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Brendan Thomas  
CEO  
Australian Transactions Reports and Analysis Centre (AUSTRAC)

Dear Mr Thomas

## **Consultation on Amendments to AML/CTF Rules 2025: Reporting Group Provisions**

MinterEllison appreciates the opportunity to make a submission in relation to the Exposure Draft of the *Anti-Money Laundering and Counter-Terrorism Financing (2025 Rules) Amendment Rules 2026*.

MinterEllison is a leading Australian Law firm. We advise major financial institutions, wealth and asset managers, fintechs and other financial intermediaries in Australia and overseas.

The views expressed in our submissions are ours alone and do not necessarily reflect the views of our clients.

This submission primarily responds to the proposed amendments to the reporting group provisions contained in the Exposure Draft. We have also included brief commentary in paragraph 5 on the proposed amendment to Rule 6-32.

### **1. Summary of submissions on proposed amendment to reporting group rules**

- 1.1 We support the policy objectives underpinning the AML/CTF reforms, including risk-based regulation, operational flexibility and alignment with FATF standards. We also support the reporting group framework for the potential administrative efficiencies it will provide to member entities that are reporting entities.
- 1.2 However, our principal concerns with the proposed amendments to the reporting group rules are as follows:
  - (a) it will effectively mandate that **all** members of a corporate group (including foreign entities with no connection to Australia and entities not providing designated services) form a single reporting group unless active steps are taken to prevent this outcome;
  - (b) it will eliminate the ability for a corporate group to form multiple reporting groups within a corporate structure, contrary to a reasonable (and in our view the preferred) interpretation of the existing legislative framework; and
  - (c) it will impose practical and operational burdens inconsistent with the stated objective of facilitating flexible, efficient compliance arrangements between groups of entities.
- 1.3 We recommend that:
  - (a) AUSTRAC reconsider the introduction of the opt-out mechanism and instead provide express clarification that multiple business groups can exist within a corporate structure, consistent with the statutory language and policy intent. This would provide flexibility for corporate groups to tailor reporting group structures to their operational and governance realities. In that context, the existing 'opt-in' nature of how a reporting group is formed could be used as the basis for providing flexibility to a corporate group to organise

themselves in one or more reporting groups to align with their internal governance and compliance structure; or

- (b) alternatively, if AUSTRAC decides to adopt the proposed opt-out mechanism (and therefore confirm the view that there can only be one 'business group' within a corporate group), AUSTRAC exclude foreign entities within a business group that are not reporting entities and have no connection to Australia from the reporting group, unless the relevant foreign entity chooses to opt-in.

## 2. Effect of the 'business group' definition

2.1 Section 10A(3) defines a 'business group' as a group of 2 or more persons where one person controls each other person in the group. This definition is key because (currently) a business group may form a 'reporting group' where at least one member provides a designated service and each member opts-in by agreeing on the lead entity.

2.2 There is no doubt therefore that a corporate group is a business group and that all related companies in the corporate group are members of that business group.

2.3 However, it appears to us that there can be more than one business group in a corporate group. The effect of the definition seems to be that, in addition to the business group which comprises the ultimate holding company and all of its subsidiaries, there is also a separate business group for each holding company in the group below the ultimate holding company. This means that there are multiple business groups within any corporate group with multiple intermediate holding companies (ultimately owned / controlled by the parent company).

2.4 Our interpretation is supported by the following considerations:

### (a) The statutory text.

- (i) The phrase 'a group of 2 or more persons' employs the indefinite article 'a', which is consistent with ordinary English usage describing one of several possible groups.
- (ii) Parliament did not employ 'the group', 'the entire group', or 'all related bodies corporate'. Had Parliament intended to mandate a single, all-encompassing business group, clearer language would have been expected.
- (iii) The principle that legislation should be interpreted to avoid absurd or unreasonable results is well established. The interpretation that multiple business groups may exist within a corporate structure, which is clearly open on the statutory text, avoids the unreasonable outcome of the 'all in or all out' approach. For example, a corporate group with 100 entities globally, of which three are Australian reporting entities, would be required to include all 100 entities in a single reporting group. This is disproportionate and inconsistent with a risk-based approach to regulation.

