

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Legal And Constitutional Affairs
Inquiry into the adequacy and efficacy of Australia's anti-money laundering and
counter-terrorism financing (AML/CTF) regime

10 November 2021

QoN Number: 01

Subject: Effectiveness of current AML/CTF Regime

Asked by: Kim Carr

Question:

Chair: Can you take on notice whether the current regime considering the 4 Corners program, is actually working?

Mossop: It might be difficult depending on your definition. For the case in question it might depend on whether there was any criminal activity involved in this purchase. An AML/CTF regime might identify the beneficial owner but may not have suspicious matter to be reported.

Chair: 4 Corners suggests very suspicious.

Mossop: In that instance were there obligations on some of the parties in that transaction, there may be an intelligence thread that we could draw on but there are other powers like tracing orders under the ACIC Act.

Chair: Would you like me to draft a question that is more implicit?

Spencer: Perhaps we could provide a response on how it operates under the current regime.

Chair: And how it applied to the instance demonstrated in the 4 Corners program on Monday night (8 November 2021). It's very specific – Hawkes Nest.

Answer:

The Department does not comment on individual cases.

Obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) only apply where a listed 'designated service' is provided to a customer. Current designated services encompass those primarily provided by the financial, bullion dealing, digital currency exchange and gambling sectors. The

regulatory capture of businesses is therefore dependant on whether they provide any of the designated services under the AML/CTF Act. Such businesses must comply with key obligations, including undertaking customer due diligence to identify the customer, reporting certain transactions to AUSTRAC (including 'suspicious matters', cash transactions of AUD10,000 or more, and any instruction to transfer funds internationally), having an AML/CTF program, record keeping, and enrolling and registering with AUSTRAC.

Part 4.12 of the AML/CTF Rules requires the business providing the service (the reporting entity) to collect information on the name, and either date of birth or address of each beneficial owner, and to take reasonable measures to verify it before the provision of a designated service, or as soon as practicable after the service has been provided.

Pursuant to Paragraph 4.13.1, reporting entities are required to determine whether a customer or the beneficial owner is a 'politically exposed person' (PEP). This determination should occur before the provision of a designated service to the customer or as soon as practicable after the provision of a designated service. Paragraph 4.13.3 provides the measures to be taken in the case of foreign PEPs and high ML/TF risk domestic or international organisation PEPs. If the PEP is the beneficial owner of the customer, the customer identification procedures applicable to the customer should apply to the PEP. In all cases, the reporting entity should (i) obtain senior management approval before establishing or continuing the business relationship; (ii) take reasonable measures to establish the PEP's source of wealth and source of funds; and, (iii) comply with the obligations in Chapter 15 on 'ongoing customer due diligence'.

Further, Part 4.4 of the AML/CTF Rules requires financial institutions to collect information on the name of the trust, its type, country of establishment and information on the trustees, beneficiaries and, under specific circumstances, the settlor. Verification only applies to the name of the trust and its beneficiaries and is done using a trust deed, certified copy or certified extract of the trust deed. Reporting entities determine on the basis of risk if other information should be verified.

The AML/CTF regime is continually reviewed to proactively manage emerging risks, improve consistency with international standards and best practice as set by the Financial Action Task Force, and enhance the operation effectiveness of the regime.

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QoN Number: 02

Subject: Improvement to stop VIPs bringing cash in unchecked baggage

Asked by: Kim Carr

Question:

CHAIR: Has there been any improvement in our capacity to stop the abuse of VIP facilitated processes for the use of cash being brought into the country in unchecked baggage?

Ms Spencer: That might be something we need to take on notice and speak to our ABF colleagues about.

CHAIR: I'm not surprised, but I would like an answer, please.

Answer:

The ABF has strengthened its process relating to Off Terminal Clearance including the physical checking of baggage and passengers on a risk-based approach and will intervene where a risk has been identified.

The Incoming Passenger Card (IPC) asks whether an incoming passenger is bringing into Australia AUD\$10,000 or more or foreign currency equivalent. Where a person answers 'yes' to that question, they are administered with the relevant cross-border reporting form to complete their declaration as required by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). There is no limit on how much cash can be brought into Australia, so long as the passenger completes the relevant declaration form, and reporting obligations are fulfilled under the AML/CTF Act. In the future, passengers will be able to use the Digital Passenger Declaration to fulfil their reporting obligations under the AML/CTF Act. Part 4 of the AML/CTF Act prohibits the movement of physical currency of AUD10,000, or more into or out of Australia without reporting the movement.

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QoN Number: 03

Subject: Lead Agency in relation to AML/CTF

Asked by: Kim Carr

Question:

CHAIR: I am trying to establish in your mind—the agency's mind, not your personal mind—how you see the regulatory regime and what advice you can provide to the committee as to where we can strengthen it, where you see the gaps in the regime. Could you indicate to us what you believe where you are the lead agency, in terms of enforcement and compliance, in regard to financial crimes, money laundering and the like. If you could provide that on notice, please, I'd appreciate that.

Mr Soros: I'm happy to take a crack now, if you like.

CHAIR: No. We haven't got all night.

Mr Soros: I can talk fast.

CHAIR: No, no. It has been a long day. If you could provide that, please.

Answer:

AUSTRAC performs a dual role as Australia's Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) regulator and financial intelligence unit. These functions and responsibilities are enacted through the functions of the AUSTRAC CEO in section 212 of the *Anti-Money Laundering/Counter-Terrorism Financing Act 2006* (AML/CTF Act).

