



Modernising Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime

Deloitte's response to Attorney-General's Department consultation
16 June 2023

16, June 2023

Attorney-General's Department
Attn: The Hon Mark Dreyfus KC MP
Submission via Online Portal

www.deloitte.com.au

Dear The Hon Mark Dreyfus KC MP

Deloitte's response to consultation on simplifying and modernising the Anti-Money Laundering and Counter-Terrorism Financing regime (Consultation Paper)

Deloitte established a dedicated financial crime advisory practice in Australia during 1999, and since this time, has worked with reporting entities, law enforcement agencies and Australian Transaction Reports and Analysis Centre (**AUSTRAC**) in the context of the Anti-Money Laundering and Counter-Terrorism Financing regime (**AML/CTF regime**). We are also closely connected with our global financial crime practice and leading practitioners in a number of jurisdictions, many of which have had, or are undergoing, similar transformations.

With this background, we welcome the opportunity to share insights on both the challenges and the significant opportunities of Australia's current AML/CTF regime, in response to the Attorney-General's Department (**AGD**) consultation on modernising Australia's Anti-Money Laundering and Counter-Terrorism Financing regime (**Consultation Paper**).

Deloitte supports the stated intention of the AGD to simplify and modernise the AML/CTF regime as outlined in Part 1 of the Consultation Paper. At the heart of our submission is the premise that we must use this reform as a starting point to a longer-term pursuit of **effectiveness** of both the AML/CTF regime itself, but also of the introduction of other measures and initiatives that are required to comprehensively harden Australia against the threat of financial crime.

Within this submission we have outlined a number of relevant considerations with respect to both the simplification and the modernisation aspects set out within Part 1 of the Consultation Paper. We have not in this submission addressed the proposed reforms outlined in Part 2.

We would welcome the opportunity to further discuss any of our observations as part of the continued consultation process, including access to any of our global financial crime leaders.

Kind regards



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1. Executive Summary

The Consultation Paper recognises that in the years since the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (**the Act**) and the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (**the Rules**) were originally enacted, the operating and risk environment has changed, making it increasingly complex for Reporting Entities (**REs**) to address key regulatory obligations. We therefore support the need to simplify and modernise the Act and Rules.

The Financial Action Task Force (**FATF**), and most mature AML jurisdictions, are seeking greater “effectiveness” from the AML/CTF regime in light of the spiralling costs of compliance and limited empirical evidence that the fight against money laundering and terrorism financing (**ML/TF**) is being won.¹ The notion of effectiveness goes beyond technical compliance with FATF principles and instead focuses on specific regulations, resourcing and guidance targeting action that lifts regime outcomes.² We submit that the proposed simplification to the AML/CTF regime also considers measures to address effectiveness.

Australia will benefit from the development of an overarching Economic Crime Plan (similar to that established by the United Kingdom in 2019³ and updated in 2023 for the next 3 years)⁴, together with industry, that will architect a series of initiatives driving at greater effectiveness, including possible further reforms to the AML/CTF regime. We believe an Economic Crime Plan would provide the following:

1. Broader complementary actions, at regime level, designed to enhance the effectiveness of Australia’s AML/CTF regime as opposed to just technical compliance;
2. A roadmap for a suite of future reforms and activities that would incentivise more targeted investment and collective efforts in the fight against financial crime; and
3. A tangible vehicle to refine how Australia ensures unwavering leadership of this issue within government.

In this submission we have provided commentary on key effectiveness measures that we believe should feature in such an Economic Crime Plan, and/or which could be considered as part of this round of reforms. Doing so would, in our view, deliver significant and lasting value for Australia. In this respect, research and trends witnessed in other jurisdictions regarding the effectiveness of existing AML/CTF developments have been drawn on, as well as our discussions over recent years with industry leaders.

We recognise that some of the suggested broader reforms may be difficult to achieve within the envelope of this round of reforms. As such, we recommend a two-phase approach regarding the modernisation and simplification of the AML/CTF regime, namely:

1. Undertake immediate actions to correct known weaknesses (such as those measures identified in the consultation paper), in a way that encourages a greater focus on effectiveness; and
2. Hold further consultations with industry on identified limitations and opportunities to lift the effectiveness of the Australian AML/CTF regime to inform a strategy for further reform and other actions.

¹ FATF, ‘Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of the AML/CTF system’, accessed 25 May 2023.

