



Submission in relation to the Consultation
Draft of the Anti-Money Laundering and
Countering Financing of Terrorism Bill 2008

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Introduction

We, Minter Ellison, Australia and Minter Ellison Rudd Watts, New Zealand, welcome the opportunity to make a combined submission in relation to the Consultation Draft of the Anti-Money Laundering and Countering Financing of Terrorism Bill 2008 (**the Bill**). We believe that this joint submission has value reflecting the combined experience of many lawyers in both Australia and New Zealand in the financial services and anti-money laundering areas.

We act for a number of clients in the banking and financial services sectors in both Australia and New Zealand. While the following submission is informed by their and our experiences, the views expressed are ours alone.

We appreciate and acknowledge that New Zealand has already accepted FATF obligations which the Bill seeks to implement. The purpose of this submission is to highlight areas which in our view require clarification or where a more nuanced approach would be appropriate to reflect local issues and scale.

We make the Recommendations set out in the Executive Summary.

Terms defined in the Bill are used in that sense in this submission. Clause references are to the current draft of the Bill.

In this submission, AML means anti-money laundering, ML means money laundering, CFT means Countering Financing of Terrorism, TF means terrorism or terrorist financing.

Background

We are concerned that the very limited consultation period provided means that many issues will not become apparent until after the consultation period has ended. We appreciate that there will be the opportunity to comment on the Bill as introduced itself in due course, but note that the Select Committee process is best designed for enhancements to the Bill rather than for substantial engagement with affected sectors, which is the process that should be undertaken in terms of the Bill. While the consultation draft of the Bill is indicative of the regulatory approach that will be taken by the Government, there are still some gaps in the regulatory framework.

This submission outlines our concerns in relation to the following:

- **General Policy Statement** – The Government has of course not yet released a General Policy Statement or commentary for the Bill which makes it very difficult to determine its intentions on particular points. What policy statements exist are set out in the Cabinet papers released with the Bill.
- **Regulations** – Likewise, the Government has indicated its intention to prescribe minimum standards, both generic and sector specific, in regulations. However, although a significant number of sections of the Bill make reference to the Regulations, no Regulations have been drafted to date. It therefore makes it difficult to comment on the ML regime in context, since so much of the financial institutions' obligations will be in the Regulations rather than in the Bill once enacted.
- **Transition** – No information has been provided about the transition period which will be granted to reporting entities. Any transition period should not commence before the full regime has been released.
- **Consistency with the Australian AML regime** – The Government has agreed that compatibility with Australian AML regulatory requirements, where appropriate to New Zealand's circumstances and requirements, should be one of the objectives underlying New Zealand's AML/CFT regulatory framework. However, there are a number of provisions of the Bill which differ significantly from similar provisions in the equivalent Australian legislation, for example: the customer due diligence and enhanced due diligence requirements; reporting obligations; treatment of politically exposed persons; and AML Compliance Program requirements.
- **Power of the Regulators** – The Bill does not provide a clear indication of the role played by the proposed regulators, particularly in relation to their contribution to sector-specific regulations.
- **Defences** – The Australian regime provides more extensive defences, particularly in relation to other legislation, such as the *Privacy Act 1993*. We recommend inclusion of similar provisions in the Bill.

List of Recommendations

We set out in this Executive Summary 18 Recommendations which we believe would significantly enhance the Bill, in five key areas:

- Staged implementation and transition period (two Recommendations);
- Consistency with the Australian AML regime (seven Recommendations);
- Suspicious transaction reporting (two Recommendations);
- Power of the AML supervisors (six Recommendations); and
- Defences (one Recommendation).

1. Staged Implementation and Transition Period

Recommendation 1: That further information should be made available about:

- (a) whether different parts of the Bill will be enacted at different times; and
- (b) the transition periods that will be granted to reporting entities (noting that any transition period should not commence before the full regime has been finalised.)

