

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

PEXA Submission, 13 June 2024

The PEXA Group welcomes the opportunity to provide feedback to the Attorney-General's Department under the second round of consultation for its review into Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

The May 2024 Consultation Papers recognise that, at its core, the AML/CTF regime is a partnership between the Australian Government and industry. PEXA acknowledges the important need to strike a balance when introducing new obligations for regulated entities, particularly in relation to small businesses which may be less able individually to effectively define and implement the risk-based and outcomes-focused approach sought by such reform and are proportionately more impacted by compliance costs and burdens.

To that end, we have reviewed submissions made to the first round of consultation, including feedback from bodies representing banks, real estate agents and legal practitioners, to identify the concerns of industry and to consider solutions that, if the legislation is to be extended to "tranche-two entities", might produce more effective regulatory and law enforcement outcomes while reducing the burden of the regime on lawyers, conveyancers and real estate agents which are predominantly small businesses.

### **Key points of our submission**

- International experience has proven that the extension of AML/CTF legislation to "tranche-two entities" imposes significant costs and compliance burdens on lawyers, conveyancers and real estate agents which are predominantly small businesses, with consequential impacts for consumers. Minimising those impacts is an important and appropriate focus in the Government's assessment of the proposed amendments.
- Australia's electronic conveyancing regime is unique internationally, with PEXA's electronic conveyancing platform already processing 90% of all property transactions in Australia and recently being determined critical infrastructure by the Commonwealth.
- Leveraging that platform, and collaboration between industry and Government, provides an opportunity to both:
  - Reduce the compliance burden and cost on small businesses such as lawyers, conveyancers and real estate agents; AND ALSO
  - Provide more effective regulatory and law enforcement outcomes.
- We recommend simple legislative amendments to enable reliance between parties to a transaction which is implemented through an independent system, such as the PEXA Exchange, which connects those parties and enable secure information sharing between those parties to support more effective and efficient assessment of AML/CTF risks.

PEXA's submission to the Department's 2023 consultation primarily focused on opportunities to reduce the compliance burden of proposed extension of the legislation to real estate agents, lawyers and conveyancers and presented an opportunity to simplify implementation of the government's AML/CTF reform by leveraging the systems and processes which underpin Australia's established electronic conveyancing network.

In this submission, we seek proposed amendments to the legislation providing for reliance and information sharing between regulated entities, particularly where small businesses are involved, in situations in which:

- The nature of the transactions is relatively consistent in terms of AML/CTF risk;
- A risk assessment is undertaken at an industry level in respect of those transactions by a reputable body, is generally available, and which individual participants can adopt as a standard in implementing their respective AML/CTF frameworks; and
- There is an independent system, such as the electronic conveyancing system that has been established by PEXA, which connects the parties to the transaction, providing a standard process that can provide confidence to regulators and to all participants in the transaction that defined steps, reflective of the industry-developed risk assessment, have been undertaken (even if undertaken by another party to the transaction) and, by securely linking information from various participants to the transaction, enabling more effective risk assessment.

## Feedback to consultation questions

*Paper 1, Question C - In what circumstances do you consider reliance among real estate professionals and other reporting entities for initial customer due diligence will be appropriate?*

In PEXA's view, a broader reliance regime that is accessible to more of those businesses set to be regulated under these AML/CTF reforms is the essential mechanism to achieve the shared objectives of industry and government – a substantially reduced compliance burden on small businesses such as lawyers, conveyancers and real estate agents while delivering better regulatory and law enforcement outcomes.

We consider the conceptual model presented in our first submission (and further illustrated via examples in the Appendix to this submission) resonates with the objectives of this reform, to:

*“Improve the effectiveness of the regime and ease regulatory burden by simplifying and clarifying the regime to make it easier for businesses to meet their obligations, and modernising the regime to reflect changing business structures and technologies across the economy.”*

Importantly, a successful reliance regime requires acceptance by key stakeholders. PEXA's conceptual model for reliance between parties to a property transaction has received positive support from industry peak bodies as a means to simplify this pending reform and reduce perceived increases in red tape and, in turn, minimise costs passed onto the end consumer. Additionally, extending the use of available technology infrastructure with proven capability and significant user uptake can help accelerate the digitalisation of government services.

