

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

23 August 2020

Dear Committee Secretary,

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

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this submission to the Legal and Constitutional Affairs References Committee, responding to terms of reference (c) and (d) of the inquiry.

The ANU LRSJ Research Hub falls within the ANU College of Law's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are students of the ANU College of Law, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving the law to promote both social justice and social stability.

Summary of Recommendations:

1. The scope of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* should be expanded to include Tranche 2 industries, given the persistent attractiveness of Australia as a destination for proceeds of foreign crime.
2. The Committee notes the deficiencies in the UK AML system and provides support to small businesses to reduce the impact of AML obligations on their business.
3. AUSTRAC should develop a standardised guideline for new reporting entities, that is consistent across industries and clearly identifies their obligations under the Act.

If further information is required, please contact us at anulrsjresearchhub@gmail.com.

On behalf of the ANU LRSJ Research Hub,

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Introduction

This submission addresses the need to expand the scope of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* ('the Act') to include money laundering gateway industries, such as accounting, real estate, and legal services. It identifies that the current scheme is too narrow and considers the practical implications of extending the Act to cover Tranche 2 industries.

1. Australia Continues to be a 'Haven' for Money Laundering

Australia remains an attractive destination for money laundering and terrorism financing, even since the enactment of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.¹ Australia's stable economy, profitable property market, and narrow regulatory scheme makes it the ideal location to convert proceeds of crime into legitimate assets.² Indeed, Australia's property market is "an established money laundering method".³ For example, Australia is a "destination of choice" for money laundering from Papua New Guinea.⁴ Sam Koim, leader of Papua New Guinea's anti-corruption task force, notes that "it's common knowledge that Cairns is a hotspot that most of Papua New Guinean proceeds have been invested in".⁵

Recent litigation involving the *Australian Transaction Reports and Analysis Centre (AUSTRAC)* and the big banks confirms the continuing incidence of money laundering and terrorism financing in Australia,⁶ demonstrating that Australia remains a target destination for these practices. Already, Australia has been criticised for its narrow focus on the banking and finance sectors by international organisations such as *Transparency International* and the *Financial Action Task Force*.⁷ Failing to regulate key gatekeeping industries, such as property and legal

¹ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* ('AML/CTF Act').

² Sue Lannin, 'Australia a 'place of choice' for money laundering due to lack of regulation: ANZ: A lack of political will has seen successive Australian governments fail to extend money laundering laws to cover lawyers, real estate agents and accountants, ANZ Bank says', *ABC Premium News* (online, 13 July 2017) <<https://www-proquest-com.virtual.anu.edu.au/wire-feeds/australia-place-choice-money-laundering-due-lack/docview/2122547186/se-2?accountid=8330>>.

³ *Ibid.*

⁴ Liam Fox, 'Australia used to launder PNG's dirty money; Australia has been singled out as the money-laundering destination of choice for corrupt Papua New Guinea politicians and officials', *ABC Premium News* (online, 10 Oct 2012) <<https://www-proquest-com.virtual.anu.edu.au/wire-feeds/australia-used-launder-pngs-dirty-money-has-been/docview/1095402372/se-2?accountid=8330>>.

⁵ *Ibid.*

⁶ *Chief Executive Officer of Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation* (2020) 148 ACSR 247 ('*AUSTRAC v Westpac*'); *Chief Executive Officer of Australian Transaction Reports and Analysis Centre v Commonwealth Bank of Australia Ltd* [2018] FCA 930; *Chief Executive Officer of Australian Transaction Reports and Analysis Centre v TAB Ltd (No 3)* [2017] FCA 1296.

⁷ Lannin (n 2).

services, makes these industries a desirable target for criminal activity.⁸ Nathan Lynch, a financial crimes analyst from Thomson Reuters, further observes that failing to regulate these sectors, whilst enforcing strict compliance with the Act in the finance/banking sector “distorts the entire market”, due to the costs associated with complying with one’s obligations under the Act.⁹ Comparative research by Chong and Lopez-De-Silanes considered the effectiveness of money laundering legislation in 80 countries and found that the criminalisation of feeding activities and improvement of disclosure obligations had a significant impact in reducing the incidence of money laundering.¹⁰

We submit that expanding the Act to include Designated Non-Financial Businesses and Professions (“Tranche 2 industries”) is the next logical step in ensuring inter-industry compliance with AML/CTF obligations, given the persistent attractiveness of Australia as a destination for the proceeds of crime. That is, it is difficult to assess the efficacy of the current scheme when it only regulates one key sector involved in money laundering.

