14 February 2025

Mr Daniel Mossop
National Manager
Policy, Rules and Guidance
AUSTRAC

Via portal

Dear Mr Mossop

**First consultation on draft Anti-Money Laundering and Counter-Terrorism Financing Rules**

COBA thanks AUSTRAC for the opportunity to provide feedback on its first draft Anti-Money Laundering and Counter-Terrorism Financing Rules 2024.

COBA is the industry association for Australia's customer owned banks (mutual banks and credit unions). Collectively, our sector has over $182 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 their 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 and simplification of the anti-money laundering and counter-terrorism financing (AML/CTF) regime, including the release of updated Rules and Guidance.

COBA is concerned that consultation on partially completed Rules and Guidance and the relatively short implementation period hampers our members' ability to effectively and efficiently transition to the new regime. As such, we recommend AUSTRAC adopts an education first enforcement approach for the first year of the regime to assist regulated entities with the transition.

COBA recommends that AUSTRAC establishes a bank-only engagement forum, comprising of COBA, the Australian Banking Association (ABA), and the Australian Financial Markets Association (AFMA). This forum would support implementation, including by identifying achievable and realistic implementation deadlines for key elements of the new laws.

COBA believes the draft Rules needs to clearer and additional Guidance needs to be urgently prepared in key areas, including customer due diligence (CDD), transfer of value, and the changes to predicate offences.

## AUSTRAC's approach to Rule and Guidance development and implementation

COBA supports the need to update and uplift Australia's AML/CTF regime to reflect changes in the operating environment and to ensure alignment with the recommendations made by the Financial Action Task Force. We support AUSTRAC's intention to modernise and simplify the regime and its efforts to engage with industry in the development of the Rules and Guidance. COBA welcomes AUSTRAC's early efforts and improvements in streamlining and simplifying the draft Rules. The structure of the draft Rules is a significant improvement on existing Rules, which are convoluted and overly complicated.

While we welcome AUSTRAC's efforts, including the shift to a more principles-based approach, we are concerned with the process taken to date. Releasing incomplete Rules and Guidance for consultation is a novel approach, as legislative instruments need to be read and considered as whole due to the interdependence of their various provisions. We appreciate that AUSTRAC has likely taken this approach to keep the process moving forward and to engage with industry sooner rather than later.

While AUSTRAC's eagerness to engage with industry is laudable, this approach creates significant risks of unintended consequences. COBA, and our members, are unable to fully determine what the impacts of the Rules will be or what the regulatory expectations will be on regulated entities. The lack of clarity on the final package of the Act, Rules and Guidance makes it difficult for our members to prepare for implementation. Our members will need to make investments to update systems and processes to meet the new regime, however, as the final expectations are unclear, our members cannot prepare business cases to commence implementation.

To assist AUSTRAC to finalise the Rules and Guidance, we recommend establishing a banking industry forum to collaborate on a phased implementation plan. This forum would include COBA, ABA, and AFMA and would aim to provide a means for communication and coordination on implementation. The forum would help support the overall implementation process and would assist AUSTRAC in helping to identify achievable and realistic implementation deadlines for key elements of the AML/CTF changes.

As it is likely that the Rules and Guidance will not be finalised until the second half of 2025, we recommend that AUSTRAC consider adopting an 'education first' approach for the first year of the AML/CTF regime starting from 1 July 2026. This would be like the Financial Accountability Regime (FAR) regulators' approach at the FAR's commencement. For the first year, this would see AUSTRAC adopting an education and guidance approach to instances of identified non-compliance. This approach recognises that regulated entities face challenges experienced from the relatively short implementation period and that there are likely to be genuine mistakes made as well as other relatively minor breaches. In instances where breaches are identified, AUSTRAC would focus on educating the entity and helping to uplift its practices. There would, of course, be an exception to this approach for occurrences where AUSTRAC identifies instances where there is a significant or systemic breach of the law, especially where it poses a threat to the system if not addressed.

We believe that this process is necessary as it is likely that the Rules and Guidance will not be finalised until the second half of 2025. This will leave regulated entities only approximately 6 to 9 months to comply depending on whether the provision commences in March 2026 or July 2026. Considering the significant number of new regulated entities in the regime, due to its extension to Tranche 2 entities, we believe that it is likely there will be higher industry demand for AML/CTF specialists and advisers to assist in the transition. This is likely to result in difficulties for smaller regulated entities, like customer-owned banks, to access these advisers especially as they will be competing against much larger entities with more resources to obtain these services. Providing flexibility in AUSTRAC's approach during the early period of commencement will provide confidence to industry and provide more time to engage these increasingly scarce services.