Recommendation 2: That further consultation be engaged in to determine whether a single transition period would be more suitable and how long New Zealand businesses will reasonably require to be able to comply with the new regime.

2. Consistency with the Australian AML regime

Recommendation 3: That the legislation provide scope for reporting entities to tailor customer identification and enhanced customer due diligence procedures to appropriately address the specific ML/TF risks they face.

Recommendation 4: That the Bill be amended to include a general requirement to address the ML/TF risks posed by politically exposed persons.

Recommendation 5: That any prescriptive requirements relating to politically exposed persons be risk-based and outlined in the regulations.

Recommendation 6: The Bill should be amended so that an executive officer will only be liable if they aid, abet, counsel or procure or are otherwise knowingly involved in a contravention (similar to section 174 of the Australian AML legislation and the equivalent in the Australian Criminal Code for offences).

Recommendation 7: The provisions of the Bill relating to the AML Compliance Programme should be amended so that:

- (a) they are only required to have the **purpose** of identifying, managing and mitigating ML/TF risks;
- (b) greater clarity is provided in relation to the requirement to implement include procedures, policies and controls for internal control;

- (c) the requirement to keep written findings in relation to certain transactions and activities be removed or included as part of the record keeping provisions in the Bill; and
- (d) the additional measures are required for specific categories of countries, for example, those countries given Non-Cooperative Country or Territory status by the FATF or countries that are not members of the FATF.

Recommendation 8: Greater consideration be given to the implications of the inclusion of the provisions which seek to make certain guidelines binding.

Recommendation 9: The record keeping provisions of the Bill should be reviewed to take into account the expense to business and obligations under the Privacy Act 1993 and other privacy related legislation.

3. Suspicious transaction reporting

Recommendation 10: The prohibition against disclosure of suspicious transaction reports be extended to auditors, and an exception be included to allow auditors to disclose the making of suspicious transaction reports to the reporting entity being audited.

Recommendation 11: Clause 29 of the Bill should be amended to specify the categories of persons to whom disclosure may be made to receive the benefit of the protection provided to persons reporting suspicious transactions.

4. Power of the AML supervisors

Recommendation 12: The provisions of the Bill relating to the making of exemptions be amended to allow:

- (a) for the AML supervisors to make exemptions for reporting entities;
- (b) an exemption to be made subject to conditions; and
- (c) modifications to be made to the operation of the legislation..

Recommendation 13: The Bill should be amended to allow the AML supervisors to make enforceable regulations.

Recommendation 14: Consideration should be given to amending clause 107 of the Bill to allow the relevant reporting entity to have some role in determining which AML Supervisor will be appointed to supervise it.

Recommendation 15: The provisions of the Bill relating to delegation of the functions of an AML Supervisor should be amended to clarify:

- (a) the circumstances in which the functions can be delegated;
- (b) to whom the functions can be delegated;
- (c) the method of delegation; and

which functions can be delegated.

Recommendation 16: Consideration should be given as to whether information obtained by the AML supervisor and provided to its domestic and international counterparts:

- (d) should be made subject to protections relating to confidentiality and use of that information; and

(b) is the sort of function that can be delegated.

Recommendation 17: That consideration be given to amending clause 121 of the Bill to ensure that it is clear that one of the express roles of the Ministry of Justice is to monitor and advise the Minister of Justice on any issues arising in relation to the consistency and coordination of any guidelines.

