25 November 2014

Compliance Report Review
Planning, Coordination and Relief
AUSTRAC

By Email Only: Compliance_Report_Review@austrac.gov.au

FSC Submission on AUSTRAC Consultation paper – AUSTRAC: Proposed changes to the compliance report

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than $2.2 trillion on behalf of 11 million Australians.

We welcome the opportunity to comment on the online *AUSTRAC Consultation paper – AUSTRAC: Proposed changes to the compliance report* (the **Compliance Report Consultation Paper**), released for consultation on 2 October 2014.

In this submission, the following definitions are used (as used in the Compliance Report Consultation Paper):

- "**AR**" means the proposed revised Annual Return;
- "**ECR**" means the proposed "enhanced compliance report";
- "**RE**" means reporting entity;
- "**RIS**" means the Regulation Impact Statement accompanying the Compliance Report Consultation Paper.

We observe that given the breadth and depth of the detail in the proposed AR and ECR, our submission has been limited to key matters of concern. We may raise additional comments on the proposals as and if they evolve.

Given our comments and the nature of the detail in the AR and ECR, we would welcome the opportunity to discuss our concerns in a meeting with AUSTRAC and FSC members after AUSTRAC has considered our submission and prior to any final decision being made on AUSTRAC's proposals.

YOUR FUTURE FIRST

Financial Services Council Ltd
ABN 82 080 744 163

Level 24, 44 Market St
Sydney NSW 2000

T. +61 2 9299 3022
F. +61 2 9299 3198

E. info@fsc.org.au
W. fsc.org.au

Executive Summary

1. FSC agrees that the existing compliance report format is out-dated and is generally supportive of the changes proposed to the ECR (particularly the approach outlined in option 4 of the RIS). The requirement for CEO/Board certification of this ECR is however not considered to be appropriate as it will require the Board to become involved in the day to day management of the organisation, a function typically performed by management.

2. The AR as envisaged under option 3 of the RIS would impose a significant additional regulatory burden on reporting entities. The position taken in the RIS that this option is a light handed regulatory approach is not consistent with FSC and its members views of the time, effort and costs that would be incurred by affected 'large reporting entities' to comply with the AR requirements. In addition, this regulatory burden is not necessarily commensurate with the level of ML/TF risk encountered by these reporting entities.

3. Much of the information AUSTRAC seeks in the new AR reporting requirements can be collected by AUSTRAC reviewing a reporting entity's AML Program and any additional information AUSTRAC chooses to request as part of AUSTRAC's supervisory reviews. The proposed AR seeks to outsource the collection, collation and summarising information which AUSTRAC can and should obtain for itself from the above documents and by AUSTRAC's usual supervisory process.

4. The proposed RIS option 3 involves the submission of two reports (for large REs) – namely an ECR and AR. This will result in duplication of information provided to AUSTRAC and this additional regulatory burden will fall on larger reporting entities that provide the majority of funding under the Industry Contribution to cover AUSTRAC's supervisory (as well as non-supervisory, e.g. financial intelligence) functions.

5. We respect the right of AUSTRAC to require targeted information on a supervisory-risk basis; however the proposed model to collect additional information based on a monetary threshold of revenue is not necessarily conclusive on whether the RE's designated services are low, medium or high ML/TF risk, or whether this information will be used by AUSTRAC.

6. The requirement for Board sign-off of the AR and manner of certification requested will require boards to become involved in the day-to-day management of their organisations, whereas they would ordinarily rely on management for such matters.

7. A start date from 1 January 2015 for the ECR and AR (that is, information would have to be captured from, and systems and operational procedures updated by, that date to capture the information) is unreasonable given there is around one month until the 2014 holiday period. While the lodgement for the period from 1 January 2015 to 31 December 2015 will be from 4 January 2016, REs may need to review and refine various systems, procedures and documents prior to the commencement of the first reporting period under the proposed expanded compliance reporting regime.

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

8. While we do not support the AR, we do support the ECR however with AML Compliance Officer (not Board) sign-off. The role of the board under the current AML/CTF Act is to approve and adopt the relevant AML/CTF Program. To then require direct board approval of the detail contained in the ECR and (if proceeded with) the AR, significantly extends the role of the board far more than is currently contemplated by the AML/CTF Act. This runs the real risk of blurring the lines between the role of the board and the role of management in the day to day management and oversight of the AML/CTF Program.

