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**Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Senate Legal and Constitutional Affairs Legislation Committee to the inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime
27 August 2021**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission on the inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

As a member of Transparency International Australia (TIA), the Synod also support the submission by TIA to the inquiry.

"Developing countries lose between US\$20 to US\$40 billion each year through bribery, misappropriation of funds, and other corrupt practices. Much of the proceeds of corruption find a "safe haven" in the world's financial centers. These criminal flows are a drain on social services and economic development programs, contributing to the further impoverishment of the world's poorest countries. The victims include children in need of education, patients in need of treatment, and all members of society who contribute their fair share and deserve the assurance that public funds are being used to improve their lives."

Yury Fedotov, Executive Director of UNODC and Ngozi N. Okonjo-Iweala, Managing Director of the World Bank, Preface to Asset Recovery Handbook

The Synod has taken a long interest in the need to reduce money laundering in Australia and globally. Corruption and money laundering do real harm to people, holds back development and undermines confidence in government and public institutions. In 2014 the meeting of 400 representatives of the Synod resolved:

14.7.19.3. The Synod resolved:

(a) To continue its support for action by the Commonwealth Government to combat corruption, both in Australia and internationally; and

(b) To request the Commonwealth Government:

(i) To extend Australia's anti-money laundering/counter-terrorism financing laws to cover designated non-financial businesses and professions named in the Financial Action Task Force international standards, and specifically to real estate agents in relation to the buying and selling of property,

- dealers in precious metals and stones, lawyers, accountants, notaries and company service providers;*
- (ii) To require a bank or other financial institution which assesses that funds it is dealing with have a high risk of being associated with money laundering to refuse to deal with the funds unless instructed otherwise by the appropriate Australian law enforcement agency;*
 - (iii) To share information automatically with the relevant foreign authorities when a foreign politically exposed person purchases property or transfers funds to Australia unless the Australian authorities have some reason to carry out a prosecution of the person themselves and sharing the information would compromise that prosecution, or if the Australian Government has reasonable concerns the information is likely to be misused to carry out human rights abuses;*
 - (iv) To establish a dedicated unit within the Australian Federal Police to investigate money and assets stolen from foreign governments and shifted to Australia by politically exposed persons and to seek to return the stolen assets where possible;*
 - (v) To establish a national unexplained wealth scheme to combat the ability of organised criminals to profit from their crimes, where unexplained wealth provisions are not limited by having to prove a predicate offence;*
 - (vi) To implement an effective non-conviction based confiscation and restraint mechanism to deal with criminal assets transferred from overseas to Australia; and*
- (c) To write to the Prime Minister, the Attorney General, the Leader of the Opposition and the Shadow Attorney General to inform them of this resolution.*

Successive Australian Governments have signed up to international standards committing to assist with global efforts to recover stolen assets shifted across borders. Those international promises mean the Australian Parliament needs to put in place anti-money laundering and proceeds of crime laws that are fit-for-purpose. For example, Article 51 of the UN Convention Against Corruption states:

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and State Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Australia is a party to the UN Convention Against Corruption.

Recommendations

The Synod requests that the Committee recommend:

- Amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* so that DNFBPs are required to report suspicious transactions to AUSTRAC and are not permitted to proceed with transactions where they suspect the transaction is likely to involve the proceeds of crime. However, it is essential that extending the Act to capture DNFBPs is accompanied by a substantial increase in resources to AUSTRAC to ensure AUSTRAC is able to enforce compliance and process additional intelligence reports from the additional reporting entities.
- The introduction of legislation to provide for a public beneficial ownership register of companies and trusts.
- That nominee directors be required by law to reveal they are a nominee and to disclose whom they are acting on behalf of.
- The Commonwealth Government should continue to require disclosure of the date of birth, place of birth and residential address of company directors under the new Director Identification Number system. Maintaining this information is vital for know your customer checks for reporting entities under the AML/CTF Act, where there will be multiple people with the same name. There will be no way to identify which person is the person of interest

from their DIN unless the person discloses their DIN to the reporting entity (which will tip the person off that they are being checked by the reporting entity).

- The Australian Government should develop a list of people and entities of concern, as well as Politically Exposed Persons, that should be used as a baseline database for due diligence by reporting entities under the AML/CTF regime. The database could build on the existing Commonwealth Government sanctions list. Alternatively, AUSTRAC could be required to certify commercial databases to assist reporting entities with their know your customer obligations. Only the certified databases could count towards the AML/CTF systems that reporting entities are required to have in place.
- That Australian law enforcement agencies share information automatically with the relevant foreign authorities when a foreign Politically Exposed Person purchases property or transfers funds to Australia unless the Australian authorities have some reason to carry out a prosecution of the person themselves and sharing the information would compromise that prosecution, or if the Australian Government has reasonable concerns the information is likely to be misused to carry out human rights abuses.
- Australia's unexplained wealth laws are amended to make them effective in the restraint and seizure of assets associated with significant corruption overseas to achieve similar outcomes as have been achieved by unexplained wealth laws in the US.
- Adequate law enforcement resources are provided to investigate assets being shifted into Australia by those involved in serious crime or significant corruption and take action to freeze or confiscate such assets.
- That AUSTRAC publish assessments of how reporting entities are collectively complying with the AML/CTF obligations and provide examples of best practice.

1. The extent to which the Australian Transaction Reports and Analysis Centre:

a. responds to and relies upon reporting by designated services, and

b. identifies emerging problems based on this reporting

The recent assessments of Crown's compliance with its AML/CTF obligations have called into question the effectiveness of AUSTRAC's oversight of existing reporting entities. It is probably the clearest example of AUSTRAC failing to ensure compliance with the AML/CTF Act that is public. Counsel Assisting the Victorian Royal Commission into the Casino Operator and Licence concluded that despite the fact that Crown had been operating the Melbourne casino for decades, it was still only at an "early stage of maturity in its ability to manage the risk of money laundering at its casinos."¹ The Counsel Assisting the Royal Commission concluded that "Crown has not prioritised its anti-money laundering obligations. Further, in addressing allegations and revelations of money laundering, Crown has not always acted with candour, rigour or haste."² The Bergin Inquiry into Crown had found that processes adopted by Crown enabled or facilitated money laundering through Crown's Southbank and Riverbank accounts. Further, Crown's conduct enabled money laundering to occur.³ The Bergin Report identified red flags that were raised from 2014 onwards

¹ Royal Commission into the Casino Operator and Licence, 'Closing submissions of Counsel Assisting the Commission', July 2021, 154.

² Ibid., 154.

