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To Whom It May Concern

Submission on May 2024 proposals to reform Australia's anti-money laundering and counter-terrorism financing regime

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Attorney-General's Department's (the Department) consultation on reforms to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

This submission is focused on responding to two papers from the second stage of consultation released in May 2024 (the 2024 proposals), namely '[Paper 1: Further information for real estate professionals](#)', and '[Paper 5: Broader reforms to simplify, clarify and modernise the regime](#)' (which will apply to current and new proposed reporting entities).

The Property Council welcomes amendments made by the Department from its original proposals (the 2023 proposals), which better align it with international standards set by the Financial Action Task Force (FATF).

In our 2023 submission, we made recommendations to the Department on adopting a risk-based approach in order to limit the regulatory burden on industry to those activities of heightened risk and where industry could have the most impact in detecting, deterring, and disrupting money laundering activity.

The 2024 proposals represent an improvement for industry, but there remain a number of matters which require further review and engagement by the Department to ensure any prospective legislation or regulation is fit-for-purpose and can be implemented practicably by industry.

Response to detailed proposal for real estate professionals

Residential leases, commercial leases and property management

The Property Council strongly welcomes the decision to remove residential and commercial leases, and property management from the proposed regulation. This decision represents the most important and significant change from the 2023 proposals, which would have forced entities

to conduct customer due diligence (CDD) on a high volume of low value transactions which we identified as posing a low risk.

Further, as identified in Paper 1, these activities fall outside the scope of the FATF recommendations, namely recommendation 22 relating to designated non-financial businesses and professions (DNFBPs). As such, and in response to industry feedback, it is appropriate that they are not regulated in line with other transactions, namely the buying and selling of real estate.

Further clarity is required for land lease transactions and other long-term arrangements, where the terms of agreements are defined in years and decades, rather than in the short to medium-term.

For example, where chattels or fixtures are included in a land lease or long-term lease arrangement, there should be clarity on whether these transactions will be considered designated services or as residential and/or commercial leases (and thus not regulated).

Residential land lease transactions are largely regulated under manufactured homes or caravan park legislation and involve a buyer paying consideration for the purchase of chattels (being the manufactured or relocatable home) and entering into a site access agreement for nil consideration.

The buyer is required to pay periodic and recurring site access fees under the site access agreement. The collection of site access fees is captured as a property management activity under state-based real estate legislation and therefore is more closely aligned with residential leasing activities.

Any extension of the regime to residential land lease transactions may inadvertently bring caravan park operators within the AML/CTF legislation.

Proposed designated services

1. Brokering the sale or transfer of real property on behalf of one or more sellers, in the course of carrying on a business. The customer is the seller of the real property.
2. Brokering the purchase, or transfer of real property on behalf of one or more buyers, in the course of carrying on a business. The customer is the buyer of the real property.
3. Selling real property in the course of carrying on a real property selling business without the involvement of a real estate agent. The customer is the buyer of the property.

The Property Council supports clearly defining who is responsible for the AML/CTF obligations in relation to newly regulated services (i.e. real estate and professional services), and at what point in a transaction these obligations apply ('who and when'). The Property Council recommends that a regulated entity is only responsible for monitoring the customer in which the entity has a direct business relationship with, as is required in New Zealand.

There are a number of services which require clarity from the Department and AUSTRAC when developing the underlying AML/CTF rules and associated guidance, following the passage of legislation, to clarify whether they are designated services or not, including but not limited to:

- Conjunction agreements, where one entity transfers their obligation or right to sell a property to another entity, and each receiving an agreed earning or commission.

- Initial refundable deposits (or holding deposits), which can be requested by real estate professionals to secure buyers' interests. These are paid prior to a full deposit and contract for sale is signed, are of a low dollar value (as low as \$1,000 in some jurisdictions such as NSW) and are fully refundable.
- Granting of easements and land dedications to public or utility authorities, or the grant of mortgages, and
- Auction services, including the practical difficulties of conducting CDD on all registered bidders prior to auction.

As a matter of principle, and in order to reduce duplication and double handling of transactions, wherever possible real estate professionals should be able to rely on other professionals' customer identity checks, and where the client is assessed as low risk.

Paper 1 refers to an example of a buyer's agent that undertakes Know Your Client (KYC) on their own customer, who is the buyer at the time of completing the agency agreement. The same example then references the buyer's agent requesting the seller's identity information from the seller's agent (who would already have been obligated to conduct KYC on the seller, as their client).

A view has been expressed by government that multiple reporting of the same entity in a transaction is considered desirable, because it entrenches redundancy and ensures customers' activities are reported.

The Department must strongly consider whether this redundancy in fact promotes complacency amongst regulated entities, particularly in resource-poor and newly regulated entities (i.e. an assumption that the other entity will cover it).

By clearly defining who is responsible for performing CDD and when removes ambiguity, clearly identifies obligations and removes double handling of the same transaction.

Sector-specific guidance

The Property Council supports the Department's proposal for the Australian Transaction Reports and Analysis Centre (AUSTRAC) to work closely with industry in order to develop sector-specific guidance and to support newly regulated businesses to comply with their obligations.

