



11 November 2016

Financial Crime Section  
The Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

**By email:** antimoneylaundering@ag.gov.au

**Attention:** Mr Daniel Mossop

Dear Sir,

### **AML CTF Reforms - Draft Project Plan**

The Australian Financial Markets Association (AFMA) represents the interests of over 130 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets. The majority of AFMA's members are reporting entities for the purposes of the AML/CTF Act.

We are pleased to make a submission in relation to the Draft Project Plan on the implementation of the recommendations from the statutory review of the anti-money laundering and counter-terrorism financing regime (**the Draft Project Plan**). In providing our submission, AFMA notes the previous submissions provided in relation to the review, and our comments below should be read in light of those submissions. Additionally, we note the considerable engagement with both the Attorney-General's Department (**AGs**) and AUSTRAC in relation to the review and the Draft Project Plan.

#### **1. Overview**

Broadly, AFMA is supportive of the Draft Project Plan and stands willing to assist both the AGs and AUSTRAC in ensuring that the recommendations of the review are implemented as efficiently as possible, in a manner that mitigates both AML/CTF risk and also compliance costs and duplication for our members. In particular, we support at a high level the proposed two-stage process for the implementation of the review's recommendations.

#### **2. Government commitment**

The review was released on 29 April 2016, immediately prior to the proroguing of the Parliament prior to the July Federal election. At the time of the release of the review, there was no comment from the

Minister or the Government accepting (or otherwise) the recommendations of the review, at least from a policy perspective.

Given the long timeline for the implementation of the recommendations, as set out in the Draft Project Plan, AFMA would welcome a statement from the Minister for Justice that the Government supports all of the recommendations of the review, in principle. In our view, this will provide the necessary Government imprimatur for the implementation of all recommendations, to the extent that such implementation is feasible and consistent with the implementation principles.

### **3. Implementation principles**

The Draft Project Plan includes a number of implementation principles that provide the framework for the implementation of the review's recommendations. Many of these reflect AFMA's previously expressed views, particularly co-design with industry, the re-affirmation of the risk-based approach as a core aspect of Australia's regime and consistency with the Government's better regulation agenda, and accordingly are welcomed.

There is a statement that industry's preference for the implementation of the recommendations in two packages is designed to avoid "regulatory fatigue." This is not the case for the entities we represent. Industry's preference for packages of reforms to be implemented simultaneously is to reduce the requirements for reporting entities to make amendments to their compliance frameworks (all of which have an incremental cost) or ensure that no additional amendments need to be made. As such, we request that the reference to "regulatory fatigue" be omitted.

### **4. Governance arrangements**

We have noted the proposed governance structure included in the Draft Project Plan. In particular, we note the proposed creation of the AML/CTF Industry Consultation Council and, based on our understanding of the terms of reference for that body, believe that AFMA would be well-placed to be one of its constituent members, particularly given the diversity of our membership and our engagement in relation to the review so far.

We also encourage AGs to provide further details on the Industry Consultation Groups that they are proposing to establish, including how they map to each of the recommendations of the review. Given the framework objective of co-design, it is important that these Industry Consultation Groups are provided a broad mandate to consider the optimal policy models and also the issues associated with the implementation of the recommendation. Reporting entity feedback will also be important in relation to the recommendations which *prima facie* appear to be government focussed. For example, recommendations around the enhancement of the powers of the AUSTRAC CEO or an expansion of the agencies with standing to apply for civil penalty notices/impose infringement notices require consultation with industry to ensure that such powers are appropriate and suitable checks and balances are in place.

### **5. Consultation process**

Although not specifically mentioned in the Draft Project Plan, we understand that for the Phase 1 legislative initiatives, it is AGs' intention to undertake consultation solely on the policy response to the implementation of the recommendation, and not the legislation to give effect to the recommendation.

While it may not be necessary that all recommendations are subject to a two-part public consultation process (i.e. one on policy, one on legislation), AFMA requests that industry feedback be sought on the legislation prior to its introduction into Parliament. This will provide an important mechanism to ensure that the legislation reflects the agreed policy intent and will not require remediation through

the parliamentary process, particularly as there may not be an opportunity for amendment through that process. It may be possible for the review of the legislation to be conducted by the industry consultation group specifically convened for the recommendation or delegates from the Industry Consultation Council.

## **6. Specific recommendations**

We set out below our comments in relation to the specific recommendations and the extent to which they are included in the first or second phase of the Draft Project Plan, or indeed appear not to have been included.

### **6.1 Correspondent banking**

We note that the Draft Project Plan has included “simplification of the Act and Rules and compliance with FATF standards” with respect to “streamline and simplify correspondent banking obligations.” Our view is that this is an important initiative and we support its inclusion in Phase 1 of the Project Plan.

