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Discussion Paper – Customer Due Diligence Reform  
International Policy  
Legal and Policy Branch  
AUSTRAC  
PO Box 5516  
West Chatswood NSW 1515

Email: [CDD\\_Consultation@austrac.gov.au](mailto:CDD_Consultation@austrac.gov.au)

Dear Sir/Madam,

### **Discussion paper on possible enhancements to the requirements for customer due diligence**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in relation to AUSTRAC's discussion paper on the consideration of possible enhancements to the requirements for customer due diligence (CDD).

#### **About ASFA**

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

#### **General comment**

As an overall comment, which has been reinforced by our members, ASFA is concerned that, while the clarification provided in the paper on what is required is helpful, the thrust of the paper seems to be to increase the obligations required of reporting entities, including superannuation funds. In particular, we are concerned about the superannuation industry's need to devote ever increasing resources to comply with AML/CTF requirements. In a superannuation fund, many of which have tens of thousands of members, it is simply not possible to gain a detailed understanding of each customer, particularly those members of superannuation funds who have been enrolled by their employer.

Given the long-term nature of superannuation where monies are subject to 'preservation' and required to be retained in the system until a 'condition of release' of the benefit is met<sup>1</sup>, it is likely that most superannuation funds have classified a substantial proportion of their members as low risk for AML/CTF purposes, and so are only undertaking basic know your customer (KYC) and ongoing customer due diligence (OCDD) processes. Therefore, we would envisage that enhanced CDD would only apply if an AML/CTF flag has been raised with respect to a specific customer (i.e. superannuation fund member).

As a general principle, ASFA supports the proposed reforms in the discussion paper that reduce the regulatory burden on reporting entities. That is, where the risk is low (eg. low value transactions), the effort and resources required to be expended by reporting entities should be reduced wherever possible – for example, greater ability for reporting entities to use simplified due diligence (SDD) measures in low-risk situations.

### **Specific comments**

The remainder of this submission outlines specific issues or concerns we have identified with respect to various potential areas of reform.

#### ***(i) Ownership and control***

Deficiencies 1 and 2 of the discussion paper state that there is no requirement to take reasonable steps to understand the control structure, or to identify and verify beneficial owners of a customer that is a legal person or arrangement.

Designate service item 43 makes it clear that where a fund member has died, the 'customer' for the purposes of the payment of the death benefit is any person who receives part or all of the death benefit. It is not uncommon in such situations for a deceased member's death benefit to be paid to a legal person or a legal arrangement, rather than directly to an individual or individuals. For example, it may be paid on trust for a minor beneficiary or a beneficiary who otherwise lacks legal capacity, or it may be paid to the deceased member's estate in circumstances where the estate is administered by a trustee company. The question about how many 'layers' of ownership reporting entities will need to look through in establishing beneficial ownership of a customer is an interesting one – for some professional trustee companies that could potentially involve going through a few layers.

The wording of the potential reforms on page 18 of the paper is of concern in that the Rules could be amended to require a reporting entity to collect additional information in such cases "regardless of the level of perceived risk" and the requirement "could extend to all categories of legal persons and legal arrangements". AML/CTF is typically a risk-based regime and the distribution of death benefits to a trust would generally be viewed as low risk. There is already an intensive process undertaken to

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<sup>1</sup> As specified in Schedule 1 of the *Superannuation Industry (Supervision) Regulations 1994*.

identify the appropriate recipient of the death benefit under the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*, and where payment is being made other than to an individual, the superannuation fund trustee would already be checking the legal basis for such payment as a matter of course. It is important to note that superannuation death benefits can only be paid to dependants of the member or to the member's estate (legal personal representative) except in limited circumstances where no dependants or legal representative can be identified, in which case it can be paid to an individual. We would submit that payment to dependants and/or the legal personal representative generally would be low risk. If the proposed enhancement to the AML/CTF Rules were to apply, this will potentially delay payment of death benefits and would require considerable changes to be made to current processes.

***(ii) Customer acting on behalf of another person***

ASFA does not believe the potential reforms to address Deficiency 3 will materially impact the operations of superannuation funds. Funds already require written proof of appointment in order to provide information to, or take instructions from, an 'agent' on behalf of a fund member and there is typically close scrutiny by trustees of superannuation funds in relation to any transactions that would be designated services (eg. benefit payments). Also, call centres currently use security questions or other similar means to screen out any potential unlawful attempts to access information from persons other than the fund member. This includes financial planners who have neglected to obtain the member's written authority before trying to access the member's information as well as any persons attempting to access the member's information by deception.

