

Ms Katherine Jones PSM
Secretary
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

16 June 2023

Dear Ms Jones

Modernising Australia's AML/CTF regime and introducing Tranche 2

The Financial Advice Association of Australia (FAAA)¹ welcomes the opportunity to provide feedback on the Attorney-General's Department's (AGD) proposals to modernise the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Act and Rules and to introduce Tranche 2 to extend the regime to professional service providers.

The AML/CTF regime provides vital protection for all Australians from the risks and impacts associated with money-laundering and terrorism financing (ML/TF), as well as Centrelink fraud, and tax evasion.

The FAAA's submission considers the ML/TF risks faced by entities that provide item 54 designated services – ie. Australian Financial Services Licensees (AFSLs) and authorised representatives providing financial advice – and their clients.

We would welcome the opportunity to discuss with the Attorney-General's Department, the issues raised in our submission. Please contact me on sarah.abood@faaa.au or 02 9220 4500 if you have any questions.

Yours sincerely



Sarah Abood
Chief Executive Officer
Financial Advice Association Australia (FAAA)

¹ The Financial Advice Association of Australia (FAAA) was formed in April 2023, out of a merger of the Financial Planning Association of Australia Limited (FPA) and the Association of Financial Advisers Limited (AFA), two of Australia's largest and longest-standing associations of financial planners and advisers. The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia's largest professional association for financial planners, the FPA represented the interests of the public and (leading into the merger) over 10,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would positively influence the financial wellbeing of all Australians. The AFA was a professional association for financial advisers that dated back to 1946 (existing in various forms and under various names). The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.

Modernising Australia's AML/CTF regime and introducing Tranche 2

Effective date: 16/06/2023

Submitted to: Attorney-General's Department

FAAA's key recommendations:

Part 1 – Modernising the AML/CTF regime:

1. AML/CTF exemptions for reporting entities providing item 54 designated services should continue to apply.
2. The revised AML/CTF Act and Rules should be drafted to clearly delineate the requirements for each type of reporting entity.
3. The use of consistent terminology across the law would significantly enhance users' understanding of their obligations and help with compliance to protect Australia.
4. The AML/CTF regime should use simple language including consideration of licensing and professional titles used in other Commonwealth laws and regulations. For example:
 - a. Financial planners and financial advisers and Australian Financial Services Licensees (AFSLs) in the Corporations Act
 - b. Tax and BAS Agents in the Tax Agent Services Act
5. Clarification should be provided on the interaction between the proposed changes in the AML/CTF regime and the consideration of cyber security and privacy risks the proposed changes may have for item 54 reporting entities and their clients.
6. Any changes to the regime must make it clear how the Government, AUSTRAC and reporting entities can embrace the use of technology to combat AML/CTF risks and reduce the current reliance on paper-based identification verifications and record keeping.
7. As part of its Modernising Business Registers program, the Government should investigate utilising its existing registers and portals to provide a source of truth for AML/CTF customer identification purposes. This would protect Australian individuals and businesses from privacy and cyber security threats by removing the need for reporting entities to hold personal identification, and increase the efficiency of the AML/CTF regime for all stakeholders. For example:
 - a. MyGov site – for individual customer verification
 - b. ATO or ASIC business registers – for identification of business owners and directors
8. Simplify the ongoing CDD obligations to only require re-verification of customer identification in certain circumstances – eg. a re-verification 'trigger event' occurs, change of customer details or circumstances, a transaction occurs where the source of wealth/source of funds (SOW/SOF) of the incoming money has not yet been verified.
9. AUSTRAC to provide standardised digital customer identification templates / processes for all reporting entities to use. This would inject significant efficiencies into the system while reducing the inconvenience and data risks for Australian individuals and businesses.
10. As part of the modernisation project, the Government should identify clear and uniform record keeping obligations that are consistent with or complementary to requirements in the Corporations Act and Tax Agent Services Act. For example, AML/CTF record keeping obligations for CDD should be consistent with or complementary to the 'know your client' obligation in the Corporations Act.
11. Improve the accessibility of AUSTRAC guidance.
12. The intent of the covid measures under Rule 4.15 should be permanently retained in the legislation.

