27th June 2025

Mr Brendan Thomas
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AUSTRAC
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Dear Mr Thomas

SMSF ASSOCIATION SUBMISSION: SECOND PUBLIC CONSULTATION ON NEW AML/CTF RULES

The SMSF Association welcomes the opportunity to provide this submission to the *Public Consultation on the Second Exposure Draft of the new AML/CTF Rules*.

The SMSF Association believes that it is essential that Australia has in place a robust anti-money laundering and counter-terrorism financing (AML/CTF) regime to effectively deter, detect and disrupt money laundering, terrorism financing and proliferation financing, and ensure that Australia meets the international standards set by the Financial Action Task Force (FATF).

We believe the exposure draft *Anti Money Laundering and Counter Terrorism Financing Rules 2025* (Rules) combined with the amended *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (amended Act) simplify and modernise the AML/CTF regulatory regime. Further, the revised approach of including the primary obligations in the amended Act, supported by the specific requirements in the draft Rules will make it easier for reporting entities to understand and comply with their obligations.

However, we believe there are still a number of requirements that must be explained in the draft Rules to effectively achieve this outcome. This includes clarifying:

- the application of the 'control' test to different business models, specifically in financial services
- specific enrolment information including the number of employees and association memberships of applicants
- customer due diligence (CDD) requirements when neither simplified nor enhanced measures specifically apply.

Further, the SMSF Association recommends that AUSTRAC clarify whether a reporting entity that solely provides item 54 designated services (item 54 reporting entity) is required to appoint a senior manager. If such an appointment is necessary, AUSTRAC should also outline the specific

responsibilities of the senior manager, considering the entity's modified obligations under section 26T of the amended Act.

Our detailed responses to the consultation are contained in the Attachment.

If you have any questions about our submission, please do not hesitate to contact Keddie Waller, Policy Manager via email keddiewaller@smsfassociation.com

Yours sincerely,

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.

ATTACHMENT

Part 1 – Preliminary

Reporting Groups - Section 1-9 and Section 1-10

Section 1-9 and Section 1-10 of the draft AML/CTF Rules defines who is a lead entity for the purposes of a reporting group that is a business group or for a reporting group that is formed by election. The fundamental requirement is that lead entity is not controlled by another member of the group or to rephrase, has 'control'.

'Control' is defined in section 11 of the amended Act, where paragraph 59 in the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 Explanatory Memorandum* (explanatory memorandum) states that the intention is to clarify what kinds of corporate structures qualify as a business group. It further states that where reporting entities are related to each other as bodies corporate under the *Corporations Act 2001*, such as common structures for traditional financial services businesses, they are required to form a business group.

This is further reiterated in paragraph 58 of the *Exposure draft explanatory statement to the Anti-Money Laundering and Counter Terrorism Financing Rules 2025* (explanatory statement) where it states a reporting group is mandatory where there is control between persons, but in all other circumstances are optional.

However, it is unclear how 'control' applies in non-traditional business models such as where the representative, being either an individual or corporate, is authorised by an Australian Financial Services (AFS) licensee, but may not form part of the same corporate ownership structure as the AFS licensee.

For example, an accounting firm may establish a separate entity that is under its 'control' but is authorised under a corporate authorised representative (CAR) agreement by a separately owned AFS licensee to provide financial product advice. Importantly, with the implementation of the tranche 2 reforms, it is also likely that the accounting firm will also be required to enrol with AUSTRAC as a reporting entity.

The SMSF Association recommends that AUSTRAC provide clarity in the explanatory statement or through guidance to the AML/CTF Rules:

- **How 'control' will be applied to determine if such business models described above are a reporting group that is a business group, or a reporting group formed by election?**
- **Who has 'control' and is therefore the lead entity in the reporting group for such models?**
- **How will 'control' be applied if the authorised individual or CAR is a member of two reporting groups?**
- **If an item 54 reporting entity is a member of a reporting group where the lead entity provides a range of designated services, can it still rely on section 26T of the AML/CTF Act and be subject to modified obligations as a reporting entity?**

Part 2 – Enrolment

Division 1 – Application for enrolment

2-3 Information relating to the applicant

The reporting entity is required to provide information on the number of employees employed by the applicant in **paragraph 2-3(h)**. We understand that the purpose of this information is to allow AUSTRAC to understand the demographics about the applicant, including where it provides its designated services and the governing bodies of the applicant.

As previously noted, under an AFS licensee structure, it is common for individuals to be authorised by agreement rather than through employment and as such, this may not capture the data AUSTRAC is seeking to understand about the size and locations of the reporting entity.

