

14 October 2024

Our ref: [MD: WD: MC]

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Dear Senator

**Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024**

Thank you for the opportunity to provide feedback on the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important development in the anti-money laundering and counter-terrorism financing (**AML/CTF**) framework in Australia.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 15,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

**Law Council of Australia - support for submission**

QLS is one of the constituent bodies of the Law Council of Australia. We have had the benefit of seeing, in draft, the Law Council's submission to the Committee.

QLS supports the Law Council's submission, and the recommendations that it makes.

**QLS comments in relation to the Bill**

The Bill proposes to extend the federal AML/CTF regime to the Australian legal profession and other so-called "Tranche 2" entities.

We support measures to disrupt money laundering and the crimes connected with it. However, any extension of the AML/CTF regime to lawyers must not detract from the independent role of the legal profession in the administration of justice, or the centrality of trust and confidence to the client/practitioner relationship.

We are also concerned about the extra regulatory costs of the proposed AML/CTF reforms, and their impact on the cost of legal services and the viability of the legal profession, which is already the most regulated profession in Australia.

### **Compliance costs and consequences for Queenslanders seeking legal support**

QLS is concerned Queensland law firms will be significantly affected by the AML/CTF reforms, given the high number of small law firms and sole practitioners across Queensland:

- 1,783 sole practitioners;
- 1,461 micro law firms (defined as 5 or fewer practising certificates (solicitors) in the firm)
- 407 small law firms (defined as between 6 and 19 practising certificates (solicitors) in the firm)

Queensland is also a highly decentralised State, with 1,674 law firms based outside of metropolitan Brisbane.

QLS is particularly concerned that some rural, regional and remote firms will close as a result of imposing AML/CTF regulation in its current form, due to the cost of compliance arising from the scope of designated services in the Bill.

In many regional centres, the local firm is the only Legal Aid preferred supplier for their community. The majority of Legal Aid Queensland work is undertaken by preferred suppliers in private practice. According to the recent Justice on the Brink Report commissioned by National Legal Aid,<sup>1</sup> 72 per cent of legal aid approved matters are assigned to private practitioners.

A closure to these practices will have devastating impacts for locals and will increase the cost of obtaining legal assistance from a distant firm or a community legal centre. This will have significant implications for an already strained and underfunded legal assistance sector.

Compliance costs will either need to be borne by the firm or passed onto the client, leading to an increase in cost of providing legal services generally. In the conveyancing context specifically, compliance will increase the cost of purchasing a home.

### **Drafting concerns**

QLS also highlights the following drafting concerns in relation to Table 6 “Professional Services” in the Bill.

The current drafting could have the likely unintended consequence that a solicitor is required to undertake customer due diligence (CDD) on a person other than their client, including the client of another firm, in the circumstances outlined below.

This would be in breach of Rule 33 of the *Australian’s Solicitors Conduct Rules* that prohibits a solicitor from directly communicating with another solicitor’s client.

- Item 7 (b) – requires the solicitor arranging the power of attorney to undertake AML/CTF CDD on the corporate or other entity donor of the power.

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<sup>1</sup> <https://www.nationallegalaid.org/resources/justice-on-the-brink/>



- This obligation is understandable when a power of attorney (POA) has been specifically created for a client company.
- However, the obligation is not appropriate in relation to POAs granted by a client's counterparties in transaction documents such as:
  - securities or priority deeds, where a POA is often granted to allow the senior creditor to remove any caveat lodged by a junior creditor or borrower;
  - POAs in leases, etc – or where a POA is required to be given by a counterparty as part of a transaction to enable the other party to create certain specified documents as part of the transaction.
- Item 8 - where the legal service provider acts for another party to a transaction and prepares the nominee document on their client's behalf. For example a solicitor preparing a nomination (such as a POA) for a client to obtain from their counterparty, or a solicitor preparing a POA allowing a mortgagee to sign a transfer on the Mortgagor's behalf where the mortgagor is co-operating with the sale of the security.

Further drafting consideration is also required in relation to Table 6, Item 5 - where a shelf company is being sold or transferred and the obligation is to undertake AML/CTF CDD on the buyer or transferee.

The focus in column 1 on “selling or transferring a shelf company” implies the relevant designated services are being provided to the seller or transferor, although column 2 describes the customer as the buyer or transferee. The question arises whether it is intended that the seller of the shelf company undertake CDD on the buyer. If so, then if a solicitor is acting for the selling shelf company, that solicitor might be required to undertake CDD on the buyer, even if the buyer is represented by another solicitor.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