The Department and AUSTRAC must work with industry to prepare clear guidelines in relation to the undertaking of CDD, in particularly the reliance on shared assessments among real estate professionals and other reporting entities for initial CDD, including not requiring a politically exposed person (PEP) or sanctions screening where a customer has been assessed as low risk or eligible for simplified CDD.

In addition, guidance should be prepared for the requirement of ongoing CDD for transactions with long lead times, such as off-plan purchases, new developments and large commercial transactions which may be subject to other regulatory approvals, not limited to the Australian Competition and Consumer Commission (ACCC, in relation to merger approvals) or the Foreign Investment Review Board (FIRB, in relation to the review of investment proposals).

Further guidance should be provided, and an appropriately long transition period, when graduating existing customers into an entity's new AML/CTF regime, as well as advice on developing risk enterprise and individual risk assessments (with appropriate best-practice templates), and detailed guidance of the role of the AML compliance officer and committees.

Sector-specific guidance should be developed with industry, with appropriate consultation and in a methodical manner. The Property Council would support the creation of a technical advisory committee of real estate industry professionals to assist the government in developing its guidance.

Training and education

The Property Council welcomes the government's \$166.4 million investment in the 2024/25 Budget for AUSTRAC to implement the new regime and to engage with industry to prepare for and meet their obligations.

Larger entities and smaller firms will have vastly different resources to undertake the appropriate training in time for implementation. The Impact Analysis Survey conducted during the May 2024 consultation elicited feedback from sectors not familiar with the AML/CTF regime, with some reporting that the surveys provided by the Department proved lengthy and complex.

This should provide clear insight to the Department and AUSTRAC of the level at which some stakeholders, who are not currently regulated, are engaged in the nuances of the regime and their new obligations.

Paper 5 refers to an example of an eight-year-old child opening a savings account with a bank, depositing \$5 a week, and subsequently being assessed as low risk and requiring simplified CDD. This example would be useful to an already regulated entity – such as a bank – but not newly regulated entities such as real estate professionals.

The Department must issue sector-specific guidance which reflects routine, day-to-day transactions and services including identifying potential suspicious matters in the real estate sector in order to provide a safe harbour for employees and AML/CTF officers.

Reporting certain transactions and suspicious activity

Paper 1 notes that entities will be required to submit a Suspicious Matter Report (SMR), if they suspect on reasonable grounds that criminal activity is taking place, not limited to money laundering, proceeds of crime and tax evasion.

The existing SMR obligations however also refer to the requirement for an entity to report any customer who commits, or which there are reasonable grounds for suspicion, an offence against a Commonwealth, State or Territory law.

The Department should consider the practicality of requiring entities, through their employees and AML/CTF compliance officers, to make appropriate assessments regarding all applicable law in Australia, and to submit an SMR within three business days.

The Property Council supports maintaining the current SMR requirements for reporting where you reasonably suspect a person is committing a crime, is not who they claim to be, or could be the victim of a crime.

Broader reforms to simplify, clarify and modernise the regime

The Property Council welcomes the proposal to simplify the AML/CTF regime as they apply to all reporting entities, and to better facilitate an outcomes-based approach to the regulation. We welcome the Department's proposal to ensure the broader package of reforms are implemented prior to the mandating of obligations for new entities, to simplify the transition and allow entities appropriate time to implement AML/CTF programs.

'Business group' concept

The Property Council welcomes the implementation of a 'business group' concept which automatically includes related entities in a corporate group or other structure.

This concept is important in order to capture the variety of corporate structures present in the Australian context, in particular within the real estate industry. These include but are not limited to real estate investment trusts (REITs), stapled groups, limited partnerships (LPs) and unlisted property funds.

Consideration should be given to syndicates and joint ventures to ensure it is clear who is responsible for the AML/CTF obligations, such as the parent entities individually or together, or the syndicate/joint venture individually.

Entities within syndicates or joint ventures should be able to report the activities of those arrangements in a manner most appropriate for them, that is otherwise consistent with the broader regulation.

Further clarity is required for permanent establishments offshore, and how they will be regulated. Consideration should be given for regulated entities to be in a business group in one jurisdiction, and in a business group of another jurisdiction.

Simplification of customer due diligence obligations

The Property Council welcomes the proposal to allow simplified CDD for customers assessed as low risk and moving away from the prescriptive nature of the current regulations.

In order to simplify the requirements for ongoing CDD, there should be no positive obligation required other than when a risk rating is changed (for example, from low risk to medium or high risk). This will allow entities to undertake a risk-based reporting and compliance approach to their obligations.

As part of its sector-specific guidance, the Department should provide specific examples such as:

Example A

If the customer/client is a publicly listed company or has 25% or more ultimate ownership by a publicly listed company in any jurisdiction which has a sufficient AML/CTF regime, the customer/client should be assessed as low risk as the company would have ongoing CDD to remain listed in its jurisdiction.

As such, the customer/client would be deemed low risk, and simplified CDD should be applied.