The SMSF Association recommend that AUSTRAC clarify if AFS licensees are required to provide the number of direct employees, authorised representatives or both when enrolling with AUSTRAC.

If the intention is to capture employees and authorised representatives, this should be made explicit in both draft Rules and the explanatory statement. Further, each should be a separate field to complete when enrolling to ensure AUSTRAC has an accurate view of the size of the reporting entity. It also avoids the reporting entity having to constantly update this information, given any changes must be updated with AUSTRAC within 14 days.

Paragraph 2-3(i) requires the applicant to identify whether it is a small business entity within the meaning of sections 328-110 if the *Income Tax Assessment Act 1997* for the previous year, if the applicant is a resident in Australia. The explanatory statement states that aggregated turnover includes the turnover of businesses 'connected with', which is based on 'control', or affiliates of the applicant. However, as discussed earlier in our submission, it is currently unclear how 'control' will be applied in some business models.

The SMSF Association recommend AUSTRAC provides clarity about how the small business test will be applied to a reporting group that is a business group or for a reporting group that is formed by election.

Of note paragraph 87 of the explanatory statement incorrectly references this section as Paragraph 2-3(g), not 2-3(i).

Paragraph 2-3(j) requires the applicant to identify one or more associations of which the applicant is a member (if any) that represents the interests of a particular industry, profession or trade. However, in the professional services sector, it is common for individual membership, not a corporate or entity.

If the expectation is to list all memberships for the applicant's employees or personnel, this could include a large number of associations. For example, in financial services sector an AFS licensee may authorise a large number of financial advisers who could be a member of one or more 12 different associations. While we understand that this information could be beneficial to AUSTRAC for smaller applicants, the quality of information may be diluted for those with a larger number of personnel.

The SMSF Association recommends that AUSTRAC clarifies the information it is seeking to collect in respect of an applicant being a member of one or more associations that represent the interests of a particular industry, profession or trade.

We also note that any changes to information provided at enrolment must be updated within 14 days. If the intention is to record membership for all personnel of the applicant, this could become unnecessarily burdensome task for larger applicants, noting that there are also potential civil penalties for non-compliance.

Part 4 – AML/CTF Programs

Division 2 – AML/CTF Policies

4-4 Reporting from AML/CTF compliance officer to governing body

We support the specific inclusion of subparagraph 4-4(3) to recognise that the distinction between a governing body, senior manager and AML/CTF compliance officer may be redundant for a sole trader or in fact for a small business. Given the large number of sole practitioners and small businesses that are expected to enrol as a reporting entity under the tranche 2 reforms.

The SMSF Association recommends a note to this effect is added to all relevant sections where the distinction between roles may be redundant.

4-7 Independent evaluations

Section 4-7 of the draft Rules specifies the requirements that must be included in the AML/CTF policies of a reporting entity for the completion of an independent evaluation of its AML/CTF Program. Paragraph 200 of the explanatory statement notes that subparagraphs 4-7(2)(a) to (c) and (e) are based on concepts that have been drawn from Auditing and Assurance Standards Board's *Standard on Assurance Engagements ASAE 3150 Assurance Engagements on Controls* (ASAE 3150).

We note that the objectives of ASAE 3150 are to:

a) *to obtain limited or reasonable assurance about whether, in all material respects, based on suitable criteria, either:*

   (i) *as at a specified date, the controls were suitably designed, to achieve the identified control objectives and, if included in the scope of the engagement:*

      a. *the entity's description of the system of controls fairly presents the system and/or*

      b. *the controls were implemented as designed; or*

   (ii) *throughout the period, the controls were suitably designed to achieve the identified control objectives, the controls operated effectively as designed and, if included in the scope of the engagement, the entity's description of its system fairly presents the system; and*

b) *to express a conclusion through a written report on the matters in (a) above which expresses either a reasonable or limited assurance conclusion and describes the basis for the conclusion.*

We support the concepts of the independent evaluation being aligned to the objectives and the concepts of ASEAE 3150, noting the standard is scalable like the requirement for the AML/CTF policies of a reporting entity to be appropriate to its nature, size and complexity.

However, it is important that the independent evaluation is based on the concepts of ASAE 3150 and the standard itself not become the baseline standard for completing the independent evaluation, noting importantly that the assurance standards do not operate in isolation. Further, many of the existing professionals experienced to perform an independent evaluation are not assurance practitioners.

