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Inquiry into the Anti- Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 – *submission by the Australian Federal Police*

Senate Legal and Constitutional Affairs Legislation Committee



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Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee review of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the Bill).
2. The reforms in this Bill will provide tangible operational benefits for law enforcement. The reforms will protect and target-harden key industries from abuse and infiltration by criminal syndicates. Furthermore, the reforms will significantly enhance the AFP's ability to detect, investigate and prosecute serious and organised criminals for money-laundering offences, and to confiscate associated proceeds, instruments and benefits of crime. The reforms may also improve our ability to identify other criminal offending, as "following the money" frequently helps uncover predicate offending that generated those funds.
3. The ACT Policing arm of the AFP also benefits from financial intelligence from the AML/CTF framework and supports this submission.

Role of the AFP

4. The AFP plays an important role in Australia's anti-money laundering and terrorism financing framework, and greatly benefits from financial intelligence gathered under the current regime.
5. As the Commonwealth's primary law enforcement and policing agency, the AFP is responsible for investigating the money-laundering offences contained in Division 400 and terrorism financing offences in Division 103 of the *Criminal Code Act 1995* (Cth) (Criminal Code).
6. In particular, the AFP-led Taskforce Avarus continues to target Australian and offshore money laundering organisations, and other criminal groups dealing with illicit funds and property. This taskforce comprises members from key partner agencies, including the Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Criminal Intelligence Commission (ACIC) and the Australian Border Force (ABF).
7. The AFP also leads the multi-agency Criminal Assets Confiscation Taskforce (CACT), which is the main Commonwealth authority responsible for investigating and litigating asset confiscation matters under the *Proceeds of Crime Act 2002* (Cth) (POCA). The CACT enhances the identification and pursuit of criminal wealth by bringing together the resources and expertise of the AFP, Australian Taxation Office (ATO), ACIC, ABF and AUSTRAC.
8. These reforms will also enhance the AFP's ability to combat serious and organised criminal activity in the Australian Capital Territory (ACT). The AFP's community policing arm, ACT Policing, targets serious and organised crime using Commonwealth and ACT law. ACT Policing has investigated matters, including matters currently before the court, where the professional services proposed to be covered by the Bill are alleged to have been exploited by criminal groups to launder proceeds of crime.
9. Additionally, the AFP hosts the Joint Threat Financing Group (JTFG), which brings together the resources and expertise of the AFP and AUSTRAC's specialist financial capabilities to work with private industry and Commonwealth partners on terrorism financing investigations.

The AML/CTF threat environment

10. The global money-laundering threat is enduring, complex and diverse, although the AFP continues to achieve considerable success in investigating and prosecuting money laundering and recovering illicit wealth. For example:
- Between 1 July 2023 and 30 June 2024, the AFP charged 41 people with money-laundering offences under Division 400 of the Criminal Code, including:
 - i. 14 people for allegedly dealing with money and/or property in excess of \$10million;
 - ii. four people for allegedly dealing with money and/or property in excess of \$1 million;
 - iii. 13 people for allegedly dealing with money and/or property in excess of \$100,000;
 - iv. four people for allegedly dealing with money and/or property under \$100,000;
 - v. four people for allegedly dealing with money and/or property in excess of \$50,000; and
 - vi. two people for allegedly dealing with money and/or property in excess of \$1,000.
 - Between 1 July 2022 and 30 June 2024, the CACT restrained criminal assets in excess of \$500 million (gross).
11. Despite these successes, money laundering is an ever-growing threat. It enables criminals to benefit from, or facilitate, a broad range of transnational, serious and organised crimes; for example, drug trafficking, foreign bribery and corruption, people smuggling, forced labour and fraud.

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024

Schedule 3 – Regulating additional high-risk services

12. The AFP has conducted numerous investigations into the activities of organised crime syndicates, which have subsequently uncovered the intentional, reckless or unwitting involvement of Designated Non-Financial Businesses and Professions, otherwise known as “tranche two entities” (particularly lawyers and accountants).
13. In some instances, “tranche two entities” have used their specialist skills to subvert legal frameworks, in breach of their professional and ethical obligations. They have provided advice and professional services to assist the client in avoiding regulatory and law enforcement scrutiny.