### (b) The policy intent and better practical outcome.

- (i) The purpose of the reporting group framework is to allow reporting entities to share or centralise compliance functions and ML/TF risk information across a group of entities, thereby reducing regulatory burden for reporting entity members. An interpretation that permits multiple business groups within a corporate structure advances that purpose by enabling corporate groups to tailor their compliance structures to their operational and governance realities.
- (ii) This flexibility would allow corporate groups to form reporting groups at different levels of the corporate structure. For example:
  - (A) a multinational group may form a reporting group at the Australian holding company level, aligning the reporting group with the entities that share common compliance functions and risk profiles;
  - (B) a group with multiple business divisions operating through separate holding structures may form separate reporting groups aligned with each division's compliance function and the ML/TF risk faced by each division. For example, a conglomerate that wholly owns a SME loans business, a

payments/remittance company and a financial advisory group will face inherently different ML/TF risks within each line of business. Taking the view that each division can comprise of a 'business group' (assuming the conglomerate is structured such that there are separate intermediate holding companies below the ultimate controlling entity that own the operational businesses within each division) would enable the conglomerate to form multiple reporting groups (or a single reporting group) if that aligns with the conglomerate's existing governance and compliance structure;

- (C) a franchisor of convenience stores enabling remittance services to be forced to bring its related companies that issue securities into a section 10A(1)(b) 'elective reporting' group with arm's length franchisees who need to be in the same reporting group as the franchisor; and
- (D) foreign entities that do not provide designated services in Australia, or that are subject to conflicting foreign regulatory requirements, may be excluded from the Australian business group.

(iii) By contrast, an interpretation that mandates a single business group encompassing the entire corporate structure would undermine the flexibility objectives of the regime and impose disproportionate compliance burdens on multinational groups.

(c) The voluntary nature of reporting groups.

- (i) There is currently no requirement to form a reporting group (and we believe there should not be such a requirement).
- (ii) The reporting group framework is intended to permit groups of reporting entities to form a reporting group (in this case, between business group members by each one consenting and choosing a lead entity). This voluntary character is consistent with an interpretation that affords flexibility as to which entities are included in a business group.

2.5 We acknowledge the proposed new 'opt-out' mechanism will alleviate much of the administrative burden that came with having to obtain the consent of each member of the 'business group'.

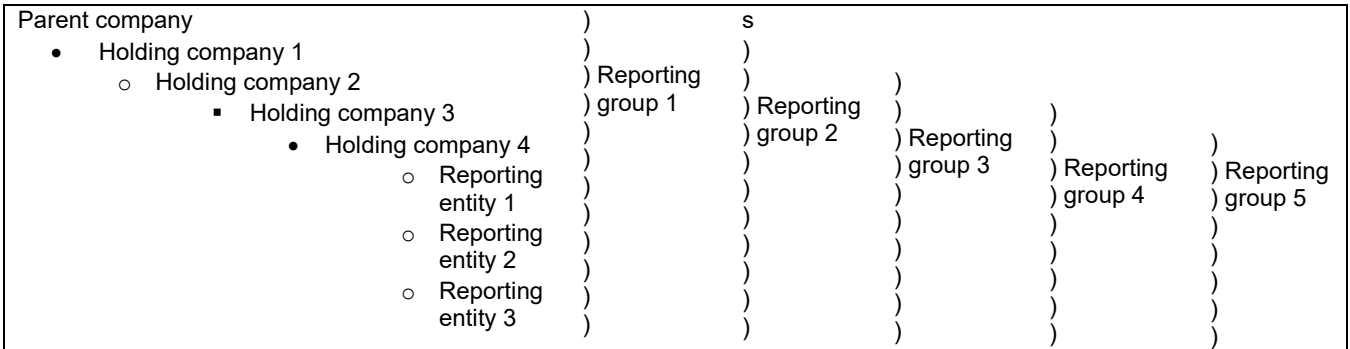
2.6 However, in our experience, offshore-headquartered groups with Australian subsidiaries will be concerned about the fact that the offshore parent (and every other entity that the parent controls, including in particular, entities which operate outside Australia and do not have any connection with Australia) must be a part of an Australian 'reporting group'. Although the parent and other non-reporting entity members will not have any obligations or liabilities under the Australian AML/CTF regime simply by virtue of being a member of the reporting group, the mere fact of those entities becoming part of an Australian reporting group will cause confusion and concern, and may result in the Australian operations being directed to not form a reporting group when there would otherwise be good reason to do so from an AML/CTF compliance perspective.

### **3. The proposed opt-out mechanism creates impractical compliance burdens**

3.1 The proposed opt-out mechanism proceeds on the assumption that all entities within a corporate structure must form a single reporting group. However, we consider that interpretation of 'business group' is not clearly supported by the statutory text (for the reasons described earlier).

3.2 If the proposed amendments are made, then a corporate group with multiple business groups would strictly seem to need to opt out of each possible reporting group, apart from the one it wishes to retain (if any).

3.3 For example, in a group with 5 holding companies above the level of any reporting entities, there are 5 different 'business groups'—one at each holding company level. At least one reporting entity would need to opt out of each of those groups to prevent them becoming reporting groups. This is illustrated in the diagram below.



