



16 June 2023

Attorney General's Department
Modernising Australia's anti-money laundering and counter-terrorism financing regime
Canberra ACT 2600
Via Consultation Hub

Dear Sir/Madam,

Consultation paper on reforms to simplify and modernise the regime and address risks in certain professions issued April 2023

The AHA is committed to working in partnership with the Attorney General's Department (**AGD**) and welcomes any changes to Australia's AML/CTF regime that simplifies and modernises what is an historically complex and predominantly financial services focused legislative environment. We welcome the opportunity to participate in this important initiative.

PART 1: SIMPLIFYING AND MODERNISING THE REGIME

We support initiatives by the AGD to simplify the existing regime to enable and provide all reporting entities - of varying sizes - clarity on what they need to do to comply with the regime and to ensure they address their ML/TF risks.

However, with any efforts at simplification and modernisation, this can introduce complexity and unintended consequences. We encourage Government and AGD to work closely with broader industry (and the AHA in respect of pubs) to ensure that the new simplified regime is appropriately tailored to the unique needs of individual sectors, to best place AHA members to comply.

In particular, for smaller venues of 30 gaming machines or less, where the risk is low, any modernised AML CTF regime should be careful not to impose requirements that create unnecessary red tape.

AML/CTF Programs

The AGD notes that the *"current requirements are confusing and difficult to follow, with obligations dispersed throughout the Act and the Rules"* (at p7).

The AHA is very supportive of initiatives by AGD to simplify the requirements on regulated entities wherever possible.

Further, the AHA supports on an in-principle basis:

- providing clarity on the importance of internal controls;
- ensuring the AML/CTF regime allows for business groups to include non-reporting entities into their designated business groups (or DBGs) as required to address ML/TF risks in their consolidated groups;

- AGD’s measured approach to the risk of the proliferation of weapons of mass destruction in the Australian financial sector, and that the AML/CTF regime will need to be sufficiently flexible to ensure businesses that do not see this risk in their operations focus their attention appropriately on where ML/TF risks might otherwise lie; and
- appropriate and measured changes to foreign branch / subsidiary obligations to bring Australia in line with global best practice.

Consultation Questions

1. How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?

The AHA encourages AGD to work closely with regulated entities across all sectors to understand:

- feedback (on a per-sector basis) on relevant sector pain-points and/or existing uncertainty as to application under the current AML/CTF regime and any uncertainty the sector has on the applicability of elements of the regime on businesses that operate in that sector;
- key learnings that can be taken from entities that have complied with the current AML/CTF regime requirements, and those that have not, and ensure that those learnings are factored into any contemplated changes; and
- how, as we simplify, we ensure the regime is not ‘oversimplified’ which could create greater ambiguity. In simplification, is there an opportunity to address the requirements of specific sectors to remove uncertainty and enhance the capacity of the AHA to comply?

2. What are your views on the proposal for an explicit obligation to assess and document money laundering and terrorism financing risks, and update this assessment on a regular basis

The AHA in-principle supports this proposal, subject to understanding the detail of what is required.

3. For currently regulated entities, to what extent do you expect that a simplified AML/CTF program obligation would affect your AML/CTF compliance costs

The AHA is supportive of any initiative of Government and AGD to simplify and modernise these requirements (cutting the red tape) including as an underpinning priority the intent that resources otherwise invested by regulated entities in understanding the current complex regime and its applicability to their operations (for instance) would be otherwise reallocated to uplifting ML/TF risk management initiatives for that business.

In this regard, it is expected that initial compliance costs would *increase* as regulated entities understand how the changed requirements impact their operations, following which time we expect a *net zero or slight decline* in compliance costs going forward.

4. What kind of entities would you propose to include in a designated business group if membership were no longer limited to regulated entities, and what volume of AML/CTF information would you seek to share

Not applicable.

5. How will a flexible approach that allows an AML/CTF program to incorporate all related entities within a designated business group affect your AML/CTF compliance and risk mitigation measures

The AHA does not presently anticipate this to have a material impact on how pubs presently address AML/CTF compliance and its risk mitigation measures.

6. What are your views on the proposal to expressly set out the requirement for entities to identify, mitigate and manage their proliferation financing risks?

As outlined above.

7. What guidance would you like to see from AUSTRAC in relation to AML/CTF programs?

The AHA supports AUSTRAC's ongoing active engagement with all sectors to drive continuous improvement.

Customer Due Diligence and "Knowing the Customer"

The AHA is supportive of AGD's proposal to realign obligations under the Act to set out the core obligation, and for the Rules setting out how that obligation is to be met.