5. Defences

Recommendation 18: The Bill should be amended to include a provision which provides protection from any action, suit or proceeding (civil or criminal) for any person acting in compliance, or purported compliance, with the legislation

Submission

1. Staged Implementation and Transition

- 1.1 We note that clause 2(1) of the Bill states that the Act comes into force on a date to be appointed by the Governor-General by Order in Council. Clause 2(2) provides that one or more Orders in Council may be made appointing different dates for the commencement of different provisions. Apart from the Cabinet paper which was disclosed with the Bill, it has not been made clear which provisions of the proposed Act are likely to be enacted first and what timeframes are likely to apply before the whole Act is enacted.
- 1.2 In addition, no information has been provided about the transition period which will apply to the stage one reporting entities. Any transition period should not commence before the full regime (including regulations) has been released.
- 1.3 Significant difficulties have been experienced in Australia both with staged implementation and having shorter transition periods accompanied by a ministerial direction not to prosecute reporting entities taking reasonable steps for 15 months after obligations commence. The most significant problem has been uncertainty as to whether retrospective compliance is required during the 'prosecution-free' period. It seems clear in retrospect that Australian reporting entities should have been given the three year transition period that they had originally requested.

Recommendation 1: That more precise information should be made available about:

- (a) whether different parts of the Bill will be enacted at different times; and
- (b) the transition periods that will be granted to reporting entities (noting that any transition period should not commence before the full regime has been finalised.)

Recommendation 2: That further consultation be engaged in to determine whether a single transition period would be more suitable and how long New Zealand businesses will reasonably require to be able to comply with the new regime.

2. Consistency with the Australian AML regime

2.1 We understand that it was the intention of the New Zealand government to develop requirements that are compatible with the requirements under the Australian AML regime. While we understand that the need for compatibility must be weighed against New Zealand's specific ML/TF risks and circumstances, we are concerned that some obligations unnecessarily go beyond the requirements of the Australian regime. This is in our view very important because so many of the affected financial institutions are significantly or wholly owned Australian companies already subject to the Australian AML regime. Consistency of approach means that existing Australian rules and learnings can be rolled out in New Zealand without significant extra cost to over-tailor them to the New Zealand regime.

Customer due diligence

2.2 While it is difficult to comment on the standard customer due diligence requirements contained in clause 8 of the Bill as no Regulations have been made to date, it appears that the minimum legislative requirements are more extensive than the minimum customer due diligence requirements contained in the Australian AML legislation.

2.3 For example, reporting entities are expected to obtain information:

- (a) regarding the identity of the beneficial owner of each customer and take steps to ensure that they know who the beneficial owner is;
- (b) regarding the purpose and intended nature of the proposed business relationship with the customer; and
- (c) to determine whether the customer should be subject to the enhanced customer due diligence requirements in the legislation.

2.4 While the Australian AML regime contemplates that reporting entities may need to obtain the information specified in paragraph 2.3 above where it is warranted by the ML/TF risk posed by the provision of the designated service to the customer, there is no minimum requirement for Australian reporting entities to collect such information in all cases. For example, Australian reporting entities must collect information regarding the beneficial ownership of proprietary companies but are only required to have procedures in place to determine whether and when it is necessary to collect information regarding the beneficial ownership of public or registered foreign companies.

2.5 We consider that this approach is more appropriate as it recognises that, where the information does not relate directly to the identity of the customer (for example, the purpose and intended nature of the proposed business relationship), reporting entities should have the ability to assess whether the information is required for the management and mitigation of the ML/TF risks specific to that reporting entity.

2.6 We are also concerned that the enhanced customer due diligence provisions are more prescriptive than those applying in Australia. In particular, clause 11 prescribes certain situations as always being high risk. For example, dealing with politically exposed persons is always high risk which is not necessarily the case in Australia which could mean that procedures developed for Australian businesses will not be able to be applied without amendment in New Zealand, adding to compliance expenses for trans-Tasman firms.

Recommendation 3: That the legislation provide scope for reporting entities to tailor customer identification and enhanced customer due diligence procedures to appropriately

address the specific ML/TF risks they face.