PEXA recommends the Department assesses the merits of shaping legislation to allow for:

- (1) **reliance between parties to a property transaction** (where, for example, those parties use a common platform that meets the requirements of an entity's AML/CTF compliance framework); and,
- (2) **information sharing** to be permitted between those parties to the extent necessary to fulfill their obligations.

The rationale behind this proposal, and why it represents the sensible approach for AML/CTF reform in Australia, is better expressed in response to another consultation question raised in Paper 1:

*Paper 1, Question B - To what extent do you think you would be able to leverage existing systems and controls to meet the proposed obligations?*

Paper 5 acknowledges that many entities reported having existing risk mitigation measures in place due to other regulatory regimes or as part of a standard business practice. PEXA is pleased the Department is considering the opportunity to leverage existing systems and controls already applicable to, or made available to, regulated entities proposed to be covered under the tranche-two reforms. PEXA also supports references to *Verification of Identity* obligations, prescribed by ARNECC for legal practitioners in the context of electronic conveyancing transactions, as a practical demonstration of where existing systems can be leveraged to satisfy an entity's AML/CTF obligations. This example provides a helpful basis for understanding where other benefits and opportunities can be extracted across the property transaction process that is unique to Australia and made possible through the establishment of a standardised workflow and comprehensive regulatory framework.

## Opportunities

Australia's electronic conveyancing regime has developed in consultation with industry and government and accounts for varying interests, including strict requirements to maintain integrity of land title registers and the operational conventions preferred by industry (legal practitioners and banks).

PEXA currently processes around 90% of all property transactions across Australia, operating in all States and Territories except Tasmania (where we will enable electronic conveyancing in FY25 and are well advanced in delivery in collaboration with the Tasmanian Government) and the Northern Territory (where planning has commenced with an indicative target of FY26 being validated).

PEXA has been able to balance these design requirements to produce a high degree of standardisation and homogeneity in the Australian property settlement experience which is unique internationally. The following qualities of property sales and electronic conveyancing provide opportunities which can be leveraged for an AML/CTF regime:

1. **The nature of property transactions is now relatively simple and consistent** - Unlike other designated services that can be significantly complex in terms of product, risk and ownership, property transactions are tied to physical assets with transparent movement of funds (with PEXA settlements involving transfers between Australian bank accounts – see point 5 below).
2. **Industry bodies are taking a proactive approach in helping to frame this new reform** – This includes taking on elements of risk assessment in relation to the property transaction and

development of guidelines. PEXA is uniquely positioned to partner with industry to further develop opportunities for private-to-private information sharing to assist in risk assessment and the development of standards/guidelines.

3. **Participants are linked in a transaction chain** – Parties to a property transaction executed through an electronic conveyancing collaborate on our unique workspace technology to complete the transaction with shared visibility of where each party is in the chain.
4. **The transaction must be performed in certain way to a certain standard** – Existing requirements for electronic conveyancing can substantially satisfy AML/CTF obligations<sup>1</sup>. In the context of electronic conveyancing, the PEXA platform is configured to reduce user error and enforce regulations through the design of controls to prompt users to consider information and/or make assessments in a structured manner. The PEXA platform also provides controls that support user administration and access, information privacy, regulatory reporting and data security.
5. **Settlement of a property transaction on PEXA’s electronic conveyancing platform flows through Australian bank accounts** – As part of the standardisation that has been introduced by PEXA, all funds for a property settlement flow through accounts with Authorised Deposit-taking Institutions (ADIs), with financial settlement being implemented by a transfer of funds between the banks’ exchange settlement accounts held at the Reserve Bank of Australia. Purchasers are therefore required to ensure funds are available for settlement in an account with an ADI and settlement funds are transferred to an account with an ADI. In addition to removing the AML/CTF risk associated with cash or asset classes such as cryptocurrencies, this means that each party to a transaction is required to deal through ADIs which have established AML/CTF controls, risk assessment and transaction monitoring programs. These are significantly more comprehensive and robust than might be expected of small businesses such as lawyers and conveyancers and which could be more effectively leveraged by the secure transmission of information from other participants to the property transaction representing the same customer (e.g. the Purchaser).