² ‘Review of the UK’s AML/CTF regulatory and supervisory regime’, HM Treasury, June 2022, viewed on 25 May 2023.

³ ‘Economic crime plan 2019 to 2022’, HM Treasury and Home Office, 12 July 2019, viewed on 23 May 2023, <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022>.

⁴ ‘Economic crime plan 2023 to 2026’, HM Treasury and Home Office, 30 March 2023, viewed on 23 May 2023, [Economic Crime Plan 2 2023-26 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/publications/economic-crime-plan-2023-to-2026).

Our commentary regarding immediate actions is provided at section 2 *Simplification of the AML/CTF Regime – AML/CTF Programs*, and our suggestions in relation to holding further consultations with industry to lift effectiveness is at section 3 *Modernising the AML/CTF Regime*, where we discuss key measures including:

1. A strategic vision for the management of economic crime at a regime level;
2. The alignment of national ML/TF risk priorities and how the primary focus of REs needs to shift from maintaining technical compliance to a more outcomes-oriented approach;
3. Greater efforts needed on the recovery of the proceeds of crime;
4. Enhancing information and intelligence sharing by complementing the Fintel Alliance through private-to-private arrangements; and
5. Harnessing technology for better risk intelligence through innovation.



2. Simplification of the AML/CTF Regime - AML/CTF Programs

The Consultation Paper outlines that the purpose of the simplification of the AML/CTF regime is to remove complexity and streamline the obligations. Deloitte supports this objective but submits that a further aim should be ensuring that the AML/CTF regime is effective.

In the table below we have considered the initial proposals described in the Consultation Paper with respect to some of the different areas outlined. In this respect, we have not necessarily sought to directly answer the consultation questions posed but have provided considerations in response to the proposed reform models outlined in the Consultation Paper.

Area for proposed reform	Considerations
Simplifying the Act and Rules	It will be important for these reforms to more clearly set out the hierarchy and relationship between the Act, Rules and guidance, with greater explicit incorporation of the risk-based approach and the principle of effectiveness.
Streamlining Part A and Part B into a single program	<p>The merging of Parts A and B of an AML/CTF Program would resolve considerable confusion and technical challenges faced by many REs under the current regime. This change would enable REs to design a more holistic program that is effective in identifying, mitigating and managing relevant ML/TF risks. It would also ensure that there is a more explicit requirement for board oversight of all aspects of the AML/CTF Program. Some additional considerations:</p> <ul style="list-style-type: none">• There is opportunity for greater clarification on expectations of governance, assurance and oversight of the AML/CTF program, including clear articulation of the role, function and responsibilities of the governing board and senior management.• We believe that extending the independent review requirement to include Part B aspects would lead to greater focus from management and boards on the effectiveness of customer due diligence as a key preventative control.
Assessing and mitigating risk	The Consultation Paper outlines that the Act could be amended to be consistent with the expectations of FATF, such as taking steps to “identify, assess and understand” ML/TF risks. This has been implicit in the current regime but bringing this through more explicitly would ensure more consistency among REs. We submit that the obligation could be taken further, to require steps are taken to “identify, manage and <i>mitigate</i> ” ML/TF risks – this would obligate a more action-orientated approach to the design and implementation of an AML/CTF Program.

	<p>We believe that the governance and oversight of ML/TF risks of individual REs under their AML/CTF programs need to be improved. Specifically, the requirement as part of the risk-based approach, supported by detailed guidance, to assess, document, monitor and manage Risk Appetite.</p>
Internal controls	<p>We agree that a greater focus on controls is valuable, as it is important for REs to design, implement and test controls which support either mitigation of an identified risk or to ensure a key regulatory obligation is addressed. Some additional considerations:</p> <ul style="list-style-type: none"> • While it may be helpful to articulate in the Rules the key aspects of an AML/CTF Program that should have systems and controls, this should provide sufficient flexibility for organisations to determine what might be appropriate to mitigate risk in the context of the organisation’s size, nature and complexity. It will be crucial that any prescription outlined in the Rules will not be deemed a minimum standard. • AUSTRAC guidance could be developed to provide practical examples to industry of controls and characteristics required for these to be effective. • Clarifications proposed with respect to the role and responsibilities of the AML/CTF compliance officer, and on the topic of adequate resourcing and independence, are important and would strengthen a focus on resourcing as part of an effective AML/CTF Program. • We are supportive of the AML/CTF Compliance Officer (AMLCO) being at senior manager level, which would support the ability of that individual to effect change and maintain focus.
Group wide risk management for Designated Business Group (DBG)	<p>We agree that information should be able to be shared with entities that provide services to other entities within a corporate group and with existing DBG members. Some additional considerations:</p> <ul style="list-style-type: none"> • Many REs have contractual arrangements with third parties for the performance of some AML/CTF processes. We believe this is likely to be a growing trend and that reforms to the regime could be considered that better cater for these arrangements. For example, enabling information sharing with appropriate guardrails, and providing more guidance about requirements of review and testing of third-party arrangements to ensure continued effectiveness.
Foreign branches and subsidiaries	<p>We note that the current regulations for Australian businesses operating overseas are complex and often poorly understood. However, an obligation that requires a RE to determine and justify that an overseas AML/CTF regime is equivalent to Australian standards may not offer meaningful relief, unless the concept of “equivalence” is tightly defined, and/or additional guidance is provided that outlines jurisdictions that are deemed to meet this requirement. In our experience most REs seek to address Australian requirements in addition to any local requirements.</p>



