



CHARTERED ACCOUNTANTS  
AUSTRALIA + NEW ZEALAND

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Transnational Crime Branch  
Criminal Justice Policy and Programmes Division  
Attorney-General's Department  
3-5 National Circuit  
Barton, ACT 2600

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To The Financial Crime Section

**Submission on Consultation Paper, Accountants: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime**

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the Consultation Paper ("the Paper"). As a professional accounting body we have a role in promoting a clear understanding of AML/CTF obligations and ML/TF risks to our members. Our responses to the specific questions raised in the Paper are set out in Appendix A. Appendix B includes more information about CA ANZ.

We support the Government's initiative to combat money laundering and financing of terrorism and we have consistently been supportive of the policy objectives of the AML/CTF Act. We recognise the importance of Australia meeting its obligations as a member of the Financial Action Task Force (FATF). As a professional accounting body we are committed to acting in the public interest and contributing to a robust system to prevent criminals from using Australia for illegal activities.

We support, in principle, the extension of the AML/CTF Act to cover the accounting profession as this extension is in the public interest. However, our support is contingent on the regime being pragmatic and proportional. This balance is best achieved through ongoing consultation with stakeholders, and appropriate and reasonable transitional timetables being agreed on. It will take businesses time to develop and put in place the required AML/CTF measures so there will need to be an appropriate implementation period, which in our view is two to three years.

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As mentioned in section 6.3 of the Paper, over half of accounting practices are sole practitioners. This highlights how critical it is to mitigate the regulatory impact on the accounting profession. We acknowledge that the Attorney-General's Department recognises that just applying Phase 1 legislation to accountants is unworkable because they are inherently different from financial institutions. We believe there are a number of measures that could be adopted to reduce or mitigate the regulatory impact of any AML/CTF regulation imposed on accountants, and these are discussed further in Appendix A:

- Transaction monitoring program
- Employee due diligence program
- International funds transfer instruction reporting
- Threshold transaction reporting
- Prospective application
- Reliance on customer due diligence (CDD) performed by other reporting entities
- Use of designated business groups (DBGs)

The time of year, coupled with the limited time given for consultation, will impact the depth and quality of feedback on the Paper. We recognise there will be a further opportunity to provide feedback at the roundtable discussions. Should you have any queries concerning the matters in this submission, or wish to discuss them in further detail, please contact Geraldine Magarey (Leader - Policy and Thought Leadership) via email at [geraldine.magarey@charteredaccountantsanz.com](mailto:geraldine.magarey@charteredaccountantsanz.com) or phone +61 2 9290 5597.

Yours sincerely

**Rob Ward FCA AM**  
Head of Leadership and Advocacy

## Appendix A: Responses to specific questions

### 1. What accountancy services pose a ML/TF risk?

We support limiting businesses' AML/CTF obligations to activities that are at risk of ML/TF. In the absence of an official sector risk assessment it is difficult to determine what accounting services pose a ML/TF risk. We support the proposal to exclude the activities of 'internal' (ie in-house) accountants that provide services to an employer rather than a client.

### 2. Do any of the professional services provided by accountants and identified by the FATF as requiring regulation pose a low ML/TF risk in the Australian context?

We support the designated services being no more than those in FATF Recommendation 22. However, we recommend further clarification of these designated services.

### 3. What are the benefits of requiring accountants to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?

We believe the benefits at a national level are adequately captured in section 2.1 of the Paper.

### 4. To what extent are the FATF's customer due diligence obligations already reflected in existing regulation (including self-regulation) for Australian accountants?

The Accounting Professional and Ethical Standards Board (APESB) is an independent, national body that sets the Code of Ethics and Professional Standards with which members of CA ANZ must comply.

Members in public practice in Australia need to perform an assessment of a client at the point of accepting the client as well as on a continuous basis. Paragraph 38(c) of APES 320 *Quality Control for Firms* requires a firm to establish policies and procedures for the acceptance and continuance of client relationships so that it will only undertake or continue relationships where the firm has considered the integrity of the client. More specifically, with regard to the integrity of a client, paragraph 40 outlines matters to consider including:

- The identity and business reputation of the client's principal owners, key management, related parties and those charged with its governance.
- Indications that the client might be involved in money laundering or other criminal activities.
- The identity and business reputation of related parties.

Furthermore, paragraph 42(a) requires a firm to establish policies and procedures that requires the firm to obtain such information as it considers necessary in the circumstances before accepting an engagement with a new client, and when deciding whether to continue an engagement with an existing client.

