Law Council
OF AUSTRALIA

Proposed 2026 amendments to the AML/CTF Act

Department of Home Affairs

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Acknowledgements

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- the Law Society of South Australia;
- the Law Institute of Victoria;
- its AML/CTF Working Group; and
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for their contribution to the preparation of this submission.

Executive summary

Preliminary comments

Commencement

1. As previously communicated to you, the Law Council has serious concerns regarding the ability of Tranche 2 reporting entities to comply with the new legislative Regime by 1 July 2026. We reiterate that the commencement of the legislation, at least insofar as it applies to the reporting entity population of legal practitioners, should be delayed until 1 July 2027. If this cannot be done, we recommend that consideration be given to delaying commencement of, and/or temporarily modifying the application of, the specific aspects of the AML/CTF Act detailed in Annexure A.

2. Alternatively, AUSTRAC should implement a transitional compliance period of at least 24 months following July 2026, during which AUSTRAC will focus on education and assistance for Tranche 2 entities in complying with their new obligations, rather than pursuing compliance through enforcement.

Other recommended amendments

3. We recommend that consideration be given to making other important amendments to the AML/CTF Act, including clarifying in the legislation the meaning of the word '*customer'* and the scope of application of the professional services designated services, located in Table 6, Section 6.

Views on the proposed power to prohibit or restrict high-risk products, services or delivery channels

4. We do not support amending the AML/CTF Act to introduce the proposed power either in relation to registerable services or in relation to all designated services.

5. However, if the proposed power is introduced, we recommend that it only be exercisable in circumstances where the service, product or delivery channel poses a serious systemic risk of money laundering and terrorism financing (**ML/TF**) that cannot be mitigated by any less restrictive means (including improved regulation), and where the proposed limitation or restriction of the same would not cause harm to businesses, consumers, the economy, and society more broadly that is disproportionate to the ML/TF risks posed. We also support including a consultation and legislative instrument requirement, subject to certain qualifications, and recommend that the exercise of the power be subject to several critical safeguards, including that the relevant provision of the AML/CTF Act creating it:

    - requires that each legislative instrument made under it be accompanied by an explanatory statement, as defined in section 15J of the *Legislation Act 2003*, which satisfies the requirements of section 15J(2) of the Act *and* which requires justification for the decision to be provided, and an explanation of how criteria shaping the exercise of the power were considered (including detailed

statements as to how any subjective assessments or factors were considered and weighted);
- specifies that the power is only exercisable in exceptional circumstances where there is clear evidence of systemic risk that cannot be mitigated, associated with a specific product, service, or delivery channel;
- specifies clear decision-making criteria that must be taken into account before the instrument is made;
- provides that the consideration of any subjective factors, such as whether it is 'the public interest' to restrict or prohibit a product, service, or delivery channel, be guided by clear criteria;
- specifies that decisions made pursuant to an exercise of the power are not retrospective in application;
- includes a requirement to consult (subject to the above recommendations); and
- includes a mechanism for appeal or review of decisions.

Views on amending the definition of 'financing of terrorism'

6. The Law Council has significant concerns regarding the proposed amendment to the definition of '*financing of terrorism'* in section 5 of the AML/CTF Act to reflect recent amendments to the *Criminal Code 1995* (Cth), effectuated by the *Criminal Code Amendment (State Sponsors of Terrorism) Act 2025* (Cth). We do not support it.

7. Importantly, we do not agree that amending the definition is merely 'technical' and consequential in nature, or that the Regime already largely covers state-sponsored terrorism. Rather, we think that amending the definition to refer to additional offences introduced by the Amending Act will have the effect of extending the scope of the Regime's obligations (excluding the SMR obligation), which will mean that reporting entities will need to have regard to the broader scope of the term when fulfilling their obligations under the AML/CTF Act, including, for example, when assessing their ML/TF risk, when crafting their compliance programs, and when conducting client due diligence.

Introduction

8. The Law Council of Australia welcomes the opportunity to respond to the Department of Home Affairs' (**Department**'s) consultation on proposed amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth).

9. This submission first provides preliminary comments on the subject matter of the consultation, then provides comments on the specific proposed amendments by responding to the Consultation Paper's questions.

10. For ease of reference, in this submission the Law Council refers to:

    - the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth) as an integrated whole (**AML/CTF Act**); and
    - to the Anti-Money Laundering and Counter Terrorism Financing legislative regime as the **Regime**.

Preliminary comments

11. Before providing its views on the amendments proposed in the consultation paper, the Law Council takes this opportunity to offer the following related comments and recommendations.

Commencement of the AML/CTF

12. As you know, the Law Council has serious concerns regarding the ability of Tranche 2 reporting entities to comply with the new legislative Regime by 1 July 2026 as, less than six months from its commencement, several of the essential steps that new reporting entities will need to complete to prepare to comply cannot be completed.

13. To be able to comply by 1 July 2026, Tranche 2 entities must:

    - first, be aware of the fact that they may be regulated by the Regime;
    - second, be able to work out (well in advance of that date) whether they will be regulated by it, which requires that they be able to determine whether the services they provide are 'designated services';
    - third, if they believe they will be subject to the Regime, learn about it, the obligations it imposes, and what is required to comply with it; and
    - fourthly, and critically, determine how they will implement their obligations, which requires them to—at a minimum:
        - design a comprehensive compliance framework;
        - hire new staff and/or upskill existing staff (or themselves) to acquit specific obligations (both of which will require the investment of time and resources to engage in recruitment and/or necessary training);
        - investigate and potentially implement external compliance solutions;
        - potentially reorganise their business operations;
        - come up with the money needed to pay necessary costs.