Part 2 - Tranche 2:

13. Reporting entities that provide item 54 designated services only (ie financial planners/advisers) be exempt from any additional Tranche 2 obligations.
14. The obligations for Tranche 2 should be based on the risks of services provided by the professionals.
15. The 'special AML/CTF program' requirement for item 54 designated services should continue to apply to reporting entities that may also provide Tranche 2 professional services under a multi-disciplinary business model.
16. Reporting entities that provide multi-disciplinary professional services – such as a combined financial advice/accounting business - should be permitted to use group arrangements to share data and meet their AML/CTF obligations based on the risks of the services provided, and client type, scale, and size of the business.
17. Tranche 2 should include the following professional services:

- a. Tax agents registered with the Tax Practitioners Board and public practice accountants servicing clients – ie. not rely on the generic title of ‘accountant’
- b. Real estate agent professionals should include property advocates and conveyancers
- c. Business Activity Statement (BAS) agents registered with the Tax Practitioners Board
- d. Mortgage brokers
- e. Business brokers
- f. Migration businesses, migration lawyers and migration agents

Streamlining AML/CTF Part A and Part B Program

The AGD proposes to streamline Part A and Part B requirements into a single requirement to develop, implement and maintain an AML/CTF program that is effective in identifying, mitigating and managing a regulated business’ money laundering and terrorism financing risk.

The FAAA welcomes and supports the following statement in the consultation paper:

Existing exemptions for those businesses that are only required to have a ‘special AML/CTF program’ would be maintained.

As referenced in the paper, a ‘special program’ applies to a particular regulated entity that only provides services in its capacity as a holder of an Australian Financial Services Licence, such as financial planners², and special programs are only required to include Part B.

The FAAA seeks clarity that the intention to maintain the existing exemptions under the ‘special AML/CTF program’ requirement for financial planners/advisers applies to all Part 1 proposed changes including:

- Assessing risk
- Mitigating risk
- Internal controls

The proposed changes in these sections, while high-level, appear to introduce new requirements aligned with current Part A obligations. These proposals are based on financial transactions. As financial planners/advisers do not provide financial transaction services, there is no additional or identified AML/CTF risk to be addressed through item 54 reporting entities complying with these changes.

The FAAA recommends the existing AML/CTF exemptions for reporting entities providing item 54 designated services must continue to apply. Item 54 reporting entities should be ring-fenced from any changes/increase in AML/CTF Part A program requirements under the modernisation of the regime; as well as from the new Tranche 2 obligations for professional designated service providers.

Combining AML/CTF Program Part A and Part B into a single AML/CTF program requirement has the potential to make it significantly more complicated and confusing for item 54 reporting entities that are exempt from the Part A obligations, to find the applicable provisions and requirements for a ‘special AML/CTF Program’ – ie Part B AML/CTF Program only. There is a need for clear delineation of the requirements for different types of reporting entities. The FAAA suggests this may also be a concern for Tranche 2 reporting entities.

The FAAA recommends the revised AML/CTF Act and Rules be drafted to clearly delineate the requirements for each type of reporting entity.

Most reporting entities must comply with multiple pieces of legislation and meet their legal requirements enforced by several different regulators. Financial planners/advisers are regulated by six separate regulators. The confusion and complexity this causes is exacerbated by the use of different terminology and definitions across the breadth of the pieces of legislation financial planners/advisers must comply with.

² Designated services covered by item 54 of table 1 in section 6 of the Act.

The terminology, language and definitions used in the AML/CTF Act and Rules complicates the regime for financial planners/advisers.

The FAAA recommends that:

- **the use of consistent terminology and language across all laws would significantly enhance users' understanding of their obligations and help with compliance to protect Australia.**
- **the AML/CTF regime should use simple language including consideration of licensing and professional titles used in other Commonwealth laws and regulations. For example:**
 - **Financial planners and financial advisers and Australian Financial Services Licensees (AFSLs) in the Corporations Act**
 - **Tax and BAS Agents in the Tax Agent Services Act**

Cyber security and privacy

Financial product providers rely on financial planners/advisers to meet their customer identifications obligations. The AML/CTF Act poses risk-based obligations on each product provider. Each product provider has an AML/CTF Program Part A and Part B based on the ML/TF risk faced by that particular entity (or group).

AML/CTF Rule 8.1.7 requires that a reporting entity must apply Part A to all areas of its business that are involved in the provision of a designated service, including in relation to any function carried out by a third party.

