

Select Committee on the Perth Mint and Commonwealth regulatory compliance

AUSTRAC responses to Questions on Notice

The Committee asked AUSTRAC the following questions on **8 May 2024**.

1. Requirements met under the enforceable undertaking

CHAIR: The enforceable undertaking issues a number of requirements that must be met. Those requirements are identified at paragraph 16, paragraph 20, 22, 23 to 24, 25, 28 and 30. So on notice, given the limitation of time, can you advise the committee formally that each of the matters in those paragraphs have been met or are being met to AUSTRAC's satisfaction thus far?

Mr Lear: I can take it on notice, but my understanding is that they are.

The response to the Senator's question is:

To date, AUSTRAC is satisfied that Gold Corporation has complied with the enforceable undertaking.

2. Decision to commence compliance assessment

CHAIR: What was the start date? What was the initial reason for AUSTRAC's more detailed inquiry into Gold Corporation's AML/CTF compliance obligations? What was the single event?

Mr Lear: I don't think there was a single event, but I can check back at the records and take that on notice. Each year AUSTRAC takes a risk based approach to its own regulation. It considers various factors—it considers intelligence; it considers its own regulatory priorities and structure; it considers where it has been most recently and where it has not been; and it considers the risks faced by particular regulated entities—and determines on that basis whether or not a particular entity should be the subject of a supervisory engagement.

There were some other things happening around 2020. Obviously, in January 2020, there were a number of publicised raids on the Euro Pacific Bank. On 1 April 2020 we published a COVID risk bulletin. Again, Mr Brown entered evidence about this previously. We were trying to identify risks that we were seeing in certain conduct that was flowing, not necessarily from COVID but during COVID, which was a little out of the ordinary. One of those things was that we identified some out-of-character purchases of bullion. That was made public on our website at that point in time. Really, there was a combination of things building up to what happened on 14 January 2021, which was when we issued that compliance assessment notice, which was the start of our supervisory engagement with Perth Mint.

The response to the Senator's question is:

AUSTRAC's decision to commence a compliance assessment of Gold Corporation in January 2021 was not made in response to a single event. AUSTRAC's decision was informed by intelligence analysis from AUSTRAC and the Serious Financial Crime Taskforce. This decision to undertake regulatory work was made pursuant to internal regulatory decision-making processes in accordance with [AUSTRAC's approach to regulation](https://www.austrac.gov.au/about-us/corporate-information-and-governance/austrac-policies/austracs-approach-regulation) (<https://www.austrac.gov.au/about-us/corporate-information-and-governance/austrac-policies/austracs-approach-regulation>).

3. Monitoring compliance and law enforcement activities

Mr Lear: AUSTRAC conducted onsite assessments in 2010, 2012 and 2014.

CHAIR: Why the gap between 2014 and the beginning of the investigatory work in 2021, given, as you've just said, there were events happening around the time? Mr Brown has mentioned that the Serious Financial Crimes Taskforce had been inquiring into Perth Mint and the Euro Pacific Bank at the time. So why did it take until 2021 for AUSTRAC to provide any real detailed attention on Gold Corp's AML/CTF obligations?

Mr Lear: There are two things I can say about that. The first is that the fact that AUSTRAC initially conducted three onsite assessments every two years has not always been AUSTRAC's process. We have 17,000 regulated entities, so you shouldn't assume—

CHAIR: But none like the Gold Corp.

Mr Lear: Sorry?

CHAIR: None like the Gold Corp—there aren't 17,000 Gold Corporations.

Mr Lear: No, that's true. We do regular risk based assessments, but the fact that there is a gap there is not of itself—

CHAIR: Why did the—

Mr Lear: There are many large gaps between supervisory engagements particularly. But the second part of it is, as well, that AUSTRAC needs to make decisions about when and where it has supervisory engagements, and sometimes the activities of other law enforcement partners or other AUSTRAC partners mean that AUSTRAC will decide to take a back seat.

CHAIR: Why did your risk based assessment not identify the Gold Corp as having a higher-risk profile?

Mr Lear: I'm not saying it didn't. So the second—

CHAIR: But if it did—

Mr Lear: I'm sorry if I wasn't clear. The second aspect of my answer was that sometimes AUSTRAC will elect to take a back seat to other engagements that take place involving law enforcement partners and intelligence agencies where there's a need to do so.

CHAIR: Just to be clear, it may well be that in some circumstances AUSTRAC may have cause for concern around an entity's AML/CTF compliance obligations but will take a back seat on pursuing those in order for other law enforcement activities to take place or have precedence.

Mr Lear: That may happen in a number of different circumstances, yes.

CHAIR: Was that the case here for AUSTRAC in the context of the Gold Corporation?

Mr Lear: I would have to take that on notice.

The response to the Senator's question is:

AUSTRAC's longstanding practice is to not comment on law enforcement matters. AUSTRAC was closely engaged in matters relating to Gold Corporation through the Serious Financial Crime Taskforce.

