



Law Council
OF AUSTRALIA

Business Law Section

AML/CTF Review Team
Financial Crime
Attorney-General's Department
4 National Circuit
BARTON ACT 2600
Via email: amlreview@ag.gov.au

1 May 2015

Dear Sir or Madam,

Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act (Cth) 2006
Response to live issues document for banking/finance sector

Introduction

1. Thank you for meeting with members of the Financial Services Committee of the Business Law Section of the Law Council of Australia (**Committee**) on 24 March 2015. We were grateful for the opportunity to discuss further the original submission (**Original Submission**) made by the Committee and dated 30 April in relation to the above mentioned review.
2. This Submission is made by the Committee in relation to the issues raised at that meeting and the list of issues arising out of the industry stakeholder meetings with the banking and finance sector on the statutory review of the AML/CTF Act (**Issues Paper**), which was sent to the Committee for its response following that meeting. The Committee is grateful to the AML/CTF Team for allowing an extension of time for this submission to be prepared.
3. As previously noted, the focus of the Committee is financial services and committee members have significant experience in advising financial services providers and other entities that currently are subject to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)* and *associated Anti-Money Laundering and Counter-Terrorism Financing Rules Instruments (No. 1) 2007 (AML/CTF Rules)*.
4. For clarity the Committee notes that the Law Council of Australia has made separate submissions in relation to the review. The main focus of those submissions has been the question of extending an anti-money laundering and counter-terrorism financing (**AML/CTF**) regime to the legal profession in that capacity, as part of proposals to extend coverage to 'designated non-financial businesses and professions' (DNFBPs). Nothing in this submission is intended as a comment on such a proposal.

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5. The balance of this submission provides comments on the specific issues raised in the Discussion Paper.

Reliance Provisions

6. **Foreign jurisdictions** The Committee would support any measure enhancing the ability to rely on foreign processes that are designed to achieve the identification and verification of customers (**Customer Due Diligence** or **CDD**) in accordance with the FATF Recommendations issued by the Financial Action Task Force (**FATF Recommendations**), which may be appropriate where customers of an Australian entity may be present or resident in foreign jurisdictions.
7. In this regard, the Committee submits that preference should be given to the UK model where reliance is permitted if the reporting entity is in the same industry sector as the regulated entity conducting the CDD and that regulated entity is located in a foreign country with equivalent anti money laundering and counter-terrorism financing (**AML/CTF**) regulation to that in Australia. To facilitate this, the Committee considers that it would reduce the regulatory burden on the regulated sector if AUSTRAC were to publish a list of comparable or equivalent AML/CTF jurisdictions where such reliance was considered appropriate, similar to the one published by JMLSG in the UK.
8. (The Committee considers this preferable to each reporting entity separately having to undertake the expense of considering a range of jurisdictions. The Committee considers that it would be appropriate for the Australian reporting entity to be required to independently consider (having regard to the money laundering and terrorism financing risks (**ML/TF risk**) facing the Australian entity, the quality of the CDD process, and the AML/CTF controls of the particular regulated foreign entity) whether it was appropriate to rely on the identification record and whether further information should be sought. However this process would be far more difficult without an authoritative statement that the foreign AML/CTF regime is seen as broadly equivalent.).
9. **Credit providers and brokers** The benefit of 8 years' experience following the effective commencement of the AML/CTF Act has revealed an anomaly that the Item 54 CDD reliance procedure only applies in relation to Corporations Act regulated financial services (whether retail or wholesale) and not for any credit activities, even though there are close similarities in the industries' structure of intermediaries and product manufacturers. This may result in technical requirements for a credit broker needing to undertake multiple CDD procedures in the context of loans (in a series of agent capacities for a series of lenders).
10. The Committee submits that it would be a worthwhile reform to implement an equivalent regime for the credit industry. A simple approach (which would necessarily be limited to consumer lending) might rely on the *National Consumer Credit Protection Act 2009* (**NCCPA**), and allow credit licensees (including their representatives and appointed credit representatives) who engage in credit assistance activity (as that term is defined in the NCCPA) to carry out CDD and permit the credit provider to rely on that CDD. The NCCPA in structure is closely based on Chapter 7 of the Corporations Act, and Australian Credit Licensees who act as loan brokers play a closely analogous role to financial planners that provide the designated service in Item 54 of the financial services table in section 6 of the AML/CTF Act.