Customer Due Diligence (CDD)	<p>We support amendments to the customer due diligence requirements of the AML/CTF regime that would enable REs to better attune their programs and processes to risks identified in their ML/TF risk assessments.</p> <p>Too much prescription should be avoided and is better suited to be included as AUSTRAC guidance. The risk assessment requirements in the Rules have led to ineffective and highly inefficient processes. For example, prescriptive ECDD requirements and processes that require significant investment of resource but may not result in ML/TF risks being mitigated by a RE.</p> <p>It requires sophistication to develop a process attuned to risk, so providing examples and expectations by way of AUSTRAC guidance would be helpful to ensure that REs understand what effective ECDD looks like.</p>
Amending the tipping-off offence	<p>Deloitte supports review of the tipping-off offence to mitigate unintended limitations on valuable intelligence sharing and enrichment, such as greater public-private and private-to-private information sharing. There should also be a focus on the overall efficacy in relation to the overarching purpose of disrupting financial crime associated with disclosures, to provide support for REs which have been fearful of inadvertently breaching this provision in the past. We believe a pivot to such a model, as seen in other jurisdictions, would make sense.</p>

3. Modernising the AML/CTF Regime

In Question 1 of the Consultation Paper the AGD asks respondents to consider: *How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?* In response to this, in this section we describe a number of measures that Deloitte believes would support the modernisation of the AML/CTF regime.

Overview

There has been a growing realisation among FATF-regulated countries, and the FATF itself, that technical or legal compliance with AML/CTF principles is not sufficient to mitigate contemporary money laundering risks. Effectiveness, a new measure of evaluation introduced by FATF in 2013, requires demonstrable **outcomes** across an AML/CTF regime. Based on the 4th round of FATF reviews (the outcomes of which are illustrated in the excerpt below, and a full table is included at <https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>), <https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>, even where there is a large degree of technical compliance with FATF standards (green on the technical side of the chart below), there is in most cases a far lesser degree of effectiveness in outcomes (amber or red on the effectiveness side of the chart below).

Updated 31 May 2023

Effectiveness

Ratings that reflect the extent to which a country's measures are effective. The assessment is conducted on the basis of 11 intermediate outcomes, which represent key goals that an effective AML/CTF system should achieve. For more information see: FATF Methodology

Technical Compliance

Ratings which reflect the extent to which a country has implemented the technical requirements of the FATF Recommendations. For more information see: FATF Methodology

