

## **Select Committee on the Perth Mint and Commonwealth regulatory compliance**

The Committee asked AUSTRAC the following question on **27 July 2023**:

**CHAIR:** Are you confident that matters were raised with the risk and audit committee of the board?

**Mr Brown:** That may well be within that entire bundle of correspondence and information that we have. I would have to consider that and take that one on notice.

**CHAIR:** On notice, if you could. If you could confirm your evidence, that there was no engagement between AUSTRAC and the board and/or the chairman of the board, and what, if any, level of engagement interaction there was between AUSTRAC and members of the risk and audit committee of the board, and whether or not any AUSTRAC officials were given commitments or understandings that the matters that AUSTRAC was raising with the CEO had been relayed to members of the board, and, in particular, the risk and audit committee of the board.

**Mr Brown:** Thank you, I'll take that on notice.

### **The response to the Committee's question is:**

The Perth Mint CEO is a member of the Perth Mint Board. The Perth Mint CEO was present at a meeting between AUSTRAC and Perth Mint on 16 June 2022 to discuss the outcomes of AUSTRAC's compliance assessment. In that meeting the Perth Mint CEO indicated that AUSTRAC's compliance assessment report would be shared with the Perth Mint Board.

Perth Mint informed AUSTRAC that on 8 August 2022 the Perth Mint Audit and Risk Management Committee reviewed and endorsed Perth Mint's anti-money laundering and counter-terrorism financing remediation program update.

Perth Mint informed AUSTRAC that on 24 August 2022 the Perth Mint Board attended a workshop focused on Perth Mint's compliance obligations and remediation.

AUSTRAC has had no engagement with the Chairman of the Board.

On 15 March 2023 the AUSTRAC CEO met with the Perth Mint CEO.

On 6 July 2023 the Acting AUSTRAC CEO met with the Perth Mint CEO.

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**CHAIR:** To what extent was the Serious Financial Crime Taskforce involved in the Commonwealth Bank and Westpac matters?

**Mr Ford:** We had no involvement in that.

**CHAIR:** Was that purely an AUSTRAC matter?

**Mr Brown:** Yes.

**CHAIR:** Perhaps, on notice, Mr Brown, you could let me know what the milestones were in both the Commonwealth Bank and Westpac matters. I'm particularly keen to understand the length of time it took for that prosecution to be made.

**Mr Brown:** Absolutely.

**CHAIR:** That would be most appreciated.

**The response to the Committee's question is:**

### **Commonwealth Bank of Australia civil penalty proceedings**

On 22 June 2016 AUSTRAC issued its first information-gathering notice to the Commonwealth Bank of Australia (CBA).

On 3 August 2017 the AUSTRAC CEO instituted civil penalty proceedings against CBA for alleged contraventions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

On 4 June 2018 AUSTRAC and CBA agreed to a proposed \$700 million penalty.

On 20 June 2018 the Federal Court of Australia ordered CBA to pay a \$700 million penalty for its contraventions of the AML/CTF Act.

### **Westpac Banking Corporation civil penalty proceedings**

In August 2018 Westpac made a voluntary disclosure to AUSTRAC that at least 23.5 million incoming international funds transfer instruction reports were not reported.

On 23 November 2018 AUSTRAC issued its first information-gathering notice to Westpac.

On 20 November 2019 the AUSTRAC CEO instituted civil penalty proceedings against Westpac for alleged contraventions of the AML/CTF Act.

On 24 September 2020 AUSTRAC and Westpac agreed to a proposed \$1.3 billion penalty.

On 21 October 2020 the Federal Court of Australia ordered Westpac to pay a \$1.3 billion penalty for its contraventions of the AML/CTF Act.

## **Select Committee on the Perth Mint and Commonwealth regulatory compliance**

The Committee asked AUSTRAC the following question on **27 July 2023**:

**Senator STERLE:** Thank you very much. Senator Smith was talking about the Commonwealth and Westpac cases. Help me out here: were they clearly money-laundering cases?

**Mr Brown:** Both the Commonwealth and the Westpac cases are regulatory matters that look at the anti-money-laundering obligations under our legislation, so it's whether the business has, as I described, a program in place that manages and mitigates the risk of the business and the services that it provides being used for money laundering. That is not to say that they themselves are laundering money, but certainly individual persons that bank with those entities could be misusing particular services provided by those institutions to launder money.

