20 February 2026

Katie Miller
Deputy CEO, Regulation
AUSTRAC

Email: reform@austrac.gov.au

Dear Ms Miller,

JOINT SUBMISSION: CONSULTATION ON UPDATES TO THE NEW AML/CTF RULES; and OUTSTANDING ISSUES

The Financial Advice Association Australia[1] (FAAA) and the SMSF Association[2] welcome the opportunity to provide this submission in response to the AUSTRAC consultation on *Updates to the New AML/CTF Rules*.

Reporting Groups

We support the proposed amendments to replace the current approach to form a reporting group with a more streamlined process. This approach should reduce the administrative burden by requiring only the reporting entity that does not want to form a reporting group to 'opt out' in writing rather than requiring all reporting entities to agree in writing to form a reporting group.

We also believe it is practical to include the provision that if the reporting entity has taken reasonable steps to ensure the notice is given to all parties, the notice will be taken to be effective.

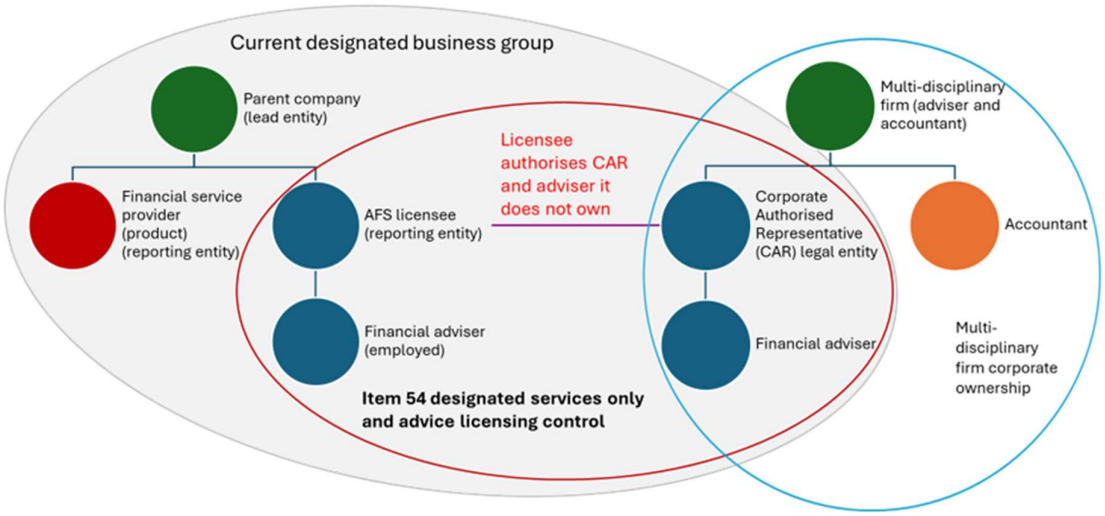
Outstanding issue

The proposed amendments to the Rules do not address the issue we have previously raised in relation to a small multi-disciplinary business that includes a Corporate Authorised Representative (CAR) licensed to provide financial product advice by an external Australian Financial Services Licence (AFSL) holder, that is a separate/non-related legal entity.

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

[2] 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.

The following diagram demonstrates the likely structure and different reporting groups of this business scenario that is common and can legally operate in our profession.



Under the *Corporations Act 2001,* financial product advice licensing obligations, the AFSL holder is legally liable for the financial product advice provided under its licence and hence requires the CAR to meet the policies and oversight requirements set by the AFSL holder for the purposes of the financial product advice regime. The definition of item 54 designated services of the amended Act is based on the AFSL holder:

> *in the capacity of holder of an Australian financial services licence, making arrangements for a person to receive a designated service (other than a service covered by this item)*

An AFSL holder that only provides item 54 designated services is required to enrol as a reporting entity and comply with modified obligations under section 26T, s30(10), and s47(5) of the amended AML/CTF Act. Provided the CAR is not providing any other designated service, it is not itself required to also register as a reporting entity.

The amended AML/CTF Act provisions for forming a reporting group is based, in part, on the meaning of control in s11 of the Act. Section 11(1)(d) states:

> *(d) having the capacity to determine the outcome of decisions about the body corporate's financial and operating policies, taking into account:*
>
> *(i) the practical influence that can be exerted (rather than the rights that can be enforced); and*
>
> *(ii) any practice or pattern of behaviour affecting the body corporate's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).*

The amended AML/CTF Act, Rules and proposed amendments to the Rules, do not permit a person to be a member of more than one reporting group. If the CAR informed the other members of the multi-disciplinary firm that it cannot form a reporting group with them, as it had to be a member of the external AFS licensee's reporting group, this would prevent the multi-disciplinary firm and related entities from itself forming a reporting group.

In the above business scenario, the current restrictions for reporting groups have significant compliance issues for the AFSL holder, CAR, financial advisers and other persons in the multi-disciplinary firm. It also has the potential to impact the application of the modified obligations for reporting entities that provide only item 54 designated services, and the operation of reliance arrangements.

As discussed below, there is a lack of regulatory clarity impacting our members ability to determine if their financial advice services would be caught by the tranche 2 definitions. If a CAR is caught by the tranche 2 definitions, then it is unclear if they would need to enrol with AUSTRAC as a reporting entity and how that would impact the reporting group arrangements for all parties, the AML/CTF programs for both the AFSL holder and the CAR for the same services, and also any reliance agreements.

