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By email: economiccrime@ag.gov.au

Australian Payments Network (AusPayNet) welcomes the opportunity to respond to the consultation paper on *Modernising Australia's anti-money laundering and counter-terrorism financing regime*.

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. We manage and develop procedures, policies and standards governing payments in Australia. Our purpose is to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payments ecosystem. AusPayNet currently has over 150 members, including financial institutions, payment system operators, major retailers and financial technology companies.

Introduction

Economic crime poses a significant threat to the prosperity of Australia, and can generate serious financial and emotional harm to individuals, businesses, and society as a whole. Over the past few years, AusPayNet has progressed several initiatives that reaffirm our commitment to working with members, government, and other stakeholders to defend the payments system from economic crime and associated money laundering.

The AML/CTF regime is a critical part of Australia's efforts to prevent criminals from receiving the proceeds of their illegal activity and stopping funds from falling into the hands of terrorist organisations. As noted in the consultation paper, the regime has not kept pace with the changing threat environment and evolving international standards, which has resulted in gaps and vulnerabilities that could have significant economic and social consequences for Australia. We therefore welcome the Attorney-General's Department's review of the AML/CTF regime to ensure that it remains clear, fit-for-purpose and meets international standards and best practice. Clarifying and simplifying the regime should also assist in reducing the operational burden for both industry and regulators, as well as helping to ensure consistency in understanding and application across entities.

Based on the insights gained through member consultation and our prior work in these areas, AusPayNet would like to comment on the following proposals in particular:

- **Simplifying and modernising the AML/CTF regime.** AusPayNet supports the proposal to update the AML/CTF regime in line with international standards, and simplify the regime to help businesses better understand and comply with their obligations.
- **Amending the tipping-off offence.** We encourage the Department to update this rule to enable greater collaboration between financial crime teams across the ecosystem.
- **Regulation of digital currency exchanges.** AusPayNet supports the proposed expansion of AML/CTF obligations for digital currency exchanges, in line with the FATF Standards.

- **Updating the travel rule obligations.** Any changes to the application of the FATF travel rule in the AML/CTF Act will need to take the limitations of Australia's Direct Entry system into account, or provide sufficient time for any implications to be assessed and implemented by the industry.
- **Extending the regime to tranche-two entities.** We support this proposal, given the potentially significant benefits of capturing tranche-two entities in the regime, as well as the potential costs of remaining non-compliant with the FATF Standards.
- **Amending the customer due diligence model.** We support updating the customer due diligence obligations to reflect developments in identification technology and processes.

Further details on these matters are provided below.

Responses to consultation proposals

Simplifying and modernising the AML/CTF regime

AusPayNet supports the Department's proposal to simplify and modernise the AML/CTF regime in line with international standards. Not only will this assist entities in better understanding their obligations and reduce the operational burden of addressing money laundering and terrorism financing risks, but it could also help ensure the ongoing competitiveness of Australian businesses.

Members expressed particular support for:

- removing the delineation between Part A and Part B requirements, streamlining these into a single requirement to develop, implement and maintain an effective AML/CTF program for identifying, mitigating and managing regulated businesses' money laundering and terrorism financing risk. This would help ensure understanding of obligations and consistency of approach across the economy.
- an explicit obligation to assess and document AML/CTF risks, in line with requirements in other jurisdictions. Some level of minimum requirements or guidance for these risk assessments would be useful in this regard, including around the frequency of review.
- an approach that allows AML/CTF programs to incorporate all related entities within a designated business group, given that larger businesses often leverage 'centres of excellence' to design and operate AML/CTF programs and controls. In adopting such an approach, one member recommended that the Department considers whether specific outsourcing requirements should be put in place for entities within the designated business group to ensure that there is an appropriate level of oversight of activities performed.

As part of the review, we also suggest further consideration of how the regulation of other relevant matters (e.g. sanctions screening) could be better coordinated with that of the AML/CTF regime.

Amending the tipping-off offence

AusPayNet supports the proposed review of the tipping-off offence. As part of this, we encourage consideration of how private-private pre-suspicion information sharing could be enabled as an important component of combatting financial crime.

