CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

16 September 2016

AML/CFT Consultation Team
Ministry of Justice
SX10088
Wellington

By email: aml@justice.govt.nz

To the Minister of Justice

Submission on Consultation Paper on Phase Two of the AML/CFT Act: Improving New Zealand's ability to tackle money laundering and terrorist financing

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on the Consultation Paper ("the Paper"). As a professional body we have a role in promoting a clear understanding of AML/CFT obligations and ML/TF risks to our members. Our responses to the specific questions raised in the paper are set out in Appendix A. Appendix B includes more information about CA ANZ.

General comments

We support the Government's initiative to combat money laundering and financing of terrorism and we have consistently been supportive of the policy objectives of the AML/CFT Act. We recognise the importance of New Zealand meeting its obligations as a member of the Financial Action Task Force (FATF). As a profession we are committed to acting in the public interest and contributing to a robust system to prevent criminals from using New Zealand for illegal activities.

We support the extension of the AML/CFT Act to cover the accounting profession in principle, as this extension is in the public interest. However, our support is contingent on the regime being practical and cost-effective. This balance is best achieved through ongoing consultation with stakeholders, and appropriate and reasonable transitional timetables being agreed on. Our key points for consideration are as follows:

- Clarity is required around the activities that would bring an entity into scope of the regime. The proposed activities are very broad.
- The regime should take a risk-based approach so not to impose excessive compliance costs on businesses.
- It is critical, given the national importance of this matter, that there is a single supervisor. We note that Australia has a single supervisor (AUSTRAC) and there may be benefit in an aligned trans-Tasman approach.
- The supervisory programme for our members should leverage existing monitoring activity to avoid duplication of effort and undue compliance costs.

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Proportionality

95% of CA ANZ's 2,000 Approved Practice Entities (APEs), which are potential reporting entities, are either sole practitioners or contain 2-5 practitioners. We recognise that accountants are in a unique position to perform an important 'gatekeeper' function for the financial system, but we are mindful of the potential cost of compliance given the size of the majority of practices. Therefore, AML/CFT obligations must be proportionate to the ML/FT risks posed by the services provided.

Definition of 'accountant'

There is no universally recognised definition of 'accountant' and hence anyone can hold themselves out to be an accountant. Therefore not all individuals who identify themselves as being an accountant are a member of CA ANZ. There are other professional accounting bodies, and some accountants are not affiliated with any professional accounting body. It is important that these non-member accountants are identified if the new regime is to be effective.

Confidentiality

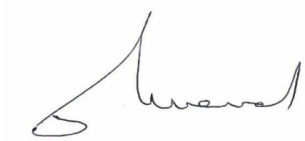
The extant Code of Ethics makes reference to circumstances where a member discovers evidence of fraudulent or illegal activities. However, this conflicts with the fundamental principle of confidentiality so it does not provide practical guidance on how a member should disclose non-compliance with laws and regulations to a public authority. This has recently been addressed and the resolution will be in place prior to phase two of the AML/CFT Act.

Education

The introduction of phase two of the AML/CFT Act will be a significant development for the accounting profession. It is vital to ensure there is a robust awareness raising campaign, as well as practical training. We are open to collaboration in this respect in terms of educating our members.

Should you have any queries concerning the matters in this submission, or wish to discuss them in further detail, please contact Geraldine Magarey (Leader - Policy and Thought Leadership) via email at geraldine.magarey@charteredaccountantsanz.com or phone +61 2 9290 5597.

Yours sincerely



Rob Ward FCA AM
Head of Leadership and Advocacy

Appendix A: Responses to specific questions

Part 3: Accountants

1. How should AML/CFT requirements apply to the accounting sector to help ensure the Act addresses the risks specific to it? For example, which business activities should the requirements apply to? At what stage in a business relationship should checks, assessments and suspicious transaction reports be done? Who should be responsible for doing them?

The proposed activities on page 17 of the Paper are very broad and all-encompassing as currently drafted. There appears to be the potential for a significant compliance cost to be placed on accountants depending on how widely these are defined. We recommend these activities be narrowed to correlate directly to those that are at risk of ML/FT which we believe arises in the movement of funds. By way of example:

- You have signing authority over a client's bank account and pay invoices from that account on behalf of your client.
- A client issues you a cheque for an amount equal to their income tax payable and your accounting fees. You deposit the cheque and transfer the income tax payable to the Inland Revenue from your account.
- You act on behalf of a client in the sale of trade and assets that constitute a business.

Whilst we acknowledge it is unlikely that any such list of activities could be definitive, we encourage a certain level of specificity. In our view, accountants should be able to quickly and easily identify whether any of the activities they carry out are subject AML/CFT obligations. Clear guidelines that limit activities to those that involve the movement of funds would be well received.

We support:
- Excluding transactions that are solely for the purpose of paying professional fees or invoices.
- Excluding activities of businesses' in-house accountants, as they do not provide services to external clients.

