

13 June 2024  
Attorney-General's Department  
Economic Crime  
Via email: [economiccrime@ag.gov.au](mailto:economiccrime@ag.gov.au)

# Reforming Australia's anti-money laundering and counter-terrorism financing regime

## About the Super Members Council

We are a strong voice advocating for the interests of more than 11 million Australians who have over \$1.5 trillion in retirement savings managed by profit-to-member superannuation funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure superannuation policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

The Super Members Council (SMC) thanks the Attorney-General's Department (the Department) for the opportunity to comment on the proposed reforms to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime. This submission considers proposals featured in [Paper 5: Broader reforms to simplify, clarify and modernise the regime](#) and one element of [Paper 4: Further information for digital currency exchange providers \(DCEPs\), remittance service providers and financial institutions](#) - specifically Reforms to International Funds Transfer Information (IFTI) reports.

Australia's AML/CTF regime protects the integrity of Australia's financial system and preserves confidence in Australia's financial institutions to the benefit of all superannuation members.

## Executive Summary

SMC supports the intent of the reforms to improve the effectiveness of the regime and to ensure reporting obligations are clear, simple and reduce regulatory burden for reporting entities. SMC welcomes the advice that the proposed changes will be supported by sector specific guidance material. SMC's recommendations focus on superannuation specific considerations being incorporated into the Act, Rules, and guidance materials to ensure that what is proposed will not have unintended consequences for superannuation members.

## Recommendations

### SMC recommends that:

1. **Tipping off:** AUSTRAC's superannuation specific guidance to include examples of how changes to the tipping off provisions will work practically in the context of successor fund transfers (SFTs). And how the term 'legitimate purposes' could apply in superannuation.



2. **Risk Assessments and board approvals:** The AML/CTF Rules acknowledge that non-material changes to a risk assessment may not require board approval.
3. **Compliance Officers:** AUSTRAC include in superannuation specific guidance on SPS 520 a working example acknowledging that a super fund, complying with their SPS 520 obligations would also be complying with their AML/CTF obligations in relation to their compliance officer being a fit and proper person.
4. **Independent review and independent audit:** Clarity is given as to how an 'independent audit' under the new regime is different to what is currently in place with an independent review.
5. **Business Groups:** clarification is provided on the concept of business groups and whether it will entail trustees becoming a group member and whether a business group in superannuation can include third-party administrators.
6. **Customer due diligence:** Superannuation specific guidance to clarify the application of initial CDD and risk rating requirements.
7. **Record keeping and CDD:** SMC requests that the recommendations from the Privacy Act review and the outcomes of the AML/CTF review are aligned.
8. **Transition period and implementation:** Adopting the new regime should include a transition period, the contemporaneous issue of sector specific guidance, detail as to how the regime will impact the annual reporting requirements, and a comprehensive checklist of all items that will move from the Rules to the Act.
9. **Reforms to IFTI reports:** Clarity in the AML/CTF regime whether the proposed change to reporting IFTIs could impact super funds if they are the 'the closest entity to the Australian customer.' If the new regime intends to capture super funds, this should also be included in the super specific sector guidance material and examples provided.

## Summary

### Tipping off offence

SMC supports changes to the tipping off offence to clarify:

- the intent of the framework to prevent disclosures that are likely to prejudice an investigation or potential investigation.
- that reporting entities can disclose information for 'legitimate purposes' including within business groups.

SMC requests that AUSTRAC's superannuation specific guidance include detail and examples of how this proposed change will work practically in the context of successor fund transfers (SFTs).

SFT's are commonplace and likely to continue into the foreseeable future. AUSTRAC's sector specific guidance should include detail on how the new tipping off provisions will operate during an SFT. Doing so would:

- assist funds in understanding AUSTRAC's expectations on the legitimate purposes for disclosing Suspicious Matter Reports (SMR) when funds merge.
- permit the sharing of information in an efficient, streamlined manner with the intent to align AML/CTF risk mitigation strategies.

SMC also requests working examples of the term 'legitimate purposes' within superannuation.



