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Attorney General's Department
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Dear Sir/Madam,

On behalf of Arctic Intelligence I would like to thank the Attorney-General's Department for the opportunity to contribute to the public consultation on proposed reforms of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime and participating in the planned roundtable discussions should the opportunity arise.

I have been engaged in the AML/CTF area for 17 years starting in 2006 working at Westpac on the early stages of their AML/CTF Program and spent over 8 years at Macquarie Bank as the Program Director responsible for implementing both the AML/CTF and FATCA (tax evasion) programs for the Banking and Financial Services Group (retail arm of the bank) across all aspects of the AML/CTF Act. In 2015, I launched Arctic Intelligence, now a market-leading RegTech firm that specialises in Enterprise-Wide ML/TF Risk Assessments and our proprietary technology is used by hundreds of businesses in 17 countries and in 20 industry sectors. In Australia our platforms are used by major banks, many credit unions/mutual banks, non-bank financial services companies in insurance, stockbroking and FinTech's, as well as in the casino and gaming sector, including many hotels, pubs, and clubs. We also support lawyers, accounting firms and real-estate firms in countries that have unlike Australia, have regulated these sectors for years.

On behalf of Arctic Intelligence, I made several submissions to the Parliamentary Inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime and on the 9 November 2021, I was invited to give evidence as an expert witness into the Public Hearings, which I have attached as background information to my submission.

As you will read and hear, I have been strongly critical of the Australian Government in general and the Attorney-General's Department in particular for its long-standing apathy in taking action to expand AML/CTF laws to Tranche 2 sectors much sooner than it has which in my opinion constitutes an epic failure by the Attorney General's Department (and the Home Affairs Department before that).

Consecutive Australian Governments have shown a continued lack of political will going back 16 years, since 2007 resulting in Australia being now only one of 5 out of over 200 countries that have repeatedly failed to take action to expand the AML/CTF laws, cow-towing to sustained lobbying (and political donations) by industry groups.

The unwillingness of the Australian Government to introduce these reforms has undoubtedly made Australia an attractive destination for organised criminals, evidenced by huge increases in the value and volume of drug importations, rises in drug addiction, gang and domestic related violence and additional pressure on the emergency services and court systems.

The Australian Government must accept some responsibility for the social harm caused by its inaction over the last 16 years.

Back in 2007, the Attorney General's Department indicated in a (long forgotten) project plan setting out a timeline to expand AML/CTF laws to lawyers, accountants, real estate agents and trust and company service providers but failed to act to make this happen. Given it is now 2023, and in my opinion, it is only because the Financial Action Task Force (FATF) are scheduled to complete their (long overdue) follow-up to the 2015 mutual evaluation report in 2025 that the Attorney General's Department has now decided it needs to act (after a 16-year hiatus), to save itself further embarrassment on the international stage.

In 2015, the FATF mutual evaluation report on Australia heavily criticised the Australian Government for its failure to expand AML/CTF laws to gatekeeper professions. Then on 26 April 2016 the Australian Government published its own Statutory Review of the AML/CTF Act and committed to implementing 84 recommendations *(most of which remain unactioned)*, including expanding AML/CTF laws to gatekeeper professions. In March 2022, following a year long, Parliamentary Inquiry into the adequacy and efficacy of Australia's AML/CTF laws, the findings report included an entire chapter dedicated to expanding AML/CTF laws to gatekeeper professions, which was widely supported (apart from industry groups who continue to argue that Australia is somehow different to the 195 countries that have already implemented these reforms).

Against this domestic context, internationally, there are many countries that have been grey listed by the FATF for being far less recalcitrant than the Australian Government is, despite numerous reports, reviews and inquiries all recommending the same reforms. It seems incredulous and a waste of taxpayer funds for there to be another year of consultation, when what needs to happen to bring Australia into line with international standards is crystal clear to most, but the phrase *"none blinder than those who do not want to see"* could not be more apt. And there is a lot to see…

Australia has a terrible track record of failure to prevent money laundering and tax evasion.

Two of our largest banks have been fined over AUD$2 billion dollars for ineffective financial crime risk management and another is under an ongoing enforceable undertaking with AUSTRAC. The gaming sector has fared just as badly with action taken against three major gaming operators and ongoing action expected at others in the sector. In the precious metals sector, AUSTRAC announced an investigation into Perth Mint (*ironically operated by the Western Australian Government*), following a recent ABC documentary highlighting money laundering concerns.

Outside of the financial services, gaming and precious metals dealer sectors, there is irrefutable evidence that Australia's real-estate sector is being widely used by organised criminal networks to launder the proceeds of crimes. And in the Panama Papers leak of over 11.5 million documents found there to be over 320,000 offshore entities established between 1977 and 2015, with over 1,700 officers (directors, shareholders and/or beneficiaries) and 1,400 addresses connected to Australia. Evidence was also shown that over 200 intermediaries (lawyers, accountants and trust and company service providers), were involved in helping set up or act as the registered agents for offshore companies, prompting the Australian Taxation Office to initiate investigations of over 800 Australians.

It is long overdue for the Australian Government to expand AML/CTF laws to lawyers, accountants, real-estate agents, trust and company service providers, as well as, dealers in-high-value goods, which is notably absent from being included in the AGD's consultation paper which was surprising as there is irrefutable evidence that organised criminals launder criminal proceeds through luxury car dealers, boat dealers, art and antiquities dealers and luxury goods dealers and should not be excluded from the planned reforms.

Despite such a long-history of inaction by the Attorney General's Department in a context of wide-spread money laundering through Australian businesses, reported to cost the Australian economy AUD$60.1 billion[1] a year, it is clearly time to stop the pretence of action and act.

[1] Australian Institute of Criminology – 2020-2021 "Serious and organized crime in Australia cost up to AUD$60.1bn in 2020-2021".