11. The Committee suggests that if this structure were implemented, it would be useful to make it voluntary, so that a broker that was not otherwise a reporting entity and did not wish to carry out identification procedures on behalf of reporting entities would not be required to be enrolled as a reporting entity or implement an AML/CTF program.
12. Outside the consumer lending context, a broader regime that allowed brokers of commercial loans to also undertake customer due diligence on behalf of commercial lenders may also be useful. However, the Committee considers that there is not such an obvious statutory framework to make use of to 'parallel' the Item 54 approach.
13. In the Committee's view it would be important to ensure that the current regime where a commercial loan broker is able to carry out a CDD process as agent of a proposed credit provider would continue to be permitted.
14. **General comment** The Committee suggests that having effective reliance processes in place will substantially reduce the administrative burden on reporting entities allowing them to rely on CDD already undertaken by other regulated entities.
15. The Committee agrees with the principle that liability in relation to CDD conducted should rest with the Australian reporting entity, which would also be responsible for monitoring and conducting ongoing CDD. This position is consistent with the finding in the Mutual Evaluation Report on Australia recently published by FATF.
16. **Specific measures to reduce regulatory burden** The Issues Paper requests any suggestions for specific measures that might reduce the regulatory burden faced by reporting entities.
17. **ASIC and ATO to collect beneficial owner information** The Committee suggest the following possible measures as a way to minimise or reduce the regulatory burden of reporting entities in meeting their obligations for identifying and verifying beneficial ownership and control of their customer.
 - For companies: the Australian Securities and Investments Commission (**ASIC**) should be required to collect beneficial ownership information (ultimate parent, individuals holding 25% or more of ultimate parent, any other individual otherwise in control of ultimate parent) in each company's annual return, and make that information available to reporting entities;
 - For registered managed investment schemes (**RMIS**): ASIC should be required to collect beneficial ownership information (as part of the RMIS' annual reporting) and make it available to reporting entities.
 - For trust with an ABN: the Australian Taxation Office should be required to collect beneficial ownership information as part of the trust's annual reporting and make it available to reporting entities.
18. The Committee suggests that such a proposal would be far more economically efficient on a 'least cost avoider' model. We submit that the current model where a range of reporting entities are each required separately to ascertain beneficial owner information in the absence of conveniently available (or any) reliable

records is highly inefficient, compared with centralised collection by an appropriate regulator (and supported by existing sanctions for providing incorrect information).

19. In relation to trusts, the Committee believes that this approach would be consistent with what the Committee understands are the agreed texts of the Fourth Money Laundering Directive of the European Union (<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0045>) and associated regulatory instruments which the Committee believes are in the process of being adopted by the European Parliament.
20. The Committee understands that this EU Directive when fully implemented is anticipated to establish mandatory registers of trusts, information for which will be collected in closed centralised registers available only to AML/CTF regulated entities and competent authorities, and on the basis that only trusts which that generate tax consequences will be required to register.
21. **Collection and verification** The Committee understands that the Australian regime differs from some international equivalents through the distinction between 'collection' and 'verification' of information, and considers that reducing the focus on this distinction could reduce regulatory burden.
22. Provided that some robust procedure exists to check that a customer which purports to be an identifiable company is in fact that company, it seems redundant to collect from the customer and verify from an ASIC report, information that can more readily be obtained directly from the ASIC report. This will particularly be the case for information that the customer may not have readily to hand (such as the name of the settlor of any trust, which would ordinarily be found in the trust deed). There is no real benefit in a reporting entity explaining to the customer what this means and how to find it in the trust deed, then itself finding the same information in the trust deed to verify.
23. Each situation in the AML/.CTF Rules where collection and verification are distinguished should, in the Committee's submission, be separately considered to determine whether they in substance are necessary to manage ML/TF risk.
24. **Disclosure certificates** The Committee repeats the observations in the Original Submission in relation to verification certificates. The restrictions in Chapter 30 are significantly over restrictive. If a verification certificate given by a particular person is, objectively, an appropriately reliable and independent source of information about a customer, or is a source that may be relied on under AML/CTF laws of a relevant foreign country, it should be able to be relied on. Rather than being centrally prescribed, it should be open for a reporting entity to determine what certificates can be relied on provided that a record is kept of relevant determinations.

Correspondent Banking

25. The Committee is aware of concerns that the Australian regime is not consistent with comparable regimes in other jurisdictions. Given the strictly wholesale-to-wholesale (and predominantly cross-border) nature of this part of the Act and

Rules, the Committee suggests that conformance with international standards should be favoured.