14. Concerningly, some of those who may be regulated by the Regime remain unaware, or have only very recently become aware, that they may be subject to it. This is due partly to the significant degree of ambiguity in the new provisions of the AML/CTF Act that extended its scope of application, which have made it very difficult for potentially regulated entities to work out whether the Regime will apply to them with reference to the legislation (and accompanying materials) alone—necessitating the production of authoritative guidance on the scope of the Items in Table 6, section 6 by government to clarify its application. Such guidance was only finalised and made available to the public by AUSTRAC via its Reforms Guidance in December 2026, leaving many potentially regulated entities only six months to work out if they are likely to be regulated by the Regime.

15. While we sincerely appreciate AUSTRAC's efforts to produce the Reforms Guidance, the profession needs more time to work through it and its implications for specific areas of practice, including commercial transactions, mergers and acquisitions, family law, certain aspects of criminal law, intellectual property, and so forth. We are concerned that practitioners continue to reach out to the Law Council with questions about the Regime's scope of application—practitioners who are either unaware of the

Reforms Guidance or who say that it has not sufficiently clarified whether or not they are subject to it and requesting further guidance. In addition, AUSTRAC has yet to deal with the important matter of exemptions from the scope of application of the designated services, leaving many anxious about whether they will be able to apply for and obtain an exemption (if needed) before commencement.

16. It is unacceptable that many potentially regulated entities remain unsure about whether they will be regulated or not with less than six months until the commencement of the extended Regime.

17. Our concerns are significantly compounded by the fact that aspects of the Regime remain unsettled: importantly, for example, Legal Professional Privilege Guidelines (that will regulate how assertions of client legal privilege may be made in the context of the Regime) have been expected to have been finalised for some time but have not yet been finalised. In addition, several pieces of authoritative guidance and support materials remain outstanding, including AUSTRAC sector-specific guidance and profession/industry specific Starter Programs. These will be critical resources that smaller, resource-constrained reporting entities will be reliant upon and likely largely unable to start the task of preparing for compliance without. Guidance is also outstanding on the Regime's interaction with the Privacy Act, which will be critical as many new reporting entities will be brought within the scope of the Privacy Act for the first time by virtue of becoming regulated by the AML Act. Such guidance will need to be supplemented by education, including continuing professional development modules—all of which will take time to develop and run.

18. We are very concerned about the prospect of reporting entities being expected to be compliant with the Regime on pain of punishment without having been given a reasonable opportunity to understand it or how to comply with it, or to undertake any steps needed to prepare their practice for compliance.

19. Accordingly, we reiterate our view that the commencement of the legislation, *at least* insofar as it applies to the approximately 90,000 strong reporting entity population of legal practitioners, should be delayed until 1 July 2027. This time is needed to give reporting entities, including legal practices, the time they need to properly consider and implement the changes required to meet their compliance obligations without the threat of sanction.

20. If this cannot be done, we recommend that consideration be given to delaying commencement of, and/or temporarily modifying the application of, the specific aspects of the AML/CTF Act detailed in our letter to you dated 20 August 2025. An excerpt of that letter is **Annexure A**.

21. Alternatively, AUSTRAC should implement a transitional compliance period of at least 24 months following July 2026, during which it will focus on education and assistance for Tranche 2 entities in complying with their new obligations, rather than pursuing compliance through enforcement. We would be pleased to discuss how this transitional approach can best be achieved. For example, it might require provisions in the Regime containing offences or civil penalties to be disapplied to legal practitioners for a 24-month period.

Other recommended amendments

Definition of 'customer' in the context of professional services

22. The meaning of the word '*customer'* needs to be clarified in the AML/CTF Act in relation to the provision of professional services located in Table 6, section 6.

23. The word is currently defined by reference to sections 5 and 6 of the Act; section 5 provides that '***customer** has the meaning given by section 6, and includes a prospective customer*', while section 6 (Designated services), contains six tables defining the services that constitute '*the provision of a designated service'* in the context of a particular industry or sector, and '*the person (the **customer**) to whom the designated service is provided'.*

24. For example, the customer is simply defined as '*the person'* in relation to Item 1, '*assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate*'; the same is true in relation to Items 2, 3, and 4. In relation to Item 6, '*assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of … a body corporate … or … a legal arrangement…'*, the customer is also defined as '*the person',* but that may also include *'the beneficial owners and directors of the company', or 'the trustee, settlor and beneficiaries'* of an express trust created.

25. These definitions are broad and capable of including people other than the client of a legal practice, including counter-parties; for example:

- legal practitioners holding money on trust, including in the form of a deposit, from both vendor and purchaser in the context of a real estate transaction;
- a legal practitioner acting for a party to a joint venture, syndicate, or consortium involving the provision of a designated service, in relation to which they are retained by one party but assisting all.

26. It would be impractical and likely infeasible to require a reporting entity to fulfil AML/CTF obligations in relation to non-client customers and, in any case, it would likely be unnecessary as obligations will likely be incurred by another reporting entity employed by the counter-party or third party.