This submission has been broken down into the following sections:

- AML/CTF Act Simplification/Modernisation
- Expansion of AML/CTF laws to new sectors (including high-value goods dealers)
- Explicit guidance on Enterprise-Wide ML/TF Risk Assessments to be conducted at least annually.
- Explicit guidance that AML/CTF Programs must be subject to independent review at least every two-years (or annually for higher risk businesses)
- Appendices:
    - Appendix A - responses to consultation question summary
    - Appendix B - areas omitted from the consultation paper that the AGD should address.

If you would like further clarification or information on anything contained in my submission, please do not hesitate to contact me and I welcome the opportunity to participate in the round table discussions and subsequent consultation processes as these critical reforms are overhauled.

Yours sincerely,

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On behalf of the Arctic Intelligence team.

AML/CTF Act Simplification/Modernisation

The two parts to the AML/CTF Act and Rules (Part A and Part B) are overly complicated, written in a too legalistic way, hard to follow with circular references and with language that is often not prescriptive (such as not explicitly stating that an enterprise-wide ML/TF risk assessment is required, or independent reviews must be conducted on a "regular" basis, when an explicit timeframe should be clearly stated and not left open to interpretation).

Many submissions I expect will focus on the various ways in which the AML/CTF Act, Rules and Guidance can be simplified, so the main points of this submission will not focus on this, other than to support a simplification process that addresses the above points.

Expansion of AML/CTF laws to new sectors (including high-value goods dealers)

The FATF has long recognised that money laundering occurs in the real-estate sector and high-value goods dealers, sometimes facilitated by lawyers, accountants, trust and company service providers and I have attached the published guidance outlining the risks and vulnerabilities that these sectors have in facilitating money laundering which is irrefutable and for this reason we would urge the Attorney General's Department to expand the AML/CTF laws to these sectors as soon as possible.

One notable omission from the Attorney General's Consultation Paper into Tranche 2 reforms is the exclusion of High Value Goods Dealers, which for some unknown reason is not even considered to be the subject of the consultation process, which is a significant oversight. This is surprising, particularly since the Attorney General Department's predecessor, the Home Affairs Department who in November 2016, issued its own consultation paper on a model for regulating high value dealers under the AML/CTF Act. Can the Attorney General's Department please explain why High Value Dealers have been omitted from this consultation paper?

In this consultation paper, the Home Affairs Department stated:

"In Australia, items considered to pose ML/TF risks when purchased using large sums of cash include jewellery, antiques and collectibles, fine art, boats, yachts, and luxury motor vehicles. Building, bathroom, and kitchen supplies are also considered to be high-value goods that ***pose significant ML/TF risks*** *because criminals often purchase real estate using illicit funds and renovate the property using crime-derived cash. HVDs that conduct a business in Australia involving the buying and selling of these items, and accept large sums of cash for these items, are being considered for AML/CTF regulation".*

It is worth noting that the report goes on to outline the ML/TF vulnerabilities of high-value dealers:

"Recent high profile asset confiscation cases in Australia demonstrate the breadth of criminal investment in HVDs and the scale of criminal wealth that can be laundered and invested in those goods. In 2014-15, the Australian Federal Police's (AFP) Criminal Assets Confiscation Taskforce restrained over AUD$246 million worth of illicit assets that included a range of high-value goods. Real estate, motor vehicles and jewellery are the most commonly targeted high-value goods for money laundering, but other types of luxury goods or 'lifestyle assets', can also be used. The most significant ML/TF risks arise where these high-value goods are purchased using large sums of cash.

Luxury cars can be purchased by criminals using illicit cash or a combination of credit and illicit cash. Where credit is obtained for the purchase, the loan is often repaid early using illicit cash. The cars are then resold. Any losses made by the criminal on the loan or as a result of a decrease in the cars' resale value are borne as the cost of laundering.

Precious stones and precious metals are particularly vulnerable to being used for ML/TF purposes. The purchase of jewellery can disguise the real amount of money laundered because a 'normal' market price can be hard to establish. This means the value of the jewellery can be misrepresented by either under or over-valuation to disguise the amount of criminal income laundered through its purchase.

Transaction methods for jewellery can range from anonymous exchanges of stones or nuggets to government-regulated deals and international transactions conducted through the financial system. These goods can be readily purchased and transported, and later sold for cash, with their value increasing over time.

Jewellery also carries an added ML/TF risk because individual items may be small, very high in value, and easily transportable, offering criminals the opportunity to transfer value within or between countries in a manner which minimises the chance of detection."

The report then went on to explain the benefits of regulating high-value dealers under the AML/CTF regime:

"The regulation of HVDs under the AML/CTF regime would deliver a number of benefits, including closing a regulatory and intelligence gap, enhancing national security, and enhancing the reputation of the Australian financial system. While transactions performed by HVDs that use electronic payment systems can be tracked by law enforcement, transactions that involve large sums of cash are virtually invisible.8 No information is collected and verified about the identity of the customer and the source of the customer's funds, and no information is reported to AUSTRAC that can be used by law enforcement agencies to follow the money trail for illicit funds.

This makes the use of HVDs attractive to criminals seeking to launder illicit funds through buying and selling high-value goods. If HVDs had obligations to collect, verify and report information, they could play a significant role in the detection and investigation of ML/TF offences. This would allow for suspicious transactions to be reported to authorities earlier in the transaction chain than occurs currently, thereby activating the protections of the Act and providing earlier opportunities for law enforcement to detect and disrupt criminal activities and deprive criminals of the proceeds of crime.

The AML/CTF regulation of HVDs would also enhance the sector's awareness of ML/TF risks and assist HVDs to identify 'red flags' that may be early indicators of criminality or potential misconduct. Red flags can relate to the customer, the nature of the transaction and/or the source of the customer's funds. Where there are a number of indicators, it is more likely that a HVD should have a suspicion that ML or TF is occurring."

I have illustrated this point at length as there are clearly concerns expressed by the Home Affairs Department into the ML/TF risks and vulnerabilities in the high-value goods sectors but for some unexplained reason the Attorney General's Department have **entirely overlooked high-value goods dealers** in the consultation process and appears that they must have formed a view that these risks have miraculously disappeared since 2016 *(unlikely considering the queues of tattooed bikies outside Chanel every Tuesday lunchtime!)* or that high-value dealers are not worth regulating in Australia, which creates a weak link for organised criminals to exploit.