Setting this expectation, even unintentionally, could impact the supply of professionals to undertake independent evaluations, and in turn the cost.

4-11 Actions requiring approval or that senior manager be informed

Section 4-11 of the draft Rules requires the AML/CTF policies of a reporting entity to either require the approval of a senior manager or to inform a senior manager before the reporting entity commences to provide a designated service to a customer in specific circumstances. This section is made under section 26F(3)(e) of the amended AML/CTF Act.

Section 26T(3)(a) of the amened Act states that paragraphs 26F(3)(a) to (d) do not apply to item 54 reporting entities. However, it does not include 26F(3)(e) which states that the AML/CTF policies of a reporting entity must deal with any other matters specified in the AML/CTF Rules.

Section 26T(3)(a) also states section 26F(4) does not apply to item 54 reporting entities, noting this section requires, among other obligations, the reporting entity to designate one of more senior managers of the reporting entity for approving the AML/CTF policies and the ML/TF risk assessment of the reporting entities.

Given this, we believe it is unclear if an item 54 reporting entity must comply with section 4-11 of the draft Rules.

The SMSF Association recommends that AUSTRAC provide clarity if an item 54 reporting entity is required to comply with section 4-11.

We believe it is the intention of the draft Rules that section 4-12 apply to all reporting entities, including item 54 reporting entities, and believe it would be prudent to make this clear in the explanatory statement.

Division 3 – AML/CTF compliance officers

4-18 AML/CTF compliance offices

Paragraph 4-18(a) requires the reporting entity to have regard to whether the individual possesses the necessary 'expertise' to properly perform the duties of the AML/CTF compliance officer. We

question the appropriateness of this requirement for sole practitioners and small businesses required to enrol under the tranche 2 reforms who will have had no experience and therefore expertise in AML/CTF compliance.

The SMSF Association recommends that AUSTRAC clarify its expectations in guidance in regard to 'expertise' for new reporting entities.

Part 5 – Customer Due Diligence

Division 2 – Simplified and enhanced due diligence requirements

The amended Act requires a reporting entity to undertake customer due diligence (CDD) before providing a designated service to a customer. Section 27 of the amended AML/CTF Act states that:

Simplified customer due diligence may be undertaken in certain low risk circumstances as part of initial and ongoing customer due diligence.

Enhanced customer due diligence must be undertaken in certain circumstances as part of initial and ongoing customer due diligence.

Section 31 of the amended Act states when simplified CDD may be applied:

In complying with the obligation imposed on a reporting entity under subsection 28(1) or 30(1) in relation to a customer, the reporting entity may apply simplified customer due diligence measures if:

(a) the ML/TF risk of the customer is low; and

(b) section 32 does not apply to the customer; and

(c) the reporting entity complies with the requirements specified in the AML/CTF Rules

Noting this in respect of both initial and ongoing CDD and section 32 of the amended Act states when enhanced CDD must be applied.

Section 5-4 of the draft Rules states:

For the purposes of paragraph 31(c) of the Act, for a reporting entity to apply simplified customer due diligence measures the AML/CTF policies of the reporting entity must deal with the application of those measures.

Section 5-5 then states when enhanced CDD must be applied to a customer.

It is not clear from the amended Act, draft Rules or explanatory statement what CDD measures a reporting entity must apply if a customer has a medium ML/TF risk and simplified CDD cannot be applied, yet the risk and other circumstances do not trigger the enhanced CDD obligations.

From discussions during consultation, it is evident that AUSTRAC expects a 'standard' or another form of CDD to be applied in these circumstances. However, we do not believe the amended Act, or

the draft Rules reflect AUSTRAC's expectations to support reporting entities to understand and comply with their statutory obligations.

While we understand that AUSTRAC intends to clarify CDD obligations in guidance, we believe it should first be reflected in the draft Rules to articulate the specific requirements that apply and then supported in guidance to explain how a reporting entity meets its obligations.

The SMSF Association recommends that AUSTRAC revise the AML/CTF Rules and accompanying explanatory statement to clearly define the customer due diligence obligations of reporting entities in circumstances where neither simplified nor enhanced due diligence requirements are applicable.

Division 4 – Circumstances in which reporting entity is taking to comply with requirements

5-20 Ongoing customer due diligence – monitoring of transaction and behaviours

Section 5-20 provides a list of offences a reporting entity must monitor its customers for that may give rise to a suspicious matter reporting obligation. We acknowledge that the explanatory statement states the purpose of this list is to limit the monitoring of customers in relation to the provision of is designated services. However, the list is still comprehensive, and it is likely that many reporting entities, especially new entrants under the tranche 2 reforms, will not know how to effectively monitor for such behaviours.

