

21 January 2026

Department of Home Affairs

Dear Sir/Madam

2026 Reforms to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The Financial Advice Association of Australia¹ (FAAA) welcomes the opportunity to provide feedback on the Department of Home Affairs Consultation Paper, *2026 Reforms to the AML/CTF Act*.

Our feedback responds to the consultation questions in *Part 1: A power to prohibit or restrict high-risk products, services or delivery channels*, of the consultation paper only.

Part 1 proposes to amend the AML/CTF Act to enable the AUSTRAC CEO to restrict or prohibit certain high-risk products, services or delivery channels under the AML/CTF regime. The new power would apply to services regulated under the AML/CTF Act.

While supportive in principle of the concept to provide the AUSTRAC CEO with such powers, we are concerned about the fairness of such measures if the scope, criteria and application of this proposal is too broad or too uncertain. It would be helpful to see examples of how the proposed CEO power might work in practice, given it is a broad power that can be applied across an entire sector, not just one entity.

CONSULTATION QUESTIONS

1. Do you have any views on the scope of this power applying to the provision of all designated services, or should the power be limited to registrable services?

- A. While there is merit in the suggestion that the proposed power be limited to the higher-risk registrable services, consideration should be given as to whether this limitation would adequately deal with emerging risks, products, services and delivery channels.

However, if the powers are applied to all designated services, appropriate and clear criteria should be developed to ensure that the proposed powers can only be applied to genuinely high-risk products, services and delivery channels. Within a designated service cohort, there will likely be a variety of products and services provided using a range of delivery channels. Each of these may present a different level of ML/TF risk – i.e. low, medium or high risk. This risk variation should be recognised in the criteria to ensure the CEO powers apply only to the products, services and delivery channels that present a particularly high ML/TF risk. Low-risk products, services and delivery channel should be

¹ The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

explicitly excluded, including in circumstances where the powers are applied to high-risk services under the same designated service definition.

If appropriate criteria is developed to permit the powers to be used in relation to an identified cohort of high-risk providers in each designated service (see B. for further discussion), this approach may provide a reasonable application of the powers that is broader than registrable services to cater for emerging risks.

- B. If the scope of this power applies to the provision of all designated services, consideration should be given to the variations in the designated services provided under each definition, particularly a professional service, as it may unfairly penalise reporting entities that provide low-risk services only.

The proposal implies that if the CEO were to exercise such powers, the restrictions or prohibition would apply to all reporting entities that may be captured by that designated service definition in the Act.

This would mean that all variations of providers and services that may be captured under a definition would be impacted by the application of the CEO powers, even if their involvement in that service is incidental to the main service they provide; or if they do not provide the high-risk version of those services.

Noting that the aim of this measure is to provide powers for the CEO in relation to 'high-risk products, services and delivery channels', we suggest the criteria used in the application of the power should carefully identify the higher-risk services and providers amongst the reporting entities enrolled to provide the relevant designated services under each definition. The aim would be to ensure any restriction or prohibition would apply to the specific high-risk products, services, and delivery channels, and avoid inadvertent inclusion of lower-risk products, services and delivery channels.

2. What products, services or delivery channels that enable designated services to be provided pose money laundering, financing of terrorism or proliferation, or serious crime risks that are difficult for reporting entities to manage and mitigate?

The large majority of FAAA members provide only item 54 designated services and therefore arrange for another designated service to be provided by another reporting entity. This creates two layers of AML/CTF risk mitigation - the financial adviser and the product provider, for example. This assists in mitigating and managing ML/TF risk.

Generally, financial advisers do not recommend products, services or use delivery channels that pose a high ML/TF risk; and the majority of financial advisers' clients are individuals based in Australia.

The most challenging ML/TF risk for an advice AFSL holder to mitigate and manage would be collecting enough information to make informed SMRs on people who advisers do not take on as clients due to suspicious behaviour, while also complying with the tipping off provisions.

We are therefore unable to respond in terms of designated services that pose risks that are difficult to manage and mitigate.

3. What criteria should the AUSTRAC CEO be required to apply when making a decision to restrict or prohibit a high-risk product, service or delivery channel?

