FINANCIAL ADVICE ASSOCIATION AUSTRALIA

26 June 2025

Mr Brendan Thomas
CEO
AUSTRAC
PO Box K534
Haymarket NSW 1240

Dear Mr Thomas,

Second public consultation on new AML/CTF Rules

The Financial Advice Association of Australia (FAAA)[1] welcomes the opportunity to provide feedback on the second public consultation on the new AML/CTF Rules (the draft Rules), the Explanatory Statement (ES) and associated consultation paper.

The Anti-Money Laundering and Counter-Terrorism Financing (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) and is strongly supported by the FAAA.

Our members are predominantly providers of item 54 designated services only, which involves 'arranging' for another designated service and does not directly involve a 'transaction'.

In our submission we have raised the need for greater clarity regarding:

- reporting groups and the 'meaning of control'
- the operation of third party reliance, and
- industry-specific Guidance.

We would welcome the opportunity to discuss the matters raised in our submission with AUSTRAC. If you have any questions about our submission, please do not hesitate to contact either myself on 02 9220 4500 phil.anderson@faaa.au, or FAAA Senior Manager, Policy, Heather McEvoy at heather.mcevoy@faaa.au.

Yours sincerely,

Phil Anderson
General Manager Policy, Advocacy & Standards
Financial Advice Association Australia (FAAA)

[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.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Second public consultation on new AML/CTF Rules

Effective date: 26/06/2025

Submitted to: AUSTRAC

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

GPO BOX 4285 SYDNEY NSW 2001

CONTACT@FAAA.AU

WWW.FAAA.AU

T 1300 337 301

ABN 62 054 174 453

FAAA FEEDBACK ON DRAFT RULES AND EXPLANATORY STATEMENT

FAAA's feedback on the draft Rules and Explanatory Statement also serves to address the relevant questions in the AUSTRAC consultation paper.

Our submission relates to the provision of item 54 designated services, which is defined in Table 1 of section 6 of the AML/CTF Act as:

> *"in the capacity of holder of an Australian financial services licence, making arrangements for a person to receive a designated service (other than a service covered by this item)."*

The arranging of another designated service occurs during the implementation of financial advice that is provided by a financial adviser, who is authorised by the financial advice AFSL holder.

Our submission uses the term "AFSL holder" in reference to a reporting entity that provides only item 54 designated services. This is in line with the AML/CTF Act item 54 designated services definition and the use of the term 'AFSL holder' by AUSTRAC.