27. For clarity and certainty and to avoid unintended consequences, we recommend that consideration be given to amending the AML/CTF Act to clarify that the term '*customer'* means '*client'* for designated services that are legal services delivered by legal practices.

Clarify scope of designated services

28. Another important matter that requires legislative amendment is the scope of application of the professional services designated services, located in Table 6, Section 6.

29. The Law Council has, on several occasions, expressed its serious concern with the degree of ambiguity inherent in the legislative drafting of the Items in Table 6,

including, for example, in our submission to the Senate Legal and Constitutional Affairs Committee regarding its *Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024*.[1] Though AUSTRAC has published helpful Reforms Guidance clarifying its interpretation of the scope of application of the Items in Table 6, our concerns regarding the inadequacy of the underlying legislation remain unresolved. The Reforms Guidance cannot provide reporting entities with the degree of certainty about their obligations under the AML/CTF that is needed.

30. We recommend that serious consideration be given to amending the AML/CTF Act to insert precise definitions regarding the meaning of the Items in Table 6. We consider that these definitions should mirror the interpretations outlined by AUSTRAC in its Reforms Guidance.

[1] Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs Committee, *Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (16 October 2024) [70], [207]-[211] <https://lawcouncil.au/publicassets/b3536317-9695-ef11-94ab-005056be13b5/4607%20-%20S%20-%20AML%20Bill%20Submission.pdf>.

Part 1: A power to prohibit or restrict high-risk products, services or delivery channels

31. The consultation paper proposes that the AML/CTF Act be amended to introduce new provisions enabling the AUSTRAC Chief Executive Officer (**CEO**) to restrict or prohibit certain high-risk products, services, or delivery channels that enable the provision of services within subsections 6(2) to 6(5B) of the AML/CTF Act—i.e., the designated services.

Question 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?

32. The Law Council does not support amending the AML/CTF Act to introduce the proposed power either in relation to registerable services, or in relation to all designated services.

33. The Law Council considers that any extension of AUSTRAC's powers in relation to the regulation of the Regime should be risk-based, proportionate, and demonstrably necessary. Where proposed new powers would interact with the legal profession (and other highly regulated professions), the question of whether the proposed powers are necessary should involve consideration of lawyers' professional and ethical obligations.

34. It is difficult to say whether the proposed powers are risk-based and proportionate because no detailed explanation is provided about what high-risk products, services, or delivery channels are, nor are any examples provided that this power is intended to be exercised in relation to, though we have located a press release dated 16 October 2025 referencing crypto ATMs.[2] This makes it difficult to envisage what the powers are intended to be exercised in relation to, preventing any assessment of whether the proposed powers are proportional to any risk. However, given that their exercise could result in the wholesale prohibition or limitation of the provision of an undefined range of products, services, and delivery channels, it seems unlikely such powers are risk-based and proportionate given the extensive risk mitigation and management framework created by the AML/CTF Act, which should be sufficient to manage conceivable risks.

35. It is also far from clear whether the proposed powers are necessary: no case—and certainly, no compelling case—is made in the consultation paper as to why the proposed new powers are needed, nor is an adequate explanation provided as to why existing powers in the AML/CTF Act or elsewhere are insufficient to appropriately regulate high-risk products, services, or delivery channels. In the context of the delivery of designated services that are legal services, the necessity for the proposed powers is especially dubious: the Law Council is not aware of any, and

[2] AUSTRAC, '*Powers proposed to tackle high-risk products services and channels*' (Media Release, 16 October 2025) <https://www.austrac.gov.au/news-and-media/media-release/powers-proposed-tackle-high-risk-products-services-and-channels>.

cannot conceive of any specific products, services, or delivery channels that enable legal services to be provided that—in their own right—pose money laundering, financing of terrorism or proliferation risk that cannot be adequately managed and mitigated through the AML/CTF Act's framework and lawyers' professional and ethical obligations, without recourse to the proposed powers.

36. Accordingly, we are not convinced that the proposed powers are risk-based, proportionate, and demonstrably necessary. Unless and until the Department can demonstrate that they satisfy these basic criteria, they should not be introduced.

37. We also question why this proposed amendment to the AML/CTF Act has been prioritised for action before the Act's commencement when other, far more pressing issues have apparently not warranted action. It is extremely disappointing that years of advocacy by a range of stakeholders across several professions and industries regarding serious deficiencies with the Act that will have a critical impact on Tranche 2 entities—including, but not limited to, its exceptionally unclear scope of application (specifically, we refer to the Items in Table 6) and inadequately defined obligations—appear to have gone ignored.

38. If, however, the proposed power is intended to be progressed despite these concerns, consideration should first be given to:

    - deferring introduction of the power until the amended AML/CTF Act and Rules have been given a couple of years to operate post-commencement, to obtain certainty about whether the controls in the AML/CTF Act are sufficient to manage identified high-risk products, services, or delivery channels (as it is intended to be); and/or
    - giving the power to the responsible Minister via a regulation-making power, rather than to the AUSTRAC CEO via a legislative instrument. This better reflects the broad scope and gravity of the proposed powers, which render it more appropriately exercised by a responsible, elected Minister.

39. Regardless of whether either or both of these recommendations are followed, if the proposed power is progressed, the Law Council submits that it should be confined to registerable services, or at the very least, that it should not extend to include section 6(5B), which contains Table 6—Professional services.