**Senator STERLE:** Are those inquiries still ongoing?

**Mr Brown:** No, both of those matters have been finalised in court.

**Senator STERLE:** Good. Were there any cases of money-laundering? I'm not accusing those two banks, but were there cases of their clients laundering money? Is that what came out of the findings?

**Mr Brown:** I think I would have to go back to my colleagues in relation to the significant detail that was in both of those matters. I certainly think that underpinning those particular matters, and the reason why AUSTRAC was focused upon them and took the action we did, was that there was a level of harm and a concern that particular activities had occurred.

### **The response to the Committee's question is:**

AUSTRAC is responsible for ensuring regulated businesses comply with their obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The AUSTRAC CEO can apply to the Federal Court for civil penalties in respect of breaches of regulatory obligations under the AML/CTF Act.

Breaches of regulatory obligations under the AML/CTF Act are a civil, and not criminal, matter.

Criminal investigations for money laundering are the responsibility of the Australian Federal Police and state and territory police.

## Select Committee on the Perth Mint and Commonwealth regulatory compliance

The Committee asked AUSTRAC the following question on **27 July 2023**:

**Senator REYNOLDS:** Mr Brown, I'm not in any way impugning AUSTRAC at all—quite the opposite. If there have been years of systematic board failure and CEO failure that have led to the circumstances that have required an independent audit and review, I can see no incentive whatsoever for the board to reform or for anybody to identify lessons learnt and to take action if there is no accountability for that. If you are the only one that has access to the independent report, where is the accountability to the Western Australian taxpayer, for example, or to the federal taxpayers, who provide the funding for the regulation of this organisation?

**Mr Brown:** Certainly the outcome of our appointment is a public document. The appointment in the first instance is public, so there is naturally consideration of what action AUSTRAC has taken to date. Because the matter is ongoing, I can't say that there won't be other public action that occurs, because some of the possible actions that are open to AUSTRAC would involve other enforcement, which can lead to more public consideration, as in the cases of the Commonwealth Bank, Westpac and the casino.

**Senator REYNOLDS:** I accept that and I understand that. Perhaps in your responses to the questions you've taken on notice, when you're having a look at previous examples, you would be able to provide examples of the sorts of actions that have been taken. Are they primarily relating to systems and processes? Have there been any actions taken to hold boards or senior executives in the organisation accountable? Arguably, that's not your remit, but then who holds them accountable? If it's a public company, as some of these are, and the shareholders never get to see this, there seems to be a lack of transparency—not by you.

**Mr Brown:** There are aspects that definitely fall out of AUSTRAC's remit in terms of director duties et cetera, if any were considered to be appropriate in certain instances. All I can say is that with the outcomes that AUSTRAC has, whether it be the correspondence or the more formal actions, we have absolute expectations that they will go to the highest levels of every organisation which we're involved with, and we know that they do. So there is a matter then of—

**Senator REYNOLDS:** But if it goes to the board—you said the board's failed—and there's no way of actually enforcing it or making it visible or providing accountability, I think human nature is that they're not going to self-flagellate in public when this is a private report.

### The response to the Committee's question is:

AUSTRAC has taken enforcement action against reporting entities who do not comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

AUSTRAC publishes information about its enforcement actions on its website:  
[www.austrac.gov.au/lists-enforcement-actions-taken](http://www.austrac.gov.au/lists-enforcement-actions-taken).

Examples of AUSTRAC's enforcement action outcomes include:

- civil penalty orders:
  - Crown Melbourne Ltd and Burswood Nominees Ltd
  - Westpac Banking Corporation
  - Commonwealth Bank of Australia
  - Tabcorp

- enforceable undertakings:
  - Bank of Queensland Ltd
  - PayPal Australia Pty Ltd
  - Cash Converters
  - ING Bank (Australia) Pty Ltd
  - National Australia Bank Limited
  - Customs House Currency Exchange (Australia) Pty Ltd
  
- infringement notices:
  - State Street Bank and Trust Company
  - Compass Global Holdings Pty Ltd
  - MoneyGram Payment Systems Inc
  
- remedial directions:
  - Australian Military Bank Ltd
  - ClassicBet Pty Ltd.

