Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA

Justice and International Mission Cluster

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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 *Crimes Legislation Amendment (Economic Disruption) Bill 2020*

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The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission on the inquiry into the *Crimes Legislation Amendment (Economic Disruption) Bill 2020.* The Synod requests that the Committee recommend that the Parliament pass the Bill, subject to the Committee being satisfied that Schedule 3 will not result in unjustified hardship on innocent third parties.

> *"Developing countries lose between US$20 to US$40 billion each year through bribery, misappropriation of funds, and other corrupt practices. Much of the proceeds of corruption find "safe haven" in the world's financial centers. These criminal flows are a drain on social services and economic development programs, contributing to the further impoverishment of the world's poorest countries. The victims include children in need of education, patients in need of treatment, and all members of society who contribute their fair share and deserve assurance that public funds are being used to improve their lives."*
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> Yury Fedotov, Executive Director of UNODC and Ngozi N. Okonjo-Iweala, Managing Director of the World Bank, Preface to Asset Recovery Handbook

The Synod has taken a long interest in the need to reduce money laundering in Australia and globally. Corruption and money laundering do 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.

Successive Australian Governments have signed up to international standards committing to assist with global efforts to recover stolen assets shifted across borders. Those international promises mean the Australian Parliament needs to put in place anti-money laundering and proceeds of crime laws that are fit-for-purpose. For example, Article 51 of the UN Convention Against Corruption states:

> *The return of assets pursuant to this chapter is a fundamental principle of this Convention, and State Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

Australia is a party to the UN Convention Against Corruption.

Point 25 of the 2015 Addis Ababa Action Agenda on Financing for Development agreed to by governments committed to:

> *We urge all countries that have not yet done so to ratify and accede to the United Nations Convention against Corruption and encourage parties to review its implementation. We commit to making the Convention an effective instrument to deter, detect, prevent and counter corruption and bribery, prosecute those involved in corrupt activities, and recover and return stolen assets to their country of origin. We encourage the international community to develop good practices on asset return. We support the Stolen Asset Recovery Initiative of the United Nations and the World Bank, and other international initiatives that support the recovery of stolen assets. We further urge that regional conventions against corruption be updated and ratified. We will strive to eliminate safe havens that create incentives for transfer abroad of stolen assets and illicit financial flows. We will work to strengthen regulatory frameworks at all levels to further increase transparency and accountability of financial institutions and the corporate sector, as well as public administrations. We will strengthen international cooperation and national institutions to combat money-laundering and financing of terrorism.*

Governments have continued to recognise that addressing money laundering and recovering and returning stolen assets are essential to addressing global poverty and promoting inclusive development. For example, Sustainable Development Goal Target 16.4 states:

> *By 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organised crime.*

The interim report that has just been released by the Financial Accountability Transparency and Integrity (FACTI) Panel found:[1]

> *Cooperation on confiscating and returning the proceeds of corruption is far from effective. The process remains extremely burdensome and lengthy for countries that saw their resources drained – especially those that are seeking to recover assets stolen by formerly entrenched kleptocratic rulers.*

They recommended that "Returning resources to countries that are victims of corruption should be more transparent, easier and faster, while still maintaining integrity."[2] In response, the Australian Parliament should make sure that our proceeds of crime laws do not allow those who have stolen assets and shifted them across borders into Australia to unreasonably delay the confiscation and return of the assets.

Australia is home to stolen assets shifted across borders. The Synod notes that the Australian Federal Police reported that they had restrained more than $250 million in criminal assets in courts across Australia and overseas in the 2019 – 2020 financial year.[3] They noted that the criminal assets took many forms:

- Residential properties;
- Commercial properties;
- Rural land;
- Luxury cars;
- Boats;
- Ban accounts;
- Cash;
- Cryptocurrency;
- High-end jewellery; and
- Luxury goods.

The restrained assets were linked to money laundering, drug trafficking, illicit tobacco, identity crime, tax crime and corporation offences.

Australian law currently makes the restraint and confiscation of proceeds of crime difficult for law enforcement agencies. The AFP pointed out that one case successfully prosecuted in 2018 had taken 17 years.[4]

As an example of another case, the Australian Federal Police announced on 4 September 2020 they had restrained $1.6 million in assets as part of an investigation into alleged bribery of Malaysian Government officials by a Melbourne man.[5]

The AFP alleges that the Melbourne man paid Malaysian officials $4.75 million in bribes in exchange for them to purchase his property developments in Melbourne.[6] It is alleged that the accused acquired three properties around a university campus in Caulfield East and developed them into student hostels through his associated companies. Upon completion of the

[1] Financial Accountability Transparency and Integrity Panel, 'FACTI Panel Interim Report', September 2020, ix.
[2] Ibid., ix.
[3] Australian Federal Police, '$250 million in criminal assets restrained by the AFP', Media Release, 27 August 2020.
[4] Ibid.
[5] Australian Federal Police, '$1.6 million in assets restrained in connection to alleged Malaysian official bribery investigation', Media Release, 4 September 2020.
[6] Ibid.

development in 2013, the property price of the student hostel was allegedly inflated from $17.85 million to $22.6 million and sold to a Malaysian government-owned entity.[7]

The AFP-led Criminal Assets Confiscation Taskforce obtained restraining orders over two real estate properties in Victoria, each owned by the accused's wife and company in which she is the sole director. Bank accounts held by the accused's wife and accused's associated companies were also restrained.[8]

