

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Senate Legal and Constitutional Affairs

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

10 November 2021

QoN Number: 06

Subject: Assets as proceeds of crime

Asked by: Kim Carr

Question:

Some witnesses mentioned problems with establishing the identity of those engaged in laundering or the beneficial owners of assets purchased by laundered funds. Are you aware of any jurisdictions which might deem assets where no beneficial owner can be established treating these assets as proceeds of crime?

Answer:

Australia has an asset confiscation regime that allow for orders to be made in relation to property that is suspected of being proceeds of crime, even where the offender cannot be identified. The Department of Home Affairs understands that jurisdictions, including Switzerland, the United Kingdom and Ireland have similar asset confiscation regimes in place.

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(AML/CTF) regime

10 November 2021

QoN Number: 07

Subject: Confiscated proceeds

Asked by: Kim Carr

Question:

What happens to the proceeds confiscated? Does it go to consolidated revenue, or to increase resourcing of AML/CTF activities?

Answer:

Confiscated proceeds of crime vest absolutely in the Commonwealth at the time the property is forfeited. Once forfeited to the Commonwealth, the proceeds are credited to the Confiscated Assets Account (CAA), which is managed by the Australian Financial Security Authority on behalf of the Commonwealth. Section 298 of the *Proceeds of Crime Act 2002* provides legislative authority for the Commonwealth to spend amounts in the CAA for the purposes set out in subsection 298(2) of that Act, namely crime prevention measures, law enforcement measures, measures relating to treatment of drug addiction or diversionary measures relating to illegal use of drugs. While section 298(2) does not specifically refer to AML/CTF, increased resourcing for such activities could fall within scope of crime prevention or law enforcement measures.

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QoN Number: 08

Subject: Possible use of confiscated proceeds

Asked by: Kim Carr

Question:

Has any consideration been given to using funds confiscated as proceeds of crime as a reward or payment to encourage informants or whistleblowers?

Answer:

Section 298 of the POCA provides legislative authority for the Commonwealth to spend amounts in the Confiscated Assets Account for the purposes set out in subsection 298(2) of that Act, namely crime prevention measures, law enforcement measures, measures relating to treatment of drug addiction or diversionary measures relating to illegal use of drugs. The Department of Home Affairs has not provided advice to the Minister for Home Affairs on whether funds confiscated as proceeds of crime could be used as a reward or payment to encourage informants or whistleblowers. Whether or not funds could be used for this purpose depends on whether there is a sufficient nexus between those payments and the purposes in subsection 298(2) of the Act.

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10 November 2021

QoN Number: 09

Subject: Overseas jurisdictions use of confiscated funds

Asked by: Kim Carr

Question:

Are you aware of any overseas jurisdictions where this approach is taken? If so, it is considered a successful approach?

Answer:

The Department of Home Affairs is not aware of any of overseas jurisdiction that specifically provide for confiscated proceeds of crime to be used as a reward or payment for informants or whistleblowers. However, reuse of confiscated assets to fund crime prevention or law enforcement measures is widespread in a number of jurisdictions, including Italy and France, which have wide reaching social reuse initiatives, and the United Kingdom, which returns a percentage of confiscated assets to agencies to incentivise further asset confiscation, and allows confiscated assets to be invested in community projects.

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Senate Legal And Constitutional Affairs Committee
Adequacy and efficacy of Australia's anti-money laundering and counter-terrorism
financing (AML/CTF) regime

10 November 2021

QoN Number: 10

Subject: Percentage of recommendations enacted

Asked by: Deborah O'Neill

Question:

What percentage of the recommendations in the AGD's statutory review of the AML-CTF Act have been enacted?

Answer:

The 2016 Statutory Review made 84 recommendations. Since its tabling in 2016, the Department has addressed 37 of the 84 recommendations in full. Upon its release, the then Justice Minister, the Hon Michael Keenan MP, announced that the Government would address the recommendations of the Review in phases. The staged approach allows time for consultation with businesses that may be affected, ensuring measures can be operationalised with the lowest regulatory burden, which should ultimately drive better compliance.

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Senate Legal And Constitutional Affairs Committee
Adequacy and efficacy of Australia's anti-money laundering and counter-terrorism
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10 November 2021

QoN Number: 11

Subject: AGD Statutory Review Recommendation 4.6

Asked by: Deborah O'Neill

Question:

Recommendation 4.6 of that statutory review said that:

"The Attorney-General's Department and AUSTRAC, in consultation with industry, should:

- develop options for regulating lawyers, conveyancers, accountants, high-value dealers, real estate agents and trust and company service providers under the AML/CTF Act, and
 - conduct a cost-benefit analysis of the regulatory options for regulating lawyers, accountants, high-value dealers, real estate agents and trust and company service providers under the AML/CTF Act."
- a. Have these options been developed?
 - b. We already know from Senate Estimates a fortnight ago that a cost-benefit analysis still has not taken place. Why has the AGD and AUSTRAC failed to progress this and to consult with Australian industry about the likely impact of the Tranche 2 laws to which the Government is committed?

Answer:

The Attorney-General's Department engaged KPMG to conduct a cost-benefit analysis on options for regulating 'Tranche 2' entities, and instructed them to consider the costs associated with each of the AML/CTF obligations. The report was finalised in 2017 following extensive consultation with relevant industry sectors.

The 2017 cost-benefit analysis was a point in time assessment. Since then the Government has undertaken legislative reforms, particularly in relation to Customer Due Diligence which is a costly component of the existing regime. The Department has commenced work on a revised cost-benefit analysis to identify the most appropriate and efficient means of regulating Tranche 2 entities, and is in the process of procuring a service provider. Timing for finalising the cost benefit analysis will be determined in consultation with the successful provider and the Minister for Home Affairs.