

The Institute of Public Accountants



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS[®]

11 November 2016

Attn: Financial Crime Section
Attorney-General's Department
3-5 National Circuit
Barton ACT 2600

By email: antimoneylaundering@ag.gov.au

Dear Sir/Madam

Consultation on AML/CTF review reform project plans

1. The Institute of Public Accountants (IPA) welcomes the opportunity to comment on the draft project plan on the implementation of recommendations from the statutory review of the anti-money laundering and counter-terrorism financing (AML/CTF) regime.
2. Overall:
The IPA is in agreement with all of the recommendations in chapter 2: Overarching issues. The IPA also agrees with recommendation 3.2 relating to the general principles of administration of the Act; and especially that compliance with the rules and regulations should be proportionate to the risks involved, which should be a guiding principle.
3. Regime scope: accountants:
The IPA's main area of interest is chapter 4.2: Regime scope: Designated non-financial business and professions; and in particular, recommendation 4.6 relating to (a) the development of options for regulating, inter alia, accountants; and (b) conducting a cost-benefit analysis of regulatory options for regulating, inter alia, accountants.
4. Options for regulation of accountants:
In terms of options for regulating accountants in order to become compliant with the international rules and regulations, the IPA believes that more can be done around education, monitoring and enforcement of compliance with the AML/CTF rules and regulations. We note that when the IPA undertook a members survey for the Financial Action Task Force (FATF) MEAT country assessment in 2014 that our members were largely compliant (see below for results). However, more can be done in terms of continuous professional development of accountants in this area, and we have sought to implement this over the last two years since the FATF assessment. In addition, written guidance and check lists developed by government agencies such as AUSTRAC, are very useful, including updates and alerts on what to look out for and the latest activities, similar to the ACCC's ScamWatch (which is very well received by our members and we believe by the public). We note the AUSTRAC Compliance Guide, which is a practical and useful resource, should be promoted as widely as possible. The case studies on the website are also educational. The outreach undertaken by AUSTRAC has been very welcome and our members have shown keen interest in engaging with AUSTRAC staff. However, the outreach program and more

guidance material and updates, need to be available on an ongoing basis in order to reinforce the AML/CTF requirements. We can all play a role in this.

5. Monitoring, enforcement and supervision:

As a professional association, the IPA could enhance monitoring and enforcement activity by extending our Quality Assurance (QA) program to include AML/CTF. An annual report could then be provided to AUSTRAC (or other government agency as required). We currently undertake QA reviews of members (though not annually). The IPA has an online system which has won multiple awards (including a BRW award for innovation). The system is scalable and modular and could be expanded to include AML/CTF modules which can be updated as needed. However, we would need to spend a considerable sum of money to achieve this and pay an annual license fee. Whilst the IPA owns the IP for part of the system, we pay an annual license fee for the use of the non-proprietary IP, which forms part of the overall QA system. We have not to date costed this extension but expect it would be in the tens of thousands given the development and ongoing costs thus far. As part of the QA process, some members are selected, according to certain criteria, for a field review (ie face to face). The IPA pays independent reviewers to undertake these reviews. They are also paid to conduct desk reviews of all the completed QA reports. Part of the review includes uploading a sample of documents to ensure that all rules and regulations are being complied with. The same can apply to AML/CTF and such things as proving adequate customer due diligence (documents can be uploaded) so the online system and the reviewer can determine whether the member/accountant is compliant. Non-compliance leads to specific disciplinary action commensurate with the nature of the breach.

6. Customer due diligence:

The IPA is in support of chapter 5: Customer due diligence, recommendation 5.2 in that the Act and regulations should be simplified using plain language; recommendation 5.3 relating to the use of new technologies; recommendations 5.4 and 5.5 relating to simplified customer due diligence and making this proportionate to the risk of ML/TF. A further consultation period on each of these would be welcome, including workshops based on actual experience in other jurisdictions.

7. Guidance material:

We support chapter 7: AML/CTF programs and recommendation 7.4 requiring AUSTRAC to develop guidance to enable improved assessment and reporting of risks. Overall, the implementation of the regime would benefit from more guidance, which would lead over time to more consistent application of the rules and regulations.

8. Exemptions:

The IPA supports all of the recommendations in chapter 17: Exemptions process. Reducing unnecessary regulatory burden while maintaining the integrity of the regime should be paramount. For instance, clarity around exemptions, including possible tests which can be applied would be beneficial. In the UK, there is a test around "limited business activity" which reduces the burden on small businesses with low commercial activity. The UK imposes a threshold for "limited business activity" and is currently reviewing this (as part of a wider

review) and considering increasing the threshold to 100,000 pounds. This recognises the very low risk posed by businesses in this category.

9. UK experience:

In 2015 the IPA merged with the Institute of Financial Accountants (IFA) in the UK and hence we have the benefit of their long experience with the application and enforcement of the AML/CTF regime, which is based on the same international standards. We note that in fact the UK is currently reviewing its own system ahead of a FATF evaluation in 2017, while also looking at fulfilling the UK's G8 anti-corruption commitments.

