

KordaMentha submission to the
Legal and Constitutional Affairs
Legislation Committee inquiry
into the Anti-Money Laundering
and Counter-Terrorism Financing
Amendment Bill 2024

October 2024

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Introduction to KordaMentha

KordaMentha welcomes the invitation to make a submission to the Legal and Constitutional Affairs Legislation Committee inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the ‘Bill’).

KordaMentha is an independent and trusted advisory firm providing specialist financial crime, forensic accounting, restructuring, cybersecurity, performance improvement, and real estate services. Our team of over 400 extends across Asia-Pacific and has experience ranging from C-suite advisory to finance, real estate, and law enforcement.

Since 2002, KordaMentha has been entrusted with some of the region’s most complex and sensitive commercial situations. We work together to solve the challenges facing corporations, financiers, lawyers, private investors, and government clients.

Our financial crime advisory team operates in both the Australian and New Zealand markets and understands the commercial challenges of implementing AML/CTF obligations. We have gained experience from a range of roles in industry, including as Compliance Officers in some of Australia’s largest regulated entities, professional advisory firms, in Australia and internationally, and in regulatory roles with the Australian Transaction Reports and Analysis Centre (AUSTRAC). As a result, our team has developed deep insights into the breadth of challenges facing industry.

The views provided in this submission are made on a general basis. As a technological and politically neutral firm, KordaMentha supports the development of regulation that offers consistency and alignment with international best practise, clear guidance for business, and effective supervision and enforcement of the regulatory regime.

Impact of the Bill to KordaMentha

The KordaMentha group of entities will be impacted in a number of ways by the proposed changes if the Bill is to be passed:

- Two entities within the group are existing reporting entities through the provision of interests in managed investment schemes and loans. Changes will need to be made to programs, policies and processes to meet the proposed modernisation requirements.
- The introduction of the regulation of professional service providers (PSPs) and real estate will lead to other entities within the group that are not currently captured having to meet a broad suite of AML/CTF obligations; and
- Our Financial Crime advisory team will broaden our ongoing role of assisting existing regulated entities comply with the proposed legislative changes, update Programs to comply with modernisation reforms and transition those new to the AML/CTF regime.

Notwithstanding the cost and regulatory impacts, KordaMentha welcomes the proposed changes to modernise and simplify the existing regime, as well as to incorporate additional sectors into the regulatory framework recognising the need to comply with international standards and mitigate ML/TF risks to those entities considered ‘gatekeepers’.

However, we have reservations in relation to the proposed implementation period which we understand allows the Government to meet Australia’s Financial Action Task Force (FATF) mutual evaluation timeframes. We believe that the 18-month transition period should commence from the date the AUSTRAC AML/CTF Rules and associated guidance are finalised, not from the date that the Bill receives royal assent. That is because we understand the AML/CTF Rules will have the required detail to allow businesses to start building their processes, systems and controls to achieve compliance and will be published post royal assent being received. The detail outlined in the Bill is not sufficient for existing regulated entities to resource for cost transformation programs or for new entities to understand the detail of what they are required to do to comply. If the AML/CTF Rules and guidance are finalised by the end of this calendar year, we believe the 18-month period would still allow sufficient time to meet FATF review deadlines.

Why is KordaMentha supportive of modernising the AML/CTF Act?

In KordaMentha’s view, the changes that relate to modernising the current AML/CTF regime will remedy a number of areas that businesses have struggled with since the AML/CTF Act commenced. These changes will also improve business’s ability to detect and prevent financial crime. Specific examples include:

- The foundational need to undertake ML/TF risk assessments will be made more explicit and complemented with guidance from AUSTRAC which will greatly improve business’s understanding of financial crime risk vulnerabilities and abilities to prevent and detect them.
- Governance changes will free up Boards to focus on the strategic aspects of financial crime risk rather than approving updates to policy documents, which is traditionally the role of senior management.
- The importance of an AML/CTF Compliance Officer will be recognised with their prominence elevated, providing them adequate authority, independence and resourcing.
- Customer due diligence processes will move from a prescriptive approach to ‘outcomes focussed’ and an ability to tailor to an individual business. This will lead to less burden for the public when accessing financial services and reduce the regulatory burden imposed on new entities.
- The many obstructions caused by the prevention of tipping off will be removed.
- There will be greater clarity for entities involved in the transfer of funds value chain as to who is responsible for International Funds Transfer Instructions (IFTI obligations).

