

2 December 2021

Senate Standing Committee on Legal and Constitutional Affairs
legcon.sen@aph.gov.au

Senate inquiry into the adequacy and efficacy of Australia's AML/CTF regime - Written Questions on Notice

Dear Secretary,

Transparency International Australia is pleased to submit some brief comments in response to the questions on notice taken from the public hearing on the inquiry into the adequacy and efficacy of Australia's AML/CTF regime. Please note that questions from Senator Deborah O'Neill and Senator The Hon Kim Carr are addressed in this document.

TRANSPARENCY INTERNATIONAL AUSTRALIA

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TI Australia is the national chapter of [Transparency International \(TI\)](http://www.transparency.org), the global coalition against corruption, with a presence in over 100 countries. TIA fully supports TI's [Vision, Objectives and Guiding Principles](#) and [Mission and Strategy](#).

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QUESTIONS ON NOTICE FROM SENATOR DEBORAH O'NEILL

1. You allege in your submission that “systemic and large-scale breaches have occurred undetected by AUSTRAC.” Why do you believe that AUSTRAC has failed in this regard? What more resources or powers does AUSTRAC to effectively deal with systemic and large-scale breaches? What do you believe has been the benefit to criminals and terrorist organisations from this failure of oversight?

Why do you believe that AUSTRAC has failed in this regard?



AUSTRAC has an explicit mandate to enforce the AML/CTF Act but it has exhibited no evidence that it has processes in place or activities underway that would allow it to reliably detect non-compliance with that Act. The only information routinely available to AUSTRAC which it could use to detect non-compliance with the AML/CTF Act is that which is provided by the very entities themselves. This renders independent detection of non-compliance with the AML/CTF Act all-but impossible.

- AUSTRAC's own reporting indicates, a significant (if not the majority) of money laundering (ML) is now occurring via a wide variety of methods that are outside of AUSTRAC's current capacity to detect.
- AUSTRAC, and many other financial intelligence units around the world have been aware for many years that relying on banks to be the primary means of detecting ML is far from a sensible approach.
- AUSTRAC collects threshold suspicious transaction reports on international funds transfers and cash, but does not collect the equivalent data on transactions using a debit or credit card.
- The AUSTRAC recognises real estate, gaming, luxury goods, international trade, cash intensive businesses, moving property across borders, concealing money or other properties domestically are all common ML techniques. Yet despite this understanding, the AUSTRAC does not routinely collect, combine and analyse data, or engage in activities, that would result in effective detection of ML through these methods.
- If corporate reporting entities believe they will not be caught, they are at risk of not complying. Cases such as [Westpac](#), [Crown Casino](#) and [Operation Ironside](#) provide examples of what has not been picked up through the current AML structures.
- The recent reports on Crown Casino demonstrate the case for how poorly the system has performed. This calls into question at what point did Crown Casino detect this suspicious activity and report it to the AUSTRAC, and how long did the activity go undetected, unreported and not acted upon.

What more resources or powers does AUSTRAC need to effectively deal with systemic and large-scale breaches?

AUSTRAC could undoubtedly benefit from more resources. It currently has a staff of 418 and a total expenditure last financial year of \$91.167 million. Given its inability to detect or address significant breaches of the AML/CTF Act or industrial-scale money laundering by regulated entities this is clearly insufficient to carry out the functions as both the financial intelligence unit and the AML/CTF regulator.

With respect to the 'need for additional powers to detect breaches and offences committed by reporting entities', AUSTRAC is already provided a very wide range of powers under the AML/CTF Act that it appears to have never exercised.

Given that the evidence suggests that the majority of money laundering now occurs outside of the entities that AUSTRAC regulates and the majority of transactions within those regulated entities are not reported to AUSTRAC (AUSTRAC submission p.9) the effective detection of money laundering requires an expansion of the types of transactions reported to AUSTRAC.

Detection of money laundering occurring outside of the formal financial system will require the combination of information from a range of sources currently not collected by AUSTRAC – including information held by the ACS, import/export companies, high-value goods dealers and the ATO. It is debatable whether collection of this information would require legislative change.



