

Cracking down on money laundering and terrorist financing

Following the 9/11 tragedy there is greater scrutiny of money laundering and the financing of illegal terrorist activities.

Late last year, Senator The Hon. Chris Ellison, Minister for Justice and Customs, announced that Australia is to implement new global standards aimed at aligning Australia's anti-money laundering system with new international standards.

The Attorney General's Department published a suite of Issues Papers outlining proposals that apply to the financial services sector, real estate agents, dealers in precious metals and stone, the gambling industry, legal practitioners, accountants and company and trust service providers.

These proposals are being driven by two major themes. Firstly, the current domestic regime administered through the *Financial Transaction Reports Act 1988* (FTR Act), which requires cash dealers to report significant cash transactions, international funds transfer instructions and suspicious transactions to the Australian Transaction Reports and Analysis Centre (AUSTRAC), is outdated and requires a substantial overhaul to bring it into line with current industry practices and international regulatory standards.

Secondly, the Financial Action Task Force (FATF) completed a review of its "Forty Recommendations". These standards now apply to money laundering as well as terrorist financing and highlight particular high-risk areas of concern. Another international development that is impacting the debate is the passage of the *USA PATRIOT Act 2001* through the US Congress in October 2001.

This international setting has meant that the priority to update Australia's legislation has been surpassed by a priority to adopt an anti-money laundering framework that is internationally consistent and compliant.

Issue Paper 1 – Financial Services Sector ("the Issues Paper") outlines reform

proposals that apply to financial services businesses engaged in "handling the flow of funds through the financial system". The proposed reforms will require substantial changes to Australia's anti-money laundering program and will require financial services businesses to consider how they currently conduct business.

The proposals will shift current efforts in four key areas:

- **Coverage:** The proposals will expand current transaction reporting obligations from "cash" transactions to "value" transactions, resulting in a substantial increase in the volume of reporting.
- **Detecting suspicious activity:** The proposals will significantly expand current processes by requiring financial institutions to conduct enhanced initial customer due diligence and conduct ongoing scrutiny of customers and transactions.
- **Record keeping and tracking:** The proposals will require redeveloping reporting systems, delivering staff training programs and adopting new record keeping and information handling practices.
- **Oversight and compliance:** The proposals will require re-engineering internal control measures and risk management procedures.

The Institute strongly supports the broad direction of the proposals as they seek to safeguard Australian business and the community from the impacts of crime, particularly as efforts aim to prevent the laundering of criminal proceeds and the flow of terrorist funds. However, we must ensure that legitimate commercial activities are not unduly restricted.

As a guiding principle, the Institute asserts that the proposals should be introduced consistently across the various industry sectors to

the extent that is reasonable and practical through adopting a *risk-based* approach.

Risk-based strategies aim to identify activities that may be vulnerable to money laundering and terrorist financing. A risk-based approach allows for some flexibility for financial sector businesses to tailor their policies and procedures to the potential risk of money laundering, in particular to financial transactions and business relationships.

The proposals as currently outlined are likely to introduce a compliance burden on industry that surpasses implementing the FSR Act. Therefore it is essential that there is a balance between the tension to introduce an internationally recognised and compliant anti-money laundering program with ensuring careful and thorough consideration is given to designing a robust and practical legal and regulatory framework.

In addition, it is vital that the community is confident that the increased collection, retention and sharing of their information is conducted with confidentiality and only for the purpose of supporting Australia's national security.

The Institute believes that through a partnership approach with the Government, the financial services industry will be able to deliver a reasonable, practical and outcomes-based anti-money laundering program.

The Attorney General's Department has recently published a Policy Principles Paper, which identifies a number of key principles that will guide the implementation process. We expect that the exposure draft legislation will be released for public comment shortly.

The Institute will continue to consult with the Government on the anti-money laundering reforms.