³ Ibid., 155.

concerning indications that money laundering was occurring through the Southbank and Riverbank accounts. Crown was alerted to these red flags but ignored them.⁴

In August 2019, *The Age* had published an article that federal investigators had traced money from a number of suspected or convicted drug traffickers and money launderers flowing into the bank accounts of Southbank Investments Pty Ltd and Riverbank Investments Pty Ltd, between 2012 and 2016.⁵ Crown made a deliberate decision not to engage an external party to investigate those reports at the time.⁶ It is not known if AUSTRAC made any requests that Crown should investigate the report or if AUSTRAC conducted its own review of Crown's AML/CTF systems. It was not until September 2020, while under investigation by the Bergin Inquiry, that Crown decided to conduct its own internal investigation into cash deposits into the Riverbank and Southbank accounts.⁷ Despite being aware that the risk of money laundering extended beyond the Southbank and Riverbank accounts to other accounts operated by Crown, Crown made the deliberate decision not to investigate those other accounts for signs of money laundering.⁸ The investigation initiated in October 2020 by Crown into the Southbank and Riverbank accounts was limited to the Australian dollar accounts.⁹

The investigation found examples of transactions whereby someone anonymously deposited cash into the Southbank or Riverbank account. Crown that allocated the funds into a particular patron's deposit account and then released those funds at the casino end without that particular patron being present.¹⁰

The Bergin Inquiry found that Crown aggregated individual transactions in Crown's internal systems that compromised Crown's AML Team's capacity to detect structuring in the Southbank and Riverbank accounts.¹¹ The foreign currency bank accounts held by those entities were excluded from the investigation.¹²

The Victorian Royal Commission found that Crown had illegally allowed international guests staying at Crown Hotels to use credit and debit cards to access funds then made available to those guests on the casino floor.¹³ At least 1,679 such transactions were processed between 2012 and 2016, involving at least \$160 million.¹⁴ Individual transactions ranged from \$500 to \$2.8 million.¹⁵ The practice was set up in response to requests from guests to avoid currency restrictions and capital controls under Chinese law.¹⁶ The development of the practice was conducted by in-house lawyers and compliance staff who provided advice on the risk of getting caught and defensive arguments if that was to occur.¹⁷ The practice circumvented anti-money laundering monitoring and reporting, and hotel transactions were not subject to Crown's AML monitoring.¹⁸ Thus, the practice made it much easier to conduct money

⁴ Ibid., 158.

⁵ Ibid., 158.

⁶ Ibid., 158-159.

⁷ Ibid. 159.

⁸ Ibid., 160-161.

⁹ Ibid., 161.

¹⁰ Ibid., 168.

¹¹ Ibid., 155.

¹² Ibid., 161.

¹³ Ibid., 141.

¹⁴ Ibid., 141.

¹⁵ Ibid., 141.

¹⁶ Ibid. 141.

¹⁷ Ibid., 141.

¹⁸ Ibid., 142, 144.

laundering at Crown Melbourne.¹⁹ Money made available for gambling was falsely represented by Crown as hotel payments.²⁰

The Victorian Royal Commission found evidence that Crown had issued invoices to fictitious hotel rooms.²¹ Counsel Assisting the Royal Commission expressed concern that the practice may have contravened section 74(1A) of the AML/CTF Act.²²

The Committee should ask AUSTRAC why it had not been able to ensure greater compliance by Crown with its AML/CTF obligations.

2. The extent to which Australia's AML/CTF regulatory arrangements could be strengthened to:

- a. address governance and risk-management weaknesses within designated services, and
- b. identify weaknesses before systemic or large-scale AML/CTF breaches occur.

AUSTRAC only gets reports from a small fraction of the businesses and professionals that may be facilitating money laundering and the financing of terrorism. In some cases, the facilitation will be unknowingly, and in some cases it will be reckless. The limited number of reporting entities is because DNFBPs are exempted from reporting under the AML/CTF Act.

Databases of Politically Exposed Persons and People of Concern

A current weakness in Australia's AML/CTF framework is that it relies on reporting entities having their own lists of people of concern and Politically Exposed Persons. There are commercial databases of such people. However, not all reporting entities make use of these commercial databases. Further, there is no certification of the accuracy and comprehensiveness of such databases. It would be more effective if the Australian Government assists in the development of up-to-date lists of Politically Exposed Persons (PEPs) and their associates. Such a list could be built upon the existing people and entities in the Australian Government sanctions list. Such a list would not replace commercial products but at least would ensure reporting entities under the AML/CTF framework had a baseline database to work from.

Alternatively, AUSTRAC could be required to certify commercial databases to assist reporting entities with their know your customer obligations. Only the certified databases could count towards the AML/CTF systems that reporting entities are required to have in place.

Either the development of a Commonwealth Government database or certification of commercial databases could be funded through the levies on reporting entities.

Beneficial Ownership Register

Due diligence by reporting entities would also be assisted by the Australian Government implementing a publicly accessible beneficial ownership register for companies and trusts.

¹⁹ Ibid., 145.

²⁰ Ibid., 145-146.

²¹ Ibid., 152.

²² Ibid., 152.

As an example of the benefits of a public register of beneficial ownership, Global Witness pointed out that after the UK Persons of Significant Control register was extended to cover Scottish Limited Partnerships (SLPs) in June 2017, the rate of SLP incorporation dropped to its lowest level for seven years. The incorporation rate dropped by 80% in the last quarter of 2017 compared to the peak at the end of 2015. SLPs had become notorious for their association with corruption, organised crime and tax evasion and were highly attractive as vehicles for criminals.²³

A public beneficial ownership register of companies and trusts would also assist reporting entities in carrying out due diligence obligations under the AML/CTF Act. The register needs to be backed up by an offence of a person acting as a front person for another and not disclosing it. The offence would help act as a deterrent for people who knowingly or recklessly act as nominees or front people for those who have engaged in criminal activity.

The World Bank pointed out in 2011 that in one jurisdiction that they did not name, customers of financial institutions are required to complete a written declaration of the identity and details of the beneficial owner(s) – a requirement pursuant to an agreement between the jurisdiction's bankers association and signatory banks. The form is signed and dated by the contracting party and includes a statement that it is a criminal offence (document forgery) to provide false information on the form, with a penalty of up to five years imprisonment or a fine. The form approach was adopted by banks in other jurisdictions, even when not required by law or regulation. In the jurisdiction where the form is used, the prosecuting authority has prosecuted cases of forgery (that is, falsely establishing in a written document a fact with a legal application or what is referred to as an 'intellectual lie').²⁴

The World Bank argued the written declaration of beneficial ownership is a valuable tool for a number of reasons. It assists in focusing on the process of identification of the beneficial owner at the outset, not only for the bank officials but also for the contracting party. It provides the background information that will assist the bank with verification, as well as in determining if the beneficial owner(s) is a Politically Exposed Person (PEP). It assists regulatory authorities in evaluating beneficial ownership practices and enables better oversight of how banks are handling beneficial ownership issues. Finally, the requirement to sign under penalty of a criminal offence and, where appropriate, the additional consequences of non-conviction based or criminal forfeiture serves to alert the contracting party to the seriousness and importance of the information and therefore acts as a deterrent. It may not be a deterrent for the corrupt PEP or serious criminal but acts as a deterrent for intermediaries and others (including family and close associates) who are acting as the contracting party and are not likely to be involved in any other criminal activity themselves.²⁵

Nominee owners are common. For example, Global Witness' 2018 analysis of the UK Person of Significant Control register found more than 9,000 companies controlled by beneficial owners who control over 100 companies each.²⁶ At least some of these owners were likely nominee owners.

