Queensland Law Society

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Office of the President

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Our ref: [WD:BC:MC]

Dr James Popple
Chief Executive Officer
Law Council of Australia
Level 1, MODE 3
24 Lonsdale Street
Braddon ACT 2612

By email: [redacted]

Dear Dr Popple

LCA Memorandum: Consultation Paper – 2026 Reforms to the AML/CTF Act

We appreciate the opportunity to comment on AUSTRAC's proposal to introduce a new power enabling the AUSTRAC CEO to prohibit or restrict high-risk products, services or delivery channels under the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (AML/CTF Act). The proposal is outlined in the Department of Home Affairs *Consultation Paper on the 2026 Reforms to the AML/CTF Act* (Consultation Paper), released in late December 2026.

Executive summary

- QLS does not support the proposed amendment of the AML/CTF Act to expand powers for the AUSTRAC CEO to prohibit or restrict high-risk products, services or delivering channels. We hold serious concerns about the breadth of the proposed prohibition power.
- In our view, the proposal lacks sufficient justification, is inconsistent with the broader reform architecture and risks creating unintended regulatory and economic consequences across entire sectors.
- The proposal involves a delegation to a regulator of significant powers which should be retained by parliament.
- As outlined below, designated services should be expressly excluded from the scope of any prohibition or restriction power. Any power to restrict the supply of legal services would be an unprecedented and inappropriate intrusion into the sanctity of the lawyer-client relationship.

General comments

The Consultation Paper appears to rest on the presumption that AUSTRAC lacks the ability to restrict or prohibit high-risk products, services or delivery channels. The premise is not clearly substantiated.

The current AML/CTF Act already provides AUSTRAC with significant supervision, enforcement and remedial powers. The Tranche 2 reforms further expand AUSTRAC's oversight and intervention capabilities. No evidence has been presented demonstrating that these existing powers are insufficient to address genuine high-risk scenarios.

Before introducing a new sector-wide prohibition mechanism, AUSTRAC should articulate why the existing powers are inadequate, what specific regulatory gaps exist and why less intrusive measures cannot achieve the same outcome. Without this clarity, the proposal represents an unnecessary and disproportionate expansion of executive authority.

In addition, the proposal sits uneasily alongside the broader reform direction. The Tranche 2 risk-based model is explicitly designed to recognise the diversity of business models across financial, gambling and professional services, and requires entities to assess and mitigate their own risks and avoid prescriptive, one-size-fits all obligations. Introducing a CEO prohibition power that can apply across an entire sector contradicts this philosophy.

The Consultation Paper also gives little detail as to what types of products, services or delivery channels would be targeted by the proposed power.

The concept of prohibiting a 'service' is particularly concerning for the legal profession. Legal practitioners must be permitted to offer legal services responding to their clients' needs, to comply with their professional and ethical obligations. It is unclear whether the Consultation Paper intends the prohibition power to be used to restrict the type of legal services a legal practitioner can offer. As legal practitioners are ethically bound not to assist clients to act illegally, a prohibition power which has the effect of restricting legal services is unnecessary.

In addition, we would be extremely concerned if restricting or prohibiting types of legal services was the outcome of the framework. Such a power would be an unprecedented and inappropriate intrusion into the sanctity of the lawyer-client relationship.

We also consider it premature to consider a proposed prohibition power affecting Tranche 2 entities before the broader Tranche 2 reforms have commenced and been allowed to operate in practice.

It is our strong view that any contemplation of such a mechanism should occur only after Tranche 2 has been operating for at least two years, to ensure there is a meaningful evidence base regarding how newly regulated sectors have identified, assessed and mitigated ML//TF risks under the risk-based framework.

This period is essential to properly evaluate whether the perceived regulatory gap actually materialises in practice. Without this empirical foundation, the introduction of a legislative instrument power risks being unnecessary, disproportionate and misaligned with the reform objectives of a risk-based approach to managing ML/CT in Australia.

Responses to Questions

Question 1. Do you have any views on the scope of this power applying to the provision of all designated services or should the power be limited to registrable services?

If enacted, the power should not apply to the provision of all designated services.

We consider that applying a prohibition or restriction to designated services would be inappropriate and unworkable given the fundamentally different nature of designated services compared to products or delivery channels, particularly professional services (including legal services) caught by the regime from 1 July 2026. As noted earlier, prohibiting types of legal services would be an unprecedented and inappropriate intrusion into the lawyer-client relationship.

Products and delivery channels can be defined, isolated and assessed at a systemic level, whereas, designated services, particularly those provided by the professional services sector (such as legal services), are inherently bespoke, being shaped by the individual facts, circumstances and risk profile of each client engagement.

The exercise of a prohibition power over professional services would require the AUSTRAC CEO to make broad, sector wide judgements about complex, context specific professional activities, which is neither feasible nor consistent with the risk-based regulatory regime.

It would also require the regulator to understand and assess the nuances of the product, service, or delivery channel so as to ensure any prohibition does not adversely affect other sectors of the economy or related services. Otherwise, a prohibition could cause market instability or other economic impacts. The regulator might also be subject to compensation claims or other challenges if regulatory overreach adversely affected a legitimate business activity.

For these reasons, designated services should be expressly excluded from the scope of any prohibition or restriction power.