A more pro-active version of AUSTRAC would also undoubtedly benefit from an expansion of the definition of reporting entities, to include lawyers, accountants, real estate agents, high-value goods dealers, import-export companies.

- Agencies such as AUSTRAC, the Australian Federal Police and the Australian Securities and Investments Commission need to be provided with adequate resources to enable them to handle ML related offices and an increase in reporting entities.
- AUSTRAC only collects data and intelligence from only a very small subset of those entities that are being used to commit or facilitate financially-motivated crime and ML.
- For example, the AUSTRAC does not collect data or intelligence from entities engaged in, or related to import/export, sale/trade in high-value goods (e.g. luxury cars and boats), real estate/property development and cash intensive/legitimate businesses. It also does not collect information from the agencies such as the Australian Customs Service (ACS), the Australian Taxation Office (ATO) or Police Forces.
- AUSTRAC would undoubtedly benefit from the ability to be able to obtain warrants to gather evidence of money laundering or terrorist financing by any person or entity -whether or not that entity is covered by the AML/CTF Act.
- AUSTRAC could also potentially benefit from amendments to the Act that would allow it to conduct controlled operations involving activity that would otherwise be illegal – such as opening bank accounts with false identification and conducting structured transactions.
- AUSTRAC may also benefit from the power to obtain warrants to conduct electronic surveillance under the Surveillance Devices Act¹. This would provide opportunity to gather evidence to support the prosecution of individuals for money laundering offences such as those committed by Crown Casino.
- AUSTRAC would also benefit from the capacity to conduct physical surveillance and human-source intelligence gathering – though much of this could be achieved without legislative amendment.
- AUSTRAC is currently unable to detect non-compliance among the 15,000 plus entities that it currently regulates. The addition of several hundred thousand more entities (Tranche 2) is unlikely to result in a reduction in crime, unless those additional entities perceive a risk that the AUSTRAC will detect and punish non-compliance. This would take the allocation of significant additional resources to the AUSTRAC to build its capacity.
- In 2006, the FATF identified that Trade-Based Money-Laundering (TBML) was likely to become the main method of laundering as offender behaviour evolved in reaction to the FATF recommendations. In 2021 this seems to be precisely what has occurred, as

¹ <https://www.legislation.gov.au/Details/C2017C00193>



payments are often being made through the movement of goods, not money, thereby passing current AML detection processes

- The detection of this type of ML will require the combination of information from a range of sources currently not collected by the AUSTRAC – including information held by the ACS, import/export companies, high-value goods dealers and the ATO
- AUSTRAC should either develop a database for reporting entities – funded from fees charged on reporting entities – or should at least audit the commercial databases. The AUSTRAC could be required to certify that such databases are fit-for purpose, and only certified databases can be used by reporting entities to supplement their formal ‘know your customer’ and due diligence processes.

What do you believe has been the benefit to criminals and terrorist organisations from this failure of oversight?

The failure of any Australian agency to attempt to pro-actively detect money laundering in Australia has clearly provided the ability for criminal groups to amass very large amounts of money which they have used to expand their activities and influence. Barely a day goes by in Australia where there isn't a media report about people who are linked to known criminal families or groups having amassed vast unexplained fortunes that appear to be beyond the reach of law enforcement.

Far from being just an issue of criminals ‘getting away with it’ AUSTRAC's failure has potentially significant national security implications. International organised crime groups such as the ‘Ndrangheta² are known to use their power and influence to infiltrate the political process in the countries in which they operate. The ‘Ndrangheta are known to have been operating in Australia for many years. Similarly, the rise of ‘State-sponsored organised crime’ should not be downplayed in the current geopolitical environment of deteriorating relations with certain countries.

- Money laundering has gone undetected and Australia is seen as a hot spot for dirty money.
- Information and data collected by the AUSTRAC and other global regulators, is not keeping pace with changes in technology, and virtual currencies and electronic platforms which do not easily fit within existing legal principles. Digital currencies are a magnet for ML and criminal conduct.
- Australia needs to strengthen existing laws to stop criminals prospering through our financial institutions.