To realise the above opportunities, we refer the Department to PEXA’s 2023 submission in respect of co-designing a sector-specific AML/CTF program with regulators, industry bodies, regulated entities, and the Electronic Lodgement Network Operator (ELNO), PEXA:

*“The co-design process presents an opportunity to address potential duplication or inconsistency in the Rules related to Customer Due Diligence (CDD) in the real estate sector to harmonise and streamline the obligations, instructions, and guidance, including creating an efficient framework for conducting CDD procedures specific to the real estate industry. This could include establishing a standardised mechanism for reporting entities to apply risk assessment and mitigation measures under a sector-specific AML/CTF Program consistent with the intent of the proposed model for designated business groups.*

*If a sector-specific framework is approved, this can be translated into practical mechanisms for implementation, including data standards and workflows described in section 5. Reporting entities would remain responsible for performing the CDD assessments, under the sector-specific framework, adhering to the Act, Rules, Guidance, and Standards.*

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<sup>1</sup> Law Council of Australia (2023), *Vulnerabilities Analysis Money Laundering and Terrorism Financing in The Australian Legal Profession*, p. 46

*The ELNO would provide the ecosystem and infrastructure for implementing a sector-specific AML/CTF Program.”*

Industry has been justifiably concerned by the regulatory burden of being covered under the AML/CTF regime. The current availability of widespread electronic systems and processes in Australia covering virtually all property transactions settled across the country can be leveraged to reduce that impost. It would be sensible and prudent for government to ensure legislation enables the opportunities to reduce the compliance burden, and at the same time produces a more effective regulatory and law enforcement outcome.

Naturally, co-ordination with ARNECC (the electronic conveyancing regulator) will be required to align this approach with the electronic conveyancing regulatory requirements and define the model for ongoing regulatory oversight.

## Benefits

The Consultation Papers recognise challenges with the current obligations and a commitment from the Department to “ensuring that AML/CTF program obligations remain fit-for-purpose and balanced” (Paper 5). While feedback to the first stage of consultation indicates some entities are reluctant about the value their compliance may contribute (in contrast to the anticipated compliance burden<sup>2</sup>), a reliance/information sharing model should be capable of alleviating those concerns without infringing upon the ultimate aim of this reform – “to significantly improve Australia’s ability to target illicit financing” (Paper 5).

A reliance/information sharing model would enable a more effective implementation of the proposed regulatory obligations. The ability to assess risk and understand the transactional context is improved if all parties can see information in relation to that transaction:

- **Reduces inconvenience to the consumer** - In the UK, consumer feedback indicates that customers often feel that checks are intrusive, administration-heavy or don’t reflect their understanding of the risks they pose.<sup>3</sup>
- **Reduces cost and compliance burdens on small business** - In New Zealand, the average estimated cost of compliance for lawyers and conveyancers is \$37.76 per client, while real estate professionals face an average cost of \$355.88 per transaction.<sup>4</sup>
- **Reduces risk of data breaches and increases compliance with Data Privacy Protection** by improving the accuracy of Suspicious Matter Reports, reducing false positives<sup>5</sup> and related investigations, or reducing the amount of personal data being shared. ELNOs are currently required to meet strict requirements for cyber security and data protection, and PEXA is currently classified as critical infrastructure under the *Security of Critical Infrastructure Act 2018*, providing security that would exceed other systems available to small businesses in the property sector.

