

Select Committee on the Perth Mint and Commonwealth regulatory compliance

Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

1. The Perth Mint admits the failure to report 3,322 International Funds Transfer instruction (IFTI) as per the requirements of The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and as identified during AUSTRAC’s investigation.
- Is this figure of 3,322 International Funds Transfer Instruction (IFTI) breaches limited and can you advise the actual time period of when these breaches occurred in?
2. Is it the case that the “reported” 3,322 breaches only refers to a limited sample of transaction scenarios? Is that correct, if it is, could there be additional breaches?
- If yes, please provide all information on all additional breaches?
3. Would you agree that the AUSTRAC investigation into the AML/CTF breaches does not establish the full quantum of breaches to which the Perth Mint may have been involved in because these periods were not reviewed by AUSTRAC?
4. Was any other period of transaction activity assessed by AUSTRAC that is not subject to the data referenced to and which underpins the Enforceable Undertaking?
- If yes, please provide that data.
5. Is it the case that the AUSTRAC investigation did not include Suspicious Matter Reports (SMRs) & Threshold Transaction Reports (TTR) under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the same period as the International Funds Transfer instruction (IFTI) breaches that have been declared?
6. Were any Suspicious Matter Reports (SMR) or Threshold Transaction Reports (TTR) breaches identified and were they reported?
- If yes how and when?
14. How many *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* AML/CTF Act Suspicious Matter Reports (SMRs) has the Perth Mint reported since 2010?
15. How many Financial Transactions Reports Act (FTRA) Suspect Transaction Reports (SUSTRs) has the Perth Mint reported since 2010?
36. How many incidents (value and dollars included) of money laundering has AUSTRAC established that have occurred involving the Perth Mint during the entirety of its investigation into the Perth Mint for the purpose of the investigation which underpins the Enforceable Undertaking?

The responses to the Senator’s questions are:

1. The enforceable undertaking provides the detail AUSTRAC is able to make public about the outcome of our regulatory engagements with Perth Mint. This is to ensure sensitive

investigative processes and potential vulnerabilities in Gold Corporation's systems are not compromised.

Paragraph 11 of the enforceable undertaking sets out AUSTRAC's summary of the external auditor's findings, which includes the auditor's finding that the Gold Corporation designated business group (DBG) failed to report 3,322 international funds transfer instructions (IFTIs) to AUSTRAC.

Paragraph 12 of the enforceable undertaking sets out AUSTRAC's concerns that the Gold Corporation DBG may have failed to comply with section 45 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) relating to its IFTI reporting obligations, and other provisions of the AML/CTF Act.

2. See response to question 1.
3. All AUSTRAC's compliance assessments are conducted as a point-in-time assessment and do not consider the entire period in which a business has been operating under the legislation. The enforceable undertaking provides the detail AUSTRAC is able to make public about the outcome of our regulatory engagements with Perth Mint. This is to ensure sensitive investigative processes and potential vulnerabilities in Gold Corporation's systems are not compromised.
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14. Since 1 January 2010, Gold Corporation has submitted 347 SMRs.
15. Since 1 January 2010 Gold Corporation has submitted no SUSTRs under the FTR Act, as it has submitted suspicious matter reports under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.
36. Criminal investigations for money laundering are the responsibility of the Australian Federal Police and state and territory police.

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Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

7. What is the statute of limitations for AUSTRAC civil enforcement orders?
8. What is the statute of limitations for criminal proceedings under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)?
11. Is it the case that the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) was Australia's response to the Financial Action Taskforce Recommendations on anti-money laundering and counter terrorism financing?
12. Is it the intention of the AML/CTF Act to provide additional rigor with regards to designated services?

The responses to the Senator's questions are:

7. Proceedings for a civil penalty order may be started no later than 6 years after the contravention, as per section 178 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.
8. Where the maximum penalty that may be imposed for an offence under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is, or includes, a term of 6 months or more (for an individual), or a fine of more than 150 penalty units (in the case of a body corporate), there is no statute of limitations and proceedings may be commenced at any time. This includes, for example, where a person provides information or documents to AUSTRAC knowing them to be false or misleading.

Where the maximum penalty that may be imposed for an offence under the AML/CTF Act is less than 6 months (in the case of an individual), or a fine of 150 penalty units or less (in the case of a body corporate), proceedings may be commenced at any time within one year after the commission of the offence. This includes, for example, where a person fails to answer questions or produce documents to AUSTRAC upon entering premises in certain circumstances.

