CPA Australia Ltd
ABN 64 008 392 452
Level 20, 28 Freshwater Place
Southbank VIC 3006 Australia
GPO Box 2820 Melbourne
VIC 3001 Australia
T 1300 737 373
Outside Aust +613 9606 9677
cpaaustralia.com.au

27 August 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Director

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

CPA Australia represents the diverse interests of more than 168,000 members, working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia has long supported governments taking appropriate action to improve their ability to detect, deter and disrupt money laundering and terrorist financing. Not only is such action an essential part in tackling organised crime and other illegal activity it also improves the integrity of a nation's financial system and reduces the risk of it being misused.

However, before the existing AML/CTF regime is extended beyond the current participants a cost-benefit analysis of regulatory options for Designated Non-Financial Businesses and Professions (DNFBPs) must first be undertaken by the Department of Home Affairs and AUSTRAC. This was identified as a Phase 1 non-legislative project that was scheduled for completion by June 2017 but is still outstanding.

Extending the AMT/CTF regime to potentially thousands of DNFBPs will require significant resourcing by both those entities and the regulator. The cost-benefit analysis is therefore critical to understanding the potential benefits and costs of different regulatory options for DNFBPs.

Importantly, the analysis should consider the case for distinguishing potential obligations between those DNFBPs who are members of a professional body and those who are not. A qualified accountant, for example, as a member of a professional accounting body, is already subject to additional obligations and compliance oversight that aligns with the AML/CTF regime.

Our detailed responses are contained in the Attachment.

If you have any queries about this submission, please contact Keddie Waller, Head of Public Practice and SME on 0401 716 083 or keddie.waller@cpaaustralia.com.au.

Yours sincerely

Dr Gary Pflugrath
Executive General Manager, Policy and Advocacy
CPA Australia

Attachment

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

General Comments

CPA Australia supports governments taking appropriate action to improve their ability to detect, deter and disrupt money laundering and terrorist financing. This is an essential part in tackling organised crime and other illegal activity, as well as improving the integrity of a nation's financial system, reducing the risk of it being misused.

AUSTRAC remains the appropriate Commonwealth agency to be responsible for detecting, deterring and disrupting criminal abuse of the financial system to protect the community from serious and organised crime.

While maintaining AUSTRAC's independence in this role is important, it is equally important that relevant Commonwealth agencies work collectively to share information, as appropriate, to protect the integrity of the system and identify potential illegal activity.

Designated Non-Financial Businesses and Professions

CPA Australia supports action to improve the ability to detect, deter and disrupt money laundering and terrorist financing.

We are also generally supportive of potentially extending the application of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Act) to other businesses and professionals, including accountants, and other providers of accounting services.

For example, we are supportive of imposing the obligation to undertake customer due diligence (CDD) on all providers of accounting services. Such an obligation should not only reduce the risk of money laundering and terrorist financing, but it is also good practice for firms to verify their customer's identity. We note that the ATO and Tax Practitioners Board recently released client verification guidelines that align with AML/CTF CDD requirements, meaning that tax practitioners are now performing these checks.

We are also broadly supportive of extending the obligation to report suspicious matters to AUSTRAC to all providers of accounting services. Such reporting is important in identifying possible money laundering and terrorist financing. However, further clarity is required on the reporting obligations that would be imposed on DNFBPs. A potentially significant burden may be placed on accountants depending on the extent to which they are expected to check for politically exposed persons, threshold transactions, cross-border movements and suspicious matters for all of their clients. The Government must also consider the safety and identity security of DNBFPs who report, given that often the information is known only to them and they can be easily identified by clients. This may give rise to threats to their safety, and those of their employees and associates.

CPA Australia does not support the extension of all of the existing obligations under the Act to all accountants without modifications. There is a compelling case for distinguishing the application of the obligations between members of the accounting profession (i.e., who are members of a professional accounting body), and those who practise in the field of accounting—and may indeed call themselves accountants—but are not members of a professional accounting body.

As part of their membership obligations, members of the accounting profession who provide accounting services to the public must adhere to a number of additional obligations including, but not limited to:

- complying with extensive quality control and risk management policies and procedures for firms, including procedures for client due diligence and having that compliance verified through periodic independent quality assurance reviews.
- holding appropriate professional indemnity insurance, and
- undertaking at least 120 hours of professional development over a three-year period.

As part of their commitment to the public interest, members must also comply with APES 110 Code of Ethics for Professional Accountants (APES 110). The professional obligations and ethical requirements imposed on members of the accounting profession are based on the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour outlined in the Code.

Under APES 110, a self-interest or intimidation threat to compliance with the principles of integrity and professional behaviour is created when a member (providing services to the public) becomes aware of non-compliance or suspected non-compliance with laws and regulations ("NOCLAR").

APES 110 requires that a member must respond to NOCLAR or a suspected NOCLAR, which may include disclosing the matter to an appropriate authority even where there is no legal or regulatory requirement to do so. Specific examples of laws and regulations which NOCLAR addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime

It is therefore evident that some of the AML/ CTF obligations significantly overlap with, or emulate, existing professional requirements imposed on members of the accounting profession by their respective professional bodies.