## Draft Rules and Guidance

COBA believes that the draft Rules need more clarity, and that further Guidance is needed for many issues. We have provided more detailed feedback on the draft Rules in **Appendix A**. However, we are concerned with inconsistent term usage throughout the Act and Rules and the lack clear definitions on particular terms. For example, terms used such as “adverse findings” and “as soon as practicable” are examples of undefined terms which could be subject to inconsistent interpretation. These inconsistences and lack of clarity drive uncertainty on what AUSTRAC’s expectations will be. We note particular concerns with the approach to CDD, transfers of value, and the increased list of predicate offences.

We thank AUSTRAC for taking our views into account. Please do not hesitate to contact Robert Thomas, Senior Manager Policy (rthomas@coba.asn.au) if you have any questions about our submission.

Yours sincerely

**MICHAEL LAWRENCE**
**Chief Executive Officer**

**Appendix A – COBA comments on draft AML/CTF Rules**

| Focus area | COBA Comment |
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| **Definitions** | |
| "payer information" | The definition of "payer information" at (c)(v) requires that, in relation to a transfer of value, an individual payer must provide their date and place of birth. Place of birth is not recorded on the usual identification documents that customer have and is only recorded on birth certificates or passports. Collecting place of birth is not a standard data capture that customers expect when acquiring a new product or service meaning that customers may not have this information available.<br><br>Additionally, our members flag that there will need to be system development to collect the required information under (c) as this is not what is currently required to be shared with a payment. As such, our members are likely to experience challenges with being able to send this information, even if the place of birth is removed, by the 31 March 2026 commencement date. We also note that these systems changes will coincide other significant system updates, such as Confirmation of Payee, which will pose further challenges to implementation. |
| **AML/CTF Programs** | |
| General comment | AUSTRAC should provide further Guidance on the structure of AML/CTF policies. That is, whether our members should continue to have an overarching policy or program similar to the existing Part A, but with less detail and pointing out to subsequent policies, or if there should be a number of individual policies. This is because the Act and Rules at times refers to "policies" but in other instances it refers to "programs". COBA's understanding is that the term "program" is meant to encompass the risk assessment and policies, but clarification would be appreciated on whether there is a continued need for a single document that pulls this all together.<br><br>Additionally, risk assessments are an area where many reporting entities have had challenges and our members would welcome further Guidance, including on what constitutes good and bad risk assessments and the required documentation for each. |
| Review of ML/TF risk assessment – section 9 | We seek clarification on several elements of ss 9 and 16:<br>• "adverse findings" – it needs to be clearer on what would constitute an adverse finding and if there is a materiality expectation. It is possible that an independent evaluation could make minor comments that are not sufficiently serious to require a review of a bank's ML/TF risk assessment. |

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| Reviewing and updating AML/CTF policies following independent evaluation – section 16<br><br>Independent evaluations – section 15 | • "as soon as practicable" – AUSTRAC needs to be clearer on its expectations on this requirement. For example, does it mean days, weeks or months? Our preference would be for a period of months as a very short period would likely place significant strain on small banks generally, but especially for our smaller members that lack the resources available to larger banks that may be able to conduct a review more quickly. A further factor impacting this is that the significant increase in new reporting entities due to Tranche 2 will increase demand on a scarce number of providers that will hinder the ability of regulated entities to quickly conduct these reviews.<br><br>It should also be clearer whether the review under ss 9 and 16 is intended to be a complete review or if an interim assessment ahead of a later full assessment would be sufficient. This differentiation is particularly relevant in instances where there is lower level of seriousness in the "adverse" findings made by an independent evaluation. |
| Tipping off – section 10 | COBA requests that AUSTRAC issue clear Guidance on approaches to the tipping off provision.<br>We recommend that this Guidance should outline scenarios to help outline the circumstances when communication with customers would constitute tipping off and instances when it would not. |
| Provision of information to governing body – section 11 | COBA requests Guidance on what AUSTRAC considers to be mandatory inclusions in this reporting. This will be particularly important in helping our smaller members shift from engaging in volume reporting of suspect matters to a more strategic risk focus. |
| Reporting from AML/CTF compliance officer to governing body – section 12<br><br>AML/CTF compliance officer requirements – section 23 | Section 26L of the new Act provides that the functions of the AML/CTF compliance officer (AMLCO) is to "oversee and coordinate" various functions, including the day-to-day compliance, and the effective operation of the AML/CTF policies. This is beyond what is currently required, particularly regarding coordination.<br><br>Many of our members currently have the AMLCO as Line 2 roles, rather than it sitting in an independent division with coordination and implementation functions. As such, this could pose challenges for their AMLCOs to be able to meet the reporting obligations. For example, the current Line 2 roles provide oversight and compliance impact reviews, but do not coordinate the Line 1 activities that need to be completed, such as updating procedures. This is an issue that is normally the responsibility of the business owner and is simply overseen by the Line 2 role.<br><br>Our concern with AUSTRAC's proposed approach is that it implies both Line 1 and Line 2 responsibilities as part of "coordinate", which will be at odds to the Three Lines of Defence risk model that most of our members have adopted. |