FATF Methodology

FATF Recommendations

Jurisdiction (click on the country name to go to the report on www.fatf-gafi.org)	Report Date	Report Type	Assessment body/bodies	IO1	IO2	IO3	IO4	IO5	IO6	IO7	IO8	IO9	IO10	IO11	R1	R2	R3	R4	R5	R6	R7	R8	R9	R10	R11	R12	R13	R14	R15	R16	R17	R18	R19	R20	R21	R22	R23	R24	R25	R26	R27	R28	R29	R30	R31	
Australia	MER-FuRts	Aug-21	MONEYVAL	ME	ME	ME	SE	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Dec-19	MONEYVAL	ME	ME	ME	SE	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Aug-21	MONEYVAL	ME	ME	ME	SE	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER-FuRts	Dec-19	MONEYVAL	ME	ME	ME	SE	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Sep-17	MONEYVAL	SE	SE	ME	ME	ME	SE	ME	ME	SE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Dec-19	MONEYVAL	SE	SE	ME	ME	ME	SE	ME	ME	SE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Dec-19	MONEYVAL	SE	SE	ME	ME	ME	SE	ME	ME	SE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia & Bahrain	MER-FuR	Nov-21	CFATF	ME	ME	LE	ME	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia & Bahrain	MER	Jul-18	CFATF	ME	ME	LE	ME	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia & Bahrain	FuR	Nov-21	CFATF	ME	ME	LE	ME	ME	SE	ME	ME	LE	ME	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER-FuRts	Jul-18	MONEYVAL	ME	SE	ME	SE	SE	ME	LE	LE	SE	SE	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Jul-18	MONEYVAL	ME	SE	ME	SE	SE	ME	LE	LE	SE	SE	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Jul-18	MONEYVAL	ME	SE	ME	SE	SE	ME	LE	LE	SE	SE	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Jul-22	CFATF	SE	SE	SE	SE	ME	SE	ME	SE	ME	SE	ME	PC	LC	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Australia	MER-FuRts	Oct-19	FATFAPG	SE	SE	ME	ME	SE	ME	SE	ME	SE	ME	SE	PC	LC	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Australia	MER	Apr-19	FATFAPG	SE	SE	ME	ME	SE	ME	SE	ME	SE	ME	SE	PC	LC	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Australia	FuR	Oct-19	FATFAPG	SE	SE	ME	ME	SE	ME	SE	ME	SE	ME	SE	PC	LC	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Australia	MER-FuRts	Nov-18	FATF	ME	SE	ME	ME	ME	LE	LE	ME	SE	ME	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Sep-18	FATF	ME	SE	ME	ME	ME	LE	LE	ME	SE	ME	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Dec-17	FATF	ME	SE	ME	ME	ME	LE	LE	ME	SE	ME	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER-FuRts	Nov-18	FATF	ME	SE	ME	ME	ME	LE	LE	ME	SE	ME	SE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Dec-22	CFATF	LE	ME	ME	ME	ME	ME	LE	LE	LE	LE	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Aug-17	CFATF	LE	ME	ME	ME	ME	ME	LE	LE	LE	LE	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Dec-19	CFATF	LE	ME	ME	ME	ME	ME	LE	LE	LE	LE	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Dec-21	CFATF	LE	ME	ME	ME	ME	ME	LE	LE	LE	LE	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	Dec-22	CFATF	LE	ME	ME	ME	ME	ME	LE	LE	LE	LE	LE	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER-FuRts	May-22	MINAFATF	ME	SE	SE	ME	ME	ME	ME	ME	ME	ME	ME	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	MER	Sep-19	FATF/MENAFATF	ME	SE	SE	ME	ME	ME	ME	ME	ME	ME	ME	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Australia	FuR	May-22	MINAFATF	ME	SE	SE	ME	ME	ME	ME	ME	ME	ME	ME	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC
Bahamas	MER-FuRts	Dec-20	APG	ME	SE	SE	ME	LE	ME	LE	SE	ME	SE	PC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC	
Bahamas	MER	Nov-19	APG	ME	SE	SE	ME	LE	ME	LE	SE	ME	SE	PC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC	
Bahamas	FuR	Sep-19	APG	ME	SE	SE	ME	LE	ME	LE	SE	ME	SE	PC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC	
Bahamas	FuR	Aug-19	APG	ME	SE	SE	ME	LE	ME	LE	SE	ME	SE	PC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC	
Bahamas	MER	Dec-20	APG	ME	SE	SE	ME	LE	ME	LE	SE	ME	SE	PC	LC	LC	LC	LC	C	PC	LC	LC	LC	LC	LC	LC	LC	C	PC	LC	LC	LC	C	LC	C	LC	LC	PC	PC	LC	LC	PC	LC	C	LC	

The challenge to improve effectiveness is great, but Deloitte's view is that any increase in the effectiveness of the Australian AML/CTF regime would support a more targeted and purposeful application of the very significant resources that are dedicated to preventing financial crime.

Encouragingly, a number of G7 and OECD nations are leading the way in introducing or trialling a range of measures designed to increase the effectiveness of their AML regimes. We have outlined our high level observations of some of these measures, with a view to promoting further consultation and discussion on their application to the Australian regime, and the role they (or other measures promoting effectiveness) may play as part of a long-term economic crime strategy for Australia.