26. The Committee notes that this is also consistent with the recent Mutual Evaluation Report on Australia's compliance with FATF recommendations. In that report, Australia's compliance with FATF recommendations on correspondent banking was assessed as non-compliant in some respects. In the Committee's submission, correspondent banking due diligence should be required in the circumstances (and **only** in the circumstances) required by the AML/CTF controls of FATF compliant major trading partners, and the scope of that correspondent banking due diligence should cover the matters (and **only** the matters) customarily covered by those major partner AML/CTF controls.
27. Having expressed those observations on policy settings, the Committee thinks it is more appropriate for the directly regulated sector to respond in detail.

Exemptions and Modifications

28. The Committee reiterates the comments made in our Original Submission in relation to this matter. In the experience of members of the Committee, it is not uncommon for applications to AUSTRAC for exemptions and modification to remain outstanding for periods between between 6 months to several years, and in many cases without any indication of when, if at all, an appropriate solution might be reached. This leaves a reporting entity (or potentially unregulated person, depending in the circumstances) that has applied for relief in a limbo state and potentially in a state where it is uncertain of its compliance but where full application of AML/CTF systems and controls may be a waste of resources.
29. The Committee submits that Australia's AML/CTF regime would operate more efficiently and with less undue burden on business if AUSTRAC were equipped to provide, and did provide, a well-resourced team with an express focus on promptly addressing requests for assistance, and considering regulatory relief applications (including on a 'class order' basis), and with a mission of facilitating relief that would not unduly raise ML/TF risk.
30. The AML/CTF Act is complex, and the Committee stresses that in many cases the legislation will not produce unambiguous results. In other cases, while the regime may produce a clear result, it is in many cases not consistent with international standards or the intention of the legislature, or is otherwise unreasonable. The Committee would urge AUSTRAC to acknowledge these areas of ambiguity or absurdity, and to promptly use the existing powers to resolve them
31. Therefore, AUSTRAC should dedicate a team to respond promptly to cases where the application of the AML/CTF Act is unclear, with a view to providing clear exemptions in cases where to do so would not materially increase the ML/TF risks to the Australian economy.
32. **Barriers to requests for exemption and modification** The Issues Paper raises a specific question as to any specific barriers to requests for exemption and modification. With sincere apologies to the many highly skilled and committed individuals who work within AUSTRAC, the Committee is bound to observe in

response that the most significant barrier to making of such applications is a well founded expectation that applications will not be dealt with promptly and may never be effectively resolved, even where the arguments for relief are objectively strong. In cases of ambiguity, applicants have been asked to categorically state which of several ambiguous alternatives is the true one as a precursor to any consideration. Any relief that might result from an application cannot be expected to eventuate in time to be useful.

33. Having regard to this general expectation, there is an unwillingness to invest the not inconsiderable cost of preparing a full application in the format and containing the detailed information required by AUSTRAC.
34. AUSTRAC should consider providing accurate and up-to-date detail about the process and timing of accessing applications for exemptions and modifications in its guidance note on Applications for Exemptions and Modifications under the AML/CTF Act. In order to reduce the burden on the AUSTRAC CEO, AUSTRAC might consider adopting an approach similar to other regulators (eg the Australian Securities and Investments Commission) by dividing applications into classes of relief, for example:
 - standard applications, which have a policy basis that can be accessed operationally (even though this policy may need to be developed in early stages);
 - technical applications, which are largely based on policy but need limited input from the AUSTRAC CEO; and
 - novel applications, which will need new policy consideration from the AUSTRAC CEO.

This could presumably be effected without legislative change by exercise of the AUSTRAC CEO's power to delegate in section 222 of the AML/CTF Act.

35. **Forgiveness of past conduct** In cases where AUSTRAC has been minded to offer relief, AUSTRAC has expressed a view that its powers do not permit it to offer 'retrospective' relief. For example, if a reporting entity proposes to carry on activity, AUSTRAC expresses a willingness to offer relief, but the relief is ultimately not formalised until after the activity has commenced, breaches of civil penalty or criminal provisions would exist for the period before the relief is formalised.
36. In a case where AUSTRAC considers there is a proper policy ground for the AML/CTF Act to not apply strictly in accordance with its terms, the Committee submits that AUSTRAC should be given express power (by instrument) to cure any breach of the AML/CTF Act which would not have been a breach if specific relief were in place at the time.
37. **'No action' relief** The Committee understands that AUSTRAC has determined that it will no longer offer relief in the nature of a 'no-action letter', as it formerly had

done under *Guidance Note 08/01*. The Committee suggests that it would be beneficial to resume the use of a no-action letter process.

