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Legal and Constitutional Affairs Committee Public Hearing for new proposed measures on Anti Money Laundering/Counter Terrorist Financing

## Questions on Notice

### VERBAL QUESTIONS ON NOTICE – taken during hearing (dated 10 November 2021)

#### Q1.

*“CHAIR: On that point, I've tabled this letter from the Russian embassy; I would like you to have a look at it. They're saying to us that there has been no contact with them for three years. Could that be right?”*

*Mr McCartney: Well, we don't necessarily deal through the embassy. We've got—*

*CHAIR: No, no, no. They're saying not with the embassy; they're actually talking about the government. That's how I read the letter. You can read it yourself and tell me whether or not I have misunderstood it. It is from their ambassador, speaking about their state instrumentalities. And you do work internationally, so you would be able to tell us whether or not it is true, surely?*

*Mr McCartney: Well, I haven't seen the letter; I have seen the media reporting of the letter—*

*CHAIR: Why don't you have a look at the letter and come back to us on notice.*

*Mr McCartney: I am happy to. There have been a range of cases where we have worked very successfully with Russian authorities.*

*CHAIR: I would expect quite a substantial source of advice would come from that quarter, given that—*

*Mr McCartney: There have been significant flows of illicit funds into Australia from Russia; we've worked successfully over the last five or 10 years.*

*CHAIR: They're saying three years. I thought it was an extraordinary proposition.*

*Mr McCartney: I will take it on notice and look at the letter.”*

#### **AFP response:**

The AFP consistently leverages our international partnerships to tackle the increasingly globalised threat of money laundering and the confiscation of illicit wealth. This includes Russia, where we have leveraged our formal networks as well as informal contacts to progress investigations within the last three years, over a variety of crime types, including AML/CTF matters. For example, as recently as early 2021, an informal enquiry was placed through to Russian authorities in relation to a matter of suspected terrorism funding.

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Q2.

*“CHAIR: I took some liberties with them, which is not unknown for me. But I did express my disappointment that there appeared to be a misunderstanding about the nature of the problem. The thrust of their evidence was that they do not have any advice from you or anyone else about the extent of the problem with regard to gatekeeper malfeasance. With accountants we can say that there's a malpractice board, for instance, where disciplinary action is taken. With lawyers you've got to go through various state-by-state processes for disbarment, in effect. Given that they are lawyers you would expect that there would be considerable resistance to any disciplinary action. Do we have any evidence that suggests the extent of the problem involving the legal profession, real estate agents or any other gatekeeper professions other than your case studies? We do appreciate that you've provided them, but they are all individualised, and some of them go back some time—2013, for instance. Is there anywhere you can point to?”*

*Mr Jerga: We definitely do. We have matters before the courts now where, amongst various groups, lawyers are facing criminal charges and things like that. If I can say this, I've engaged personally with the Law Council in different forums with other partners. We've said regulating any of our gatekeeper professions because of a small few going down the wrong path is not—while we would welcome any government decision to introduce tranche 2, it is simply the information insights that would enhance our work.*

*CHAIR: That's the philosophical framework. I can understand that. That's not being disputed by members of this committee. But could you take this on notice: is there a body of evidential work that we could call upon to demonstrate why this is necessary, other than the logical position that one would put that it's a reasonable proposition that criminal outfits want to make themselves into legitimate outfits and are going to use professional advice to do so?”*

## **AFP response:**

The AFP has investigated a number of matters which have involved the use of services provided by gatekeeper professions to undertake money laundering, and facilitate other criminal ventures by transnational, serious and organised crime.

For example, the AFP has witnessed circumstances in which lawyers' trust accounts were used to receive and forward substantial amounts of cash from Australia to offshore entities, as well as instances of company book keepers withdrawing the proceeds of real estate transactions by cheque, enabling the cheque to be sent overseas and cashed with an offshore financial institution.

The AFP has investigated criminal activities involving Designated Non-Financial Businesses and Professions (DNFBPs). Two examples are as follows:

### **Example 1**

In 2020, a number of individuals, including a lawyer and an accountant, were arrested following an eight-month investigation targeting professional facilitators of organised crime. It is alleged the group met on a number of occasions to discuss how legal contracts and agreements could be used to support a business purchase to facilitate the laundering of proceeds of crime. The group were charged with offences associated with money

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laundering. Search warrants were executed at a number of DNFPB businesses linked to the offenders.

The prosecution is ongoing.

### **Example 2**

Commencing in 2016, the AFP investigated a syndicate responsible for dealing with one of Australia's largest-ever taxation frauds, and millions resulting from a blackmail plot linked to the fraud.