To appropriately comment on limiting the power to registrable services, further clarification is required from the Department or AUSTRAC regarding what might be contemplated by this option.

The Consultation Paper uses the term "registrable services" which we have interpreted as referring to the concept of "registrable remittance services" in the AML/CTF Act.

Tying such a significant power to registrable remittance services introduces unnecessary complexity and uncertainty, because the operation and scope of those services depend heavily on the new *Anti-Money Laundering and Counter-Terrorism Financing Rules 2025* (AML/CTF Rules), which themselves remain incomplete and lack sufficient clarity.

In our view, this complexity is compounded by the broader legislative architecture, making it difficult to understand the practical reach of the proposed power.

If the question is intended to relate specifically to registrable remittance services, it should be noted the scope of those services may change before any 2026 amendments commence, as their meaning is determined by reference to Part 7 of the AML/CTF Rules. It is also noted the AML/CTF Rules can be changed by AUSTRAC's CEO at any time.

Question 2. What products, services or delivery channels that enable designated services to be provided pose money laundering, financing of terrorism or proliferation, or serious crime risks that are difficult for reporting entities to manage and mitigate?

In considering which products, services or delivery channels pose ML/TF or serious crime risks that are difficult for reporting entities to manage, we note the AUSTRAC CEO's recent public comments identifying crypto ATMs as a rapidly expanding, high-risk product due to their capacity to convert cash into digital currency that can be transferred instantly and with limited traceability[1].

This example underscores that the means and methodologies of money laundering and terrorism financing are dynamic and continually evolving, and that risk cannot be assessed in static or categorical terms.

Before contemplating a prohibition power, further information is required, through structured consultation with affected sectors, to clarify which specific products AUSTRAC has already assessed as high-risk and why existing supervisory instruments and powers are insufficient to mitigate those risks.

Importantly, services, and particularly professional services, are fundamentally different in nature from discrete products or delivery channels. They involve professional judgment, ethical duties, and contextualised engagement with clients. They are not monolithic, uniform or inherently high-risk and therefore should be expressly excluded from the scope of any prohibition power.

Question 3. What criteria should the AUSTRAC CEO be required to apply when making a decision to restrict or prohibit a high-risk product, service or delivery channel?

The proposal is premised on a high-risk threshold being met. However, as the reform development process has repeatedly highlighted, including through the ongoing development of the AML/CTF starter packs for real estate and professional services, risk assessment is inherently nuanced, contextual and dynamic.

Risk varies based on numerous factors including client profile, transaction purpose, geographic exposure, delivery channel, organisational controls and professional judgment. A product or service that is high risk in one context may be low risk in another. Attempting to define high risk at a product, service or delivery channel level, applicable across a whole sector, perilously oversimplifies the complex and fluid nature of ML/TF risk.

This proposal raises several concerns including how AUSTRAC will determine that a product or service is high risk in all or most circumstances, what evidence will be required and how AUSTRAC will ensure that risk determinations remain current as threats evolve.

[1] Powers proposed to tackle high-risk products services and channels | AUSTRAC

Question 4. Do you have a view on the proposed consultation and legislative instrument requirements when a decision is made and prior to it coming into effect?

If the proposals outlined in the Consultation Paper do proceed, despite the concerns expressed above, then:

- In our view, a statutory consultation requirement is absolutely critical – that is, the AUSTRAC CEO must be required to undertake public consultation with affected persons prior to exercising powers under the new framework. A legislated compulsory consultation process is supported and given the significance of a prohibition, we recommend a 6-week consultation period (not including significant holiday periods like 24 December to 10 January each year), rather than 30 days;
- We do not support the decision being made by legislative instrument by the AUSTRAC CEO. Any prohibition of a product, service or delivery channel is a restriction and could have significant commercial and economic consequences. We reiterate our concern above that this proposal is an inappropriate delegation of power and prohibitions of this nature should be the remit of Parliament.
    - Although the Consultation Paper refers to the legislative instrument disallowance process, we note that a legislative instrument commences on the day after it is registered (unless the instrument provides for a different date - *Legislation Act 2003* (Cth), section 12(1)). Even if the instrument is ultimately disallowed, there could be significant adverse consequences for those affected by the prohibition in the meantime.
    - However, if it is determined to proceed by way of delegated legislation, we recommend any prohibition of this nature should be made by way of a regulation pursuant to the power in section 252(1) of the AML/CTF Act, to ensure greater transparency and review by the Executive Council before being made by the Governor-General.

Question 5. Do you propose any particular safeguards or restrictions to the proposed new power for the AUSTRAC CEO to restrict or prohibit high-risk products, services and delivery channels that enable the provision of designated services and, if so, what should those safeguards be?

See comments above.

Question 6. Are you satisfied that the proposed model adequately captures products, services and delivery channels that enable the provision of designated services that may be high-risk now, or in the future?

No. As discussed above, we do not support the proposed model.

Question 7. Do you think the proposed offence penalty is sufficient to deter continued use of banned or restricted products, services or delivery channels?

Given the lack of detail about the potential scope or nature of any banned or restricted products, services or delivery channels, we cannot comment on whether the proposed offence penalty is appropriate.

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 [redacted].

Yours faithfully

[redacted]

Peter Jolly
President