9. **FSC Supports Option 4 but not Option 3 (i.e. FSC supports the ECR but not AR)** – Given that the information in the AR requires reporting entities to re-collate and summarise information largely otherwise available to AUSTRAC already, we request that AUSTRAC proceed with the ECR but do not proceed with the AR. AUSTRAC can via its supervisory activities seek additional information from particular REs as required. Accordingly, FSC supports *Option 4 Light handed regulatory option B* (set out on pages 19 and 20 of the RIS) which involves requiring an ECR but not requiring an AR. FSC does not support Option 3 *Light handed regulatory option A* (which requires an ECR and an AR). Option 3 is not light-handed on those REs required to lodge an AR, and it imposes the AR requirement on entities which are not high-risk but meet the AR ($100 million) earnings threshold.

10. **Removal of Board sign-off**– We consider that the requirement for Board/CEO declaration requires the board to operate at an operational level and is contrary the board's role in that it delegates operational aspects of the business' management to management.

Comments

AUSTRAC proposed AR and ECR

11. FSC is supportive of some amendments to the existing compliance report format given it is out-dated. FSC agrees with AUSTRAC's comments that the existing reporting format is now out of date as it was based on the initial implementation of the AML/CTF regime in 2006.

12. FSC agrees that the existing Annual Compliance Report requires modification to allow for the maturing of the AML/CTF regime since 2006. The proposed ECR is considered more relevant than the existing Annual Compliance Report and will ensure AUSTRAC is better-informed when undertaking its supervisory activities.

13. We do not support the AR for the reasons set out in this submission, including the compliance burden imposed by such a requirement. As part of its rationale for introducing the AR, AUSTRAC cites the need to maintain an understanding of the ML/TF risks facing larger REs, changes in their business activities and the effectiveness of their AML Programs. REs are already required to maintain comprehensive ML/TF risk assessments under Part A of their AML Programs, in accordance with criteria set-out under Chapter 4 of the AML/CTF Rules (recently expanded from 1 June 2014). Regarding business activities, AUSTRAC's requirements around RE enrolment and the need for REs to maintain their business profiles (i.e. changes to designated services) via AUSTRAC Online are existing mechanisms in place to help keep

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

AUSTRAC on-notice with respect to business changes. Thirdly, the effectiveness of an AML Program is monitored via mandatory Independent Reviews and other periodic audits (resulting in action plans to address any deficiencies).

14. Much of the information proposed for collection under the AR is available via AUSTRAC reviewing the AML Program, enrolment/business profile information and related information as well as any risk-based AUSTRAC supervisory activity. We agree that AUSTRAC should be in a position to request, on a targeted basis, additional information it may seek.

15. AUSTRAC has significantly underestimated the impact of the proposed changes. While it may reduce regulatory burden for a portion of the smallest reporting entities (that will not be required to lodge an ECR or AR), for 'large REs' **the introduction of a second report (the AR) will result in a significant increase in time required to prepare and submit these reports**. The Compliance Report Consultation Paper observes that the new reporting requirements will be minimal because of the ability to leverage existing internal reports. The new requirements are not minimal in their impact. Based on the nature and volume of information AUSTRAC is seeking to collect via the AR, the ability to leverage existing reports is overstated. Significant refinement of RE's internal reporting frameworks (to capture the full breadth and diversity of information required to be collated and summarised under the AR, and to facilitate the board attestation requirement on the AR) is likely to be required in many cases if AUSTRAC proceeds with the AR.

16. The RIS substantially underestimates the additional burden on reporting entities as a result of AUSTRAC's proposed AR which must be completed by 'large REs' in addition to completing the ECR (under '*Option 3: Light-handed regulatory option A*', being **AUSTRAC's preferred option**). The impact analysis undertaken by AUSTRAC makes several assumptions that FSC considers are unfounded:

    (a) *Firstly*, there is an assumption that ML/TF risk exposure is a function of an RE's size, with only 'large REs' (defined in the RIS as those with total annual earnings of $100m or more) required to complete the AR. While an RE's 'foot-print' or 'market share' is one factor to consider when assessing ML/TF risk exposure across the industry, sole reliance on this factor is overly-simplistic and ignores those factors most clearly influencing ML/TF risk, such as the types of designated services provided, customer demographic and operating jurisdictions.

