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AUSTRALIAN FEDERAL POLICE**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Economics Reference Committee on
Foreign Investment Proposals

QoN Number: 1

Subject: Record keeping of referrals to the AFP

Asked by: Senator O'NEILL

Question:

Mr Ryan: If I can assist: in the last 12 months, there have been no referrals of breaches of the FATA from Treasury or the ATO.....

Senator O'NEILL: One of the concerns I have expressed in the course of the day is what has been revealed to this committee, when we've asked question on notice of Treasury, in terms of an absence of data. You've just given Senator Patrick evidence that there have been no referrals for you to consider in the last financial year. Is that correct?

Mr Ryan: That's correct.

Senator O'NEILL: How many years do we have to go back before we find a referral?

Mr Ryan: We don't have any data on that, but, anecdotally, there have been no referrals in the last three to five years.

Senator O'NEILL: Are we relying on anecdote because there is no record keeping about these matters?

Mr Ryan: That's something we'd have to take on notice.

Answer:

The AFP maintains records of all matters referred across a variety of systems depending security classification and legal requirements.

One matter was referred by the ATO to the Criminal Assets Confiscation Taskforce (CACT) within the AFP in 2016, under a previous version of the *Foreign Acquisitions and Takeovers Act 1975*.

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Economics Reference Committee on
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QoN Number: 2

Subject: Reporting requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and example of money laundering through real estate

Asked by: Senator WHISH-WILSON

Question:

Senator WHISH-WILSON: I could understand that perhaps from the real estate agent's point of view, but you're saying that, for the lawyers and the accountants setting up these structures, some of them may not be aware that laundered money is being used.

Mr Jerga: Look, even in the real estate context, unless somebody is bold enough to put a pile of cash on your desk and say, 'I want to buy the property with cash,' a lot of other indicators might not be that obvious. One thing, just in terms of our powers under the Proceeds of Crime Act, is that we do have the power to coercively examine parties. In civil proceedings, as I noted—that is, there's no right to silence. So where we restrain assets and we're interested in answers from professional facilitators, whether there's any suggestion of any wrongdoing by them or otherwise, we will bring them in for examination and ask questions. That's a very powerful tool for us in our proceedings.

Senator WHISH-WILSON: Can I ask if you'll be doing that in relation to this particular case?

Mr Jerga: Look, this is probably at the point—and, hopefully, you've found me reasonably forthcoming to date—

Senator WHISH-WILSON: I have. Indeed.

Mr Jerga: This matter is very much going through the courts. There's plenty happening. I wouldn't like to say anything further.

Senator WHISH-WILSON: This bust was obviously high profile and made the news. Can you give the committee an indication of—we're just trying to get an idea of where, for example, the reporting requirements that we've got in place under the AML/CTF laws are working — whether there have been any other examples of money laundering through real estate that you have caught or been able to catch through the broader networks? You could provide this on notice.

Mr Jerga: We'll take that on notice.

Answer:

Money laundering offences are one of the most common offences relied on to ground proceeds of crime action. This reflects that the nature of proceeds of crime investigations involve finding and following money derived from offending. As such, any dealing with the proceeds of crime, such as the transfer of funds or the purchase of real property, will usually constitute the commission of a money laundering offence even if the intention behind the transfer or purchase is not about concealing the origins of the funds.

Real estate is one of the most common forms of assets targeted by the Australian Federal Police (AFP) led Criminal Assets Confiscation Taskforce (CACT), in matters involving both Australian and foreign nationals. The CACT does not keep statistics in relation to the percentage of its matters that involve domestic or commercial real estate, though this is considerable. However, a review of the fifteen mutual assistance matters that are currently being progressed by the CACT show that ten of those matters involve the restraint of real property or funds derived from the sale of real property. Further, of the approximately \$264 million in criminal assets restrained by the CACT during FY 2019-20, some 52% (or approximately \$137 million) was domestic or overseas real estate.

Matters referred to the CACT are identified from a broad range of sources including criminal investigations conducted by the AFP, other Commonwealth, State or overseas agencies, non-governmental organisations or other concerned citizens. Below is a case study that shows a matter involving real estate property that has recently been litigated.

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QoN Number: 3

Subject: Briefing note from the East Coast Alliance (ECA) regarding concerns over property development in Tasmania

Asked by: Senator WHISH-WILSON

Question:

Senator WHISH-WILSON: ...My final question is in relation to Operation Gethen. Can you take on notice whether the AFP has received a briefing note from a community organisation in Tasmania called ECA, or East Coast Alliance. I understand they sent a brief to the Federal Police, AUSTRAC, ASIC and the ATO, outlining their concerns about the individuals involved in the operation of the company and the structures that were in place at that time—some of them are still involved in property development in Tasmania. The brief went into quite a bit of detail about those concerns. Could you take on notice whether you've received that and whether you're acting on it? Also, do you often get tip-offs from people bringing these kinds of things to your attention?

Mr Jerga: We will take that on notice. In relation to your latter point, our information sources, which lead to us conducting our proceeds work or even criminal investigations, come from domestic and overseas partners, but we'd always welcome tip-offs from members of the public and the community, if they have knowledge of suspected wrongdoing and criminality in this space.

