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By email: economiccrime@ag.gov.au

Australian Payments Network (AusPayNet) welcomes the opportunity to respond to the consultation on proposed reforms to 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 currently have over 150 members, including financial institutions, payment system operators, major retailers and financial technology companies. AusPayNet manages and develops 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. As part of this, AusPayNet continues to work closely with members, government, and other stakeholders on a range of initiatives to help defend the payments system from economic crime.

This submission has been prepared by AusPayNet in consultation with its members. In developing this submission, interested members participated in a consultation process to discuss key issues and provide feedback to inform our response to the consultation paper.

Introduction

Economic crime poses a significant threat to Australia, with the potential to generate serious financial and emotional harm to individuals, businesses, and society as a whole. While the AML/CTF regime is a critical part of Australia's defences against economic crime, the consultation paper rightly notes that it has not kept pace with the changing threat environment and evolving international standards. This has resulted in gaps and vulnerabilities that could have significant economic and social consequences for Australia. The complexity of the current regime could also be leading to inconsistent application across entities, and placing an unnecessary operational burden on both industry and regulators.

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. We also support the Department's ongoing industry engagement on these reforms, and acknowledge its efforts to incorporate stakeholder feedback from the first round of consultation in mid-2023 into the more detailed proposals presented in the current consultation package.

In line with our submission to the first consultation, AusPayNet is generally supportive of the overall direction of the proposed reforms. The feedback below builds on our earlier submission, reflecting the additional insights we have gained through member consultation and our own assessment of the current consultation package. Given AusPayNet's remit, we have largely focused on matters that directly relate to payments, as well as areas of key concern raised by our members.

While welcoming the additional detail provided in this consultation, and understanding the significant effort required to design and implement effective reforms in this area, members have noted that there are still numerous areas in which further detail is required to fully understand and assess the scope and impact of the proposed changes. We therefore welcome further engagement with the

Department as additional detail on the proposed reforms, including the draft Bill and Rules, become available. This will allow industry stakeholders to provide more comprehensive feedback to help ensure that the reforms achieve their intended aim of improving the efficiency and effectiveness of the AML/CTF regime in Australia.

Responses to consultation proposals

AML/CTF Programs

As noted in our earlier submission, AusPayNet supports the Department's proposal to simplify and modernise the AML/CTF regime in line with international standards. This includes the proposal to replace the existing procedural obligation to 'have and comply with' an AML/CTF program with a risk-based approach centred around the obligation for reporting entities to understand and manage the money laundering and terrorism financing risks relevant to their specific business. This should help shift entities' focus away from administrative compliance processes towards the more flexible, efficient and effective identification and mitigation of relevant risks. However, the consultation paper provides limited detail on how the proposed changes will be implemented in practice, leading to considerable uncertainty among members about how to effectively meet the new obligations and the potential implications on their businesses.

In line with the current framework, AusPayNet encourages the Department to adopt the new high-level obligations (to conduct ML/TF risk assessments and implement proportionate risk mitigation measures) in the AML/CTF Act, supported by a consolidated set of Rules that specify any minimum requirements. This should be underpinned by clear and detailed Guidance to help businesses understand the regulatory expectations and best practice across the various requirements, including establishing an AML/CTF program and appropriate governance arrangements, conducting risk assessments and adopting suitable controls. Limiting the Act to only include the overarching, principles-based obligation will help future-proof the regime, as the Rules and Guidance can be more easily adjusted over time to reflect changes in the risk environment, technology and business practices. We note that this principle of apportioning the overarching obligations, minimum requirements and examples of best practice across the Law, Rules and Guidance, respectively, should apply for all other areas of the AML/CTF reforms as well.

Value Transfer Services

AusPayNet supports clarifying the scope of services subject to AML/CTF regulation. As noted in the consultation paper, the current definition of 'designated remittance arrangement' is very broad, generating uncertainty and inconsistency of application across the industry.

As part of this, we support the stated intention that non-financial entities that only transfer funds incidentally to the provision of their main service should not be captured under the AML/CTF regime (with retail stores and online marketplaces being two additional examples beyond those noted in Paper 4). Such entities are unlikely to pose sufficient ML/TF risks within the economy (that could not be addressed elsewhere in the value chain) to warrant the significant regulatory burden associated with setting up an AML/CTF program.

However, while this intention has been noted the consultation paper, members are concerned that the proposed definitions of designated services underlying the new 'value transfer services' concept do not make clear that they only apply where that service is a 'core' business activity. As a result, they may not solve the issues of breadth and ambiguity posed by the existing definitions. We encourage the Department to revise the new definitions to provide sufficient clarity that value transfers that are ancillary to an operator's core business and/or not the primary purpose of an arrangement with the customer are not in scope. This would helpfully be supported by clear guidance on what constitutes 'core' and 'ancillary' services, including additional examples beyond those outlined in Paper 4.

Separately, we note that Treasury has been undertaking a program of work on modernising the regulatory framework for payment service providers (PSPs) to reflect the significant changes in the payments ecosystem that have occurred over the past two decades. These reforms will include the establishment of a new licensing regime, underpinned by updated definitions of the different types of PSPs operating in the Australian payments ecosystem. We encourage the Department to consider whether there would be value in better aligning the relevant definitions under the PSP licensing framework and the AML/CTF regime, to reduce complexity and uncertainty for PSPs that will be subject to both regulatory regimes.