4. Royal Commission into banking

CHAIR: This is my last question before I go to Senator Reynolds and others. To what extent do you think the royal commission into banking had any influence or impact over the scope of audit reports around AML/CTF obligations?

Mr Lear: I'm not aware of it having any impact on the scope of audit reports around AML/CTF obligations. It was before my time at AUSTRAC. [inaudible] it would have influenced that, but I could take that on notice in case there was [inaudible].

The response to the Senator's question is:

AUSTRAC is not aware of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry influencing the scope of audit reports conducted for the purpose of assessing compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

5. Regulatory approach ahead of enforceable undertaking

Senator REYNOLDS: This is my last point for now. Here you have successive audit reports, three that we've seen and then the 2021 one which we haven't yet seen. The audit finding was that things need to be improved. Yes, we agree. Clearly, nothing happened and certainly nothing happened that stuck. In 2018 it got even worse, so things had escalated. But it doesn't appear that anybody said, 'Hang on a minute, you said you were going to do this last time and you didn't. In fact, you are now going to engage in more risk-taking events.' Who was marking their homework? They were still doing their own internal audits, because it was clear from the internal audit reports that nobody was checking that they were actually improving and not getting worse.

Mr Lear: At that particular time, around 2018, in that audit report, the board and senior management were responsible for marking the homework. They were also responsible for complying with the act. We ended up in a situation, as I mentioned before, where AUSTRAC were engaged in other aspects. Mr Brown has tried to provide a heads-up for what happened between 2018 and 2020. At the end of 2020, AUSTRAC decided it required a supervisory engagement with the Perth Mint—effectively externally marking the homework, if you like. It was through that process that we have ended up with the enforceable undertaking.

Senator REYNOLDS: Take on notice: did it have to get to this point or were there any lessons learned that could have actually prevented it getting to the enforceable undertaking and the exposure for the WA taxpayers?

Mr Lear: We can take that on notice. But I do think that, in my own view, it is the responsibility of the board and senior management to ensure they are complying with the AML/CTF, and those audit reports are meant to feed into that process. They have to be read from the context of it is not a matter of just setting whatever risk appetite you want and then not controlling that risk. If you undertake riskier operations, you need to control that risk effectively.

The response to the Senator's question is:

The onus is upon reporting entities to ensure they comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

In AUSTRAC's view, the compliance issues arising in this matter demonstrate the importance of adopting and maintaining a compliant AML/CTF program that includes an appropriate framework for ensuring adequate oversight by boards and senior management. It is the responsibility of boards and senior management to ensure that the reporting entity is effectively identifying, mitigating and managing its money laundering and terrorism financing risk over time, and in response to changes in the reporting entity's operating environment and introduction of new services or products.

6. Documentation relating to bullion risk

Senator COX: Are you aware of if there's any documentation that you can provide to us on notice? It was around the same time the ANAO published a report in November 2022 in relation to the Royal Australian Mint. Are you aware of that report?

Mr Lear: No, I'm not.

Senator COX: Can you provide to us on notice whether there is any documentation that AUSTRAC may have referenced in both the work that informed this serious risk report, because this was quite detailed. I know we have the ANAO appearing after you, but I'm particularly concerned in relation to some of the governance structure, financial risk and arrangements that were put in place that provided what I see to be not only a very critical risk to CTF compliance but also to much broader public governance arrangements. You've now only got less than a year left in this enforceable undertaking. In your view, what are the leftover pieces that we need to ensure that we are on track and that we are compliant, not just now but also in future?

Mr Lear: We'll take the first part about the ANAO report in relation to the Australian Mint on notice.

The response to the Senator's question is:

The ANAO's report [Strategies for Addressing the Impacts of Declining Demand for Australian Circulating Coins](https://www.anao.gov.au/work/performance-audit/strategies-addressing-the-impacts-declining-demand-australian-circulating-coins) (<https://www.anao.gov.au/work/performance-audit/strategies-addressing-the-impacts-declining-demand-australian-circulating-coins>), published on 20 November 2018, does not relate to anti-money laundering.

AUSTRAC's notification [Fighting financial crime together – SMRs during the COVID-19 pandemic](http://www.austrac.gov.au/smr-s-during-covid-19) (www.austrac.gov.au/smr-s-during-covid-19), published on 1 April 2020, advised industry of the areas of interest for suspicious matter reporting during the COVID-19 pandemic. These included out-of-character purchases of precious metals and gold bullion across the sector more broadly, and was not directly related to Perth Mint.