    (b) *Secondly*, AUSTRAC states that AUSTRAC's preferred option will result in an increase in 'efficiency' (through a reduction in administrative burden). FSC members strongly dispute this assumption. While the administrative burden may be reduced for smaller REs with supposedly lower ML/TF risk exposures, it is significantly increased for those large REs required to complete the AR. AUSTRAC states that these large REs will already be preparing similar information in 'business as usual' reports for internal purposes. This assumption is unfounded to the extent it implies that other existing reports fully cover the field of the AR and can simply be used without analysis, synthesis or refinement for the purposes of an AR lodged with AUSTRAC.

YOUR FUTURE FIRST

Financial Services Council Ltd
ABN 82 080 744 163

Level 24, 44 Market St
Sydney NSW 2000

T. +61 2 9299 3022
F. +61 2 9299 3198

E. info@fsc.org.au
W. fsc.org.au

This certainly does not apply in the case of all large REs, especially those not engaged in activities that might be considered to pose elevated ML/TF risk.

(c) *Thirdly*, AUSTRAC states that adoption of AUSTRAC's preferred option will result in a 'significant increase in the level of effectiveness'. Again, this assumption is contested by FSC. FSC considers that the information requested by AUSTRAC in the AR can, for the most part, be already obtained by AUSTRAC through procuring a copy of the relevant RE's current AML/CTF Program and related material. **The proposed AR will involve significant burden for REs in duplication and re-cutting of information which is already available to AUSTRAC on request**. FSC considers that such an exercise will provide little added benefit to AUSTRAC but will unnecessarily increase the regulatory burden on REs. At a time when AUSTRAC's supervisory activities are soon to be fully-funded by leviable reporting entities, it appears that the responsibility for collating certain information is shifting from AUSTRAC to industry (in the form of the AR), when AUSTRAC is already able to review AML Programs and related material (as well as undertake its usual supervisory processes). The process of preparation, testing, review and sign-off (including board sign-offs) of the AR is a significant exercise and is not a two day only exercise as suggested in AUSTRAC's RIS.

17. The RIS concludes (at page 35) that Option 3 is significantly more equitable than the other options because it accounts for RE's varying ML/TF risk. We disagree – Option 3 is inequitable on REs required to prepare the AR, and particularly so given that AUSTRAC has not used a nuanced test for "high-risk", simply adopting a crude revenue threshold as the binary delineator of high-risk. That revenue threshold will capture superannuation entities and fund managers who are not high-risk.

18. **We note the reporting proposals introduces an entirely new and significant requirement to obtain sign off from Boards/senior management on annual reports (the ECR and AR) lodged with AUSTRAC**. We comment below on AUSTRAC's estimation of costing in the RIS – an estimate which we consider is a significant under-representation of the actual costs and impacts of the new reporting requirements on large REs required to lodge an AR (under the proposals). We do not understand how AUSTRAC reached its conclusion in the RIS that it might only take two days to prepare, due diligence, verify, test, assess and prepare board papers, hold board meetings and receive board (or CEO) sign-off on the new AR (and ECR) in the case of "large REs" required to lodge the AR (and ECR).

19. **The inclusion of an earnings criterion in the definition of a large reporting entity does not lead to the accurate identification of high ML/TF risk entities** and inappropriately applies the burden to REs with robust compliance (including AML related) frameworks such as FSC member REs.

20. AUSTRAC underestimates the level of work that goes into preparation and finalisation of existing Annual Compliance Reports. Information gathering, assurance work and stakeholder engagement/endorsement already requires significant time and resource investment for

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

compliance teams, particularly in larger organisations. The new AR will exponentially increase this burden, even before reaching the point of needing to obtain a declaration from the Board or CEO (as applicable) or in the case of a DBG, the Board or CEO of each entity in the DBG, or from a person or Board with written authority from each entity in the DBG.

21. Part 2.4 of AUSTRAC's RIS suggests that large entities "have relatively more customers and typically provide products and services which are more complex often using multiple distribution channels in multiple jurisdictions". Entities will be assessed as "large" for this purpose based on one of three criteria:

    (a) Earnings, and/or
    (b) Transaction report volume, and/or
    (c) Transaction report value.