Analysis of the UK Persons of Significant Control (PSC) register by Global Witness in 2016 and 2018 showed the kind of useful information that can be derived from such a register by entities required to do know your customer due diligence under the AML/CTF regime. It was found in 2016 that 76 beneficial owners shared the same name and birthday as someone on the US

²³ Global Witness, 'The Companies We Keep', July 2018, 10.

²⁴ Theodore Greenberg, Larissa Gray, Delphine Schantz, Michael Latham and Carolin Gardner, 'Stolen Asset Recovery. Politically Exposed Persons. A policy paper on strengthening preventative measures', The World Bank, 2009, 37.

²⁵ Ibid.

²⁶ Global Witness, 'The Companies We Keep', July 2018, i.

sanctions list, and 267 disqualified directors were listed as beneficial owners. There were also 2,160 beneficial owners with a 2016 date of birth and people who listed the year 9988 as their date of birth.²⁷ In 2018, Global Witness found there were still beneficial owners on the PSC register with dates of birth that would mean they were yet to be born.²⁸

In their 2018 analysis, Global Witness found 345 companies had a beneficial owner who was a disqualified director. There were also 7,848 companies that shared a beneficial owner, officer or registered postcode with a company suspected of having been involved in money laundering.²⁹

In 2018, Global Witness reported that 328 companies in the UK PSC register were part of circular ownership structures, where they appear to control themselves.³⁰

The work by Global Witness also demonstrates that there would be a need to have a regulator willing to check information about beneficial ownership disclosure being lodged with the register.

Relevant beneficial ownership information should be automatically shared with relevant authorities in other jurisdictions unless there are substantial grounds to believe that the information would be misused to violate the human rights of the beneficial owner. Automatic exchange of information about beneficial ownership will assist in combating the use of companies with concealed ownership to carry out transnational crimes such as tax evasion, money laundering, human trafficking and terrorism. Automatic exchange of information between tax authorities has already seen significant global benefits in recovering funds obtained by tax evasion and in deterring individuals from engaging in cross-border tax evasion. Similar benefits can be expected from the automatic exchange of information on beneficial ownership.

Addressing nominee directors

Requesting that a nominee director reveal they are acting as a nominee allows entities required to do due diligence to know there are concealed controllers of the legal entity they are dealing with. It will be a flag that greater due diligence is necessary.

For the requirement to be effective, it will need to be an offence under national law for someone to act as a nominee director and not disclose the fact. Furthermore, the penalty for the offence will need to be of a level that a criminal wishing to have the shield of a front director cannot simply pay a civil penalty on behalf of the nominee director if it is detected that the nominee director did not disclose they were acting as a nominee director.

We are deeply concerned the Commonwealth Government plans to remove access to the date of birth, place of birth and address of directors under the Director Identification Number system being introduced. In our experience, there can be multiple people with the same name on the Australian business registry. So when trying to identify a particular individual, it will become more problematic as it will not be possible to know from DINs which individual with the same name the DIN applies. When we have conducted investigations into stolen assets and proceeds of crime being shifted into Australia, access to dates of birth, places of birth, and residential addresses have allowed us to know which corporate entities the person in question are likely to be the director. Under the new regime, it appears a search on a name may result in several individuals being returned with the same name and different DINs, but with no way to verify which of them is a person of interest. The reduction in identity information being made public is

²⁷ Robert Palmer and Sam Leon, 'What does the UK beneficial ownership data show us?', UNCA Coalition, 22 November 2016.

²⁸ Global Witness, 'The Companies We Keep', July 2018, 13.

²⁹ *Ibid.*, ii.

³⁰ *Ibid.*, ii.

likely to make due diligence checks required by reporting entities under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* more difficult.

Need for greater resources to recover proceeds of crime and corruption

The Australian Government should provide more law enforcement resources to address cross border money laundering into Australia. The US Government has been setting an example to other governments on the recovery of stolen assets shifted into the US. In 2010, then US Attorney-General Eric Holder announced the creation of a new Kleptocracy Asset Recovery Unit at the Department of Justice. In May 2019, the Unit returned \$84 million to Malaysia from funds stolen from the 1 Malaysia Development Berhad (1MDB) fund. The 1MDB fund was a state investment fund wholly owned by the Government of Malaysia. More than \$6.6 billion was allegedly stolen from the 1MDB by Malaysia's then Prime Minister Najib Razak and his associates. Efforts to recover the stolen funds were commenced by the new Malaysian Government in 2018.

Currently, the Australian federal Criminal Assets Confiscation Taskforce (CACT) locates concealed criminal wealth using conviction or civil means to confiscate proceeds of crime. We believe the CACT would benefit from additional resources. However, we are aware there are many areas of serious criminal activity where the AFP would use additional resources. Thus, we realise the CACT would need to compete with other priorities for additional resources.

All confiscated money, and the funds derived from the sale of confiscated assets, are returned to the Commonwealth and placed into the Confiscated Assets Account, which is managed by the Australian Financial Security Authority (AFSA) on behalf of the Commonwealth.

With approval by the Minister, those funds are then reinvested into the community through a variety of means, including local crime prevention, law enforcement, drug treatment and diversionary measures across Australia.

There are also provisions for the Australian Government to approve the sharing of confiscated funds with other jurisdictions, including overseas in recognition of their effort involved in joint investigations or prosecutions of unlawful activity.

Public assessments of the health of the AML/CTF regime

AUSTRAC has not published assessments of how reporting entities are complying with the AML/CTF obligations. Such assessments could be used to encourage reporting entities to improve their systems and move towards best practice. We note the UK Financial Conduct Authority publishes assessments of how the UK financial services sector is responding to preventing financial crimes, including money laundering and the financing of terrorism.³¹

We acknowledge there are risks that criminals could use such assessments to target identified weaknesses. However, it is likely that criminals probably have already identified the weaknesses in the existing regime, and many of them are exploiting those weaknesses, as demonstrated by the long-term money laundering facilitated through Crown Casino.³² For example, it was reported that between 2005 and 2013, Dan Bai Shun Jin, who is allegedly under investigation in Australia and the US for money-laundering activities, managed to turn over \$855 million at Crown Casino.³³

³¹ For example, see UK Financial Conduct Authority, 'Financial crime: analysis of firm's data', November 2018.