Reporting groups

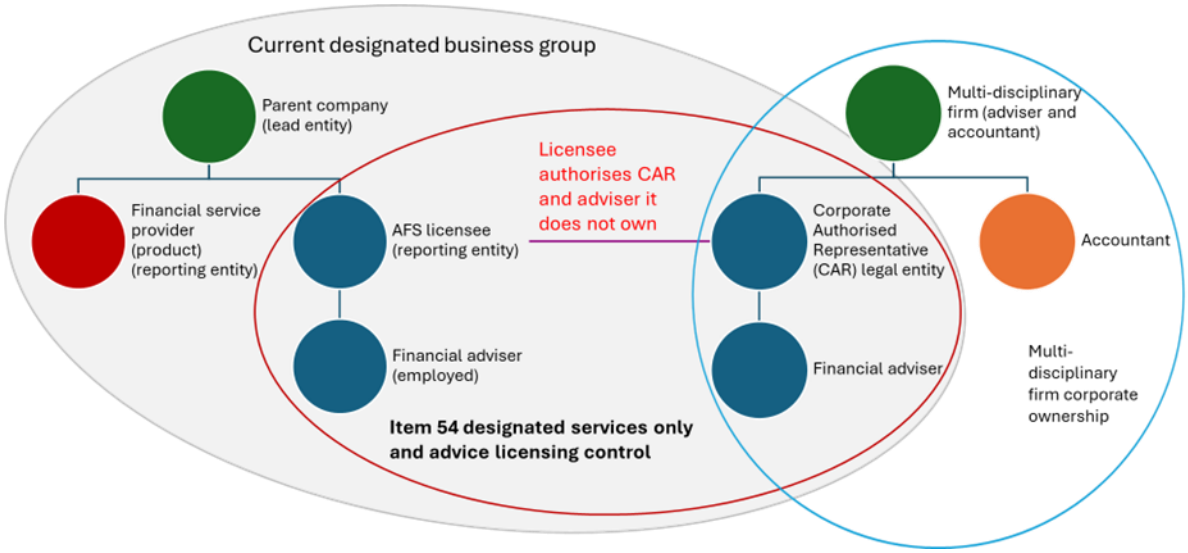
Control

Section 11 of the Amended Act introduces a 'meaning of control' that is applied to reporting groups under the Act and Rules. As discussed in previous submissions and with AUSTRAC directly, the provision of financial advice is heavily regulated under the Corporations Act and requires the AFSL holder to authorise representatives who provide financial advice under their licence. This includes both corporate authorised representatives (CARs) and individual authorised representatives (practitioner financial advisers). The AFSL holder is the AUSTRAC reporting entity legally responsible for the provision of the item 54 designated services, and the licence holder is legally responsible for the provision of financial advice under the Corporations Act. There are a range of business models that exist in the financial advice profession[2] and representatives may be part of the same corporate ownership structure as the AFSL holder; or be part of a business that is not owned by the AFSL holder (reporting entity) or its parent company. The latter model is depicted in the schematic below.

The current practice is that any representative (corporate or individual) authorised by the AFS licensee is considered as being under the control of the licensee and operating under the licensee's reporting group (designated business group) for AML/CTF purposes. This is the way the AML/CTF Act was implemented and has operated since it was introduced.

As illustrated in the following schematic, other members of the business that is not owned by the AFSL holder but to which the CAR / financial adviser belong to, are not part of the AFSL holder's reporting group.

[2] See FAAA submission to AUSTRAC out of session questions, 11 December 2024; and joint FAAA / SMSF Association email sent to AUSTRAC, 5 June 2025



Note: The financial service provider (product) is included in the schematic to illustrate the multi-functional corporate structures within which some financial advice AFSL holders belong.

Due to the expansion to tranche 2 designated services, we seek the following clarity:

- Will the 'meaning of control' apply to the AFSL holder in their capacity as authorising licensee? For example, what is AUSTRAC's view as to whether the ASFL holder has 'capacity to determine the outcome of decisions' about the corporate authorised representatives and authorised representatives 'operating policies' (in the example above) where the representatives are 'owned' by another business?
- How would the 'control' and 'reporting group' provisions apply in the scenario above:
    - who would be seen as the reporting entity 'with control' of the CAR and financial adviser?
    - who would be the lead entity?
    - which reporting group(s) would the authorised representatives (corporate or individual) belong to?

Lead entity

Rule 1-9(3) serves to introduce a 'fall-back' for appointing a lead entity of a reporting group, with r1-9(3)(b) referring to "….*whichever of those persons has the most employees at the start of the financial year*". As discussed below, the large majority of financial advisers are authorised by but not employed by the AFSL holder, yet it is commonly the financial adviser (who is employed by a separate business) who discharges CDD obligations on behalf of the AFSL reporting entity.

The FAAA seeks clarity as to how 'employees' is intended to be measured for the purposes of r1-9(3)(b).

Mandatory reporting groups

Paragraph 58 of the Explanatory Statement (ES) to the draft Rules states that:

> *"Reporting groups are mandatory where there is control between persons, but in all other circumstances are optional."*

As per the scenario above, as well as business models previously provided to AUSTRAC by the FAAA[3], this could create a scenario where a financial adviser/advice practice is mandated to be a member of multiple reporting groups, even though they are not a reporting entity in their own right. This could result in duplicated processes and costs for the adviser/practice. It is also unclear as to if and how this may impact the item 54 exemptions applicable to the AFSL holder. It is understood that a reporting entity cannot 'elect out' of a reporting group.

We seek clarification as to the application of paragraph 58 and the mandatory requirement for reporting groups. For example, is the intent of this statement to specifically require that where there is 'control', each 'person' party to that control must become a member of the reporting group with the 'other person'?

We request clear AUSTRAC guidance as to how the application of control, mandatory reporting groups, and 'no-elect out' requirements are intended to apply to item 54 providers (reporting entities and representatives) and the diversity of business models operating within the AFS licensing regime.

Reporting group formed by election

Rule 1-10 details the conditions under which reporting entities may elect to form a reporting group and states that *"…each member of the reporting group must be:*

> *(a) a reporting entity; or*
>
> *(b) a person who discharges obligations imposed on members of the reporting group by the Act, the regulations or the AML/CTF Rules."*

AFSL holders, and (under the AFS licence) financial advisers, discharge obligations imposed on product providers under a reliance agreement. Currently the reliance agreement is commonly incorporated into the distribution contract between the provider and AFSL holder.

Our understanding is that the intent of r1-10 is to allow a non-reporting entity that is a member of a business group, to be considered a member of a reporting group and be permitted to discharge AML/CTF obligations on behalf of the reporting entities within the reporting group.