38. Relief in the nature of a no-action letter is offered by other regulatory agencies (notably ASIC) and can be a relatively fast and effective remedy to resolve technical or trivial breaches raising no substantive ML/TF risk. The Committee feels that a broad range of relief avenues should be available in principle given the wide range of possible events with which the AUSTRAC CEO may be faced. If there is doubt as to AUSTRAC's power to offer no-action relief, then the Committee submits that the AML/CTF Act should be amended to expressly confer that power.
39. Depending in the circumstances, the Committee suggests that it may usually be appropriate for no-action relief to be available without a requirement for specific publicity, although summaries of the kinds of no-action relief that has been offered might be provided in annual reporting.

Tipping off provisions

The restriction and relevant exemptions: section 123 of AML/CTF Act

40. The existing restriction in the AML/CTF Act was informed by FATF Recommendations as well as the provisions of the *Financial Transaction Reports Act*. With limited exceptions (noted below) a person must not disclose the substance of a suspicious matter report (SMR) that has been given to the AUSTRAC CEO. Further, a person must not disclose that a report has been given, or that a relevant suspicion has been formed. Finally, a person must not disclose any information that would allow another person to conclude that a SMR has been given or a relevant suspicion has been formed.
41. There are a number of relevant exemptions, but the Committee considers that these are overly limited, with the result that international responses to terrorism and financial crime are ultimately hampered rather than enhanced.
42. Several exemptions do not relate to day to day business. These include exemptions allowing –
 - a professional advisor to counsel against illegality (section 123(4)),
 - a reporting entity to seek legal advice (section 123(5)), or
 - a reporting entity to explain that assets have been frozen due to the operation of the Charter of the United Nations Act 1945.
43. The AML/CTF Act includes limited exemptions intended to assist reporting entities in mitigating and managing money laundering and terrorism financing risks (**ML/TF Risk**). Relevantly, section 123(7) permits disclosures between members of a designated business group, if all have adopted the same joint AML/CTF Program (**DBG Exemption**).

The Committee's concern

44. The Committee is concerned that the DBG Exemption is inappropriately narrow.
45. Foreign parents of Australian financial service providers (particularly those based in the United States or EU jurisdictions) commonly express a strong desire for direct access to SMR information generated by the Australian entity, to manage the impact of many customers of global financial services groups having relationships with a number of group entities crossing national borders. Further, the Committee understands that the relevant anti-money laundering regulators that supervise those organisations in the jurisdictions where they do business have firmly expressed their expectation that the US and EU based parents will be able to access Australian SMR information for the purpose of ensuring that ML/TF Risks can be appropriately managed across the group.
46. The Australian entities are constrained in their ability to provide relevant information (or entirely prevented) because of section 123.
47. The Committee submits that this has the effect of hampering, rather than improving, the global response to money laundering. Providing SMR information to related entities outside Australia would allow the foreign entities to apply appropriate and higher levels of scrutiny to Australian customers (or their associates) about whom a relevant suspicion had been formed or who had been the subject of enhanced scrutiny.

Alternative approaches

48. The Committee notes that as a matter of principle it may be possible, within a global financial services group, for all members to adopt the same AML/CTF Program (consistent with Australia's AML/CTF Act and the AML/CTF Rules). However, the Committee considers that it would in most cases be highly impractical for foreign parent (and sibling) entities to adopt a formal program prepared according to the requirements of Australia's regime. They already are subject to equally strict, but differently arranged, requirements under the FATF compliant legislative regimes of their home jurisdictions (typically including the United Kingdom, the United States of America, the Hong Kong Special Administrative Region of the People's Republic of China, and the Republic of Singapore).
49. As the section 123 restriction on disclosing information involves a requirement that a reporting entity not disclose any information that would allow another person to be sure that a relevant suspicion has been formed, it might be lawful to provide information about potentially suspicious matters, if the Australian reporting entity deliberately 'seeded' the data with some non-suspicious matters and clearly stated that it had done so. As the foreign entities would need to act on any potentially suspicious information provided, this approach would lead to unnecessary expense and is not favoured. The substance of any SMR that had been filed could not be shared under this approach.