Example B

If the customer is a private Australian company, is well known in the market and provides services or products that are deemed low risk, there is no requirement to screen the Ultimate Beneficial Owners (UBOs).

Simplified CDD should be applied.

Example C

If a purchaser in a residential conveyance transaction has an incoming financier (as opposed to a cash buyer), the financier would have conducted CDD on their customer as part of their business and is therefore deemed as low risk.

Simplified CDD should be applied.

Delegated authority to the AUSTRAC CEO

Paper 5 also refers to a rule-making power in the Act to allow the AUSTRAC CEO the power to make a number of changes to the regulation, such as regarding simplified CDD, including mandating certain factors and outright prohibiting some circumstances, as well as in respect to group AML/CTF policies, systems and controls, and subsidiaries.

The Property Council recommends that the AUSTRAC CEO should instead seek approval from the Attorney-General in order to make these amendments, consistent with the view of the Senate Standing Committee for the Scrutiny of Delegated Legislation, as it may limit parliamentary oversight and accountability.

Collection and retention of sensitive data

This new collection of data, including personal information relating to names, residential addresses and dates of birth, and determinations of individuals as politically exposed persons (PEPs) or as sanctioned parties represents a risk for newly regulated businesses.

Paper 5 notes the Department is committed to exploring options to reduce the requirements for sensitive data collection, and the Property Council would welcome facilitating engagement between the Department and industry on our capabilities and requirements to run an AML/CTF regime that is safe for consumers who access real estate services.

These new obligations for real estate professionals to request and retain sensitive data makes them vulnerable to a number of cyber risks including data breaches and ransomware.

To respond to this new vulnerability, the Department should consider what level of retention is required for identity documents (i.e. not retaining photocopies of passports or drivers' licenses or recording license or document numbers), and instead recording whether a document has been sighted.

The Department should engage with the Office of the Australian Information Commissioner (OAIC) to prepare a whole-of-government approach to engaging industry on their obligations and opportunities to support their retention of sensitive data.

The Parliament recently passed the Digital ID Bill 2024 and the Digital ID (Transitional and Consequential Provisions) Bill 2024, which in part enabled expansion of the Australian Government Digital ID system for use by Commonwealth, state and territory governments, and eventually private sector organisations.

The government should consider fast-tracking implementation of secure and voluntary ways for customers to verify their identity and there for businesses to undertake KYC obligations. This is consistent with the expressed aim of the Department which is looking to ensure the AML/CTF regime remains technology neutral.

Definition of a 'business relationship' and 'occasional transaction'

The Property Council welcomes defining the terms 'business relationship' and 'occasional transaction' in order to provide certainty for industry when assessing which customers should be subject to ongoing CDD.

It's important to reduce complexity by making the definitions as simple as possible, in order to reduce both over-compliance and regulatory breaches through misinterpretation. The Department should also consider comparisons to other jurisdictions in order to align the Australian definitions with international practice, where possible.

The regulation must clearly delineate when an ongoing business relationship ends, to distinguish between that relationship and occasional transactions.

For example, where entities remain in contact but do not perform designated services (such as real estate professionals sending electronic direct marketing to customers), the relationship should still be considered an occasional transaction and not a business relationship subject to ongoing CDD or transaction monitoring.

The Property Council recommends that a business relationship, in terms of a real estate transaction, should end once the title (i.e. the legal right to own, use or sell) is transferred.

Transitional arrangements and grandfathering provisions

The Property Council recommends that real estate professionals be afforded a 15-month period to implement the reforms. New Zealand's Department of Internal Affairs (DIA) conducted desk-based reviews to review whether regulated entities are meeting the minimum standards of their obligations, such as whether they had an AML/CTF regime and appropriate compliance officer when new reporting entities were introduced to the regime in 2019.

The Department should consider whether these desk-based reviews will assist newly regulated entities during the transition period, before obligations are mandatory and legally enforceable.

Paper 5 proposes to transition pre-commencement customers into the new regime if there is a material change to their business relationship presenting a medium or high risk and extending the requirements for risk-ratings to all customers (including pre-commencement customers).

The Property Council recommends an appropriate further transition period of two years to conduct risk-ratings for existing customers, to allow newly regulated entities the time to balance the creation and management of an AML/CTF program, their obligations for new customers, and finally transitioning to new arrangements for their existing clients.

Milestone	Transition period
AML/CTF program must be operational	15-months from implementation date
Initial and ongoing CDD for new customers	15-months from implementation date
Risk-rating and appropriate onboarding (where appropriate) of existing customers	Two-years from implementation date

The government provided a 15-month 'policy principles period' when the AML/CTF Act was implemented from December 2006. The government should provide the same undertaking that AUSTRAC would only take action where a reporting entity has failed to take reasonable steps towards compliance under the Act during this period.

The Property Council would welcome the opportunity to discuss this submission in more detail. Please reach out to Dan Rubenach, Policy Manager at drubenach@propertycouncil.com.au to arrange a meeting.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Antony Knepe', followed by a small dot.

Antony Knepe
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