Politically exposed persons

- 2.7 The requirements in the Bill relating to politically exposed persons (clause 12) are more prescriptive than the requirement contained in the Australian AML legislation. The only prescriptive requirement under the Australian AML regime relating to politically exposed persons states that reporting entities must consider the ML/TF risks posed by politically exposed persons when developing systems and controls for the identification of customers and develop systems and controls to manage and mitigate these risks.
- 2.8 This requirement is sufficiently flexible to address the need to have systems and controls in place to manage and mitigate the ML/TF risks posed by politically exposed persons yet allow reporting entities to tailor these procedures so that they are appropriate to the nature, size and complexity of their organisation.
- 2.9 While we recognise the importance of implementing requirements that reflect the *FATF 40 Recommendations*, we consider that it would be more appropriate to include a general requirement in the legislation to implement procedures to address risks posed by politically exposed persons, supplemented by more prescriptive requirements in the regulations which incorporate the *FATF 40 Recommendations*.

Recommendation 4: That the Bill be amended to substitute a general requirement to address the ML/TF risks posed by politically exposed persons for the existing prescriptive requirement.

- 2.10 In addition, we recommend that any prescriptive requirements implemented in relation to politically exposed persons be risk-based and sufficiently flexible to allow reporting entities to develop procedures that are appropriate to the size, nature and complexity of their organisation.

Recommendation 5: That any prescriptive requirements relating to politically exposed persons be risk-based and outlined in the regulations.

Liability of executive officers

- 2.11 The provisions in the Bill relating to the liability of executive officers are more onerous than the equivalent provisions in the Australian AML legislation.
- 2.12 Under the Australian AML legislation, an executive officer will only commit an offence or breach a civil penalty provision if they aid, abet, counsel or procure or are otherwise knowingly involved in a contravention. However, the Bill currently states that an executive officer will have committed an offence where the officer knew of and failed to take reasonable steps to prevent the commission of the breach. In other words, an executive will only be liable in Australia if they are actively involved in the breach whereas New Zealand executives who have any knowledge of a matter which is in fact a breach will need to take steps to prevent it from occurring. This distinction imposes a higher burden on New Zealand executives which not only makes it difficult to run consistent training where an organisation operates in both countries but it is also likely to lead to higher compliance and insurance costs in New Zealand.

Recommendation 6: The Bill should be amended so that an executive officer will only be liable if they aid, abet, counsel or procure or are otherwise knowingly involved in a contravention (similar to section 174 of the Australian AML legislation and the equivalent in the Australian Criminal Code for offences).

AML Compliance Programme

- 2.13 While we acknowledge that the provisions in the Bill relating to AML Compliance Programmes are generally similar to the equivalent provisions in the Australian AML legislation, we are concerned that a number of the requirements are insufficiently clear or are too onerous for those organisations required to comply with both the Australian and New Zealand regimes.

General requirement

- 2.14 The Australian AML legislative requires the AML Compliance Program to have the primary **purpose** of identifying, mitigating and managing ML/TF risks. The Bill does not talk about the purpose of the Program. It states that the Program must include procedures, policies and controls to **prevent** activities relating to ML/TF. Consequently, while the Australian legislation expressly recognises that the Program should be designed to achieve a certain end (to manage, etc ML/TF risks), the New Zealand proposal would require companies to implement procedures, etc which do in fact prevent their facilities being used for ML/TF. It therefore appears that a New Zealand company will breach this requirement if their procedures do not in fact prevent ML/TF.

Internal control

- 2.15 We consider that the requirement in clause 41(f) of the Bill to include procedures, policies and controls for **internal control** in an AML Compliance Programme is unclear. Accordingly, we request further explanation of the term 'internal control', either in the regulations or as a defined term in the Bill.

Transaction monitoring procedures

- 2.16 We consider that the requirement in clause 41(h) of the Bill, which states that reporting entities must include procedures to keep written findings in relation certain transactions or activities, is too onerous.
- 2.17 We note that clause 33 of the Bill already requires reporting entities to keep records in relation to every transaction to enable the transactions to be reconstructed. We are therefore of the opinion that it is unnecessary to include an additional requirement to keep written findings in relation to certain types of transactions.
- 2.18 In addition, we recommend that clause 41(i) of the Bill be amended or clarified. We consider that the requirement to implement additional measures for dealing with countries that **insufficiently** apply the *FATF 40 Recommendations* is too broad and uncertain.
- 2.19 Very few countries are considered to be fully compliant with the *FATF 40 Recommendations*, therefore this requirement could result in additional measures being implemented in relation to a majority of countries. Accordingly, we request that this requirement be amended so that additional measures are only required for specific categories of countries, for example, those countries given Non-Cooperative Country or Territory status by the FATF or countries that are not members of the FATF.