Why is KordaMentha supportive of the introduction of ‘Tranche 2’ entities?

Despite being directly affected by the introduction of ‘Tranche 2’ entities, KordaMentha is of the view that this should occur and with haste. Australia was a founding member of the FATF and for many years was the jurisdiction that was the envy of the world in financial crime compliance and risk management. This reputation has now been eroded, due to failures in requiring accountants, lawyers and real estate agents to be included in the AML/CTF regime. Australia is now one of only a few FATF members that are failing in this regard.

Ongoing failure in this regard will inevitably lead to Australia being grey listed by the FATF. This will result in Australia joining countries with serious deficiencies and requiring ongoing and increased monitoring by FATF in order to address our strategic deficiencies within agreed timeframes.

The impacts of being grey listed are significant. An International Monetary Fund Working Paper published in May 2021 examined the impact FATF grey listing has on capital flows and suggests, on average, that a grey listed country experiences a decline of capital inflows equivalent to 7.6% of GDP and a decline in foreign investment equivalent to 3% of GDP. Further, overseas businesses, such as major global banks may shy away from working with domestic banks as well as impacting correspondent banking relationships and increased due diligence standards for Australian businesses. This ultimately results in greater resources required domestically to respond to these needs and costs passing to the end consumer and community.

Separately, failing to regulate these industries will continue to leave a gaping hole in Australia’s ability to detect and prevent organised crime operating domestically, which inevitably has catastrophic

consequences to our community, including drug importation and narcotics addiction, online exploitation of children, an increase in scams losses and the Government being deprived of revenue for essential services to the community. Not regulating these industries now will make us an even more attractive haven for organised crime.

Real estate is known as a prevalent money laundering method around the world. AUSTRAC’s Money Laundering in Australia National Risk Assessment 2024 assesses the domestic real estate sector as posing a very high and stable money laundering vulnerability. According to AUSTRAC, real estate can be exploited at all stages of the money laundering cycle and is widely exploited in Australia due to our market stability and value appreciation, foreign investment, profit-generation, negative gearing benefits, housing and rental income functions of the sector.

Contextually, real estate forms a significant portion of criminal assets restrained by the Australian Federal Police (AFP). Of the \$352 million of assets seized in the last year by the AFP, 65% was made up of real estate assets.

Recently, KordaMentha partnered with Transparency International to report on illicit money flows between Cambodia and Australia which detailed the attractiveness of the Australian real estate sector as well as the significant volume and value of funds flowing into Australia from Cambodia. The report found that the value of funds moving into Australia from Cambodia were unexpectedly large – on average the total funds flowing from Cambodia into Australia accounted for approximately 1% of Cambodia’s GDP for the period in scope – for details go to **Strengthening Australia’s money-laundering defences**.

Conclusion

KordaMentha supports the proposed changes to modernise and simplify the existing regime, as well as including the additional sectors into the regime. We believe the transition timeframes need to factor in the finalisation of the associated AML/CTF Rules and guidance, as this is when impacted businesses can realistically start to focus on what they need to do to meet the required changes.

If the Committee requires, KordaMentha would be pleased to elaborate on our submission.

Key contacts



Rachel Waldren
Partner

More than three decades of experience in the public, private and professional services sectors make Rachel a leader in risk management and compliance. She has held senior roles in the banking sector with responsibility for global and domestic financial crimes, operational risk and compliance.



Alice Saveneh-Murray
Partner

Alice is an experienced leader and trusted advisor to the financial crime risk community and brings deep subject matter expertise and innovative strategies to support client engagements, Boards and a wide range of industry initiatives.



Grace Mason
Partner

Grace has over 15 years' experience in financial crime policy, regulatory compliance, domestic and international policy in Australia and the ASEAN.



Richard Lee
Executive Director

Richard has over 30 years experience in financial crime regulation and investigation, including executive leadership roles with Australia's AML/CTF regulator, AUSTRAC.

He brings valuable experience that will ensure businesses meet their financial crime challenges and prevent criminal exploitation.

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