40. While it is likely unnecessary for the power to apply to non-registerable designated services generally, applying it in relation to the designated services in Table 6, section 6 would be both unnecessary and unacceptable. We consider it unacceptable because it would confer upon AUSTRAC's CEO the power to prohibit or limit the provision of certain legal services, possibly including certain kinds of legal advice and representation. It is essential to the rule of law that legal professionals can provide their clients with full and frank advice about their legal affairs, and to provide them with legal services responsive to their needs—subject, of course, to the limits imposed by their professional and ethical obligations, which prohibit legal professionals from furthering illegal purposes. Any curtailment of a lawyer's capacity to provide comprehensive, appropriate advice and/or representation to a client would represent a significant and unwarranted intrusion into the relationship between lawyers and clients that should not be contemplated in the absence of compelling justification.

Question 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?

41. As a preliminary comment, we are concerned that this question implies that consideration is being given to exercising the proposed powers in relation to products, services, and delivery channels with reference to whether they are merely difficult for reporting entities to manage and mitigate. This contrasts with the consultation paper, which proposes that the power would be exercisable only in relation to circumstances where the '*use of the product, service, or delivery channel has resulted in, or will or is likely to result in* ***significant*** *money laundering, financing of terrorism or other serious crime harm to the Australian financial system, and the continued use of the product, service or delivery channel is likely to cause harm to the community that outweighs the public interest in its continued use'*.

42. This power—if it is introduced—cannot be crafted in such a way that it is exercisable with reference to whether a risk is merely 'difficult' to manage and mitigate. This threshold is unacceptably vague; there are a range of risks that a reporting entity, depending on its resources and level of sophistication, may consider difficult for it to manage and mitigate. This threshold is also unacceptably low, considering that it could include, for example, dealings with complex corporate structures, with politically exposed persons, or involving medium- to high-risk jurisdictions. The AML/CTF Act creates a legislative framework within which reporting entities are supposed to deliver designated services whilst appropriately managing and mitigating ML/TF risks, including those that may be difficult to mitigate and manage.

43. For these reasons, we recommend that, if introduced, this power should only be exercisable in relation to registerable products and in exceptional circumstances where there is clear evidence of systemic and unmitigable risk associated with a specific product, service, or delivery channel.

44. In any case, as discussed above, the Law Council is not aware of any, and cannot conceive of any specific products, services, or delivery channels that enable legal services to be provided that—in their own right—pose money laundering, financing of terrorism or proliferation, or serious crime risks that pose a risk of harm that outweighs their continued use, irrespective of relevant AML/CTF controls. In the context of legal service delivery, heightened risk tends to arise from the circumstances in which a service is requested to be provided: for example, where there are opaque ownership structures, high-risk offshore jurisdictions, or rapid movement of funds. Such risks can be readily managed through the AML/CTF framework.

Question 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?

45. The consultation paper proposes that, in making a decision, the AUSTRAC CEO will need to consider the following factors:

- whether the restricting or prohibiting of a product, service or delivery channel is in the public interest to prevent and disrupt serious financial crime;
- whether there are viable alternatives to the proposed product, service or delivery channel that enable the designated service to continue to be provided;
- any other relevant information;
- AUSTRAC's regulatory objectives; and
- Reporting entity's obligations under the AML/CTF Act.

46. We are of the view that, if the proposed power is introduced in relation to registerable services, it should only be exercisable in the following circumstances:

- **Last resort:** the service, product or delivery channel must pose a serious systemic risk of ML/TF that cannot be mitigated by any less restrictive means (including improved regulation); and
- **Proportionate:** any proposed limitation or restriction of a service, product, or delivery channel should not cause harm to businesses, consumers, the economy, and society more broadly that is disproportionate to the ML/TF risks posed.

47. If this threshold is met, we support requiring the AUSTRAC CEO to consider the factors in paragraph [45] above. If the power is introduced and its scope of application extends to Table 6, and the decision would affect the provision of legal services, the criteria should also include the following:

- whether the ethical and professional framework regulating legal practitioners adequately manages and mitigates the identified risk;
- any impact on access to justice;
- the availability of viable alternatives for delivering the relevant legal service; and
- whether the risk arises from misuse of legal services or whether it is inherent in the product, service, or delivery channel itself.

Question 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?

Consultation requirement

48. If the proposed power is introduced, we support including a consultation requirement. We make the following recommendations regarding the content of this requirement:

    - **Minimum consultation period**: the minimum consultation period should be longer than 30 days, as the gravity of the power and the significant implications of its exercise means that more time will be needed to ensure meaningful consultation can occur with affected stakeholders. We suggest that a period of 60–90 days be considered.
    - **Notice period**: there should be a prescribed minimum notice period for proposed changes to take effect.
    - **Exceptions**: there should not be an 'urgency' exception that would allow the requirement to consult to be dispensed with in circumstances where a decision needs to be made urgently; adequate consultation may be especially important in such circumstances to ensure the exercise of the power is appropriately confined and that unintended consequences are avoided.