11. The Attorney-General's Department is the policy lead on anti-money laundering and counter-terrorism financing and administers the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Questions on the policy intent of the AML/CTF Act should be referred to the department. However, AUSTRAC notes that the explanatory memorandum to the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 provides:

The Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Bill (the Bill) forms part of a legislative package that will implement the first tranche of reforms to Australia's AML/CTF regulatory regime. The reforms are a major step in bringing Australia into line with international best practice to deter money laundering and terrorism financing that includes standards set by the Financial Action Task Force (FATF).

12. The designated services set out in section 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) determine the scope of regulation under Australia's AML/CTF regime. Any person that provides a designated service to a customer is a reporting entity for the purposes of the AML/CTF Act, and is subject to AML/CTF compliance and reporting obligations, and supervision and monitoring by AUSTRAC. Designated services capture financial services, bullion dealing services and gambling services. This service-based approach to regulation captures businesses according to the nature of the services they provide, rather than the nature of the business that provides that service. This means businesses cannot evade AML/CTF regulation by changing the way they characterise the nature of their business.

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Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

9. Has AUSTRAC considered breaches under any of the “fail to” provisions of the *Financial Transaction Reports Act 1988* with regards to non-compliance of Designated Service reporting under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)?
10. Does AUSTRAC believe that the Financial Transactions [sic] Reports Act (FTRA) still apply in situations not captured by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)?
13. Does the Financial Transactions [sic] Reports Act (FTRA) still apply to organisations that have not engaged the safe harbour of reporting subject to the AML/CTF requirements?

The responses to the Senator’s questions are:

9. No, AUSTRAC’s assessment and appointment of an external auditor considered regulatory obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.
10. Yes. There is a limited number of businesses that continue to report under the *Financial Transaction Reports Act 1988* (FTR Act) since the commencement of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). However, the AML/CTF Act established a more comprehensive regulatory regime, and amended the FTR Act so that where a regulated entity complies with AML/CTF Act reporting obligations, any equivalent FTR Act obligation would not apply.
13. A business that is regulated as a ‘cash dealer’ under the *Financial Transaction Reports Act 1988* (FTR Act) and a ‘reporting entity’ under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is not required to duplicate reporting across the two legislative regimes. For example, if such a business submits a suspicious matter report to AUSTRAC in compliance with the AML/CTF Act, the FTR Act exempts the business from the obligation to also submit a suspect transaction report under the FTR Act in relation to the same transaction. However, a business regulated as a reporting entity that has an obligation to report to AUSTRAC under the AML/CTF Act, cannot choose to report under the FTR Act as a cash dealer instead. The business must report under the AML/CTF Act.

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Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

16. Did AUSTRAC participate in Operation Atlantis as part of an international taskforce into money laundering and tax evasion?
 - If yes, were any of the entities subject to AML/CTF actions including but not limited to the Perth Mint, Westpac, and Crown?
17. Was the AUSTRAC TargIT intelligence and transaction monitoring system used to entities regarded as priority targets?
18. Is it the case when an external authority, such as the US Internal Revenue Service, Securities and Exchange Commission, Department of Justice, etc identify a suspicious counterparty they are established with flags in AUSTRAC's alert and monitoring systems?
19. Was Euro Pacific Bank identified as a priority target for money laundering investigations?
 - If yes, what action did AUSTRAC take to advise relevant stakeholders and was any other action taken?
 - If no, why not and was any other action taken?
20. Was the Bank of Cyprus identified as a priority target for money laundering investigations?
 - If yes, what action did AUSTRAC take to advise relevant stakeholders?
 - If no, why not and was any other action taken?
21. Did this program identify Swiss BFI Consulting as a priority target for money laundering investigations?
 - If yes, what action did AUSTRAC take to advise relevant stakeholders.
 - If no, why not?
22. In your answer at the last inquiry hearing AUSTRAC mentioned a number of enforcement actions but did not mention Westpac.
 - How many breaches was Westpac involved in?
 - What was the penalty given to Westpac?
23. In AUSTRAC's answer at the last inquiry when you mentioned a number of enforcement actions but not Crown.
 - How many breaches was Crown involved in?
 - What was the penalty given to Crown?
25. Is part of the reason for the record penalty handed to Westpac due, to a significant degree, to the correspondent account facilities which were operated by Westpac with Euro Pacific Bank and the Bank of Cyprus?
26. Is part of the reason for the record penalty handed to Crown was due, to a significant degree, to the correspondent account facilities which were operated by Crown with Euro Pacific Bank and Bank of Cyprus?