There are a number of reasons for this view. Firstly, as noted in our submission dated 1 May 2015, industry has continued to seek clarity both in relation to the definition of “correspondent banking” and also the specific requirements for correspondent banks to undertake due diligence on a respondent bank (referred to as “the nostro/vostro issue”), which appears out of step both with the risk-based approach and international requirements. These issues, and the extent to which clarity is required as a priority issue, have elevated in terms of importance in the intervening period since the submission was lodged. In relation to the nostro/vostro issue, a compliance assessment undertaken by AUSTRAC into the manner in which the correspondent banking requirements were being implemented by reporting entities highlighted some inconsistencies in approach. Secondly, correspondent banking has been highlighted as a pivotal issue by FATF, culminating in the release in October 2016 of updated FATF guidance on Correspondent Banking Services, dealing with the requirements for respondents to undertake (or otherwise) “KYCC” in respect of the customers of the correspondent bank. It is clear that correspondent banking requirements, and the extent to which they result in respondent banks “de-risking” through the non-provision of services to correspondent banks, are increasing in global importance.

There are some apparent synergies between the correspondent banking requirements and other areas currently slated for inclusion in Phase 1 of the Draft Project Plan, particularly in relation to the CDD and deregulatory reforms area of work (particularly to the extent that the requirements for a correspondent bank to undertake due diligence on a respondent bank are clarified) and the new payment methods, to the extent to which they necessitate a revisiting of the definition of correspondent bank.

For these reasons, and noting FATF’s assessment of Australia as being “non-compliant” with respect to its correspondent banking provisions, we suggest that prioritisation of correspondent banking issues would be prudent and ideally addressed through Phase 1 of the Project Plan.

### **6.2 Secrecy and access**

AFMA notes the implementation of recommendations 14.1 and 14.2 of the review are to be included in Phase 1 of the Draft Project Plan, and strongly endorses this approach. A number of AFMA members have highlighted the inability to properly share information within the corporate group, with appropriate restrictions, as stymying the ability of the corporate group to disrupt suspicious activity in all jurisdictions in which the institution operates.

As part of the consultation process in respect of the implementation of these recommendations, and particularly Recommendation 14.2, AFMA will be looking to ensure that the ability for reporting entities to share suspicious matter report-related information can be across the corporate group, as opposed to merely foreign parent entities, given that the latter assumes a linear corporate group structure which may not exist in practice. Further, we will be keen to explore the extent to which such information may be able to be shared outside the corporate group to other reporting entities that also have a relationship with the object of the suspicious matter report-related information, such as a financial planner, and also counterparties that may be in receipt of a flow of funds arising from the suspicious activity.

### **6.3 Reliance**

Similarly, AFMA supports the inclusion of the reforms to the usability of the reliance provisions in Phase 1 of the Draft Project Plan. Recommendation 5.12 of the review highlighted the areas in which the provisions may be amended to facilitate reliance on third parties both within Australia and also in comparable regulation and customer identification jurisdictions.

### **6.4 Cost-benefit analysis of tranche two**

An important non-legislative project to be delivered as part of Phase 1 is the cost-benefit analysis to be undertaken in respect of models for the regulation of tranche two entities. AFMA notes that the completion of the cost-benefit analysis is to occur by June 2017.

AFMA supports this work and understands the two-tiered approach to implementation of tranche two, particularly given the implementation principles that underpin the Draft Project Plan. Given our understanding that work in relation to this deliverable has commenced, we encourage broad engagement on the issue to ensure that both the efficiencies that might arise for currently regulated entities through the regulation of tranche two entities, and the various models of such regulation, are incorporated into the analysis. We would be hesitant to support an approach where the consultation in respect of this deliverable was to be restricted to the tranche two entities alone.

### **6.5 Definitional issues**

AGs have advised that all of the recommendations of the review are included in the Draft Project Plan. However, based on the recommendation references in the Draft Project Plan, this does not appear to be the case. In particular, Recommendations 19.1 (which addresses definitional amendments to the AML/CTF Act) and 19.2 (which addresses definitional amendments to the AML/CTF Rules) are not specifically referenced in the Draft Project Plan.

AFMA is keen to ensure that these amendments, which are largely supported, are included in the Draft Project Plan with a designated time for delivery. Clarification of some of the key definitions, such as limiting the application of “derivative” and “security” to those that are intended to be covered by the AML/CTF Act, would result in real benefit for the industry.

We note that AFMA has undertaken engagement with AUSTRAC in relation to progressing deregulatory initiatives that are not reliant on amendments to the AML/CTF Act and that certain changes to definitions in the Rules are included in that engagement. To the extent that recommendations from the review are to be progressed through a discrete piece of work, with AUSTRAC driving the implementation of these recommendations, this needs to be specifically acknowledged in the Draft Project Plan.

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Thank you for the opportunity to provide a submission in relation to the Draft Project Plan. Please contact me with any queries on 02 9776 7996 or [rcolquhoun@afma.com.au](mailto:rcolquhoun@afma.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Colquhoun', written in a cursive style.

Rob Colquhoun  
Director, Policy