14. However, more often the AFP has observed “tranche two entities” to be unwitting facilitators, or reckless as to the risk of money laundering or concealing proceeds of crime, including by:
- failing to identify, or turning a blind eye to, payments structured in such a way to avoid reporting thresholds (such as the threshold transaction reporting requirement for cash transactions greater than \$10,000, under section 43 of the AML/CTF Act), as well as other behaviour suggesting the person is involved in criminal activity or is not who they say they are;
 - criminals deliberately structuring their affairs in order to work with different professionals, often in the same field, to obfuscate the true intent behind transactions, conceal ownership or control of assets, and control the services being provided by the “tranche two entities”;
 - failing to conduct appropriate due diligence in respect of their clients; or
 - accepting clients’ explanation for particular transactions or requests for services that might otherwise raise suspicions at face value and without probing further.
15. In either case, the result is the same – specialised skills and proficiencies have been used for the benefit of criminal entities. This not only aids criminal enterprises, but also increases the vulnerability of “tranche two entities” to infiltration by serious and organised crime.
16. The AFP considers there are significant benefits to expanding the AML/CTF regime to capture designated services provided by “tranche two entities”, beyond addressing the deliberate or reckless criminal behaviour of specific individuals within these industries.
17. These entities receive and hold information and insights which would greatly benefit law enforcement investigations targeting transnational, serious and organised crime. Bringing “tranche two entities” into the AML/CTF regulatory regime would enable a more comprehensive and unified approach to assessing and managing key money laundering and terrorism financing risks and assist in identifying any trends and/or vulnerabilities so they can be addressed at the earliest opportunity and increase law enforcement’s ability to protect the community and deprive offenders of the proceeds, instruments and benefits of crime.

Professional services - legal, accounting, conveyancing and trust/company services

18. In the AFP’s experience, professional services can be exploited by criminal groups, to establish, for example, corporate and trust structures which give illegal activities the appearance of legitimacy. This includes structures which obscure the true source of funds and/or the true ownership of property and assets, or by disguising the movement of illicit proceeds. For example:
- In 2016, the AFP commenced Operation Elbrus, an investigation into a large-scale, organised tax fraud and money laundering syndicate, which was responsible for one of Australia’s largest-ever taxation frauds. Seventeen people were charged and, to date, fifteen people have been convicted, including an accountant and two lawyers. More than \$50 million in assets were restrained in 2017, with some \$32.5 million of this now forfeited (confiscated) to date. During sentencing for one of these matters, the court noted the solicitor played a critical role in the offending, utilising his professional status

as a solicitor and access to a trust account which provided a level of cover for the criminal activity involved.

- In February 2023, under Operation Avarus-Midas, the AFP dismantled a money laundering operation. This investigation led to the arrest of nine people in Australia, and one person in Malaysia. The AFP alleges two of the individuals arrested were professional facilitators, including an accountant who allegedly assisted the money laundering organisation to create companies and bank accounts that would obfuscate the source of large funds transfers and minimise the risk of detection by authorities. More than \$222 million in assets have so far been restrained as the suspected proceeds of crime, including approximately \$157 million in Australian real estate, more than \$30 million in cryptocurrency, \$2.3 million in cash, and several vehicles and bank accounts. This matter remains before court.
- Between May 2022 and June 2023, \$45 million was restrained by the AFP-led CACT, as part of Operation Fuji (AFP) and Operation Echo-Steelers (Victoria Police). These were combined law enforcement efforts targeting an organised crime syndicate's access to firearms, largescale drug importation and unexplained wealth, as well as threats to life. One of numerous restraining orders made related to a unit trust in property investment suspected to have been entered into by a key member of the syndicate, with alleged involvement from a solicitor who was working as a business partner. It is alleged that the solicitor worked with members of the syndicate both in his capacity as a lawyer, as well as facilitating business ventures and investments for members of the syndicate.

19. The AFP anticipates regulating designated services provided by “tranche two entities” will help harden these sectors against exploitation by serious and organised crime and terrorism financing by:
- a. raising awareness within these sectors of any vulnerabilities to money laundering and terrorism financing;
 - b. providing a legal mechanism by which these sectors can report suspicious activity; and
 - c. assisting with the identification of those who are actively and knowingly using their skills to assist criminals, or who are negligent in respect of, or wilfully blind to, the exploitation of their skills by criminals.

Real estate sector

20. In the AFP’s experience, Australian real estate is a lucrative and attractive asset in which to hide or invest illicit funds.
21. Real estate is one of the most common types of criminal assets restrained by the CACT. During the 2022-2023 and 2023-2024 financial years, 68 per cent of the total gross restraint attributable to CACT investigations comprised of commercial and residential property, amounting to more than \$354 million. This included restraints arising from AFP investigations into large-scale money laundering syndicates under Taskforce Avarus.
22. Further, during the joint AFP and Victoria Police operation Fuji/Echo Steelers the CACT restrained 60 real properties, including 33 parcels of land in a development site in Melbourne.

A number of these restrained properties are suspected to be under the effective control of persons charged with drug trafficking offences, including the alleged head of the criminal syndicate. In acquiring the assets, real estate agents were used for the purchase and sale of the real properties. The AFP has not alleged that their involvement was witting facilitation by those professionals. However, investigations into the acquisition and disposal of restrained properties remain ongoing.

23. Bringing designated services provided by the real estate sector within Australia's AML/CTF regime will provide valuable intelligence to help identify criminal dealings with Australian property, and support law enforcement to effectively confiscate proceeds of crime invested in, and associated illicit income derived from, commercial and residential property.