27. Did TargIT identify commonality between the entities that were subject of the investigation including but not limited to Euro Pacific Bank, Bank of Cyprus, and BFI Consulting?
- Did AUSTRAC find any nexus or commonality points in Australia or overseas (both people and entities) involved with Crown, Westpac, and the Perth Mint?
28. Did AUSTRAC treat the Westpac, Crown and Perth Mint investigation in silos and separate to each other or did it consider the possibility that there was an overarching and coordinated effort at the Perth Mint?
- Please explain the answer.
29. Did the US investigation into Operation Atlantis find and chart all linked transactions and association between their investigation targets and Westpac, Crown, and the Perth Mint?

The responses to the Senator's questions are:

16. AUSTRAC, as a member of the Australian Taxation Office-led Serious Financial Crime Taskforce, provided support to member agencies on Operation Atlantis. Operation Atlantis included a globally-coordinated day of action in January 2020, to stop suspected facilitation of offshore tax evasion. Tax evasion or tax crime is a predicate offence for money laundering. For reasons outlined at pages 9 and 10 of our written submission to this Inquiry, AUSTRAC is not able to comment on anti-money laundering and counter-terrorism financing actions with any more detail than what has been publicly submitted regarding Perth Mint, Westpac and Crown.
17. AUSTRAC does not comment on intelligence matters, including targets or current systems. For correctness, TargIT is an obsolete system and was replaced in 2019 by capabilities in a contemporary intelligence appliance.
18. AUSTRAC makes independent decisions regarding our targeting and monitoring, in line with our legislated mandate and endorsed intelligence priorities.
19. The Australian Taxation Office-led Serious Financial Crime Taskforce (SFCT) started to consider Euro Pacific Bank in mid-2018. AUSTRAC provided support through the SFCT. Euro Pacific Bank is a foreign financial institution with no physical presence in Australia and is not regulated by AUSTRAC. AUSTRAC is not able to provide any more detail beyond what has been provided in evidence by the SFCT on any operational investigations.
20. Bank of Cyprus is a foreign financial institution with no physical presence in Australia and is not regulated by AUSTRAC. AUSTRAC is unable to comment on whether it is a target for money laundering investigations.
21. Swiss BFI Consulting is a foreign institution with no physical presence in Australia and is not regulated by AUSTRAC. AUSTRAC is unable to comment on whether it is a target for money laundering investigations.
22. Refer to the table below for a breakdown of Westpac's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) breaches. The Federal Court ordered that Westpac pay a penalty of \$1.3 billion.

AML/CTF Act	Contravention	No. of contraventions
subsection 45(2)	Failing to give reports of 19,502,841 international funds transfer instructions (IFTIs) to the AUSTRAC CEO within the time frame specified by s45(2) of the Act	19,502,841
subsection 45(2)	Failing to give 76,144 IFTIs to the AUSTRAC CEO that contained payer names, as required by s45(2) of the Act	76,144
paragraph 64(7)(f)	Failing to pass on some or all of the required transfer information within the meaning of s70 of the Act to another institution in relation to 8,140 IFTIs	8,140
subsection 64(6)	Failing to pass on complete payer information to another institution in relation to 2,400 IFTIs	2,400
subsection 115(2)	Failing to retain for seven years records of so much of the required transfer information	3,516,238
subsection 98(1)	Failing to comply with s98 of the Act in relation to the preliminary risk assessments and due diligence assessments undertaken in respect of its correspondent banking relationships	48
subsection 98(2)	Failing to comply with s98 of the Act in relation to the preliminary risk assessments and due diligence assessments undertaken in respect of its correspondent banking relationships	48
subsection 81(1)	Contravened s81(1) of the Act on each occasion it commenced to provide a designated service to a customer from 20 November 2013 to 20 November 2019	Too many to be reasonably estimated
subsection 36(1)	Failing to conduct appropriate ongoing customer due diligence in relation to 262 customers	262

23. Refer to the table below for a breakdown of Crown Melbourne and Crown Perth's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) breaches. The Federal Court ordered that Crown Melbourne and Crown Perth pay a combined penalty of \$450 million payable by instalments over two years.

