

28 February 2014

Issues Paper – AML/CTF Act Review
Legislative Review and Mutual Evaluation
Criminal Law and Law Enforcement Branch
Attorney-General's Department
4 National Circuit
BARTON ACT 2600

Email: amlreview@ag.gov.au

Dear Sir/Madam,

Re: Review of the AML/CTF Regime

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$600 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST welcomes the opportunity to respond to this review and we support the object of the Act and the proposed new aims. AIST supports a robust and safe financial system to the extent that it assists Australians to conduct their financial affairs in an efficient way.

We have collected a variety of issues in our discussions with members, and these cases cross over between the different areas outlined in the paper. Our comments will, in the main, address these issues in turn.

AIST welcomes the proposed additional aims that prioritise the efficient conduct of business, as well as protecting the privacy of individuals and their personal information. We believe that these should not be forgotten in the drive to ensure that money-laundering and terrorism financing risks are minimised.

Generally, AIST believes that the regime is appropriately risk-based, with respect to risk-based and rules-based approaches. However, there are areas where we believe that these approaches could be further refined.

We note that in the employee due diligence requirements, there has been some concerns raised about the definition of a 'high risk role'. The outcome of this is that what is considered to be 'high risk' can vary across the superannuation industry, with one organisation classifying nearly 20 percent of their employees as high risk. Under the Part A requirements, such a classification is a significant amount of additional work through the entity's human resources department in such

tasks as bankruptcy and police checks and thus adds considerable cost. AIST recommends that the concept of high risk employees be better defined, and believe that a checklist could be included in the AML/CTF Rules for clarity.

AIST also wishes to provide some feedback that relates to members of superannuation funds who are challenged with regards to traditional methods of identification. A large subset of this group are Aboriginal or Torres Strait Islanders for whom it is possible that possession of traditional identification documentation may be significantly more difficult than other Australians for a number of reasons, including:

- For some, there may be no registered, or even known date of birth;
- In some communities, cultural norms may dictate that members change their names, due to the death of another family member with the same name; or
- A considerable number of communities are remotely located, without easy access to infrastructure where documentation can be obtained, for example, motor registry offices, post offices, passport offices etc.

Whilst the solution to problems such as these may lie outside the AML/CTF regime, we point out that these are customers of reporting entities for whom the requirements to produce identification documentation can be very difficult. We recommend that where an issue that is identified is outside the terms of reference, for example, changes to other legislation, that these issues be recognised in the interests of harmonising with the AML/CTF regime, and not inconveniencing these members of the community.

We point out that Australians with lower amounts of identification would be generally considered to be low risk and therefore in need of better solutions that are mindful of cultural sensitivities. Solutions for Aboriginal or Torres Strait Islanders could potentially include the following:

- Well-funded third party verification services staffed by professionals who are well acquainted with Aboriginal and Torres Strait Islander communities where identification is limited;
- An indigenous identification service where documentation is issued for people from affected communities; and/or
- The ability for elders from these communities to verify the identification of affected people, in the same way as certain specified persons, e.g. persons listed in the *Statutory Declarations Regulations 1993 (Cth)*.

AIST also wishes to convey some feedback received from our members. AUSTRAC is considered by most to be quite helpful yet in other instances it can be considered difficult to know if an organisation is complying. In most instances however, there is consensus that the information

that reporting entities require for answering queries and undertaking their work in complying with the Act is readily available from AUSTRAC and that the AUSTRAC website is generally easy to navigate and to find answers.

Where feedback was provided, it was agreed that the AUSTRAC typologies report was valuable in conveying the role that AUSTRAC plays in both collecting and disseminating information. Whilst there was some desire for information to be provided with regards to how the information imparted to AUSTRAC was eventually used, the role of AUSTRAC in collecting this information appears to be well understood, and the limitations in this regard appear to be also well known.

We believe that it would be helpful for AUSTRAC to more proactively engage with superannuation funds who are reporting entities, if only to provide feedback around issues associated with compliance.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', written in a cursive style.

Tom Garcia
Chief Executive Officer