ARA SUBMISSION

REFORMING AUSTRALIA'S ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REGIME

JUNE 2024

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to the Attorney-General's Department (AGD) on its initiative to modernise Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

The ARA is the oldest, largest and most diverse national retail body, representing a $420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

This submission responds to matters outlined in the five papers released by the AGD in its second stage of consultation in respect of Australia's AML/CTF regime. The submission has been informed by ARA members with local operations and those that operation across multiple overseas jurisdictions.

SUPPORT FOR REFORM PROPOSALS

The ARA welcomes efforts to simplify and modernise Australia's AML/CTF regime, building on feedback from the first round of consultation with more detailed reform proposals presented in the second stage of consultation.

We believe that the proposed reform agenda presents opportunities to create efficiency gains for Australian retailers and offer more certainty for retailers regarding the regulatory environment in which they operate, providing a level playing field. We also support the AGD's technology-neutral stance and considered approach to applying new technologies to enhance procedures such as Customer Due Diligence (CDD).

STREAMLINING THE AML/CTF REGIME AND CDD

The ARA supports the AGD's initiative to streamline the AML/CTF regime into a single program and reinforce the requirement for regulated entities to take a risk-based approach to their AML/CTF obligations. This will allow reporting entities to establish appropriate and proportionate risk mitigation measures based on risk assessment.

We welcome the proposal to clearly define roles and responsibilities of an entity's board and senior management in relation to internal controls, which we believe will improve accountability and alignment within organisations.

We also support the AGD's proposal to shift the focus of CDD away from the concept of "applicable customer identification procedures, which is vague and provides opportunity for misinterpretation. The shift towards 'initial CDD' more accurately reflects the purpose of this obligation and its operation under the CDD framework. This change will shift the focus from prescriptive procedures to more flexible procedures, focused on the outcome of knowing your customer and understanding the associated risk.

The AGD proposal creates a clearer framework for reporting entities on the types of relevant information required for collection and verification, and how these information fields correlate with the potential risks that need to be addressed. Further, the acknowledgement in Paper 5 that "reporting entities would retain flexibility in determining how to meet initial CDD obligations in practice" creates an important balance that needs to be, and can be, achieved by adopting risk-proportionate CDD measures.

We note the AGD's proposal that, prior to providing a designated service, a reporting entity must be reasonably satisfied that it knows whether the customer or beneficial owner is a politically exposed person (PEP) or designated for targeted financial sanctions under an Australian sanction law.

We consider this requirement is likely to create challenges for operators that conduct batch screening, as compared to screening on a case-by-case basis.

Therefore, we encourage the AGD to provide guidance on batch screening, which, based on feedback from our members, we understand is typically completed within one day of the the CDD, creating minimal incremental risk in the interim. The compliance costs of requiring case-by-case screening would create unnecessary cost and complexity, considering the efficacy of the established practice of batch screening.

We note the proposal to replace the concept of a "designated business group" with a simplified "business group" concept. The business group will include all related entities (including non-reporting entities) and the Act will allow any member of the business group to fulfil AML/CTF obligations on behalf of reporting entities, although this will not shift liability for breaches.

The scope should be confined to reporting entities only, rather than applying to all group subsidiaries as a default position - particularly in the context of non-financial institutions, such as supermarkets. We do not support the business group concept being wider than is necessary to meet the objects of the reform. From member feedback, we note that some business activities of other entities in a group are often unrelated to activities of the reporting entity. For example, a related group entity may itself conduct an entirely distinct business.

STREAMLINING REGULATION OF VALUE TRANSFER SERVICE

The intent to streamline the regulation of value transfer service is a positive development but more could be done to narrow the scope of the reporting obligations to reduce compliance risk and costs for impacted retailers.

We are therefore generally supportive of the proposal outlined in Paper 4 to clarify and update the scope of remittance services subject to AML/CTF regulation but make the following observations.

The current definition of 'designated remittance arrangement' is broad, creating uncertainty about the intended scope, which has resulted in entities investing significant time and effort in evaluating the designated remittance services and creating a lack of confidence on whether registration is required.