**5. To what extent do existing mechanisms that allow for regulatory oversight of accountants mitigate any ML/TF risks that may be posed by the services accountants provide?**

The Australian Securities and Investments Commission (ASIC) is the oversight body for Registered Company Auditors (RCAs) and their accounting practices. ASIC carries out audit inspections that focus on compliance with the requirements of the *Corporations Act 2001*, Auditing Standards and Professional and Ethical Standards. The supervision of such entities should take this into account to avoid duplication of effort and undue compliance costs.

We have a responsibility under paragraph 717.1 of Regulation CR2 of the CA ANZ Regulations to regulate our members. This includes monitoring members' compliance with enactments and other requirements that relate to the practice of accountancy. We do this by reviewing the operation of our members' practices on a cyclical basis. The review looks at policies and procedures, as well as compliance with regulatory requirements and professional standards, which includes those issued by the APESB. Again, the supervision of our members should leverage practice review activities to avoid duplication of effort and undue compliance costs.

**6. What lessons can be learned from the experience of regulating accountants under AML/CTF regimes in other jurisdictions?**

Under the UK multi-agency model, disparity amongst supervisors' interpretation and application of the AML/CTF regime is an additional cost to businesses. In our view, consistency across all reporting entities should be the primary factor when considering the most appropriate supervisory model. On this basis, our preference is for the continuation of the single supervisor model in Australia with AUSTRAC being the supervisor of all reporting entities. If this occurs we assume there will be a significant increase in resourcing at AUSTRAC, and we recommend this comprises sector specialists who understand the accounting profession and how it operates.

**7. What accountancy services should be regulated under the AML/CTF regime?**

Accounting services that pose a ML/TF risk should be regulated under the AML/CTF regime. For further discussion on this – refer to our response to question 1.

**8. Do any of the accountancy services identified by the FATF for AML/CTF regulation pose a low ML/TF risk in the Australia context?**

Refer to our response to question 2.

**9. Should auditing, compliance services and assurance services be regulated under the AML/CTF regime?**

*Auditing and assurance services*

'Assurance services' comprise of any assurance engagements performed by an assurance provider, which includes 'auditing'. An 'assurance engagement' is one in which an assurance practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

APES 110 *Code of Ethics for Professional Accountants* contains independence requirements that largely prohibit auditors engaging in transactions on behalf of clients or acting as an agent for such transactions. Accordingly, in our view, assurance services pose a low ML/TF risk. This is consistent with the FATF view as its Recommendations do not require regulation of assurance services.

#### *Compliance services*

'Compliance services' has no defined meaning or boundaries. On this basis, the designated services should not be described with reference to compliance services.

### **10. How would AML/CTF obligations impact on the client confidentiality obligations of accountants?**

APES 110 *Code of Ethics for Professional Accountants* currently imposes a duty of confidentiality, but it does not provide practical guidance on how a member should disclose a potential illegal act to a public authority. This conflict has recently been addressed in the international Code of Ethics by way of an amendment. It now provides a clear pathway for professional accountants to report non-compliance with laws and regulations to a public authority. It is likely that these changes will also be in place in Australia prior to Phase 2 of the AML/CTF Act coming into effect.

### **11. What other aspects of the accountancy sector would be impacted by AML/CTF obligations?**

Many accounting practices also provide other service offerings. It is not clear how the complexity of such multi-disciplinary firms would be dealt with in terms of the reporting entity concept and its resultant AML/CTF obligations.

Accounting practices often structure themselves as 'networks'. This is defined in APES 110 *Code of Ethics for Professional Accountants* as "a structure that is aimed at co-operation, and profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources." It is unclear whether this would meet the definition of a 'designated business group' for AML/CTF purposes. Therefore we recommend the definition be clarified to enable networks of accounting practices to share AML/CTF compliance obligations.

#### **Enrolment and scope of service**

- **Should accountants be required to enrol with AUSTRAC? Or are existing obligations that require accountants to be enrolled/licensed under other regulatory regimes sufficient?**

Not all accountants will carry out designated services, so some accounting practices will not be reporting entities. All reporting entities should be required to enrol with AUSTRAC.

