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Director – Planning, Coordination & Relief  
AUSTRAC  
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Dear Sir/Madam,

### **Consultation on Draft guidance note 15/01 – Key terms used in 'politically exposed person' definition**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in relation to Draft guidance note 15/01 – *Key terms used in 'politically exposed person' definition* released by AUSTRAC on 19 January 2015.

#### **About ASFA**

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. 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 comments**

As an overall comment, ASFA welcomes the release of draft guidance note 15/01 and is broadly comfortable with the contents. In our view, the guide will be of great assistance to reporting entities in understanding the key terms used in the 'politically exposed person' (PEP) definition contained in Chapter 1 of the AML/CTF Rules (the Rules).

In our submission to AUSTRAC dated 24 January 2014 on the draft amendments to the Rules relating to customer due diligence (CDD), we stated that some aspects of the definition needed to be clarified in order to avoid capturing individuals not intended by the Rules, and that not doing so would unnecessarily increase the resources required by reporting entities, such as superannuation funds, to undertake greater numbers of risk assessments and ongoing CDD.

With the release of draft guidance note 15/01, ASFA is particularly pleased that the terms "government minister", "senior government official", "high ranking member of the armed forces" and "state enterprise" have been clarified, as these were areas of particular concern for our members.

That being said, some of our members have advised that the broadening of the definition of “government ministers” to include ministers at the state or territory level would result in a much larger population of PEP members than would otherwise be captured under the old definition (one fund advised ASFA that, in their case, this would be at least 100 extra PEPs). As a result, this would require significant changes to their fund’s enrolment/on-boarding processes.

### **Comments related to PEPs**

The remainder of this submission outlines specific issues raised by ASFA’s members that impact on the ability of superannuation trustees to comply with the proposed new/amended requirements to the Rules in relation to how reporting entities deal with PEPs.

Although not strictly associated with the PEP definition itself, we believe the issues below are sufficiently important, and their impact on the superannuation industry particularly acute, so as to warrant raising them with AUSTRAC again in this submission.

#### ***Identification and verification of PEPs***

Superannuation trustees are currently exempted from the requirement to collect and verify the customer’s identity when undertaking designated service 42 (accepting a contribution, roll-over or transfer in respect of a new or existing member of the fund) under section 39(6) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

However, the recent proposed amendments to Chapter 4 of the Rules relating to CDD seek to introduce a requirement for reporting entities to identify and verify the identity of a PEP upon provision of a designated service 42 (proposed clause 4.13.1). As stated in our submission to AUSTRAC dated 24 January 2014, ASFA contends that this proposed requirement appears to be inconsistent with the above-mentioned exemption.

If superannuation trustees were required to comply with this proposed requirement, it would necessitate complex changes to funds’ current information collection processes and potentially IT system changes as well in order to track this information.

ASFA therefore requests that this proposed requirement be reviewed with respect to superannuation trustees.

#### ***Additional measures for customers who are foreign politically exposed persons***

Similarly, recent proposed amendments to clause 4.13.2 of Chapter 4 of the Rules state that, where a customer has been identified as a foreign politically exposed person, the AML/CTF Program must require the reporting entity to:

- take reasonable measures to establish the source of wealth and source of funds of the customer;
- determine whether the reporting entity should establish a business relationship with the customer; and
- obtain senior management approval before commencing to provide a designated service to the customer.

In the context of the superannuation environment, ASFA contends that it would be difficult for fund management (acting on behalf of the trustee) to make a decision not to provide a designated service to a customer (i.e. fund member) who has been identified as a foreign politically exposed person. If a decision were taken not to provide a designated service to a customer, this could cause an employer to breach their obligations under the Superannuation Guarantee (SG) legislation, in respect of designated service 42, as a result of the fund not accepting an SG contribution in respect of a new or existing member of the fund. Such a decision could also result in the trustee of the fund breaching its obligations under the *Superannuation Industry (Supervision) Act 1993*, in respect of designated service 43, by not cashing the whole or part of an interest held by a member of the fund.

As above, we suggest that reporting entities be permitted to apply a risk-based approach to this proposed requirement.

### ***Factors to consider when conducting ML/TF assessment***

Proposed amendments to clause 4.1.2 of Chapter 4 would require a reporting entity's AML/CTF Program to consider, amongst other things:

- the ML/TF risk of a customer who is a politically exposed person;
- the ML/TF risk of a customer's source of funds, source of wealth and beneficial ownership; and
- the ML/TF risk of a customer's business or occupation.

In the superannuation context, funds generally would not seek information about the member's occupation. While it may be captured in some funds where insurance is tailored to individual members according to their occupation, for multi-employer funds or public offer funds, and funds with broad group life insurance policies, the member's occupation would simply not be captured. The intent of the business relationship between the fund and the member is still clear and uniform – the administration of superannuation monies and the provision of retirement benefits.

As well, ASFA contends that identifying and considering the customer's source of wealth would be problematic for superannuation fund trustees. While funds can potentially infer an individual's salary (broadly speaking) through the amount of standard employer contributions received from their employer, this would by no means be an accurate calculation in all instances. Voluntary contributions are commonly made and superannuation funds are largely not in a position to be able to determine the "source" of the member's wealth.

### ***Implementation arrangements***

It has been suggested in the proposed amendments to the Rules relating to CDD requirements that reporting entities are already undertaking measures in relation to politically exposed persons, so the proposed provisions discussed above could commence almost immediately.

However, ASFA's view is that, for superannuation fund trustees, implementing the changes would not be so straightforward and would require funds to update their information collection processes (including forms) as well as IT/system changes to record and monitor the additional information. The proposed changes would involve additional costs that would need to be passed on to members in the form of increased administration fees. It would also require the modification of the soon to be implemented mandated ATO Superannuation Contributions Data Standard and the already

implemented Rollover Data Standard. For example, the Superannuation Contribution Data Standard does not currently capture an individual's occupation, and the Standard is not expected to be updated next until December 2015 at the earliest. Whilst this does not mean that some of the changes are unjustified, ASFA contends that any changes should not materially impact on the ability of superannuation trustees to act in the best interests of all fund members, and should be implemented with a view to minimising the compliance burden on the industry and the implementation costs.

In particular, if superannuation trustees are not permitted to apply a risk-based approach to many of the proposed requirements, but instead are compelled to comply with the proposed requirements unchanged, ASFA believes this would involve complex changes to current information collection requirements as well as costly changes to current IT systems and procedures for little or no benefit in terms of additional security.

Therefore, given the substantial resources that superannuation trustees have been forced recently to devote in order to implement the various (significant) changes required under the Stronger Super reforms, together with the fact that the Superannuation Contribution Data Standard will not be updated until at least December 2015, ASFA would suggest a start date with respect to superannuation trustees of no earlier than 1 July 2016.

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I trust that the information contained in this submission is of value. 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

Glen McCrea  
Chief Policy Officer