In addition, the second bullet in the 'potential reform' column of the table on page 15 would require reporting entities to "identify the beneficiaries and the destination of the transaction". ASFA suggests that, where it is low-risk, such as in superannuation, it should be sufficient for reporting entities to be aware of the destination and be satisfied that there are no suspicious matters that would cause them to have concern regarding potential ML/TF risks associated with the transaction.

***(iii) Enhanced CDD and politically exposed persons***

ASFA is supportive of the proposal to define the meaning of 'politically exposed person' (PEP). However, ASFA considers that requiring reporting entities to take proactive steps to identify customers who are PEPs could potentially be quite onerous. This should be taken into account if a decision is made to introduce reforms in this area.

***(iv) Purpose of business relationship***

ASFA contends that the identified 'deficiency' and the proposed 'potential reform to address the deficiency' do not seem to be aligned. The description of Deficiency 6 says there is no explicit requirement for a reporting entity to consider and understand the *purpose & nature of the business relationship with the customer*. This suggests that an understanding may be required of what the

customer is seeking to get out of the interaction with the reporting entity (in this case, the trustee of the superannuation fund). ASFA does not have an issue with this, although in the superannuation context it would seem to be fairly self-evident.

However the 'potential reform' suggests the AML/CTF Rules could be amended with a view to ensuring that the reporting entity has a reasonable understanding *of the nature of the customer's business or occupation*. This is a very different consideration to an understanding of the purpose of the relationship between the customer and the reporting entity.

For example, in the superannuation context, funds generally would not seek information about a member's occupation. It may be obvious in a single-employer corporate fund, or in some funds where insurance is tailored to individual members according to their occupation, but for multi-employer funds or public offer funds, and funds with broad group life policies, the member's occupation would simply not be considered relevant. The intent of the relationship between the fund and the member is still clear – the administration of superannuation monies and the provision of retirement benefits. That relationship does not change based on the person's occupation.

If the intention is to require the collection of specific information about a customer's business or occupation, that is a matter that can be considered on its merits. However, as stated previously, in a superannuation context we would argue that the nature of the business relationship is self-evident and the need to collect a member's occupation has no bearing on this relationship.

#### ***(v) Updating CDD records***

ASFA contends that the requirement for reporting entities to keep CDD information 'up to date and relevant, regardless of the assessed risk' (albeit with added emphasis on high-risk customers) potentially imposes a very onerous obligation on reporting entities. In ASFA's view, this increased obligation is unwarranted where the ML/TF risks are generally low, such as in superannuation.

In addition, this increased obligation appears to be inconsistent with the second part of the proposal, which is that reporting entities use risk-based systems "to determine what CDD information should be updated or verified and at what intervals". ASFA's view is that the use of risk-based systems to determine what needs to be updated is more appropriate than an obligation to be kept up to date at all times, regardless of the assessed risk. This is particularly the case with respect to superannuation where the vast majority of customers (i.e. fund members) would generally be classified as low risk.

We believe the proposed requirement to keep CDD information regularly (i.e. continually) up to date would be overly onerous for superannuation trustees. ASFA recommends that, while this may be appropriate for high risk customers, following the risk-based approach the requirement to update and verify CDD information should only apply where there is a customer touch point or upon the occurrence of specific 'trigger events' (eg. when the member requests his/her benefit to be paid, contacts the fund to make an enquiry etc).

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***(vi) Exemptions for low-risk situations***

ASFA is supportive of the availability of mechanisms that reduce the regulatory burden on business by providing regulatory exemptions for specific, well-defined situations involving low ML/TF risk. Indeed, there is general acceptance that the superannuation sector generally involves relatively low level ML/TF risk and ASFA has on a number of occasions successfully advocated the industry's exclusion from specific AML/CTF requirements. Recent examples of such exemptions include:

- Amendments to Chapter 41 of the AML/CTF Rules to exempt superannuation funds from conducting the applicable customer identification procedure on members prior to paying out superannuation benefits to temporary residents that have permanently departed Australia, where the application has been made through the ATO's on-line Departing Australia Superannuation Payment (DASP) system.
- Exemption achieved from superannuation funds having to report international funds transfer instructions (IFTIs) to AUSTRAC.

Wherever possible, ASFA supports the availability of exemptions to be granted for various requirements under the AML/CTF Rules for particular sectors (such as superannuation) for specific, well-defined situations involving low level ML/TF risk. Where such sector-wide exemptions are unable to be supported, ASFA considers that the existing exemption-granting mechanism available to the AUSTRAC CEO for individual reporting entities should continue to be maintained.

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I trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Senior Policy Adviser, Jon Echevarria, on (02) 8079 0859 or by email [jechevarria@superannuation.asn.au](mailto:jechevarria@superannuation.asn.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read "Fiona Galbraith".

Fiona Galbraith  
Director, Policy