49. If, despite the above, the proposed 'urgency' exception is retained in the consultation requirement, its scope must be clearly defined and narrowly confined to ensure that it is not used in inappropriate circumstances. In particular, if the proposed power extends to the professional services in Table 6 (which we do not support), the urgency exception should not be available in relation to proposed exercises of the power that would affect the delivery of legal services. Meaningful consultation with relevant professional bodies and regulators is essential in this context given the implications any proposed restriction or prohibition may have on human rights and access to justice; it is critical that such implications are properly understood before any decisions are made, and that unintended consequences are avoided. Further, the exception should be subject to appropriate safeguards to ensure it is only relied upon in genuinely urgent situations, which could involve imposing time limits on the outcome of the decision, requiring post-decision consultation, and requiring the publication of reasons explaining the basis for the urgency.

Legislative instrument requirement

50. The consultation paper proposes that '*a decision by the AUSTRAC CEO must be made via a legislative instrument'*. We note that the term '*legislative instrument'* is an umbrella term, including any instrument that is legislative rather than administrative in nature, and made by exercising a power delegated by the Parliament.[3]
    Per sections 8 and 10 of the Legislation Act, legislative instruments include any instrument specified as a legislative instrument in primary legislation, and regulations

[3] Australian Government , *Legal Briefing No 102* (26 February 2014) <https://www.ags.gov.au/sites/default/files/br102.pdf>, referring to section 5(1) *Legislative Instruments Act 2003* (Cth).

and rules, among other things. It is not clear what precise kind of legislative instrument it is proposed that decisions are to be made via, but we note that the Legislation Act imposes the same requirements in relation to all types of legislative instrument.

51. We do not necessarily oppose the proposed power being exercisable via legislative instrument, subject to the recommendations we make in response to Question 5 below. For the avoidance of doubt, we do not support the proposed power being exercisable via notifiable instrument.

Question 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?

52. If the proposed power is introduced, we make the following recommendations in relation to the relevant new provision of the AML/CTF Act creating the power for the AUSTRAC CEO to make decisions:

- that it requires that each legislative instrument made under it be accompanied by an explanatory statement, as defined in section 15J of the Legislation Act , which satisfies the requirements of section 15J(2) of the Act *and* which requires justification for the decision to be provided, and an explanation of how criteria shaping the exercise of the power were considered (including detailed statements as to how any subjective assessments or factors were considered and weighed);
- that it specifies that the power is only exercisable in exceptional circumstances where there is clear evidence of systemic and risk that cannot be mitigated, associated with a specific product, service, or delivery channel;
- that it specifies the decision-making criteria that must be taken into account before the instrument is made;
- that the consideration of any subjective factors, such as whether it is 'the public interest' to restrict or prohibit a product, service, or delivery channel, be guided by clear criteria;
- that it specifies that decisions made pursuant to an exercise of the power are not retrospective in application;
- that it includes a requirement to consult (subject to the above recommendations); and
- that it includes a mechanism for appeal or review of decisions.

Scope

53. As currently contemplated, the proposed power would enable the AUSTRAC CEO to restrict or prohibit the use of a high-risk product, service, or delivery channel if it appears that its use has resulted in, or will or is likely to result in significant ML/TF, or other serious crime harm, to the Australian financial system, and that its continued use is likely to cause harm to the community that outweighs the public interest in its continued use.

54. We are of the view that the proposed power should only be available in exceptional circumstances where there is clear evidence of systemic and risk that cannot be mitigated associated with a specific product, service, or delivery channel. We consider this a more appropriate threshold for the exercise of the proposed extraordinary powers given that the framework created by the AML/CTF Act is intended to create a framework to manage and mitigate, so far as is possible, ML/TF risk, and to enable the detection, prosecution, and prevention of ML/TF activity. We consider that a power of the nature described is only justifiable in the context of this Regime in circumstances where ML/TF risk exists that cannot be mitigated and which thus warrants the exercise of the power.

Question 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?

55. The Law Council considers that the proposed model is unduly broad, in that it is capable of applying to an undefined range of products, services, or delivery channels that are or may be high risk. This risks undermining the clarity and certainty of the provisions and the overarching Regime.

Question 7

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

56. The consultation paper proposes an offence provision applying to the continued provision of designated services through restricted or prohibited high-risk products, services, or delivery channels with a maximum penalty of 2 years or 500 penalty units, or both.

57. This is significant and potentially inappropriate in circumstances where non-compliance may arise from uncertainty, transitional issues or inadvertent conduct, particularly in the early stages of the Regime's extension to Tranche 2 entities. It may also be disproportionate or unfair when applied to legal practitioners because ceasing to provide a legal service to a client mid-matter may violate professional and ethical obligations, leaving them at risk of regulatory and professional consequence—while continuing to provide a proscribed or limited service will still place them at risk of regulatory and professional consequences because a conviction for an offence under the AML/CTF Act may trigger mandatory reporting obligations and regulatory action.

58. A proportionate and graduated enforcement approach would better recognise the regulatory consequences already faced by legal practitioners while still supporting compliance and deterrence.

Part 2: Amending the definition of 'financing of terrorism'

59. The Law Council notes that Part 2 of the consultation paper proposes an amendment to the definition of '*financing of terrorism'* in section 5 of the AML/CTF Act.

60. The term is currently defined as conduct amounting to an offence against section 102.6 or Division 103 of the *Criminal Code 1995* (Cth) or a corresponding offence under the law of a State or Territory, or a foreign country or a part of a foreign country, or an offence against section 20 or 21 of the *Charter of the United Nations Act 1945* (Cth).