We would strongly recommend that the Attorney General's Department reconsiders its position in respect of high-value goods dealers and includes them in the expanded AML/CTF laws as there has clearly been concern expressed by the Australian Government in the past and if the Australian Government is genuine in its claim that it is *"committed to protecting the integrity of the Australian financial system and improving Australia's AML/CTF regime to ensure it is fit-for-purpose, responds to the evolving threat environment, and meets international standards set by the Financial Action Task Force (FATF)"* as stated in the opening paragraph of this consultation paper, then it will act to regulate high-value goods dealers too.

In the appendix of this document, I have summarised the ML/TF risks and vulnerabilities of the following high-value dealer sectors which we urge the Attorney General's Department to regulate:

- Antique and Art Dealers
- Auctioneers and Brokers
- Motorised Vehicle Dealers
- Luxury Goods Dealers

Given the 16-year delay (and counting) and the fact that Australia has fallen many years behind its international counterparts, we are also of the opinion that a staggered implementation period should not be introduced instead all industry sectors should be given a maximum of 12-months to implement the reforms in their industry all starting and ending at the same time.

Explicit guidance on Enterprise-Wide ML/TF Risk Assessments to be conducted at least annually.

The fact that ML/TF regulations are risk-based putting the onus on regulated businesses to identify and assess their risks and vulnerabilities to money laundering and terrorism financing, in respect of the nature, size and complexity of their business and then build an AML/CTF Program that is appropriate and proportionate to these risks to help mitigate and manage them but then omitting an explicit obligation for regulated entities to conduct an enterprise-wide risk assessment (EWRA) in the AML/CTF Act 2006 is a significant oversight and one that we fully support making this explicit in the law.

Further, the use of language is important and, in our opinion, needs to be more prescriptive in the expectations that are being set. For example, an expectation that regulated businesses update the EWRA on a "regular" basis is not explicit enough and many businesses will simply interpret that to be every, 2, 3, 5 or 10 years, which is clearly unacceptable, particularly given the pace of internal and external environmental changes, which are outlined below.

At Arctic Intelligence, we provide technology and content solutions to support businesses conduct EWRAs and our observations having spoken to hundreds of companies is that many businesses are:

- Lacking the capacity and/or capability to conduct EWRAs in a meaningful way.
- Lacking appropriate tools to conduct EWRAs (excel in our view is not fit for purpose for most)
- Conducting assessments manually over many months (meaning the data is often out of date)
- Lacking the knowledge required to develop a logical, explainable, and defendable methodology (i.e., basic consideration of risk groups, risk categories, risk factors and risk indicators)
- Inheriting risk models that are not appropriate and/or they do not actually understand.
- Over reliant on subjective (question driven) rather than objective (data driven) inputs to assess risk.
- Not conducting these in a timely enough manner considering internal or external triggers occurring

We believe that ML/TF risk assessments should be mandated by law to be conducted **at least every year** for most businesses and more frequently than this for higher risk businesses.

The case for at least annual ML/TF risk assessments is driven largely by the pace of internal and external environmental changes that most businesses face, meaning that ML/TF risk assessments conducted less frequently than that are likely to be ineffective.

The table below summarises different external and internal factors that are relevant to triggers to refresh EWRAs:

External Events		Internal Events
Regulatory Events	**Other Events**	
Enforcement activity targeted at certain sectors or activities - is the same activity present?	Changes in the geo-political landscape making a country at higher risk than before.	External (or internal) independent review highlighting deficiencies in the ML/TF risk assessment.
Changes in AML/CTF regulations or rules - how do they impact your organisation?	Changes in various published country risk rankings (i.e., transparency international).	Review of ML/TF risk assessment prior to annual compliance reports being filed with the regulator.
Changes in guidance and risk typologies - has your ML/TF risk assessment considered this?	Increased media scrutiny on certain companies, industries, or activities.	Organisation is launching or has launched new products services, which pose new ML/TF risks.
Consultation papers about proposed regulatory changes - what would be the impact on your business if these laws are enacted?	Changes in the threat landscape as criminals find more innovative ways to launder criminal proceeds.	Organisation is targeting new customer segments, expanding into new geographic markets, or generally changing its business.
International guidance issued by the FATF, the Wolfsberg Group, the Egmont Group highlighting trends and risk-related guidance.	Emerging technologies that could pose new threats to your organisation, such as criminal use of Artificial Intelligence.	Merger and acquisitions activity (i.e., divestments, acquisitions) bringing together businesses with different risks and approaches.
Publishing of National Risk Assessments highlighting threats at national, industry, product, or activity level.	Collaboration through public and private partnerships could present opportunities to update ML/TF risks and controls.	Change in Board and/or Senior Management, with a greater focus on risk appetite and management.
Release of federal, state, or local crime statistics that are relevant to your industry and operations.	Investigations by journalists or law enforcement into organised criminal activity that is related to your organisation's operations.	Appointment of a new AML/CTF Compliance Officer/MLRO looking to make changes to the ML/TF risk assessment and AML Program.
Criminal or civil prosecutions or other enforcement action (i.e., enforceable undertaking, regulator appointed independent auditors).	Class actions being filed against organisations for failing to manage or disclose risks.	Appointment of risk, compliance, or legal advisors with experience in conducting and updating ML/TF risk assessments.

We are also engaged with FIUs/Central Banks that have an expectation of a quarterly EWRA, which many organisations we have engaged with could simply not achieve.

In terms of the explicit requirement the section on enterprise-wide risk assessments needs to be overhauled and more detail provided, for example in the law and rules these could more explicitly state a requirement for regulated entities to:

- Explain the process for the Board and Senior Executive for determining the organisations risk appetite and risk tolerance as it pertains to ML/TF risks and actions that are to be taken if the ML/TF risk assessment demonstrates that residual risks are outside stated appetite and/or risk tolerance statements.

