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14 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email only: legcon.sen@aph.gov.au

To Whom It May Concern

Submission on the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024

The Property Council of Australia (the Property Council) welcomes the opportunity to respond to the Senate Legal and Constitutional Affairs Committee's inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the Bill).

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.

The Property Council supports the intent of the Bill, that is to reform Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime and to extend it to regulate real estate professionals, in order to meet our international obligations to the Financial Action Task Force (FATF), which sets international standards to prevent global money laundering and terrorist financing.

Grey listing by the FATF

Meeting our obligations is central to maintaining the confidence of our international partners, including the FATF and foreign jurisdictions. The ongoing non or partial compliance to a number of requirements, including regulating Designated Non-Financial Businesses and Professions (DNFBPs) such as real estate professionals risks Australia being "grey listed", a determination by the FATF that Australia does not meet its minimum standards and requires increased monitoring.

The risk to Australia's economy and financial system as a result of being grey listed by the FATF outweigh any proposed increased regulatory cost on industry. The Property Council strongly encourages the Parliament to engage with this Bill from this important premise.

Avoiding a grey listing by the FATF should be a priority for the Parliament. Grey listing, whilst not as serious as black listing, still places Australia on the path to becoming a high-risk jurisdiction, causes significant damage to Australia as a destination for foreign investment as well as our ability to access international capital markets.

Grey listing of Australia by the FATF would impact significantly on capital flows into Australia. An International Monetary Fund (IMF) paper in 2021 estimated that "...[grey listing] results in a large and statistically significant reduction in capital inflows", using data from 2000-2017.¹

If the Parliament does not act now to avoid a grey listing, then it will be forced to act in the future to get off the listing by engaging with the FATF on a formal undertaking. As such, the Parliament can avoid the resulting reputational and economic damage by implementing these reforms now.

Previous submissions

The Property Council has made two previous submissions to the Attorney-General's Department (the department) regarding its proposed reforms to the AML/CTF regime, in [June 2023](#) and [May 2024](#).

A number of substantive policy matters have been addressed by government, including but not limited to removing residential leases, commercial leases, and property management from the proposed regulation. This was important, firstly as we identified these services as a high volume of low-risk transactions, and as regulating these services was not required in order to ensure compliance to the FATF's standards.

This, combined with clarifications from the department through the Explanatory Memorandum (EM) on its proposed designated services, such as confirming that auctioneer services are not intended to be regulated, as well as dwellings not attached to land that are sold as chattel, have been welcomed by industry.

The Property Council has commenced engagement with the Australian Transaction Reports and Analysis Centre (AUSTRAC) and looks forward to engaging with the agency further as the AML/CTF Rules are prepared later in 2024.

The importance of streamlining the proposed regulations will be central to limiting any superfluous reporting under the new regime. With AUSTRAC's reporting population increasing from approximately 17,000 to 90,000 entities, it's important to continue to clarify designated services to ensure the regulatory response is risk-based and proportionate.

The Property Council proposes a number of amendments or clarifications the department may make, either in substantive form in the Bill, or through the EM.

Proposed designated services

There are four outstanding matters which the Property Council has identified as requiring further investigation by the department:

1. Defining the leasehold interest threshold at 20 years or less
2. Residential site agreements and land lease
3. Conjunction agreements, and
4. Initial Refundable Deposits (IRDs).

¹ Mizuho Kida and Simon Paetzold, *IMF Working Paper: The Impact of Gray-Listing on Capital Flows: An Analysis Using Machine Learning*, 2021

Leasehold interest threshold

The Bill defines real estate (in part) as an interest in land including a leasehold interest of more than 20 years. The EM explains that this would exclude ordinary commercial leases from regulation under the regime.

The Property Council recommends this threshold be re-examined by the committee. The department has stated that the purpose of not regulating leases considered 'ordinary' was that they did not exhibit ownership-like qualities or interests, such as if the lease was for a length of 50 or 99 years, however this is not expressed in the EM.

The Property Council would welcome engagement with the committee at what length of lease, in practice, ownership-like qualities are transferred.