Answer:

The AFP can confirm that it received the East Coast Alliance Briefing Note on 4 May 2020. An initial review of the contents of those documents has been undertaken. At this stage no significant new investigative avenues of enquiry have been identified based on those documents.

The AFP accepts referrals and information from a wide variety of sources ranging from formal governmental agencies to non-government agencies and members of the public. Encouraging the provision of relevant information to the AFP is a regular aspect of AFP media releases and community engagement.

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QoN Number: 4

Subject: Chow Tak Fook's purchase of Alinta Energy

Asked by: Senator O'NEILL

Question:

Senator O'NEILL: You may be aware of some of my questioning of the Treasury department, in the course of this inquiry, about Chow Tak Fook's purchase of Alinta Energy. We've spoken a little bit about money laundering, character tests and people not being allowed to invest in Australia. Did the AFP assist Treasury in analysing Dr Henry Cheng's suitability and character as a person fit to invest in Australia? Were you aware of his business connections with the Ho family, who failed the national interest test? What's your interaction with Treasury on these matters?

Mr Jerga: We would need to take that specific example on notice.

Senator O'NEILL: You weren't aware of that matter when you came to the hearing today?

Mr Jerga: As we noted earlier, we receive many hundreds of requests. That is not one that I'm specifically aware of. Others in the organisation will be able to tell us the answer to your question, if we could take that on notice.

Answer:

The AFP may be consulted by the Foreign Investment Review Board (FIRB) as part of the screening process for foreign investment proposals. The Department of the Treasury may refer a matter to law enforcement (including the AFP), where a proposal raises potential criminal risks, including money laundering.

The AFP's role is limited to providing advice on whether an applicant has been convicted of a Commonwealth criminal offence, or is a suspect in an AFP investigation.

There is no record of the AFP receiving the FIRB Consultation request for Alinta Energy.

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QoN Number: 5

Subject: *Foreign investment reforms June 2020.*

Asked by: Senator O'NEILL

Question:

Mr McCartney: As I noted in my opening statement, our working relationship with AUSTRAC is hand in glove. We have AFP officers seconded into AUSTRAC and AUSTRAC officers seconded into the AFP. It is very much a seamless approach and very much a whole-of-government approach, particularly when it comes to money laundering. We have agencies like the ACIC and the Australian Taxation Office, and also have our state and territory partners—

Senator O'NEILL: What about the Treasurer's department, with the people who undertake these assessments and make recommendations to and for the Foreign Investment Review Board, who then give them to the Treasurer to tick off? How intimately are you involved with Treasury?

Mr McCartney: We're not part of FIRB and we don't sit within Treasury. From our perspective, our role is an advisory role. Once referrals are made into the AFP in terms of requests for information they're addressed promptly and that information is provided back into the FIRB arrangements.

Senator O'NEILL: The government put out a document in June, called *Foreign investment reforms June 2020*. It has a commitment from the government to provide draft legislation. Were you consulted as part of the announced reforms?

Mr McCartney: To ensure that we're providing a full and accurate response, we might just take that question on notice and come back to you.

Answer:

Noting that the reforms identified *Foreign Investment Reforms June 2020* document are at the early stages development, the AFP has not yet been consulted by the Department of the Treasury.

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QoN Number: 6

Subject: Foreign investment reforms legislation

Asked by: Senator O'NEILL

Question:

Senator O'NEILL: Have you been engaged in the development of any legislation?

Mr McCartney: We've been engaged in working closely with Home Affairs in relation to improvements to the money-laundering legislation. We have identified opportunities for improvements within that regime. That's an ongoing discussion with the Department of Home Affairs. We're more than happy to provide what our recommendations are on those issues to this committee.

Senator O'NEILL: I think that's in a separate piece of legislation. This is particularly about the foreign investment reforms.

Mr McCartney: Well take on notice our engagement in that piece of legislation.

Answer:

The AFP was consulted in the development of the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019*. The Bill will improve the AFP's and partner agencies ability to combat money laundering by addressing barriers to successful prosecution. The Bill clarifies that the existence of one Commonwealth constitutional connection is sufficient to establish an instrument of crime offence, and deems money or property provided by undercover law enforcement as part of a controlled operation to be proceeds of crime for the purposes of prosecution.

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QoN Number: 7

Subject: Chow Tai Fook

Asked by: Senator O'NEILL

Question:

Senator O'NEILL: If money laundering through gambling were part of the reason that Mr Ho was not acceptable and didn't meet the national interest test, does it concern you that Dr Henry Chen's links to the Ho family weren't sufficient to prevent him from being able to purchase Alinta Energy through his company Chow Tai Fook?

Mr McCartney: As we said, we'll take that on notice so we can provide an accurate and fulsome response to the committee.

Answer:

The Australian Federal Police (AFP) is not responsible for the determination of the suitability or not of the Foreign Investment Review Board (FIRB) applicants or applications.

The AFP may be consulted by the FIRB as part of the screening process for foreign investment proposals. The Department of the Treasury may refer a matter to law enforcement (including the AFP), where a proposal raises potential criminal risks, including money laundering. The AFP's role is limited to providing advice on whether an applicant has been convicted of a Commonwealth criminal offence, or is a suspect in an AFP investigation.

There is no record of AFP receiving a FIRB consultation request for Alinta Energy.

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