Dealers in precious metals and precious stones

24. Precious metals and stones, as well as luxury products containing these items, are a well-known avenue for laundering and investing proceeds of crime. This is because the purchase of these products can be relatively anonymous, have high and stable value, are easily transportable (including across international borders) and have a high re-sale value. The AFP led CACT frequently restrains and confiscates a wide variety of luxury goods containing precious metals and stones, including designer jewellery and watches. For example, during Operation Fuji/Echo-Steelers, the CACT restrained a significant quantity of jewellery and designer goods, including multiple Cartier bracelets and Rolex watches.
25. Expanding AML/CTF regulation to capture designated services provided by dealers in precious metals/stones and precious products provides a clear operational benefit. It will increase visibility of where these items, including jewellery, watches and certain other goods containing precious metals or stones, have been purchased with cash or digital currency, in transactions of at least \$10,000. This will enable law enforcement to develop a clearer picture of where and when criminal proceeds are being invested in the economy and may better help identify property which should be restrained and confiscated as the proceeds or benefits of criminal activity.

Schedule 5 - Tipping off offence and disclosure of AUSTRAC information to foreign countries or agencies

26. From an AFP perspective, it is critical that a suspect, their associates, or persons with a close relationship to the suspect, are not informed of the existence of a Suspicious Matter Report (SMR) or section 49 notice. Disclosing the existence of an SMR or section 49 notice may affect the reporter's safety, compromise a criminal investigation, and/or lead to the dissipation of assets before action can be taken under the POCA to restrain the assets.
27. The AFP notes the offence is intended to capture both intentional and reckless disclosures. In many situations, it may be difficult to obtain evidence that can prove to a criminal standard the exact intention of the person in releasing the information. The exceptions to the offence will assist in ensuring that good faith disclosures would not be captured.

Schedule 6 - Services relating to virtual assets

28. The AFP recognises the need to regulate digital currency exchange providers (DCEPs) in accordance with the FATF Recommendations, as well as initial coin offerings (ICOs) and other methods of issuing digital currencies, and facilitators.
29. Criminals, including money laundering organisations, rapidly adapt to technological changes, including the emergence of new payment platforms and digital currencies, and will use these to exploit vulnerabilities in AML/CTF reporting obligations. In the AFP's experience, digital currencies and digital assets are not only enablers of crime, but also an increasingly common avenue for investing proceeds of crime. As of 1 October 2024, the CACT had restrained more than \$61 million in digital currency.
30. Extending AML/CTF obligations to DCEPs who trade exclusively in digital currencies, as well as entities involved in offering or sale of a virtual asset, will provide greater visibility of a broader range of digital currency transactions and the customers involved, and help close a gap which can be exploited for money-laundering and terrorism financing purposes.

Facilitation of money-laundering utilising cryptocurrency

31. The AFP has seen instances in which cryptocurrency has been used as an enabler in criminal activity, in addition to being used to facilitate money-laundering activity. Cryptocurrency is at times anonymous, easy to conceal and easily transferrable.
32. As part of Operation Avarus-Midas, the AFP restrained more than \$30 million worth of cryptocurrency.

Schedule 8 – Transfers of value and international value transfer services

International Funds Transfer Instruction reporting requirements

33. The AFP notes Schedule 8 streamlines international funds transfer instruction (IFTI) reporting requirements. The AFP acknowledges the benefits of reforms which streamline and strengthen IFTI requirements and remove ambiguity.
34. In the AFP's experience, the process of off-setting used by Australian registered money remitters to transfer value on behalf of clients based in other countries relies upon access to funds in Australia. Those funds can often represent the profits generated from the activities of organised crime.

Travel rule

35. The amendments to the travel rule obligations, including extending it to Australian DCEPs would provide greater visibility of international transfers of digital currency.
36. For example, requiring DCEPs to retain the payer and payee details on transactions to foreign digital currency exchanges will ensure law enforcement is able to determine the recipient account holder at a foreign DCEP. It will also ensure that Australian DCEPs can interact with international DCEPs without being seen as a high-risk exchange or jurisdiction, providing benefits to the industry.

Conclusion

37. Money-laundering continues to grow in both size and complexity. Criminals are increasingly finding ways to exploit vulnerabilities in the current AML/CTF regime to further their activities and conceal their illicit wealth.
38. Australia's AML/CTF regime must continue to evolve, to ensure robust and flexible legislative frameworks are available to respond to criminal threats. The amendments bring Australia in line with international AML/CTF standards, helping to ensure Australia does not become a permissive environment for criminal groups and money laundering organisations seeking to further their activities and conceal their illicit wealth.
39. The AFP welcomes the proposed reforms. The reforms support law enforcement's efforts to disrupt and deter criminal actors, and to respond to the evolving nature of the criminal environment in which the AFP and other law enforcement and regulatory agencies operate.