61. The Department proposes to amend this definition so that it reflects recent amendments to the Criminal Code, effectuated by the *Criminal Code Amendment (State Sponsors of Terrorism) Act 2025* (Cth) (the **Amending Act**), which Act introduced provisions giving the Governor-General the power to prescribe an entity in regulation as a '*state sponsor of terrorism'*, and new offences criminalising conduct engaged in by such entities and by those seeking to assist them.

Question 8

What concerns, if any, do you have with the proposed amendment to the definition of 'financing of terrorism'?

62. The Law Council has significant concerns regarding the proposed amendment to the definition of '*financing of terrorism'*, and it does not support it. At a minimum, before any further consideration is given to this proposed amendment, the impact of expanding the definition of the term needs to be better understood and appreciated by the Department—particularly given the unclear, broad scope of the new offences in the Criminal Code.

63. Importantly, we do not agree that amending the definition is merely 'technical' and consequential in nature, or that the Regime already largely covers state-sponsored terrorism. Rather, we think that amending the definition to refer to additional offences introduced by the Amending Act will have the effect of extending the scope of the Regime's obligations (excluding the SMR obligation).

64. We say this because it is not clear that the existing Regime extends AML/CTF obligations generally to state-sponsored terrorism, except in relation to the SMR obligation. Even in that case, while it is true that reporting entities are required to report suspicions of state-sponsored terrorism financing under section 41(f)(1)(iii), this obligation extends to any information that '*may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory'*. As such, it is not correct to refer to this section in support of the claim that the Regime covers (which is to say, extends AML/CTF obligations) to state-sponsored terrorism generally—rather, it does so only in respect of this particular offence for the purposes of suspicious matter reporting, which it also does so in relation to all other crimes). Other aspects of the AML/CTF Act referenced in support of the claim that the Regime already applies to state-sponsored terrorism are equally tenuous: while reporting entities are required to report suspicious matters

relating to sanctions breaches and to undertake enhanced customer due diligence to a customer in certain circumstances (including where an SMR obligation arises, or where the customer is physically present in a high risk jurisdiction) , neither of these obligations specifically relate to state-sponsored terrorism. No other provisions of the AML/CTF Act currently, so far as we are aware, require reporting entities to have regard to state-sponsored terrorism in acquitting their broader ML/TF obligations.

65. As such, amending the definition to refer to additional offences introduced by the Amending Act will have the effect of extending the scope of the Regime's obligations (excluding the SMR obligation, which it already applies to). Among other things, it will mean that reporting entities will need to have regard to the new definition of the term—and importantly, its broadened scope—when fulfilling their obligations under the AML/CTF Act, including, for example, when assessing their ML/TF risk, when crafting their compliance programs, and when conducting client due diligence.

66. In so doing, the proposed amendment creates a real risk of introducing additional, and significant, uncertainty and complexity to the Regime. This is particularly so due to the nature of the state-sponsored terrorism offences. Though broadly analogous to the listing framework for non-state terrorist organisations in Divisions 102 and 103 of the Criminal Code, new offences in Part 5.3A of the Criminal Code that address the financing of state sponsored terrorism are comparatively broadly framed and uncertain.

67. The legislation introducing these new offences was not subject to an adequate period of consultation prior to its passage, and the Law Council was unable to provide a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) *Review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025*. However, it is clear that these offences have an exceedingly broad potential scope of operation. Notably, a person may be guilty of an offence under section 111.4(1) or (2) if they possess a 'thing', where that 'thing' is connected with preparation for, the engagement of an entity in, or assistance in a state terrorist act', if they know or are reckless as to whether the connection exists (among other elements). Under section 111.5(1) or (2), a person will commit an offence by collecting or making a document that is connected with preparation for, the engagement of an entity in, or assistance with a state terrorist act, where they know or are reckless to the connection (again, in addition to other fault elements). No clarification is provided about what it means for a document or a thing to be 'connected with preparation for' a state terrorist act.

68. In purely practical terms, it will be very difficult for reporting entities to comply with their AML/CTF obligations if the term '*financing of terrorism'* is defined with reference to such broadly framed offences; it is not clear how a reporting entity could possibly know whether a client may be being reckless as to whether a thing they possess is connected to the preparation of, engagement of an entity in, or assistance in, a state terrorist act.

69. We are also concerned that, unlike the pre-existing terrorism offences, the new state-sponsored terrorism offences involve a direct connection to a foreign nation state (i.e., the Islamic Republic of Iran). Expanding the definition to refer to these offences could will have an unintended negative impact on Iranian people, and especially on diaspora communities and those who deal with people linked to Iran as reporting

entities may decide that they are simply unable to deal with anyone from Iran, regardless of their particular circumstances, because they are unable to understand the scope of the new offences and thus their obligations under the Regime.

70. Introducing these additional, broadly framed and unclear offences into the definition is also of concern because financing of terrorism suspicions must be provided to AUSTRAC within 24 hours, heightening consequences of inadvertent non-compliance and imposing additional strain.[4]

Question 9

Are the amendments to the definition likely to impact your entity's AML/CTF program, noting your existing obligations and the consequential nature of the amendment?

71. The proposed amendment will impact each reporting entity's AML/CTF program, which comprises the entity's ML/TF risk assessment and AML/CTF policies (section 26B).