AML/CTF Act	Contravention	No. of contraventions
Joint program		
subsection 81(1)	Contravened s81(1) of the Act on each occasion it commenced to provide a designated service to a customer from 1 March 2016 to 1 November 2020	Too many to be reasonably estimated
Crown Melbourne		
subsection 36(1)	Failing to monitor 380 customers in relation to the provision of designated service	380
Crown Perth		
subsection 36(1)	Failing to monitor 166 customers in relation to the provision of designated service	166

25. AUSTRAC is unable to comment on the Westpac matter with any more detail than what was submitted to the court in that matter. Neither the Bank of Cyprus, nor Euro Pacific Bank, are identified in the Federal Court's judgement in the Westpac matter.
26. AUSTRAC is unable to comment on the Crown matter with any more detail than what was submitted to the court in that matter. Neither the Bank of Cyprus, nor Euro Pacific Bank, are identified in the Federal Court's judgement in the Crown matter.
27. AUSTRAC is not able to provide any more detail beyond what has been provided in evidence by the Australian Taxation Office-led Serious Financial Crime Taskforce on any operational investigations.
28. AUSTRAC's investigations into Westpac and Crown, and supervisory activity with respect to Perth Mint, were separate matters and treated as such. All reporting entities are subject to the provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and Rules. There is often, to some extent, a degree of thematic crossover in matters under investigation or connections between parties. AUSTRAC is otherwise unable to comment on the specifics of investigations or supervisory engagements.
29. AUSTRAC is not able to comment on investigations undertaken by a foreign agency.

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Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

24. Would you agree that in the case of partner banks and correspondent account institution partners, that a much higher level of due diligence should be applied than that of a basic individual customer?
41. What is AUSTRAC's position on bullion dealers not undertaking their own Know your Customer (KYC) requirements, instead relying on external institutions to conduct their own (KYC) checks including the Bank of Cyprus and Euro Pacific Bank?
42. What are the potential money laundering consequences of the Perth Mint not undertaking adequate KYC checks?
43. Does it concern AUSTRAC that the Perth Mint continues to have insufficient information on the identity of many of its customers?

The responses to the Senator's questions are:

24. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and AML/CTF Rules require regulated businesses to consider the risk posed by the types of customers they have. Individual and non-individual customers can both pose a high risk, which will lead a regulated business to undertake further due diligence.
41. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* enables identification procedures to be undertaken by a third party on behalf of the regulated business. Where such arrangements are in place, the legislation requires the entity to undertake regular assessments of the arrangement, to ensure that the third party is continuing to meet requirements.
42. Not undertaking adequate 'know your customer' checks may expose a business to criminal exploitation and regulatory action.
43. 'Know your customer' (KYC) is an important *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* obligation. Not having sufficient information may expose regulated businesses to criminal exploitation. The enforceable undertaking accepted by AUSTRAC identifies these concerns and incorporates processes for Perth Mint to remediate issues relating to its KYC obligations.

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Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

30. GoldPass tokens PMGT were issued on the Ethereum Crypto network. These tokens underpinned the issuing of the GoldPass certificates?
 - a. Does it concern AUSTRAC that the Perth Mint operated a Digital Currency Exchange that was not registered with AUSTRAC as a Digital Currency Exchange Provider (DCE) or further as a Remittance Dealer as it is lawfully required to do so?
 - Please explain your response.
 - b. Unless counterparty details are recorded by a regulator or some other trusted third party then the Ethereum platform can exchange token/s anonymously.
 - Is this correct?
31. Did AUSTRAC consider that the GoldPass product could be exchanged anonymously with a gold backed security?
 - a. Did AUSTRAC inquire into what the intention of the program was at its inception and what market analysis and research was done before the project was approved?
 - Please explain your answer.
32. Were Ethereum transactions captured by AUSTRAC as early as 2018?
 - If yes, please explain the implications of that data capture.
33. Is it correct that the only way an Ethereum transaction is captured for Financial Intelligence Unit (FIU) data is if the facility is registered as a Remittance Dealer and a Digital Currency Exchange with AUSTRAC?
 - Is that correct?
34. Does AUSTRAC know who did the market opportunity and risk assessment for GoldPass?
 - If yes, who was it?
35. Does AUSTRAC have a copy of any of the market opportunity and risk assessments for GoldPass?
 - If yes, please provide a copy of that report.
44. Did the Introduction of the GoldPass App and the ease at which customers could sign up create further risks for money laundering and non-compliance with AML/CTF rules?
45. Did any Australian bank or financial institution receive deposits into the Perth Mint's GoldPass account in Perth?