Recommendation 1: The scope of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* should be expanded to include Tranche 2 industries, given the persistent attractiveness of Australia as a destination for proceeds of foreign crime.

2. Practical Implications of Expanding the Scope of the Act

However, implementing AML/CTF obligations on Tranche 2 industries such as real estate should occur with support from AUSTRAC. Walker and Hooper highlight the “incredibly resource-intensive” nature of AML systems as they stand.¹¹

Litigation against the big banks has revealed an initial lack of concern with and lack of resources directed towards implementing the AML/CTF scheme.¹² Since being reprimanded for low compliance with the Act, Westpac has made significant, costly changes to its AML/CTF procedures to ensure better compliance with its obligations under the Act.¹³ These processes were undertaken by the company at their own expense. While it is unlikely that AUSTRAC would seek to enforce strict compliance with the Act or seek high penalties from non-compliant small Tranche 2 businesses, there is a gap between legislative intent and the practical implementation of an industry's AML/CTF obligations. If industry giants, like Westpac and NAB, are struggling to comply effectively, smaller businesses will require assistance to abide by their obligations under the Act.

⁸ Sumeer Pai, 'Anti-money laundering: Current state of play' (2021) 73(2) *Governance Directions* 56, 56.

⁹ Lannin (n 2).

¹⁰ Alberto Chong and Florencio Lopez-De-Silanes, 'Money Laundering and Its Regulation' (2015) 27(1) *Economics and Politics* 78, 121.

¹¹ David Walker and Natalie Hooper, 'Financial Crime: We need to talk about Westpac' (2020) 36(1) *Company Director* 30, 31.

¹² *Ibid.*

¹³ *AUSTRAC v Westpac* (n 6) [127].

In the United Kingdom (UK), where AML obligations extend to the real estate and luxury goods sectors, their equivalent legislation has been criticised for its disproportionate impact on small businesses.¹⁴ Australia can learn from the UK's shortcomings to strengthen its own regime. For example, the UK system negatively impacts the sale process where compliance with AML obligations leads to delays for prospective customers.¹⁵

Further, the UK scheme is criticised for its "lack or inconsistency of guidelines" regarding their obligations under the Act.¹⁶ Chong and Lopez-De-Salines further note that "standardised disclosures and clear liability rules that create incentives for all participants" are integral to preventing future money laundering and lowering the cost of enforcement.¹⁷ Even though standardised rules may encourage "box-ticking" over active engagement with the Act, Zavoli and King note that this creates a positive "norm of compliance";¹⁸ a risk-averse approach that is preferable to non-compliance with the Act in any capacity.

If Australia were to increase the scope of the Act to include Tranche 2 industries it should invest resources into the implementation and training of AML officers to avoid these shortcomings. Developing a consistent guideline for reporting entities would further increase the effectiveness of the scheme.

One might question whether the costs of expanding AML regulation outweigh the benefits. Expanding the Act's scope to include Tranche 2 industries will likely result in a further 85,000 entities reporting to AUSTRAC.¹⁹ We submit that the benefits of intercepting and identifying money laundering in these core areas outweigh the initial cost of system implementation and would represent a significant step towards reducing Australia's attractiveness as a destination for money laundering.

Recommendation 2: The Committee notes the deficiencies in the UK AML system and provides support to small businesses to reduce the impact of AML obligations on their business.

Recommendation 3: AUSTRAC should develop a standardised guideline for new reporting entities, that is consistent across industries and clearly identifies their obligations under the Act.

¹⁴ Ilaria Zavoli and Colin King, 'The Challenges of Implementing Anti-Money Laundering Regulation: an Empirical Analysis' (2021) 84(4) *Modern Law Review* 740, 740-41.

¹⁵ *Ibid*, 757.

¹⁶ Zavoli and King (n 14) 766.

¹⁷ Chong and Lopez-De-Salines (n 10) 80.

¹⁸ Zavoli and King (n 14) 763.

¹⁹ Sumeer Pai, 'Anti-money laundering: Current state of play' (2021) 73(2) *Governance Directions* 56, 56.

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A Articles/Books/Reports

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B Cases

Chief Executive Officer of Australian Transaction Reports and Analysis Centre v Commonwealth Bank of Australia Ltd [2018] FCA 930.

Chief Executive Officer of Australian Transaction Reports and Analysis Centre v TAB Ltd (No 3) [2017] FCA 1296.

Chief Executive Officer of Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation (2020) 148 ACSR 247.

C Legislation

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).