A total of 17 people have been charged, including two lawyers, who were both prominent actors in this matter. To date, 8 individuals have pled guilty and have been convicted.

One of those convicted to date, was a former accountant who incorporated a company in his partner's name. The company was used for the sole purpose of diverting criminal profits from the tax fraud to those behind the fraud scheme, using a combination of company bank accounts and false invoicing.

Two other offenders used a solicitor's trust account to receive the blackmail funds. Once in the trust account, those funds were gradually introduced into the mainstream commercial and financial system, through loans to property developers, bank cheque transfers to another solicitor's trust account, and payments made to bank accounts held in company names.

A number of prosecutions in this matter remain ongoing.

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Q3

*“CHAIR: I've asked this of all the agencies. Could you provide us with guidance as to how you see those areas of responsibility, in terms of enforcement and compliance work, that you have lead responsibility for, how you see the regulatory environment, what agencies you cooperate with at a national level—I know your submission outlines these in part—what areas you work with within the state and what international agencies you cooperate with. Could you provide advice to the committee on which areas you believe to be the areas in which there needs to be further work or in which there are gaps in terms of the regulatory environment at the moment, from your perspective? This is an opportunity for you to provide advice to us as to where you think there could be further work undertaken to strengthen the regulatory regime. Is it possible to provide advice on that on notice?”*

*Mr McCartney: I'm happy to take that on notice and provide a detailed response to you.”*

**AFP response**

*Responsibilities*

At the Commonwealth level, the AFP has primary responsibility for investigating money laundering offences within Division 400 of the Criminal Code.

Additionally, the AFP has primary responsibility for the investigation and litigation of Commonwealth proceeds of crime matters and targets proceeds of foreign offending – through the AFP-led Criminal Asset Confiscation Taskforce (CACT). The CACT brings together the skills and expertise of the AFP, Australian Criminal Intelligence Commission (ACIC), Australian Taxation Office (ATO), Australian Transaction Reports and Analysis Centre (AUSTRAC) and Australian Border Force (ABF) to identify, trace, restrain and confiscate illicit wealth.

*National partnerships*

The AFP routinely works in partnership with various agencies, recognising that money laundering requires strong national and international cooperation in the detection, disruption and prosecution of serious and organised financial related crime.

For a more detailed discussion on AFP's domestic partner agencies and the responsibilities of each including the regulator (AUSTRAC), please see our submission to this inquiry at paragraphs 25-32.

*International*

Given the increasingly globalised nature of financial systems and the speed with which funds can be laundered through multiple countries, relationships with international partners remain critical in the AFP's efforts to target money laundering and the confiscation of illicit wealth. The AFP has a well-developed, mature and wide spread international network of operational Police and support staff based at Australian embassies and consulates across the globe, and maintains strong intelligence and operational relationships through involvement in various international working groups, networks and taskforces.

For a more detailed discussion on our active engagement with international partners, please see our submission to this inquiry at paragraphs 33-48.

*Strengthening the regime*

The AFP recognises the Government's commitment to ensuring the AML/CTF regime remains fit for purpose in an ever-evolving criminal environment, including by way of recent legislative reforms through the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020 and Crimes Legislation Amendment (Economic Disruption) Act 2021.

The AFP has advocated for, and continues to support measures to strengthen the framework, including targeting vulnerable services that exist within non-financial sectors, which are being exploited by transnational, serious and organised crime groups.

As a result of continued operational use of the existing legislative and regulatory frameworks, and continued advancements to the threat environment, we have identified a number of other risks which the AFP welcomes consideration on. A more detailed discussion each of those risks are outlined in our submission at paragraphs 59-79.

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**Q4.**

*“CHAIR: I have one specific question, and this is an area where I think you do have specific expertise. Can you provide advice on the number of cases in the last four years where you've been involved in money laundering or non-compliance for gatekeeper groups: the number of cases you've investigated, the number you've forwarded to the court for prosecutions and the number of successful prosecutions that have arisen from those cases? I'm specifically referring here to accountants, lawyers, financial advisers and other so-called gatekeeper professionals.”*

**AFP response:**

First and foremost, the AFP targets criminality and does not retain a distinct category of statistics for gatekeeper groups and/or non-compliance with their professional obligations.

Recent AFP investigations have identified Designated Non-Financial Businesses and Professions either directly laundering illicit proceeds or assisting in this process through the exercise of their technical skills. A matter is currently before the court involving a legal professional who is accused of orchestrating a complex money laundering scheme to deal with funds arising from related offences (see example provided above at Question 2).

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