The Committee's submission – tipping off reform

50. The Committee submits that section 123 should be amended as a matter of urgency to permit certain additional kinds of disclosure which would not raise a risk of the subject of the SMR (**Suspect**) becoming aware of the suspicion.
51. The Committee's key concern is that information should be able to be shared with other regulated entities that are engaged in a common enterprise (whether or not they are all corporations and whether or not they are members of a designated business group).
52. The Committee is aware of some concerns in the market that there should also be ability for unrelated entities which have lawful access to the same regulated information to be able to give information about SMRs, even if they are not related or part of a designated business group. (Examples include either the vendor or the purchaser where there has been a sale of a business by a reporting entity, and entities that, for hire, carry on identification and verification services on behalf of reporting entities, whether as a formal agent or under Chapter 7 of the AML/CTF Rules.)

Reform would be consistent with FATF Requirements

53. The FATF Recommendation 21 requirement calls for a prohibition on disclosure. However, the intention of the FATF requirement is explained by the reference to 'tipping off'. The interpretive note to Recommendation 10 clarifies that the 'tipping off' refers to the customer about whom a suspicion has been formed (the **Suspect**) becoming aware of the report. A disclosure among the AML/CTF officers and equivalent personnel of reporting entities that are dealing with the customer should not be expected to alert the customer to the fact that any relevant suspicion had been formed.

Reform would be consistent with international approaches

54. The Committee understands that the approaches of Australia's major trading partners are not as restrictive as section 123.
55. The suspicious matter reporting and tipping-off obligations of the United States make it an offence to reveal to any person involved in the transaction that the relevant suspicion has been formed (United States Code § 5318(g)(2), accessed at <http://www.law.cornell.edu/uscode/text/31/5318>)
56. The tipping off restriction in the United Kingdom applies only to a disclosure that is 'likely' to prejudice an investigation (Proceeds of Crime Act 2002 (UK), section 333A, accessed at <http://www.legislation.gov.uk/ukxi/2007/3398/schedule/2/made>).
57. The Committee understands that the tipping-off restriction of the United Kingdom was materially revised in 2007, to expressly permit disclosures between 'credit institutions' and 'financial institutions'(respectively) that are members of the 'same group', where the recipient is resident in a European Economic Area State or a non-EEA state with comparable protections (Idem, section 333B(2)).

58. Further, in the United Kingdom, disclosures are permitted between unrelated 'credit institutions' and 'financial institutions' if the purpose of the disclosure is to prevent a breach of Part 7 (Money Laundering) of the Proceeds of Crime Act 2002 (UK) (Idem, section 333C).
59. The Committee submits that a relaxation of the tipping off restriction in section 123 would be a material reduction in 'red tape' which would make easier and more efficient the compliance obligations of Australia's reporting entities and would improve the international framework for prevention of financial crimes and the financing of terrorism. Properly drafted, it need not increase the likelihood that a Suspect would learn that a suspicion had been formed and change their behaviour.
60. The Committee notes that AUSTRAC has broad powers under section 248 of the AML/CTF Act to vary the effect of the Act in relation to particular organisations or generally. However, Committee members understand that AUSTRAC has on more than one occasion declined to exercise its discretion to reduce the burden of the tipping off restriction on reporting entities.
61. The Committee submits that the time is ripe to amend section 123 in advance of the finalisation of any changes that result from the current Review, but in any event as part of that review. Changes could be implemented in the short term by an AUSTRAC instrument without the need for legislation.

Designated Business Group

62. The Committee restates its recommendation that treatment of the true economic units as 'related' regardless of whether they satisfy the Corporations act 'related body corporate' definition should apply generally, both in relation to customers and also when assessing which entities can or cannot be part of a designated business group. In the Committee's submission, 'related body corporate' should not be the only or even the primary, criterion for determining whether entities are or may be 'grouped' for the purposes of the AML/CTF Act.
63. As long as there is a sensible economic connection between reporting entities, and they are not part of another DBG, they should be permitted to form a designated business group.
64. In the meeting on 24 March 2015, we suggested a model where **ANY** entity that is not a member of another DBG can be joined to an existing DBG by notice to AUSTRAC. The form should include a free text field (or potentially a series of check boxes, ie 'related body corporate', 'under common control', 'partnership', 'co-trustees', and 'other' with a free text field). AUSTRAC should have power to issue show cause notices to entities that have applied to form a designated business group, requesting that they provide AUSTRAC with evidence of their economic connection to existing group members.
65. **In-house provision of services within an economic grouping** Further, the Committee repeats its view that the reliance in the AML/CTF Act on the concept of 'related body corporate' when determining 'in-house' exemptions (under Chapter 36 of the AML/CTF Rules) is unduly limiting. The Committee notes that

relevant relief has been provided to BHP Billiton in reference to its dual-listed structure, and to certain Babcock & Brown entities in this regard.