2. You also raise the issue of new technologies such as cryptocurrencies and the deficiencies of the current regulations to deal with them. What do you think the current money laundering risks are from new technologies such as cryptocurrencies and NFTs (non-fungible tokens)? What should the Government's regulatory response be?

² <https://journals.sagepub.com/eprint/2VUfJlvpdWe26l8REukh/full> ; <https://www.occrp.org/en/ndrangheta/what-is-the-ndrangheta> ; <https://www.abc.net.au/radionational/programs/backgroundbriefing/mafia-on-the-move-how-the-ndrangheta-came-to-australia/8995964>;



- The current ML risks from new technologies are significant as these technologies are largely outside the scope of criminal or civil sanctions when they are used for ML purposes.
- As they permit anonymity, cryptocurrencies can be used to launder illicit funds and for any number and type of illegal activities, including through use of legitimate funds.
- NFTs, essentially unique digital items, can be purchased as assets with cryptocurrencies (and fiat currency) and bought, sold and traded anonymously. These assets may be high value items worth in the millions (e.g. see <https://www.theverge.com/22310188/nft-explainer-what-is-blockchain-crypto-art-faq>) and anyone will be able to deal in them.
- Even if they are based on a blockchain, which should by definition enable identification of their owner, access to that evidence would be necessary for law enforcement or regulators to be able to take any action, for example, to seize proceeds of crime. Most blockchains are currently privately owned and controlled and even if access could be obtained specialist technical skills may be required to interrogate them to obtain the relevant evidence. Even then, the blockchain may not identify the ultimate beneficial owner as this may be hidden behind a number of layers.
- It is not plausible for governments to keep pace with new technology and adequately regulate it to safeguard the public, let alone identify ML and prosecute offences. Notable exceptions are internet sites that become infamous such as Liberty Reserve and Silk Road, but these are just examples of the public facing part of huge multi-party often illegal enterprises.
- What governments need to learn to do better is to use new and emerging technology to steer the majority of the population to things that can be better regulated on the assumption that most people wish to act within the law. A possible example of this is the digital currency Facebook was developing called Libra. If done properly, with adequate customer identification and verification and identification of beneficial owners, it has the potential to steer a very large portion of the world's population to take up a digital currency that can be better regulated (and a safer investment as it is intended to be a stablecoin, rather than highly speculative cryptocurrencies such as bitcoin). This of course runs the risk of governments being seen to be picking winners, assisting multinationals and thereby dissuading smaller players from entering the market.
- One way to deal with this is to afford the same opportunities to all with the prospect of lighter touch regulation for those who can demonstrate satisfaction of benchmarks that reduce ML risks.
- Governments need to give regulators power to adapt and be nimble and flexible to keep abreast of technology, whilst at the same time transparent and accountable. This is not an easy balance. The current AML/CTF Act gives the AUSTRAC CEO novel powers to adapt the legislation to suit the circumstances, but only in regard to subject matter AUSTRAC has the power to regulate.



- Unfortunately, the current legislation has very limited reach into digital currencies which leaves most of the ML risk in this area untouched, perhaps in recognition that the risk is transnational and therefore not an area one country can effectively regulate alone.
- An international regulator with punitive powers is not likely to be acceptable to countries that have the most to lose and is not necessarily the solution in any case.
- Effective domestic regulation and tight international cooperation may be effective, though the weakest link problem is likely to remain.
- Governments and international bodies must adopt an aggressive global response required to fix the money laundering risks linked to the increase in digital currencies. Meaningful regulation will require bipartisanship at the domestic level and an effective international framework.

3. Your submission also notes that Australia does not have a national policy on AML/CTF or a National Risk Assessment. Why do you think the current Government has not implemented one? Is it just further evidence of their wilful blindness on the issue of AML/CTF funding?

