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Financial Action Task Force (FATF)
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Submission: Financial Action Task Force (FATF) Consultation

Liberty Victoria

Liberty Victoria (Liberty) is one of Australia's peak civil liberties non-profit organisations. Since 1936 we have worked to defend and extend human rights and freedoms in Victoria and across Australia.

Liberty Victoria believes in a society based on the democratic participation of all its members and the principles of justice, openness, the right to dissent and respect for diversity. We aim to secure the equal rights of everyone provided they don't infringe the rights and freedoms of others, and oppose any abuse or excessive power by the state against its people. Further information on Liberty's activities can be found at www.libertyvictoria.org.au.

Liberty welcomes the FATF's public consultation into its review of standards in preparation for the 4th round of mutual evaluations. We hope the comments below are of benefit to FATF and look forward to FATF finding a proportionate balance between protecting society and the civil liberties of those within it.

The FATF's current consultation is ostensible a 'public' one, but a careful reading of the consultation document suggests the consultation is aimed at 'private stakeholders' rather than all stakeholders. Specifically, there is no mention of consumer rights, civil liberties, or indeed any human rights except for 'privacy' (which is mentioned only once on page 3, paragraph 3). Liberty understands that FATF is concerned with developing and promoting anti-money laundering (AML) and counter terrorist finance (CTF) standards, but urges the FATF, its members and observers to remember that it is consumers whose civil liberties are affected by its policies. Indeed, FATF's recommendations are an important element of government regulatory policy and are therefore subject to the principles of good government and the protection of civil liberties.

Principle 1: Focussed exercise – *the FATF has identified a limited number of issues and is dealing with them on a prioritised basis. There should be a balance between the desirability of maintaining stability in the standards and the need to address new or emerging threats, or obvious deficiencies or loopholes in the standards.*

Liberty broadly agrees with the FATF’s principle of maintaining a balance between stability in the current standards whilst addressing the need for change due to new and emerging threats. It is important that when considering new and emerging threats that a proportionate response is taken. There is a tendency by regulators, when untempered by civil liberties and consumer rights, to take a more prescriptive approach to regulation and data collection. As a civil liberties organisation, we recognise that regulation is desirable, but only where done for clearly defined purposes in a transparent and accountable manner.

Principle 2: Inclusiveness, openness and transparency – *the review process should allow for the full involvement of all FATF and FSRB members and also all FATF observers. In addition there is the current public consultation exercise, including close engagement, in particular, with private sector partners.*

Liberty is pleased to see inclusiveness, openness and transparency recognised as important factors. Unfortunately these are often given little more than lip service by those charged with their implementation (whether as regulators or regulated organisations) in various jurisdictions. It would be pleasing to see these cornerstone principles of good government incorporated more thoroughly throughout FATF’s recommendations.

Principle 3: Increased focus on effectiveness – *the 4th Round of Mutual Evaluations should give a higher emphasis to effective implementation of the AML/CFT requirements by countries, which could in the future lead to restructuring the evaluation process, with a greater focus on risks and vulnerabilities faced by particular jurisdictions.*

Liberty agrees that the FATF must focus on the implementation of its recommendation by its members, observers and other relevant parties. A failure to adequately implement regulatory policies risks undermining the whole.

Risk Based Approach (RBA) – Liberty has no particular view on the proposal to develop a single comprehensive statement on the RBA by way of a new Interpretive Note (applicable to Recommendations 5, 6, 8-11, 12, 15, 16, 21 & 22). However, it is noted that specific Recommendations may require a different approach (see paragraph 6, page 4). To avoid confusion, the FATF may wish to consider a tailored Interpretive Note for each of its Recommendations and Special Recommendations.

Further, the broadening of Recommendation 20 to all types of financial activities is logical, although should be balanced against a realistic money laundering and terrorist financing risk assessment.

Conclusion – Given the short consultation period and lack of direct engagement with consumers or civil liberties groups (to Liberty’s knowledge), Liberty would welcome the opportunity to comment in more depth on the FATF’s current consultation. Should you wish to discuss any aspect of this submission further, please contact our office on +61 3 9670 6422.

Yours sincerely,

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