Due to the designated services they offer customers, product providers must have in place a Part A AML/CTF program due to their higher ML/TF risk. Financial product providers use financial planners to comply with their CDD verification, re-verification, and ongoing CDD obligations. This results in product providers placing additional AML/CTF requirements on financial planners/advisers that are more excessive than the legal requirements for item 54 reporting entities.

Financial planners'/advisers' AML/CTF procedures, systems, controls and record keeping must also be appropriate to enable planners/advisers to effectively complete the customer identification forms and procedures on behalf of product providers and maintain appropriate records³.

As product providers have ongoing CDD requirements⁴, financial planners/advisers are regularly requested to undertake ongoing CDD of their clients under the third-party reliance provisions, even though item 54 reporting entities are exempt from ongoing CDD. This is an extra cost to businesses and clients that cannot be recovered.

Feedback from FAAA members indicates that financial planners/advisers have successfully embedded the item 54 designated service requirements in their business operations and the customer due diligence requirements are working well and accepted by clients. However, the additional requirements placed on them by product providers cause significant concerns for planners/advisers and their clients.

Most financial planners/advisers have long-term clients. However, some product providers request customer identification to be re-verified every six months even if the customer identification or circumstances have not changed, the source of wealth/ source of funds have previously been checked, and no trigger event has occurred. Product providers are demanding client photo identification to be held by both the item 54 entity and the product provider. Product providers appear to have introduced requirements that well exceed the obligations in the Act, which over-complicates the AML/CTF regime for reporting entities and clients.

The unnecessary requests for re-verification significantly increases the cyber-security risk for businesses and clients. Clients have expressed their concern to financial planners/advisers about these requests for re-verification and multiple entities holding their personal data. The changes proposed in the consultation paper will not address this issue.

³ Division 7 of Part 2 of the AML/CTF Act

⁴ s36 of the AML/CTF Act

The FAAA recommends simplifying the ongoing CDD obligations to only require re-verification of customer identification in certain circumstances – eg. a re-verification ‘trigger event’ occurs, change of customer details or circumstances, a transaction occurs where the SOW/SOF of the incoming money has not yet been verified.

Feedback from FAAA members highlights that consumers are extremely concerned about their exposure to cyber security risks and privacy issues because their personal data and identification documentation is held on file by multiple financial services entities for AML/CTF purposes (eg. their financial planner/adviser and each product provider). Financial planners/advisers do not feel comfortable holding verified copies of their client’s personal identification documentation for the same reasons. It is unclear if there are protections under privacy laws that permit clients to request for certain information to be no longer retained on file.

Based on the consultation paper, it is unclear how the proposals to modernise the AML/CTF regime would interplay with the changes to the Privacy laws released by the AGD in January 2023, and measures to address cyber security issues. While customer identification is vital, the holding of customer information and identification increases the cyber security risk and poses privacy issues for customers and businesses. As evidenced through recent high-profile cases, cyber attacks and data breaches are increasing in their occurrence and severity.

The FAAA recommends clarification be provided on the interaction between the proposed changes in the AML/CTF regime and the consideration of cyber security and privacy risks the proposed changes may have for item 54 reporting entities and their clients.

Currently customer due diligence involves verifying customer identification from a variety of government agencies. For example, the following primary and secondary identification documents are issued and held by either a state or federal government agency:

- drivers license and photo identification card
- passports
- Medicare card
- Business licence
- Director Identification Number

The Federal Government has existing secure and interactive registers that hold such data, such as the Centrelink, Medicare, ATO and other government applications linked through the consumer facing MyGov portal, the ASIC professional registers, and the ATO business register for example.

The Government must take the leading role in protecting customers’ data and facilitating the protection provided to Australia through the AML/CTF regime. There is an opportunity for government to utilise existing infrastructure to provide a ‘source of truth’ to be used by reporting entities for CDD AML/CTF purposes. This would help protect Australian individuals and businesses from privacy and cyber security threats by allowing reporting entities to verify customer identification via a government source and removing the need for reporting entities to hold personal identification. It would also increase the efficiency and reduce the cost of the AML/CTF regime for all stakeholders.

As part of its Modernising Business Registers program, the FAAA recommends the Government investigate utilising its existing registers and portals to provide a source of truth for AML/CTF customer identification purposes. For example:

- **MyGov site – for individual customer verification**
- **ATO or ASIC business registers – for identification of business owners and directors**

Feedback from some FAAA members indicates that some clients have requested the use of independent identification verification processing service providers (eg. Green ID, Reverify). This involves the AFSL making a request to the verification service to have a client identification verified. The client uploads their license with a protected password. The service verifies the identification, conducts a background check on the customer, and

provides a verification report to the AFSL. However, this service is relatively costly. It is also unclear how the use of this technology will be accepted and acknowledged under the proposed changes.