Customer due diligence (CDD) should be performed at the commencement of the business relationship. We believe the regime should be applied prospectively. For existing clients CDD should be performed when there is a risk-based trigger, such as those provided for under section 14(c) of the extant AML/CFT Act.

The extant requirements for reporting suspicious transactions – as soon as practicable, but no later than 3 working days after forming a suspicion – is a reasonable timeframe to retain.

Ultimate responsibility for conducting CDD and reporting suspicious transactions on behalf of the reporting entity should lie with the individual responsible for the engagement concerned. However, this should not prohibit their ability to delegate such tasks in practice.

2. Given the level of risk associated with advisory and assurance services (for example, tax advice, bookkeeping and auditing), should these activities be subject to AML/CFT obligations even where the business is not involved in a transaction for their client?

We support limiting businesses' AML/CFT obligations to activities that are at risk of ML/FT, which are those that involve the movement of funds. In general, advisory and assurance services of any kind do not involve the movement of funds. As such, we believe that assurance and advisory services should not be subject to AML/CFT obligations. This rational is drawn from the analysis set out below.

Paragraph 10.1(a) of our Rules defines 'accounting services' as those relating to any one or more of the following:
(i) the preparation of financial information;
(ii) assurance engagements;
(iii) taxation;
(iv) insolvency.

Assurance services

'Assurance services' comprise of any assurance engagements performed by an assurance provider. An 'assurance engagement' is one in which an assurance practitioner expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

PES 1 *Code of Ethics for Assurance Practitioners* contains independence requirements that largely prohibit auditors engaging in transactions on behalf of clients or acting as an agent for such transactions. Accordingly we do not consider that assurance services should be subject to AML/CFT obligations.

Assurance practitioners already have an obligation under section 43 of the AML/CFT Act to report suspicious transactions to the Police, and this is a protected disclosure. We believe a similar obligation and protection should remain.

Advisory services

'Tax advice' and 'bookkeeping services' have no defined meaning. The concept of tax advice is dealt with under the Tax Administration Act 1994. This may assist in determining how tax advice can be defined and excluded from the scope of the AML/CFT regime. Bookkeeping is usually limited to the recording transactions. On this basis, we do not believe that advisory services should be subject to AML/CFT obligations.

We also note that some advisory services, such as tax opinions, are performed under a non-disclosure right. This is comparable in nature to legal professional privilege, so similar considerations apply.

Insolvency services

Insolvency services often include the activities proposed to be subject to the AML/CFT Act such as formation of legal entities and management of businesses. However, in such circumstances neither the customer (the insolvent entity) nor the beneficial owner will (generally) select the insolvency practitioner, and the insolvency practitioner is not subject to instructions from the customer or its beneficial owner. Rather, the insolvency administration generally arises as a result of enforcement of rights by a third party, and transactions are

undertaken at the sole discretion of the insolvency practitioner. The customer is (generally) an unwilling party, and the beneficial owner may not be motivated to cooperate with AML/CFT compliance obligations of the insolvency practitioner. This is an important distinction that should be acknowledged.

In addition, insolvency administrations are already subject to detailed statutory provisions including public reporting, and to directions by the Court. These factors are natural controls over ML/FT. From the equity perspective, costs of compliance will be an additional burden on the creditors of the insolvent customer.

Similar to our view on assurance services, we do not consider that insolvency services should be subject to AML/CFT obligations. However, there should be an obligation for insolvency practitioners to report suspicious transactions to the Police, and provision for this to be a protected disclosure.

Financial advisory services

Some of our members provide financial advisory services – these do not fall within the definition of 'accounting services'. Instead, these members are Authorised Financial Advisers (AFAs) working in Qualifying Financial Entities (QFEs). Such entities are already reporting entities under phase one of the AML/CFT Act and supervised by the Financial Markets Authority (FMA).

Part 4: Supervision

1. **Do you think any of our existing sector supervisors (the Reserve Bank, the Financial Markets Authority and the Department of Internal Affairs) are appropriate agencies for the supervision of Phase Two businesses? If not, what other agencies do you think should be considered? Please tell us why.**

   Our preference is for a single supervisor model, similar to Australia where AUSTRAC is the dedicated government agency that supervises all reporting entities. We strongly believe that the responsibility for monitoring and assessing the level of risk of ML/FT lies with the Government.

   In our view, consistency across all reporting entities should be the primary factor when considering the most appropriate supervisory model. Under the current multi-agency model, disparity amongst supervisors' interpretation and application of the AML/CFT Act is an additional cost to businesses.

   The FMA is the oversight body for registered audit firms. We have 28 APEs that are registered audit firms and subject to quality reviews by the FMA under the Auditor Regulation Act 2011. The supervision of these entities should take this into account to avoid duplication of effort and undue compliance costs.