Further, the AHA is supportive of AUSTRAC providing tailored and specific guidance to AHA and its pub members on how to meet these requirements and examples of how to assess risks associated with different types of business relationships.

In considering 'simplifying' the AML/CTF regime, the AHA encourages AGD to work closely with us to ensure that regulated entities are focusing their resources on identifying the right persons that present ML/TF risks to that organisation. A broad-brush approach could give rise to inadvertent unintended consequences and a consequential misallocation of resources by regulated entities into compliance on low risk persons and away from the ML/TF risks the entity may have identified for that organisation.

Ongoing Customer Due Diligence

Transaction monitoring programs should be appropriately tailored for the ML/TF risks presented by customers. A transaction monitoring program for a financial services institution will be different to a remittance service provider, which will be different again to a gambling operator. The risks presented to a large casino are very different to a small pub.

The AHA would welcome the opportunity to engage with AGD on how the Act might be updated to provide better clarity to pub regulated entities on how it should monitor transactional activity.

Enhanced Customer Due Diligence

The AHA would welcome the opportunity to engage with AGD on any enhanced customer due diligence improvements, and is supportive of AGD's focus on providing further clarity.

Simplified Due Diligence

The AHA is supportive of any additional clarity that can be provided here.

8. What are your views on the proposed simplification of the customer due diligence obligations as outlined?

The AHA has outlined its views above and looks forward to ongoing consultation with AGD in respect of proposed simplification measures. We reiterate the importance of ensuring that regulated entities direct their resources to where ML/TF is identified and accordingly, that appropriate thresholds are retained for that purpose.

9. Do you have suggestions on other amendments to customer due diligence obligations?

The AHA would welcome the opportunity to work further with AGD on how CDD obligations are drafted for pubs, to ensure that such obligations do not inadvertently include unintended consequences or ambiguity.

Lowering the reporting threshold for gambling sector

The AHA is not averse to a reduction in the cash amount at which customer due diligence or “know your customer checks” be applied, provided however this number should be \$5,000 for venues with more than 30 gaming machines. Due to the much lower risk of venues with 30 gaming machines or less, the threshold should remain at \$10,000. In our view this achieves the aims of simplification and modernisation but ensures smaller less risk venues are not impacted.

Consultation Questions

10. What are your suggestions to minimise regulatory impact in lowering the customer due diligence exemption threshold for gambling service providers from AUD10,000 to AUD4,000?

As provided above, the AHA encourages AGD to work closely with the states and territories to ensure that compliance requirements are as simple as possible. To that end, the AHA recommends that the figure be set at \$5,000 (being the current gaming machine payout identification threshold in NSW and QLD) and be indexed to CPI.

It is noted that customer due diligence is conducted at the lower figure but that the consultation documentation is silent as to whether an equivalent change would be made to section 43 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act)*. The AHA would **not** support a reduction in the threshold transaction report (TTR) cash figure of \$10,000 as this would create a significant compliance burden for pubs without a corresponding information benefit (given the low contemplated cash balance).

Amending the tipping-off offence

The AHA supports changes here that simplify compliance for regulated entities and their employees.

Consultation

11. Are there aspects of the tipping-off offence that prevent you from exchanging information, which would assist in managing your risks

No.

12. What features would you like to retain or change about the current tipping-off offence?

The AHA would welcome the opportunity to engage with AGD on any contemplated changes to the tipping off offence provision.

13. What safeguards are needed to protect against the disclosure of SMR-related information? Has the current tipping-off offence achieved the right balance between protecting against the risk of leaked SMR information and disclosures which help manage shared risks?

The AHA would welcome the opportunity to engage with AGD on any contemplated changes.

Regulation of digital currency exchanges

Not applicable.

Modernising the travel rule obligations

Not applicable

Regulation of digital currency exchanges

Not applicable.

Exemption for assisting an investigation of a serious offence

The AHA is supportive of any simplification and any alleviation of administrative burden on investigative agencies and driving efficiencies.

18. Are there any additional issues that would not be addressed by the proposed approach for exemptions for assisting an investigation of a serious offence?

The AHA does not have any additional issues to raise at this time but would welcome the opportunity to consider and provide comment to any proposed changes to the regime.

Revised obligations during COVID19 pandemic

Not applicable.

Repeal of the Financial Transactions Reports Act 1988

The AHA is supportive of the amalgamation and simplification of these two pieces of legislation. We agree with AGD that inconsistency creates overlap and inefficiency.

Yours faithfully,



**STEPHEN FERGUSON
NATIONAL CEO**