The FAAA recommends that any changes to the regime must make it clear how the Government, AUSTRAC and reporting entities can embrace the use of technology to combat AML/CTF risks and reduce the current reliance on paper-based identification verifications and record keeping.

Standardised forms

The Financial Planning Association (FPA) and Financial Services Council (FSC) developed an agreed AML/CTF customer identification, verification and due diligence guideline and forms based on appropriate customer identification procedures (ACIP) for the type and level of ML/TF or other serious crime risks product providers may reasonably be expected to face in the provision of the designated services they offer customers.

This includes standardised customer verification forms covering:

- Individuals
- Australian Companies
- Foreign Companies
- Australian Regulated Trusts
- Unregulated Australian Trusts and Foreign Trusts
- Partnerships
- Associations
- Registered Co-operatives
- Verifying Officer
- US Tax Status Declaration (curing) Individuals
- Tax Status Declaration (curing) Individuals
- Foreign Tax Status Declaration (curing) Entities

While these forms were heavily used in the early years of the AML/CTF regime, due to amendments to the AML/CTF Act and Rules, changes in the financial services market and regulations, and technology developments, FAAA member feedback indicates these forms are no longer consistently utilised by providers.

However, the most significant impact on the consistent use of these forms in recent years is the high-profile prosecutions of financial services entities by AUSTRAC. Product providers tend to use their own forms and request additional information and re-verification that well exceed the requirements in the Act due to the fear of litigation. This greatly impacts customers and financial planners/advisers who must fill in multiple forms with the same information and for the same purpose, which is inefficient and drives up the cost of services.

The use of standardised forms:

- improves clarity for customers and reporting entities as to the information required,
- simplifies the requirements for all reporting entities and promotes efficiency and compliance,
- improves quality of the customer due diligence process because the work is done in a pre-defined, consistent way, and
- facilitates appropriate and safe record keeping.

The FAAA recommends that:

- **AUSTRAC should provide standardised digital customer identification templates / processes for all reporting entities to use. This would inject significant efficiencies in the system while reducing the inconvenience and data risks for Australian individuals and businesses.**
- **as part of the AML/CTF modernisation project, the Government should identify clear and uniform record keeping obligations that are consistent with or complementary to requirements in the Corporations Act and Tax Agent Services Act. For example, AML/CTF record keeping obligations for CDD should be consistent with or complementary to the 'know your client' obligation in the Corporations Act.**

Covid provisions – Amendments to Rule 4.15

The covid amendments to Rule 4.15 provided flexibility for determining proof of identity during lockdown – that is, remote customer identification verification. The nature of work generally has changed as a result of the lockdown conditions imposed on businesses and the community by governments during the pandemic. Community expectations around work conditions have changed with workers and businesses understanding the significant benefits of flexible work arrangements on productivity, employee wellbeing, and customer service options. The Federal Government has recognised this ongoing transformation of businesses and community expectations by building ‘flexible work arrangements’ into the provisions of the Fair Work Act.

The means through which consumers seek goods and services has also changed. Financial advice clients are more commonly requesting services to be provided remotely and do not always come into the financial planner’s office for in-person meetings. Face-to-face meetings are commonly conducted online, saving both the client and the advice practice time and money.

The covid provisions under Rule 4.15 recognised the need and community expectation for a more flexible approach to customer verification by allowing a reporting entity to use “alternative identity proofing processes in accordance with its risk-based systems and controls”. The Note to Rule 4.15.1A specifies that:

Alternative identify proofing processes could include, but are not limited to, acceptance of multiple types of secondary identification documents where normally a primary identification document would be required.

The FAAA recommends the intent of the covid measures under Rule 4.15 should be permanently retained in the legislation to reflect the change in community expectations and business operations in the provision of remote service delivery.

PART 2 – TRANCHE 2

Application of Tranche 2

The consultation paper identifies “lawyers, accountants, trust and company service providers, real estate agents, and dealers in precious metals and stones (known as tranche-two entities) as particularly vulnerable to misuse and exploitation by transnational, serious and organised crime groups and terrorists due to the nature of the services that they provide”.