- **If these existing obligations are sufficient, how would any AML/CTF regulator for these sectors identify the regulated population?**

There is no universally recognised definition of ‘accountant’ and hence anyone can hold themselves out to be an accountant. Therefore not all individuals who identify themselves as being an accountant are a member of CA ANZ. There are other professional accounting bodies, and some accountants are not affiliated with any professional accounting body. In addition, there may be individuals who carry out designated services, but do not identify as an accountant. If the regime is to be effective and achieve competitive neutrality, it is imperative that these individuals are identified.

- **What accountancy services should be regulated under the AML/CTF Act? Should accountants that provide tax advice, auditing and bookkeeping be regulated?**

For ‘auditing’ refer to our response to question 9.

‘Tax advice’ and ‘bookkeeping’ have no defined meaning or boundaries. We do note however that ‘taxation services’ is defined in APES 220 *Taxation Services*, and ‘tax agent service’, ‘BAS service’ and ‘tax (financial) advice service’ are defined in the *Tax Agent Services Act 2009*. On this basis, the designated services should not be described with reference to ‘tax advice’ or ‘bookkeeping’.

- **What factors should be taken into account in determining whether an entity is providing a designated service?**

Being an activity-based regime, if an accountant provides a designated service then the accounting practice should be a reporting entity for AML/CTF purposes.

- **Are there services provided by accountants that should be exempted from AML/CTF obligations? If yes, on what grounds?**

We do not believe the designated services should be linked to the ‘traditional’ lines of accounting services (ie compliance services, taxation services and bookkeeping) as these have no defined meaning or boundaries. We support the designated services being no more than those in FATF Recommendation 22, providing they are further clarified. It is unlikely that ‘assurance services’ would encompass any of the designated services in Recommendation 22. If any accounting services are to be specifically excluded from the regime, then we support the FATF view not to require regulation of assurance services.

There may be accountants that do not provide designated services, but are still in a position to identify suspicious matters. Therefore we recommend a provision for them to make a protected disclosure in this regard.

## **Customer due diligence**

- **What CDD obligations should accountants have?**

CDD should be conducted when a business provides a client with a designated service. Identification and verification of the client (individuals and beneficial owners of a legal entity) is an important part of the regime.

- **What CDD obligations do accountants currently have that duplicate CDD obligations under the AML/CTF regime?**

Refer to our response to question 4.

- **Should simplified CDD measures be available for some services provided by accountants?**

The level of CDD should be proportional to the ML/TF risk that the customer poses. Simplified CDD should be permitted for those clients that pose a low ML/TF risk.

- **When should the obligation for accountants to conduct CDD on clients commence? Should it be at the point at which the client first seeks advice, or only once there is a retainer in place?**

CDD should be performed at the commencement of the business relationship. In our view, the regime should be applied prospectively.

- **What opportunities are there for accountants to rely on CDD performed by other businesses involved in the same transaction?**

We agree that, in certain circumstances, accountants should be able to rely on CDD performed by other reporting entities involved in the same transaction. This would avoid duplication of effort and undue compliance costs.

### **Ongoing customer due diligence**

- **What ongoing due diligence obligations should apply to accountants?**

For existing clients CDD should be performed when there is a risk-based trigger, such as when there is a material change in the nature or purpose of the business relationship. Depending on the nature of the engagement, some accountants may not have ongoing relationships with clients whereby they have continuous visibility over transactions. In such circumstances, it would be inappropriate to require accountants to have a transaction monitoring program as part of their CDD obligations.

- **Are there existing ongoing due diligence obligations or industry standard practices for accountants that duplicate CDD obligations under the AML/CTF regime?**

Refer to our response to question 4.

### **Reporting obligations**

- **Should all reporting obligations apply to accountants?**

Suspicious matter reporting is an important feature of the regime. However, our members are not expected to have a level of knowledge of laws and regulations that is greater than that which is required to undertake the professional service they have been engaged to perform. It follows that some accountants may not know whether a matter is relevant to the enforcement of an offence against a law of the Commonwealth or of a State or Territory (eg the *Proceeds of Crime Act 2002*). Therefore, we recommend further guidance is provided on what is a 'suspicious matter'.

For the reasons outlined in our responses below, it is unlikely that international funds transfer instruction reporting and threshold transaction reporting will be applicable to accountants.

- **Are there any legal or regulatory issues that affect the submission of transaction and suspicious matter reports to AUSTRAC for accountants or insolvency practitioners?**

Refer to our response to question 10.

However, in our view, it is not appropriate for transaction or suspicious matter reporting to be made to the supervisor as this could give rise to conflicts of interest. We recommend that suspicious matter reporting should be made to an independent Police unit.