- A key goal of an AML/CTF regime is to accurately and consistently detect money laundering and terrorist financing as, or as soon as possible after, it occurs. One of the key methods of identifying emerging money laundering and terrorist financing methods is to develop a National Risk Assessment process that identifies, assesses and supports an understanding of the evolving money laundering and terrorist financing methods impacting on Australia.
- The NRA process helps a country identify, assess, and understand the risks that arise from vulnerabilities that facilitate ML. The NRA process includes determining the most revenue generating criminal activities in the country, assessing financial and private sectors' vulnerability to ML, identifying the controls and weaknesses of the criminal justice system and evaluating the effectiveness of the fight against money allocation of resources according to the level of risk.
- The current [government risk assessments](#) only examine current money laundering and terrorism financing threats and vulnerabilities in specific parts of Australia's financial sector. Australia does not have a national policy which sets out what the overall AML/CTF system is meant to achieve, and how success would be monitored or measured. This makes it challenging to determine how well the ML/TF risks are being addressed
- If AUSTRAC were to conduct a National Risk Assessment there is a potential that it would identify specific methods of money laundering that its processes, and legislation, do not currently cover. It might also identify methods by which this money laundering might be disrupted and deterred.
- The [national risk assessment process](#) includes:
 - Determining the most revenue-generating criminal activities in the country



- Assessing financial and private sectors' vulnerability to ML identifying the controls and weaknesses of the criminal justice system
- To evaluate the effectiveness of the fight against money allocation of resources according to the level of risk.

4. You also raise extensive concerns with AUSTRAC's reliance on self-reporting of reporting entities. Do you believe this is an effective or sustainable model and if not, what would be your suggested remedy?

- AUSTRAC requires self-reporting information in order to detect ML, financially motivated crime, as well as offences committed against the AML/CTF Act by those same reporting entities. If a reporting entity fails, (or deliberately decides not to) report threshold transactions or suspicious matter reports, the only mechanism the AUSTRAC has to identify these offences is through the limited range of reports that it receives from the entity committing the offence.
- The recent media stories on large entities such as [The Commonwealth Bank](#) (CBA), [Westpac](#), [National Australia Bank](#) (NAB), [Crown Casino](#), [The Star](#) and [SkyCity Entertainment Group](#), is highly indicative that the structure of Australia's AML/CTF regime needs reform. This means both legislative reform of the AML/CTF Act, and changes to the AUSTRAC's operating model, scope and capacity to address ever changing ML techniques including those associated with digital currencies.
- Detection of trade-based ML will require the combination of information from a range of sources currently not collected by the AUSTRAC – including information held by the ACS, import/export companies, high-value goods dealers and the ATO.

QUESTIONS ON NOTICE FROM SENATOR THE HON KIM CARR

1. What happened to the case study subjects you detailed? Were they subject to action by Australian regulators or law enforcement?

Sudanese General, Ngouth Oth Mai:

- The Herald Sun reported in 2018 that the AFP would continue to hold assets belonging to his family. Titchiang Hoth Mai (his child) failed in her attempt in the County Court to prevent the AFP from restraining a \$1.5 million house at Narre Warren and an Audi as they investigated financial dealings of her brother Ngouth Oth Mai.³
- The investigation centred around a company called Sportscars, which was revealed during a hearing to have never traded or had any income. Ngouth Oth Mai was a director and major

³ 'Children of Sudanese general James Hoth Mai lose million-dollar assets suspected to be proceeds of crime', The Herald Sun, 17 December 2017; <https://www.heraldsun.com.au/news/law-order/sudanese-peoples-liberation-army-former-chief-of-staff-of-james-hoth-mais-kids-lose-million-dollar-assets-suspected-to-be-proceeds-of-crime/news-story/c160f189367247c9a85eff7ecb1f8fc3>



shareholder of the company. The Narre Warren home was paid for from the company's account.⁴

- Refer to County Court of Victoria Database for more information- Mai v Australian Federal Police (2018). ⁵
- No further updates located.

