Queensland Law Society

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Office of the President

14 October 2024

Our ref: [LP:MC]

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Dear Dr Popple

AML Amendment Bill 2024

Queensland Law Society (**QLS**) refers to the Law Council of Australia's (**LCA**) Memorandum dated 20 September 2024 (**LCA Memorandum**) regarding the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (**Bill**). The Society welcomes, and thanks the LCA, for the opportunity to provide comments in relation to the Bill.

This response has been prepared with the assistance of the Banking & Financial Services Law Committee.

The comments contained in this submission should be read in conjunction with previous submissions, some of which are cited throughout.

General comments

QLS has previously highlighted our concerns with the proposal to extend the AML/CTF regime compliance regime to legal practitioners.

We reiterate in particular, as outlined in our submission to the LCA of 24 May 2024,

- The proposal to bring legal practitioners into the AML/CTF regime will raise significant barriers for Queenslanders to gain access to justice, given the significant compliance costs for practices and the impact on the viability of legal firms.
- The regulation of law practices is best achieved through existing legal profession regulatory structures and professional obligations, the provision of typology information, guidance and continual professional development, rather than by introducing an additional layer of statutory regulation.

However, QLS recognises that with the introduction of the Bill, the debate now shifts to considering the practical implications of the Bill and in particular, identifying, in the short time available, any technical drafting issues with the provisions in the Bill.

QLS makes the following comments in response to some of the issues identified in the LCA Memorandum. QLS has also identified a series of drafting concerns below.

Compliance burdens, costs and impacts on small law practices

- In our correspondence of 24 May 2024, QLS noted the following concerns for rural, regional and remote firms:

  > "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 in conveyancing and other commercial matters. 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 and in the conveyancing context specifically, it will increase the cost of purchasing a home.
  >
  > In many regional centres, the local firm is the only Legal Aid preferred supplier for their community. A closure will have devastating impacts for locals and increase the cost of obtaining legal assistance from a distant firm or community legal centre."

- The Bill is only the first step of a suite of legislative provisions. The next step is to develop regulations and rules to support the overarching framework in the Bill.
- If these reforms are introduced, legal practices will need to substantially redesign their business and compliance systems.
- It is in the interests of the Government, AUSTRAC and legal practitioners that a clear and informed set of regulations be adopted. Clarity and certainty of obligations will help to mitigate the impact of a new regulatory framework.
- The drafting of the proposed designated services needs to be further considered and amended alongside meaningful consultation with legal stakeholders. We have outlined further comments below.
- The precise drafting of the designated services, and the accompanying regulations and rules, will be critical to determining the impact of the regime on the legal profession. Further consultation in the coming months will be vital to ensure the regulations and rules are workable and will apply appropriately across the State and territory legislative landscape.
- Our members hold concerns that the scope of proposed reforms has the potential to introduce duplication of processes and costs. It will be critical that as the rules and regulations are developed, there is a careful analysis and 'mapping' exercise of process, to reduce the risk of duplication and inconsistency, as far as practical and appropriate. This analysis must occur in relation to both State and relevant Commonwealth legislation.

- The drafting of proposed new subsection 6(5C)(b) needs to be further considered. This subsection sets out the circumstances excluded from the definition of "professional services" described in Table 6, Item 3.
    - Whilst QLS supports the intent of the proposed exception, the current drafting of sub-section (5C)(b) unjustifiably narrows its application to law practices that do not provide any designated services other than the services referred to in item 3 and the money, accounts, securities, securities accounts, virtual assets or other property being held is for payments incidental to the provision by the business of a service that is not a designated service.
    - QLS is concerned the practical effect is that a law practice which offers a variety of professional services, including professional services within the designated service definitions in Table 6, will be at a competitive disadvantage to a law practice that only offers services which are not designated services. This will disproportionately and unfairly impact small law practices offering a range of general legal services, particularly those in regional settings.
- QLS also suggests the regulations under the enabling legislation should be developed and managed by the Attorney-General's Department (**AGD**). This approach is consistent with the financial services regulatory model administered by the Treasury where key exceptions and scheme boundaries are set out in this way.
    - In our view, it is not appropriate for the conduct regulator AUSTRAC to be responsible for determining the scope of the regulatory regime. This role is best placed with AGD. It is also critical that the regulations are legislative instruments under section 10 of the *Legislation Act 2003* (Cth) and subject to disallowance by Parliament.

Suspicious matter reporting (SMR) obligations and tipping off and procedures for responding to claims of client legal privilege

The Society supports the LCA raising questions to clarify the client legal privilege implications of proposed new section 26Q to be inserted in the AMLCTF Act 2006. Further detail and clarification is particularly required with respect to the process suggested for the proposed "LPP form" and the content of the proposed form, given the proposed form is not yet available.

The impact on the current regulatory and ethical frameworks for the legal profession and the provision of legal services that will arise from dual regulation of the designated services and law practices providing those services under the AML/CTF regime.