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[3] See FAAA submission to AUSTRAC out of session questions, 11 December 2024; and joint FAAA / SMSF Association email sent to AUSTRAC, 5 June 2025

However, we recommend the obligations in r1-10 and associated provisions in r10 of the Rules should not apply where parties have entered into a reliance agreement. The Rules should make it clear that 'other persons' that discharge AML/CTF obligations on behalf of the 'first person' under a reliance agreement, cannot be a member of the 'first person's' reporting group.

Discharge of obligations by members of a reporting group

Rule 10-3(1) imposes conditions (under s236B(5)(c) of the Amended Act) when the member of the reporting group that is to discharge an AML/CTF obligation of a reporting group/entity, is a non-reporting entity.

Paragraph 57 of the draft ES includes the following statement:

> *"Non-reporting entities are included in the concept as this reflects how modern businesses are structured in practice and under subsection 236B(5) of the Act, members of a reporting group may discharge obligations on behalf of other members in the reporting group without the need for authorisation under the principles of agency."*
>
> *"…*[the discharge of obligations on behalf of the reporting group] *may be done by any entity that is a member of the reporting group, provided the conditions in section 10-2 and 10-3 of the Rules are satisfied.*

As indicated in the schematic example above and in previous FAAA submissions to AUSTRAC, the item 54 reporting entity may authorise several other businesses (CARs) (both owned and not owned) under its AFS licence. Currently, these 'authorised businesses' (CARs) fall under the AFSL holder's AUSTRAC reporting entity enrolment. The legal entities that operate under the AFSL holder's licence do not meet the AML/CTF Act eligibility criteria for AUSTRAC enrolment as they do not hold the AFSL, rather these entities (CARs) provide the designated service with the authorisation of the AFSL holder. These legal entities also conduct customer due diligence (CDD) as an authorised representative (corporate or individual) of the AFSL holder. The AFSL holder is the reporting entity and may be part of a reporting group.

Rule 10-3 imposes the personnel due diligence and training obligations on the 'discharging member' of the reporting group. However, reporting entities that provide only item 54 designated services are exempt from s26F(4)(d) and s26F(4)(e) of the Amended Act.

In line with the provisions in the Amended Act, the FAAA recommends:

- the Rules and ES clarify that an authorised representative (corporate or individual) of an AFSL is not classified as a "'discharging member' of the reporting group to which the AFSL holder belongs", despite the fact that they conduct CDD for the AFSL holder.
- that Rule 10-3 does not apply to authorised representatives (corporate or individual) of an AFSL holder.

Enrolment

The clarity sought in relation to reporting groups is pertinent to the following concerns regarding reporting entity enrolment.

Item 54 designated services

Rule 2-2(4) and paragraph 83 of the ES require a reporting entity that provides only item 54 designated services, to include a statement to that effect in the enrolment application.

The FAAA seeks certainty as to whether the statement that the reporting entity provides item 54 designated services only, for inclusion in the enrolment application, is or is not required to be in a prescribed form.

Information relating to the applicant

Rule 2-3(1)(h) requires the disclosure of information on the number of employees employed by the applicant. As mentioned above and in our previous submissions, the large majority of financial advisers are authorised by but not employed by the AFSL holder. While financial advisers are authorised by the AFSL holder, they are commonly employed by a separate legal entity not owned by the AFSL holder. The individuals that conduct CDD, include both employees (of the AFSL holder; and the advice practice, which is typically not owned by the AFSL) and authorised representatives.

The number of employees an AFSL holder may have is typically very different to the number of authorised representatives and therefore may not provide the data that AUSTRAC is seeking.

We seek clarity as to who an AFSL holder that provides only item 54 designated services, should capture in this information, when enrolling with AUSTRAC – employees or financial advisers (individual authorised representatives) operating under its licence, or both? In addition, should the non adviser employees of the CARs, be included or excluded?

Rule 2-3(1)(j) requires "*information identifying one or more associations of which the applicant is a member (if any) that represent the interests of a particular industry, profession or trade professional membership"* to be included with the applicant's enrolment information. This provision is rightly restricted to the professional membership of the reporting entity. The AFSL holder is the reporting entity for AML/CTF purposes. FAAA is the largest professional association in the financial advice space, however, our membership is at the individual practitioner level. Individual practitioner membership is common within the financial advice profession.

It is unclear as to why AUSTRAC is requesting this professional association membership information. However, we note that paragraph 86 of the ES indicates that some of the information required under r2-3(1)(h) and (i) are to allow AUSTRAC to better understand the demographics of the reporting entity population to enable better education and support, and to assist with its policy development function under the Act. In line with this approach, ensuring AUSTRAC is aware of and in contact with associations that represent a particular industry would likely assist both the regulator and reporting entities in understanding AML/CTF matters specific to that industry. However, as drafted, this may not capture associations that have individual members (unless that individual is a sole trader or AFSL holder).