Importantly, these obligations only apply to qualified accountants, as opposed those that may call themselves accountants but who are not members of a professional accounting body.

The term qualified accountant is defined in s88B of the Corporations Act as a person meeting the criteria in a class declaration made by ASIC. Under ASIC class order [CO 01/1256] a qualified accountant is:

- an individual that is a full member of one of the three recognised professional accounting bodies, being CPA Australia, Chartered Accountants Australia and New Zealand or the Institute of Public Accountants, and
- that complies with the respective professional accounting body's continuing professional development requirements (120 hours over a three year period).

We are therefore of the view that the ongoing compliance costs associated with extending all existing AML/ CTF obligations to all members of the accounting profession significantly outweigh the benefits. Further, the current obligations under the Act are primarily designed to counter risks in large financial institutions. These obligations are expensive and difficult to comply with, especially for smaller businesses.

Of relevance to this discussion is the complexity of the obligations imposed on the accounting profession in New Zealand, which has resulted in some smaller practices outsourcing their CDD obligations to a third party. The costs range from $40 for an individual through to $500 where multiple entities may be involved, noting these costs are ultimately borne by the client.

Consideration also needs to be given to how extending the regime to DNFBPs would interact with those currently regulated by the regime. For example, the banking industry must report transactions of $10,000 and over as part of a designated service, be it receiving or paying cash. Imposing this same obligation on DNFBPs would arguably duplicate the reporting of such transactions, adding additional costs to DNBFPs for little or no benefit.

Given these factors, CPA Australia believes the objectives of the Act can still be achieved, at less cost, if a number of the proposed obligations are either not imposed on members of the accounting profession or are applied in an extensively modified way.

Therefore, before the regime is potentially extended to DNFBPs, CPA Australia recommends that the Department of Home Affairs and AUSTRAC conduct the cost-benefit analysis of the options for regulating DNFBPs as recommended by the 2016 review.

The cost-benefit analysis should identify the potential increase in resources that AUSTRAC would require to regulate thousands of DNFBPs at varying levels, and should differentiate between DNFBPs who are already subject to additional obligations and oversight as part of their professional membership, and those who are not. It must also identify the increase in compliance costs on DNFBPs of such a regime and suggest ways to limit those costs.

In the interim, AUSTRAC could look to develop non-binding guidance and education to accountants and others (with input from the professional accounting bodies) on the risks of money laundering and terrorist financing and how to mitigate and act on those risks.

Australian Taxation Office

While the recent client verification requirements released by the Australia Taxation Office (ATO) and the Tax Practitioners Board were specifically designed to align with AML/CTF responsibilities, tax record keeping obligations remain different to AML/CTF in terms of their purpose and requirements. We highlight that the role of the ATO is specifically to administer the taxation laws and to require only relevant information that extends from this oversight. This does not(?) extend to detecting potential AML/CTF activity.

Therefore, while the ATO has a role to play as part of Commonwealth agencies that work collectively to detect and disrupt potential illegal activity, the primary responsibility properly sits with, and should remain with, AUSTRAC.

Further, CPA Australia sees no legitimate reason or cause for the ATO to monitor the real time tax positions or cashflows of companies and large individuals for taxation purposes, and certainly not for AML/CTF requirements. This proposal suggests an expansion of ATO powers and monitoring significantly beyond the current status and is neither a proportionate nor appropriate response. It is not something that is part of the Financial Action Task Force (FATF) recommendations.

We are not aware of any other international tax administrators that are responsible for the AML/CTF regime in their jurisdiction, and it is critical to preserve the function of the ATO, which is the administration of taxation laws – not AML/CTF detection or oversight. Given the existing role of intermediaries within the AML/CTF regime, such as financial institutions and the proposed expansion to DNFBPs, the focus should be on implementing the FATF recommendations to bolster AUSTRAC's capabilities and data sources by working with financial institutions and DNFBPs.

In regard to Bitcoin and other digital currencies, we note that as they gain acceptance as a medium of exchange, they should be subject to the same regulations and oversight as other financial institutions and exchanges. Significant governance and regulatory improvements have been made in the industry and consideration should be given to extending AML/CTF reporting to exchanges and institutions dealing with cryptocurrency.

Attorney-General's Department statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

CPA Australia notes that the Attorney-General's Department's (AGD's) project plan for implementing the recommendations of the of the 2016 AGD Review in two phases is not accessible, and therefore we are unable to provide any specific comments regarding progress and barriers to implementation.

However, we note that the cost-benefit analysis of regulatory options for DNFBPs ('Tranche Two entities') that was identified as a Phase 1 non-legislative project was not completed by June 2017 as intended.

As noted earlier, CPA Australia recommends that this analysis be completed before the regime is extended to DNFBPs, to understand the potential benefits and costs of different regulatory options.