The responses to the Senator's questions are:

30. a. The designated services set out in section 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) determine the scope of regulation under

Australia's AML/CTF regime. Any person that provides a designated service to a customer is a reporting entity for the purposes of the AML/CTF Act, and is subject to AML/CTF compliance and reporting obligations, and supervision and monitoring by AUSTRAC. The enforceable undertaking at paragraph 8 outlines the disclosure made by Gold Corporation in relation to the provision of a remittance service. The enforceable undertaking provides the detail AUSTRAC is able to make public about the outcome of our regulatory engagements with Perth Mint.

- b. The AML/CTF Act provides for the reporting of certain transactions to AUSTRAC, including threshold transaction reports involving \$10,000 in physical currency, international funds transfer instruction reports and suspicious matter reports. AUSTRAC does not comment on intelligence capabilities.
31. The enforceable undertaking provides the detail AUSTRAC is able to make public about the outcome of our regulatory engagements with Perth Mint. This is to ensure sensitive investigative processes and potential vulnerabilities in Gold Corporation's systems are not compromised.
 - a. See above answer.
32. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* regulates the provision of designated services and not the underlying currency. In relation to digital currencies, the designated service relates to the exchange of digital currency for money, or money for digital currency.
33. As Australia's financial intelligence unit, AUSTRAC provides the highest level of protection and security to information and intelligence. AUSTRAC does not comment on intelligence capabilities.
34. AUSTRAC is not aware of who did the market opportunity for GoldPass. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* requires regulated businesses to identify, mitigate and manage the risk of the designated services that they provide, including taking into account any risks involved in a mode or channel of delivery.
35. No, AUSTRAC does not have a copy of any market opportunity of GoldPass. The enforceable undertaking provides the detail AUSTRAC is able to make public about the outcome of our regulatory engagements with Perth Mint.
44. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* requires regulated businesses to identify, mitigate and manage the risk of the designated services they provide, including taking into account any risks involved in a mode or channel of delivery.
45. AUSTRAC is not made aware of every transaction conducted. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* provides for the reporting of certain transactions to AUSTRAC, including threshold transaction reports involving \$10,000 in physical currency, international funds transfer instruction reports and suspicious matter reports.

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Questions on notice – AUSTRAC

Senator Reynolds asked AUSTRAC the following questions on **6 February 2024**:

37. Is AUSTRAC aware of any Gold Corporation (Perth Mint) or executives declaring an interest in Trovio or InfiniGold?
38. Is AUSTRAC aware of any relationships that existed between Peter Schiff and Gold Corp Directors, paid advisors, and consultants?
- If yes, please outline the relationship.
39. At the Perth Mint hearing on Friday the 3rd of November 2023 Minister Johnston stated the following according to Hansard of the proceedings “*Mr Johnston: We store gold for foreign citizens, **but we don't store it overseas**. It's in the annual report of Gold Corp. We've got five Reserve Bank quality vaults. The Auditor General actually did a hard count—I don't know if she said that this morning, but she's actually done a hard count of all the gold holding, and all the gold's there. So all those tin-hat people who say—*”
- Is it AUSTRAC’s understanding that the Perth Mint does not physically hold Gold Bullion overseas?
40. What is AUSTRAC’s understanding of the identity and role of Perth Mint’s overseas gold distributors?

The responses to the Senator’s questions are:

37. No, AUSTRAC’s regulatory engagement focused upon compliance with anti-money laundering and counter-terrorism financing obligations.
38. No, AUSTRAC’s regulatory engagement focused upon compliance with anti-money laundering and counter-terrorism financing obligations.
39. AUSTRAC cannot respond to this question. The anti-money laundering and counter-terrorism financing obligations in relation to bullion services relate to buying and selling, not storage.
40. AUSTRAC cannot respond to this question. The anti-money laundering and counter-terrorism financing obligations and regulatory oversight do not extend to offshore distributors.