As stated above, QLS members suggest that legal professionals should be exempt from conducting customer due diligence (**CDD**) when receiving funds via electronic transfer that originate from an Australian Deposit-taking Institution (**ADI**) account, where Anti-Money Laundering and Counter Terrorism Financing (**AML/CTF**) obligations have already been satisfied. Given that ADIs are subject to stringent regulatory oversight, including robust CDD processes, legal professionals should be permitted to rely on these existing measures. This exemption would streamline the process for legal practitioners, further reduce unnecessary

regulatory burden and be in alignment with the principles of efficiency and trust embedded in professional – client relationships while maintaining compliance with broader AML-CTF objectives.

Drafting concerns

The extension of the regime to "real estate services" and "professional services" gives rise to a number of technical drafting queries:

Clause / term	Issue
Section 5 – definition of *real estate*	In the extremely short time available to comment on the Bill, we have not been able to undertake an analysis of all typical land use or occupation arrangements in Queensland to determine whether the definition of *real estate* will apply in a logical and workable way in this State. This may also be a challenge for other States and territories in the Federation, given that land and real estate rights and obligations are typically governed by State or territory legislation. For example, the Explanatory Memorandum indicates the definition of *real estate* is not intended to capture dwellings (such as mobile and modular homes) not attached to land that are sold as chattels, where the land the dwelling is located on is leased in caravan parks and retirement villages (that is, the resident owns the dwelling but leases the land). There are different models deployed in Queensland for retirement villages and mobile / manufactured homes. We note the definition excludes "an interest prescribed by the regulations". This will provide an opportunity to address any unintended consequences of the definition in the Bill. We strongly encourage further opportunities for detailed consultation about the scope of the definition of *real estate* with expert property practitioners in each State and territory to ensure the legislation operates as intended.
Section 5 – definition of *legal arrangement*	QLS considers that the concepts of 'fiducie, treuhand or fideisomiso' referred to in the definition of *legal arrangement* will not be familiar to most Australian legal practitioners as they are not well known concepts in Australian law and ought to be replaced with a clear and substantive definition.
Table 6 – Professional services Item 1 - "assisting a person in the planning or execution of a	QLS considers further clarification, or a definition, is required with respect to the scope of "an order of a court or tribunal".

transaction, or otherwise acting for or on behalf of a person in a transaction, to: (a) sell real estate; or (b) buy real estate; or (c) transfer real estate (***other than a transfer pursuant to, or resulting from, an order of a court or tribunal***); in the course of carrying on a business"	In Queensland, property transfers could arise following a grant of probate, letters of administration or administrative transfer by the titles registry pursuant to a will in certain limited circumstances. A property transfer could also be required by way of a transfer by direction from an insolvency trustee or similar. In some litigious contexts, a compulsory mediation, carried out as part of a pre-hearing process, could give rise to an agreement to transfer real estate. However, the final settlement agreement might not be the subject of a court order. In our view, these types of transactions are akin to an order of a court or tribunal as they arise following a statutory or quasi-judicial process. If these transactions are to be excluded from the scope of designated services, then it is critical that these exemptions are clearly defined in the Bill and not in any subsequent supporting Rules. Such an exclusion is a key concept for property transactions and it should be clear in the primary legislation what is in scope and what is not.
Customer due diligence – proposed sections 28 and 29	Further clarification is required as to how these two sections might operate to protect the reporting entity, when seeking to rely on it in certain real estate transactions. The Bill proposed to require a reporting entity to "undertake initial customer due diligence before providing a designated service to the customer. However, in special cases, initial customer due diligence may be carried out after the provision of the designated service." (amended section 4 AMLCTF Act 2006). Proposed new section 28(1) provides "A reporting entity must not commence to provide a designated service to a customer if the reporting entity has not established on reasonable grounds each of the matters in subsection (2) in relation to the customer." However, proposed section 29 (Exemptions from initial customer due diligence) sets out a regime where it is permissible to provide the designated service prior to conducting customer due diligence, provided the grounds in section 29(1) are met. QLS raises the following practical issue in relation to property transactions: • auctions for the sale of land - in our members' experience, a potential bidder may arrive only minutes before the commencement of the auction. On the fall

	of the hammer, the successful bidder will sign an unconditional contract; • other urgent legal advice situations. One of the grounds, in section 29(1)(a) is that "circumstances specified in the AML/CTF Rules apply". QLS recommends consideration be given to specifying an auction exemption in the proposed rules, to clarify the situation. Section 29(1)(d) provides a further ground is that the reporting entity determines on reasonable grounds that any additional risk of ML/TF money laundering, terrorism financing or proliferation financing associated with complying with subsection 28(1) in relation to the customer after commencing to provide the designated service to the customer is low. Where multiple bidders are participating in an auction, only one bidder might be successful (provided the reserve price is met). However, this analysis is unlikely to satisfactorily meet the ground that the risk of ML/TF is "low" for the purposes of section 29(1)(d). It appears highly anomalous that in order to meet the threshold of 'reasonable grounds' a reporting entity would need to have undertaken client due diligence in order to meet the criteria for the temporary exemption from undertaking client due diligence.

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 or by phone on (07) 3842 5930.

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