22. We submit that the earnings criterion does not necessarily identify higher ML/TF risk entities, and would lead to an outcome where an RE earning in excess of $100 million will be judged to pose a higher ML/TF risk, even though such a conclusion is not supported by the ML/TF risk assessment in Part A of the RE's AML Program or indeed the volume of transaction or suspicious matter reports submitted to AUSTRAC during the relevant period. For example, investment management services provided to superannuation funds, pension funds and sovereign wealth funds will be treated as high-risk (that is, required by AUSTRAC to prepare an AR) if earnings exceed $100 million. We query the appropriateness of AUSTRAC treating such designated services as high-risk and therefore (under AUSTRAC's reasoning) the basis of the requirement for an AR just because the business providing such designated services earns more than $100 million. For example, FSC members include fund managers whose revenue exceeds AUD 100 million. This includes (to illustrate the inappropriateness of using the earnings threshold as the condition to trigger an AR requirement) an FSC fund manager which:

    (a) Does not accept or pay cash;
    (b) Does not make third party payments and only makes payments to pre-nominated bank accounts in the name of the investor;
    (c) All investors of the fund manager must have a bank account with an Australian ADI;
    (d) The fund manager only accepts customers from low risk jurisdictions; and
    (e) The fund manager is compliant with the AML/CTF Act.

23. It is not clear what net (after costs on the reporting entity) regulatory benefit there is in requiring such a reporting entity to allocate significant time and resources to prepare the AR. A more efficient approach would be for an obligation on an auditor to report any material matters to AUSTRAC.

24. We do not agree it is appropriate to apply a monetary threshold as the delineation between high-risk and not high-risk (for the purpose of being required to, or not required to, prepare an AR). Larger institutions usually have available more integrated control and reporting frameworks and more resources to monitor and mitigate AML/TF risk – yet it is these entities that will be required to prepare an AR.

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

25. Entities which are not high risk will be captured by the proposed earnings criterion, creating an increased regulatory burden for those entities. This is an outcome that is both inequitable and at odds with AUSTRAC's own stated intention (to reduce unnecessary regulatory burdens). A more nuanced and appropriate approach is required in line with RE's characterisations of the risks of designated services – further consultation would be required by AUSTRAC to formulate an appropriately targeted categorisation of entities as high-risk and AUSTRAC should consult on a more appropriately nuanced framework.

26. FSC members are heavily regulated institutions with robust compliance frameworks (required by their Australian financial services licences and RE status). Also, global institutions have global integrated compliance frameworks. To categorise these institutions as having high AML-risk by virtue of being global or exceeding the earnings threshold is not appropriate.

27. An earnings threshold as an indicator of high-risk is crude and blunt, and not sufficiently nuanced and imposes reporting burdens (in the form of the AR) on entities which are not high-risk.

28. **The objectives of AUSTRAC's proposals are stated in the RIS to be "to reduce unnecessary regulatory burdens on REs". AUSTRAC's proposals have quite the opposite effect on those entities required to lodge AR's and/or ECRs**.

29. Page 21 of the RIS prepared by AUSTRAC states that "*No substantive compliance costs…have been identified*". (The RIS then refers to the fact that REs will not be required to purchase any plant equipment in order to meet regulatory requirements.) Regulatory costs for AML are essentially driven by the costs of systems, procedures, IT and personnel (not plant and equipment). **FSC strongly disagrees with the statement in AUSTRAC's RIS that no substantive compliance costs will be incurred by virtue of the AR and ECR**. Along with the statement in the RIS that it may take just two days to comply with the new reporting requirements, this is an enormous underestimation of the compliance and regulatory costs of the changes. In the case of the AR, AUSTRAC has under-estimated the time and cost required to provide reports to regulators, particularly where there are 'free-text' reports from a regulated entity in relation to a wide range of matters, as is the case for the AR. The reports will require significant resourcing to prepare, review, verify and obtain management and Board sign-offs.