If these powers apply to all designated services, when making a decision to apply these powers, where possible, the AUSTRAC CEO should conduct an analysis of all reporting entities enrolled with AUSTRAC as providing that designated service, product or using that delivery channel to assess and provide evidence on whether the high-risk is a systemic issue across all providers, or specifically relates to an isolated incident from one provider, or particular types of providers of that designated service. The restriction or prohibition should apply where it is necessary to address the high-risk only.

We would endorse the CEO's consideration of the use of restriction conditions in advance of the complete prohibition of products, services and delivery channels, where this a viable option to effectively mitigate the high ML/TF risk.

4. Do you have any view on the proposed consultation and legislative instrument requirements when a decision is made and prior to it coming into effect?

It is proposed that before making a decision the AUSTRAC CEO must undertake mandatory public consultation for a minimum of 30 days, with persons who are reasonably likely to be affected by the decision; and that the consultation should identify the product, service or delivery channel, the risk that it poses, and the proposed decision by the AUSTRAC CEO.

- A. Consultation requirement - We support the intent of this proposed consultation requirement to ensure consideration is given to potential market, economic, consumer and competition issues that may arise as a result of the CEO applying these powers. As discussed above, if the settings for these powers are not appropriately targeted to high ML/TF risks only, there may be unintended consequences for low-risk services and products consumers rely on.
- B. Time critical matters - It is important that the powers provide for circumstances where the risk poses significant detriment to consumers, the community and/or businesses, that require immediate use of the powers. We support the caveat regarding consultation in such circumstances.
- C. Regulator consultation - We welcome the requirement that the AUSTRAC CEO must consult with the relevant agency where the product, service or delivery channel is also regulated by another Commonwealth, state or territory agency.
- D. Duration of restriction or prohibition - We seek clarity on the following statement, which implies any application of the new powers must be for a minimum of 3 years, regardless of the circumstances:

...and the duration of a decision (i.e. for an initial period of no less than 3 years after it commences, with an ability for the AUSTRAC CEO to extend or make a decision permanent via a subsequent legislative instrument).

We question the need for a minimum duration and suggest the duration be a matter for the CEO to determine based on the circumstances and ML/TF risk.

5. Do you propose any particular safeguards or restrictions to the proposed new power for the AUSTRAC CEO to restrict or prohibit high-risk products, services and delivery channels and, if so, what should those safeguards be?

As mentioned above, clear and appropriate criteria should permit the CEO to use these powers in relation to just a cohort of providers identified as providing high-risk services, products or delivery channels, rather than all entities enrolled to provide a particular designated service. The consultation paper is unclear as to the circumstances under which the AUSTRAC CEO may be able to exercise the power in this regard.

Safeguards should be considered from both the consumer/community protection perspective, and business perspective. The proposed CEO powers must balance consumer protections with business operations. Care should be taken to ensure the new powers do not result in unnecessary regulatory over-reach, yet provides enough flexibility to cater for emerging ML/TF risks of the future.

The definitions in the AML/CTF Act can capture providers across a large cross-section of reporting entities offering a range of services, products and delivery channels. Depending on the very specific types of services, products and delivery channels, there may be cohorts of providers under a definition with varying levels of ML/TF risk – i.e. the specific types of services, products and delivery channels provided by one cohort may be higher ML/TF risk than another cohort, for the same designated service.

We support the use of parliamentary oversight as a safeguard for the use of the proposed AUSTRAC CEO powers.

6. Are you satisfied that the proposed model adequately captures products, services or delivery channels that enable the provision of designated services that may be high-risk now, or in the future?

See response to question 1 above.

7. Do you think the proposed offence penalty is sufficient to deter continued use of banned or restricted products, services or delivery channels?

It is proposed to introduce an offence with a maximum penalty of 2 years or 500 penalty units, or both, which seems reasonable.

We would welcome the opportunity to discuss the feedback provided in our submission in more detail. If you have any questions, please contact me on (02) 9220 4500 or phil.anderson@faaa.au.

Kind regards



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