Recommendation 7: The provisions of the Bill relating to the AML Compliance Programme should be amended so that:

- (a) they are only required to have the **purpose** of identifying, managing and mitigating ML/TF risks;
- (b) greater clarity is provided in relation to the requirement to include procedures, policies and controls for internal control;
- (c) the requirement to keep written findings in relation to certain transactions and activities be removed or included as part of the record keeping provisions in the Bill; and
- (d) the additional measures are only required for specific categories of countries, for example, those countries given Non-Cooperative Country or Territory status by the FATF or countries that are not members of the FATF.

Implementation of guidelines

- 2.20 The treatment of guidelines in the Bill compared both to Cabinet’s decisions and what the sector would understand by guidelines is inconsistent.
- 2.21 We note that clause 41(p) of the Bill appears to make any guidelines issued by the AML Supervisors or the Commissioner binding. We consider that the inclusion of such a provision may create difficulties in the drafting of such guidelines, as it will require greater consultation with industry and greater certainty in drafting. It seems to run counter to the intended purpose of the guidelines which we understand to be to help reporting entities understand how best to achieve compliance with their obligations under the Act and the regulations. The guidelines are not intended to be used as a layer of additional AML rules themselves. In addition, we are concerned that making guidelines enforceable will reduce the risk-sensitivity and flexibility that is sought by the proposed regulatory model. Accordingly, we recommend that greater consideration be given to the inclusion of this provision in the legislation.
- 2.22 We also note that paragraph 16 of POL (08) 300 records Cabinet’s decision to approach regulation at three levels: primary legislation, regulations (embodying minimum standards) and non-enforceable guidance material. Yet just to take clause 41(p) for example, guidelines which are not incorporated in regulations (and are, presumably, meant to be in the third, non-enforceable, category) are made enforceable through the opening language of clause 41 (“compliance programme must include”). Other examples of this approach include clause 36(c) (record keeping) and clause 116 (Commissioner’s suspicious transactions guidelines).

Recommendation 8: Greater consideration be given to the implications of the inclusion of the provisions which seek to make certain guidelines binding.

Record keeping

- 2.23 The provisions in the Bill relating to record keeping are more onerous than the equivalent provisions in the Australian AML legislation and will therefore create difficulties for organisations required to comply with both regimes.

- 2.24 The Australian legislation only applies to records that are in fact kept by reporting entities – with certain exceptions, the Australian legislation (unlike the proposals in the Bill) does not specify the information that must be recorded, nor does it require that the record be sufficient to allow a transaction to be reconstructed.
- 2.25 We consider that the prescriptive nature of the record keeping requirements in the Bill may be inconsistent with the operation of the *Privacy Act 1993*. In addition, we are concerned that the additional infrastructure and systems required to support such requirements may result in significant expense for reporting entities. Accordingly, we recommend that the record keeping provisions be revised with a view to creating a balance between the need to keep sufficient records to manage and mitigate ML/TF risk and the need to comply with Privacy legislation.

Recommendation 9: The record keeping provisions of the Bill should be reviewed to take into account the expense to business and obligations under Privacy legislation.

3. Suspicious transaction reporting

- 3.1 While we consider that the suspicious transaction reporting provisions are generally appropriate, we outline our concerns in relation to a number of specific provisions below.