Without working examples in the guidance material, it may lead to the term 'legitimate purposes' being defined differently across the sector, based on individual funds' risk appetites. Consistency within the sector will ensure a harmonised approach to the AML/CTF regime and increased compliance.

**Recommendation 1:**

**Tipping off:** AUSTRAC's superannuation specific guidance to include examples of how changes to the tipping off provisions will work practically in the context of successor fund transfers (SFTs). And how the term 'legitimate purposes' could apply in superannuation.

### **Risk Assessments and board approvals**

SMC supports the changes to the regime to establish in the Act a clear, rather than implied, requirement that a reporting entity must conduct a risk assessment. A reporting entity's board or equivalent senior management would be required to approve the entity's risk assessment and be informed of updates to that assessment.

SMC recommends that AML/CTF Rules include an acknowledgement that changes that are considered 'non-material' changes to a risk assessment may not require board approval. An example may be where the risk assessment is revised to consider changes in the organisation structure. The board is notified of the change rather than approval sought to approve the change. Providing this clarification in the Rules will ensure that reporting entities can streamline their processes, keep their risk assessments accurate and up to date without involving board level approvals for minor changes.

**Recommendation 2:**

**Risk Assessments and board approvals:** The AML/CTF Rules acknowledge that non-material changes to a risk assessment may not require board approval.

### **Compliance Officers**

SMC supports changes to the regime that clarify the role and responsibilities of the compliance officer. SMC notes that reporting entities must certify to AUSTRAC that their AML/CTF compliance officer is **a fit and proper person**. This language mirrors language contained within the APRA prudential standard SPS 520 - Fit and Proper.

SPS 520 sets out minimum requirements for APRA-regulated entities in determining the fitness and propriety of individuals to hold responsible person positions. APRA regulated entities must maintain a fit and proper policy that meets the requirements of SPS 520.

The proposed AML/CTF regime recognises that reporting entities, such as APRA-regulated entities, have in place certain risk mitigation measures due to other regulatory regimes. The Department proposes that these existing mitigation measures may be leveraged for an entity's AML/CTF program.

SMC requests that AUSTRAC consider in their sector specific guidance for superannuation a working example acknowledging that a super fund, complying with their SPS 520 obligations would also be complying with their AML/CTF obligations in relation to their compliance officer being a fit and proper person. This would streamline compliance for funds by ensuring regulators have unified expectations, making compliance requirements easier to understand and follow.



### Recommendation 3:

**Compliance Officers:** AUSTRAC include in superannuation specific guidance on SPS 520 a working example acknowledging that a super fund, complying with their SPS 520 obligations would also be complying with their AML/CTF obligations in relation to their compliance officer being a fit and proper person.

### Independent review and independent audit

The proposed changes to the regime specify that the Act would identify categories of internal controls that must be included in an AML/CTF program, including a *requirement for independent audit with a frequency determined by the entity's risk profile (with a potential minimum frequency of every four years) and detail around the minimum standards for auditors.*

Part 9.6 of the current AML/CTF Rules specifies a requirement for reporting entities to conduct an 'independent review.' SMC seeks clarity regarding whether the proposed independent audit under the new regime is materially different to what is currently in place with an independent review. If so, the details of what is required, and how it differs from the current regime, should be specified in guidance material.

### Recommendation 4:

**Independent review and independent audit:** Clarity as to how an 'independent audit' under the new regime is different to what is currently in place with an independent review.

### Business Groups

SMC welcomes the simplified business group concept, which would automatically include all related entities in a corporate group or other structure.

SMC requests clarification on the following two points regarding business groups:

- **Third-party administrators:** Many super funds outsource administrative functions to third-party service providers, several of which service multiple large funds. There is unlikely to be a material change in the risk profile or the overall legislative obligations relating to AML/CTF across these funds. Can the concept of business groups include third-party administrators?
- **Trustees:** As the definition of a business group includes entities not providing designated services, will this have an impact on trustees as a related party within the business group? If so, this should be addressed in the AUSTRAC superannuation specific guidance material.

