

# Chapter 1

## Background and terms of reference

1.1 On 5 March 2014, the Parliamentary Joint Committee on Law Enforcement (the committee) initiated an inquiry into financial related crime, pursuant to paragraph 7(1)(g) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*.

1.2 The terms of reference required the committee to examine the effectiveness of current Commonwealth law enforcement legislation and administrative arrangements that target serious and organised financial related crime, including money laundering and identity fraud:

- (1) The character, prevalence and impact of financial related crime in Australia;
- (2) The methods and practices used by the perpetrators of financial related crime (including the impact of new technologies);
- (3) The involvement of organised crime;
- (4) In relation to money laundering—the large number of high denomination banknotes in circulation;
- (5) In relation to identity fraud—credit card fraud in particular;
- (6) The operation and effectiveness of Commonwealth legislation, administrative arrangements and law enforcement strategies;
- (7) The role of the Australian Crime Commission and the Australian Federal Police in detecting financial related crime;
- (8) The interaction of Commonwealth, state and territory legislation and law enforcement activity;
- (9) The extent and effectiveness of relevant international agreements and arrangements;
- (10) The need for any legislative or administrative reform; and
- (11) Any related matters.

## Report structure

1.3 Following this introductory chapter, this report is divided into six substantive chapters.

1.4 Chapter 2 broadly examines issues relating to the use of Commonwealth law enforcement agency powers and taskforces in addressing financial related crime. In particular two of these taskforces, *Wickenby* and *Eligo*, are assessed not only in terms of their overall effectiveness, but also whether they demonstrate a need for any changes to the longevity of Commonwealth law enforcement taskforces. Chapter 2 also examines the recent announcement of the Serious Financial Crime Taskforce, and commentary relating to *Momcilovic v The Queen* [2011] HCA 34 (*Momcilovic*).

1.5 Chapter 3 discusses several issues surrounding telecommunications interception powers and financial related crime. Specifically, it examines the

proposition that the Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC) ought to be granted telecommunications interception powers, outside of multi-agency taskforces. Further, it examines the regulatory roles that ASIC and the Australian Transactions Reports and Analysis Centre (AUSTRAC)<sup>1</sup> play in regulating financial service providers. Finally, it examines the interplay of Australia's international Anti Money Laundering/Counter-Terrorism Financing obligations.

1.6 Chapter 4 examines many issues relating to financial service providers, including: banks; remittance providers; and the self-managed superannuation sector. This chapter examines additional issues to those assessed in Chapter 3, particularly in relation to ASIC and AUSTRAC and their roles as regulators for different financial service providers. Particular interest is paid to issues of disproportionate penalties, and the 'de-banking' of the independent remittance industry.

1.7 Chapter 5 considers issues associated with collaboration between law enforcement agencies and the private sector, with particular focus on financial service providers.

1.8 Chapter 6 examines issues related to technology and the increasing incidences of identity crimes in Australia. It examines the use of digital currencies and the 'Darknet' to facilitate financial related and other crimes, as well as the effects of new technologies, like contactless payments. Chapter 6 also examines some of the strategies available to both the private sector and law enforcement agencies for identity verification, including the Document Verification System.

1.9 Finally, Chapter 7 considers issues raised by the National Indigenous Intelligence Taskforce (NIITF), and the particular vulnerabilities of Indigenous communities to financial related crime. In this context, the chapter also examines the need for additional education, financial literacy and improving governance capabilities in Indigenous communities, including through the provision of information in Indigenous languages.

### **Conduct of inquiry**

1.10 The committee advertised the inquiry in *The Australian* and on the internet. The committee also invited submissions from interested organisations, individuals and government bodies. The committee received 23 submissions. A list of individuals and organisations that made public submissions, together with other information authorised for publication is provided at Appendix 1.

1.11 The committee held public hearings in Darwin, Sydney and Canberra on 8, 9 and 10 September 2014 respectively. The witnesses who appeared before the committee are listed in Appendix 2.

1.12 The committee thanks the organisations and individuals that made written submissions, and those who gave evidence at the public hearings.

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1 Please note, this also includes consideration of the question of AUSTRAC's membership of the Australian Crime Commission Board.

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## Financial related crime—background

### *Increasing threat*

1.13 The risks of financial related crime are expanding exponentially due to the higher reliance on electronic means to pay for goods and services as well as transfer money. While this is not a new trend, the increasing sophistication of the serious and organised crime threat results in the need for Commonwealth law enforcement agencies, together with state and territory partners and the finance sector, to ensure that they co-operate as effectively as possible.

### *Need for collaboration*

1.14 Given the speed at which financial related crimes may be committed, law enforcement agencies must collaborate effectively and efficiently with the private sector to strengthen the security of financial products and services. The committee's report details some of the successful instances of cross-agency and agency-industry co-operation that has led to significant progress in deterring and disrupting financial crimes perpetrated by serious and organised crime groups.