It is also unclear as to whether and how this information should be updated if individual membership changes.

While we support the Regulator being informed about associations, individual professional association membership complicates the provision of this information.

We are concerned that, as drafted in the Rules, this would create legal and privacy compliance complications that that might be subject to penalties.

We suggest other disclosure solutions be considered to gather this information.

Changes in enrolment details to be advised

Section 51F of the Amended Act, a civil penalty provision, requires a reporting entity to advise AUSTRAC of a change in the entity's enrolment details within 14 days of the change arising. The required enrolment details are set out in r2-2 and 2-3. As stated above, for example, 2-3(1)(h) requires the disclosure of information on the number of employees employed by the applicant, which could change frequently.

In relation to advice representatives, there is often a number of advisers moving from one AFSL holder to a new AFSL holder each week. We suggest it would be unreasonably burdensome for businesses and AUSTRAC, to require a reporting entity to notify AUSTRAC each time there has been a change by as little as one employee.

The Rules should be amended to ensure the 'changes in enrolment details to be advised to the AUSTRAC CEO' within 14 days, does not create an excessive regulatory burden and that it delivers on the intent of the enrolment obligations.

Exemptions under the Amended Act

The following rules are made under provisions in the Amended Act from, which reporting entities that provide only item 54 designated services are exempt.

Rule	Provision in the Act under which it was made	Provision of item 54 exemption
AML/CTF policy (item 54 reporting entities are exempt from these provisions under s26T)		
4-1 Review of ML/TF risk assessment	26D(1)(a)(iii) and 26D(2)(d)	26T - Exempt from the obligation to conduct independent evaluation and the requirement to have a governing body, which these rules relate to
4-2 Prevention of tipping off	26F(4)(g)	26T(3)(a)
4-3 Provision of information to governing body	26F(4)(g)	26T(3)(a) (Also exempt from 26H(1) under s26T)
4-4 Reporting from AML/CTF compliance officer to governing body	26F(4)(g)	26T(3)(a)
4-5 Undertaking personnel due diligence	26F(4)(d)	26T(3)(a)
4-6 Providing personnel training	26F(4)(e)	26T(3)(a)

Rule	Provision in the Act under which it was made	Provision of item 54 exemption
		(though it is noted that licensees commonly provide AML/CTF training for representatives and client facing staff who carry out CDD and other AML/CTF related functions to ensure the reporting entity meets the applicable obligations under the Act)
4-7 Independent evaluations	26F(4)(f)	26T(3)(a)
4-8 Reviewing and updating AML/CTF policies following independent evaluation	26F(3)(c)(ii)	26T(3)(a)
4-9 Fulfilling reporting obligations	26F(4)(g)	s26T(3)(a)
4-10 Assessment of potential suspicious matters	26F(4)(g)	26T(3)(a)
4-11 Actions requiring approval or that senior manager be informed	26F(3)(e)	26T(3)(a) exempt from 26F(4)(c) - obligation to appoint designated senior manager
4-18 AML/CTF compliance officer requirements—matters to have regard to in determining whether a fit and proper person	26J(4)	26T(3)(d) Division 5. – compliance officer provisions
Division 4 -AML/CTF compliance reports (r8-9)	47	47(5)
5-18 Initial CDD – transferred customer	28(6)(b) Note states – reporting entity is also required to undertake ongoing CDD under s30 of the Act	30(10) If the entity acquiring the business, and the services provided by the transferred business are only item 54 designated services, ongoing CDD does not apply
5-20 Ongoing CDD – monitoring of transactions and behaviours	30(3)(b)	30(10)
5-23 Ongoing CDD - PEP	30(2)(c)(ii)	30(10)

To provide clarity and certainty for reporting entities, the FAAA recommends the following note be included in the above provisions in the Rules:

> *If all the designated services provided by the reporting entity are item 54 designated services, the reporting entity is exempt from this obligation under s26T, s30(10), or s47(5) of the Amended Act.*

Increased explanation in the Explanatory Statement of the application to the Rules of the exemptions for reporting entities that provide only item 54 designated services would greatly improve the clarity and certainty of the Rules.

Part 5 - Customer due diligence

Customers for whom enhanced customer due diligence is required

Rule 5-5 requires enhanced CDD to be applied to a customer if the proposed designated services:

(a) has no apparent economic or legal purpose; or
(b) would involve unusually complex or large transactions; or
(c) would involve an unusual pattern of transactions.