³² As members of TIA, we shared the following section on Crown with them and it appears in their submission as well as ours.

³³ Tom Cowie, 'Suspected Chinese-Australian money launderer gambled 'astronomical' \$850m at Crown Casino', *The Age*, 16 September 2016, <http://www.theage.com.au/victoria/suspected-chinese-australian-money-launderer-gambled-astronomical-850m-at-crown-casino-20160916-grhuvj.html>

It is also claimed Mr Jin made more than \$140 million chip "buy-ins" at the casino since 2010 and had used multiple identity documents, including six Australian passports. Mr Jin claimed that he earned a base salary in China of \$US300,000 with bonuses and shares.

High roller Peter Tan Hoang was murdered in 2014 in the wake of an investigation into an international drug and money laundering syndicate that saw more than \$1 billion in suspect money pass through Crown casino over a 12-year period to 2012.³⁴ Mr Hoang was allowed to gamble under four different names, Pete Hoang, James Ho, John Ho and Patrick Lu, and received perks, including overseas holidays, cash gifts of as much as \$100,000 and gambling "commissions" in the hundreds of thousands of dollars.³⁵ He had been banned from the Star casino in Sydney in 2001, so it is a significant question why Crown Casino welcomed him.³⁶ He was banned from Sydney's Star Casino and Jupiter's Casino in Brisbane in May 2012.³⁷ He had been able to purchase \$75 million of gambling chips at Crown Casino between 2000 and 2012.³⁸

It was alleged in the media that a significant amount of Crown's gambling chips are being seized during drug trafficking investigations, presumably being used in money laundering activities.³⁹ Police raids on a major drug syndicate found at least \$600,000 in Crown casino chips where the funds used to obtain the chips were "derived from the sale of heroin".⁴⁰

In 2014, Victoria Police's Operation Volante seized another \$600,000 in chips after smashing a 26-person drug ring.⁴¹

It was reported that in one case, an offender was able to transfer \$300,000 into a Crown betting account in defiance of a court freezing order and had the sum converted to gambling chips, calling into serious question the effectiveness of Crown's anti-money laundering detection systems and AUSTRAC's oversight of Crown's AML/CTF systems.⁴²

Australian Federal Police were able to obtain a seizure order against a Lamborghini Aventador coupé purchased by Ming Qing Wang through an account set up by Crown Casino.⁴³ The AFP acted on suspicion that the vehicle may have been bought using "proceeds or an instrument of the crimes of money laundering or tax avoidance occurring during gambling activity on casino junket tours", according to Supreme Court of Victoria Justice Rita Zammit.⁴⁴

³⁴ Chris Vedelago and Cameron Houston, 'Crown Casino haven for drug traffickers, 'a blot on the community'', *The Sunday Age*, 7 February 2016, <http://www.smh.com.au/business/crown-casino-haven-for-drug-traffickers-a-blot-on-the-community-20160206-gmnce7.html> and Dylan Welch, 'Drug trafficker and high roller Pete Tan Hoang laundered up to \$1 billion through Melbourne's Crown Casino before being shot in the face', *ABC News*, 12 December 2014.

³⁵ Dylan Welch, 'Drug trafficker and high roller Pete Tan Hoang laundered up to \$1 billion through Melbourne's Crown Casino before being shot in the face', *ABC News*, 12 December 2014.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Chris Vedelago and Cameron Houston, 'Crown Casino haven for drug traffickers, 'a blot on the community'', *The Sunday Age*, 7 February 2016, <http://www.smh.com.au/business/crown-casino-haven-for-drug-traffickers-a-blot-on-the-community-20160206-gmnce7.html>

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Sarah Danckert, 'The Chinese gamblers ploughing millions into Crown Casino', *The Sydney Morning Herald*, 21 October 2016.

⁴⁴ *Ibid.*

3. The effectiveness of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act) to prevent money laundering outside the banking sector

Australia is home to stolen assets shifted across borders and laundered into Australia. The Synod notes that the Australian Federal Police reported that they had restrained more than \$250 million in criminal assets in courts across Australia and overseas in the 2019 – 2020 financial year.⁴⁵ They noted that the criminal assets took many forms:

- Residential properties;
- Commercial properties;
- Rural land;
- Luxury cars;
- Boats;
- Ban accounts;
- Cash;
- Cryptocurrency;
- High-end jewellery; and
- Luxury goods.

The restrained assets were linked to money laundering, drug trafficking, illicit tobacco, identity crime, tax crime and corporation offences.

As the list above demonstrates, the laundering of proceeds of crime uses many asset vehicles to achieve the objective of trying to make the proceeds appear legitimate. Australia's current AML regime almost exclusively focuses on cash, leaving open many other avenues for laundering.

4. The attractiveness of Australia as a destination for proceeds of foreign crime and corruption, including evidence of such proceeds in the Australian real estate and other markets since the enactment of the Act

Delays in freezing and recovering proceeds of crime

Australian law currently makes the restraint and confiscation of proceeds of crime difficult for law enforcement agencies. The difficulty makes Australia a more attractive location for the laundering of proceeds of foreign crime and corruption.

The AFP pointed out that one case successfully prosecuted in 2018 had taken 17 years.⁴⁶

As an example of another case, the Australian Federal Police announced on 4 September 2020 they had restrained \$1.6 million in assets as part of an investigation into alleged bribery of Malaysian Government officials by a Melbourne man.⁴⁷

The AFP alleges that the Melbourne man paid Malaysian officials \$4.75 million in bribes in exchange for them to purchase his property developments in Melbourne.⁴⁸ It is alleged that the accused acquired three properties around a university campus in Caulfield East and developed

⁴⁵ Australian Federal Police, '\$250 million in criminal assets restrained by the AFP', Media Release, 27 August 2020.

⁴⁶ Ibid.

⁴⁷ Australian Federal Police, '\$1.6 million in assets restrained in connection to alleged Malaysian official bribery investigation', Media Release, 4 September 2020.

⁴⁸ Ibid.

them into student hostels through his associated companies. Upon completion of the development in 2013, the property price of the student hostel was allegedly inflated from \$17.85 million to \$22.6 million and sold to a Malaysian government-owned entity.⁴⁹

The AFP-led Criminal Assets Confiscation Taskforce obtained restraining orders over two real estate properties in Victoria, each owned by the accused's wife and company in which she is the sole director. Bank accounts held by the accused's wife and the accused's associated companies were also restrained.⁵⁰

The Age reported that the alleged victims of the crime were impoverished rural Malaysians. They were meant to benefit from the funds held by the Malaysian government-owned agency that purchased the student hostel.⁵¹

In the case above, the restraint of the assets took seven years from the completion of the development.

