

14 October 2024

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



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

Australian Payments Network (AusPayNet) welcomes the opportunity to respond to the Legal and Constitutional Affairs Legislation Committee's inquiry into the *Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Amendment Bill 2024*.

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 works closely with members, government, and other stakeholders on a range of initiatives to help defend the payments system from economic crime.

Together with our members, AusPayNet has welcomed the Government's review of the AML/CTF regime to ensure that it remains clear, fit-for-purpose, and meets international standards and best practice. Economic crime poses a significant threat to Australia, with the potential to generate serious financial and emotional harm to individuals and businesses. While the AML/CTF regime is a critical part of Australia's defences against economic crime, 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.

Over the past few years, AusPayNet has gathered insights on the effectiveness of the AML/CTF regime through extensive member consultation, as well as our broader work on economic crime issues across the payments ecosystem. These insights were provided to the Attorney-General's Department in response to its two consultations on the AML/CTF regime reforms in mid-2023 and mid-2024. The insights and feedback in these two submissions remain relevant to the Committee's inquiry into the proposed AML/CTF Amendment Bill. We therefore consider that providing these two submissions to the Committee directly will be the most effective approach to providing our input into this inquiry. Please find these two submissions attached in Appendices A and B. To assist the Committee, a brief summary of the overarching feedback in these two submissions is listed below:

- AusPayNet was generally supportive of the overall direction of the reforms to the AML/CTF regime proposed in the two consultation papers. In particular, our members supported:
 - updating the regime to align with international standards, including by adopting a risk-based approach centered on entities understanding and managing their specific ML/TF risks, and clarifying the scope of entities subject to AML/CTF regulation;

- amending the tipping-off offence to enable greater collaboration across the payments ecosystem, which is increasingly critical for the effective detection and disruption of money laundering networks and other economic crime activity;
 - extending the regime to digital currency exchanges and tranche-two entities;
 - extending the travel rule obligations to all reporting entities, while ensuring that any changes take into account the current limitations of Australia’s Direct Entry system; and
 - updating and simplifying both the IFTI reporting framework and customer due diligence (CDD) obligations, including to reflect recent technological developments.
- However, members had expressed concerns about certain proposals in the consultation papers, and made several recommendations to address these. These included ensuring that:
 - the amendments to the tipping-off offence effectively enable appropriate private-to-private and private-to-public information sharing across the payments ecosystem, not just within business groups;
 - the AML/CTF Act retains a principles-based approach to regulation, with more detailed requirements set out in the Rules and Guidance (which can be more easily adjusted over time to reflect changes in the risk environment, technology and business practices);
 - the definition of ‘value transfer services’ clearly excludes transfers that are ancillary to an entity’s core services, and considering closer alignment of the definition with those under Treasury’s proposed payments service provider (PSP) licensing framework;
 - the final changes to the travel rule application in Australia reflect the conclusions of the Financial Action Task Force's ongoing work on this topic;
 - any changes to the IFTI reporting framework are designed in close collaboration with the industry to ensure effectiveness, appropriate cost-benefit trade-offs (particularly in the case of reporting responsibilities), and clarity and consistency of application; and
 - the industry is provided with a clear and viable reform implementation timeframes, with appropriate phasing of priority areas.

Following our review of the AML/CTF Amendment Bill, AusPayNet would particularly like to reiterate our strong support for amending the tipping-off offence to enable greater private-to-private information sharing across the ecosystem, subject to appropriate controls and safeguards. The Explanatory Memorandum notes that the intention of s.123(5) of the Bill is to allow for such information-sharing arrangements to be established through new regulations. While we welcome this policy intent, we note that the regulations will be critical to ensuring the effectiveness of this amendment. We therefore encourage the Government and/or relevant regulators to consult with the industry on these regulations as soon as practicable after the passage of the Bill.

Relatedly, we note that the Impact Analysis for the proposed AML/CTF regime reforms had not considered the potential impact of the ongoing reforms to the *Privacy Act 1988*. While we understand that consideration of the Privacy Act reforms is still ongoing, we note the importance of ensuring that the obligations under the Privacy Act do not impede the implementation of the private-to-private information sharing arrangements envisaged under the AML/CTF Amendment Bill.

We appreciate the Committee's further consideration of the additional insights and feedback provided in the attached submissions.

Please contact Jennifer Le, Head of Government & Regulatory Relations ([REDACTED]) and Kateryna Occhiutto, Head of Policy & Insights ([REDACTED]) if you have any further questions related to this inquiry.

Yours sincerely,

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Andy White
Chief Executive Officer
Australian Payments Network

APPENDIX A: AusPayNet Submission to the First Consultation on Reforms to the AML/CTF Regime

16 June 2023

Attorney-General's Department
Australian Government



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

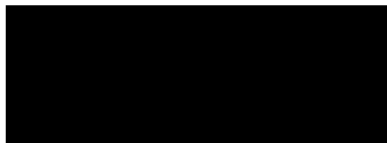
process to assess and approve biometric platforms for use in Australia could also reduce the compliance burden on entities.

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,



Andy White
Chief Executive Officer
Australian Payments Network

APPENDIX B: AusPayNet Submission to the Second Consultation on Reforms to the AML/CTF Regime

13 June 2024

Attorney-General's Department
Australian Government



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.⁶ 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

⁶ FSB (2023), [G20 Roadmap for Enhancing Cross-border Payments: Priority actions for achieving the G20 targets](#), 23 February.

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 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.

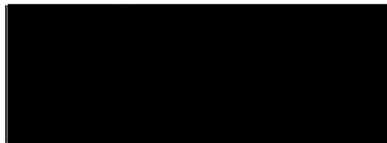
Conclusion

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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Andy White
Chief Executive Officer
Australian Payments Network