14 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee

Via email: legcon.sen@aph.gov.au

Dear Committee Secretary

Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024

COBA thanks the Committee for the opportunity to provide feedback on the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (the Bill).

COBA is the industry association for Australia's customer owned banks (mutual banks and credit unions). Collectively, our sector has over $179 billion in assets and is the fifth largest holder of household deposits. Our members range in size from less than $200 million in assets to around $25 billion in assets – all significantly smaller than our ASX-listed peers. Customer-owned banks account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

Key points

COBA supports the modernisation of anti-money laundering and counter-terrorism financing (AML/CTF) laws and the expansion of the regime to tranche-two entities.

COBA continues to have many concerns with proposals, that have been incorporated into the Bill and that were raised in our previous submissions to the Attorney-General's Department (AGD). We particularly note our concerns with the changes to Customer Due Diligence (CDD), to regulatory reporting and on the new transfers of value provisions. Much of the detail is contained in the forthcoming AUSTRAC Rules, which makes it difficult for our members to have clarity on the impacts of the Bill.

COBA believes that the proposed implementation period for this Bill is inappropriate as it provides insufficient time for to industry to comply. While three to four years would be ideal for implementation, a minimum of two years that starts from the finalisation of the AUSTRAC Rules needs to be provided to our members.

COBA is concerned about the proposed expansion of AUSTRAC powers given AGD or AUSTRAC did not seek feedback on these changes in prior consultations.

COBA supports modernisation of Australia's AML/CTF laws to align with recommendations made by the Financial Action Task Force (FATF) and to bring tranche-two entities into the regime. While COBA is mindful of the Government's desire to have adopted these changes ahead of Australia's upcoming FATF assessment in 2026-27, we believe a rushed implementation could see unintended

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consequences. Due to the significant changes required, there are risks that our members may need to shift their focus and limited resources from interdicting criminal activities into primarily focusing on implementation.

COBA notes that the Bill is complex and that the Committee's submission process has coincided with other important and complex consultations. This includes the Scams Prevention Framework, changes to the privacy laws, and artificial intelligence. This highlights the importance of the Financial Services Regulatory Initiatives Grid that is currently under development by Treasury and the need for improved coordination between Government departments and agencies to ensure an orderly consultation and implementation process prior to matters being brought to Parliament.

It is our view that due to the complexities of this Bill an exposure draft should have been released and consulted on by the Attorney-General's Department (AGD) prior to its introduction into Parliament. In our submissions to the AGD's earlier consultations we called on the Government to release an exposure draft of the Bill to coincide with consultation by AUSTRAC on its updated Rules. We believed that this was necessary to ensure that industry could see the full picture and to provide informed and considered feedback on the design of the laws *prior* to its introduction into Parliament. The result is that industry has an incomplete picture of the impacts of this regime and, due to the limited time for consultation, can only provide limited feedback. We note that AUSTRAC intends to consult on the Rules later in 2024 and we look forward to engaging with it in those processes in due course.

COBA praises some of the much-needed improvements to the current regime, such the Government hearing our concerns regarding the treatment of pre-commencement customers. However, we remain concerned that the Bill does not fully reflect on the concerns raised by industry in the prior consultations. While we note that while improvements have been made to the tipping off provisions compared to the current regime, we continue to be concerned that the provisions continue to be overly onerous in preventing our members from being able to effectively collaborate in the prevention of money-laundering and terrorism-financing (ML/TF). COBA is concerned that the provision does not appear to account for the obligations that will arise under the Scams Prevention Framework and that it may hinder the two regimes being effective in preventing both ML/TF and scams.

Many of our concerns, as outlined in our submissions to earlier consultations, remain unresolved in this Bill. To assist the Committee in its deliberations we attach our submission of 28 June 2024 (**Appendix A**) and our submission of 16 June 2023 (**Appendix B**) which outlined our concerns to AGD on various key aspects of the proposed changes. We will now address some additional issues arising from the Bill.

Implementation

COBA is highly concerned with the inadequate implementation periods proposed in this Bill that would require our members to have implemented all significant changes by, at the latest, 1 July 2026. As outlined in **Appendix A**, an ideal time period for implementation would be three to four years to provide sufficient time for our members to both implement the changes while continuing their ongoing operational work. If this period was considered to be too long by the Parliament, then we would submit that the bare minimum period should be at least two years from when the AUSTRAC Rules are finalised.