The following example from AUSTRAC guidance on 'assisting customers who don't have standard forms of identification'[4] demonstrates a reasonable approach to applying the enhanced CDD requirements as they were intended to be used.

> *"The bank later detects unusual transactions on the customer's bank account. This includes large cash transactions that cannot be connected to any legitimate source. The bank re-assesses the ML/TF risk of the customer as high.*
>
> *The ML/TF risk is connected to the source of the customer's funds, not their identity. The bank conducts a source of funds check under their ECDD program. While they do this, the bank does not require the customer to provide any further identification documents. The source of funds check establishes that the large cash payments came from a legitimate source – gifts from family members following the customer's wedding.*
>
> *The bank reassess the customer's risk rating as low. The bank does not require further identification information."*

Under reliance arrangements, it is common practice for product providers to automatically request the AFSL/financial adviser to conduct enhanced CDD, rather than asking the AFSL/adviser about the transaction, or considering a source of wealth/source of funds check.

Given the services financial advisers provide to their clients, they act as an additional gatekeeper for AML/CTF purposes. Advisers are privy to the reasons clients make what might appear to a product provider as an 'unusual or large transaction' and could assist the 'first entity' with identifying ML/TF risk in a manner that would avoid tipping off the client. An adviser or AFSL could clarify the reason for such a transaction; or if the transaction raises concerns for the AFSL/ adviser, assist in the identification of a suspicious matter.

We note the tipping off guidance on AUSTRAC's website includes the following statement:

> *Section 123(5) will provide an exception to the tipping off offence for disclosures of Information between reporting entities for the purposes of:*
>
> - *detecting, deterring or disrupting money laundering*

[4] https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/assisting-customers-who-dont-have-standard-forms-identification, published April 2025

- *detecting, deterring or disrupting the financing of terrorism, proliferation financing, or other serious crimes.*

This exception will only apply when regulations under the AML/CTF Act have been developed and are in force. The regulations will prescribe conditions and controls for reporting entities entering into such information sharing arrangements.

Section 123(5) of the AML/CTF Act is not yet in operation. AUSTRAC will provide further guidance once these regulations have been developed.

We note these regulations are being developed by the Department of Home Affairs.

The FAAA recommends:

- Exceptions to the tipping off provisions for the sharing of information between reporting entities should include the 'first entity' and 'other person' operating under a reliance agreement.
- Enhanced CDD guidance should include clear examples of the need to consider SOW/SOF and other checks, rather than require an AFSL/adviser to complete a reverification of customer ID (which is a current common practice).

Initial customer due diligence - previous carrying out of applicable customer identification procedure

Rule 5-12 is a 'saving' provision that confirms that if a reporting entity had carried out applicable customer identification procedures (ACIP) in respect to a customer under the AML/CTF Act before 31 March 2026 (commencement day), it would be deemed as meeting the CDD obligations under s28(2) of the Amended Act for that customer.

We suggest that expanding this Rule to specifically cover 'ACIP that was conducted and relied upon under a reliance arrangement', would provide greater certainty for tranche 1 reporting entities.

Reliance arrangements

The following feedback is provided in addition to the joint FAAA / SMSF Association submission[5] outlining our initial recommendations to improve the requirements and operation of reliance arrangements to deliver improved AML/CTF outcomes. We would welcome the opportunity to discuss these recommendations with AUSTRAC.

[5] Submitted 13 June 2025

Requirements for agreement or arrangement on collection and verification of KYC information

Rule 5-26(1)(c) and (d) require the reliance agreement to enable the 'first entity' to *obtain all* the KYC information collected by the 'other person' about the customer that is appropriate to the ML/TF risk of the customer, and *copies of the data* used to verify the KYC information.

As stated in paragraphs 341 and 342 of the ES, rules 5-26 and 5-27 "substantively reproduce the requirements in Chapter 7 of the former rules". Given the current issues with how reliance agreements operate, it is disappointing that the opportunity presented by these reforms to improve the equity, cost, efficiency and AML/CTF outcomes of reliance agreements, has not been fully embraced.

AUSTRAC's response (number 44) to feedback previously received, states that:

> "*The intent is not for reliance mechanisms to be used by a reporting entity to transfer its obligations under the Amended AML/CTF Act. Rather, the ultimate aim is to reduce the costs associated with conducting CDD by providing reporting entities with greater flexibility to rely upon CDD procedures undertaken by a broader range of Australian and foreign entities*".