   We have a statutory responsibility to control and regulate the practice of the profession of accountancy by our members in New Zealand, which includes monitoring members' compliance with enactments that relate to the practice of accountancy. We do this by reviewing the operation of our members' practices from time to time. Again, the supervision of our members should leverage practice review activities to avoid duplication of effort and undue compliance costs.

2. Are there other advantages or disadvantages to the options in addition to those outlined above?

The alternative models may have varying cost implications and it is vital that supervisors are adequately funded. The Paper is silent on whether phase two of the AML/CFT Act will be Government funded. We believe that these costs should be fairly and proportionately borne by those who benefit according to the user pays principle. We note that the objectives of the regime, particularly *"contribute to public confidence in New Zealand's financial system"* are public benefits. Given this, we consider it to be appropriate for the taxpayer (ie through the Government) to meet this cost.

Part 5: Implementation period and costs

1. What is the necessary lead-in period for businesses in your sector to implement measures they will need to put in place to meet their AML/CFT obligations?

It will take businesses time to develop and put in place the required AML/CFT measures so there will need to be an appropriate implementation period. We agree that phase two business are unlikely to need the same length of time to prepare as phase one, but this is a process that should not be hurried. In addition, any new supervisor(s) will need adequate time to set-up systems and processes. Failure to do so may result in non-compliance by reporting entities, and/or ineffective supervisory activities which would be an additional cost to businesses.

The accounting profession has been through a sustained period of change, including the introduction of auditor regulation, overhaul of the financial markets legislation, and revision of financial reporting legislation. Much of this is still in the implementation phase, and this may impact the professions ability to effectively implement another major legislative reform if there is not an appropriate period of time in which to do so.

2. Where possible, please tell us how you calculated how long it will take to develop and put in place AML/CFT requirements.

There are many variables to this, including readiness, therefore it is not possible to provide a conclusive response. However, as always in this situation you have to go with the lowest common denominator. This would be an entity that has no existing systems and processes for the proposed obligations, and very little resource to implement such infrastructure and mechanisms.

Part 6: Enhancing the AML/CFT Act

1. Should the current requirement to report suspicious transactions be expanded to reporting suspicious activities? Please tell us why or why not.

Expanding the requirement to report suspicious activities gives us cause for concern because a suspicious activity would not, by definition, involve the movement of funds.

2. Should industry regulators be able to share AML/CFT-related information with government agencies?

We agree there may be benefits in allowing for information to be shared between regulators and government agencies, where appropriate. This kind of information sharing arrangement

may assist with minimising duplication of effort, and therefore be more cost-effective for reporting entities and the public.

3. **Should AML/CFT supervisors be able to share customers' AML/CFT-related personal information with government agencies?**

   There may be benefits in allowing for information to be shared between supervisors and government agencies, where appropriate. This kind of information sharing arrangement may result in earlier detection and disruption of illegal activities.

4. **What are the appropriate circumstances under which the FIU can share financial intelligence with government agencies (such as the sector supervisors, industry regulators, intelligence agencies, IRD and Customs) and reporting entities? What protections should apply?**

   We agree there should be a reasonable suspicion of criminal activity before the FIU can share financial intelligence with government agencies. Government agencies and the FIU should also be able to inform supervisors if they think a reporting entity may not be meeting its AML/CFT obligations. These should all be protected disclosures.

5. **What restrictions should be placed on information sharing?**

   Information should only be shared if it is necessary for the enforcement of the AML/CFT Act.

6. **Are the existing provisions that allow reporting entities to rely on third parties to meet their AML/CFT obligations sufficient and appropriate? If not, what changes should be made?**

   Any consolidation of AML/CFT obligations would be well received by our members. Our APEs often structure themselves as 'networks'. This is defined in our Code of Ethics as a structure that is aimed at co-operation, and profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.

   It is unclear whether this would meet the definition of a 'designated business group' for AML/CFT purposes. If not, then we recommended the definition be revised to enable networks of accounting firms to share AML/CFT compliance obligations.

7. **Should the scope of the provision requiring persons providing trust and company services to comply with the AML/CFT Act be extended to activities carried out in the ordinary course of business, rather than just when they're the only or principal part of a business?**

   If such activities are deemed to be in scope for other professions in the ordinary course of business, then the provisions for trust and company service providers should be extended.

8. Should the simplified customer due diligence provisions be extended to the types of low-risk institutions we've proposed? If not, why?

We agree that simplified CDD provisions should be extended to state owned enterprises (SOEs) given that the beneficial owner is the Government.

Majority-owned subsidiaries of publicly traded entities in New Zealand and in low risk overseas jurisdictions should also be included in the simplified CDD provisions given these subsidiaries face the same ownership and disclosure requirements as their parent companies on which simplified CDD is currently already permitted.

9. Should we consider extending the provisions to any other institutions?

We have not identified any other institutions.

Appendix B: About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 115,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international capital markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.