- Explain the ML/TF methodology they have in place, when and how it was developed and how frequently it is updated, and whether the ML/TF risk assessment has been subject to external review by suitably qualified experts.

- Explain the ML/TF risk assessment approach to identifying and assessing inherent risks, for example, what risk groups, risk categories, risk factors and risk indicators were considered (and why), whether all risks are weighted equally or whether there is some proportionality and what the rationale is behind this.

- Explain the ML/TF risk assessment approach to conducting control design and operational effectiveness testing, testing methods, size of testing samples, how control effectiveness was determined, and any weighting applied to key controls etc.

- Explain how the ML/TF risks are aggregated across different business lines, operating divisions, and countries as appropriate.

- Explain the process for documenting enhancement opportunities to continuously improve the approach to ML/TF risk assessment.

- Explain the time-based and event-based triggers that has in the past prompted a review and refresh of the ML/TF risk assessment.

- Explain what process the organisation undertakes to gather qualitative (question-based) and quantitative (data-based) inputs to inform the ML/TF risk assessment process and to strike the right balance between subjective and objective approaches to ML/TF risk assessment.

- Explain how the ML/TF risk assessment methodology aligns to international standards of risk management (i.e., ISO31000 or similar)

- Explain how the ML/TF risk assessment inputs and outcomes are presented and discussed with the Board and Executive committee and how any follow-up actions to continuously improve this process are tracked and monitored.

- Explain whether the organisation is adopting RegTech to conduct enterprise-wide ML/TF risk assessments or if not to provide an explanation and justification that excel spreadsheets are fit for purpose (which they are most certainly not for organisations of a certain size or complexity)

    - This argument is like a major reporting entity with high volumes of clients, accounts and transactions conducting transaction monitoring on spreadsheets - it can be done but is ill-advised as it is not fit for purpose.

    - Complex organisations that fail to consider adopting technology for this purpose, should be challenged by regulators since the value proposition and benefits are undeniable.

Explicit guidance that AML/CTF Programs must be subject to independent review at least every two-years (or annually for higher risk businesses)

In my opinion, another major deficiency in Australia's AML/CTF laws is the fact that there is no mandatory minimum requirement for when reporting entities must have their AML/CTF Programs subject to an independent review to assess the design and operational effectiveness of the AML/CTF Program and whether the regulated entity is in compliance with the AML/CTF legislation, rules, and guidance.

Also, we do not agree with the approach to independent reviews advocated by AUSTRAC on their website under the section entitled "how often independent reviews must be done"; it is left entirely to the discretion of the reporting entity to decide when these should be conducted. The website states *"you must decide on how often reviews are done. How you decide depends on the size of your business, what kind of business you have, how complex your business is and your level of ML/TF risk"*.

This simply does not go far enough. We have met many businesses that have never had an independent review of their AML/CTF Program since the laws were enacted in 2006 (17 years ago), so this risk-based approach to independent reviews is not driving the right behaviours or outcomes needed for the 17,000 businesses regulated by AUSTRAC.

Often when there are material AML/CTF compliance failures these frequently relate to issues that have remained undetected or unaddressed for years (or even decades) because of independent reviews either not having been completed in a timely manner (if at all) or by independent reviewers not being sufficiently skilled or thorough in their reviews, particularly in the areas of control effectiveness testing.

We often hear about unqualified persons conducting superficial independent reviews, giving regulated businesses a false sense of comfort, and often failing to perform control testing at all, which in our opinion does not even constitute an independent review.

Several years back, AUSTRAC established an Approved Persons list for practitioners that had demonstrated their skills, qualifications and/or experience in AML/CTF, much like the Skilled Person panels that exist in the UK and administered by the Financial Conduct Authority. In Australia, this process and concept was dropped, and it was not clear why, but seems like a sensible thing to consider reinstating as part of this review.

Our specific recommendations in respect of this can be summarised as follows:

- Include specifically in the laws that all businesses must have their AML/CTF Programs independently reviewed at least every two-years.
- Include high-risk industry sectors (i.e., casinos, crypto, money remitters and cash intensive sectors) where and independent review of the AML/CTF Programs is more appropriate on an annual basis.
- AUSTRAC advocates on their website and through their outreach programmes that independent reviews are an important mechanism to achieve compliance and they have a minimum expectation, which is not stated like this with the "you decide when" approach. Update their website to reflect a more prescriptive approach.
- Implement a timeframe of within 6-months for high-risk industry sectors (and those that have not had an independent review within the previous 3-years) and 12-18-months for all other businesses to have initiated and completed an independent review of their AML/CTF Programs
- A request that on completion of the Independent Review that these are provided to AUSTRAC and uploaded into a portal so that AUSTRAC can track who has and who has not completed the independent review within the specified timeframes and impose potential penalties, such as AUSTRAC appointing an independent reviewer on the reporting entities behalf if they have failed to initiate one themselves.
- AUSTRAC to reinstate the Approved Persons process but the definition last time was too restrictive as it approved legal practitioners (who could have zero AML/CTF knowledge or experience, as is currently the case with some lawyers conducting independent reviews), but did not as broadly as it could have included experience of AML/CTF practitioners who are working in the field but may not be qualified as a lawyer etc.
- AUSTRAC to spot check the independent reviews for completeness to examine the quality of the independent review and the approved person in conducting the review.

- AUSTRAC in the annual compliance report to explicitly ask, when the last independent review was completed, who by, for what periods, request that the report and any remedial actions are uploaded to AUSTRAC online and ask questions about whether any of the “trigger events” have occurred within the last 12-months. Where the trigger events have occurred, but no independent review has been conducted, AUSTRAC writes to regulated entities with a “please explain” letter.

Closing Remarks

The Attorney General’s Department have an opportunity to significantly improve the level of AML/CTF compliance in Australia and has an obligation to address the general level of apathy, particularly among gatekeeper professions who overall remain opposed to embracing the AML/CTF reforms, in stark contrast with the international community, 95% of whom implemented laws for gatekeeper professions going back years or even decades ago.