While the consultation paper does not mention financial planners/advisers would be part of the Tranche 2 obligations, it also does not specifically exclude such professionals or the services they provide. The FAAA is concerned that financial planners/advisers may be considered as designated non-financial businesses and professions (DNFBPs or ‘gatekeeper professions’), under the banner of accountants.

Tranche 2 of the AML/CTF Act would be a duplication of existing requirements that financial planners/advisers have complied with for over a decade. Since the enactment of the AML/CTF Act on 12 December 2006, AFS licensees have been required to register with AUSTRAC and meet the obligations of item 54 designated service providers under the Act.

Financial planners/advisers either hold their own AFSL or operate as an authorised representative, Corporate Authorised Representative (CAR), or employed planner, under another entity’s AFSL, and must comply with and report into the AML/CTF processes, systems, and controls of the AFSL, which is registered with AUSTRAC as the reporting entity. This is based on the higher ML/TF risk of licensees, not the ML/TF risk of the individual financial planner/adviser or their firm.

See attachment 1 for an overview of the current obligations for financial planners under the AML/CTF Act and the Corporations Act.

Applying Tranche 2 to financial planners/advisers or financial planning/advice firms would create significant confusion and cost; undermine the effective AML/CTF risk management and compliance systems, processes and controls that have been efficiently and effectively assisting AUSTRAC to fulfil its role in protecting Australia since the commencement of the Act; and deliver no additional AML/CTF benefit or protection.

Financial planners/advisers would incur the significant cost of undoing existing AML/CTF processes and controls, to put in place new systems and controls based on Tranche 2 requirements and reporting obligations. It will also significantly undermine cost-effective and efficient industry developed solutions to addressing ML/TF risks by financial planners, AFS licensees and Part A AML/CTF program reporting entities (ie. product providers).

This will have a significant impact on financial planners, the majority of whom operate small businesses or are sole practitioners (nearly 90% of licensees have 10 or less financial planners operating under their licence).

Financial planners/advisers are also not accountants. Accountants offer different professional services to financial planners/advisers. As such, accountants play a different role, and interact differently with the financial system on behalf of clients, compared with financial planners/advisers.

The provision of financial planning services is regulated by ASIC under the Corporations Act 2001 licensing regime. Australian Financial Services (AFS) licensees provide financial product advice to clients and deal in financial products.

Financial planners/advisers must either be authorised by a licensee or hold an AFSL to provide financial advice to consumers. Accountants are not required to hold an AFSL to provide accounting services to consumers.

Similarly, under the AML/CTF Act financial advice licensees are considered to be reporting entities that provide item 54 designated services. The AML/CTF Act 2006 has applied to financial planners/advisers since the commencement of Tranche 1. The different licensing requirements, and the application of the AML/CTF regime, clearly shows that accountants and financial planners/advisers provide different and distinct professional services under the law.

These distinctions should be recognised in determining the appropriate application of Tranche 2 AML/CTF obligations. The FAAA requests the AGD acknowledge this distinction.

The FAAA recommends reporting entities that provide item 54 designated services only (ie financial planners/advisers) be exempt from any additional the Tranche 2 obligations.

The FAAA supports the list of professionals identified as Tranche 2 entities and makes the following recommendations to clarify the services that financial planners/advisers suggest are exposed to AML/CTF risk.

The FAAA recommends that Tranche 2 obligations should include the following professional services:

- **Tax agents registered with the Tax Practitioners Board (TPB) to provide tax agent services and public practice accountants servicing clients – ie. not rely on the generic title of ‘accountant’. This should not include tax agents registered to only provide tax (financial) advice services**
- **Real estate agent professionals, including property advocates**
- **Conveyancers**
- **Business Activity Statement (BAS) agents registered with the TPB**
- **Mortgage brokers**
- **Business brokers**
- **Migration businesses, migration lawyers and migration agents**

As discussed in the consultation paper, the identified Tranche 2 entities provide distinct professional services posing different ML/TF risks to the business and Australia.

The FAAA supports the risk-based regulatory approach under the AML/CTF Act for the extension of obligations to Tranche 2 entities.

Multi-disciplinary professional services practices

While we do not believe that item 54 designated services should be captured under the Tranche 2 obligations, many financial advice practices provide multi-disciplinary professional services such as financial advice and accounting; or financial advice and mortgage broking.