ATO data on likely money laundering

Data from the Australian Taxation Office has also raised a red flag regarding the likelihood of proceeds of crime are being shifted across borders into Australia. The Commissioner of Taxation provided a report under Section 396-136 of the *Taxation Administration Act 1953* on the reportable account information received from Australian Financial Institutions under the Common Reporting Standard for 2018. Some of the data is suspicious in terms of the number of people, trusts or businesses holding cash in accounts with Australian financial institutions and the average amount per entity being held. Some of these funds may be held by Australian residents who have changed their citizenship to be located in a secrecy jurisdiction. Some jurisdictions facilitate easy transfer of citizenship to assist high net worth individuals in aggressively minimise their tax contributions, such as the Cayman Islands golden visas.⁵²

Table 1. Amount of funds held by foreign individuals, trusts and businesses in selected jurisdictions in Australian financial institutions as of 31 December 2018.

Jurisdiction	Number of Accounts	Total Balance (\$ millions)	Average Balance (\$/account)
Marshall Islands	71	386.4	5,442,297
The British Virgin Islands	700	927.7	1,325,258
Tuvalu	140	112.6	804,288
Jersey	954	682.5	715,407
Cayman Islands	2,793	1,764.1	631,613
Bermuda	2,051	1,181.9	576,276
Guernsey	527	275.5	522,697
Belize	156	78.4	502,343
St Kitts and Nevis	191	85.9	449,568
Luxembourg	888	214.6	241,618
Solomon Islands	2,609	144.3	55,321
Papua New Guinea	17,775	636.7	35,817
Cambodia	7,398	197.5	26,701

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Nick McKenzie, 'Melbourne property seized in bribery probe', *The Age*, 4 September 2020.

⁵² <https://best-citizenships.com/2019/05/02/cayman-islands-golden-visa/>; <https://www.goldenvisas.com/cayman-islands>; <https://nomadcapitalist.com/2019/04/08/cayman-islands-residency/>

Real Estate and Money Laundering

Investing in Australian real estate appears to be particularly attractive to people overseas seeking to launder proceeds of crime and corruption through Australia. The purchase process is advertised to foreign nationals as simple with benefits⁵³ including the ease of government approval, the availability of speciality mortgage broker finance, stable housing market and the strong consumer protections available.

There is a significant risk of money laundering through real estate professionals that have set up Chinese based offices to attract Chinese investment into Australian property if the real estate businesses in question do not have significant anti-money laundering processes in place. For example, McGrath Limited ancillary services include home loans⁵⁴ and an 'Asia Desk'⁵⁵ which provides specialised services to facilitate the purchasing process for Asian buyers. It states that the Asia Desk has assisted in over \$345 million worth of sales as of August 2021.⁵⁶

Woobuyers operated the website 'woobuyers.com.au', which advertised their skills in attracting Chinese buyers through their "Woobuyer strategists", direct marketing channels, social media marketing (including through Weibo), hotline services, and targeting to high net worth individuals.⁵⁷ They arranged "roadshows" for groups of overseas buyers to inspect properties and their network includes real estate partners, accountants, bankers, migration agents, media and lawyers to facilitate transactions.

Cases of Chinese Nationals

On 31 October 2019, the Australian Federal Police (AFP) issued a media release stating they had restrained \$17.3 million of assets related to two Chinese nationals.⁵⁸

The media release stated that Operation Gethen had restrained \$50 million in assets since the 2017 signing of a Joint Agency Agreement with the Chinese Ministry of Public Security. Operation Gethen followed a 2017 request from the Chinese Ministry of Public Security for AFP assistance to identify two Chinese nationals suspected of laundering proceeds of crime in Australia. Chinese authorities believe the money was raised in China through real estate and bank loan fraud.⁵⁹

The AFP alleged that the two Chinese nationals moved about \$23 million of fraudulently obtained funds from China since late 2012. The allegedly criminally obtained funds were used to purchase numerous properties in Melbourne and Tasmania. These included:⁶⁰

- A newly constructed mansion in Mont Albert, Melbourne;
- Three new residential units in Box Hill, Melbourne;
- Commercial property in Blackburn, Melbourne; and
- Over 3,000 acres of farmland at Musselroe Bay on Tasmania's northeast coast.

The Australian Financial Review raised money laundering concerns in 2019 about a 32-year-old Chinese national Bo Zhang, who had purchased six houses in Mosman worth \$37 million. He

⁵³ <https://www.homeloanexperts.com.au/non-resident-mortgages/buyers-guide/>

⁵⁴ JP Morgan, Bell Potter, Luminis Partners, 'McGrath Initial Public Offering', 2015, 58.

⁵⁵ <https://www.mcgrath.com.au/services/asia-desk>

⁵⁶ <https://www.mcgrath.com.au/services/asia-desk>

⁵⁷ The website was <http://www.woobuyers.com.au/chinese-real-estate-services>. However, as of August 2021, it no longer appears to be in operation.

⁵⁸ Australian Federal Police, '\$17.3m restrained in AFP investigation into Chinese nationals allegedly laundering proceeds of crime', Media Release, 31 October 2019.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

did not live in any of them. He also bought a further \$1.2 billion of hotel, apartment and retail developments in Sydney and on the Gold Coast.⁶¹

Case of Eremas Wartoto

Eremas Wartoto is a politically connected Papua New Guinean businessman. In 2011, PNG Taskforce Sweep charged Mr Wartoto with the misappropriation of \$5 million.⁶² Mr Wartoto was charged over the "payment of K7.9m [\$3.2 million] of RESI [Rehabilitation Education School Infrastructure] funds allocated for Kerevat NHS [National High School]".⁶³ On 30 August 2011, Mr Wartoto was charged; but then obtained an Australian foreign skilled workers visa and fled to Queensland on the 3 September 2011.⁶⁴ He was charged with two counts of misappropriation of property of Papua New Guinea in contravention of section 383(1) (a) of the *Criminal Code Act 1974* (PNG). Mr Wartoto claimed that he was 'too ill' to travel back to Port Moresby, even though he frequently travelled internationally within the two year period that he was in Australia.⁶⁵

On 30 August 2012, PNG authorities issued a restraining order to cover property owned by Eremas Wartoto in PNG.⁶⁶

On 24 April 2013, Papua New Guinea made a 'Mutual Assistance Request' to the Australian Federal Police, asking for assistance in registering a 'Foreign Restraining Order' that was made in 2012 against Mr Wartoto under the *Proceeds of Crime Act 2005* (Papua New Guinea).⁶⁷ On 26 May 2013, the District Court of Queensland registered the Foreign Restraining Order over Mr Wartoto's five Australian properties and four bank accounts believed to be associated with Mr Wartoto.