Any changes to the AML/CTF laws in Australia need to be introduced at the latest by March 2024 and given the decades long delays in introducing these common-sense reforms, we strongly advocate for a “big bang” approach, meaning introducing the laws to all industries simultaneously (i.e., not phased by sector) and with no more than a 12-month implementation period.

The Australian Government has clearly dropped the ball.

Australia is way out of step with the international community and many of our major financial services and gaming firms have been found to have systemic non-compliance issues with AML/CTF laws.

There has been very little notable progress made since the last Financial Action Task Force (FATF) report in 2015 or on the 84 recommendations in the statutory review and unless Australia now acts decisively and recognises that it has clearly failed to take these obligations seriously (evidenced by the 17-year delay and counting) that Australia runs a real risk of being included on the FATF grey-list.

But more important than that, is the fact that organised criminals are clearly making billions of dollars in profits and are laundering the proceeds of their crimes like drug-importations, fraud, human and wildlife trafficking that cause immeasurable social harm to everyday Australian’s and if the Australian Government is serious about its commitment to financial crime prevention, then they will introduce these reforms without delay and with conviction.

Appendix A - Annex B - Consultation question summary - Arctic's responses

Note: Not all questions have been responded to intentionally and some have been removed.

No	Question	Arctic Response
General questions for all entities		
1	How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?	There are many ways that the AML/CTF Act 2006, can be modernised for example: ● Simplification of Part A and Part B into a singular document without so much round-robin, circular referencing ● Build the AML/CTF Act in a "rules as code" so that this can be ingested into a RegTech solution (with ability to add plain English translation) since the current laws are very "legalistic" and given Tranche 2 audience the language could be simplified. ● Development of a minimum-libraries of ML/TF risks that should be considered by regulated entities in each industry-sector and having the regulator AUSTRAC supporting the development on industry-wide ML/TF risk models (i.e., groups, categories, factors, and indicators) that can be used to benchmark. ● Unlike New Zealand (and many other FATF member countries) there is no explicit, proscribed minimum for conducting independent reviews of AML/CTF Programs, but states "at reasonable intervals" but this can be interpreted as every 5-10 years or never. We have seen many regulated entities that have never had a proper independent review over their AML/CTF Program, and we would recommend that is becomes mandatory at least every 2-years for businesses, unless the following, which should become a mandatory requirement at least on an annual basis: ○ The Enterprise-Wide ML/TF risk assessment determines the business to be higher risk; or ○ The industry sector is known to be higher risk (i.e., Casinos, Online Gambling, Money Remittance, Crypto etc.)
2	What are your views on the proposal for an explicit obligation to assess and document money laundering and terrorism financing risks, and update this assessment on a regular basis?	This is necessary and has been covered above in the main part of the submission.

6	What are your views on the proposal to expressly set out the requirement for entities to identify, mitigate and manage their proliferation financing risks?	Yes, this was an unfortunate legal drafting oversight in the AML/CTF laws that assumed a risk-based approach meant regulated entities would perform a money laundering risk assessment. The AML laws, like they have in the UK, should also include proliferation financing risks which must be considered. There is support for industry to be able to do this notably: ● AUSTRAC Paper on Proliferation Financing ● FATF Guidance on Proliferation Financing
7	What guidance would you like to see from AUSTRAC in relation to AML/CTF programs?	AUSTRAC are to be commended about the guidance they put out but there is still significant room for improvement, including: ● Stronger lobbying of their government counterparts (i.e., Attorney-General's Department) to have acted on Tranche 2 far sooner. ● More industry sectoral ML/TF risk assessments - and would like to see AUSTRAC engage in a public-private partnerships that includes RegTech providers and consultants (not just regulated entities and Government) to reach a common industry-standard set of risk indicators that they expect regulated entities to consider at a minimum. ○ In a small agency like AUSTRAC that regulate 17,000 reporting entities now (and 117,000 when Tranche 2 is introduced) it is simply not viable for AUSTRAC to meaningfully regulate that community by adopting the “risk-based approach” (i.e., letting each business determine the methodology, risk models and risk assessment and then having to oversee potentially 117,000 different methodologies and risk-based approaches. This is a recipe for disaster and a more prescriptive approach using technology will deliver a far better outcome. ○ In some smaller jurisdictions, Arctic is engaged with FIUs/Central Banks and Regulators who are looking at mandating the use of a centralised risk assessment platform with a minimum set of risk factors per industry, which would deliver a platform that would allow them to understand the ML/TF risks at not only a regulated entity level, but an industry-level something that would NEVER be achieved if allowing this to be completely risk-based

		• Whilst AUSTRAC cannot and should not endorse individual technology providers, they could and should consider some RegTech providers that can deliver improved outcomes and support the industry as this would drive adoption and frankly drive far greater levels of compliance.
8	What are your views on the proposed simplification of the customer due diligence obligations as outlined?	Very long overdue!
Sector specific questions		
Gambling services providers		
10	What are your suggestions to minimise regulatory impact in lowering the customer due diligence exemption threshold for gambling service providers from AUD10,000 to AUD4,000?	This is a good idea, even $4,000 might be too high a threshold, which people could abuse going from venue-to-venue gambling $3,500 a time, multiple times a day and could still manage to launder hundreds of thousands a week without ever being identified.
Amending the tipping off offence		
11	Are there aspects of the tipping-off offence that prevent you from exchanging information, which would assist in managing your risks?	Only that information sharing between public to private and private to private individuals unconnected to the entity for which a suspicion is formed should be encouraged, if compliance officers and the like are trying to do the right thing.
Legal, accounting, conveyancing, and trust/company services		
23	What services by lawyers, accountants, conveyancers and trust and company service providers should be regulated under the Act so that they can manage their AML/CTF risks? Are there international examples that have worked well for these sectors?	The services of each profession that **must** be regulated under the Act include: **Lawyers and conveyancers** These are the services offered by lawyers and conveyancers that must be included as designated services under AML Act are: • Acting as a formation agent of legal persons or legal arrangements • Acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or legal arrangements. • Providing a registered office or a business address, a correspondence address, or an administrative address for a company, or a partnership, or for any other legal person or arrangement