Reporting by auditors

- 3.2 We note that although the Bill allows auditors to report suspicious transactions and provides protection to auditors who report suspicious transactions, the prohibition against disclosure of reports does not apply to auditors.
- 3.3 We consider that the prohibition against disclosure should apply to auditors. However, we recommend that auditors be permitted to disclose the fact that a suspicious transaction report has been made or is being contemplated to the reporting entity being audited.

Recommendation 10: The prohibition against disclosure of suspicious transaction reports be extended to auditors, and an exception be included to allow auditors to disclose the making of suspicious transaction reports to the reporting entity being audited.

Protection of persons reporting suspicious transactions

- 3.4 We recommend that clause 29 of Bill, which provides protection to persons reporting suspicious transactions, be amended to specify the persons to whom disclosure can be made to receive the benefit of the protection. We are concerned that the provision as drafted provides protection for any disclosure of information in connection with a suspicious transaction report, rather than disclosure to the limited categories of persons specified in clause 31 of the Bill. Accordingly, the provision appears to contradict the prohibition against disclosure contained in clause 31 of the Bill.

Recommendation 11: Clause 29 of the Bill should be amended to specify the categories of persons to whom disclosure may be made to receive the benefit of the protection provided to persons reporting suspicious transactions.

4. Powers of the AML Supervisors

Exemptions and Modifications

- 4.1 Under the Australian AML legislation, the regulator, the Australian Transaction Reports and Analysis Centre (AUSTRAC), has the power to exempt and/or modify the operation of certain parts or the whole of the AML/CTF Act. We note that the Bill only allows for exemption by regulation and that Regulations may only be made by the Governor-General.
- 4.2 Based on the Australian experience, applications for exemption and modification require assessment of the individual circumstances of the reporting entity making the application. We consider that regulators are better placed to assess whether an application for exemption should be granted. In addition, we consider that providing the exemption in the form of a regulation may result in significant delay in passing such exemptions as a result of the need for parliamentary approval.
- 4.3 Accordingly, we recommend that the provisions relating to exemption from the operation of the legislation be amended to allow for the AML supervisors to make exemptions for reporting entities.
- 4.4 In addition, we note that there is an express ability under the Australian AML regime for any exemption or modification to be made subject to conditions which is useful as it gives AUSTRAC greater flexibility when granting exemptions or modifications and therefore should make it more willing to exercise this power. We recommend that similar provisions be included in the Bill.
- 4.5 We also recommend that the Bill be amended to include provisions to allow modifications to be made to the operation of the legislation. This power has been useful under the Australian regime to amend an unintended exemption created by the wording of a particular section of the AML/CTF Act.

Recommendation 12: The provisions of the Bill relating to the making of exemptions be amended to allow:

- (e) for the AML supervisors to make exemptions for reporting entities;
- (f) an exemption to be made subject to conditions; and
- (g) modifications to be made to the operation of the legislation.

Making of Regulations

- 4.6 We note that the Bill only allows regulations to be made by the Governor-General, by Order in Council. While we recognise the importance of such a requirement to ensure consistency, particularly in a multi-regulator model, it has been beneficial for the Australian regulator to have the power to quickly publish binding instruments, or amend existing instruments. In addition, we consider that the regulators would be best placed to develop sector specific regulations. Accordingly, we recommend that the AML supervisors have the power to make regulations (or similar) in consultation with the Government.

Recommendation 13: The Bill should be amended to allow the AML supervisors to make enforceable regulations.

Method for determining which AML supervisor applies

- 4.7 Clause 107(2) provides that where the products or services to be provided by a reporting entity are covered by more than one AML supervisor it is up to the AML supervisors concerned to meet to agree on the relevant AML supervisor that will be that reporting entities supervisor and the relevant reporting entity will simply be notified of that. There are no criteria specified for determining which AML supervisor will be appointed and we think that at the very least there should be some system for consultation with the relevant reporting entity or ability for the reporting entity to have some say as to whom its supervisor will be.

Recommendation 14: Consideration should be given to amending clause 107 of the Bill to allow the relevant reporting entity to have some role in determining which AML Supervisor will be appointed to supervise it.