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<sup>2</sup> HM Treasury UK (2022) *Review of the UK’s AML/CTF regulatory and supervisory regime* p 18-19. 9

<sup>3</sup> HM Treasury UK (2024) *Improving the effectiveness of the Money Laundering Regulations – Consultation*, p.15

<sup>4</sup> New Zealand Ministry of Justice (2022) *Report on the review of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009*, p. 85

<sup>5</sup> The Financial Action Task Force (2021) *Stocktake on Data Pooling, Collaborative Analytics and Data Protection*, p.7

- **Could be designed and built in such a way as to meet the FATF standards** including for timely access to data, record keeping for data and documents and liability in reliance arrangements. These have been significant challenges in other jurisdictions (including the UK) and significant barriers to uptake of reliance arrangements.<sup>6</sup>
- **Tipping Off concerns could be mitigated** through a shared information model where the platform can host information sought between parties without arousing suspicion through multiple independent due diligence procedures. Access can also be restricted to permitted personnel within an organisation who are involved in the relevant transaction.
- **Improved detection of unusual behaviour** is more capable of being achieved through information sharing where separate parties are connected to a shared customer in a common transaction<sup>7</sup>. For example, banks might not hold updated information relating to beneficial ownership under a trust structure which can be acquired by the legal practitioner during the conveyancing process and relayed to the bank for consideration in their respective transaction monitoring program.
- **Improved law enforcement outcomes** through pooled information and opportunities to design how information to be collected by regulated entities is captured/transmitted.
- **Efficiency through avoiding duplication** – All parties are not required to undertake identical assessments. Where permitted, real estate agents and legal practitioners can focus on the elements where their contribution is more valuable and assessments are driven by risk, not prescriptive obligations.
- **Reduced compliance burden and cost for small business** through leveraging existing critical infrastructure that is already used by thousands of small businesses to complete the property transaction, reducing the risk of risk displacement where data sharing initiatives are limited to major institutions.<sup>8</sup>

## Conclusion

The timing of this reform to Australia's AML/CTF regime presents an opportunity to exceed the benchmarks set internationally. Australia is in a favourable position to leverage existing systems and processes to improve implementation for tranche-two entities and to overcome any barriers relating to undue regulatory burden that might have prohibited earlier reform in Australia (or is not possible abroad). Critically, government has a unique opportunity to take the lead to ensure Australia's legislative framework contains the right mechanisms to support this great potential for innovation.

PEXA thanks the Department for considering its submission and welcomes the opportunity to be involved with any further consultation, including industry roundtables, as part of this ongoing reform process.

Sincerely,

  
  
Group Chief Executive Officer, PEXA AU

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<sup>6</sup> HM Treasury UK (2022) *Review of the UK's AML/CTF regulatory and supervisory regime*, p. 38

<sup>7</sup> The Financial Action Task Force (2022) *Partnering in the Fight Against Financial Crime*, p. 14