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| Undertaking personnel due diligence – section 13 | COBA is concerned that the obligation under s 13(2)(b) is likely to be onerous and will be challenging for our members to meet if it is extended beyond a limited number of high-risk roles. It is onerous for our members to assess all their frontline staff skills, knowledge and expertise as it will differ from person to person based on their overall experience, time in the role, and training.<br><br>Further, it is not clear on the expected process. Will it be sufficient for an employee to have completed a training program on AML/CTF or will there need to be tailored training programs for individual roles which are then assessed? Rather than requiring an annual assessment we suggest that it be deemed sufficient where training has been provided and passed, in accord with s 14 of the draft Rules. |
| Providing personnel training – section 14 | We seek clarity on the intended training audience. The Act indicates it is intended for people "who perform, or will perform functions relevant to the reporting entity's obligations under this Act". However, the Rules appears to use broader language implying it applies more generally to the staff at the regulated entity. We suggest AUSTRAC amend the Rule to use the same language as the Act to more clearly indicate that it is only intended for a subset of staff.<br><br>COBA suggests that AUSTRAC also work with industry to develop a list of preferred suppliers and courses that is suitable for roles covered by this provision. |
| Requirements for senior manager to give approval or be informed – section 19 | <u>Requirements regarding politically exposed persons (PEPs)</u><br>We are concerned with the requirement that the identification and confirmation of a PEP must occur prior to providing a designated service. Currently, the PEP screening for many of our smaller members occurs as day two verification, meaning that it occurs after the membership and accounts have been created within the banking platform. It is completed in this manner as the existing screening tools links through the data that is maintained on this system and the screening then occurs on an overnight basis.<br><br>Requiring screening to occur prior to providing a designated service is likely to have the following impacts on these members:<br>• Banks will need to establish a separate screening check and system to screen prior to the membership and account opening, which would also likely sit outside of the bank's current screening processes.<br>• Banks will need to separate the membership and account processes. Creating a membership (which is not a designated service) and an account (which is a designated service) are events that usually occur simultaneously for our members. If screening for PEPs is to occur prior to the provision of a designated service, a bank would need to change its onboarding process to separate these two actions to allow screening to occur and potentially delay the account opening process by at least |

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| | one business day (to review any triggered alerts). The customer experience will be negatively affected and will put customer-owned banks at a possible disadvantage to other larger banks that may have both the capacity and ability to review the pre-screening results more quickly due to their additional systems and resources.<br>• Additionally, any changes that may be required to have pre-screening checks performed earlier within the on-boarding processes are likely to require changes to the existing screening processes. This will likely involve a substantial cost to customer-owned banks, given their reliance on third-party vendors to provide these processes and any changes would require their direct involvement on these.<br><br>Additionally, the requiring a senior manager's pre-approval may cause delays for the customers during the onboarding process. If an approval is required, it would be more beneficial after an enhanced CDD check which comes with a recommendation on whether to accept the relationship. This would be consistent with current Rules and would allow more detailed information to be provided to the senior manager post-enhanced CDD check being performed. The negative customer experience could mean that only entities able to do screenings in real time will do so, meaning a competitive advantage will be provided to larger banks due to their having the size and scale to be able to undertake these checks more quickly.<br><br><u>Requirements regarding allowing a transaction to be conducted in relation to the deposit</u><br>Clarification is needed on where the designated service is allowing a transaction to be conducted in relation to the deposit (Sch 6, Table 1, Item 5). For example, the deposit may be performed through a deposit taking ATM which means that no manual intervention is performed. Therefore, it is not clear how senior manager approval can be obtained before each designated service is provided unless the approval can be provided by the senior manager in an ongoing capacity. That is, approval for a designated service(s) is to be provided on an ongoing basis and not prior to each time the designated service is to be provided.<br><br><u>Definition of senior manager</u><br>COBA seeks clarification on the "senior manager" definition as it is currently not defined in either the Act or the draft Rules. It is not clear on what level of seniority this position is meant to be. In a small bank this could be the Chief Risk Officer while in a larger bank it could be a Head of a department. |
| **Customer Due Diligence** | |
| Establishing the identity of the customer – individuals – section 25 | <u>Place of birth requirement</u><br>Similar to our concerns regarding the "payer information" definition covered above; we are concerned with the need to verify a customer's place of birth. This is a new know your customer requirement that is not captured within the current regime, and as highlighted above, will be difficult to verify considering that only |