66. The Committee submits that 'relatedness' if it actually exists should extend to any other entities with a real and tangible economic link, such between any entities held under a 'stapled' security structures, between members of partnerships (including limited partnerships) or joint-ventures, and between trustees and entities held within the trust structure. Any combination of these structures should be able to be considered a grouping if there is either common ownership and control, or a substantial common enterprise.
67. The concept that services which are effectively provided 'in-house' should not be regarded as part of FATF Recommendations 'financial institution' activity does not depend on the relevant affiliates all being companies if they are in substance the same business.
68. (The 'related entity' definition in the Corporations Act may not be a suitable criterion for the relief in this regard as it brings in relationships such as directors and spouses of directors which do not have the same kind of common ownership and control / common economic enterprise that was the basis of Chapter 36, without including partnership relationships. In any event it applies only to determine which persons are the 'related entities' of a body corporate.)

Specific definitions

69. The Committee wishes to strongly reiterate its submission that the AML/CTF Act should be amended to specifically reflect the original intention that a reference in section 6 to a particular kind of business is intended to limit the broad scope of the defined term 'business' so that it only applies when the specified business is a core function of the relevant entity. The Committee submits that not only would this be more consistent with the FATF Recommendations, but also that this was unambiguously the intention of the drafters of the Act in late 2006, and should be taken to have been the intention of the Parliament. If that intention has not been effected, now is an appropriate time to resolve this.
70. Further to the observations in the Original Submission about managed investment schemes (**MIS**), the Committee suggests that an AML/CTF definition of MIS should be limited to those MISs that are in the nature of investments (the prime focus of the relevant FATF Recommendations). The simplest way would be to limit the definition of MIS to those that are financial products by virtue of paragraphs 764A(1)(b) and 764A(1)(ba) of the Corporations Act - that is, retail, registered MISs, unregistered wholesale MIS with an in substance investment purpose. The definition should not extend to MIS that are not regulated as a financial product, that is those MISs that don't meet the criteria in paragraphs 601ED(1)(a), (b) and (c) of the Corporations Act and are expressly excluded as financial products in paragraph 765A(1)(s) of the Corporations Act. In the outcome, this is a very limited group of substantially in-house 'technical' MISs that would be excluded.
71. The Committee agrees that the key definition of 'signatory' should be redefined so that it applies more narrowly (at least in the case of non-natural person customers), eg by reference to persons with authority to authorise payment

transactions beyond a certain threshold. The existing broad definition of signatory potentially captures all agents of a corporate entity. However, a more efficient way for the corporate entity to manage its 'signatories' is to redefine the term 'signatory' so that the corporate entity has the ability to nominate persons who are 'signatories'. This would facilitate the AML/CTF Act excluding certain kinds of persons as signatories who should not come within the definition: eg terminal operators with refund capability.

72. The Committee finally wishes to restate in the strongest possible terms that the current definitions relating to remittance arrangements are far too broad, and literally applied cover an almost limitless range of commercial and non-commercial activities that were never intended to be covered by those definitions. In the submission of the Committee, although AUSTRAC presently is effectively treating the definitions as though they were of far more limited application, this does not mean that there is no case for change. The provisions need to be substantially redrafted to cover the money services activities that is the focus of relevant FATF Recommendations, and expressly rule out (at least):

- in-substance sale of goods or services transactions,
- in-specie gift transactions,
- loan transactions, including repayments; and
- security enforcement transactions.

73. The fact that Australia was found substantially compliant in this regard by the recent Mutual Evaluation should not, in the Committee's submission, be treated as a reason to avoid this change, as the Mutual Evaluation report does not consider the detail of the relevant definitions, only the actual enforcement and supervision activity. The Committee believes that the provisions are being enforced appropriately, but that the definition should cover only the matters that are intended to be caught.

Contact details

74. If you have any questions regarding this submission, in the first instance please contact the Committee Chair, James Moore, by phone on 02 9334 8686 or via email: jmoore@hwle.com.au. The Committee would welcome the opportunity to present in person or to be involved in further consultation as the review proceeds.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John-ISK', with a long horizontal line extending to the right.

John Keeves, Chairman
Business Law Section