We note that in the UK there is a system of government appointed supervisors who have certain powers to enforce AML/CTF rules. There are 27 supervisors which comprise a mixture of self-regulatory bodies and regulators. The IFA is a registered supervisor. The UK Treasury has responsibility for the appointment and removal of supervisors, while the regulations set the role of the supervisors and gives them appropriate powers to monitor their respective sectors. The UK is currently considering as part of the review whether to allow a less prescriptive approach to supervisory powers including having a test which is to be applied by a supervisor when seeking to refuse to register, cancel an existing registration, add conditions to a registration or suspend an existing registration. Examples of the test include whether the supervisor should proceed on the basis of knowledge, suspicion, belief, reasonable grounds to know, reasonable grounds to suspect, reasonable grounds to believe or a combination of the foregoing.

10. Application to Australia/IPA:

In the Australian context, we may prefer to include these matters in guidelines for application by professional associations such as the IPA, when co-regulating and educating our members. A cost-benefit analysis will be useful in determining whether a UK style system of regulation results in over-regulation given the level of risk. At this stage we are not aware of sufficient risk to justify this level of regulation in the accounting sector. The IPA's survey of members conducted in August 2014 for the FATF MEAT assessment indicates that:

- 70% of members said they were aware of their legal obligations;
- 93% said they have never been aware of reportable and suspicious transactions;
- 86% said they verify the identity of new clients through reliable, independent source documents, data and information;
- 88% conduct ongoing due diligence of business relationships, scrutinize transactions of clients to ensure consistency with what they know of the client, business and risk profile and source of funds;
- 83% keep all relevant files and records for at least five years;
- 53% said they were aware of the current AML/CTF requirements;
- 13% said they considered themselves to be at risk of being used by their clients in money laundering activities, in their day to day work; and
- 98% said they were not personally aware or had personal experience of any cases of money laundering or terrorism financing in their practices.

11. Cost-benefit analysis:

It is noted in the UK Impact Assessment that industry has difficulty in identifying costs caused by money laundering regulations, particularly around customer due diligence (or knowing your customer) as many of these costs would be incurred by a prudent business in any case as a matter of commercial practice. Consultation with industry by UK Treasury noted in the Impact Assessment concludes that industry is not able to isolate the costs of the regulations from other related costs and they do not believe it is useful to do so although they welcome continued efforts to identify costs and benefits of specific changes where feasible. We also note that the UK is undertaking a red tape comprehensive review of the AML/CTF regime “with a focus on supervision, looking to identify areas where the regime is unclear, cumbersome and ineffective”. The report is expected by December.

While the IPA believes it is necessary to attempt a cost-benefit analysis, we believe that this should be subject to ongoing review as businesses (including accountants in practice) apply and assess the cost and benefit of implementing any revised regulations. It is likely there will be significant variations as no two businesses are the same, with different clients, different services and offerings, different staff training, different risk profile and different internal systems. It is inherently difficult to assess how much resource needs to be devoted to different clients, with different structures and different needs, across more than 30,000 accounting firms.

12. Timeframe:

In terms of the proposed timetable, we note that recommendation 4.6 is scheduled to be completed by June 2017. Given the Christmas period, this essentially means 4-5 months, which we believe would not allow sufficient time to consult members, collect information and evidence from the UK and other jurisdictions (such as the US) and thoroughly examine all the options and conduct a cost-benefit analysis. A more appropriate time frame would be completion by December 2017. We are advised by our UK counterparts that the enforcement of the rules and regulations has caused a significant compliance burden to small accounting practices who are forced to purchase software and technology services, deal with field audits by their professional body and that the professional body must be fully equipped in terms of systems, training and resources to apply, monitor, enforce and report against the rules and regulations. This would require extensive examination of the UK system in order to ensure that the Australian system learns the lessons and avoids the pitfalls which the UK has experienced. Given the concurrent review by the UK Treasury then it is timely that we learn from the UK experience in designing our own system.

The time frame for phase 2 appears more considered, while the time frame for phase 1: non-legislative projects appears compressed and should be extended by at least six months for each phase. This would not necessarily impact phase 2.

If you would like to discuss any of our comments, please don't hesitate to contact me at either vicki.stylianou@publicaccountants.org.au or on 0419 942 733.

Yours faithfully

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

Vicki Stylianou
Executive General Manager, Advocacy & Technical
Institute of Public Accountants

About the IPA

The IPA is a professional organisation for accountants recognised for their practical, hands-on skills and a broad understanding of the total business environment. Representing more than 35,000 members in over 80 countries, the IPA represents members and students working in industry, commerce, government, academia and private practice. Approximately two-thirds of our members work in or are advisers to small business and SMEs. In developing its policy position, the IPA's perspective is based on the interests of our members, the accounting and finance profession and in the public interest.