



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

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Ms Atkins,

AUSTRAC draft Guidance Notes and draft Rules

Abacus Australian Mutuals, the association for credit unions and mutual building societies, appreciates the opportunity to respond to AUSTRAC's draft Guidance Notes on *Risk Management and AML/CTF Programs* and on *Opening an Account* as well as the draft Rule on *Ongoing Customer Due Diligence*.

Generally, we believe these materials are a timely reminder that the AML/CTF regime is risk-based and reporting entities can avoid some compliance costs by tailoring their responses and focusing their resources on areas of greatest ML or TF risk.

We believe this can be best achieved in a co-operative compliance environment involving adherence by reporting entities to clear and certain regulatory requirements, strongly supported by AUSTRAC through the provision of instructive guidance materials.

In that context we offer the following observations:

Guidance Note: Risk Management & AML/CTF Programs

We note the reference at paragraph 1.3 to the *Privacy Act 1988*. We believe that it remains solely the responsibility of the Federal Privacy Commission to ensure compliance with the privacy regime. This is not a role for AUSTRAC in its Guidance or Rule materials. If privacy matters must be included, then the boilerplate at the conclusion of each Guidance Note alerting reporting entities to the *Privacy Act 1988* should be sufficient.

The commentary under Part 3, *Main types of ML/TF risks*, outlines the types of risks faced by reporting entities. While the proceeding paragraphs particularise these, we believe the Guidance Note could be improved if it also made it clear that AUSTRAC will provide regular updates and support to the regulated community about changing or new risk typologies. This reminds reporting entities that a set and forget approach to ML or TF risk is not suitable, but as reporting entities seek to remain vigilant they should be able to rely on AUSTRAC for support and direction.

The drafting of sub-paragraph 4.5(g) appears to be duplicated in 4.5(j)(v); unless the intention is for 4.5(j)(v) to refer to technological systems. If so, while it might be appropriate for the Guidance Note to outline what an effective system of that type might involve, we believe it becomes equally important for AUSTRAC to outline what an effective manual or non-technology-based response might look like. If the intention is not to address technology-based responses, then the language in the Guidance Note should be amended to ensure it remains beyond doubt that compliance expectations are technology neutral.

Paragraph 6.6 refers to "*appropriate commercial PEP list providers*". We query what is meant by the term "*appropriate*" and what criteria will mean such a provider is considered "*appropriate*". We also note commercially offered list providers offer user-pays technical solutions. We believe if the Guidance Note addresses technology-based means for identifying a PEP, then it is incumbent on AUSTRAC to also set out the steps a reporting entity might take to identify a PEP without reliance on potentially expensive and systems-affecting technology solutions. Earlier discussion on PEP identification during 2006 proposed self-identification or a positive declarations by customers; this or other technology-neutral methods need to be explored in the Guidance Note to assist reporting entities.

Further, the Guidance Note refers to the FATF definition of PEPs, with a focus on individuals with a prominent public function in a foreign country. Does this definition outline the scope of those customers that AUSTRAC believes need to be identified for PEP purposes – namely people from overseas and in prominently public positions. If AUSTRAC has additional or different intentions or expectations about this definition this should be clear in the Guidance Note.

Lastly, paragraph 8.3 clarifies that reporting entities can develop their own identification procedures suitable to special circumstances. We note that, reflecting the FTR Regulations, this approach is already partially reflected in the definition of "*Secondary Identification Document*" in the consolidated Rules with reference to identifying a person under the age of 18. We query whether the existing approach to other special cases set out in the current FTR Regulations will be just as suitable for the types of customers outlined in paragraph 8.3(a) – (g)?

Guidance Note: Opening an Account

We welcome the attempt to further clarify what constitutes "*opening an account*", however, we believe paragraph 3.3(d) is misdirected. The focus should be on the facility or product itself and not the method of access. In that context, the examples in (a) to (c) already refer to withdrawing, transferring or conducting transactions and whether this occurs via an access card, by telephone or online or over the counter should not arise.

Rule: Ongoing Customer Due Diligence

We understand this draft Rules updates the July 2006 version of the *Draft Consolidated Rules* in response to the passing of the *AML/CTF Act 2006*.

The attention of reporting entities has (since at least July 2006 until the present) been largely focused on the finalisation and passing of the Act followed by the immediate

implementation of commencement requirements and preparations for the identification obligations. In that context, we believe this and other unfinished Rules require further detailed discussion and analysis, as they have not been subject to the degree of scrutiny and consultation required. Further, for many reporting entities and certainly for the general population (as customers of reporting entities), the transaction monitoring obligations represent the most significant feature of the regime.

Accordingly, our initial response to the re-issued draft Rule on *Ongoing Customer Due Diligence* is that more time and further consultation is required. In particular, there are two threshold issues, these are:

- guidance about how to identify *“complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose.”* This might, for example, be achieved by reference to volume and frequency; and
- guidance on how to comply with these requirements in a technology-neutral way. This is particularly the case in response to paragraph 7 and 10 of the draft Rule.

Understanding AUSTRAC’s expectations on transaction monitoring is critical to designing appropriate response that do not expose reporting entities to excessive costs for externally sourced solutions or expensive systems changes. Developing these responses also needs to be considered in the context of KYC obligations and systems obligations.

More generally, we query AUSTRAC’s intentions in terms of the additional analysis of KYC information referred to in paragraph 10(2) compared to the elements already set out in paragraph 10(1)(a) – (d). We also believe AUSTRAC should clarify what is a relevant and appropriate *“third party source”* as referred in paragraph 10(1).

Consultation processes

Finally, we urge AUSTRAC to consider providing a consultation schedule for future draft Guidance Notes and Rules. Presently, these materials appear on different pages on the AUSTRAC website and this requires daily review to ascertain if new materials have been released. Subsequently, collating the view of our 150 members within the relatively short consultation period presents a further challenge. This could be streamlined, and we could offer more considered feedback, if AUSTRAC provided a single location on its website covering (new) consultation materials and providing email alerts to website subscribers.

Thank you for the opportunity to make these comments. We look forward to being included in continuing consultations. In the meantime, if you would like further information about *Abacus* or the comments in this response, please contact me on (02) 8299 9033 or at jmoyes@abacus.org.au.

Yours sincerely,



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