72. Section 26C requires reporting entities to undertake an ML/TF assessment that identifies and assesses the risks of money laundering, financing of terrorism, and proliferation financing that it may reasonably face in providing its designated services. If the definition of '*financing of terrorism'* is expanded to include the state-sponsored terrorism offences, in conducting this assessment, reporting entities will need to consider whether they may risk encountering terrorism financing activities in providing designated services with reference to a broader range of potential activity.

73. The same is true in relation to a reporting entity's AML/CTF policies. Section 26F requires reporting entities to develop and maintain AML/CTF policies, procedures, systems and controls that appropriately manage and mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services, among other things. If the definition of '*financing of terrorism'* is expanded to include the state-sponsored terrorism offences, reporting entities will need to consider whether they need to develop and maintain policies to manage and mitigate the risk of terrorism financing with reference to a broader range of potential activity.

74. Because of the concerns expressed above in relation to the offences proposed to be added to extended definition of '*financing of terrorism'*, we are concerned that the proposed amendments will add significant complexity and uncertainty to these already complicated obligations that must be implemented in less than six months.

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4 *AML/CTF Act 2006* (Cth) s 41(2)(b).

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.

[redacted]

[redacted]

43. [redacted]

[redacted]

[redacted] the Law Council considers there to be scope for several additional transitional rules to be made modifying or delaying the commencement of certain provisions. Specific suggestions are outlined below.

Section 26D—Review of ML/TF risk assessment

47. The Law Council recommends that consideration be given to delaying the commencement of section 26D, which obliges reporting entities to conduct a review of its ML/TF risk assessment at least every three years, until 1 July 2027 for small reporting entities (i.e., those that are eligible to rely on the Starter Program).

Section 47—Initial annual report

48. The Law Council recommends that consideration be given to delaying the commencement of section 47, which obliges reporting entities to lodge an AML/CTF compliance report with AUSTRAC, until 1 July 2027 for small reporting entities. This will afford smaller reporting entities breathing room to implement their reporting frameworks effectively.

Section 26J—Appointment of compliance officers

49. The Law Council recommends that consideration be given to delaying the commencement of section 26J, which obliges reporting entities appoint a compliance officer, until 1 July 2027 for small reporting entities.

50. We make this recommendation because we are concerned that legal practices may struggle to hire an AML/CTF compliance officer by the 1 July 2026 deadline, based on the reports of advisory firms who have assessed the implementation of similar regulatory schemes overseas. For example, in the United Kingdom and New Zealand, initial implementation was hindered by the lack of existing AML expertise, which took time to resolve in environments with a constrained labour force; ultimately, many firms had to rely on either upskilling existing workers or sourcing experts abroad.[12]

51. We suggest that, during this period, a reporting entity would need to demonstrate that it has made reasonable efforts to hire a suitable person or upskill existing employees to perform the role.

Section 41—Suspicious matter reporting obligation

52. The Law Council recommends that a transitional rule be made delaying the commencement of suspicious matter reporting (**SMR**) provisions for reporting entities that are legal professionals or legal practices until at least 1 July 2027, but preferably until 1 July 2028. The rule would need to include Division 2 of Part 3 at a minimum, but may also need to include other provisions that impose related or dependent obligations.

53. We make this recommendation because we have significant unresolved concerns about how the SMR obligation will apply to lawyers owing to the potentially irreconcilable tension between it and lawyers' professional ethical obligations. These obligations derive from legal professional duties as an officer of the court, common law, equity, and statute, and are set out in the Australian Solicitors' Conduct Rules (**ASCR**).[13] (Similar rules exist for barristers, codified in the *Legal Profession Uniform Conduct (Barristers) Rules 2015*.) The ASCR have been adopted by all Australian states and territories and codified in Victoria, New South Wales, and Western Australia.[14] Relevantly, as set out in the ACSR, solicitors are required to (among other things):

- act in the best interests of a client in any matter in which the solicitor represents the client;
- deliver legal services competently, diligently and as promptly as reasonably possible;
- provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement;
- not disclose any information which is confidential to a client and acquired by the solicitor during the client's engagement to any person; and

[12] BDO Australia, 'Practical implementation of the AML/CTF Act: Lessons learned from New Zealand and the UK' Forensic Services (Article, 1 July 2025) https://www.bdo.com.au/en-au/insights/forensicservices/practical-implementation-of-the-aml-ctf-act-lessons-learned-from-new-zealand-and-the-uk.
[13] Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015.
[14] See also Legal Profession Uniform Conduct (Barristers) Rules 2015.

- ensure completion of the legal services for that matter, unless limited circumstances apply.

54. Violating professional ethical obligations is extremely serious and can result in disciplinary action, including fines, censure, suspension or disbarment from practicing law, restitution—in addition to potential civil liability.

55. The SMR obligation is likely incompatible with lawyers' professional ethical obligations because it will require legal professionals to submit an SMR concerning their client to an investigative authority without disclosing the same to their client and may involve termination of the retainer. At the same time, the AML Act does nothing to address the disciplinary consequences that flow from a violation of lawyers' professional ethical obligations—meaning that complying with the SMR obligation and the consequences which may follow effectively requires lawyers to breach their professional ethical obligations without affording them protection from the serious consequences that may follow. This is obviously unsatisfactory, and more time is needed to develop a lasting solution, including amendment to conduct rules, through which lawyers can fulfil their obligations under the AML Act without violating their professional ethical obligations.