30. FSC members have reported to FSC that the AR/ECRs would take significantly more than two days to complete, test and obtain sign-offs. For some large REs the review, completion, assurance, testing and board sign-off procedures would involve a schedule of weeks or months of work with dedicated staffing. Particularly for larger corporate groups, the reports will require review by numerous compliance, AML and management oversight functions and this may require many weeks or some months to facilitate for such groups taking into account the assurance and sign-off procedures and the need to prepare and collate reports for a DBG. Certainly, AUSTRAC's estimate of two days as set out in the RIS is a gross underestimation of the time it would take many FSC Members to prepare, collate and sign-off the new proposed reporting requirements.

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

31. Table 6.3 of the RIS suggests the AR and the ECR can be completed in just two days. This is not plausible for large regulated institutions because the due diligence to culminate in the AR and ECR will itself involve significant work even before providing to senior management for review and sign-off, let alone the procedures required for verification and providing to a board for board sign-off. **The two day assessment grossly underestimates the timeframes for FSC members.** In summary, the RIS for the AUSTRAC proposed changes dramatically underestimates the compliance cost impact on reporting entities.

Board sign-off requirement

32. The level of detail within the AR and ECR is not something that a Board of an RE would, reasonably, be in a position to 'declare' as true / correct/ adequate to manage the risks. The level of detail of the items in the AR and ECR are (appropriately so in our view) managed within the business by "management" not Boards. It should be sufficient for sign-off to be provided by the AML Compliance Officer. Nonetheless, while we support the ECR (with AML Compliance Officer, not Board, sign-off) we do not support the introduction of the AR for the reasons set out in this submission.

DBG

33. It seems the concept (and use) of a Designated Business Group (**DBG**) is being watered-down given the requirement to obtain an attestation from *each* RE's board or receive delegation from each Board. The DBG framework should be leveraged for any new reporting requirements. In addition, the attestation component of the proposed reporting requirements also increases the costs of the proposals.

34. The DBG framework provides appropriate efficiencies and is recognised by the AML regime. AUSTRAC's proposals do not leverage the DBG framework and should do so.

Timing of application of AR and ECR proposals

35. This submission will be lodged near the end of November 2014. AUSTRAC needs to carefully consider the submissions it receives (and potentially undertake further consultation) and then finalise the form of proposals it intends to proceed with. Presumably that is likely to take the timeline into (at best) January/February 2015. AUSTRAC's current timetable (per page 39 of the RIS) proposes announcing (we presume that means finalising) the framework by December 2014 (i.e. the fourth quarter 2014) with the framework commencing for reporting periods commencing from 1 January 2015 (effectively in a months time). This timing is unreasonable in our view. FSC makes the observation that an approach of "hard-coding law" and providing for industry to implement during the period the law relates to (that is after the law has commenced) is not ideal and is unreasonable. For example, most recently, the CDD reforms commencing on 1 June 2014 served as an example of law in place before such time as industry was reasonably in a position to comply with it, hence the non-enforcement Principles issued by the Minster.

YOUR FUTURE FIRST

Financial Services Council Ltd
ABN 82 080 744 163

Level 24, 44 Market St
Sydney NSW 2000

T. +61 2 9299 3022
F. +61 2 9299 3198

E. info@fsc.org.au
W. fsc.org.au

36. The AUSTRAC timetable is also difficult because many RE's will be transitioning their AML/CTF program throughout the 2015 calendar year from the current Annual Compliance Report (due March 2015) to any new ECR and AR (currently proposed to be lodged between January and March 2016). Given that full compliance with the new AML/CTF Rules relating to CDD (effective as at 1 June 2014) is required by 1 January 2016 (under the non-enforcement Principles issued by the Minister), it would be more appropriate for any compliance reporting changes under s47 of the AML/CTF Act to be effective from reporting periods commencing from 1 January 2016 with the first report under the new reporting regime due January to March 2017. (We reiterate we do not support the AR being included in the new reporting framework.)

37. The timing of the proposals should be re-considered. Commencing the requirements for reporting periods from 1 January 2015 (before the applicable AML/CTF Rules have been made, as they are scheduled to be made – under AUSTRAC's timetable set out on page 39 of the RIS – in the first quarter 2015) will result in RE's/DBG's not having sufficient time to consider final guidance or the amending Rules to implement necessary changes in RE procedures prior to the 1 January 2015 commencement. If AUSTRAC intended to commence the new reporting requirements for reporting periods from 1 January 2015, it would have been appropriate to consult on the proposals significantly earlier than this consultation.