4. Enhancing information and intelligence sharing; and
5. Harnessing technology for better risk intelligence.

Strategic vision of economic crime at a regime level

In order to truly strengthen Australia against the threat of financial crime, and thus achieve “effectiveness”, we believe that Australia will need a ‘whole of system approach’ to embrace a range of measures and to better harness and incentivise the commitment and investment of the private sector.

The United Kingdom (UK) Home Office released an Economic Crime Plan (**the Plan**) in 2019⁵ (recently updated) which represented a step-change in the UK’s response to economic crime and set a roadmap to guide future responses to new threats. The Plan encourages private and public sectors to jointly develop, draft, implement and operate a shared strategic vision in the fight against economic crime including the sharing of risk-based intelligence. The collective effort to produce the Plan encourages future collaboration and secures genuine commitment from all sides. The strategic vision is supported by plans, processes, common Key Performance Indicators (KPIs) and a roadmap to promote collective understanding and accountability.

The Plan is reported to have already resulted in a collective focus at the regime level, resourcing on shared goals, delivery of stronger intelligence and an improvement of ongoing identification and management of risk.⁶

We believe that Australia would greatly benefit from adopting the UK’s approach by developing a shared strategic vision on economic crime and roadmap together with clear measurement of its progress. This strategy would promote targeted action and investment and further promote the exchange of key skills and infrastructure in the fight against economic crime.

We understand that a strategy of this nature, which genuinely brings in both public and private sector participants, will be time consuming to plan and implement and will ultimately require further legislative change. However, we believe that in due course the results would offer a strong opportunity to materially lift the outcomes of Australia’s AML/CTF regime.

Alignment to national ML/TF risk priorities

We believe the current version of the Act and Rules needs to shift the primary focus of REs from maintaining technical compliance to a more demonstrable risk-based **and** outcomes-oriented approach.⁷ The absence of defined, consistent and timely measurements of the costs and outcomes of the Australian AML/CTF regime currently limits the availability of data to assess the relative value of the activities being performed by all stakeholders. We believe that a consistent and timely way of measuring these factors is important to ensuring that the ever-increasing cost of the fight against economic crime is applied (and where required, re-prioritised) to where the regime benefits can be most effectively realised.

An example of this shift is in the United States of America (US), through the AML Act of 2020 (**US AMLA**) which has recalibrated a focus from maintaining technical compliance to a more risk-based, innovative and

⁵ 'Economic crime plan 2019 to 2022', HM Treasury and Home Office. 12 July 2019, viewed on 23 May 2023, <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022>.

⁶ 'Economic crime plan 2019 to 2022', HM Treasury and Home Office. 12 July 2019, viewed on 23 May 2023, <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022>.

⁷ Financial Action Task Force (FATF), “Money laundering and terrorist financing risks,” accessed May 22, 2023.

outcomes-oriented approach.⁸ One way in which the US AMLA achieves this is per section 6101 which legally enforces the need to incorporate national AML/CFT priorities into the AML/CFT program of regulated entities. Once the AML/CFT priorities are established, the Financial Crimes Enforcement Network (**FinCEN**) has 180 days to promulgate regulations in order for FIs to incorporate them.

FinCEN is further obligated to undertake the following actions:

1. review and update the AML/CFT priorities every four years, in consultation with other regulators;
2. publish threat pattern and trend information at least every six months; and
3. communicate regularly with, as well as give and receive feedback from, financial institutions (**FIs**) and regulators.

By establishing national priorities and understanding these ML/TF risks, it is more likely that a risk-based, outcomes driven approach can be achieved. This is because countries properly understand the risks that pertain to them, allowing for the implementation of AML/CTF measures that effectively mitigate the identified risks and an efficient, prioritised allocation of resources. This is further evident in the US where FinCEN releases Suspicious Activity Report (**SAR**) filing trend data which allows REs to properly assess risk and remain at the forefront of emerging national threats. By publicly sharing SAR trends, REs have a better comprehension of where the risks are deriving from and how internal controls can be amended in response.

In addition to the US adopting this approach and FinCEN issuing the first government-wide priorities for AML/CTF policy on 30 June 2021, the Monetary Authority of Singapore (**MAS**) has been issuing a National Risk Assessment (**NRA**) report since 2014 so that FIs can take it into account when assessing their ML/TF risks.⁹ MAS also conducted a Terrorism Financing (**TF**) NRA in 2020 which collected experience and observations from all relevant authorities, including the private sector and academia so to deepen the understanding by law enforcement agencies, regulators and the private sector of what Singapore's key TF threats and vulnerabilities are.