AML supervisor functions

- 4.8 Under clause 109(2) it is stated that an AML supervisor may use another person to perform its functions under the Act. The clause states that the AML supervisor remains responsible for those functions and clause 109(3) provides that an AML supervisor may not delegate any of its functions, powers or duties relating to the investigation and enforcement of any offence under the Act. Despite those protections we consider that if clause 109(2) remains it should be strengthened further.
- 4.9 Given the broad functions of an AML supervisor proposed in the Bill, we think that the Bill should specify the circumstances in which an AML supervisor can delegate any of its functions, the types of people to whom its functions can be delegated (possibly specifying classes of people including other government employees, police, employees of another AML supervisor) and a method for delegation (eg.at a minimum any delegation should be in writing).
- 4.10 It may be also helpful to expressly state in section 109(3) which functions, powers and duties cannot be delegated. We think that without making that express, there may be circumstances in which an AML supervisor may not be sure whether a function, power or duty can be delegated.
- 4.11 In addition, it is not clear why clause 109(3) refers to “powers and duties” as well as “functions” when clause 109(2) only refers to the ability to delegate “functions”. If it is only intended that the functions in clause 109 that can be delegated then that should be clarified.

Recommendation 15: The provisions of the Bill relating to delegation of the functions of an AML Supervisor should be amended to clarify:the circumstances in which the functions can be delegated;

- (a) to whom the functions can be delegated;
- (b) the method of delegation; and
- (c) which functions can be delegated.

- 4.12 We note that one of the functions of the AML supervisors is to cooperate with domestic and international counterparts (including other AML supervisors, the Police and (Customs service) to ensure the effective implementation of the Act. This includes communicating information

obtained by the AML supervisor in the performance and exercise of its functions and powers, confidential or not, to the AML supervisor's domestic and international counterparts. We consider that:

- (a) such functions such as that require protections relating to the confidentiality and use of that information;
- (b) are such that they may not be suitable for delegation (or may not be suitable for delegation without the relevant confidentiality and use constraints referred to above); and
- (c) may illustrate a situation where it is difficult to assess whether the information sharing relates to the investigation and enforcement of any offence under the Act (which cannot be delegated) or is required for some broader purpose (which can be delegated).

Recommendation 16: Consideration should be given as to whether information obtained by the AML supervisor and provided to its domestic and international counterparts:

- (a) should be made subject to protections relating to confidentiality and use of that information; and
- (b) it is the sort of function that can be delegated.

The role of the Ministry of Justice

- 4.13 We note that in a multi supervisor environment it will be important to ensure consistency between any guidelines that are developed by each of the AML supervisors. The Ministry of Justice is intended to monitor and evaluate the overall performance and effectiveness of the new regime and to advise the Minister of Justice of any issues with its performance and options for addressing those.
- 4.14 While clause 124 (functions of the AML coordination committee) refers to coordination of guidance and implementation, as it will be very important for guidance on the AML legislation to be consistent then this should be listed as one of the express roles of the Ministry of Justice in clause 121.

Recommendation 17: That consideration be given to amending clause 121 of the Bill to ensure that it is clear that one of the express roles of the Ministry of Justice is to monitor and advise the Minister of Justice on any issues arising in relation to the consistency and coordination of any guidelines.

5. Defences

- 5.1 The Australian AML legislation provides protection from any action, suit or proceeding (civil or criminal) for any person acting in compliance, or purported compliance, with the AML/CTF Act. While the Bill provides protection to persons acting in compliance with certain provisions, such as the suspicious transaction reporting provisions, we recommend that a general clause be included in the Bill. The inclusion of such a clause in the Australian AML legislation has provided considerable comfort to reporting entities in what is a complex area.

Recommendation 18: The Bill should be amended to include a provision which provides protection from any action, suit or proceeding (civil or criminal) for any person acting in compliance, or purported compliance, with the legislation.

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