As discussed above, the ML/TF risks faced by financial planners/advisers is different to that of accountants. For example, accountants who focus on the provision of tax agent services.

The introduction of Tranche 2 should appropriately acknowledge and cater for multi-disciplinary professional service providers. However, the current exemptions for item 54 designated services should continue to apply as this is appropriate to the ML/TF risk of the services provided by financial planners/advisers.

The FAAA recommends that:

- **the ‘special AML/CTF program’ requirement for item 54 designated services continue to apply to reporting entities that may also provide Tranche 2 professional services under a multi-disciplinary business model.**
- **multi-disciplinary professional service firms should be permitted to use the group arrangements to share data and meet their AML/CTF obligations based on the risks of the services provided, and client type, scale, and size of the business.**

OTHER ISSUES

Cost recovery levy

The current AUSTRAC cost recovery levy applies to entities based on earnings and the number and value of transactions reported to AUSTRAC. Usually, only medium to large businesses are required to pay the levy. These are businesses with one or more of the following:

- earnings of A\$100 million or more
- a large number of transaction reports relative to other entities
- a high total value of transaction reports lodged with AUSTRAC during a calendar year, relative to other entities.⁵

Under the Act, the Minister has the ability to make a determination, including for reporting entities to incur a levy of nil based on criteria included in the determination. In the past, this criteria has included small businesses.

The FAAA recommends small businesses should continue to be exempt from the levy.

Access to AUSTRAC guidance

Due to the complexity of the Act and the terminology used, information on the AUSTRAC website tends to be the main source of information for financial planners/advisers. The FAAA acknowledges AUSTRAC’s efforts to simplify the presentation of the requirements for reporting entities through helpful guidance.

Our members are concerned that combining Part A and Part B into a single AML/CTF program would make the regime more complicated. More AUSTRAC guidance would be needed to overcome this issue based on the services that the group of reporting entities provide. This would clarify what each industry needs to do so they can apply it at the business level.

Grouping guidance under the financial services provided to consumers, not the AML/CTF requirement would greatly improve accessibility of the guidance for industry.

⁵ [Industry contribution levy | AUSTRAC](#)

Attachment 1: Existing obligations for financial planners/advisers

Financial advice licensees are considered item 54 reporting entities under the AML/CTF Act as such entities:

- hold an Australian Financial Services Licence (AFSL), and
- make arrangements for their clients to receive a designated service from other AUSTRAC reporting entities, such as product providers (rather than provide other services themselves).

Item 54 reporting entities are required to adopt and implement throughout their business a Special AML/CTF program⁶. Special programs only need to include Part B of an AML/CTF program.

AFSL holders, known as 'licensees', authorise financial planners/advisers to provide financial services on their behalf. Financial planners may be employed directly by the licensee, or own and operate their own financial planning firm as an authorised representative of the licensee. Financial planners/advisers may also be individually licensed.

Hence, financial planners/advisers are the AFS licensee's 'frontline' representatives who interact directly with consumers and undertake identification and other risk assessments to ensure a licensee's compliance with their existing AML/CTF obligations.

Financial planners/advisers must comply with and report into the AML/CTF program, processes, systems, and controls of the AFSL that is registered with AUSTRAC as the reporting entity. This is based on the higher ML/TF risk of licensees, not the ML/TF risk of the individual financial planner or their financial planning firm.

The following table provides an overview of the current AML/CTF obligations for financial advice licensees who are item 54 reporting entities, and relevant requirements in the Corporations Act.

Current obligations under AML/CTF Act	Description of current AML/CTF obligations financial planners adhere to	Obligations under other Australian laws
<p>Special AML/CTF program (Part B):</p> <ul style="list-style-type: none"> • Focuses on identifying customers and beneficial owners, including politically exposed persons and must include how the entity meets 'know your customers' requirements and their beneficial owners' requirements, and the money laundering/terrorism financing risk they pose. 	<p>Must include:</p> <ul style="list-style-type: none"> • How the reporting entity collects and verifies customer information to make sure they are who they claim to be, or (for companies and organisations) that they exist. • How the entity collects and verifies information about beneficial owners, and what information is collected and verified about beneficial owners • How the entity determines if its customer or the beneficial owner is a politically exposed person (PEP). • How the entity responds to discrepancies in customer information. • How the entity decides when to collect additional information about a customer. 	<p>Corporations Act:</p> <ul style="list-style-type: none"> • Licensee must have appropriate systems and processes to ensure financial planners comply with the 'Know Your Client' requirements under the Best Interests Duty • Financial planner Code of Ethics <ul style="list-style-type: none"> ○ Financial planners must "comply with all relevant laws" ○ Exercise due care and skill in the way they engage each client; understand each client; diagnose each client's needs and issues
<p>Customer due diligence (CDD) procedures</p>	<ul style="list-style-type: none"> • Collect and verify customer identification information • Identify and verify beneficial ownership • Identify whether a customer is a PEP 	<p>Corporations Act:</p> <ul style="list-style-type: none"> • 'Know Your Client' includes: <ul style="list-style-type: none"> ○ a fact find commencing with the identity of the client and their financial circumstances, such as income sources, investments, etc. ○ research both existing financial products held by client and potential