		• Managing client funds (other than sums paid as fees for professional services), accounts, securities, or other assets. • Engaging in a transaction on behalf of any person in relation to the buying, transferring, or selling of a business or legal person (for example, a company) and any other legal arrangement • Engaging in a transaction on behalf of a customer in relation to creating, operating, and managing a legal person (for example, a company) and any other legal arrangement • Engaging in or giving instructions on behalf of a customer to another person for any conveyancing to affect the grant, sale, or purchase or any other disposal or acquisition of real estate or an interest in land. • The transfer of a beneficial interest in land or other real property. **Accountants and bookkeepers** These are the services offered by accountants and bookkeepers that must be included as designated services under AML Act are: • Acting as a formation agent of legal persons or legal arrangements • Acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or legal arrangements. • Providing a registered office or a business address, a correspondence address, or an administrative address for a company, or a partnership, or for any other legal person or arrangement • Managing client funds (other than sums paid as fees for professional services), accounts, securities, or other assets. • Engaging in a transaction on behalf of any person in relation to the buying, transferring, or selling of a business or legal person (for example, a company) and any other legal arrangement • Engaging in a transaction on behalf of a customer in relation to creating, operating, and managing a legal person (for example, a company) and any other legal arrangement

		Trust and company service providers ● **Company Formation Services** - Acting as a formation agent of legal persons or arrangements. ● **Company Management Services** - Engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies. ● **Legal Entity Address Services** - Providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement. ● **Nominee Services** - Acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements. ● **Transaction Services** - Engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses. The following also re-iterates how these industry sectors can be exploited by organised criminal networks to commit money laundering offences. **Lawyers and conveyancers - ML/TF risks in services they provide.** The money laundering and terrorism financing (ML/TF) risks associated with lawyers and conveyancers includes (but is not limited to): ● Lawyers and conveyancers may be hired by individuals or businesses involved in money laundering to provide professional services such as legal advice on establishing entities and how to possibly circumvent AML/CTF laws. ● Lawyers and conveyancers could be asked to facilitate transactions that involve large amounts of money, often through complex financial arrangements. Such transactions could be designed to disguise the illegal source of the funds and to make them appear legitimate. ● Lawyers and conveyancers may also be at risk if they fail to conduct adequate due diligence on their clients or if they ignore suspicious transactions. ● Lawyers and conveyancers may also be at risk of being tempted by the

		prospect of personal gain from money laundering activities, for example, a lawyer may be offered a bribe to ignore suspicious activity or to help launder money. ● Lawyers and conveyancers are bound by strict client confidentiality rules, which can make it difficult to identify suspicious activity or report potential money laundering. ● Lawyers and conveyancers often have long-standing relationships with clients, and clients may trust their lawyers with sensitive financial information. This trust can be abused by criminals who may use lawyers to conceal their illicit activities. ● Lawyers and conveyancers may not have adequate training or knowledge to identify money laundering risks, particularly in areas such as international finance and complex corporate structures. ● Lawyers and conveyancers may be involved in cross-border transactions, which can increase the risk of money laundering due to differences in laws and regulations across jurisdictions. ● Criminals may seek out lawyers and conveyancers as gatekeepers to the financial system creating an impression of respectability and legitimacy. ● Criminals may misuse lawyers' trust accounts for deposits or international wire transfers to avoid detection. ● Criminals may seek the assistance of lawyers to establish companies or trusts which they use to obscure who really owns or controls the funds and assets, therefore avoiding the detection and confiscation of assets, and hindering law enforcement investigations. **Accountants and bookmakers - ML/TF risks in services they provide.** The money laundering and terrorism financing (ML/TF) risks associated with Accountants and Bookkeepers includes (but is not limited to): ● Accountants and bookkeepers may be hired by individuals or businesses involved in money laundering to provide professional services such as bookkeeping, accounting, tax planning, or financial advisory. ● Accountants and bookkeepers could be asked to facilitate transactions that involve large amounts of money, often through complex financial arrangements. Such transactions could be designed to disguise the illegal source of the funds and to make them appear legitimate. ● Accountants may also be at risk if they fail to conduct adequate due diligence on their clients or if they ignore suspicious transactions.

		• Accountants may also be at risk of being tempted by the prospect of personal gain from money laundering activities, for example, an accountant may be offered a bribe to ignore suspicious activity or to help launder money. • Criminals may seek out accountants and bookkeepers as gatekeepers to the financial system creating an impression of respectability and legitimacy. • Criminals may misuse accountants' trust accounts for deposits or international wire transfers to avoid detection. • Criminals may seek the assistance of accountants to establish companies or trusts which they use to obscure who really owns or controls the funds and assets. **Trust and company service providers - ML/TF risks in services they provide** The money laundering and terrorism financing (ML/TF) risks associated with trust and company service providers includes (but is not limited to): • Trust and company service providers may be used by individuals or businesses involved in money laundering to establish corporate entities with the objective of creating complex legal entity structures purposefully designed to obscure the ultimate beneficial ownership. • Trust and company service providers could be asked to facilitate transactions that involve large amounts of money, often through complex financial arrangements. Such transactions could be designed to disguise the illegal source of the funds and to make them appear respectable and legitimate. • Trust and company service providers may also be at risk if they fail to conduct adequate due diligence on their clients or if they ignore suspicious transaction. • Trust and company service providers could be engaged in the movement of funds therefore avoiding the detection and confiscation of assets, and hindering law enforcement investigations.