AusPayNet and our members are committed to supporting law enforcement and regulators in disrupting, deterring and recovering the proceeds of crime. With the growing complexity in money

laundering – often involving multiple financial institutions and payment networks – cross-sectoral collaboration to identify and disrupt criminal activity is becoming increasingly important. As recently noted by the Bank for International Settlements (BIS), ‘a network view of payments data is essential to combat money laundering’, and public-private collaborative analysis and learning arrangements ‘are more effective in detecting money laundering networks than the current siloed approach (in which financial institutions carry out analysis in isolation)’.¹

One example of effective collaboration in this space is AusPayNet’s Economic Crime Forum (ECF), which brings together a range of participants – including members, intelligence agencies, law enforcement, regulators and other stakeholders – to share intelligence on emerging threats and collaborate on tactical initiatives to prevent and disrupt all types of economic crime, including money laundering. The benefits of industry cooperation have also been evident overseas, such as with the UK’s Joint Money Laundering Intelligence Taskforce and the US Financial Services Information Sharing and Analysis Center.

One of the key challenges to such collaboration in Australia is that the current AML/CTF regime restricts financial institutions from effectively sharing information with specialised financial crime teams across the ecosystem to manage risk (private-to-private pre-suspicion information sharing). This creates a significant barrier to the early detection and disruption of economic crime in Australia. The inability to share information within an institution’s own business structure and/or with service entities and third-party suppliers that support the maintenance of AML/CTF systems can also significantly slow down the detection of criminal activity.

We therefore welcome the Department’s consideration of an outcomes-focused tipping-off regime that would remove impediments to ‘good faith’ collaboration on mitigating illicit activity, both within and across financial institutions, and across sectors. Such changes would need to be supported by clear rules or guidance, as well as appropriate governance arrangements, record keeping and safeguards to prevent abuse or malpractice.

Relatedly, AusPayNet also supports the proposal to provide statutory exemption for regulated entities when assisting an investigation of a serious offence. This would further promote and enable more efficient public-private collaboration on combatting economic crime.

Regulation of digital currency exchanges

AusPayNet supports the proposed expansion of AML/CTF obligations for digital currency exchanges in line with the FATF standards, including an onus to comply with the travel rule. As noted in the consultation, the proceeds of economic crime are increasingly being laundered through crypto assets, which often cannot be recovered as easily as other property. Extending the AML/CTF obligations to services provided by digital currency exchanges is imperative for a more secure financial system.

Incorporating these changes as part of any future reforms in the crypto asset services sector being undertaken by Treasury should help minimise complexity and duplication. Given the borderless nature of crypto assets, global consistency and coordination on the proposed reforms will also be important.

¹ BIS (2023), [Project Aurora: the power of data, technology and collaboration to combat money laundering across institutions and borders](#), 31 May.

Amending the travel rule obligations

AusPayNet manages several of Australia's payment clearing and settlement frameworks. As part of this, AusPayNet must ensure that the frameworks enable participants to comply with their obligations under the AML/CTF Act.

One of the frameworks managed by AusPayNet is Australia's Bulk Electronic Clearing System (BECS), which facilitates the processing of Direct Entry payments between individual accounts held at different Australian financial institutions. BECS processes over \$15 trillion of payments annually and, in 2021/22, accounted for over 75 per cent of the total value of non-cash retail payments in Australia.²

The BECS Framework is currently compliant with the AML/CTF Act. This includes Part 5 of the Act, which sets out information requirements for electronic funds transfers that are consistent with Financial Action Task Force (FATF) Recommendation 16 and the accompanying Interpretive Notes.³ In particular, BECS transactions contain sufficient tracing information to meet the requirements of both the AML/CTF Act and the FATF Standards. This applies to both cross-border payments where the last leg of the transaction to the beneficiary institution is settled via BECS and domestic transactions.

AusPayNet is currently consulting with industry and other key users on the future of BECS. In the recently released Strategic Plan for Australia's Payments System, the Government expressed support for this industry-led process, and set out its expectation that a transition plan away from BECS would be finalised by end-2023.⁴ Any such transition, however, would be expected to take a number of years.

In the meantime, any changes to the AML/CTF regime that amend the application of the FATF travel rule and the associated Interpretive Notes will need to take the data limitations of BECS into account to ensure that BECS can continue to support the settlement of such a significant share of Australia's payment transactions, or provide sufficient time for any implications to be assessed and implemented by the industry. If any changes to BECS are required as a result of the AML/CTF reforms, these should be aligned with the strategic direction set out in Treasury's Strategic Plan.

We also note that earlier this year the Financial Stability Board (FSB) released a report on the priority actions for achieving the G20 targets for enhancing cross-border payments, which included actions for updating the application of the AML/CTF rules (including Recommendation 16).⁵ This work is expected to conclude in early 2024. It may therefore be practical to postpone consideration of any changes to the travel rule application in Australia until the FATF review is completed (by which point, any transition plan away from BECS should also have been finalised).