38. FSC submits that the timeline is not sufficient for reporting entities to implement the new reporting regime and AUSTRAC should not commence the regime until the calendar year commencing 1 January 2016 (with the first report under the new regime, if proceeded with, due from January 2017). Under this timeframe, that would enable AUSTRAC to prepare any new AML Rules required to implement the regime and allow REs time to review the final AML Rules and implement procedures required by the new regime. Nonetheless FSC does not support the AR being proceeded with.

39. (***Transition to new reporting requirements if proceeded with***): Will the *existing Annual Compliance Report* for the calendar year ending 31 December 2014 be required to be submitted in March 2015? We seek AUSTRAC clarification on the transition from the existing reporting requirements to the new ECR and AR reporting requirements (if AUSTRAC does, notwithstanding this submission, proceed with the AR).

Comments on specific parts of the Enhanced Compliance Report

40. We welcome AUSTRAC's commitment to providing guidance on the new reporting framework once finalised. Such guidance is not, and cannot be, a substitute for a commencement date which is reasonable. See our comments above on commencement dates. (We reiterate we support the ECR but consider the AR an unnecessary compliance burden.)

41. Below are some initial comments and requests for guidance. FSC may request guidance on additional matters as the new reporting regime develops.

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

42. Many of the questions in the ECR have binary answers – Yes/No/Not applicable. Clearly the answers are not as simple and definitive as the form suggests.

Section 1 Business Information

AUSTRAC Question 1.4 When you provide a designated service, with which of these regions do you do business (select all that apply)?

43. To assist with clarity it is preferred that the first box currently marked *Not applicable* be amended to indicate *Australia only*.

44. What does "do business" mean? How would "do business" apply in various scenarios e.g. Australian sourced customers with a foreign address? How would "do business" apply to marketing activities? These are just some scenarios where the phrase "do business" is not sufficiently clear.

AUSTRAC Question 1.5 To which customer types did you provide designated services during the reporting period (select all that apply)?

45. Is this question directed at the ability for each customer type to receive a designated service, or does it refer to the actual designated service provided (e.g. such as provided to a Registered Co-Operative)?

Section 2 AML/CTF program

AUSTRAC Question 2.1 How effective was your AML/CTF program in identifying, managing and mitigating the ML/TF risk faced by your organisation during the reporting period?

46. We seek guidance on how does AUSTRAC expect an RE to measure effectiveness. Further, we seek AUSTRAC guidance in respect of the AML/CTF compliance measure that AUSTRAC would expect a reporting entity to implement to validate or test the effectiveness of the adopted program.

AUSTRAC Question 2.2 Were there any material instances of non-compliance with your AML/CTF program?

47. Section 81 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* requires that reporting entities must not provide a designated service until it has adopted an AML/CTF program. Further, section 82 requires that the adopted AML/CTF Program Part A must be complied with. In respect of Part B, for reporting entities who have adopted a Standard anti-money laundering and counter-terrorism financing program or a Joint anti-money laundering and counter-terrorism financing program, under sections 84(3)(b) and 85(3)(b) respectively, the requirement is that the reporting entity 'complies with such requirements (if any) as are specified in the AML/CTF Rules'. There is no reference to a 'material' threshold in the

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

legislation as contemplated by AUSTRAC question 2.2. We request that AUSTRAC provide further information and guidance in respect of this question.

48. We agree with the reference to a qualification such as "material". Such a qualification is appropriate and sensible from a risk-based perspective (as the AML-CTF regime is risk based). We seek AUSTRAC guidance on what is meant by *material* non-compliances.

Section 5 AML/CTF risk awareness training

49. AML/CTF Rule 8.2.2 requires that the AML/CTF risk awareness training program must be designed so that the reporting entity gives its employees appropriate training at appropriate intervals, having regard to ML/TF risk it may reasonably face. AML/CTF Rule 8.2.3 requires that the training program must enable employees to understand the obligations of the reporting entity, the consequences of non-compliance, the type of ML/TF risk that the reporting entity might face, the potential consequences of such risk, and the processes and procedures provided for by the reporting entity's AML/CTF program that are relevant to the work carried out by the employee.

AUSTRAC Question 5.1 What percentage of applicable employees received AML/CTF risk awareness training during the reporting period?