In **Appendix A**, we outlined in detail the significant regulatory burden being created by these changes and the amount of time needed for our members to adequately resource the implementation. We are pleased that the Government has heard our concerns regarding the originally proposed risk assessment of pre-commencement customers and the burden this would have created for our members. However, the other detailed information provided on the need for a longer implementation period appears to not be properly reflected in the Bill.

Proportionality

COBA is concerned that there does not appear to have been proper consideration given to the proportionality of the regime. Very similar obligations will be applied to regulated entities regardless of size and capability. This can be seen in both comparing how our members will be disproportionately impacted due to their smaller size compared to the major banks, and due to the way obligations are likely to apply to tranche-two entities.

We believe that the regime should consider providing less prescriptive risk-based measures with additional flexibility given to smaller entities in how they comply with the regime. We especially note that as many of our members are small and regionally-focused they will have different risk profiles compared to global banks with complex product offerings and this should be a factor in considering how to apply the regime to them.

Resourcing

COBA notes that the implementation of the Bill will likely coincide with other major implementation projects. This includes the first round of changes to privacy laws contained in the *Privacy and Other Legislation Amendment Bill 2024,* subsequent amendments expected to the privacy laws and from the Scams Prevention Framework. This will create a perfect storm of regulatory change that will be challenging for our members to implement.

The resourcing challenge arises as members would need to take on significant additional resources to manage the transition. Due to Australian skill shortages for experienced financial crimes subject matter experts, there will be significant competition from all regulated entities to obtain this expertise. In these circumstances it will be challenging for our members to both retain existing talent while competing for additional resources against much larger institutions.

The highly truncated implementation timelines are likely to lead to a 'scramble' for these resources from entities already under the regime and from tranche-two entities. This will place significant pressure on our members to obtain these resources in a reasonable manner prior to implementation.

Technology and third-party providers

The Bill risks exacerbating the existing two-tiers that already exist within the AML/CTF regime due to the technology and resource constraints that non-major banks, including COBA members, have compared to the major banks. The regulatory approach does not appear to consider the diversity of regulated entities and their capability and capacity constraints. These constraints arise due to the varying levels of technology maturity that exists within the banking sector between majors and non-major banks like COBA members. As mentioned above, this gap also exists between those entities already subject to the regime and the tranche-two entries with little or no AML/CTF experience.

COBA members are reliant on third party providers for core technology systems and services in respect to many aspects of their AML/CTF technology. While the Bill seeks to be technology agnostic, further uplifts above and beyond existing projects already underway in the sector will be needed. This reliance on third party providers and the need to make changes to technology adds further complexity to our members' ability to make sufficient uplifts by the implementation due date.

Phased implementation

We believe greater consideration should be given to phasing the various measures beyond the current two start dates of 31 March 2026 and 1 July 2026.

While the current phasing is appreciated, due to the sheer volume and complexity of changes in this Bill, it would assist our members to stagger the various commencement dates. If this were combined with a longer overall commencement period this could see some measures being implemented in late 2026, and others in early and mid-2027. Adopting a phased implementation along these lines would allow COBA members to more effectively allocate resources and adopt changes in a more sequenced

manner. It will also provide members with more flexibility in the obtaining of the resources and expertise needed to implement these changes.

Education first approach

If a more reasonable implementation period is not adopted, then we again call on the Government to publicly confirm that AGD and AUSTRAC will take an 'education first' focus for the initial period after commencement. This would operate similarly to the approach adopted by the agencies following the original implementation of the AML/CTF regime in 2005 to 2007.

Under this approach the agencies would focus on providing education, and not issue penalties, for instances of non-compliance. Regulator action would be targeted towards helping uplift industry rather than penalising, especially where non-compliance was due to honest mistakes. However, we recognise that there would need to be exceptions to this approach if the agencies found non-compliance that posed significant or systemic risk to the system. COBA suggests that this period would last for approximately 12 months after commencement.

Customer Due Diligence

COBA supports the intention of simplifying the existing Customer Due Diligence (CDD) rules, however, we remain concerned about the resourcing impact on our members from implementing these changes. We wish to highlight our concerns with CDD in relation to the requirement to undertake initial CDD prior to the provision of designated services. As we note in our earlier submission (**Appendix A**), this is not the standard practice for our sector and the conducting of a dynamic risk rating is likely to be impractical for our members to do based on their available resources. This requirement would also likely present several practical challenges for our members.

