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27 August 2021

The Chair
Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Chair

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

I am a researcher whose work has focused the implementation of Financial Action Task Force (FATF) standards in a range of developing economies. I have undertaken various university research engagements with the bodies such as the World Bank, the Consultative Group to Assist the Poor (CGAP) and the Financial Integrity Working Group of the Alliance for Financial Inclusion (AFI). My research has been cited in publications and research papers of international bodies such as the World Bank, the Basel Committee on Banking Supervision, the International Labour Organisation, the G20's Global Partnership for Financial Inclusion and the World Economic Forum.

My brief submission focuses on three linked issues regarding regulatory impact of AML/CFT obligations:

- The need for evidence-based policymaking when FATF standards are formulated;
- An opportunity to collect evidence on the efficacy of AML/CFT regulation of DNFBPs;
- The need to consider the impact of new compliance obligations under revised FATF standards.

1 The need for evidence-based policymaking when FATF standards are formulated

- 1.1 Globally and nationally we have surprisingly little empirical data available on the performance of AML/CTF measures. In 1990 the original FATF standards reflected common sense law enforcement thinking at that time. The standards were revised – and are now continuously revised – but the revision discussions are not necessarily informed by high quality empirical data, for example by tracking the impact of existing AML/CFT measures on crime and crime patterns. Much of the evidence that informs changes to the standard tends to be anecdotal and case-based and discussions are often influenced by opinion-based views held by officials of its members.
- 1.2 While AML/CFT measures have an important role in combating crime, new technologies enable other measures that may have less of a cost impact on businesses. The spectacular success of the recent ANOM app operation by the Australian Federal Police

and the US Federal Bureau of Investigation produced crime combating results at a scale that has not been seen in relation to AML/CTF for some time. We need to collect evidence to inform policies that will ensure the best law enforcement outcomes. AML/CTF measures require close scrutiny to ensure that the benefits warrant the costs of the system. After 31 years of implementation we need to understand the value of the system; whether it is realistic to expect businesses to become better at AML/CFT compliance; the true contribution made by AML/CFT to crime combating; and how that contribution can realistically be improved without undue economic costs or impacts on civil liberties.

- 1.3 Australia was one of the founding members of FATF. It is represented at plenary and other FATF meetings by Australian government officials. As plenary decisions are taken by consensus, the Australian government, via its official representatives, are party to FATF decisions. FATF processes are not public and the extent to which it and its delegations engage in evidence-based policymaking can therefore not be monitored by citizens.
- 1.3 Once FATF standards were formulated with the participation of Australian officials, the Australian parliament is under pressure to adopt legislation in compliance with the agreed standards. It is at this point that policy decisions may be informed by some evidence, for example by a regulatory impact assessment.
- 1.5 Ideally such an impact assessment should also be undertaken earlier during the FATF processes to ensure that its standards are evidence-based before pressure is placed on countries globally to implement them. In 2020 I called on FATF to implement evidence-based policy and regulatory assessments to inform discussions about revised standards (De Koker '[Financial Action Task Force Standards and Financial Inclusion: What Should Be Done – and Not Done – to Improve the Alignment Between Integrity and Inclusion Policy Objectives?](#)' (August 2020)).

2 An opportunity to collect evidence on the efficacy of AML/CFT regulation of DNFBPs

- 2.1 As Australia has lagged on implementing the FATF standards comprehensively in relation to all Designated Non-Financial Businesses and Professions (DNFBPs) there is an opportunity to collect evidence to inform Australia's approach. Other G20 countries were quicker off the mark and their experiences can now be studied and compared with Australian experiences. Statistics and evidence on the impact of AML/CFT regulation on criminal abuse of DNFBPs and its impact on crime and crime combating in those countries can be compared to Australian statistics and evidence to answer questions such as:



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- a. What were the aspects of DNFBP AML/CTF regulation that impacted most on crime and crime patterns?
 - b. What is the cost of implementation of those measures and can those costs be justified by the proven impact?
 - c. How does Australia compare to those countries in relation to the criminal abuse of casinos, gaming outlets and bullion dealers, i.e. the DNFBPs that are supervised by AUSTRAC?
 - d. How many of the reports filed by DNFBPs were used to combat crime and how useful were they to investigators? How does the usefulness of those reports compare to the usefulness of reports by banks?
- 2.2 Evidence emerging from an objective, evidence-based study will be helpful to inform decisions on design and implementation of AML/CTF measure in relation to Australian DNFBPs.
- 3 The need to consider the impact of new compliance obligations under revised FATF standards**
 - 3.1 The [Discussion Paper](#) focuses on AML/CTF obligations. It is important that the Committee also considers the impact of the new FATF compliance obligations relating to proliferation financing.
 - 3.2 In October 2020 FATF revised its standards to adopt risk assessment and risk management obligations in relation to proliferation financing obligations linked to the targeted financial sanctions scheme of the United Nations Security Council (PF-TFS). PF-TFS obligations were introduced in the 2012 standards but until 2020 the FATF standards could be met by scanning names of customers and parties against sanctions lists.
 - 3.3 New Australian obligations adopted in response to the revised standards are likely to extend to all AUSTRAC-regulated entities, including small businesses that are DNFBPs. These risk assessment obligations are complex and will add to the regulatory burden. Where higher risks are identified, entities will be required to adopt enhanced risk mitigation measures. Where risks are lower, however, they will not be allowed to simplify their measures. Full compliance with targeted financial sanctions related to proliferation will still be expected.
 - 3.4 In FATF private sector meetings and a paper (De Koker '[Financial Action Task Force Standards and Financial Inclusion: What Should Be Done – and Not Done – to Improve the Alignment Between Integrity and Inclusion Policy Objectives?](#)' (August 2020) I called on FATF to refrain from extending its risk measures to proliferation financing without



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considering their impact on financial inclusion. I recommended the adoption of evidence-based policymaking and, in particular, regulatory impact assessments before changes to standards are adopted.

- 3.6 I am not aware of any such assessments that were undertaken by FATF. I assume however that the Australian delegation undertook such an assessment to inform their support for the PF-TFS standards, given that it envisaged increased compliance obligations for regulated entities in Australia. The Committee will find it helpful to access that assessment to inform its views on the regulatory impact of the PF-TFS FATF obligations on DNFBPs.

Thank you for the opportunity to make a submission.

Yours sincerely

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