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| | birth certificates and passports support this verification. Of these two documents, only the passport can be verified by an electronic verification process, and it is not clear if this channel has the capacity to verify place of birth.<br><br>If electronic verification does not work, or the customer does not have a passport, then the customer would be required to attend a branch in person or to provide a certified copy of the record. The need to attend in branch or to provide certified copy will greatly slow down the onboarding process and likely see customers subject to an inefficient and inconsistent approach compared to other customer interactions that are increasingly becoming more digital.<br><br>Additionally, customers will be subject to cost and time burdens if they need to obtain or re-obtain a passport or birth certificate to verify their birthplace. This also will likely impose an unreasonable disadvantage on certain Australians who may not be able to easily visit a branch or certify a document due to their circumstances. This could include people with remote/rural living arrangements, or who would experience difficulties presenting to a branch due to disability, caring responsibilities, or working hours that prevents them visiting during business hours. An additional complexity arises where a vulnerable customer fleeing a violent environment may be subject to delays due to the verification process. This person's ability to leave their dangerous environment could be made more difficult where their passport or birth certificate is under the abuser's control.<br><br>We further note that it will be more difficult to verify of place to birth for those born outside of Australia due to the records being issued by a foreign government. Our members will have little certainty on whether the document actually contains the information that can verify the place of birth or its accuracy. |
| Additional matters for initial customer due diligence – section 27 | More clarity is needed on the types of information that this section expects regulated entities to collect regarding the nature, ownership, control and management structure of businesses. For example, would our members be required to:<br>• Obtain full organisation charts or could it be limited to details on key positions like directors, chair, secretary, and treasurer.<br>• Verify settlors, appointers, and beneficiaries of trusts. Currently our members tend to determine details via the trust deed, but the provision appears to require verification to a similar level of an agent.<br><br>Under the current drafting this provision is very broad and appears to go beyond what is the currently required. |

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| Establishing the identity of any person on whose behalf the customer is receiving the designated service – class of beneficiary – section 28 | COBA requests guidance on how AUSTRAC will apply this section. For example, in relation to s 28(2)(b), it is unclear what needs to be collected at the outset and then what would be required to verify the beneficiaries. Our members have expressed concern about how this will impact on simpler trusts and companies, as it will increase the requirements on these entities compared to the current Rules. |
| Establishing the identity of agents, beneficial owners etc – section 29 | COBA understands that the intent is to largely maintain the status quo with current provisions. However, we note that under its current drafting it will be challenging for small banks to do the necessary deep dives required to examine multi-layered beneficial checks. For example, our members lack the resourcing to pay for numerous layered checks on directors and beneficial owners, along with conducting any necessary interviews and additional screening.<br><br>Regarding the verification of agents, some of our members currently make a determination on whether to verify an agent or not. A decision to not verify is only taken in very low risk circumstances, such as regarding agents for the Public Trustee. If all agents must be verified, then it is likely to have significant operational impact on our members, due to the large number of people that can act on behalf of the Public Trustee.<br><br>We also note that the Rules do not provide for a verifying officer as it exists under the current Rules in relation to agents. Removing the verifying officer could cause challenges when dealing with other domestic financial institutions. |
| Exemption from initial CDD (delayed verification) – opening an account and deposit – section 30 | It is unclear when our members can use this provision and whether it can be applied across the board for all new customers or only in certain circumstances. We particularly note that the application of s 30(2)(b) is problematic as our members cannot conduct a risk assessment of customers at the time of onboarding due to their reliance on day two assessments. More guidance will be needed on how to properly apply this exemption. |
| Simplified CDD requirements – section 34 | COBA welcomes simplified CDD as it has the potential to reduce compliance burdens on our members by providing a process for a more straightforward path for low-risk customers. However, this provision still lacks detail and needs further guidance on how to use it, particularly on the need to provide the clear risk frameworks to allow entities to justify using the simplified CDD approach. It is currently unclear whether simplified CDD is available to all low-risk customers or only to a certain low-risk subset. |
| Customers for whom enhanced CDD is required – section 35 | Further clarity is needed on how the reporting entity should approach a determination on what is “unusually complex or large”, is an “usual pattern”, or is for “no apparent” purpose when the entity does not have the |