Many banking customers require immediate access to services to make day-to-day transactions, receive income, and pay expenses. The Bill's proposed initial CDD requirements could lead to delays that will impact customer experience and competition as it will limit the ease in which customers can change products.

This is particularly relevant for politically exposed persons (PEPs) and the bank undertaking a risk assessment. To identify PEPs, name matching is required to be automatically run which is currently done overnight by a third-party vendor with any potential matches then needing to be manually reviewed to check whether it is the same person. COBA notes that the actual number of confirmed PEPs for our sector is extremely low. The change in this Bill to the methodology and timing of customer risk assessments would likely mean that our members need to undertake a substantial investment in technology uplift.

COBA appreciates the Government's acknowledging our concerns on the conducting of individualised risk assessments for pre-commencement customers that was proposed in earlier consultation. We again ask the Government to recognise the differences that exist between our sector and the broader banking sector, and we recommend that the Bill allow for the Rules to be drafted to enable day two initial CDD.

Regulatory Reporting

COBA agrees that the existing framework is becoming increasingly complex and needs to be updated to apply to modern payment services. However, we have significant concerns about the likely increased regulatory burden and the practical considerations for resourcing and the uplift to existing systems and databases to meet these obligations.

COBA continues to be concerned with the approach to regulatory reporting, in particular the proposed approach to International Funds Transfer Instructions (IFTIs). We believe that more work needs to be done by AGD and AUSTRAC on understanding IFTIs and the adverse impacts that could arise from the Bill's changes on our members. The impact of these reporting changes should be considered alongside the weight of other reporting burdens overseen by ASIC and APRA, and with the new

Scams Prevention Framework to mitigate excessive regulatory burden with converging excessive deadlines and duplication. We are concerned that the regulatory risk and compliance burden, for some of our members, may be too difficult to manage and may see some members reduce, or possibly withdraw, some of their relevant designated services for their customers.

We are particularly concerned with the shifting of reporting obligations to ordering institutions because, as we outlined in **Appendix A** and **Appendix B**, it will often require the reporting of information that is not available to the ordering institution. Our members are currently highly reliant on third party providers for the processing of international transactions and the generation of IFTI reports and that there are currently limited mechanisms available to our members to attest to the safeguards of other institutions.

While we note that the Bill does provide the option for correspondent institutions to continue reporting for ordering institutions, which is similar to the current regime, there is no obligation to do so. This means that there may be limited appetite from the larger banks that currently do the reporting to continue to do so for our members. It is quite possible that for these larger banks to continue providing this service, they may require our members to pay significant costs to do so. Of particular concern for our members has been the shifting of liability by some correspondent banks onto the ordering banks. If these larger banks refuse to continue to undertake this reporting, we expect that it will require additional significant resource and technological investments from our members to meet these obligations. We recommend that the existing 'first in, last out' approach to reporting under the current laws be continued and not removed. This would leave the reporting and the compliance attestations with the correspondent banks and arrangers as is currently the case.

Transfers of value

COBA notes that the Bill includes a substantial reworking of the obligations that will apply in relation to transfers of value which will give effect to the travel rule. As expressed in our earlier submissions to AGD, COBA is concerned with the practical application of the adoption of the travel rule in the current operating environment, especially with the payments system as it currently stands.

We are concerned with the complexity of the proposed provisions and how they will be applied and the risk of regulatory burden. We believe that further consultation should be conducted with industry on developing this provision further to ensure that there is a clear technical model for implementing these measures within the capabilities and limitations that currently exist within the Australian payments system.

AUSTRAC powers

COBA is concerned with the powers being granted to AUSTRAC under the Bill. The proposals were not consulted on by AGD in its earlier consultation and due to the limited time available through this process we have not been able to fully consider all the potential impacts. However, our initial view is that they are likely to be wide-ranging. As these provisions were not consulted on it is currently unclear why AGD considers it necessary for these powers to be granted to AUSTRAC.

We thank the Committee for taking our views into account. Please do not hesitate to contact Alysia Smith (asmith@coba.asn.au) if you have any questions about our submission.

Yours sincerely

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Chief Executive Officer