### Recommendation 5:

**Business Groups:** Provide clarification on the concept of business groups and whether it will entail trustees becoming a group member. Whether a business group in superannuation can include third-party administrators.

### Customer due diligence (CDD)

SMC welcomes comprehensive guidance that will be developed by AUSTRAC to provide details on how a reporting entity might implement the obligations and support reporting entities as they transition to the new AML/CTF regime.



SMC requests that guidance specific to superannuation include:

- Expectations as to how the superannuation sector would apply customer risk ratings and initial CDD under the new regime. The current regime exempts super funds from conducting Identification Procedures, other than ongoing CDD (OCDD) when a member purchases a new pension, makes superannuation contribution, transfers or conducts a roll-over in. Rather, ongoing, and enhanced CDD is performed based on categories of risk profiles. SMC seeks assurances that the new regime will not create unintended consequences that unnecessarily increases regulatory burden within the sector. It would be beneficial to have clarification on how OCDD will be undertaken by RSEs on a risk-based approach absent an obligation for super funds to risk rate members at the Initial CDD.
- Examples of risk ratings applying within the superannuation sector.
- Specificity as to how the new categories of CDD will interact with the safe harbour procedures already contained within the regime.

**Recommendation 6:**

**Customer due diligence:** Superannuation specific guidance to clarify the application of initial CDD and risk rating requirements.

### Record keeping for CDD

SMC welcomes the proposal that the Department is working with stakeholders to explore options to reduce the requirements for sensitive data retention while maintaining the integrity of the AML/CTF regime. This includes the advice that the Department is leading targeted engagement to implement the Government response to the Privacy Act review. SMC welcomes any further consultation on what this may look like to ensure the integrity of the AML/CTF regime whilst balancing the needs to minimise data retention wherever possible.

SMC requests that recommendations from the Privacy Act review and the outcomes of this review be aligned. Alignment of the outcomes of both reviews will allow reporting entities to consider the changes, and implications of those changes, concurrently.

**Recommendation 7:**

**Record keeping and CDD:** SMC requests that any recommendations from the Privacy Act review are released in alignment with outcomes from this review of the AML/CTF regime.

### Transition period and implementation

SMC requests that adopting the new regime will include:

- A **transition period** to ensure that reporting entities can align their internal processes with the new regime in a reasonable period that considers cost and resource allocation.
- The **contemporaneous issue of sector specific guidance** in line with implementing the new obligations. This will ensure reporting entities in each sector are clear on how the changes impact them specifically.
- If and how the changes to the regime will impact the **annual reporting requirements**.
- A comprehensive checklist of all items that will move from the Rules to the Act.



**Recommendation 8:**

**Transition period and implementation:** Adopting the new regime should include a transition period, the contemporaneous issue of sector specific guidance, detail as to how the regime will impact the annual reporting requirements, and a comprehensive checklist of all items that will move from the Rules to the Act.

**Paper 4: Further information for digital currency exchange providers (DCEPs), remittance service providers and financial institutions**

**Reforms to IFTI reports**

SMC agrees that IFTI reports are a critical source of financial intelligence to combat and disrupt financial crime.

It is SMC's understanding that Paper 4 is intended to cover AML/CTF changes applicable to digital currency exchange providers, remittance service providers and financial institutions. Per the legislative definition of these entities, superannuation funds are not captured.

However, the detailed proposal on reforms to IFTI reports in paper 4 states that 'the **reporting entity** closest to the Australian customer should report IFTIs.' It is unclear whether 'reporting entities' in this context is limited to the reporting entities Paper 4 is intended for (as listed above) or whether it includes other reporting entities.

SMC requests clarity in the AML/CTF regime whether this proposed change will impact super funds, if they are 'the closest entity to the Australian customer.' If the new regime intends to capture super funds, this should also be included within the super specific sector guidance material and examples provided.

**Recommendation 9:**

**Reforms to IFTI reports:** Clarity in the AML/CTF regime whether the proposed change to reporting IFTIs could impact super funds if they are the 'the closest entity to the Australian customer.' If the new regime intends to capture super funds, this should also be included within the super specific sector guidance material and examples provided.