3.4 In the above example, it would seem that one of the reporting entities would need to opt out of 4 of the 5 reporting groups. For example, if the reporting group is to be Reporting Group 1, a reporting entity would strictly need to opt out of Reporting Groups 2 to 5.

3.5 The only way to avoid this would be to amend the definition of 'business group' in section 10A(3) which is not proposed.

**4. Need for clarification**

4.1 The tension between the statutory definition of 'business group' and the proposed opt-out mechanism creates uncertainty for reporting entities. Clarification is required to resolve the interpretive ambiguity and provide certainty as to the scope of the business group definition.

4.2 We respectfully submit that AUSTRAC should provide clarification in one of the following forms:

**(a) Option 1: Confirm that multiple business groups can exist within a corporate structure.**

If AUSTRAC confirms the interpretation that the statutory language clearly supports—that multiple business groups can exist within a corporate structure—this should be confirmed through guidance or express wording in the Rules.

If this option is chosen, the proposed opt-out mechanism is inappropriate and should be reconsidered. Two alternative approaches are available:

(i) Revert to an opt-in model: The appropriate mechanism would be an opt-in model, whereby reporting entities within a business group affirmatively elect to form a reporting group by agreeing on a lead entity. This approach is consistent with the voluntary nature of reporting groups and ensures that only entities that affirmatively choose to participate are included.

(ii) Adjust the opt-out provisions: Alternatively, if AUSTRAC wishes to retain an opt-out mechanism, the provisions should be adjusted to make it feasible to have multiple reporting groups within a corporate structure.

**(b) Option 2: Confirm that only one business group can exist within a corporate structure**

If AUSTRAC's view is that there can only be one 'business group' which captures all entities within a corporate structure, this should be expressly clarified via the introduction of a rule pursuant to section 10A(3)(b). The Rules could specify that a business group comprises of all persons that are controlled by the ultimate controlling entity.

However, we note that this option would be inconsistent with the flexibility objectives of the reporting group framework. It eliminates the ability to form tailored compliance structures within a corporate group aligned with operational and governance realities.

If AUSTRAC decides to adopt this approach, we submit that there should be an exclusion for foreign entities within the business group that have no connection to Australia, unless the relevant foreign entity chooses to opt-in.

4.3 We respectfully submit that Option 1 represents the preferable approach should AUSTRAC wish to support industry in achieving the underlying objectives of the reporting group framework. This approach would enable corporate groups to structure their compliance arrangements in a manner

that reflects their operational realities, facilitates efficient allocation of compliance resources, and promote effective tailored ML/TF risk management across entities with shared risk profiles. Critically, this approach preserves the flexibility that is fundamental to the reporting group model, allowing reporting entities to tailor their compliance structures to their governance arrangements and operational needs, rather than imposing a rigid, one-size-fits-all framework that may be ill-suited to the diverse range of corporate structures operating in Australia.

## 5. Comments on proposed amendment of Rule 6-32

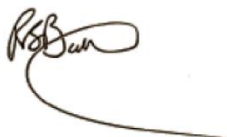
- 5.1 AUSTRAC is proposing the amendment of Rule 6-32 to allow completion of Initial CDD within 28 days (rather than 15 days) after a reporting entity commences to provide the designated service contained in Item 1 of Table 5 (which is typically provided by a real estate agent). We support this proposed amendment.
- 5.2 We prefer the view that a real estate agent taking a deposit under a contract brokered by it will not provide an Item 3 Table 6 designated service because when a deposit is taken:
- (a) the money paid by the person who is the purchaser ceases to be that person's money and instead is held by the real estate agent as a stakeholder for vendor and purchaser, and is subject to legal duties and obligations of the real estate agent; or
  - (b) alternatively, the taking of the deposit is part of the service of brokering and so section 6(5C)(e) applies.
- 5.3 If AUSTRAC has a different view to ours, we suggest that Rule 6-32 should be extended to an Item 3 Table 6 designated service that is provided in connection with an Item 1 Table 5 designated service in the same transaction. The payment is simply another component of the same transaction.
- 5.4 In our experience a provider of an Item 2 Table 5 designated service (for example, a developer/vendor of apartments) faces the same practical challenges for completing Initial CDD of a purchaser as the challenges that apply to a real estate agent. In our view Rule 6-32 should be amended so that it also applies to an Item 2 Table 5 designated service because we cannot think of a reason for AUSTRAC to favour a particular business model in the application of its policy in relation to the same type of transaction carrying the same practical hurdles.

We would welcome the opportunity to discuss these submissions with AUSTRAC and to provide any further detail required.

Yours sincerely  
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