In reality, the way in which reliance arrangements operate serves to transfer the costs associated with the CDD obligations from the 'first entity' to the 'other entity'. All the costs associated with collecting and verifying ID documentation and checking PEP status, are passed on to AFSL holders (the large majority of whom are small businesses) and financial advisers. Due to the inherently higher risk of the nature, scope and complexity of the designated services provided by financial product providers, AFSL holders and financial advisers must also incur the cost of conducting any ongoing and enhanced CDD based on the higher risk assessment of the product provider, even if it is not warranted, based on the AFSL holder's business risk or the AFSL holder's assessment of the customer's risk for the provision of item 54 designated services. It is an inequitable system.

The reforms provide an opportunity to improve the efficiency and consistency of how reliance agreement operate to help contain some of the costs incurred by the 'other entity'.

The Explanatory Memorandum to the Bill includes the following explanation:

> *"These amendments do not mandate that reporting entities must keep copies of identity documents that are used throughout the CDD process. Instead, reporting entities are required to retain records of what they did to identify a customer and the identifying information the customer presented (for example, reporting entities are required to make records of the details found on a passport that were used for verification purposes rather than taking a copy of the passport itself)".* [6]

As drafted, the following words in r5-26 and r5-27 of the draft Rules are open to inconsistent interpretation by 'first entities'. Given that the person conducting CDD is not required to take copies of the identification, clear

[6] Explanation Memorandum to the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the Bill), paragraph 271

guidance is needed to provide regulatory certainty as to the meaning and intent of the following phrases in Rules 5-26 and 5-27:

- "…*obtain all*" – for example, does this require the 'other person' to physically provide all the information the 'other person' collected and verified about the client before the 'relying entity' can provide a designated service; or is the intent that the 'relying entity' can access the information at a later date?

- "…*copies of data*" – for example, does this require reporting entities to make and keep certified copies of ID documentation?

Regulatory guidance should be clear as to what is not required to be shared between the first and other entities, including inappropriate methods of sharing CDD data, and what is unreasonable for the 'first entity' to request of the 'other entity'. For example, due to the significant privacy and data security risks, it should be inappropriate for a product provider to request customer identification be sent via email.

The FAAA recommends the ES to the Rules clarify the meaning of 'obtain', 'all', and 'copies'. This should also be made clear in AUSTRAC regulatory guidance.

Regulatory guidance to ensure reliance arrangements operate with an acceptable level of 'reasonableness'

The fundamental shift in the law under the Amended Act to a more principles-based approach focused on AML/CTF outcomes, is welcomed. However, in relation to the practical implementation of these reforms to reliance agreements and arrangements, this change in approach can only be realized, if there is a shift in behaviour of 'first entities' using reliance arrangements for ongoing CDD. This can only be done with regulatory certainty in the draft Rules and through AUSTRAC guidance.

The issues outlined below are based on the current operational situation of reliance arrangements under the existing Act and Rules. The FAAA and the SMSF Association acknowledge amendments to the regime are intended to address some of these issues. Specifically, the Amended Act applies the reliance provisions to initial CDD only. However, in practice, in the financial services industry, the reliance arrangements will likely continue to apply to ongoing CDD, given the ongoing nature of the relationship a client has with their financial adviser.

The Amended Act is clear that the program and policies of each entity, who is a party to the reliance agreement, must minimise the ML/TF risk of the entity. We support the intent of reliance arrangements to facilitate the completion of CDD in a more efficient manner for customers, thereby improving financial inclusion, while reducing the risk of disengagement by suspicious actors. However, the current manner in which reliance arrangements operate in our sector is unreasonable and imposes significant additional costs and regulatory burden on the 'other party'.

In addition to the ongoing issues with reliance arrangements that we have detailed in previous submissions to AUSTRAC, as well as during meetings with AUSTRAC personnel, we are concerned about the current lack of transparency of AML/CTF reliance agreements.

Currently reliance agreements are commonly incorporated into distribution contracts between the product provider and AFSL holder. This means that it can be unclear to the 'other party' that the clauses in the

contract that relate to the reliance agreement (such as the 'responsibilities' and 'record-keeping') are for AML/CTF purposes and have requirements under the AML/CTF Act. The clauses that relate to the AML/CTF agreement can be mis-interpreted as being part of the commercial arrangement for distributing the providers' products. This creates a power imbalance between the parties establishing the reliance agreement and reduces the ability of the AFSL holder to consider the clauses in relation to their own AML/CTF program and policies to ensure the clauses in the agreement will deliver the necessary AML/CTF outcome.

This significantly reduces the visibility that the reliance agreement, and CDD requests made under the agreement, are for AML/CTF purposes. Rule 5-26(1)(e) requires that the agreement must document the responsibilities of each party, including responsibilities for record-keeping. However, we suggest the Rules and Guidance should do more to improve the visibility and understanding of reliance agreements.

