

10 October 2024

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Dear Dr Popple

## **ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING BILL 2024**

I refer to your memo dated 20 September 2024 requesting input to inform the Law Council of Australia's (LCA) response to the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024*, which was introduced into Parliament on 11 September 2024 and referred to the Legal and Constitutional Affairs Committee on 19 September for report by 13 November 2024.

### **Key Issues**

Your Memo and the LCA's submission were provided to the convenors of relevant sub committees of the Law Society, and representatives from those sub-committees met with Mr Craig Slater, the Society's representative on the LCA's AML/CTF Working Group, on 7 October. The relevant comments were as follows:

#### **1. Compliance costs particularly for small businesses as those costs relate to risk assessments, AML policies, and client due diligences**

There remains a resistance to the extension of the AML-CTF Act to the legal profession for all of the reasons previously identified by the LCA to the Commonwealth.

The main concerns are: the cost burden to firms, that will be passed to clients, the profession is already well regulated including in relation to the identification of clients, and the profession is well educated on proper purposes for transactions. This Society has previously reported concerns that costs could be in the order of \$14,000 for an annual audit which may prohibit small firms participating in transactions caught by the legislation.

The Society has a significant concern for the continued viability of remote and regional law firms. The Society notes the concerns raised in the Vulnerabilities Analysis by Russ and Associates dated 28 September 2023 at [115] and anecdotal information about the effect on regional law firms in New Zealand when the equivalent regime was imposed.

The Society has previously suggested that the AML-CTF Act should permit law firms to rely on identification already verified by third party providers for example Australia

Post and identification provided for the purposes of electronic land transfer transactions.

The Society understands it is the intention of the Commonwealth not to duplicate or increase unnecessarily the bureaucratic burden on firms. The ability to rely on third party confirmations of identity would assist the cost burden for firms.

The Society has seen draft responses on behalf of PEXA and would support some of the suggestions in the response of PEXA to address the cost of the client due diligence and risk assessment.

The Society has previously suggested that firms be relieved from the obligation to retain verification of identity documents as that retention generates a risk with access to the information and for cyber-attacks. Instead, the AML-CTF Act could require a document signed by or for the firm that confirms the identity was verified on a particular date for a particular transaction.

## **2. Inclusion of barristers**

The convenors noted the treatment of barristers as if they were advisers equivalent to solicitors facilitating transactions caught by the proposed legislation. It is the experience of the convenors that briefing a barrister to guide a transaction would be unusual. The Society notes the specific exemptions for barristers in the legislation as applied in New Zealand.

## **3. Suspicious Matter Reports and the tipping off offences**

The convenors repeated concerns already expressed by the LCA to the Commonwealth on the effect on the solicitor client relationship where a solicitor can report concerns to a regulator and not advise a client that the report has been made. One contributor noted the existence of audit and examination powers would warn lawyers from facilitating money laundering without the need to add an obligation for reporting suspicion. That contributor also suggested that lawyers should be exempt from the obligation of suspicious matter reporting.

It has been submitted before and bears repetition that most transactions brought to a lawyer to facilitate already involve identity confirmation (electronic conveyancing using PEXA) and funding sources already being watched for money laundering (Bank financing or account transfers).

If suspicions can be formed on any of the lengthy red flag list prepared by the LCA in its resources for practitioners it is quite likely that suspicions will be formed on very little information and therefore likely to flood the regulator who will have little resources to address such reports from small practitioners compared to the more troubling reports provided by larger industry bodies like banks.

That lack of resources for the regulator may suggest that imposing the obligation on solicitors will damage the willingness of clients to be honest with their lawyers who will then be unable to advise them about processes that do not breach money laundering obligations. Imposing that obligation will not deliver to the regulator reports that are likely to warrant significant regulatory attention.

The absence of a significant benefit for the regulator and the expected damage to clients trusting their advisers suggests that imposing the suspicious matter report on lawyers is more damaging than of assistance.

For these reasons the obligation to make suspicious matter reports to the regulator ought to be deleted or at least significantly delayed (by transitional rules) to a date when it is likely that the regulator will be resourced sufficiently to be in a position to respond appropriately.

#### **4. Legal Professional Privilege – making and justifying claims**

The convenors noted and were happy with the attempt to adopt an approach to the question of legal professional privilege that was consistent across different regulators.

The convenors noted that the specific mechanism for claiming and justifying privilege claims was not set out in the legislation in its current form and these mechanisms await regulations or forms to be published by the regulator. The mechanics for claiming and justifying privilege claims will likely be controversial and will need to be addressed at a later stage.

#### **5. Compulsory audit and examinations**

The convenors noted the compulsory examination powers and powers to audit firms. In the context of the preservation of legal professional privilege it may be there is limited assistance that a lawyer can provide by way of evidence at an examination that is not already available from the documents on the lawyers files that are not the subject of a claim for privilege.

#### **6. General impact on firms given the intended regulation by a new separate authority**

The convenors noted there are already a number of regulators other than the legal profession regulator to whom lawyers are accountable. While the addition of a new regulator is not welcome it at least represents an opportunity to ensure that all lawyers are consistently regulated (as opposed to variations on a state by state basis) and also that lawyers and other professionals like accountants and real estate professionals will be consistently regulated.

#### **7. Letter to the Senators on the Senate Committee**

The convenors supported this Society providing to the senators considering this legislation an appropriately amended letter indicating the circumstances of this State and the Society will prepare these letters shortly.

Thank you for the opportunity to provide feedback. If you have any questions, please contact Ms Susie Moir, General Manager Advocacy and Professional Development on [smoir@lawsocietywa.asn.au](mailto:smoir@lawsocietywa.asn.au) or telephone (08) 9324 8646.

Yours sincerely



Paula Wilkinson  
**President**