⁶ Section 86 AML/CTF Act

	<ul style="list-style-type: none"> Obtain information on the purpose and intended nature of the business relationship. 	<p>alternative products that would achieve client's goals – this process allows planners to identify risks and suspicious activity in relation to products and transactions</p> <ul style="list-style-type: none"> Financial Adviser Code of Ethics <ul style="list-style-type: none"> exercise due care and skill in the way they engage each client; understand each client; diagnose each client's needs and issues
ML/TF risk management assessment	<p>Risk management assessment by:</p> <ul style="list-style-type: none"> Identifying risks posed by reporting entities: <ul style="list-style-type: none"> customer types customers' sources of funds and wealth delivery channel any foreign jurisdictions the reporting entity deals with. Assessing and measuring risks Applying controls including: <ul style="list-style-type: none"> Risk-based customer due diligence procedures Monitoring and reviewing effectiveness. 	<p>Corporations Act:</p> <ul style="list-style-type: none"> Licensee risk management and conflict of interest obligations Professional Indemnity Insurance policy requirements Both these requirements assess the client information identified by financial planners to help determine the overall risks of the licensee
AUSTRAC Reporting obligations	<ul style="list-style-type: none"> Suspicious matter reports (SMR) for any transaction or interaction that makes you suspicious that someone is acting illegally. 	<p>Corporations Act:</p> <ul style="list-style-type: none"> 'Know Your Client' includes: <ul style="list-style-type: none"> a fact find commencing with the identity of the client and their financial circumstances, such as income sources, investments, etc. research both existing financial products held by the client and potential alternative products that would achieve the client's goals – this process allows planners to identify risks and suspicious activity in relation to products and transactions Reportable situation obligations (s912D) - required to submit notifications to ASIC about reportable situations including: <ul style="list-style-type: none"> significant breaches or likely significant breaches of 'core obligations' investigations into whether there is a significant breach or likely breach of a 'core obligation' if the investigation continues for more than 30 days the outcome of such an investigation if it discloses there is no significant breach or likely breach of a core obligation conduct that constitutes gross negligence or serious fraud conduct of financial advisers and mortgage brokers who are representatives of other licensees in certain prescribed circumstances.