We request clear AUSTRAC Guidance and clarity in the draft Rules to further improve the operation of reliance arrangements by instilling a greater level of reasonableness, to deliver better AML/CTF outcomes.

We note that some of these recommendations may be best address by the Rule or through Guidance, or both.

1. Regulatory guidance on the intended operation of a reliance arrangement that outlines what is reasonable for the 'first entity' to request of the 'other entity' to deliver good AML/CTF outcomes, versus what is excessive. This could, for example, focus on the CDD, record-keeping and other obligations under the Amended Act and how they apply/should work in a reliance scenario, with clear examples.

2. Clear guidance on what is not reasonable and not necessary for the 'first entity' to request of the 'other entity'. For example, ongoing CDD requesting re-verification of identification documents:
    a. because a certified copy has expired (noting certified copies are no longer required under the Amended Act, they may still be operational due to the obligations under the current Act).

    b. because the client's driver's licence has expired and no further transaction has been provided during the requested period.

    c. where a low-risk client has not been active with accounts, the client's circumstances have not changed, and no new designated service is to be provided.

    d. every 12 months when there has been no change in a low-risk client's circumstances and no transactions made.

3. Regulatory guidance clarifying the intent of the requirements around 'currency' of identification documentation.

4. Clear Guidance allowing the 'other person' (a financial adviser) to collect KYC and verification of a client's identification once; that this verification can be used for multiple 'first entities' (product providers) under separate reliance agreements; and each 'first entity' can rely on this CDD. That it is unreasonable for each 'first entity' to require a separate CDD process to be repeated for the one customer.

5. Regulatory guidance clarifying that the 'first entity' should provide a reasonable reason for the ongoing CDD request, such as the client has requested a funds transfer. We suggest that this will encourage the

'first entity' to take a more AML/CTF outcomes-based approach to ongoing CDD requests, rather than the current compliance approach often driven by random system generated file checks.

6. Clear Guidance on what (if any) and when CDD re-verification is required, particularly in instances where no new designated service is being provided, with examples.

7. Regulatory guidance on data sharing, articulating what is necessary to satisfy the reliance obligations, while protecting the client's privacy and minimising data breach risks. This should cover:

    a. what is 'reasonable' to request and 'obtain' to deliver good AML/CTF outcomes versus what is excessive

    b. the KYC information and verification data collected by the 'other entity' that should be shared with the first entity, and what is unnecessary to be shared to deliver AML/CTF outcomes. For example, is it necessary and reasonable to request 'hard copies' of ID documentation be shared?

    c. the ability for the 'first entity' to rely on electronic verification systems used by the 'other entity', without the 'other entity' needing to provide hard copies of identification to the 'first entity'

    d. How client data should be shared between the first and other entities, including inappropriate methods of sharing CDD data. We do not believe that it acceptable for the 'first entity' to request client documentation to be emailed?

8. Regulatory guidance permitting the 'first entity' to rely on an attestation by an adviser/AFSL that there is no change in the client's circumstances and the client is still who they claim to be. AFSLs are reporting entities who must also adhere to the AML/CTF Act. They must also meet the stringent KYC obligations under the Corporations Act. This could include:

    a. A standardised statement (or statement guidelines) be developed of what must be included in an adviser attestation.

    b. Any 'safe harbour' steps required to be completed for an adviser attestation to be relied upon.

9. Regulatory guidance setting out minimum standards for reliance agreements, to improve the transparency of the arrangements and understanding of the intended AML/CTF outcomes. Rule 5-26 (e) of the draft Rules requires the agreement to document the responsibilities of each party, including record-keeping. Noting reliance agreements are currently commonly included in broader business to business contracts (eg. distribution agreements in financial services), examples of minimum standards for reliance agreements could include:

    a. AML/CTF reliance agreement should be a stand-alone document and should not be incorporated into another contractual agreement.

    b. Clear heading/title – AML/CTF reliance agreement.

    c. The AML/CTF outcomes the reliance agreement aims to achieve.

d. The purpose of the reliance agreement.

e. Why the first entity is requesting the other entity to enter into the agreement.

f. The AML/CTF obligations under the Amended Act of each entity in relation to their role and responsibilities under the reliance agreement. This should include any exemptions to any obligations that would be relevant to the agreement.

g. That under the Amended Act the reliance agreement applies to initial CDD only.

h. The legal responsibility/liability the reliance agreement imposes on each party for meeting the relevant AML/CTF obligations.

i. Obligations in the Amended Act and Rules requiring regular assessments of the AML/CTF reliance agreement, the purpose of the assessments, how assessments should occur, and responsibilities of each party for these assessments.

j. The overall AML/CTF risk rating of each reporting entity and the relevance of the rating for the purposes of the management of the reliance agreement.

k. How the 'first person' will make CDD requests of the 'other entity'.

l. That the AML/CTF reliance agreement, and client information collected, verified and shared under the agreement, cannot be used for any other purpose.

m. Information and data sharing permissions, including regulatory guidance on what is necessary to satisfy the reliance obligations.

n. Record keeping obligations of each party.