The Age reported that the alleged victims of the crime were impoverished rural Malaysians. They were meant to benefit from the funds held by the Malaysian government-owned agency that purchased the student hostel.[9]

Data from the Australian Taxation Office has also raised a red flag regarding the likelihood of proceeds of crime are being shifted across borders into Australia. The Commissioner of Taxation provided a report under Section 396-136 of the *Taxation Administration Act 1953* on the reportable account information received from Australian Financial Institutions under the Common Reporting Standard for 2018. Some of the data is suspicious in terms of the number of people, trusts or businesses holding cash in accounts with Australian financial institutions and the average amount per entity being held. Some of these funds may be held by Australian residents who have changed their citizenship to be located in a secrecy jurisdiction. Some jurisdictions facilitate easy transfer of citizenship to assist high net worth individuals aggressively minimise their tax contributions, such as the Cayman Islands golden visas.[10]

Table 1. Amount of funds held by foreign individuals, trusts and businesses in selected jurisdictions in Australian financial institutions as of 31 December 2018.

Jurisdiction	Number of Accounts	Total Balance ($ millions)	Average Balance ($/account)
Marshall Islands	71	386.4	5,442,297
The British Virgin Islands	700	927.7	1,325,258
Tuvalu	140	112.6	804,288
Jersey	954	682.5	715,407
Cayman Islands	2,793	1,764.1	631,613
Bermuda	2,051	1,181.9	576,276
Guernsey	527	275.5	522,697
Belize	156	78.4	502,343
St Kitts and Nevis	191	85.9	449,568
Luxembourg	888	214.6	241,618
Solomon Islands	2,609	144.3	55,321
Papua New Guinea	17,775	636.7	35,817
Cambodia	7,398	197.5	26,701

The Synod supports that the Bill will:

- Make it harder for people laundering significant proceeds of crime to escape penalties that are proportionate to the offences they are involved with.

[7] Ibid.
[8] Ibid.
[9] Nick McKenzie, 'Melbourne property seized in bribery probe', *The Age,* 4 September 2020.
[10] https://best-citizenships.com/2019/05/02/cayman-islands-golden-visa/; https://www.goldenvisas.com/cayman-islands; https://nomadcapitalist.com/2019/04/08/cayman-islands-residency/

- Makes it easier to prosecute those involved with controlling money laundering operations, who have created arrangements to try and put themselves at arms' length from the money laundering.
- Allow the evidence obtained by undercover operatives is considered lawfully obtained, even though the undercover officer did not comply with Part IC procedures that would otherwise require the officer to caution a person who is under arrest or who is a protected suspect before starting to question the person.
- Ensure that buy-back orders under the *Proceeds of Crime Act* cannot be used by criminals and their associates to buy back property forfeited to the Commonwealth or delay *Proceeds of Crime Act* proceedings.
- Clarify that the *Proceeds of Crime Act* permits courts to make orders confiscating the value of a debt, loss or liability that has been avoided, deferred or reduced through criminal offending through the amendments in Schedule 4.
- Ensure that orders made by a court with proceeds jurisdiction under the *Proceeds of Crime Act* can be made in respect of property located overseas through the amendments introduced by Schedule 5.
- Strengthen the information-gathering powers under the *Proceeds of Crime Act* by increasing penalties for non-compliance and clarifying the circumstances in which information gathered under these powers can be disclosed.

Under Schedule 1, the Synod supports the prosecution being able to combine two or more occasions of alleged money laundering activity to calculate whether the money of property was collectively valued at $100,000 or more. The measure will help ensure that a person cannot avoid criminal liability by structuring their conduct, so it relates to multiple tranches of money or other property under the $100,000 threshold.

The Synod supports the definition of 'proceeds of general crime' contained in Schedule 1, to make it harder for proceeds of crime to be laundered in Australia through arrangements that seek to conceal the specific source of the proceeds of crime. The Synod also supports that 'proceeds of general crime' offences should have the same extra-territorial reach as existing 'proceeds of indictable crime' offences. The extra-territorial reach is vital given the extensive reliance money launderers place on cross-border transactions.

The Synod supports the reform in the Bill to address the loophole identified by *Singh v the Queen* [2016] VSCA 163. The ability to rely on the partial exemption should only apply where the person maintained a mistaken, but reasonable, belief as to the value of money or other property for the duration of the entire dealing or conduct. It should not apply where the person became aware of their initial belief that the value was incorrect.

The Synod supports the Bill providing the same penalty to individuals who commit an offence in a controlled operation as those who deal with actual proceeds of crime. The harm caused the money laundering, through ensuring the profitability of the underlying crimes, justifies the equality of penalty.

Under Schedule 3, the Synod is concerned with the definition of a person being a 'suspect' may be too broad. Our concern is that innocent third parties may be excluded from buy-back orders. We accept the intention is to prevent criminal associates of the person from being about to apply for a buy-back order. The Synod is unclear how a court will determine that a person is legitimately suspected of having committed an offence. The Synod suggests that the Committee seek clarification on this point to ensure that innocent third parties will not be placed in unnecessary hardship by this provision.

The Synod agrees with the intention of the Bill to ensure that proceeds of crime cannot be used in a buy-back of a confiscated asset.

The Synod supports Part 2 of Schedules 4 and 5 of the Bill to ensure the proper functioning of the *Proceeds of Crime Act* to existing and pending cases.

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