- **How often do accountants undertake cash transactions valued at \$10,000 or more on behalf of their clients'?**

Accountants undertake cash transactions of \$10,000 or more extremely rarely, if at all.

- **To what extent do accountants conduct international funds transfer instructions (IFTIs)?**

Accountants do not usually conduct international funds transfer instructions.

- **Should accountants be able to voluntarily report to AUSTRAC suspicious matters that relate to services they provide that are not subject to AML/CTF regulation?**

We believe this is a sensible approach, but the disclosures must be protected.

#### **Internal controls – AML/CTF programmes**

- **Should accountants have an obligation to establish, implement and maintain an AML/CTF program to identify, mitigate and manage ML/TF risks? If yes, what should the components of the AML/CTF program be?**

The AML/CTF program is an essential aspect of the regime. However, we recommend reducing the employee vetting requirements when prospective employees are current members of a professional accounting body and already subject to fit and proper requirements.

- **Do accountancy firms that operate internationally already have AML/CTF programs in place that comply with the FATF standards?**

We are not aware of any Australian accounting practices that currently have AML/CTF programs in place.

- **What are the implications of a risk-based approach for accountants?**

A risk-based approach enables reporting entities to develop and tailor their AML/CTF programs to reflect their commercial environment, knowledge of their client and the ML/TF risks they face. A risk-based approach should enable the regime to be applied proportionality by accountants.



- **How could professional bodies and/or the AML/CTF regulation assist accountants in developing AML/CTF systems and procedures suited to their professional practices?**

Our preference is for a collaborative approach between professional accounting bodies and AUSTRAC to develop guidance to assist accountants to design and implement appropriate policies and procedures for their business.

## Record keeping

- **What records should accountants be required to keep?**

We do not recommend any further records be kept by accountants beyond what is required for Phase 1 reporting entities under the current AML/CTF Act. Records should be kept if it is necessary for the enforcement of the AML/CTF Act.

- **To what extent do AML/CTF record-keeping obligations mirror existing record-keeping obligations for accountants (for example, under taxation or corporations law)?**

Paragraph 101 of APES 320 *Quality Control for Firms* requires firms to establish policies and procedures for the retention of engagement documentation for a period sufficient to meet the needs of the firm or as required by law or regulation. In the specific case of audit engagements, paragraph 103 of APES 320 requires a retention period of seven years.

Australian Financial Services Licensees, or their authorised representatives, are required by Regulation 7.7.05 of the *Corporations Regulations 2001* to retain records for seven years.

Section 262A of the *Income Tax Assessment Act 1936* requires any records kept or obtained under or for the purposes of this Act to be retained for five years.

## Monitoring and supervision

- **Should AUSTRAC monitor and supervise accountants for compliance with AML/CTF obligations? If not, how would the sector be regulated?**

We support AUSTRAC being the supervisor of all reporting entities.

- **Are there professional bodies that could regulate or co-regulate accountants?**

We do not believe having multiple agency supervision by self-regulatory bodies is appropriate. Not all accountants are members of professional accounting bodies, and it is important that the supervision of all accountants is consistent. The most effective way to achieve this required consistency is with a single supervisor.

- **What regulatory approach should be adopted for accountants?**

As previously mentioned, AUSTRAC should continue to supervise all reporting entities for compliance with AML/CTF obligations. However, the supervision of our members should leverage the existing regulatory oversight mechanisms, as discussed in our response to question 5, to avoid duplication of effort and undue compliance costs.

- **What advice and assistance should the AML/CTF regulator provide to support accountants to implement AML/CTF obligations?**

The introduction of Phase 2 of the AML/CTF Act will be a significant development for the accounting profession. The majority of accounting practices are small businesses and will have limited internal resources to put in place the required systems and processes. It is vital that there is a robust awareness raising campaign, as well as practical training. We are open to collaboration in this respect in terms of educating our members.

The criteria for assessing any supervision levy must be appropriate to the accounting profession. It should bear in mind that the fee structure is different to that of financial institutions. In addition, it is important that reporting entities receive a tangible benefit, by way of practical implementation guidance, ongoing training and support, in return for their supervision levy. For example; an illustrative risk assessment and compliance program for an accounting practice that can be tailored to reflect each specific business.

## **Appendix B: About Chartered Accountants Australia and New Zealand**

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations. We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.