Whilst we maintain our position that a threshold of at least 50 years is appropriate, the committee may consider a threshold of 30 years would be more appropriate in order to not provide for unnecessary regulation and balance the views of the department and industry.

Residential site agreements and land lease

The EM states that dwellings (such as mobile and modular homes) are not intended to be captured, however the leases (also known as residential site agreements) for these manufactured homes are perpetual and will therefore be captured under the leasehold interest threshold.

As a consequence for land lease communities the sale of the dwelling will not be captured, however the lease (or residential site agreement) will.

In order to align land lease with the broader exemption for residential tenancies, the Property Council recommends that leases granted under relevant state and territory land lease legislation should be excluded from the definition of real estate, including the:

- Residential (Land Lease) Communities Act 2013 (NSW)
- Manufactured Homes (Residential Parks) Act 2003 (Qld)
- Residential Parks (Long-Stay Tenants) Act (WA)
- Residential Tenancies Act 1997 (Vic)
- Caravan Parks Act 2012 (NT)
- Residential Parks Act 2007 (SA), and
- Residential Tenancy Act 1997 (Tas).

Conjunction agreements

In our May 2024 submission, we sought clarification on conjunction agreements, that where one entity transfers their obligation or right to sell a property to another entity, and each receiving an agreed earning or commission.

These legal arrangements are not as extensive as a partnership or joint venture and may only refer to a particular transaction or individual property.

Without an explicit reference to conjunction agreements in the EM, the Property Council recommends clarifying that these arrangements would not require double handling of AML/CTF obligations under the Act.

For simplicity, the entity that is customer facing (i.e. is dealing directly with the customer) should be the entity that is obligated to conduct customer due diligence (CDD) as required by the Act.

Initial Refundable Deposits (IRDs)

The Property Council has continued to advocate to the department for the explicit removal of IRDs from the proposed designated services, as regulating them is inconsistent with establishing a risk-based and proportionate regime.

IRDs are not a home deposit, and do not by definition expressly lead to a designated service being provided, such as selling or transferring real estate.

In the case of off-the-plan apartments, residential master planned communities or greenfield residential developments it is common for customers to pay a fully refundable (initial) payment to demonstrate their interest in a particular property. Across different jurisdictions, markets and products in Australia, IRDs can range typically from \$1,000 to \$10,000.

As an expression of interest in a property only, they do not constitute a deposit, no binding agreement is made or legal documentation signed, and no service is being provided. In practice, many IRDs are paid within a sales office via payment card.

Following an IRD, a customer would then have to exchange contracts and pay the balance of the full deposit, in order to progress the transaction. It's at this exchange of contracts and balance paid that the business relationship, for the purposes of conducting CDD, should commence.

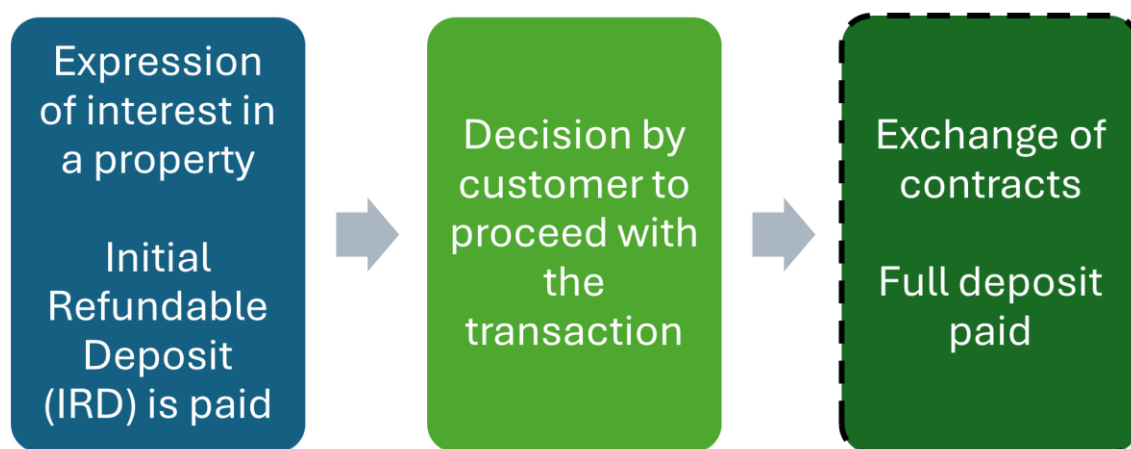


Figure 1 – in this example, a customer has made an Initial Refundable Deposit (IRD) on a residential property. Following this, a decision is made by the customer to proceed with the transaction. Before contracts are exchanged and a full deposit paid, the reporting entity must conduct customer due diligence (CDD).