We also note that AUSTRAC has issued a number of exemptions for entities providing items 31 and 32 designated services, which suggests the current wording in the legislation does not appropriately capture the intended scope.

Our understanding is that the definition of remittance was originally intended to apply narrowly. However, the current wording may lend itself to an expansive view of what is in scope, and inadvertently capture entities that transfer funds as an adjunct to their main retail business or other business activities.

For these reasons, we support the AGD proposal to streamline definitions of designated services to establish a new definition of 'value transfer service'.

A key aspect of this proposal is AGD's expressed intent to exempt operators that perform value transfer services incidentally to another service. This exemption is critical for ensuring the regime remains proportionate and appropriately focused on operators that perform these activities as a core activity. As such, we support the exclusion of businesses that do not provide remittance services as a standalone service or as part of their core business model – examples of which would include ride-sharing services for online deliveries, gig-economy workers providing food delivery services or online marketplaces.

While value transfer to drivers and merchants is a component of these business models, our position is that these transfers are ancillary to the primary purpose of the overall business. As such, these transfers are incidental to an operator's core business meaning the transfer is more clearly linked to a legitimate transaction, for example the legitimate purchase of a product or service.

In these use cases, our view is that the overall risk of the transaction being exploited by bad actors is reduced.

We also note that retailers will generally be working with duly registered payment service provider(s) to receive and disburse funds to merchants. Capturing such retailers within the AML/CFT regime would therefore impose a duplicative compliance burden, which we consider is unjustified given the role of the other providers in the value chain and the protections those parties already have in place.

To assist industry to assess applicability of the incidental service exemption, the ARA recommends that the AGD work with industry to define and issue detailed guidance on what is a 'core' vs. 'incidental' service, with additional examples beyond those provided in Paper 4.

We note AUSTRAC has previously issued exemptions for operators performing items 31 and 32 services that are not listed in Consultation Paper 4, for example payroll payment facilitators, marketplace operators and clearance service providers in the travel industry.

Further guidance is required on whether those classes of operators, including online marketplace operators, would be able to avail the incidental exemption. Alternatively, definitions could be further refined to avoid the need to seek or rely on such an exemption.

We also recommend that the AGD apply a risk-based approach to defining value transfer services. An increasing number and diversity of Australian retailers are reaching customers through multiple channels, including their own physical stores, online stores and marketplaces.

Many retailers have expanded the selection available to customers on their online stores by integrating marketplace offerings that enable other businesses to offer products alongside the retailer's own products on the retailer's website.

Marketplaces also enable small businesses to reach more customers at lower costs and with lower overheads than would be associated with setting up their own physical or online store. Retailers selling on marketplaces

and retailers who offer products on their store through a marketplace model remain, at their core, retailers and should be outside of the scope of this regime.

Capturing retailers and marketplaces under this regime would impose onerous requirements on a broad range of businesses – potentially innovation and growth in the Australian retail sector, which would adversely impact Australian consumers and the wider economy.

Finally, we note there are significant regulatory costs for any organisation to establish an AML/CFT program.

In line with the evidence-based approach outlined in the Australian Government's Guide to Policy Impact Analysis[1], the ARA recommends that it AGD and AUSTRAC review the likely net benefit of broad-reaching definitions, which could inadvertently capture a large array of operators.

An Impact Analysis of these proposed reforms would need to assess the regulatory burden, compliance costs and impact of interventions associated with broad definitions, against the benefits of combating AML/CTF concerns. The outcomes of such an analysis would provide a robust evidence base as to whether concerns about the current state could be sufficiently met through existing safeguards in the system or whether additional interventions were required.

Additionally, we recommend that the AGD ensure that definitions be aligned with the separate Payments System Modernisation to reduce confusion and complexity for businesses that are required to comply with both regimes.

We welcome the opportunity to contribute to further guidance and examples from the AGD and AUSTRAC to equip industry with greater certainty about the scope of the newly proposed value transfer services.

Thank you again for the opportunity to provide a submission to the AGD.

We look forward to further engagement on the various options canvassed in the paper. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

[1] Department of Prime Minister and Cabinet, Office of Impact Analysis | Link