FINANCIAL ADVICE ASSOCIATION AUSTRALIA

30 October 2024

Mr William Morris
Director, Guidance
AUSTRAC
Level 27, Tower 2
727 Collins Street
Docklands VIC 3008

Email: Guidance_Consultation@austrac.gov.au.

Dear Mr Morris

Assisting customers who don't have standard forms of identification

The Financial Advice Association of Australia (FAAA)[1] welcomes the opportunity to provide feedback on AUSTRAC's proposed changes to its guidance - *Assisting customers who don't have standard forms of identification.*

The AML/CTF regime provides vital protection for all Australians and businesses from the risks and impacts associated with money-laundering and terrorism financing (ML/TF).

Our submission includes feedback from the perspective of reporting entities that only provide 'item 54 designated services' – ie. Australian Financial Services Licensees (AFSLs) and authorised representatives providing financial advice – and their clients. We support the intent of the proposed changes to the guidance, and applaud the Regulator's focus on financial inclusion and the plain English drafting approach taken in the updated guidance.

We provide the following comments for your consideration.

FAAA feedback:

<u>Financial abuse</u> - The proposed guidance suggests that a referee statement should be witnessed by an independent person, particularly if there is the potential for undue influence on the customer (page 9). Undue influence can be a symptom of financial abuse and often occurs in elder abuse situations. Financial advisers are deeply concerned for the victims of financial abuse and are uniquely positioned to detect signs of financial abuse due to their close relationships with clients and their families.

While the perpetrator of financial and elder abuse can vary, these issues are commonly considered a form of domestic and family violence. Part 4.15 of the AML/CTF Rules includes "*those who are experiencing or have experienced family and domestic violence*" as an exceptional case where non-standard identification may be

[1] The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

accepted. It is also specifically included in this guidance. We support the inclusion of this issue in the AML/CTF requirements.

We are concerned about the risk of undue influence of Australians occurring in relation to their interactions with financial services. We encourage AUSTRAC to take an active interest in this area as part of its approach to financial inclusion and family and domestic violence. We note the government's ongoing commitment to address financial abuse (particularly elder abuse) through the Attorney-General's Department. AUSTRAC guidance may present an opportunity to support victims of financial abuse, including through the current consultation. For example, extending the section – *Applying this flexible approach to customers affected by family and domestic violence* (page 17) – to include financial abuse and elder abuse.

Undue influence can occur under a variety of circumstances and we agree this should be a consideration in instances where a person does not have access to standard documentation for identification verification prior to the provision of a designated service.

<u>Page 3</u> - What is the intended meaning of the term 'social footprint'? We understand that this phrase is included, undefined, in Part 4.15 of the AML/CTF Rules. However, we question whether this could be mis-interpreted as meaning social media presence, particularly in the context of younger people. Given this is in reference to not having access to standard identity documentation, is 'social footprint' accurate terminology? Further explanation of this term would be helpful.

<u>Page 5 – Example: Customer's risk rating increases due to unusual transactions</u> – this is a helpful example as it focuses on the ML/TF risk (i.e. why did the transactions occur?) and demonstrates that reverifying ID is not always the solution needed. Unnecessary ID reverification under reliance can create significant inefficiency and inconvenience for financial advisers and clients when this is demanded by product providers. Highlighting the need to focus on the AML/CTF issue is helpful.

<u>Pages 6/7</u> (and other relevant occurrences) – Examples provided on alternative means for accepting the lodgement of documents for customers who are unable to lodge documents in person, could be expanded to ensure common uses of technology are included. In particular, the use of online conferencing services or video calls.

<u>Page 7</u> – We are concerned about the inconsistency between AUSTRAC guidance and AML/CTF ongoing CDD programs implemented by some financial product providers. Under this AUSTRAC guidance a referee statement may be provided by "*another person before whom a statutory declaration can be made*". Financial advisers and financial planners are 'approved licensed or registered occupations' under the Statutory Declarations Regulations 2023. Hence, a financial adviser can provide a referee statement attesting to the identification of a customer with non-standard documentation. However, some product providers will not accept financial advisers' attestation that an existing and long-term advice client is who they say they are, rather insisting on reverifying identification every 12 months, even if the client's identification remains current and unchanged. The financial adviser must unfairly wear the cost and time involved in this seemingly unnecessary reverification of client identification. This has included requests to reverify a client's driver's licence, even though in some states a driver's licence can be issued for up to 10 years, as noted on page 10 of the guidance.

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Page 7 (and other relevant occurrences) – includes "*a manager or warden of a refuge or shelter accommodation or homeless shelter*" as an appropriate referee. We suggest consideration be given to expanding this point to include a manager of a care facility or hospital. This would capture circumstances where a customer suddenly and unexpectedly needs to enter residential aged care (or a similar care facility) and requires access to funds to cover the cost of the aged care service. We suggest the "responsible person"[2] of a "registered provider"[3] as defined in the Aged Care Bill 2024 currently before Parliament could be appropriate. Including unexpected urgent entry into a care facility could be included as an example in the section – *Allowing additional time to provide standard identity documents* (page 12).

Page 9 – The inclusion of an example form for confirming the identity of customers who don't have standard identity documents, is helpful for reporting entities.

Page 10 – Recently expired identification – this section may also be relevant to elderly people who do not officially hand in their driver's licence when they stop driving, as well as individuals in a care facility.

Page 11 – Verifying alternative identification documents – Financial advisers with long term clients who no longer have current standard ID might attest to their client's ID for a product provider. Financial advisers must meet the legislated education and professional standards and be registered to be legally permitted to provide personal advice to retail clients. Hence, it may be appropriate to include a suggestion to search the ASIC Financial Adviser Register to verify that an individual is a registered financial adviser.

Page 15 - Example 1: Opening an account – at the end of this example it states: "*Having obtained his new identification documents, Customer A provides these details and Careful Credit Union opens a personal account.*" This implies that the service cannot be provided/account cannot be opened until after the new ID documents have been provided, even though the ML/TF risk in this example is stated as low. Is this the intent of the guidance? This appears inconsistent with other examples in this guidance where the ML/TF risk is low (such as examples 1 and 2 on page 18), which allow the designated service to be provided before the new ID documents have been provided.

We would welcome the opportunity to answer any questions you may have regarding the feedback provided in our submission. Please contact me on phil.anderson@faaa.au or 02 9220 4500.

Yours sincerely

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[2] Defined under s12 of the Aged Care Bill 2024
[3] Defined under s11(2) of the Aged Care Bill 2024