The above enforcement actions involved AUSTRAC identifying likely contraventions of the AML/CTF Act relating to the reporting entity's systems and processes.

AUSTRAC has not taken action against individual board members or senior executives.

Private class actions, such as shareholder class actions, have also been taken against reporting entities flowing from non-compliance with AML/CTF Act.

ASIC is responsible for administering the *Corporations Act 2001* as it relates to the general duties of directors and company office holders.

## **Select Committee on the Perth Mint and Commonwealth regulatory compliance**

The Committee asked AUSTRAC the following question on **27 July 2023**:

**CHAIR:** How many pages does the report comprise?

**Mr Brown:** I have to say it's approximately—I'm not going to say 'exactly'—160 pages long.

**CHAIR:** Does it contain recommendations?

**Mr Brown:** I would have to take that on notice. I have not personally seen the report or read the report at this time. It was received on Saturday evening.

**CHAIR:** That's an unusual day of the week to receive a report.

**Mr Brown:** It was Perth time.

### **The response to the Committee's question is:**

The independent external audit report submitted to AUSTRAC on 21 July 2023 is 150 pages long. The report contains recommendations in response to matters that AUSTRAC raised in its notice of 30 August 2022.

## **Select Committee on the Perth Mint and Commonwealth regulatory compliance**

The Committee asked AUSTRAC the following question on **27 July 2023**:

**Senator STERLE:** I was trying to pick up on Senator Cox's line of questioning about the software and that sort of stuff. Do you know how long this software has been in use with Gold Corp?

**Mr Brown:** I would have to take that on notice in terms of how long it has actually been in operation.

**Senator STERLE:** Senator Cox said something about 10 years, but there has been ongoing auditing—internal, external and your own—from about 2008 until now. That's 15 years or something—correct?

**Mr Brown:** Yes. I would say that it's ultimately the responsibility of the entity in relation to technical capability. What we will have a look at is whether their systems and processes manage and mitigate the risks that they face.

### **The response to the Committee's question is:**

A reporting entity's compliance with obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) can be supported through the use of a wide variety of systems and software. AUSTRAC assesses reporting entities on their compliance with AML/CTF obligations, rather than the age or appropriateness of specific systems and software.

Where a reporting entity has been subject to findings of non-compliance by AUSTRAC, or other internal or external reviews, it is a matter for that entity to consider whether its systems and software are fit-for-purpose. The reporting entity is best placed to assess whether its systems and software remain current and appropriate in meeting its regulatory obligations.

AUSTRAC does not intervene or influence the reporting entity in making this assessment.

## **Select Committee on the Perth Mint and Commonwealth regulatory compliance**

The Committee asked AUSTRAC the following question on **27 July 2023**:

**CHAIR:** Just to clarify for my purposes, the August 2020 audit was conducted by AUSTRAC?

**Mr Brown:** No, that's an audit that was self-initiated by Perth Mint. Again, it's a requirement within the legislation that a reporting entity will conduct an independent audit at a period of time.

**CHAIR:** On notice, can you advise the dates in advance of the August 2020 audit, when those orders were conducted by Gold Corporation? You would have that information on record, I would have thought.

**Mr Brown:** We can take that on notice.

### **The response to the Committee's question is:**

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) requires that reporting entities have their AML/CTF programs independently and regularly reviewed. How a reporting entity complies with this requirement, including the number of reviews conducted, is a matter for the entity to respond to.

## **Select Committee on the Perth Mint and Commonwealth regulatory compliance**

The Committee asked AUSTRAC the following question on **27 July 2023**:

**CHAIR:** Has AUSTRAC met with any officials of the Western Australian government? Not limited to them, but the Department of Treasury springs to mind.

**Mr Brown:** I have had engagements from approximately October 2021 with the Office of the Auditor-General in Western Australia. I think they—

**CHAIR:** I was going to come to that. You are quite right; I did ask about officials from the government of Western Australia. Sorry for my interruption, Mr Brown.

**Mr Brown:** Officials outside of the WA office of the Auditor-General? No, but I have engaged with the office.

**CHAIR:** And you've had no requests to meet from Department of Treasury officials?

**Mr Brown:** Not from my recollection, no.

**CHAIR:** Perhaps you could take that one on notice. And there were no requests to meet or discuss the matter by relevant ministers of the Western Australian state government who are responsible for Gold Corporation?