Employee due diligence	Not required	<p>Corporations Act requirements:</p> <ul style="list-style-type: none"> • Mandatory registration on the Financial Adviser Register including fit and proper person test (s921U): <ul style="list-style-type: none"> ○ had a AFSL or Credit Licence suspended or cancelled; ○ had a banning order, or a disqualification order by ASIC ○ has ever been disqualified from managing corporations; ○ has ever been linked to a refusal or failure to give effect to a determination made by AFCA; ○ has ever been an insolvent under administration; ○ in the last 10 years, has been convicted of an offence; ○ in the last 10 years, a Financial Services and Credit Panel has made an instrument against them or given them an infringement notice • Code of Ethics – must comply with all relevant laws (std 1); uphold integrity of profession and hold each other accountable for the protection of the public interest (std 12) • Single Disciplinary Body within ASIC <ul style="list-style-type: none"> ○ Can cancel or suspend mandatory registration • Licensing requirements <ul style="list-style-type: none"> ○ Authorised by licensee ○ Licensee oversight of compliance with all legal requirements, including AML ○ Comply with the AML program of the licensee as the reporting entity • Reference checking obligations and protocol (s912) <ul style="list-style-type: none"> ○ Licensees must undertake a reference check on an individual seeking to be employed or authorised as a financial adviser <ul style="list-style-type: none"> ▪ appropriate background checks (e.g. referee reports, searches of ASIC's banned and disqualified register and police checks) ○ Former licensees must share information about the performance and conduct history of financial advisers with prospective licensee ○ Must use ASIC reference request template <ul style="list-style-type: none"> ▪ help identify the prospective representative and seek details about their previous role and responsibilities. ▪ results/outcomes of compliance audit(s) ▪ breach reports made to ASIC where the breaches were caused or contributed to by the prospective representative in any capacity
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		<ul style="list-style-type: none"> ▪ any unresolved inquiries or investigations in progress for the prospective representative
<p>Employee training: AML/CTF risk awareness training program</p> <ul style="list-style-type: none"> • for employees, employees being promoted or transferred, senior managers, consultants and new directors 	Not required	<p>Corporations Act</p> <ul style="list-style-type: none"> • Minimum education standards include understanding requirements under all relevant laws • CPD standard includes undertaking training on legal obligations • Exam includes legal obligations • Financial Adviser Code of Ethics <ul style="list-style-type: none"> ○ Competency standards and value <p>Professional association obligations</p> <ul style="list-style-type: none"> • Membership entry standards • CPD <p>Licensee requirements</p> <ul style="list-style-type: none"> • Risk management training
Compliance report	Not required	<p>Corporations Act</p> <ul style="list-style-type: none"> • Obligation to report breaches or likely breaches of the Corporations Act to ASIC <ul style="list-style-type: none"> ○ This includes compliance with Australian laws • Annual compliance report and certificate must be lodged with ASIC
AML/CTF Compliance officer	Not required	<p>Corporations Act</p> <ul style="list-style-type: none"> • Licensee Responsible Manager(s) • Compliance Officer
Third-party reliance	<p>Comply with Chapter 7 of AML/CTF Rules:</p> <ul style="list-style-type: none"> • Undertake CDD (identification and verification) and record-keeping, so that the other person is satisfied that it knows who the customer is, <ul style="list-style-type: none"> ○ Based on the type and level of ML/TF or other serious crime risks that the product provider may reasonably be expected to face in its provision of designated services, considering the nature, size, and complexity of the business, including its products, services, delivery channels, customer types, and countries it operates in. • CDD processes and systems must be appropriate and consistent with the higher ML/TF risk of financial product providers. • Assess ML/TF risk of the customer for the service provided by the product provider, not the services provided by the planners. • Records which demonstrate that the CDD procedure was conducted in a manner consistent with product providers ACIP requirements <ul style="list-style-type: none"> ○ Provide records of the applicable customer identification procedures used to verify the identity of the 	<p>Corporations Act</p> <ul style="list-style-type: none"> • Licensing regime <ul style="list-style-type: none"> ○ Financial Planners must either hold an Australian Financial Services Licence or be authorised to provide financial advice by an entity that holds an AFSL. ○ Licensees set policies and controls to meet their financial advice obligations under the Corporations Act ○ Financial planners must operate under and comply with the policies and controls set by the licensee, including record-keeping requirements.

	customer, the beneficial owner of the customer or a person acting on behalf of the customer, and all relevant documents, data and information obtained during CDD.	
Record keeping	<ul style="list-style-type: none"> customer identification procedures Reports made to AUSTRAC: Suspicious matter reports (SMR) AML/CTF program and compliance 	<p>Corporations Act</p> <ul style="list-style-type: none"> Breach reports made to ASIC Compliance reports Advice documentation 'Know your client' information Best interest duty – document client's circumstances, objectives including income, investments, assets etc Financial Adviser Code of Ethics <ul style="list-style-type: none"> must ensure that records of clients, including former clients, are kept in a form that is complete and accurate.
Part B AML/CTF program review	Review Part B AML/CTF Program to ensure the controls, systems and processes remain effective to meet current AML/CTF obligations and ML/TF risks.	AFSL and Advice file compliance reviews

Financial planners/advisers and AFSLs are exempt from the following ongoing reporting requirements as they do not provide funds “transaction” services and do not transfer currency.

- Threshold transaction reports (TTR) for transfers of A\$10,000 or more in cash (or the foreign currency equivalent).
- International funds transfer instruction reports (IFTIs) for transfers of funds of any value into or out of Australia, made either electronically or under a designated remittance arrangement
- Report cross-border movement (CBM) of physical currency of A\$10,000 (or the foreign currency equivalent) or more if you carry, mail or ship money into or out of Australia.