The SMSF Association recommends AUSTRAC develop guidance to support reporting entities, especially sole traders and small businesses, understand their responsibilities and how to discharge their obligation under this section.

Division 7 – Reliance on collection and verification of KYC information

5-26 Requirements for agreement or arrangement on collection and verification of KYC information

As raised in our previous submission, the reliance provisions can result in item 54 reporting entities undertaking additional obligations beyond their legal requirements under the current AML/CTF Act and AML/CTF Rules. This occurs where a financial product provider, who is also a reporting entity, incorporates the reliance agreement into the product distribution agreement it has with the item 54 reporting entity.

While this in of itself is not an issue, the challenge is that the terms of the reliance agreement often require the item 54 reporting entity to undertake obligations for the financial product provider they are exempt from, such as ongoing CDD, or they are prevented from distributing or arranging that financial product/s for their clients.

Section 5-26(e) of the draft Rules states that the reliance agreement or arrangement must document the responsibilities of each party including responsibilities for record keeping.

To improve the transparency and understanding of such arrangements for each party, we recommend that 5-26(e) also include the requirement for such arrangements or agreements to be a stand-alone document and not incorporated into or dependent on other commercial agreements.

We also recommend AUSTRACT guidance should set minimum standards for reliance agreements, including:

- clear heading/title – AML/CTF reliance agreement
- the AML/CTF outcomes the reliance agreement aims to achieve
- the purpose of the reliance agreement
- why the first entity is requesting the other entity to enter into the agreement
- the AML/CTF obligations under the Amended Aml/CTF Act and AML/CTF Rules of each entity in relation to their role and responsibilities under the reliance agreement
- that under the amended AML/CTF Act the reliance agreement applies to initial CDD only
- the legal responsibility and potential liability the reliance agreement imposes on each party for meeting the relevant AML/CTF obligations
- obligations in the amended AML/CTF Act and AML/CTF Rules requiring regular assessments of the AML/CTF reliance agreement, the purpose of the assessments, how assessments should occur, and responsibilities of each party for these assessments
- the overall AML/CTF risk rating of each reporting entity and the relevance of the rating for the purposes of the management of the reliance agreement
- how the 'first person' will make CDD requests of the 'other entity'
- information and data sharing permissions including regulatory guidance on what is necessary to satisfy the reliance obligations, and
- record keeping obligations of each party

With the implementation of tranche 2, we anticipate that a broader group of future reporting entities (such as conveyancers, lawyers and real estate agents) will also utilise the reliance provisions. It is therefore important that the issues of responsibility are adequately addressed to prevent it becoming a future point of friction between existing and/or tranche 2 reporting entities.

We also note that section 37B of the AML/CTF Act requires CDD reliance arrangements to be subject to regular assessments by the relying reporting entity. While we believe this is a matter for the relying reporting entity to determine to manage its own risks, it should consider existing regulatory obligations the other party is subject to in making its assessment.

For example, a product provider relying on a financial adviser to undertake initial CDD is required to be appropriately licensed under an AFS licence for the financial product advice and services they provide, abide by a statutory code of ethics and undertake ongoing professional development. Leveraging existing regulatory obligations would provide an efficient framework for ongoing assessment.

Additional Comments

Section 26T(3)(c) of the amended Act states that section 26P(2) of the amended Act does not apply to item 54 reporting entities.

However, we note that section 26P(1) still applies, which states:

(1) A reporting entity's ML/TF risk assessment and AML/CTF policies, including any updates to either, must be approved by a senior manager of the reporting entity.

Further, section 26P(3) states that a reporting entity must comply with this requirement and civil penalties may apply for non-compliance under section 26P(4).

As previously discussed, subsection 26F(4) of the amended Act does not apply to item 54 reporting entities, which includes the requirement to designate one or more senior managers responsible for approving the AML/CTF policies and ML/TF risk assessment of the reporting entity.

Similar to our comments in respect of section 4-11 of the draft Rules, it is unclear if the expectation is for an item 54 reporting entity to appoint a senior manager to undertake this and other responsibilities as stated in the amended Act and amended Rules.

The SMSF Association recommends that AUSTRAC clarify whether an item 54 reporting entity is required to appoint a senior manager. If such an appointment is necessary, AUSTRAC should also outline the specific responsibilities of the senior manager, taking into account the entity's modified obligations under section 26T of the amended Act.