**Mr Brown:** Not from my recollection.

**CHAIR:** Take that on notice, to be clear.

### **The response to the Committee's question is:**

On 23 June 2021 AUSTRAC's media team received a call from the office of Western Australia's Minister for Mines and Petroleum, Energy, Hydrogen Industry and Industrial Relations, the Hon Bill Johnston, seeking a briefing on any AUSTRAC investigation into Gold Corporation.

On 28 June 2021 AUSTRAC responded, advising AUSTRAC's approach to regulation and that AUSTRAC was not in a position to comment on operational matters.

Beyond the request of 23 June 2021, AUSTRAC has no record of any request for a meeting from relevant ministers of the Government of Western Australia.

AUSTRAC has no record of any request from the Western Australian Department of Treasury.

## Select Committee on the Perth Mint and Commonwealth regulatory compliance

The Committee asked AUSTRAC the following question on **27 July 2023**:

**Senator COX:** I have just one last thing. I did ask the previous witness—and Four Corners did expose this—about Perth Mint in particular using outdated software to manage client information. The software made it difficult to comply with the current requirements in relation to anti-money-laundering and counter-terrorism financing. The report stated that by the time this software was changed the AUSTRAC investigation was already underway. Was it the risk that the outdated software posed that triggered AUSTRAC's inquiry, or was the triggering the fact that the software was outdated? Did that alert you more so to your inquiry, or was it something else?

**Mr Brown:** Yes, Senator, it was not that single aspect. I think there was the mention of their own independent audit or assurance that was undertaken in 2020, which identified particular concerns themselves within their systems and processes. Again, perhaps as a more general consideration, every reporting entity we have across that 17,000 is working around upgrades to technology to respond to various risks and threats they may face, as well as updating technology and engagements with external software providers to get the best they possibly can to respond to the concerns.

**Senator COX:** Do you know how outdated the software was? Are you aware?

**Mr Brown:** I'm not aware, no.

**Senator COX:** Was that reported or communicated to AUSTRAC?

**Mr Brown:** I'm going to say it's highly likely that there is information within all of the documentation we have throughout this process that we have sought from Perth Mint and what the external auditor would have considered.

**Senator COX:** I would appreciate if you can provide that on notice to us, and also if there was any ministerial responsibility regarding the issue that might have been responded to in relation to that.

### The response to the Committee's question is:

A reporting entity's compliance with obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) can be supported through the use of a wide variety of systems and software. AUSTRAC assesses reporting entities on their compliance with AML/CTF obligations, rather than the age or appropriateness of specific systems and software.

Where a reporting entity has been subject to findings of non-compliance by AUSTRAC, or other internal or external reviews, it is a matter for that entity to consider whether its systems and software are fit-for-purpose. The reporting entity is best placed to assess whether its systems and software remain current and appropriate in meeting its regulatory obligations.

AUSTRAC does not intervene or influence the reporting entity in making this assessment. This is also not a matter of ministerial responsibility.

## Select Committee on the Perth Mint and Commonwealth regulatory compliance

The Committee asked AUSTRAC the following question on **27 July 2023**:

**CHAIR:** I did want to come to the matter of the WA Auditor General's report of 19 October 2022, which specifically talks about compliance frameworks for anti-money-laundering and counter-terrorism financing obligations. That report makes various recommendations. Unhelpfully, it doesn't name the six to eight entities that it's talking about, but that's a matter for a future inquiry by us. The report does make the observation about the scale of noncompliance. Could you just detail for the committee what has been your level of engagement with Office of the Auditor General on this particular report, both before its release but also since its release.