56. Compounding this, no clear guidance is yet available on the application of the SMR obligation in the context of the legal profession or its interplay with CLP and will not be for at least some months. For legal professionals to be able to prepare for compliance, it is imperative that they are able to understand the circumstances in which it is triggered and what is required of them thereafter—including in relation to CLP.

57. The SMR obligation is exceptionally broadly framed, extending even to circumstances in which a reporting entity suspects on reasonable grounds that information it has concerning the provision of a designated service may be relevant to the investigation of, or prosecution of a person for, *any offence* against a state, territory, or Commonwealth law. As the threshold for triggering the obligation is so low, there is a real risk that the obligation may be triggered for a legal professional in the first year of the AML Act's operation—in circumstances where doing so will likely require them to violate their professional ethical obligations (risking professional sanction), and where they will not have had a reasonable opportunity to understand the obligation and its interplay with CLP.

58. For these reasons, it is untenable and unreasonable to require legal practitioners to be prepared to submit SMRs by 1 July 2026. Accordingly, we urge you to seriously consider making the transitional rule described above.

SMR timeframe

59. In the alternative, we recommend that the Department consider making a transitional rule temporarily modifying the operation of section 41(2) to extend the period of time within which an SMR must be lodged. Specifically, we propose that the periods of time specified in subsections 41(2)(a),(aa), and (b) be substituted with 5 business days, 10 business days, and 5 business days respectively, from the current 3 business days, 5 business days, and 24 hours. We recommend that this modification operate for the first two years after commencement, i.e., until 1 July 2028.

60. We make this recommendation because we are concerned that many Tranche 2 entities will struggle to meet this timeframe in the period after commencement

because of a lack of experience and a lack of reasonable opportunity to familiarise themselves with fulfilling their obligations owing to the lack of available specific guidance. Providing extra time will be particularly important in circumstances where CLP is involved.

Section 51F—Change in enrolment details

61. The Law Council recommends that the commencement of section 51F(2)(a) be delayed until 31 March 2027, or, in the alternative, that the 14-day timeframe therein be extended to 90 days.

62. The provision, which is a civil penalty provision, would otherwise require reporting entities to advise AUSTRAC of any specified changes to enrolment details within 14 days of the change occurring. Subject to the AML/CTF Draft Rules being settled, the specified changes include, *inter alia*, the name, date and place of birth, and residential address, for each partner of a partnership that is a registered entity.

63. This will have a significant impact on the legal profession given the predominant form of legal practice is a partnership. It is reasonable to expect that medium- and large-sized firms will need to bed down changes associated not only with partner promotions and retirements, but also whenever a partner (with some firms having close to 200 partners) changes their residential address.

Privacy Act

64. As mentioned above, guidance has not yet been provided on the interaction between the Regime and the Privacy Act, and so it remains unclear how reporting entities are to navigate the complexities of the Privacy Act and their AML/CTF obligations.

65. In light of this, we recommend that consideration be given to delaying the commencement of (at least) the following Divisions of the AML Act until 1 July 2027 for Tranche 2 entities that provide services listed in Table 5—Real estate services, and/or Table 6—Professional services, in section 6 of the AML Act:

- Part 1A—AML/CTF programs
  - Division 1—Introduction
  - Division 2—ML/TF risk assessment
  - Division 3—AML/CTF policies
  - Division 4—AML/CTF responsibilities of governing bodies
  - Division 5—AML/CTF compliance officers
  - Division 6—AML/CTF program documentation and approvals
  - Division 7—Other matters
- Part 2—Identification procedures etc.
  - Division 1—Introduction
  - Division 2—Identification procedures for certain pre commencement customers
  - Division 3—Identification procedures for certain low risk services
  - Division 4—Identification procedures etc.
  - Division 5—Verification of identity etc.

- Division 5A—Use and disclosure of personal information for the purposes of verifying an individual's identity
- Division 6—Ongoing customer due diligence
- Division 7—General provisions

- Part 3—Reporting obligations
  - Division 1—Introduction
  - Division 2—Suspicious matters
  - Division 3—Threshold transactions
  - Division 5—AML/CTF compliance reports
  - Division 6—General provisions
- Part 10—Record-keeping requirements
  - Division 2—Records of transactions etc,
  - Division 3—Records in connection with the carrying out of identification procedures
  - Division 4—Records about electronic funds transfer instructions
  - Division 5—Records about anti money laundering and counter terrorism financing programs
  - Division 6—Records about correspondent banking relationships

66. Alternatively, separate legislation should be enacted to ensure that small firms and sole practitioners currently falling within the Privacy Act small business exception do not automatically become subject to that Act, by virtue of being regulated under the AML Act, until such time as the Australian Government lifts the small business exception, in line with Proposal 6.1 as set out in its 2022 Privacy Act Review Report.[15] This would require switching off section 6E(1A) of the Privacy Act for legal practitioners. If this option were adopted, we consider that stringent existing professional and ethical obligations are sufficient to ensure that information collected with respect to the Regime is appropriately protected.

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[15] Attorney-General's Department, *Privacy Act Review Report 2022* (Report, February 2023) 6.