We also agree that the introduction of a limited designated service with appropriate exemptions could be one option for clarifying the transaction monitoring and risk mitigation and management expectations for intermediary institutions. An alternative approach that may impose a lower regulatory burden would be to enable intermediary institutions to voluntarily submit suspicious matter reports without registering as a designated service.

Business Group Concept

In our earlier submission, AusPayNet members had expressed support for being able to incorporate any related entities into a 'designated business group', rather than only reporting entities. However, members have expressed concerns about the Department's updated proposal for a new 'business group' concept that would automatically include *all* entities within a corporate group. The consultation paper suggests that non-reporting entities within a business group will not be subject to direct AML/CTF regulation or be liable for failings in carrying out any AML/CTF functions delegated to them. However, some members remain concerned about the possible implications of the business group proposal for their related non-reporting entities. As an alternative, we suggest that corporate groups should be given the ability to decide which reporting and non-reporting entities to capture within a business group (rather than including all group entities by default), based on their individual assessment of the nature and needs of their business.

Tipping-off Offence

AusPayNet's earlier submission had expressed strong support for amending the tipping-off offence to enable greater collaboration both within corporate groups and across the broader ecosystem. With the growing complexity in money laundering – often involving multiple financial institutions and payment networks – collaboration across the entire ecosystem is becoming increasingly important to identify and disrupt criminal activity. Such collaboration is impeded by the current AML/CTF regime, creating a significant barrier to the early detection and disruption of economic crime in Australia.

While the current consultation paper recognises the benefits of amending the tipping-off offence to address these barriers, we are concerned that the proposals are not sufficient to fully achieve this aim. To a large extent, this is because the reforms appear to only facilitate disclosure within business groups or to a regulator. Members have identified numerous situations where it would be beneficial to share suspicious matter reports (SMRs) or section 49 information for 'legitimate' purposes but would be prevented under the framing of the offence proposed in the consultation paper. Examples of legitimate business disclosures may include sharing certain information with entities such as the Australian Financial Crimes Exchange (AFCX) to facilitate industry collaboration in the identification of economic crime networks, and sharing relevant information with payment system operators or other financial institutions in the payments chain to prevent fraud and scam losses from leaving the regulated ecosystem or enhancing customer onboarding and risk assessments in certain circumstances.

We note that the Department is 'considering framing the offence in a way that could help facilitate private-to-private information sharing in future, subject to appropriate protections being in place.' For the reasons outlined in our earlier submission, we strongly encourage the Department to expedite this deliberation, and ensure that appropriate (and appropriately limited) private-to-private *and* private-public information sharing is enabled under the current set of reforms. As noted in the earlier submission, we recognise that any reforms to expand information sharing abilities across the ecosystem will need to be supported by well-defined limits and caveats, clear rules and protections, as well as strong governance and accountability arrangements to prevent misuse. The industry stands ready to engage with the Department on the appropriate framing of the tipping-off offence to remove any unnecessary impediments to 'good faith' collaboration on mitigating illicit activity, as well as the supporting controls that would need to be established to make this possible.

Customer Due Diligence

Our earlier submission noted that AusPayNet supports updating and simplifying the customer due diligence (CDD) obligations in line with international standards, including by adopting a principles-based approach and reflecting developments in identification technology and processes. Accordingly, we support the stated intent of the CDD reforms in the current consultation paper, to ensure that reporting entities have the flexibility to adopt a risk-based approach to CDD that is tailored to the ML/TF risks they face in their business, rather than simply demonstrating compliance with complex and overly prescriptive CDD procedures.

However, the consultation paper implies that the revised CDD obligations should be contained in the Act, rather than the Rules (which can be more flexibly adjusted over time). This would once again risk locking in detailed CDD procedures in an environment of ongoing changes in business processes and technology. The consultation paper also outlines a level of prescription around the new CDD obligations that appears to mirror the existing regime. We encourage the Department to retain the current framework, limiting the Act to include only a high-level, principles-based obligation to conduct CDD, with additional details provided in the Rules and Guidance (in line with the current law and international provisions, such as those in the UK).

In our earlier submission, AusPayNet also noted the potential role of new technologies and a national digital identity framework (for both individuals and businesses) in strengthening customer identification and verification processes. We therefore support the Department's commitment to ensuring that the updated Act and Rules remain technology neutral, and its ongoing work on assessing

how changes to Australia's Digital Identity Framework might be leveraged by reporting entities to comply with certain CDD obligations. Members have also expressed support for additional guidance from AUSTRAC around the use of other emerging technologies, including artificial intelligence.