**Mr Brown:** I can answer the second bit: I haven't had any further engagement with the office after it was released on 19 October or tabled in the Western Australian parliament at that time. Certainly, as I say, I have had engagement with the Auditor General's office in or from about late 2021, and part of that was to provide the office with an understanding of AML/CTF obligations. So we actually were really engaged early in the piece to—like we do with entities—uplift some information and knowledge about what the regime is, how it operates, how it doesn't operate et cetera. I then had engagement with them in terms of their initiation of that limited assurance review that was tabled. They did actually indicate to us in late 2021 or early 2022 that they were going to undertake a limited assurance review on entities that are government owned entities in Western Australia that also have responsibility under the AML/CTF legislation. That process necessarily—I didn't have any direct engagement in terms of the actual report itself until perhaps later on towards its finalisation, when the office actually engaged with us to provide a draft and any advice et cetera that we may consider pertinent. I separately engaged with them before visiting Perth. I think when we had the meeting on 16 June, just out of a courtesy, we contacted their office and indicated that we would be speaking with Perth Mint in relation to that. I think, separately, Perth Mint provided them with a copy of the compliance report that we issued to Perth Mint at that time as a part of this limited assurance review that the WA office undertook.

**CHAIR:** Did the Office of the Auditor General take you up on the courtesy of having a meeting when you were—

**Mr Brown:** Unfortunately, I wasn't able to meet them at the time. I contacted them and indicated that we would be in Perth for the purpose of visiting and meeting with the Perth Mint. I wasn't able meet with representatives in person.

**CHAIR:** Have you subsequently met with representatives virtually?

**Mr Brown:** Not in person, but virtually we have.

**CHAIR:** What were the dates of those—is it right to characterise them as meetings? They were a formal engagement?

**Mr Brown:** I think we had more informal engagement following after that, because I think they were finalising that report.

**CHAIR:** Perhaps on notice you could give us the dates of when you engaged with them. Interestingly, the report makes two statements which I found interesting. The first is in the Auditor General's overview. She says:

Non-compliance could also result in significant reputational damage and financial consequences for the State.

That is, the state of Western Australia. In the final statement of the report, the Auditor General makes the following remarks:

Two entities—

but of course the eight entities that were inquired into are not disclosed in the report—

had not fully resolved past deficiencies raised by independent reviews or directions from AUSTRAC. We expect that where entities receive audit or review findings, prompt action is taken to address any issues.

Are they comments directed to the Gold Corporation?

**Mr Brown:** It's hard to answer on behalf of the Auditor General.

**CHAIR:** Put another way, are they character traits that could comfortably fit the Gold Corporation?

**Mr Brown:** I think that is an assumption that can be made, yes.

**CHAIR:** In your earlier evidence, you mentioned that you were given an opportunity to review the draft.

**Mr Brown:** Yes.

**CHAIR:** Did you make any changes to the draft, or did you offer any suggestions for changes to the draft?

**Mr Brown:** I think AUSTRAC may have, yes.

**CHAIR:** On notice, can you make those available to the committee?

**Mr Brown:** We can take that on notice and see what we can provide.

### **The response to the Committee's questions:**

AUSTRAC engages with the Office of the Auditor General for Western Australia (OAGWA) on intelligence matters. AUSTRAC and the OAGWA are engaged on the establishment of a memorandum of understanding to allow the OAGWA to access and use AUSTRAC information. AUSTRAC also engages the OAGWA on anti-money laundering and counter-terrorism financing (AML/CTF) obligations of entities the OAGWA oversees.

AUSTRAC's AML/CTF-related engagements with the OAGWA include:

- 21 October 2021: virtual introductory meeting between AUSTRAC and the OAGWA to discuss respective roles
- 22 October 2021: AUSTRAC provided the OAGWA with an overview of AML/CTF obligations and key website links
- 25 October 2021: the OAGWA provided AUSTRAC with a list of WA Government-owned entities
- 29 October 2021: AUSTRAC provided the OAGWA a list of WA Government-owned entities enrolled with AUSTRAC
- 12 January 2022: AUSTRAC had a virtual meeting with the OAGWA about AUSTRAC's regulatory approach and the limited assurance review
- 14 June 2022: AUSTRAC advised the OAGWA that AUSTRAC would be meeting with Perth Mint on 16 June 2022
- 24 June 2022: the OAGWA advised AUSTRAC it had received from Perth Mint a copy of correspondence that AUSTRAC had issued to Perth Mint on 16 June 2022
- 29 August 2022: AUSTRAC advised the OAGWA of AUSTRAC's notice to appoint an external auditor.

On 7 September 2022 AUSTRAC received a draft of the OAGWA Limited Assurance Review report. On 23 September 2022 AUSTRAC provided minor suggestions relating to how the report characterised AML/CTF obligations, and confirmed the appropriateness of references to AUSTRAC in the report.