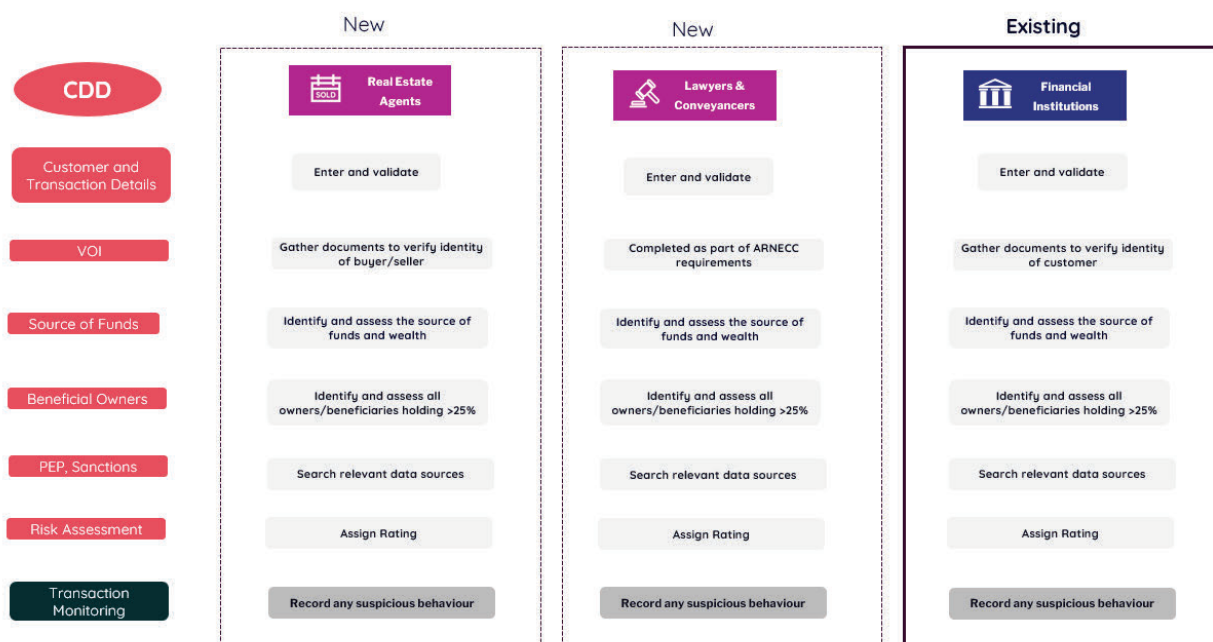
<sup>8</sup> The Financial Action Task Force (2022) *Partnering in the Fight Against Financial Crime*, p.55-56

## APPENDIX – Siloed Customer Due Diligence (CDD) assessment vs. Reliance model with pooled information sharing

A reliance model for participants to a property transaction provides the opportunity to reduce duplication and benefit from collaborative assessments.

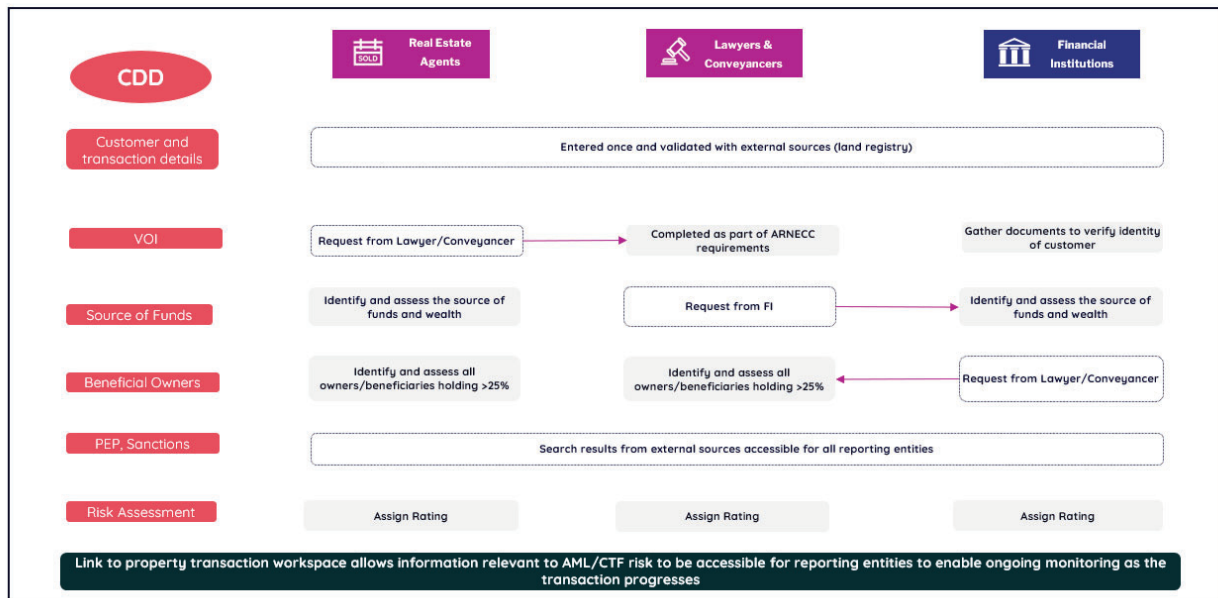
In the below diagram, all three parties to a property conveyance – the real estate agent, the legal practitioner, and the relevant financial institutions – will each have obligations to complete CDD activities for the same individual.