One new concern raised by members in response to the current consultation paper relates to the proposal that a customer risk rating should be determined *prior* to providing a designated service. For many businesses, customer risk ratings are based on an iterative risk assessment, with the initial rating usually determined by CDD data and other information that will often take at least one or two days to process. The risk ratings are also often amended over time based on the provider's continued learning about their customer transaction behaviours. The introduction of real-time screening and scoring would require significant technological uplift for most reporting entities and could negatively impact how those entities interact with prospective customers, with little apparent benefit. We therefore recommend a change to the proposal that would give entities scope to assign a customer risk rating either prior to *or* as soon as practicable after a designated service has been offered to the customer.

Travel Rule

AusPayNet is generally supportive of the proposals to extend the travel rule to all reporting entities (including digital asset service providers), and more broadly align it with Recommendations 15 and 16 of the FATF Standards. We also welcome the proposed exemption from requiring full travel rule information to be included for incoming cross-border value transfers where this information cannot be transmitted due to technical limitations in existing domestic payment systems (such as the Bulk Electronic Clearing System).

However, we note that the Financial Stability Board's work on updating the application of the AML/CTF rules (including Recommendation 16) is still ongoing.¹ This review is expected to conclude in the near term, so it may be practical to postpone consideration of the final changes to the travel rule application in Australia until then.

Members also welcome the Department's intent to provide flexibility in handling inbound payments lacking travel rule information due to the 'sunrise issue', given the robust transaction monitoring and other risk management processes that financial institutions already have in place. To provide greater clarity on the Department's expectations and an appropriate level of consistency across the industry, we encourage the development of clear guidance on the factors that would be relevant for the purposes of such a risk assessment and the decision to hold a transaction where travel rule information is missing.

IFTI Reporting

AusPayNet supports the intention to modernise the IFTI reporting framework to address the issues highlighted in the consultation paper. The proposed changes should generally help to deliver a simpler, more consistent and more effective IFTI reporting model. These include the proposals to consolidate all types of IFTI reports into a single format, shift the reporting responsibility to the entity

¹ FSB (2023), [G20 Roadmap for Enhancing Cross-border Payments: Priority actions for achieving the G20 targets](#), 23 February.

closest to the customer, align the reporting trigger to the movement of value rather than instruction, and extend IFTI reporting obligations to all value transfer services, including digital asset transfers.

However, the proposed reforms will require significant changes in business systems and processes. As acknowledged in the consultation paper, the impact is likely to be particularly pronounced for smaller banks that currently rely on an intermediary to perform IFTI reporting, as considerable effort would be required to build out the required reporting capability. This impact should be reduced by allowing intermediary institutions to continue submitting IFTI reports on behalf of smaller businesses, subject to appropriate safeguards to ensure accuracy, completeness, and accountability for risk.

More broadly, it is essential that detailed changes to the IFTI reporting model are designed in close consultation with the industry to ensure an appropriate cost-benefit trade-off across all reporting entities, alignment with Treasury's Strategic Plan for Australia's Payments System, and the resolution of interpretation issues in the current regime (including the application of the regime to trade-based transactions, credit cards and MT202 messages). The reforms should also consider the potential impact on correspondent banking fees and charges, as well as the calculation of the AUSTRAC levy. Given the interpretation issues surrounding the current requirements, any changes to the IFTI reporting regime should be accompanied by clear and comprehensive guidance, to support consistency in implementation across the industry.

A related reporting matter worth raising is the effectiveness of the SMR process. Recent industry discussions have highlighted that while reporting entities are mandated to submit SMRs, the large volume of these reports means that a significant share is unlikely to be investigated or acted upon. Depending on the suspicious activity being reported, entities may sometimes submit additional reports to the relevant regulator or agency to increase the likelihood of follow-up action, incurring additional operational costs. We note that the proposed reforms to the AML/CTF regime are likely to lead to a substantial increase in SMR reporting across the ecosystem. It will therefore be important to ensure that AUSTRAC has the necessary resources to effectively analyse these and disseminate the acquired intelligence to the relevant stakeholders. We welcome further engagement with AUSTRAC and the Department on improving the effectiveness of the SMR process, to ensure that it does not become merely a costly compliance exercise, but continues to provide actionable insights in the fight against economic crime.

Implementation

AusPayNet members share the Government's focus on strengthening Australia's AML/CTF regime and demonstrating compliance with international standards ahead of the approaching FATF mutual evaluation review. However, even while some of the proposed changes are intended to streamline and simplify the obligations under the regime, significant investment and effort will be required by reporting entities to modify, uplift and develop new complex systems and processes that span multiple areas of the business, including technology, operations, payments, and customer services

We therefore encourage the Department to work closely with industry stakeholders to develop a clear and viable reform implementation timeline, with appropriate phasing of priority reform areas and clear milestones that will help demonstrate effective progress towards FATF expectations. We also encourage the Department to continue providing adequate timeframes for all future consultations – particularly on the draft Bill, Rules and associated Guidance – to allow industry to provide considered feedback that will help ensure the changes to the regime are robust and future-proof.

Conclusion

AusPayNet appreciates the opportunity to respond to the Attorney-General's Department's second 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 welcomes the opportunity to continue engaging with the Department as it progresses this work. Please contact Toby Evans, Head of Economic Crime [REDACTED] or Kateryna Occhiutto, Head of Policy & Insights [REDACTED] if you have any further questions.

Yours sincerely,

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