A clear regulatory response on Reporting Groups is needed for AFSL holders, CARs, and multi-disciplinary firms. AUSTRAC's views are needed on the following matters:

1. Based on the s11 meaning of control, under the above business scenario, are CARs and financial advisers under the control of the AFSL holder for the purposes of the amended AML/CTF Act?

2. Under s10, can a CAR that is authorised by an external AFSL holder be a member of the reporting group of:

    a. the multi-disciplinary firm?

    b. the AFSL holder and its broader reporting group – for example, if the AFSL holder is a member of a reporting group of its parent entity?

    c. of both the multi-disciplinary firm and the AFSL holder?

3. How will the CAR's membership of either reporting group impact the item 54 modified obligations of the AFSL holder reporting entity?

4. How will the CAR's membership of a reporting group impact the ability of the multi-disciplinary firm to form a reporting group, with or without the CAR?

Reliance Agreements

Section 37A of the amended AML/CTF Act only permits a reporting entity (the ***first entity***) to enter into a written agreement or arrangement with another reporting entity if *"(b) at the time of entering into the agreement or arrangement, the first entity had reasonable grounds to believe that each of the requirements prescribed by the AML/CTF Rules were met"*.

The amended AML/CTF Rules limit reliance arrangements to initial CDD only. Items 9 and 31 of the Exposure Draft amendment to the AML/CTF Rules would expand reliance arrangements to cover all provisions in Part 2 of the amended AML/CTF Act (customer due diligence), including ongoing CDD.

Under s30(10) of the amended AML/CTF Act, reporting entities that only provide item 54 designated services are exempt from the ongoing CDD provisions. This exemption is in line with the intent of the AML/CTF Act and was supported by the Parliamentary Joint Committee on Legal and Constitutional Affairs inquiry into the *AML/CTF Amendment Bill 2024*.

To ensure the AML/CTF Rules remain consistent with the amended AML/CTF Act, proposed items 9 and 11 of the Exposure Draft must reflect the item 54 modified obligations by including a limitation making it clear that:

- The 'first entity' cannot enter into a reliance arrangement or agreement with, or rely on the 'other entity', for any obligations that the 'other entity' themselves are exempt from under the AML/CTF Act, including an obligation that is prescribed by the AML/CTF Rules; and

- The items 9 and 11 proposed amendments do not apply to reliance agreements or arrangements involving reporting entities that only provide item 54 designated services. This should be clearly stated in a Note to these proposed Rules.

This should also be clearly stated in AUSTRAC guidance, including an example of a reliance agreement between a financial product provider and reporting entities that only provide item 54 designated services.

Clear rules and guidance are needed to answer the question - Under this change, can a financial product provider enter into a reliance agreement or arrangement with, and rely upon, only the initial CDD process used by an AFSL holder that provides only item 54 services and is exempt from ongoing CDD?

Tranche 2 designated services

There is a lack of regulatory clarity on the intersection between the provision of financial product advice as an item 54 designated service, and the new tranche 2 designated services. Importantly, we have been seeking clarity on this core issue since the commencement of consultation on the tranche 2 AML/CTF reforms.

Given the lack of regulatory clarity, we know many of our members have sought their own legal advice and, based on the same facts, have received conflicting legal advice as to whether they are providing a tranche 2 professional service(s) under Table 6 of s5B of the amended Act, particularly in respect to item 3 designated services.

This decision is critical:

- It determines if an AFSL holder will remain an item 54 only provider and therefore can rely on the modified obligations under s26T, s30(10), or s47(5) of the amended AML/CTF Act, or if they will be required to comply with all of the obligations, most notably the additional governance obligations under s26 as well as ongoing CDD and AML/CTF policy and reporting requirements.

- Reporting entities that provide a tranche 2 designated service must enrol with AUSTRAC by 31 March 2026. A CAR is not a reporting entity for item 54 purposes. If some of the tasks typically involved in providing financial advice are determined to be a tranche 2 service, the CAR (as opposed to the AFSL that they are authorised by) may be considered to be a reporting entity for that service(s) and would need to enrol with AUSTRAC by 31 March 2026.

This is now a time critical issue. Not being able to operate under the item 54 modified obligations would require significant changes to our members' systems and processes – noting 95% of them operate as small businesses – if they are required to comply with all the new obligations. Determining what designated services a reporting entity provides is also necessary for members to conduct a compliant business ML/TF risk assessment, as required under the reforms.

Clear guidance from AUSTRAC on this critical outstanding issue is urgently needed so our members understand their obligations and can prepare to meet the requirements by 31 March 2026 for item 54 services only; and by 1 July 2026 for any entities that may also be deemed to provide a tranche 2 service(s).

Attachment 1 includes a list of examples, with assumptions, on item 54 designated services that we have previously provided to AUSTRAC and that we need regulatory approval with respect to.

If you have any questions about our submission, please do not hesitate to contact Heather McEvoy, Senior Policy Manager, Policy FAAA on 0408 030 906 / heather.mcevoy@faaa.au.

Yours sincerely,

Sarah Abood
Chief Executive Officer
Financial Advice Association of Australia

Peter Burgess
Chief Executive Officer
SMSF Association