



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

27 June 2007

Ms Liz Atkins
General Manager – AML/CTF Reform
AUSTRAC
PO Box 5516
WEST CHATSWOOD NSW 1515

Per email: austrac.feedback@austrac.gov.au

Dear Ms Atkins,

Compliance Reports (s.47)

Abacus Australian Mutuals, the association for credit unions and mutual building societies, appreciates the opportunity to contribute to the development of the Compliance Report process under the new *AML/ACT Act 2006*.

Our members are mutual financial institutions, as well as being Authorised Deposit Taking institutions (ADIs) and Australian Financial Services (AFS) licence holders regulated by APRA and ASIC respectively. Our members offer a wide range of designated services that require them to adhere to the new AML/CTF regime. This compliance builds on our members' ongoing compliance with their obligations as cash dealers under the *Financial Transactions Reports Act 1988* regime.

Our members support co-operative compliance involving the provision of industry education and awareness-raising by AUSTRAC coupled with reporting by reporting entities against clear and certain regulatory requirements and expectations. In that context, we offer the following general observations:

- we welcome AUSTRAC's decision to cease cash dealer reporting obligations as reporting entities continue to prepare and implement their obligations under the wider AML/CTF regime. Abandoning the FTRA reporting requirements is a sensible step to provide reporting entities with an opportunity to focus their attention on the implementation of the new regime;
- we also welcome the revised reporting period for the s.47 compliance reporting obligation. This revised approach recognises the significant preparatory and implementation effort that is underway by our members to ensure they are compliant with the various obligations introduced by the new AML/CTF regime;
- we agree that the Compliance Report should only cover those elements of the AML/CTF regime that have commenced. Accordingly, the Compliance Report is not a suitable mechanism for determining a reporting entity's progression towards other elements of the new regime that have not formally commenced; and

- we are concerned the proposed Compliance Report does not make provision for transitional arrangements. While we recognise the Compliance Report only addresses matters that have commenced, some reporting entities (at least in year one) will be undertaking best endeavours or systems responses to comply but may not be fully compliant at the time of the first reporting period. Some scope for recognising these best endeavours, which may be articulated in dynamic or free text fields, will be appropriate and consistent with the non-prosecution promise.

We also note the release of the *Compliance Report – Industry Notes* and *Compliance Report – Indicative Questions* and we offer the following responses for consideration:

The following responds to the *Industry Notes*:

- we believe clarity as to the status and role of the *Industry Notes* released by AUSTRAC is needed. For example, are they intended only as a preamble to the *Indicative Questions* or will they have an ongoing function under the final Compliance Report regime;
- we believe AUSTRAC should consider simple and targeted questions that can illicit comparable responses. Open questions about systems and controls, for example, could lead to reporting entities providing a significant variety of explanations about their different and complex processes and procedures. Alternatively, they could prompt reporting entities to offer large restate elements from their AML/CTF Program. This may provide a wealth of written responses but may not necessarily provide AUSTRAC with meaningful information to make sensible comparisons against the regulator's expectations or between different reporting entities or sectors within the regulated community; and
- we welcome the proposal to include Yes/No/Not Applicable responses and we support multiple tick-boxes and list selections. However, this must be supported by dynamic field responses so reporting entities can provide information about the responses they have applied to their individual circumstances.

The following responds to the proposed *Indicative Questions*:

- *Correspondent banking* – generally we do not object to these questions. But we believe the scope of Q4 is too broad, we believe there should be a materiality test between the relationship between the reporting entity and the correspondent bank in terms of the existence of a shell bank.
- *EFT instructions* – generally we do not object to these questions. However, it may be that reporting entities require a systems response to collating the information for Q10 and Q11 (as well as other statistically-based questions in the report). If so, the report should accommodate any necessary transitional endeavours being undertaken (at least in year one) to collect this information.
- *AML/CTF Programs* – we are concerned Q12 seems to be asking whether the reporting entity has an AML/CTF Program in place. If that is the thrust of the question it should be put plainly. There is also a risk that in seeking to respond to Q13 a reporting entity may restate large sections of their AML/CTF Program. Further, we note that Q13, Q14,

Q16 and Q18 pose “How” questions, which have the potential to prompt lengthy responses and restatements of a reporting entity’s AML/CTF Program. Whereas Q12, Q15, Q17 and Q19 – Q22 ask “Has” or “Does” questions, which may be satisfied by a Yes or No response. This suggests some inconsistency in the nature and type of information being sought among this bundle of questions. This may not be a desirable outcome for reporting purposes and it may add complexity and confusion for reporting entities in terms of the detail and appropriateness of their responses. We believe these questions require greater precision in terms of the particular information AUSTRAC is seeking from reporting entities.

- *Risk awareness training* - a key feature of many AML/CTF Program responses may be to implement measuring and tracking of staff risk awareness training. It may be that reporting entities are undertaking reasonable endeavours to put in place such tools during the transition period and the Compliance Report should be able to recognise this effort. Further, the year one Report should recognise that refresher training is unlikely to have been undertaken and so Q25 will initially be unable to be answered. Similarly, it may be difficult to record the training hours per employee until or unless an active measurement and tracking process is established and so Q26(c) may also be impossible to answer in year one.
- *Compliance* – generally we do not object to these questions. These questions relate to the AML/CTF Compliance Officer, this should be reflected in the sub-heading. We believe AUSTRAC should clarify the reference to a “team” in Q32. Further, AUSTRAC should amend Q32(d) to only refer to the Board audit or risk committee and senior management; references to the CRO, CFO or equivalent are unnecessary and confusing.
- *Independent review* – generally we do not object to these questions. However, it should be clear that it is acceptable for reporting entities to rely on external parties for their internal audit function. This is often the practice for some smaller credit unions or mutual building societies. Additionally, guidance from AUSTRAC about what constitutes best practice independent review would also be helpful.
- *Customer Identification Procedures: Part B* – we believe Q39 is perfunctory and may prompt large restatements of an AML/CTF Program. We are also unsure how Q41 can be effectively answered considering each reporting entity will have different risk-based criteria as to what represents high risk. In terms of Q45 – Q47 we reiterate the possibility that reporting entities may require a systems response to collate this information. In these circumstances, we believe the Compliance Report should recognise any transitional endeavours being undertaken to collect this data.
- There does not appear to be any attention to record retention or privacy matters. We believe Compliance Reports should cover record retention requirements (in terms of those elements that have commenced). Although, we do not believe privacy matters should be reportable to AUSTRAC. Instead, we believe adherence to privacy obligations (including the National Privacy Principles) remain outside AUSTRAC’s jurisdiction and within the remit of the Office of the Federal Privacy Commissioner.
- Where a reporting entity answers in the negative, for example to Q33, this could amount to a breach of the law. We believe, when the Compliance Report is issued,

AUSTRAC should include associated guidance material that addresses the type of responses and measures reporting entities can expect from the regulator in these circumstances.

- Finally, it would be useful if AUSTRAC to clarified how the Compliance Report should be formally signed-off. We believe it may be appropriate for the AML/CTF Compliance Officer to be primarily responsible for Compliance Report sign-off and submission.

Abacus appreciates this opportunity to contribute to the development of an effective compliance reporting framework for reporting entities as providers of designated services under the new AML/CTF regime.

If you would like to discuss these comments further please contact me directly on (02) 8299 9033 or at jmoyes@abacus.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Moyes', with a stylized flourish at the end.

JOSH MOYES

Senior Adviser – Policy & Public Affairs