We acknowledge that AUSTRAC intends to release a NRA in 2023, so we take this opportunity to confirm our support of this action. Australia establishing national risk priorities, and even releasing SMR filing trend data on a quarterly basis, will help to improve the efficiency and effectiveness of the AML/CTF regime as well as assist REs in tailoring their AML/CTF programs. As this process matures, this should enable REs to prioritise investments by dialling up and down on resources and focus based on the disclosed national priorities.

Enhancing information and intelligence sharing

The establishment of the Fintel Alliance in 2017 was a critical development and saw Australia take a lead role in advancing public-private partnerships and enhancing the effectiveness of the Australian AML/CTF regime. The sharing of information through this forum has enabled a more effective fight against financial crime by creating an increased 'whole of system approach'. However, through its operating framework it is somewhat limited by scale and ability to address the risks within some sectors of regulated entities within the Australian economy.

We believe, as has been trialled abroad, that private-to-private information sharing to complement the Fintel Alliance would demonstrably lift the effectiveness, efficiency and outcomes of an AML/CTF regime

⁸ Deloitte US, Anti-money laundering (AML) program effectiveness, [AML Program Effectiveness Reform | Deloitte US](#), 2021.

⁹ Monetary Authority of Singapore, National Risk Assessment, [Terrorism Financing National Risk Assessment 2020 \(mas.gov.sg\)](#), 7 October 2022.

and can work alongside existing and/or new public-to-private sharing arrangements. All such arrangements should be designed and reviewed on effectiveness of outcomes, and not simply a design framework. As indicated earlier, regime level objectives should be set and all parties within the regime measured on these objectives.

Whilst the Consultation Paper intimates enhanced information sharing as part of proposals to amend the 'Tipping-off Offence', we encourage further dialogue and appropriate legislative reform for the enhancement of information sharing in all ways, including public-to-private, public-to-public, private-to-private and local-to-global to ensure the proposed AML/CTF reforms are as impactful as possible. Noting that section 7 of the *Crime and Courts Act 2013* in the UK considers information sharing outside of the 'suspicion' regime, giving greater flexibility around what can be shared to deliver outcomes.

The sharing of risk intelligence at all levels across the AML/CTF regime will also promote a focus on broader outcomes including enhanced cooperation, increasing not only the recovery of the proceeds of crime rather than only prosecutions, but also enabling a more timely awareness of and reaction to emerging criminal activity.

Both domestically and globally the fight against fraud is further advanced in taking a broader or ecosystem view to address the level of fraud. In the fraud context, the benefits of information and intelligence sharing across all stakeholders is better defined in practices and legal frameworks, and the pooling and data analysis of shared risk data is already delivering enhanced outcomes. It seems anomalous that the efforts and techniques to combat fraud, a predicate offence under legislation, have not already been adopted by all country AML/CTF regimes to lift the effectiveness of AML/CTF in the same way it has impacted fraud. We strongly recommend that this issue be subject to further consultation to test the extent to which collaboration on fraud could be harnessed by the Australian AML/CTF regime.

A modernised Australian AML/CTF regime will be more effective and efficient if financial intelligence such as financial activity, threat and risk data (both domestically and internationally) is shared across the financial crime ecosystem¹⁰. To achieve an outcomes-oriented approach, it will be essential to share information pertaining to SMRs as well as beneficial owners. In addition, data protection and security issues will need to be considered and competing objectives openly discussed and managed.

Detailed below are considerations for Australia in respect of the sharing of information pertaining to SMRs and beneficial owners, based on overseas experiences:

Suspicious Matter Reports (SMRs)

Section 41 of the Act requires a reporting entity to submit a SMR if there is a suspicion that a person or transaction is linked to a crime. With the current AML/CTF regime, two things are occurring:

1. It is understood that there are high volumes of low value SMRs being submitted to AUSTRAC. This is likely due to a lack of clarity regarding the required content of SMRs in the AML/CTF regime as well as there being no penalty for over-reporting. As a result, resources are taken away from progressing pertinent financial crime intelligence in a timely manner. Imposing a penalty for overreporting is not the solution, instead we believe that enhanced sharing of intelligence through, for examples, the mechanisms detailed in this submission would promote more targeted and

¹⁰ The Institute of International Finance and Deloitte White Paper, 'The effectiveness of financial crime risk management reform and next steps on a global basis', November 2021.

complete summaries of risk intelligence, enabling those responsible for investigating said events in a more efficient and complete manner; and

2. The offence of tipping off¹¹, as currently drafted, is preventing crucial information being shared across private-to-private channels (including within REs if not considered a part of the DBG).

