16/06/2023

Katherine Jones PSM
Secretary
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Via email to economiccrime@ag.gov.au

Dear Secretary,

AustralianSuper submission to Modernising Australia's anti-money laundering and counter-terrorism financing regime

AustralianSuper welcomes the opportunity to provide a submission to the consultation paper on modernising Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

As has been noted by the Senate Legal and Constitutional Affairs Committee, Australia's AML/CTF regime is 'a cooperative effort between law enforcement, regulator, intelligence and policy agencies, as well as industry, international partners and the broader community'. AustralianSuper recognises the importance of ensuring Australia's AML/CTF regime is robust, fit for purpose, responds to the evolving threat environment and meets international standards.

Responses to questions in the discussion paper and additional comments are provided in the Attachment. We have provided responses to questions that we consider most relevant to AustralianSuper and AustralianSuper members.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact Nick Coates, Acting Head of Government Relations and Public Policy (**ncoates@australiansuper.com**).

Regards

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Attachment: Responses to Questions and Additional Comments

1. How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?

We note the proposal to 'streamline' Part A and Part B AML/CTF programs into a single program. While we support measures to improve the clarity of AML/CTF obligations, we consider that this change risks creating further complexity without necessarily increasing the robustness of the regime. Specifically, it risks conflating governance and oversight functions with management functions.

Part B programs are directed to customer identification procedures to meet the requirements of the AML/CTF Act and Rules. As these are necessarily technical, process-related requirements, approval of these requirements should remain with senior management. We consider that in this regard it is appropriate to distinguish these requirements in Part B from the framework from the governance arrangements in Part A, for which board approval is appropriate.

Where it is considered that obligations applying to Part A should be applied to Part B, we think this could be achieved more effectively by specific amendments rather than by combining the two parts. For example, there is currently a requirement for a regular independent review of Part A (see Part 8.6 of the Anti-Money Laundering and Counter-Terrorism Financing Rules). If it is thought that Part B should also be subject to these review obligations, these could be directly extended to Part B.

2. What are your views on the proposal for an explicit obligation to assess and document money laundering and terrorism financing risks, and update this assessment on a regular basis?

AustralianSuper assesses and documents money laundering and terrorism financing risks and updates this assessment on a regular basis. This is consistent with our existing obligations under the superannuation prudential framework, administered by the Australian Prudential Regulation Authority (APRA).

Any new legislative requirements to perform a risk assessment should allow sufficient flexibility so that it can be incorporated into the reporting entity's existing Risk Management Framework. We also recommend that any new legislative requirements should be designed to cohere with existing regulatory frameworks, where these are applicable, to avoid unnecessary duplication.

9. Do you have suggestions on other amendments to customer due diligence obligations?

Currently, superannuation funds are subject to the Know Your Customer (KYC) obligations when making payments to members, which may be well after the initial establishment of a member's account. The practical reason for this is to accommodate the establishment of member accounts by employers and to allow for contributions to be accepted and credited to members accounts in a prompt fashion, rather than being held as unallocated pending the completion of a verification process.

Consideration should be given to extending the KYC requirements that apply to the sector to circumstances where members join a superannuation fund by establishing an account directly with the fund (this is distinct from an account being established by an employer on an employee's behalf, a circumstance in which the same level of risk does not arise). Implemented as a sector-wide mechanism, this would reduce the risk of the use of staging accounts. This would also reflect the increasing risks surrounding identity theft and the use of superannuation accounts to create additional false data points in relation to non-superannuation fraud.

10. **Are there aspects of the tipping-off offence that prevent you from exchanging information, which would assist in managing your risks?**
11. **What features would you like to retain or change about the current tipping-off offence?**
12. **What safeguards are needed to protect against the disclosure of SMR-related information? Has the current tipping-off offence achieved the right balance between protecting against the risk of leaked SMR information and disclosures which help manage shared risks?**

The Consultation Paper proposes reforms that could modernise the tipping off offence to better support industry to comply with its AML/CTF obligations, while balancing the competing interests that the tipping-off offence was designed to protect. We would be supportive of reforms to ensure that entities can manage shared risks in an effective manner. For example, in the superannuation sector, APRA continues to encourage funds to merge in certain circumstances. However, the current framework means that there are restrictions on information that two merging funds can share between them even where this would assist in the management of risk.

Additional comments

AML/CTF reporting entities are required to keep customer identification procedure records for the duration of their relationship with the customer and then for seven years after they stop providing all designated services to the customer.

The Privacy Act Review Report, published by the Attorney-General's Department on 16 February 2023, noted the privacy and cyber security risks of entities holding significant volumes of personal information. Accordingly, it recommended that the Commonwealth review all legal provisions that require retention of personal information to determine if the provisions appropriately balance their intended policy objectives with these risks (recommendation 21.6). In accordance with this recommendation, the Department should consider these competing imperatives and how they apply in relation to AML/CTF record-keeping requirements.