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# Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Senate Legal and Constitutional Affairs Legislation Committee on the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Bill 2019*

**17 December 2019**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission on the inquiry into the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Bill 2019.* The Synod requests that the Committee recommend that the Senate pass the Bill.

The Synod has taken a long interest in the need to reduce corruption in Australia and globally. Corruption does real harm to people, holds back development and undermines confidence in government and public institutions. In 2014 the meeting of 400 representatives of the Synod resolved:

> *14.7.19.3. The Synod resolved:*
> *(a) To continue its support for action by the Commonwealth Government to combat corruption,*
> *both in Australia and internationally; and*
> *(b) To request the Commonwealth Government:*
> *(iii) To extend Australia's anti-money laundering/counter-terrorism financing laws to cover designated non-financial businesses and professions named in the Financial Action Task Force international standards, and specifically to real estate agents in relation to the buying and selling of property, dealers in precious metals and stones, lawyers, accountants, notaries and company service providers;*
> *(iv) To require a bank or other financial institution which assesses that funds it is dealing with have a high risk of being associated with money laundering to refuse to deal with the funds unless instructed otherwise by the appropriate Australian law enforcement agency;*
> *(vii) To share information automatically with the relevant foreign authorities when a foreign politically exposed person purchases property or transfers funds to Australia unless the Australian authorities have some reason to carry out a prosecution of the person themselves and sharing the information would compromise that prosecution, or if the Australian Government has reasonable concerns the information is likely to be misused to carry out human rights abuses;*
> *(ix) To establish a dedicated unit within the Australian Federal Police to investigate money and assets stolen from foreign governments and shifted*

*to Australia by politically exposed persons and to seek to return the stolen assets where possible;*

*(x) To establish a national unexplained wealth scheme to combat the ability of organised criminals to profit from their crimes, where unexplained wealth provisions are not limited by having to prove a predicate offence;*

*(xi) To implement an effective non-conviction based confiscation and restraint mechanism to deal with criminal assets transferred from overseas to Australia; and*

*(c) To write to the Prime Minister, the Attorney General, the Leader of the Opposition and the Shadow Attorney General to inform them of this resolution.*

The Synod supports that the Bill will:

- Explicitly prohibit reporting entities from providing a designated service if customer identification procedures cannot be performed.
- Strengthen protections on correspondent banking by:
    - Removing the requirement for the prosecution to prove that a financial institution has been reckless as to whether the other person is a shell bank;
    - Requiring a financial institution to terminate its correspondent banking relationship within 20 days of becoming aware that the other financial institution in the relationship is either a shell bank, a financial institution that is in a relationship with a shell bank, or a financial institution that permits its accounts to be used by a shell bank;
    - Requiring the carrying out of a mandatory due diligence assessment under AML/CTF Rules before entering any correspondent banking relationship;
    - Prohibiting financial institutions from entering into a correspondent banking relationship with another financial institution that permits its accounts to be used by a shell bank, and
    - Requiring banks to conduct due diligence assessments before entering, and during, all correspondent banking relationships.
- Expand exceptions to the prohibition on tipping off provisions to permit entities to share suspicious matter reports and related information with external auditors, and foreign members of corporate and designated business groups. This ability to share information reduces the risk that a person seeking to launder money through a reporting entity can make multiple attempts to access the services of the same entity by applying to different parts of that entity. If the different parts of the reporting entity are all alerted that the activities of the person are suspicious, all will be able to refuse services to that person. Ideally, the *Anti-Money Laundering and Counter-Terrorism Financing Act* would be amended at some time in the future to allow reporting entities to inform each other of suspicious customers. As an example, such sharing of information would make it harder for a money launderer to perform 'bank shopping', where they try multiple banks to place their proceeds of crime being able to rely on the fact that the banks cannot inform each other that the person is a risk.
- Provide a simplified and flexible framework for the use and disclosure of financial intelligence. The Synod supports the amendments to section 127 that will allow AUSTRAC information to be more easily shared with foreign law enforcement and revenue agencies. Preventing and deterring money laundering and financing of terrorism often requires international co-operation. The World Bank and the UNODC have identified that a lack of trust between jurisdictions inhibits and delays the provision of mutual legal assistance between jurisdictions. They have recommended that jurisdictions should adopt policies and procedures that cultivate trust and improve communication.[1] The World Bank and UNODC have further recommended:[2]

[1] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 6.

[2] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 36.

*When a suspicious transaction report (STR) is linked to a foreign PEP [Politically Exposed Person], the competent authorities should, after proper analysis supports such dissemination, share this information with the competent authorities in the PEP's home jurisdiction and any other germane jurisdiction.*

The Synod also supports the new section 125 that will allow the AUSTRAC CEO to authorise specified officials of a specified Commonwealth, State or Territory agency to access specified AUSTRAC information for the purposes of performing the agency's functions and exercising the agency's powers. The ability for greater sharing of AUSTRAC intelligence will make law enforcement agencies more effective, within the resources at their disposal.

- Address barriers to the successful prosecution of money laundering offences by:
    - Clarifying that the existence of one Commonwealth constitutional connector is sufficient to establish an instrument of a criminal offence, and
    - Deeming money or property provided by undercover law enforcement as part of a controlled operation to be the proceeds of crime for the purposes of prosecution.

The Synod supports that under the new Section 114A reporting entities will be required to retain records, or copies of records, of assessments of agreements or arrangements prepared under paragraph 37B(1)(c) for seven years after the completion of the preparation of the record. Both investigations and prosecutions of money laundering cases are often complex and take significant time.[3] The complexity particularly relates to attempts by criminals engaged in money laundering to conceal their true identity through the use of shell companies, nominees and trust arrangements.[4] Therefore, the maintenance of records relating to money laundering offences for a significant period is vital to address money laundering. In that context, seven years is a reasonable period for record retention of customer due diligence actions.

The Synod welcomes that on-going due diligence will be required for correspondent banking relationships to make sure that changes in the correspondent bank do not result in breaches of provisions relating to shell banks.

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[3] https://www.cdpp.gov.au/crimes-we-prosecute/money-laundering
[4] https://www.fbi.gov/news/testimony/combating-money-laundering-and-other-forms-of-illicit-finance