By way of an example of the benefits of private-to-private information sharing on regulatory reporting across the AML/CTF regime, the US introduced a “Super Suspicious Activity Report” (**SuperSAR**) which enables information sharing between regulated sector entities to file a joint Suspicious Activity Report (**SAR**). The SuperSAR collates information from a variety of sources and in turn, produces a higher quality submission of data to FinCEN. Similarly, this concept was introduced in the UK under section 339ZB of the *Proceeds of Crime Act 2002* and although it is not widely utilised presently, it is gaining momentum and institutions have begun to experiment with its application.

Beneficial Ownership (BO)

Greater transparency in Beneficial Ownership (**BO**) is recognised as being critical in combatting criminal activity.¹² FATF Recommendation 24 embeds the concept of BO registries as they create a single source of truth. The UK implemented a central BO registry through enhanced capabilities of the existing Companies House, driven by the potential threat posed by Russian or other foreign ownership of the property market. The UK’s proposed approach is industry leading and highlights a strategic repositioning of the role of the company registry in the financial crime ecosystem including new investigative and intelligence sharing capability across the company registry. Similarly, in Australia, there is an emerging trend of foreign influence linked to organised crime and utilisation of corporate entities, with opaque ownership. As such, a BO registry will need to be established or upgraded in order to erode the growing abuse of corporate entities by criminal elements.

A central BO registry would also assist the fight against fraud and scams, which continue to grow exponentially across the world. Australians lost a record \$3.1 billion to scams in 2022,¹³ card fraud increased from 6.9% in 2020/21 to 8.1% in 2021/22 (equating to 1.7 million people) and scam exposure increased from 55% in 2020/21 to 65% in 2021/22 (equating to 13.2 million people).¹⁴

In Hong Kong (**HK**), fraud remains the most prevalent predicate offence for ML in 2022 which increased by 45% compared to 2021 and led to approximately HK\$4.8 billion in monetary losses.¹⁵

In the UK, fraud now accounts for approximately 40% of all recorded crime, with an annual cost to the UK economy of £130 billion.¹⁶ Given this, fraud has become a high priority for the Home Secretary in the UK, which has developed a newly published Fraud Strategy¹⁷ as well as a central fraud and cyber-reporting centre.¹⁸ The UK’s Economic Crime Plan 2 (2023-2026) also provides an opportunity to bring the public and private sector together, such as policy makers, law enforcement, FIs and the wider corporate sector, social

¹¹ Section 123 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

¹² The Institute of International Finance and Deloitte White Paper, ‘The effectiveness of financial crime risk management reform and next steps on a global basis’, November 2021.

¹³ Australian’s lose record \$3.1 billion to scams in 2022, as ACCC calls for tougher measures, [Australians lose record \\$3.1 billion to scams in 2022, as ACCC calls for tougher measures - ABC News](#), 17 April 2023.

¹⁴ Personal Fraud, Australian Bureau of Statistics (ABS), [Personal Fraud, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](#), 22 February 2022.

¹⁵ AML Regtech: Network Analytics, Hong Kong Monetary Authority, May 2023.

¹⁶ ONS stats 2020/21 – Overview of fraud statistics – Office for National Statistics (ons.gov.uk).

¹⁷ ‘Fraud Strategy: stopping scams and protecting the public’, Policy paper, Crime, Justice and Law, Government UK, 1 June 2023.

¹⁸ Resetting the dial, Transforming the fraud reporting and response ecosystem, Deloitte UK Paper, 2022.

media, technology and telecommunication providers, which will then place the victim at the centre of the new ecosystem.¹⁹

Greater effort on recovery of the proceeds of crime

Efforts to increase the levels of asset recovery are gaining momentum globally.