24	What guidance could be provided to assist those providing proposed legal, accounting, conveyancing, and trust/company services in managing these AML/CTF obligations?	There are many resources available on identifying the money laundering risks in these sectors (and high-value dealers) which should also be included. These sectors need AUSTRAC outreach and a media campaign to support the roll out of these reforms and what is expected of them, why and the service they will be doing in playing their part in reducing financial crime.
25	Are there any existing practices within the accounting, legal, conveyancing and trust/company sectors that would duplicate the six key AML/CTF obligations? If so, do you have any suggestions on how these practices could be leveraged for the purpose of AML/CTF compliance?	Many businesses are already conducting some of these obligations in any case and for many will be an extension and some expansion of new obligations.
Real estate sector		
29	How should the Act regulate real estate agents so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?	The AML Act should be applied to commercial and residential real estate agents but also should be extended to property developers and property management companies too as these sectors are also at risk of being used to facilitate money laundering. The following services offered by Real Estate Professionals that must be included in the AML Act are: ● Managing client funds (other than sums paid as fees for professional services), accounts, securities, or other assets. ● Engaging in or giving instructions on behalf of a customer to another person for any conveyancing to affect the grant, sale, or purchase or any other disposal or acquisition of real estate or an interest in land. ● The transfer of a beneficial interest in land or other real property. **Real Estate - ML/TF risks in services they provide.** The money laundering and terrorism financing (ML/TF) risks associated with the real estate sector includes (but is not limited to): ● Real estate professionals are often involved in cash transactions, which can make it easier for criminals to launder money. ● Criminals may use complex ownership structures, such as shell companies or trusts, to hide the true ownership of a property and launder

		money through it. ● Real estate transactions involving large amounts of money can be attractive to money launderers. ● International real estate transactions may involve multiple jurisdictions, making it easier for criminals to move money around and conceal its origin. ● Real estate professionals may not conduct adequate due diligence on their clients, which can make it easier for criminals to use real estate transactions to launder money. ● Real estate professionals may conduct transactions without meeting clients in person, which can make it harder to detect suspicious activity. ● Criminals may engage third parties to buy and sell properties, adding a layer of anonymity. ● Criminals may use loans and mortgages and use illicit cash to reduce the balance and providing an offset account for future withdrawals. ● Criminals may use real estate to manipulate property values, for example, buying or selling at prices above or below fair market value. ● Criminals can apply structuring techniques using cash deposits to buy real estate. ● Criminals can buy and then lease out properties but providing the “tenant” with illicit funds to pay the rent. ● Criminals can buy property using illicit funds with the intention of conducting further criminal activity at the property (i.e., safe houses, stash houses or cultivating drugs) ● Criminals can also use illicit funds to renovate properties, gaining when property valuations rise after the completion of a renovation.
30	Do you have any suggestions on how real estate should be defined for AML/CTF purposes?	Yes, based on the designated services provided as listed above. This would mean that Tranche 2, should be applied to the following organisations: ● Residential and Commercial Real Estate ● Property Developers and Property Management Companies
31	In your view, are there any existing obligations for real estate agents that could interfere with their ability to comply with the six key AML/CTF obligations?	No there are not.
32	Are there any existing practices that would duplicate AML/CTF requirements? If so, do you have any suggestions on how these	No there are not.

	practices could be leveraged for the purpose of AML/CTF compliance?	
Dealers in precious metals and precious stones		
33	How should ‘precious stones’ be defined?	Buying and selling high-value assets such as bullion, jewellery, precious metals, and stones is attractive for criminals because such transactions can avoid interaction with the financial sector. Assets of this type may be easily hidden and can be transferred to third parties with limited documentation. Bullion dealers, jewellers, and precious metal and stone dealers are also at risk of being used as a front for money laundering activities due to the high value and portability of the products they deal in. These types of businesses may be used. to convert cash obtained from criminal activities, such as drug trafficking, into high-value items that can be easily moved across borders and sold without arousing suspicion. The money laundering and terrorism financing (ML/TF) risks associated with Bullion Dealers, Jewellers and Precious Metal and Stone Dealers includes (but is not limited to): . ● Bullion dealers, jewellers, and precious metal and stone dealers often deal in cash, which makes it easier for criminals to launder money without detection. Criminals can make cash purchases and give the asset to other parties in lieu of cash. ● Large cash transactions, especially those conducted in foreign currency or in multiple transactions below the reporting threshold, are a red flag for money laundering. ● These businesses often operate in an opaque market with limited oversight, which makes it easier for criminals to conduct illegal activities. without detection ● Precious metals and stones are highly valuable and portable, which makes them attractive to criminals seeking to launder money. Criminals can easily transport these items across borders or sell them on the black market without raising suspicion. ● Bullion dealers, jewellers, and precious metal and stone dealers may fail

		to conduct sufficient due diligence on their customers, including verifying their identity and the source of their funds. This lack of due diligence makes it easier for criminals to use these businesses to launder money.
34	How should the Act regulate dealers in precious metals and precious stones so that they can manage their AML/CTF risks? Are there international examples that have worked well for this sector?	Australia has a very poor track record of regulating the Precious Metals sector, evidenced by the multi-billion dollar money laundering allegations involving Perth Mint, which was well documented in the ABC's Tainted Gold: Inside Perth Mint's Billion Dollar Scandal, which holds many lessons on what went wrong and should be used to inform reforms of the AML/CTF Act in respect of this high-risk sector. The attached guidance should be taken into consideration in how to effectively regulate the precious metals and stones sector: ● FATF Guidance on the Risk-Based Approach for Dealers in Precious Metals and Stones ● The 5th EU Directive on AML also contains guidance in respect of regulating these sectors
35	In your view, are there any services that would justify exemption from the obligations in the Act? If yes, on what grounds?	No there are not.
36	In your view, are there any additional high-value dealers that should be included in the AML/CTF regime?	Absolutely, just extending AML/CTF laws to accountants, lawyers and real estate sectors does not go nearly far enough. There are numerous examples of how high-value goods dealers in the following industry sectors are commonly exploited by organised criminal networks and it is our view that these actors should also be regulated when the AML/CTF reforms are introduced. ● Antique and Art Dealers ● Auctioneers and Brokers ● Motorised Vehicle Dealers ● Luxury Goods Dealers In Appendix B, we have highlighted the ML/TF risks that exist within these sectors, and it will be a major misstep if Australia does not act on this to bring these industry sectors into scope of the new AML/CTF laws.