The PNG authorities had stated they believed Mr Wartoto engaged in "asset protection measures" in relation to his Australian assets to prevent these from being seized under the PNG *Proceeds of Crime Act 2005*. These asset protection measures included the registration of second mortgages over Australian properties in favour of Litia Ilam and Louisah Wartoto as Trustees of the Wartoto PNG trust, which the PNG authorities believed was under effective control of Mr Wartoto.⁶⁸

The Australian Federal Police (AFP) lodged a successful application to have Mr Wartoto's property seized.⁶⁹ The AFP's application to the court was under section 35 of the *Mutual Assistance in Criminal Matters 1987* (Cth), requesting that the Official Trustee in Bankruptcy take custody and control of the property.⁷⁰

⁶¹ Edmund Tadros, Angus Grigg and Neil Chenoweth, 'Dirty money spotlight on estate agents', *The Australian Financial Review*, 11 November 2019.

⁶² Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian*, 15 May 2013.

⁶³ Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, 46.

⁶⁴ Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of \$30m', *The Age*, 10 May 2013; and Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May 2013 (number BD 1440/2013).

⁶⁵ Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of \$30m', *The Age*, 10 May 2013.

⁶⁶ Affidavit filed in Brisbane by Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May 2013.

⁶⁷ Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May 2013.

⁶⁸ Affidavit filed in Brisbane by Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May 2013.

⁶⁹ Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian*, 15 May 2013.

⁷⁰ Application filed in Brisbane by Commissioner of the Australian Federal Police, District Court of Queensland, 26 April 2013 (number BD1440/2013).

The five properties in Queensland owned by Mr Wartoto in Queensland are in:

- Bentley Park bought for nearly \$250,000 in February 2004. Eremas Wartoto jointly owned it with Louisah Wartoto and the Westpac Bank provided the mortgage. The mortgage was cancelled on 9 July 2010. The property was gifted to Eremas Wartoto Pty Ltd on 22 June 2010.
- Edmonton, bought for over \$500,000 in September 2007. The ANZ bank provided a mortgage. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.
- Cairns, bought for nearly \$600,000 in April 2010. Jointly owned with Louisah Wartoto. The ANZ bank provided the mortgage.
- Cairns, bought for over \$400,000 in November 2010. The ANZ Bank provided the mortgage on the property. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.
- Mount Sheradan, bought for over \$500,000 in January 2011. The ANZ Bank was the mortgagee. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.

The two Cairns apartments – in Esplanade Cairns City and in Mcleod Street Cairns City – were put on the market in September 2015. The Esplanade unit sold for \$420,000, \$155,000 less than Mr Wartoto purchased it for in 2010. The Mcleod St unit, meanwhile, was being advertised for “offers over \$314,000” in May 2016 – \$101,000 less than Mr Wartoto purchased it for in 2010.⁷¹

Eremas Wartoto went on trial in PNG in February 2016.⁷² In 2017 he was sentenced to 10 years in prison with hard labour.⁷³

Case of Jeffery Yakopya

Jeffery Yakopya, the former assistant secretary in the PNG National Planning and Monitoring Department, was arrested by Taskforce Sweep after allegedly approving a K1,975,006 (\$0.89 million) variation claim lodged on behalf of Sarakolok West Transport Ltd (SWT).⁷⁴ These funds were on top of an alleged K7.9 million (\$3.6 million) paid to SWT, a company owned by Eremas Wartoto.⁷⁵ Taskforce Sweep has alleged that Mr Yakopya has misappropriated a total of K16.575 million (\$7.5 million).⁷⁶ Jeffery Yakopya owned one property in Queensland, in Bentley Park, bought for over \$400,000 in November 2009.

In December 2016, Jeffery Yakopya was found guilty of paying his own company K5 million, to build three Bailey bridges in the Komo-Margarima district, Hela province. Only one bridge was built. He was sentenced to nine years in prison with hard labour by the Waigani National Court.⁷⁷

⁷¹ Dominic Geiger, 'Cairns property listed as belonging to alleged fraudster being sold', *Cairns Post*, 3 May 2016, <http://www.cairnspost.com.au/news/cairns/cairns-property-listed-as-belonging-to-alleged-fraudster-being-sold/news-story/d455d58a545563c0134dc34ed13114ea>

⁷² <http://www.looppng-sb.com/content/australian-federal-agent-gives-evidence-wartoto-trial>

⁷³ '10 years jail for PNG businessman Wartoto', Radio New Zealand, 24 June 2017, <https://www.rnz.co.nz/international/pacific-news/333682/10-years-in-jail-for-png-businessman-wartoto>

⁷⁴ Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

⁷⁵ 'Sweep team arrest two more', *The National*, 3 January 2012; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, 46.

⁷⁶ 'Investigation Taskforce Sweep 2013 Report', *Post Courier*, 2 August 2013.

⁷⁷ Sally Pokiton, 'Public servant sentenced to 9 years in jail', Loop, 29 December 2016, <http://www.looppng-sb.com/png-news/public-servant-sentenced-9-years-jail-49144>

Case of Paul Tiensten

Paul Tiensten was the former Minister for National Planning and Monitoring for PNG and the Member of Parliament for Pomio. In September 2011, he fled to Brisbane after being summoned by Taskforce Sweep to answer questions over misappropriation of funds at the Department of Planning, and upon returning to PNG, was subsequently arrested.⁷⁸ Paul Tiensten was charged and committed for trial over the alleged misappropriation of funds from this department, after allegedly diverting funds of approximately K3.4 million (\$1.5 million) from Mesu Investment Limited intended for the Karalai Plantation Rehabilitation to his family company Tolpot Services Limited.⁷⁹

Paul Tiensten was also charged concerning dishonestly approving a government grant of approximately K10 million (\$4.5 million) to facilitate the set up an airline called 'Travel Air', owned by Eremas Wartoto, despite the money having been earmarked for rural air freight subsidies.⁸⁰ He was convicted on this charge, and Judge Gibbs Salika said that Mr Tiensten had used his "political muscle" to force the grant through.⁸¹ He was sentenced on 28 March 2014 to nine years in prison with hard labour, but four years of the sentence was suspended if he repaid the money.⁸²

In April 2015, a further three years was added to his prison sentence by the National Court in relation to the use of over one million US dollars of funding that was intended for the rehabilitation of a plantation in East New Britain. He was found guilty of one count of official corruption, one count of obtaining goods by false pretence and one count of misappropriation.⁸³

In 2008, Wu Shih-tsa, a businessman from Singapore, testified in a Taiwan court that six PNG officials had received part of a \$19 million bribe, including Paul Tiensten. Paul Tiensten denied knowledge of the bribe. Paul Tiensten was also accused of a \$90 million fraud involving executives of four landowner associations in Gulf province, in which funds were released by the National Planning Office to the groups for infrastructure projects that were never built. The case failed for procedural reasons.⁸⁴

As of November 2020, Mr Tiensten was in the community in PNG on parole.⁸⁵

Paul Tiensten's wife Julie Tiensten owned one property in Queensland, in North Quay Brisbane City, bought for nearly \$600,000 bought in May 2009. The contact address for Julie Tiensten on purchase of the property was a property owned by Eremas Wartoto in Edmonton. The North Quay Brisbane City property was sold on 14 November 2013 for over \$450,000.