Asset recovery is a critical tool in an effective AML/CTF regime, as it has the ability to suffocate the financial flow linked to criminal activity. It is also a highly visible and tangible metric of effectiveness. The measurement of this KPI can be inconsistent between calendar years, intra-jurisdiction or between jurisdictions, however, it is generally accepted that asset recovery from proceeds of crime is typically a low single percentage (only 1% on average) of the estimate of crime perpetrated in a calendar year.²⁰ However, this varies across jurisdictions and there is a lack of consistent and up-to-date data sources making it difficult to measure.²¹

Quite apart from the legal, societal and equitable visibility that is delivered when there is recovery of the proceeds of crime, we believe that this should be seen as a leading measurement on the effectiveness of the Australian AML/CTF regime.

We believe that each of the effectiveness initiatives we highlight in this submission are likely to increase the recovery of the proceeds of crime, provided law enforcement agencies are appropriately resourced to pursue this activity. Overseas experience indicates that changes to the burden of proof, timing and funding of defence and resource allocation can deliver material uplifts to asset recovery rates.

We also believe that a shared strategy, clear prioritisation and increased flow of intelligence, enabled by reforms to allow information sharing, would further increase asset recovery numbers and percentages. Finally, some countries have found that the allocated dispersal of recovered proceeds of crime can lift motivation and resource application in key areas of the AML/CTF regime, thus promoting further benefits.

Harnessing technology for better risk intelligence

AML laws and regulatory guidance around the world are increasingly accommodating the use of innovative technology to achieve improved risk intelligence, as well as recognising the increased volume and complexity of transactions and customers to be monitored.

An increasing number of jurisdictions now either mandate the use of innovation and innovative approaches or actively encourage new approaches to be tested in a safe environment. For example, the US AMLA mandates leveraging behavioural analytics and machine learning to improve effectiveness of financial crime monitoring and investigations. The Financial Conduct Authority (FCA) in the UK hosts an annual series of Financial Crime Tech Sprints to promote the use of emerging technologies. The AML transaction monitoring consortium in the Netherlands (TMNL), and the joint KYC utility in the Nordics have received a degree of regulatory encouragement to share innovative information in Europe. And in Singapore, the adoption of an intelligence sharing platform has been supported by the Monetary Authority of Singapore (MAS) and has been legislated.

¹⁹ 'Economic crime plan 2023 to 2026', HM Treasury and Home Office. 30 March 2023, viewed on 23 May 2023, [Economic Crime Plan 2 2023-26 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1154442/economic-crime-plan-2023-to-2026.pdf).

²⁰ 'Cross-sector collaboration is the key to improving asset recovery', Financial Times, Partner Content with Deloitte, 2020.

²¹ 'Cross-sector collaboration is the key to improving asset recovery', Financial Times, Partner Content with Deloitte, 2020.

Further, the New York State Department of Financial Services enacted the new AML regulation, Part 504 (DFS 504) to actively encourage FIs to embrace transaction monitoring (TM) technology stating that manual solutions are no longer fit for purpose. DFS 504 is prescriptive and explicitly states the required program attributes in areas of TM such as OFAC sanctions filtering, governance, data, model validation, vendor selection, funding, use of qualified personnel and training.²² Legislating TM to this level of prescription would be a big jump for the Australian regime, however, it is an example of 'best practice', driving a greater focus on the effectiveness of TM as a key control.

In addition to the above, provisions also need to be made for innovation regarding the control and process environment, such as digital ID and/or biometric technology. As per the 2016 Statutory Review²³, biometrics refers to technologies that measure and analyse human body characteristics, such as DNA, fingerprints, eye retinas and irises, voice patterns, facial patterns and hand measurements for authentication purposes.²⁴ It was recommended that AUSTRAC should extend the use of biometrics as an alternative option to the minimum KYC requirements.²⁵ By doing so, greater assurance and efficiencies will be realised especially in relation to record-keeping.

It will be imperative to facilitate dialogue between AUSTRAC and the public and private sectors so to allow for ongoing consultation regarding the risks, benefits, value and limitations of emerging technologies, and the ability of the private sector to leverage and share significant investment, infrastructure and deep understanding of financial crime modalities and behaviours with the public sector.

²² ACAMS, Understanding the New DFS Part 504 Regulations and the Associated AML Program Testing Challenges, [Understanding the New DFS Part 504 Regulations C.Recor-1.pdf \(acamstoday.org\)](#), 2017.

²³ Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations, Attorney-General's Department, April 2016.

²⁴ Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations, Attorney-General's Department, April 2016, p.59.

²⁵ Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations, Attorney-General's Department, April 2016, p.59.



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