Appendix B - Consultation questions not asked that should also be considered, with Arctic Responses

No	Question	Arctic Response
General questions for the Attorney-General's Department		
1	What other sectors should be regulated under the AML/CTF Act in Australia that have been omitted from the consultation paper?	There are a number of sectors that are regulated by other jurisdictions under AML/CTF laws, due to the significant ML/TF risks that will be introduced by not regulating these sectors that have been omitted either consciously or unconsciously that in our opinion should be included within the scope of the AML/CTF reforms at the same time gatekeeper professions are regulated. These industry sectors include the following: ● High-Value Goods Dealers ○ Antique and Art Dealers ○ Auctioneers and Brokers ○ Motorised Vehicle Dealers ○ Luxury Goods Dealers In subsequent questions, we will highlight the ML/TF risks that the above industry sectors have by being exploited by organised criminal networks to launder the proceeds of crime.
2	What are the ML/TF risks that exist in the **Antique and Art Dealers** sectors and why should this sector be regulated under AML/CTF laws when the other reforms are introduced?	Antique and Fine Art Dealers are at risk of becoming involved in money laundering since these sectors are attractive to criminals because of the high value of transactions, and general lack of transparency resulting from the art market being largely unregulated. One common method of money laundering in the art market is through the use of shell companies and offshore accounts. These entities can be used to disguise the true ownership of antiques and artwork and obscure the trail of funds used to acquire these assets, making it difficult for authorities to track the movement of illicit funds. Art and antiquity dealers may also be used as intermediaries by money launderers to purchase artwork on their behalf. This can be done to avoid scrutiny or to conceal the identity of the true purchaser.

		The following services must be included in AML laws: ● **Art and Antiquities Dealing** - Buying and/or selling art or antiquities as a business, whenever a transaction or series of linked transactions involves a payment over a threshold amount. ● **Jewellery Dealing** - Buying and selling jewellery as a business, whenever a transaction or series of linked transactions involves a payment over a threshold amount. ● **Watch and Clock Dealing** - Buying and/or selling watches and timepieces as a business, whenever a transaction or series of linked transactions involves a payment over a threshold amount.
3	What are the ML/TF risks that exist in the **Auctioneers and Brokers** sectors and why should this sector be regulated under AML/CTF laws when the other reforms are introduced?	Auctioneers and brokers can be at risk of money laundering due to the nature of their businesses because they are typically involved in transactions where large sums of money are exchanged, and these transactions can be complex and involve multiple parties. This complexity can make it difficult to identify and track illegal activities. Auctioneers and brokers may be at risk of being involved in money laundering if they do not have adequate procedures in place to identify suspicious activity, for example, if they are asked to sell an item for a much higher price than its actual value, which could be an attempt to launder illegal funds. They may also be asked to handle large cash transactions, which can be a red flag for money laundering. The following services must be included in AML laws: ● **Auction services** - The business of dealing in goods or services of any description (including dealing as an auctioneer) whenever a transaction or series of linked transactions involves accepting a total cash payment over a threshold amount (AUD$10,000).
4	What are the ML/TF risks that exist in the **Motorised Vehicle Dealer** sectors and why should this sector be regulated under AML/CTF laws when the other reforms are introduced?	Motorised vehicle dealerships like cars, motorbikes, trucks, boats, aircraft are vulnerable to money laundering risks due to their involvement in high-value transactions, which can make it easier for criminals to conceal the origin of funds to acquire these assets. The risk is even higher in countries or regions where there are lax regulatory requirements, weak enforcement, or non-existent anti-money laundering (AML) laws.

		High-value assets like cars, motorbikes and boats are often acquired as a show of wealth by criminals and may be purchased in part or whole in-cash and are easily sellable to realise cash once these have been enjoyed. The money laundering and terrorism financing (ML/TF) risks associated with Motorised Vehicle Dealers includes (but is not limited to): ● Motorised vehicle dealerships often deal with large sums of cash, which can be difficult to trace and can make it easier for criminals to launder their money. Dealerships should have policies and procedures in place to ensure that cash transactions are properly documented and reported. ● Motor vehicles are expensive items, and large transactions can attract criminals looking to launder money. Dealerships should be vigilant when dealing with high-value transactions and conduct proper due diligence on customers. ● Criminals can break down large sums of cash into smaller amounts to avoid detection and depositing them into bank accounts. ● Criminals can use motor vehicles to facilitate fraudulent transactions, such as buying and selling vehicles using false identities or fake documentation. ● Motor vehicles can be owned by multiple parties, and this can create complex ownership structures that can be used to conceal the true ownership of assets. ● Many motor vehicle dealerships operate internationally, which can expose them to a higher risk of money laundering. ● Criminals can use motorised vehicle dealerships as part of a trade-based money laundering scheme, where they use legitimate trade transactions to move money across borders.
5	What is the ML/TF risks that exist in the **Luxury Goods** sectors and why should this sector be regulated under AML/CTF laws when the other reforms are introduced?	The luxury goods market, such as, clothes, handbags, watches is attractive to money launderers because it offers access to high-value items that are easy to transport and sell, and that can hold their value over time. Criminals may use a variety of techniques to launder money through luxury goods, including over-invoicing, under-invoicing, and using shell companies to hide the true ownership of assets.

		Money launderers may use luxury goods to convert illicit funds into seemingly legitimate assets, which can then be sold or transferred without attracting suspicion. The money laundering and terrorism financing (ML/TF) risks associated with Luxury Goods Dealers includes (but is not limited to): ● Criminals can buy luxury goods to hide the origin of illegally obtained funds, making it difficult for law enforcement agencies to trace the money back to its source. ● Criminals may purchase a high-value item in one country and then transport it to another country where it is sold for cash. ● Luxury goods dealers operate internationally, which can expose them to a higher risk of money laundering. ● Criminals can use luxury goods dealers as part of a trade-based money laundering scheme, where they use legitimate trade transactions to move money across borders.