### AML/CTF risk assessment for reporting entities across the property transaction chain



The following diagram and example taken from *Paper 1: Further information for real estate professionals* illustrates how the alternative approach to conducting CDD and transaction monitoring where the conveyancing transaction is undertaken on a collaborative digital platform such as PEXA might work in practice.

## Potential reliance/information sharing opportunities



### *Paper 1: Further information for real estate professionals, p.11-12:*

#### What would this look like?

For example, Stella is a buyer’s agent at House and Home Real Estate. Sarah and Cam are looking to buy a townhouse near the hospital where they both work as nurses, so they engage Stella to find them the perfect house. At the same time as completing the agency agreement, Stella conducts customer identity and risk checks, and documents the results. This involves Stella checking the couple’s passports to make sure that they are who they say they are and asking them what they do for a living and what attracted them to the area. Based on Stella’s experience working in the neighbourhood, she knows that this area is very popular with hospital employees. Based on the information she obtains, she rates the client relationship as low risk in accordance with her customer risk rating scale in the agency’s AML/CTF program. This means Stella, in accordance with House and Home’s AML/CTF program, does not need to do any further checks on the couple’s identity or ask additional questions.

Once Stella finds a home that Sarah and Cam love, she approaches the seller’s agent with an offer. Alex, the seller, considers the offer and indicates he is prepared to accept Sarah and Cam’s price. At this point, Stella receives Alex’s identity information from the seller’s agent and considers it is appropriate to rely on the customer identity checks undertaken by this reporting entity, which Stella documents. Stella confirms that Alex is a recently retired midwife looking to move to the coast. Using this information, Stella concludes the client relationship with Alex is low risk.



Referencing the example and the diagram above, the proposed reliance/information sharing model could offer a more standardised, timely and secure method for Stella to rely on the customer identity procedures conducted by the seller's agent:

- instead of drafting, agreeing and conducting the reliance arrangement through email and templates/forms, Stella logs on to the platform using her authorised AML/CTF program profile, creates an AML/CTF workspace and enters the land title reference which automatically populates the property address and Vendor details
- Stella then searches for the seller's agent and sends a request including a timeframe for response
- the seller's agent reviews and accepts the request and makes the Seller's identity documents available to Stella in the secure portal.

Stella reviews the information and assesses the risk of the client relationship in accordance with her own AML/CTF measures.

Other examples where the model might support collaboration, information sharing, and reliance include:

- lawyers/conveyancer might share the ARNECC regulated Verification of Identity for the buyer with both the seller's agent and the buyer's agent
- financial institution might request ultimate beneficial owner documents from the lawyers/conveyancer
- buyer's agent might request information in relation to the source of funds from the financial institution
- financial institution might access property transaction details to resolve alerts triggered by the buyer moving funds between accounts in preparation for settlement.

The AML/CTF workspace can be linked to the existing property transaction workspace as it progresses through the sale and settlement process with data relevant to the overall AML/CTF risk populated automatically including:

- sale price
- settlement date
- buyer's details including residential address
- origin and destination of all funds and financial institutions providing/receiving
- mortgage details including for private mortgages
- foreign residents' capital gains withholding tax details (e.g. TFN) and stamp duty obligations
- non-property assets including those registered on the Personal Property and Security Register.