Malaysian Banker, Yeo Jiawei:

- The Guardian reported in 2017 that the AFP were examining whether money illegally taken from Malaysia's 1MDB state development fund had shifted into Australia.⁶
- Yeo was convicted in Singapore related to attempts to conceal his ties to Malaysian businessman Jho Low and hide his wealth, which grew by \$23.9 million over just 15 months while he was a wealth manager. Yeo denied wrongdoing throughout his trial, including the prosecutor's claim that he received "secret profits" from a 1MDB money-laundering scam.⁷
- No further updates located.

Onn Mahmud, brother of the then Chief Minister of Sarawak in Malaysia:

- Onn Mahmud founded the Regent Star company in Hong Kong in the 1980s. At the beginning of 2007, the tax authorities in Tokyo discovered that nine Japanese shipping companies had allegedly been making annual payments of millions of dollars to Regent Star in Hong Kong. The companies had been transporting timber from Sarawak to Japan since the beginning of the 1980s. The Bruno Manser Fund reported that tax authorities came to the conclusion that the kickbacks were for the government in Sarawak. Regent Star was initially found in 2007 to have received RM32 million kickbacks from Japanese shipping companies. However, an appeal tribunal reversed the findings a year later, ruling that the monies paid for "brokerage services" to Onn Mahmud's firm were legitimate and could be written off as tax rebates.⁸
- No further updates located.

⁴ Ibid.

⁵ 'Mai v Australian Federal Police', County Court of Victoria; http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2018/2103.html?context=1;query=Oth%20Mai;mask_path=au/cases/vic/VCC

⁶ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australianews/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-propertiesplurge>

⁷ Ibid.

⁸ Joseph Sipdan, 'Taib as TYT would be as powerful as Dr M, says Rafizi', Malaymail online, 25 February 2014, <http://www.themalaymailonline.com/print/malaysia/taib-as-tyt-would-be-as-powerful-as-dr-m-says-rafizi>



Hon. William Marra Duma, Minister of Parliament PNG:

- The Financial Review reported in 2020 that the company had suspended its chief executive Michael Sheridan as it investigated the payment of \$US10.3 million to a hastily restructured shell company.⁹
- The AFP said it was examining the documents obtained by The Australian Financial Review, which indicated Horizon had ignored repeated corruption warnings to pay the \$US10.3 million.¹⁰
- The investigation into the transaction confirmed that there was no breach of foreign bribery law. In a statement released by the Horizon Oil Ltd in June 2020 it was revealed that the investigation conducted by Herbert Smith Freehills (HSF) and Deloitte, with the oversight of an Independent Board Committee, confirmed that no breach of any Australian foreign bribery law occurred. Horizon also confirmed in the statement that it was not aware of any regulatory investigation into these matters involving the company in Australia or PNG.¹¹
- No further updates located.

Bo Zhang, Chinese National:

- No updates located

Brian O'Neill, son of ousted PNG prime minister Peter O'Neill:

- Peter O'Neill (his father) was a key figure in the UBS loan affair.¹²
- No updates located.

2 Chinese Nationals:

- In 2019, AFP issued a media release stating they had restrained \$17.3 million of assets related to two Chinese nationals.

⁹ Angus Grigga and Jemima Whyte, 'Horizon suspends CEO amid corruption allegations', 12 February 2020; <https://www.afr.com/companies/energy/horizon-suspends-ceo-amid-corruption-allegations-20200212-p53zzy>

¹⁰ Ibid.

