

Dr John Coyne



Submission to the Senate Standing Committees on Legal and Constitutional Affairs inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

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This submission does not reflect the Australian Strategic Policy Institute (ASPI) perspective. It is the opinion of Dr John Coyne, Strategic Policing and Law Enforcement ASPI.

Background

On 23 June 2021, the Senate referred the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime to the Legal and Constitutional Affairs References Committee for inquiry and report.

In this submission, I seek to provide evidence that addresses the following:

- the extent to which the Australian Transaction Reports and Analysis Centre;
 - responds to and relies upon reporting by designated services, and
 - identifies emerging problems based on this reporting.
- the extent to which Australia's AML/CTF regulatory arrangements could be strengthened to;
 - address governance and risk-management weaknesses within designated services, and
 - identify weaknesses before systemic or large-scale AML/CTF breaches occur.
- The effectiveness of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act) to prevent money laundering outside the banking sector.

Contextualising Australia's AML/CTF regime with its transnational serious and organised crime threat

Any assessment of the adequacy and efficacy of Australia's AML/CTF regime needs to consider its social and economic impacts on transnational serious

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and organised crime (TSOC). Arguably, the strategic intent of the regime is to reduce these impacts. That withstanding, the regime currently has three focal points. Firstly, the regime focuses on regulatory compliance and enforcement. Secondly, it attempts to support law enforcement through the collection of criminal intelligence and evidence. Finally, it is concerned with reducing Australia's vulnerability to TSOC. It has been overwhelmingly successful in collecting criminal intelligence and evidence that have contributed to prosecutorial outcomes.

Organised crime structures and business models tend to be amorphous, making drawing general conclusions that encompass all groups—from Juárez to Hong Kong and London to Mombasa—inherently tricky. Some of these groups are increasing the sophistication of their operations. However, there remain many others who continue to use tried and tested methodologies. It is, however, fair to say that most, if not all, demonstrate entrepreneurialism and agility.

Unfortunately for Australian law enforcement and policymakers, the criminal intelligence speaks volumes to the inability of the current regimes to address TSOC and money laundering. In 2017, the Australian Institute of Criminology estimated that the cost of serious and organised crime to Australia in financial year (FY) 2016–17 was up to \$47.4 billion. A more current estimate is not available, but all things being equal, the figure for FY 2020-21 is likely to be significantly greater: it seems it never goes down. Despite a raft of new legislation, big spending, and Australian law enforcement's operational success, including the recently conducted Operation Ironside, policy success in this space has been elusive.

The trade in heroin and methamphetamine in Australia illustrates this point. ASPI's 2021 report *'High rollers' A study of criminal profits along Australia's heroin and methamphetamine supply chains* assessed Australians spent approximately A\$5.8 billion on methamphetamine and A\$470 million on heroin in FY 2019. Australian criminals paid approximately A\$1,216,806,017 to international wholesalers overseas for the amphetamine and heroin smuggled into Australia that year. The profit that remained in Australia's economy was about A\$5,012,150,000. Those funds undermine Australia's public health, distort our economy daily, and ultimately fund drug cartels and traffickers in Southeast Asia.

One key takeaway from the figures presented in this report is that the Australian drug trade is large and growing. Despite the best efforts of law enforcement agencies and the AML/CTF regime, methamphetamine and heroin use has been increasing by up to 17% year on year. Falling prices in Southeast Asia are likely to keep pushing that number up, while drug prices and purity in Australia remain relatively stable.

The other takeaway here is that the proceeds of these crimes continue to be laundered within and from Australia's economy. There is an obvious argument that the problem would be substantially worse without our current AML/CTF regime. However, the strategic intent of our AML/CTF is not to prevent threats

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from becoming worse but to reduce the social and economic harm from TSOC. Arguably, if our AML/CTF regime is enjoying increased success in the finance sector, then other economic sectors must be increasingly used by criminals to launder the proceeds of crime.

In the face of this threat, enforcement approaches face several challenges, one of the most significant of which is that innovation, whether technical or otherwise, is unlikely to keep pace. Rigid models of enforcement and regulation, while not without benefits, do not promote sufficiently innovative thinking. For example, the AML regime preferences procedural compliance from the finance sector over the creative use of new technologies.

Australian law enforcement agencies face an increasing number of challenges from emergent technologies in the AML/CTF space. A key policy challenge underpinning these issues relates to the limited capacity of law enforcement to introduce innovative strategies in response to disruptive technology. Another is how to make cross-jurisdictional cooperation simpler and more manageable.

Collaboration

Public-private collaboration on AML is a given. The level of ongoing engagement is evolving and increasing, and there is a genuine desire for public-private partnerships. However, despite the widespread success, there remain areas ripe for further improvement. Further cooperation and collaboration in AML intelligence and communication would contribute more to outcomes than developing specific in-house programs in the finance sector. In particular, there's a clear need for greater feedback between regulatory and enforcement agencies and the private sector on the utility of finance-sector information.

Conclusion

In their deliberations, the Committee ought to consider two primary questions. Firstly, how can the current AML/CTF regime efforts be enhanced? Here the answer is relatively simple; the Tranche Two reforms that bring lawyers, accountants, real estate agents and other gatekeeper professions inside the regime is an obvious start. Secondly, and in many ways far more challenging, the Committee needs to consider promoting more innovative approaches to AML. This is not a criticism of Australia's high performing enforcement and regulatory agencies. Instead, it is an acknowledgment that the data is evidence that widespread money laundering is still occurring. Incremental improvements to our existing system are unlikely to offer an appropriate course correction. The following recommendations are provided as ideas for stimulating change:

Recommendation 1. Across the federal law enforcement community, agencies nominate accountable and capable innovation leaders to promote and support AML/CTF innovation.

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Recommendation 2. The AML/CTF regime's must be focused on reducing the cost of TSOC in Australia. As part of this work, efforts need to be focused on ensuring the general public better understand the social and economic impacts of TSOC.

Recommendation 3. Home Affairs establishes new panel mechanisms for engagement with industry and academia to discuss emerging disruptive ideas and technologies regularly. This needs to be viewed as an ongoing activity involving representatives from across the Home Affairs portfolio agencies. This should be augmented with mechanisms to engage with individuals and start-ups working at the emerging edge of new thinking.

Recommendation 4. All agencies emphasise working more collaboratively with the finance sector through such measures as:

- AUSTRAC establishing a regulatory sandbox to explore new policies and offsets for those companies that can contribute to AML efforts
- ACIC establishing a capability with responsibility for sharing AML intelligence with the Australian financial sector.