AUSTRAC regulates businesses that provide services that are vulnerable to money laundering and terrorism financing (ML/TF) risks, and collects reports from these sectors about the movement of money and suspicious matters. Our data holdings and financial intelligence are critical pieces of the national security architecture used to preserve the integrity of Australia's financial system. These holdings are vital in identifying new and emerging risks and aiding law enforcement outcomes.

Broadly, the functions of the AUSTRAC CEO are to:

- a) retain, compile, analyse, disseminate and facilitate access to AUSTRAC information in order to support domestic and international efforts to combat ML, TF and other serious crimes
- b) promote compliance with the AML/CTF regime and advise and assist reporting entities and their representatives in relation to AML/CTF obligations, and
- c) assist in the development of government policy or academic research.

In performing these functions, the AUSTRAC CEO must have regard to:

- a) the integrity of the financial system
- b) crime reduction
- c) economic efficiency, regulatory burden, competitive neutrality and market competition issues
- d) the risk-based approach, and
- e) privacy.

AUSTRAC's regulatory and financial intelligence functions are interconnected and complementary. This builds resilience in the financial system and uses financial intelligence and regulation to disrupt money laundering, terrorism financing and other serious crime. The combination of these two functions is seen as international best practice.

Note: AUSTRAC is not responsible for the licensing of financial and gambling service entities. These responsibilities rest with other Commonwealth, state and territory authorities. For example, the licensing of banking, insurance and superannuation businesses rests with APRA, while the licensing and regulation of gambling service entities rests with state and territory gambling regulators.

AUSTRAC is also not responsible for the investigation and prosecution of criminal offences including money laundering, terrorism financing and serious crime. These are the responsibilities of law enforcement agencies. AUSTRAC provides access to information and intelligence to these agencies to assist their investigations.

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QoN Number: 04

Subject: Agencies which AUSTRAC consults with

Asked by: Kim Carr

Question:

CHAIR: Could you also provide us with advice on which agencies you co-operate with at a national level, at a state level and internationally.

Mr Soros: That'll be a big answer.

CHAIR: Yes, I know. That's what I am saying.

Answer:

AUSTRAC engages and shares information with a range of partner agencies at the state, territory and Commonwealth levels. See <https://www.austrac.gov.au/about-us/our-partners> for:

- a list of state, territory and Commonwealth agencies that have an information sharing arrangement in place with AUSTRAC, and
- a list of counter-terrorism and law enforcement task forces, of which AUSTRAC is an active member and contributor.

AUSTRAC also engages and co-operates extensively with other partner agencies at the state, territory, Commonwealth and international levels, across its regulatory and intelligence functions, including:

- State and territory gaming regulators, anti-corruption and integrity bodies, and revenue offices
- State, territory and Commonwealth law enforcement and intelligence agencies
- Home Affairs portfolio
- Other Commonwealth agencies.

These engagements are pivotal to protecting the Australian community from serious crime and terrorism. Our financial intelligence and information significantly contributes to Australia's intelligence picture, helping our partner agencies in their work to detect and disrupt criminal activity.

AUSTRAC also shares information and intelligence with AML/CTF financial intelligence units and regulators around the world.

See <https://www.austrac.gov.au/about-us/international-engagement> for:

- information on various multilateral collaboration channels and
- a list of international information exchange partners.

Further details regarding how AUSTRAC's partners are engaged in the context of this inquiry are available in AUSTRAC's submission to the Committee.

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QoN Number: 05

Subject: Response to Article on International Transparency

Asked by: Deborah O'Neill

Question:

Senator O'NEILL: On notice, could I ask you to respond to an article dated 2 March 2021, by a Mr Chevis, published in Transparency International Australia, in which he asserts:

... if you want to get away with industrial-scale money laundering in Australia, do it behind a corporate veil and share the blame around.

He makes quite a significant number of observations about what's going on. I would appreciate your response, on notice.

CHAIR: Who is that to?

Senator O'NEILL: To both AUSTRAC and the department.

CHAIR: Thank you very much.

Answer:

Laws to respond to serious and organised crime and threats to Australia's national security are in constant review and updating. The article by Mr John Chevis notes some of the opportunities and challenges relating to laws associated with corporate entities and criminal culpability.

The Department of Home Affairs administers key regimes that disrupt illicit financial flows, including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), criminal asset confiscation under the *Proceeds of Crime Act 2002*, and money laundering offences under the Commonwealth Criminal Code.

The Government recently strengthened penalties for money laundering offences with the commencement of the *Crimes Legislation Amendment (Economic Disruption) Act 2021* on 17 February 2021.

- The Act adapts money laundering offences to the behaviour of modern laundering networks, ensuring criminal liability can be established where a person is wilfully blind as to the illicit origins of property, hides predicate offending behind complex legal structures and deals with property at an arm's length.
- With the amendments made by the Act, the maximum penalty for dealing with proceeds of crime worth \$10,000,000 or more is now life imprisonment and/or a fine of 2,000 penalty units (\$444,000) for an individual and 10,000 penalty units (\$2,220,000) for a corporation.
- Any remaining benefits a person has derived from money laundering may be seized using asset confiscation under the *Proceeds of Crime Act 2002*, which can apply without securing a conviction for money laundering.

The Government is also committed to combatting corporate crime.

- In April 2019, the Government commissioned the Australian Law Reform Commission (ALRC) to undertake a comprehensive review of Australia's corporate criminal responsibility regime. The ALRC's final report was tabled on 31 August 2020 and its recommendations are being carefully considered.

In February 2019, the Government passed the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*. This legislation encourages stronger corporate compliance and strengthens protections for corporate sector whistleblowers who come forward to report on corporate misconduct including money laundering.