AUSTRAC's [Bullion dealers in Australia risk assessment 2022](https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/bullion-dealers-australia-risk-assessment-2022) (<https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/bullion-dealers-australia-risk-assessment-2022>) was released in April 2022. This is an assessment of the bullion sector and not specific to Perth Mint. It references 6 intelligence inputs that informed the risk ratings in the assessment:

- analysis of 760 suspicious matter reports (SMRs) submitted by the bullion sector between 1 July 2018 and 30 June 2021
- analysis of 832 SMRs about the bullion sector submitted by third parties between 1 July 2018 and 30 June 2021
- a comprehensive review of 31 AUSTRAC and partner agency intelligence reports produced between 1 September 2016 and 28 September 2021
- the results of data matching, whereby threshold transaction reports and SMRs that the bullion sector submitted to AUSTRAC between 1 July 2020 and 30 June 2021 were matched against known criminal entities who were:
 - recorded as a member or associate of a significant regional, national or transnational serious and organised crime group as at April 2020
 - charged with a money laundering or proceeds of crime-related offence between 1 January 2017 and 30 June 2021
 - charged or associated with a terrorism-related offence between 1 January 2017 and 30 June 2021

- open-source information, including public-facing information produced by government agencies, academic institutions, reporting entities and the media
- feedback and professional insights offered during interviews and consultations with a range of partner agencies and bullion sector representatives.

7. Gold Corporation's internal audit report

CHAIR: On what date did AUSTRAC first sight the 2018 internal audit report?

Mr Lear: I'd have to take that on notice.

CHAIR: Also, on what date did AUSTRAC first sight the 2020 internal audit report?

Mr Lear: I will also have to take that on notice as well.

The response to the Senator's question is:

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and AML/CTF Rules do not require a reporting entity to provide a copy of an independent review to AUSTRAC. However, AUSTRAC can request copies of these reports. When undertaking a compliance review, AUSTRAC ordinarily requests the most recent independent review undertaken by a reporting entity.

To inform its compliance review initiated in January 2021, AUSTRAC requested Gold Corporation's independent auditor's report from August 2020, as the entity's most current assessment. The 2020 report was provided to AUSTRAC in February 2021.

8. Date Perth Mint sought reporting assistance

CHAIR: For clarity, can you just confirm the date the Perth Mint Gold Corporation reached out to AUSTRAC? In the Hansard, Mr Brown said that in 2020 the Perth Mint reached out to AUSTRAC and sought some assistance in relation to reporting at that time. I'm keen to understand what that date was.

The response to the Senator's question is:

AUSTRAC records show that Gold Corporation contacted AUSTRAC in relation to reporting on 5 November 2020.

9. Conflicts of interest

CHAIR: Thank you. At any point, has AUSTRAC raised any concerns or had any concerns about conflicts of interest at Gold Corporation?

Mr Lear: I'd have to take that on notice. I'm not aware, but I can take that on notice.

The response to the Senator's question is:

AUSTRAC has not had any concerns about conflicts of interest at Gold Corporation.

10. Engagement with WA Government

CHAIR: Thank you very much. Since the enforceable undertaking was issued, has AUSTRAC had any engagement with representatives of the Western Australian government—meaning ministers, ministers' staff, WA Treasury officials and the Audit Office in Western Australia?

Mr Lear: In relation to Gold Corporation?

CHAIR: Yes.

Mr Lear: I don't think so, but I will take that on notice to make sure.

The response to the Senator's question is:

Since the enforceable undertaking came into effect on 21 November 2023, AUSTRAC has not had any engagement with the Western Australian Government in relation to Gold Corporation.

11. Gold Corporation's risk profile

CHAIR: In earlier evidence you talked about the risk-based approach that AUSTRAC uses, or has used. Are you able to identify a particular moment or period—perhaps a month in a year—where the Gold Corporation's risk profile changed in a direction that moved it further up the risk profile?

Mr Lear: I'll take that on notice, including whether it did change. I'll split it into two parts: whether it changed and, if it did change, when that occurred.

The response to the Senator's question is:

AUSTRAC's decision to commence a compliance assessment of Gold Corporation in January 2021 was informed by intelligence analysis from AUSTRAC and the Serious Financial Crime Taskforce. This decision to undertake regulatory work was made pursuant to internal regulatory decision-making processes in accordance with [AUSTRAC's approach to regulation \(https://www.austrac.gov.au/about-us/corporate-information-and-governance/austrac-policies/austracs-approach-regulation\)](https://www.austrac.gov.au/about-us/corporate-information-and-governance/austrac-policies/austracs-approach-regulation).

12. Connection between auditor and PwC

CHAIR: ... In previous questions, AUSTRAC has not identified who the external auditor is in the context of the enforceable undertaking. Are you able to identify for the committee who the external auditor is?

Mr Lear: For the same reasons we gave previously, I'm not, and we'd prefer to keep that process the same to ensure they continue to run independently.

CHAIR: I understand. Can you confirm that the person has no connection to PwC?

Mr Lear: The auditor is not PwC. Other than that, I think it would get to detailed personal connections—I don't know what specifically.

CHAIR: Just to remind AUSTRAC, there is the confidential mechanism. There is a basis on which information—

Mr Lear: I have no basis for thinking that the auditor has any connection with PwC.

CHAIR: You might just take that on notice to satisfy yourself.

Mr Lear: I can take it on notice to satisfy myself; that's fine.

CHAIR: And to satisfy the committee.

Mr Lear: Of course. Certainly, Senator.

The response to the Senator's question is:

The external auditor is not PricewaterhouseCoopers (PwC), and AUSTRAC is not aware of any connection to PwC.