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| | past history of the prospective customer to allow it to determine this. Additionally, it is not clear if this provision is intended to apply to non-customers who request services that are then not supplied. |
| Deemed compliance with ongoing CDD – monitoring of transactions and behaviours – section 39 | COBA is concerned with new predicate offences on this list, especially as many have no financial transaction link. It will be difficult for our members to monitor for these new offences, and we believe are a shift the core focus of AML/CTF laws to other forms of financial crime.<br><br>Adding these new offences will be potentially onerous as it requires a significant resource commitment to both build up and maintain the required monitoring processes. This could result in investigation and SMR reporting delays. Focusing on these new and difficult to monitor crimes risks diverting resources away from other crimes that are more easily and reasonably monitored for.<br><br>If these new offences are retained, we suggest that more flexibility be provided to regulated entities in how they approach these. For example, a reporting entity could create a risk assessment of these offences that is then followed by a determination on which of these offences would be subject to monitoring activities so as to detect any unusual activities.<br><br>Providing Guidance and typologies is necessary to assist our members to screen for these new crimes. We particularly request guidance on how our members should treat receipt of a police request for a customer regarding these crimes and whether they would need to lodge an SMR even if there is no apparent financial link found. |
| **Transfers of value** | |
| General comment | A key obligation under transfers of value is the reporting requirements that will exist for international transfers of value, especially regarding the treatment of International Funds Transfer Instructions (IFTIs). The provision of clear Rules or Guidance by AUSTRAC on this is a key issue for our members and needs to be urgently addressed. |
| Obligations of ordering institutions – collecting, verifying and passing on information – section 56 | We seek clarification on whether new reporting schemas will accompany the Rules and Guidance. Section 56 appears to provide that information required to be passed on for card-based pull payments is only to be the card number and the payer, which would indicate a greatly modified report for the receiver compared to the current situation. We also need more clarity on what is meant by “the payer” and whether just a name is required and whether this means a person’s full name or if the name on the card is sufficient. |

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| | We also note that while the Rules mention card-based pull payments, however, it is unclear whether card-based push payments are covered and, if they are, what specific requirements apply. |
| Obligations of beneficiary institutions – monitoring for receipt of information – section 57 | COBA believes that AUSTRAC should provide further guidance on what it considers to be "reasonable steps" as part of monitoring the receipt of information by beneficiary institutions. |
| **Reporting** | |
| Reporting obligations of registered remittance affiliates – section 62 | COBA notes that our members rely on major remittance providers, like Western Union, and this will create regulatory burdens on them to verify whether these providers are meeting their reporting obligations. This creates challenges due to the size imbalance between some of these providers and our members, meaning that there may be difficulties in acquiring timely verifications. At the minimum this requires developing further controls and oversight of relevant remitter(s) that will have time and resourcing impacts on our members to do so, which is in addition to other proposed Rules that are also likely to have adverse regulatory burden impacts.<br><br>It is unclear what the impact of this Rule will be on IFTI reporting as the remittance affiliates could consider that they are no longer directly responsible for reporting. If these affiliates choose to no longer undertake this reporting it may impact on small banks being able to allow their customers to receive/remit funds overseas direct from their accounts and may require the bank to change remittance providers. Both situations will have adverse impacts on customers either by no longer being able to directly process payments or experiencing delays while the bank establishes a new arrangement. In instances where the affiliate chooses to continue IFTI reporting, but are no longer obliged to do so, they may determine to impose a fee for doing so, in which case it will add to the increased compliance costs for small banks. |