50. Further consultation is required with AUSTRAC as to the extent to which records are kept for former employees (that is, employees who left employment during the reporting period). Is it acceptable to provide a snapshot of employees as at a certain date (e.g. X% of employees employed by Y RE on 31 December YYYY have been provided with AML/CTF risk awareness training.)?

AUSTRAC Question 5.2 Did you test the effectiveness of the AML/CTF risk awareness training during the reporting period?

51. We seek AUSTRAC guidance in respect of the AML/CTF compliance measure that AUSTRAC would expect a reporting entity to implement to validate or test the effectiveness of the AML/CTF risk awareness training during the reporting period.

Section 6 Employee due diligence

AUSTRAC Question 6.2 Were there any instances where prospective employees failed your employee screening process during the reporting period?

52. What does "failed" mean?

53. We request AUSTRAC provide guidance in respect of the intent of this question when, prima facie, prospective employees failing the screening process would not receive confirmation of an employment offer.

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

Section 7 Independent Review

AUSTRAC Question 7.2 Did the independent review identify any material findings?

54. We agree with the reference to a qualification such as "material". Such a qualification is appropriate and sensible from a risk-based perspective (as the AML-CTF regime is risk based). We seek AUSTRAC guidance on "material" in respect of this question.

Section 9 Reporting to AUSTRAC, regulatory interactions and law enforcement enquiries.

AUSTRAC Question 9.4 Have there been any AML/CTF related regulatory actions or issues in Australia or overseas that has, or may have, an impact on your Australian business operations either directly or through the other members of your group structure?

55. This is an open-ended and non-specific question. Our members feedback is there is difficulty in applying and answering this question. The difficulties include:

    (a) What is meant by *group structure*?

    (b) There may be secrecy, off-shore law, and confidentiality obligations which may limit (that is, prohibit or constrain) the flow of information from an offshore legal entity – those matters would need to be scoped to ascertain the extent to which it is in fact feasible to answer the question.

    (c) The options in the answers in question 9.4 (namely "Yes", "No", "Do not know" or "Not applicable") do not fit such an open-ended question. It is likely any answer (unless it is an unqualified no) would have to be explained by further information.

56. There may be complexities and difficulties in obtaining verifications and sign-offs on such a question from offshore entities. It would also be necessary (particularly in large global organisations) to limit the answer by reference to certain enquires, being mindful of the board attestation process. We think this question is open-ended and needs to be removed in relation to overseas, or else refined to limit the response to the extent known by the Australian entity and to acknowledge that the offshore entity may be subject to laws or obligations which limit or restrict transfer of information to the Australian RE.

57. A re-working of this question is required, such as has an offshore regulator made an adverse finding against the Australian reporting entity.

Attestation (appearing from page 65 of AUSTRAC's RIS)

58. We request that AUSTRAC provide further guidance in respect of the format of the AML/CTF attestation that must accompany the ECR.

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au

Summary and FSC Preferred option

59. (**FSC Preferred Option – Option 4**) FSC supports *Option 4 Light handed regulatory option B* (set out on pages 19 and 20 of the RIS) which involves requiring an ECR but not requiring an AR. FSC does not support Option 3 *Light handed regulatory option A* (which requires an ECR and an AR). Given that the information in the AR requires reporting entities to re-collate and summarise information largely otherwise available to AUSTRAC already, we request that AUSTRAC dispense with the AR and instead proceed with the ECR only. We do not support the AR as AUSTRAC can obtain the information it needs via the AML Program and its usual supervisory activities – such matters should not be outsourced to a subset of (namely large) REs. Further the AR imposes significant regulatory burden on large REs.

60. (**Removal of Board sign-off**) We consider that the requirement for Board/CEO declaration requires the board to operate at an operational level and is contrary the board's role in that it delegates operational aspects of the business' management to management.

If you have any questions on our submission, please contact Stephen Judge on (02) 9299 3022.

Yours sincerely

STEPHEN JUDGE
General Counsel

YOUR FUTURE FIRST
Financial Services Council Ltd ABN 82 080 744 163
Level 24, 44 Market St Sydney NSW 2000
T. +61 2 9299 3022 F. +61 2 9299 3198
E. info@fsc.org.au W. fsc.org.au