Case of General James Hoth Mai Nguoth

General James Hoth Mai Nguoth served as the Sudan People's Liberation Army's (SPLA) chief of staff from May 2009 until being dismissed and replaced by General Paul Malong Awan in

⁷⁸ Liam Fox, 'Ex-minister arrested on return to PNG', ABC News, 17 November 2011.

⁷⁹ 'Tiensten in custody on second charge', *Post Courier*, 18 November 2011; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, 46.

⁸⁰ Liam Fox, 'PNG businessman up on yet more fraud charges', ABC News, 21 May 2013; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, 46.

⁸¹ Rowan Callick, 'PNG gets moving on scourge of corruption', *The Australian*, 2 December 2013, 9.

⁸² 'Tiensten jailed', *Papua New Guinea Post Courier*, 31 March 2014; and Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian*, 1 April 2014, 7.

⁸³ 'Former PNG minister gets 3 more years in jail', Radio New Zealand, 17 April 2015, <http://www.radionz.co.nz/international/pacific-news/271445/former-png-minister-gets-3-more-years-in-jail>

⁸⁴ Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian*, 1 April 2014, 7.

⁸⁵ Clarissa Moi, 'Tiensten earns a degree', *The National*, 12 November 2020, https://www.thenational.com.pg/___trashed-347/

April 2014. Before that post, General Hoth Mai served as Deputy Chief of Staff for Logistics. Even as a senior official in the SPLA, his salary was never more than approximately US\$45,000 per year.⁸⁶

On 1 October 2014, the Nguoth Oth Mai (the son of General Hoth Mai's 23-year-old son) became the owner of 7-8 Wiringa Close, Narre Warren North for \$1.5 million.⁸⁷ Nguoth Oth Mai was studying in China until mid-December 2013. When The Sentry visited the home in August 2016, a BMW 316i used by one of Hoth Mai's daughters was parked in front of the house.⁸⁸

It does not appear to be publicly known how General Hoth Mai's family have access to the wealth used to purchase the assets they owned in Australia.

Case of Onn Mahmud

The Australian press reported in 2013 that Onn Mahmud, the brother of the then chief minister of Sarawak in Malaysia, had a property portfolio of Sydney commercial and residential property worth an estimated \$100 million.⁸⁹ In one deal, Mr Onn sold an apartment development site in Sydney's Potts Point, 10 Wylde Street⁹⁰, for \$15.5 million in 2007, realising a profit of \$10.8 million.⁹¹

Onn Mahmud founded the Regent Star company in Hong Kong in the 1980s. As director of Archipelago Shipping, the monopoly for timber exports from Sarawak, Mr Onn was in a position of power that no purchaser of timber could circumvent. The Bruno Manser Fund alleged that whoever wanted to buy tropical wood from Sarawak had to pay a commission to Onn's Regent Star at a fixed price per cubic meter.⁹² Only then was it approved for export. With its aggressive logging, Sarawak had by this time become the world's largest exporter of tropical wood. More than 10 million cubic meters were leaving the state annually, and the ancient rainforest of Borneo was being devastated.⁹³ The primary consumer for Sarawak's timber was Japan. At the beginning of 2007, the tax authorities in Tokyo discovered that nine Japanese shipping companies had allegedly been making annual payments of millions of dollars to Regent Star in Hong Kong. The companies had been transporting timber from Sarawak to Japan since the beginning of the 1980s. The Bruno Manser Fund reported that tax authorities came to the conclusion that the kickbacks were for the government in Sarawak.⁹⁴

Regent Star was initially found in 2007 to have received RM32 million kickbacks from Japanese shipping companies. However, an appeal tribunal reversed the findings a year later, ruling that the monies paid for "brokerage services" to Onn Mahmud's firm were legitimate and could be written off as tax rebates.⁹⁵

⁸⁶ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, 46.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Mark Baker, 'Tycoon dodges millions in land tax', *The Sydney Morning Herald*, 23 April 2013.

⁹⁰ <http://www.smh.com.au/world/catch-him-if-you-can-the-mysterious-escape-of-malaysias-second-richest-man-20130427-2iildf.html>

⁹¹ Mark Baker, 'Tycoon dodges millions in land tax', *The Sydney Morning Herald*, 23 April 2013.

⁹² Bruno Manser Fonds, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, 4.

⁹³ Ibid. 4.

⁹⁴ Bruno Manser Fund, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, 4. See also Luke Hunt, 'Taib Madmud's Really Excellent Retirement', *The Diplomat*, 7 March 2014, <http://thediplomat.com/2014/03/taib-mahmuds-really-excellent-retirement/>

⁹⁵ Joseph Sipdan, 'Taib as TYT would be as powerful as Dr M, says Rafizi', Malaymail online, 25 February 2014, <http://www.themalaymailonline.com/print/malaysia/taib-as-tyt-would-be-as-powerful-as-dr-m-says-rafizi>

Case of Taib family

In 2015 the Bruno Manser Fonds issued a report alleging that the Taib family from Malaysia had been able to launder millions of dollars into Australia through the purchase of the Hilton Hotel in Adelaide.⁹⁶ Abdul Taib Mahmud was Chief Minister of Sarawak from March 1981 to February 2014. Abdul Taib Mahmud had been the subject of significant allegations of corruption and human rights abuses.⁹⁷

State Regulation mitigating money laundering in the real estate sector

There are state regulations that impact the money-laundering risks associated with foreign buyers. The NSW Government introduced updated fraud prevention guidelines for the real estate industry in October 2012. These guidelines were introduced to combat identity fraud and scams in the industry.⁹⁸ The guidelines provide a set of practices and procedures for agents to confirm the identity of vendors or their appointed representatives, as well as a list of possible fraud warning signs and proof of identity checklist.⁹⁹ The guidelines were developed following two publicised incidents in 2010 and 2011 that resulted in properties sold in WA without the knowledge and consent of the lawful property owners.¹⁰⁰

Due to this legislation, in NSW, real estate professionals require that a client provide a driver's licence as verification of identity. They also request to know who the beneficial owner is but do not undertake due diligence to verify beneficial ownership.