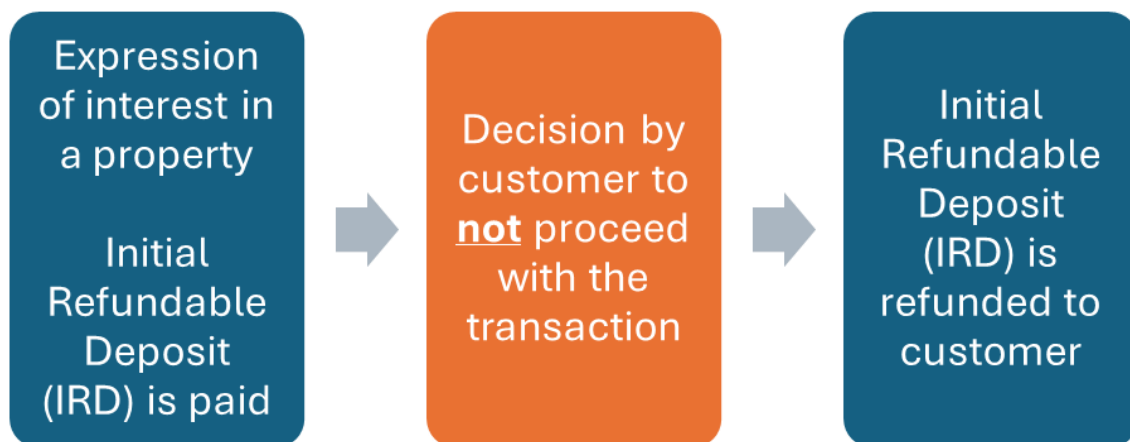


Figure 2 – in this example, a customer has made an Initial Refundable Deposit (IRD) on a residential property. Following this, a decision is made by the customer to not proceed with the transaction. The IRD is refunded to the customer.

As the designated service has not proceeded, no customer due diligence should be undertaken.

Other matters

The Property Council has identified two other matters which should be further scrutinised through the final form of the Bill and the formulation of the AML/CTF Rules later in 2024.

Transitional arrangements

The Property Council supports the arrangements outlined in Schedule 12 that allow the Minister administering the AML/CTF Act to make transitional rules relating to the Bill.

Clarity is sought on the arrangements for pre-commencement customers during the transition. The EM states that pre-commencement customers will transition to being an ordinary customer (for the purposes of the Act) following becoming subject to initial CDD.

The Property Council is seeking further information on what impact this will have on transactions that begin prior to the transition period but finalised at a later stage, potentially under the new regime. Ensuring clear guidance can be provided to industry during this transition period; in order to drive compliance and ensure reporting entities are aware of their obligations.

Politically exposed person (PEP) screenings

The Bill provides for the screening of customers as politically exposed persons, or PEPs, due to the risks associating with corruption, bribery and money laundering. In practice, PEP screening requires entities to screen customers on a database, watchlist or similar, and has a meaningful regulatory impact on reporting entities

In order to reduce the regulatory burden on business and avoid unnecessary regulation resulting from incorrect or false positives, where a transaction or customer has been otherwise identified as low-risk, a PEP screening should not be mandatory.

For entities who deal with a high volume of low-risk transactions, the regulatory cost of conducting PEP screenings outweighs the benefit of regulation. Of course, where a reporting entity identifies a customer as medium or high risk, or requiring enhanced CDD, or who could potentially be a foreign or international organisation politically exposed person, then a PEP screening is appropriate.

The Property Council would welcome the opportunity to discuss this submission in more detail. Please contact 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', with a stylized flourish at the end.

Antony Knepe
Executive Director – Capital Markets