Tranche-two entities

Given AusPayNet's strategic objective of supporting the reduction of economic crime in Australia, we support the proposal to apply the Six Key Regulatory Obligations of the AML/CTF regime to tranche-two entities. We generally agree with the case for reform outlined in the consultation paper, including

² [RBA Statistical Table C6.1](#) and RBA (2022), [Payments System Board Annual Report 2022](#), 28 September.

³ It is important to note that the 'FATF Standards' are defined to consist of the FATF Recommendations and their Interpretive Notes.

⁴ Treasury (2023), [A Strategic Plan for Australia's Payments System](#), 7 June.

⁵ FSB (2023), [G20 Roadmap for Enhancing Cross-border Payments: Priority actions for achieving the G20 targets](#), 23 February.

the benefits of capturing tranche-two entities and the potential costs of remaining non-compliant with the FATF Standards on this matter.

One specific example we can draw on is conveyancing transactions. Through the development of the eConveyancing Industry Code, AusPayNet is increasing its direct involvement with the financial aspects of online conveyancing transactions. These have historically been payments directly managed between Electronic Lodgement Network Operators (ELNOs) and the financial institutions that provide financial services to these entities.

Our work in this area has shown that the existing messages used for conveyancing transactions generally do not provide as much information as modern payment systems are capable of transmitting, making it difficult to trace end-to-end payments within the transaction flow when required. In part, this is because the financial leg of a property settlement is generally considered within the industry to have low AML/CTF risk, and that the relevant requirements are satisfied by:

- ELNOs performing correct KYC on their subscribers (primarily solicitors, conveyancers and direct mortgagees) and requiring subscribers to carry out appropriate KYC on their end customers;
- banks performing appropriate KYC as part of standard account-opening procedures; and
- banks performing appropriate AML/CTF sanctions screening on the 'point of entry' of funds into the financial system – either a local deposit or transfer within Australia, or the cross-border leg of an international payment.

In line with our strategic objectives, we support the proposal to apply the AML/CTF obligations to tranche-two entities involved in conveyancing transactions that use the Australian payments system. This would include the services specified in the consultation paper (legal, accounting, conveyancing, trust/company and real estate services), as well as entities such as ELNOs.

Customer due diligence

AusPayNet supports updating and simplifying the customer due diligence obligations, including to reflect developments in identification technology and processes and to better align with international standards. Since the AML/CTF Act was established, there has been a marked shift away from in-person customer identification and verification to digital-based procedures (including for overseas applications). While digital banking has enhanced efficiency and customer experience, it has also created additional challenges for verifying that the person producing the documentation owns the identity. These risks are being exacerbated by the increase in stolen identities arising from reoccurring data breaches and phishing scams, necessitating a conversation around how to make stolen personal information useless to criminals.

In updating the customer due diligence obligations in the AML/CTF Act and Rules, we therefore encourage further consideration of how to strengthen digital identification and verification processes without adding undue friction into the customer onboarding process. This may include the use of biometrics or similar technologies, potentially supported by a national digital identity framework. It may also be useful to consider a digital identity solution that would facilitate the KYC process and provide additional AML/CTF protections for businesses (with the Legal Entity Identifier being one possible solution). Additional guidance on the use of 'Reg Tech' vendors may also assist entities in understanding their customer due diligence obligations. One member also suggested that a regulatory

process to assess and approve biometric platforms for use in Australia could also reduce the compliance burden on entities.

More broadly, members expressed support for adopting a principles-based approach to customer due diligence obligations, noting that the current framework is overly prescriptive. Better alignment with other regimes, including those in Europe and Singapore, could also help ensure that Australian businesses remain competitive and are not constrained by regulation that our trading partners have eased. In particular, one member suggested allowing businesses to make their own risk-based determination of low-risk activities and/or products that may be eligible for simplified due diligence, consistent with Article 15 of the Fourth Anti-Money Laundering Directive (“4MLD”) in Europe.

Conclusion

AusPayNet appreciates the opportunity to respond to the Attorney-General’s Department’s consultation on modernising Australia’s AML/CTF regime. Updating the regime in line with international standards, technological developments and the changing threat environment will help protect Australia from the significant harms posed by economic crime. Given our role as the payments industry association and our strategic commitment to supporting the reduction of economic crime in Australia, AusPayNet would welcome the opportunity to continue engaging with the Department as it progresses this work. Please contact Kateryna Occhiutto [REDACTED] if you have any further questions.

Yours sincerely,

[REDACTED]

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