Consultation paper question 7: Reliance arrangement due diligence

> *Section 37B of the Amended AML/CTF Act requires CDD reliance arrangements to be subject to regular assessment by the relying reporting entity. AUSTRAC's intention is to continue the substance of the requirements in Chapter 7 of the AML/CTF Rules 2007, but is seeking feedback from current reporting entities on how due diligence on CDD reliance arrangements has operated since the framework was introduced in 2020.*

Any reliance arrangement due diligence requirements must leverage the licensing and professional obligations of the relevant industry and not create an unnecessary regulatory or contractual burden, particularly on the 'other party'.

Under the current and amended AML/CTF legislation, 'other persons' who are a party to a reliance agreement must be an AUSTRAC reporting entity and meet the relevant obligations. For example, AFSL holders are AUSTRAC reporting entities in their own right and must have the CDD policies and procedures in place to meet their AML/CTF obligations.

As mentioned above, reporting entities that provide only item 54 designated services must hold an AFS licence under the Corporations Act. There are significant requirements a business must meet when granted an AFSL by ASIC and to maintain the licence, including:

- adequate risk management systems with structured and systematic processes for identifying, evaluating and managing risks on an ongoing basis.
- conduct and disclosure.
- the provision of financial services.
- ensuring the organisation has and maintains the competence to provide its financial services, this includes complying with relevant laws.
- the adequacy of financial, technological and human resources to provide the financial services covered by the licence and to carry out supervisory arrangements of representatives in compliance with relevant laws.
- the competence, knowledge and skills of responsible managers.
- the training and competence of financial advisers and authorised representatives.
- ensuring authorised representatives comply with the financial services laws.
- ensuring financial advisers meet legislated professional, education and training standards, are registered with ASIC, and comply with the financial services laws and other Australian laws relevant such as the AML/CTF Act.
- comply with the ASIC Reference checking and information sharing protocol in relation to due diligence of prospective representatives who will act as financial advisers.
- compliance with licensing conditions and financial services laws.
- adequate arrangements for managing conflicts of interest.
- dispute resolution and compensation arrangements (if services are provided to retail clients).
- meet certain financial obligations relevant to the services they provide.
- complying with the reportable situations obligations for breaches or likely breaches of the financial services laws.

Information about an AFSL holder is readily available for checking on the ASIC professional registers.

The FAAA recommends any due diligence required for the establishment of reliance agreements should be permitted to rely upon / leverage existing due diligence procedures of the relevant industry, including those conducted by regulators for licensing and professional registration purposes, and does not need to be duplicated.

Suspicious matter reports

Information about another person providing a designated service

Under r8-4(7), "*if a person other than the reporting entity provided or proposed to provide a designated service that relates to the SMR, the [reporting entity's] report must contain the information about that person (to the extent that the information is known)".*

'Person' other than the reporting entity is very open-ended and hence could have a very broad application beyond the knowledge of the reporting entity, which unfairly creates a risk of non-compliance.

We suggest the application of this provision be restricted to "if the reporting entity is aware that a person other than the reporting entity provided or proposed to provide a designated service that relates to the SMR….".

Reporting of suspicious matters – information about the person in relation to whom the suspicious matter reporting obligation arises for the reporting entity

Paragraph 468 of the ES includes a summary table of the obligations under the relevant provisions in the draft Rules. For individuals and non-individuals that table includes the following statement:

> *"As applicable and to the extent the information is known".*

To ensure consistency with the Rules, we suggest the table in paragraph 468 be amended to include "to the extent that the information is known" for the category of 'Authorised person acting on behalf of another person', as per r8-3(3).

Consultation paper - SMRs and TTRs

Page 9 of the Consultation Paper suggests the updates to SMR and TTR requirements are driven by shifts in the operational landscape, including:

- *"Enhanced data quality and relevance: AUSTRAC aims to receive more granular, specific, and ultimately more useful information by specifying reportable details that reflect contemporary technologies and service delivery models*".

While we support the intent of this premise, AUSTRAC should acknowledge that not all businesses have the capacity to adopt contemporary technologies and service delivery models, particularly small businesses.

We suggest care should be taken to ensure the new obligations do not put these reporting entities at risk of breaching their obligations because their business does not use such technologies or service delivery models.