### *Financial related crime—types, prevalence and impacts*

1.15 'Financial related crime' encompasses activities 'ranging from fraud through to the active manipulation of the stock market, or laundering the proceeds of crime.'<sup>2</sup> The International Monetary Fund defines financial related crime as 'any non-violent crime resulting in financial loss.'<sup>3</sup> In its submission, the Australian Federal Police (AFP) identify the following components within financial related crime:

- money laundering;
- identity crime;
- serious and complex fraud; and
- corruption.<sup>4</sup>

1.16 Submitters broadly agreed that the impact of financial crime is highly significant.

1.17 For instance, AUSTRAC submitted that serious and organised crimes cost Australia up to \$15 billion annually.<sup>5</sup> Australia's anti-money laundering and counter-terrorism financing regulator argued:

Money laundering threatens Australia's prosperity, undermines the integrity of our financial system and funds further criminal activity that impacts on

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2 ACC, *Financial Crimes*, [www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes](http://www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes), (accessed 1 May 2015).

3 AFP, *Submission 6*, p. 1.

4 AFP, *Submission 6*, p. 1.

5 AUSTRAC, *Submission 10*, p. 4.

community safety and wellbeing. For these reasons, strategic intelligence assessments recognise money laundering as a critical risk to Australia.<sup>6</sup>

1.18 Similarly the AFP outlined the broader impacts of financial related crime which it said:

...poses a significant and growing threat to Australia's national security as it subverts, exploits and distorts legitimate markets and economic activity. This crime type also undermines the ongoing stability of Australian institutions and Governments by having a corrosive impact on community confidence.<sup>7</sup>

1.19 The ACC included in its list of the impacts of financial crime:

- increasingly volatile exchange rates and interest rates due to unanticipated transfers of illicit funds;
- damage to the reputation of individual sectors and businesses;
- damage to the country's financial reputation;
- loss of consumer confidence in businesses;
- negative effects on economic growth when resources are diverted to less productive activities;
- reduced ability to attract foreign investment; and
- increased costs of security and regulation.<sup>8</sup>

1.20 Financial related crime presents a unique set of challenges for Australian law enforcement agencies, as well as for private sector organisations such as banks and other financial institutions.

1.21 The ACC noted that because financial crimes 'cover a broad range of activities often combining licit and illicit financial transactions' it can be difficult to gauge the true extent of the criminal activity.<sup>9</sup> In addition to this difficulty, the ACC observed that opportunities for financial crimes have increased due to globalisation, advances in technology, and changes in the way financial transactions and business are conducted.<sup>10</sup> The approaches used by perpetrators are highly diverse and can range from crude to sophisticated, for example:

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6 AUSTRAC, *Submission 10*, p. 4.

7 AFP, *Submission 6*, p. 1.

8 ACC, *Financial Crimes*, [www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes](http://www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes), (accessed 1 May 2015).

9 ACC, *Financial Crimes*, [www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes](http://www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes), (accessed 1 May 2015).

10 ACC, *Financial Crimes*, [www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes](http://www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes), (accessed 1 May 2015).

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- looking through a person's rubbish for bank and credit card statements, using pre-approved credit offers and tax information, or obtaining old gas and electricity bills and using their personal information to apply for a bank loan;
  - 'ponzi' or pyramid investment schemes, where criminals typically offer victims an unrealistically high rate of return on investments;
  - facilitation of money laundering; and
  - insider trading.<sup>11</sup>

1.22 A key challenge for law enforcement in combatting financial crime is access to data held by financial institutions, commonwealth agencies and other police jurisdictions. With an increasingly globalised world, a further critical factor for law enforcement is addressing the increasing sophistication of financial crime, especially the use of technology:

Financial crime is becoming increasingly sophisticated, often due to the interconnected nature of global financial markets and the virtual world that we live in now and the role of technology in facilitating most of our financial transactions. It is also instructive that, of the national criminal target lists that the Australian Crime Commission have identified, up to 70 per cent are either internationally based or have international connections.

So the connectivity in both domestic and international markets is quite a critical factor.<sup>12</sup>

1.23 This complex and ever evolving type of criminal activity naturally presents significant challenges for law enforcement agencies. Over the course of the inquiry, the committee heard evidence from numerous witnesses and submitters of the efforts to combat financial related crime.<sup>13</sup>

1.24 The committee has made numerous substantive recommendations that it believes will greatly enhance the ability of individuals, service providers and law enforcement agencies to better protect themselves from financial related crime in Australia.

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11 ACC, *Financial Crimes*, [www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes](http://www.crimecommission.gov.au/organised-crime/crime-types/financial-crimes), (accessed 1 May 2015).

12 Mr Chris Dawson APM, Chief Executive Office, Australian Crime Commission, *Committee Hansard*, 10 September 2014, p. 1.

13 See for example: AFP, *Submission 6*, p. 1; AGD, *Submission 9*, p. 1.