¹¹ 'Horizon Oil Investigation Finds Nil evidence of bribery involving PNH Govt Minister Duma', Pacific Mining Watch; <https://mine.onepng.com/2020/06/horizon-oil-investigations-funds-nil.html>

¹² Lisa Murray and Angus Griggs, 'New PNG government to rule on \$20b gas deal within weeks', 9 July 2019; <https://www.afr.com/companies/energy/new-png-government-to-rule-on-20b-gas-deal-within-weeks-20190708-p5254t>



- The AFP alleged that the two Chinese nationals moved about \$23 million of fraudulently obtained funds from China since late 2012, used to purchase numerous properties in Melbourne and Tasmania.¹³

Erebas Wartoto, politically connected PNG businessman:

- In 2011, PNG Taskforce Sweep charged Mr Wartoto with the misappropriation of \$5 million.¹⁴ Mr Wartoto was charged over the “payment of K7.9m of Rehabilitation Education School Infrastructure funds allocated for Kerevat National High School”.¹⁵
- In 2011, Mr Wartoto was charged, but then obtained an Australian foreign skilled workers visa and fled to Queensland. He was charged with two counts of misappropriation of property of PNG.
- Mr Wartoto claimed that he was 'too ill' to travel back to Port Moresby, even though he frequently travelled internationally within the two year period that he was in Australia.¹⁶ In 2012, PNG authorities issued a restraining order to cover property owned by Erebas Wartoto in PNG.¹⁷
- In 2013, PNG made a 'Mutual Assistance Request' to the AFP, asking for assistance in registering a 'Foreign Restraining Order' that was made in 2012 against Mr Wartoto.¹⁸
- In the same year the District Court of Queensland registered the Foreign Restraining Order over Mr Wartoto's five Australian properties and four bank accounts believed to be associated with Mr Wartoto. The PNG authorities stated they believed Mr Wartoto engaged in “asset protection measures” in relation to his Australian assets to prevent these being seized under the PNG Proceeds of Crime Act 2005.
- The AFP lodged a successful application to have Mr Wartoto's property seized.¹⁹ The AFP's application to the court was under section 35 of the Mutual Assistance in Criminal Matters

¹³ Australian Federal Police, '\$17.3m restrained in AFP investigation into Chinese nationals allegedly laundering proceeds of crime', Media Release, 31 October 2019; <https://www.afp.gov.au/news-media/media-releases/173m-restrained-afp-investigation-chinese-nationals-allegedly-laundering>

¹⁴ Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', The Australian, 15 May 2013.

¹⁵ Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', Post Courier, 2 August 2013, 46

¹⁶ Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of \$30m', The Age, 10 May 2013.

¹⁷ Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May 2013.

¹⁸ Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May 2013.

¹⁹ Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', The Australian, 15 May 2013



1987 (Cth) requesting that the Official Trustee in Bankruptcy take custody and control of the property.²⁰

- Eremas Wartoto went on trial in PNG in February 2016. In 2017 he was sentenced to 10 years in prison with hard labour.²¹

Taib family, family of the previous Sarawak governor Taib Mahmud in Malaysia:

- The Malaysian Anti-Corruption Commission (MACC) announced in June 2011 that the billionaire politician was under investigation for corruption.
- The Sydney Morning Herald in 2015 reported that ASIC declined to say whether it had taken or intended to take any action in regards of the breaches and said to refer to AUSTRAC.²²
- Crickey in 2018 reported that despite the issue being raised both in the South Australian parliament and mainstream media, it appears neither Australian police nor regulators investigated him.²³
- No further updates located.

We hope that these answers will prove to be of benefit to the important work of your committee.

Serena Lillywhite

CEO, Transparency International Australia

²⁰ 9 Application filed in Brisbane by Commissioner of the Australian Federal Police, District Court of Queensland, April 26 2013 (number BD1440/2013).

²¹ '10 years jail for PNG businessman Wartoto', Radio New Zealand, 24 June 2017, <https://www.rnz.co.nz/international/pacific-news/333682/10-years-in-jail-for-png-businessman-wartoto>

²² Michael West, 'Allegations family of Malaysian billionaire Taib Mahmud laundered money in Australia', September 8 2015; <https://www.smh.com.au/business/allegations-family-of-malaysian-billionaire-taib-mahmud-laundered-money-in-australia-20150908-gjhw0w.html>

²³ 'Pleas grow for Malaysia to probe Aussie-linked billionaire politician', 2 November 2018; <https://www.crikey.com.au/2018/11/02/malaysia-corruption-taib-mahmud/>