NSW requires people to register to participate as a bidder in an auction. By contrast, anyone in Victoria can join in on an auction without any requirements to reveal identity before purchase. Bidders can be identified on request.¹⁰¹

The WA Government has strengthened the real estate industry's verification of identity practice. The practice recommends that conveyancers and other property professionals take reasonable steps to verify the identity of their clients and confirm their clients' authority to give instructions when dealing with a particular property.¹⁰²

5. The regulatory impact, costs and benefits of extending AML/CTF reporting obligations to designated non-financial businesses and professions (DNFBPs or 'gatekeeper professions'), often referred to as 'Tranche two' legislation

As noted above, the Synod has adopted a position that Australia's AML/CTF obligations should be extended to DNFBPs. Such businesses and professionals should have a duty to

⁹⁶ Bruno Manser Fonds, 'The Adelaide Hilton Case. How a Malaysian politician's family laundered \$30 million in South Australia' September 2015.

⁹⁷ Luke Hunt, 'Taib Mahmud's Really Excellent Retirement', *The Diplomat*, 7 March 2014, <https://thediplomat.com/2014/03/taib-mahmuds-really-excellent-retirement/>; Global Witness, 'Inside Malaysia's Shadow State', 19 March 2013,

<https://www.globalwitness.org/en/campaigns/forests/inside-malaysias-shadow-state/>; and Global Witness, 'Japanese companies buying tropical timber linked to illegal logging, human rights abuses, and rainforest destruction in Malaysia' 9 September 2013,

<https://www.globalwitness.org/en/campaigns/forests/inside-malaysias-shadow-state/>

⁹⁸ AUSTRAC, 'Strategic analysis brief Money laundering through real estate', https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ <https://www.consumer.vic.gov.au/housing/buying-and-selling-property/buying-property/buying-property-at-auction>

¹⁰² AUSTRAC, 'Strategic analysis brief Money laundering through real estate', https://www.austrac.gov.au/sites/default/files/2019-07/sa-brief-real-estate_0.pdf

report to AUSTRAC suspicious transactions. They also have an obligation not to be a party to or facilitate any transactions where there is an obvious risk of money laundering or where the funds involved are likely to be the proceeds of crime, unless they are instructed to do so by law enforcement agencies to avoid tipping off suspected offenders.

The FATF has stated that:¹⁰³

DNFBPs should be required to take appropriate steps to identify and assess their money laundering and terrorist financing risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). They should document those assessments in order to be able to demonstrate their basis, keep these assessments up to date, and have appropriate mechanisms to provide risk assessment information to competent authorities and self-regulatory bodies. The nature and extent of any assessment of money laundering and terrorist financing risks should be appropriate to the nature and size of the business.

In 2007, the Federal Government released draft legislation to extend anti-money laundering provisions to DNFBPs. The legislation was never implemented.

The Government again consulted on including DNFBPs in the anti-money laundering regime at the start of 2017. Despite strong support for the measures from bodies concerned about money laundering and tax evasion (including the Uniting Church), and little opposition from the businesses themselves, there has been no public progress on the issue.

Extending AML/CTF reporting obligations to DNFBPs would require additional resources to AUSTRAC to ensure compliance from a large number of additional reporting entities and professionals. It would also require additional resources to allow AUSTRAC to analyse the additional reports. Adding DNFBPs without substantial additional resources to AUSTRAC would not strengthen Australia's AML/CTF regime and may even weaken it. Without additional resources, AUSTRAC could be forced to spread its resources even more thinly. High levels of non-compliance by reporting entities could encourage further non-compliance by other entities who would observe that non-compliance goes undetected.

Some of the criminological literature points to the ability to get away with non-compliance with legislative obligations is a far more important determinant of the level of non-compliance than the level of penalty that may result if there is a successful prosecution for non-compliance.¹⁰⁴

A review of criminological literature on what works to deter non-compliance finds that there is substantial evidence that the increased visibility of law enforcement personnel and allocating them in ways that materially heighten the perceived risk of detection can deter non-compliance.¹⁰⁵ This literature finds that perceived certainty of punishment is associated with reduced intended non-compliance.¹⁰⁶ The conclusion is that certainty of detection and consequence, and not the severity of the legal consequences, is the more effective deterrent to non-compliance.¹⁰⁷

¹⁰³ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', 33.

¹⁰⁴ Tess Hardy, 'Digging into Deterrence: An Examination of Deterrence-Based Theories and Evidence in Employment Standards Enforcement', *Industrial Law Journal*, May 2021, 137.

¹⁰⁵ Daniel S Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, (August 2013), 201.

¹⁰⁶ *Ibid.*, 201.

¹⁰⁷ *Ibid.*, 202.

The 2012 work by behavioural economist Dan Ariely, *The (Honest) Truth About Dishonesty: How We Lie to Everyone--Especially Ourselves* found that people generally cheat if they think they can get away with it. They cheat up to the level they feel they can justify (for most people, that is a small amount of cheating). Most people who would consider themselves honest will cheat for personal gain if they are given the opportunity.¹⁰⁸

Ariely found that people have a basic capacity to be morally flexible and reframe situations and actions that reflect positively on themselves. Culture influences dishonesty in two main ways: "It can take particular activities and transition them into and out of the moral domain, and it can change the magnitude of the fudge factor that is considered acceptable for any particular domain."¹⁰⁹ The 'fudge factor' refers to how dishonest a person can be and still see themselves as honest. In the case in question, reporting entities might justify to themselves non-compliance is acceptable as they cannot see anyone being harmed by their non-compliance. Further, it becomes easier to justify non-compliance if others can be seen to be non-compliant and there is no consequence.

Targeted crackdown periods only have transitory effects, meaning they must be regularly repeated to have a sustained deterrent effect on non-compliance. There is a decline in deterrent response from a crackdown or blitz operation as potential offenders learn through trial and error that they had overestimated the certainty of getting caught at the beginning of the crackdown, leaving a residual deterrence. The non-compliance suppression effect that extends beyond the intervention lasts until the offender learns by experience or word of mouth that it is once again safe to break the law.¹¹⁰ What is critical in building compliance is the perception of the regulated population of businesses that non-compliance will be detected and subjected to meaningful sanction.¹¹¹

Meta-analysis of what works to deter businesses from breaking the law found that a combination of enforcement strategies worked best, rather than the over-reliance on just one approach.¹¹² A combination of law, regulatory policy and punitive sanctions was found to have a significant deterrent effect on businesses breaking the law. Inspections had the most effective deterrent impact on companies willing to break the law.¹¹³ The researchers concluded:

...it makes sense to focus on regulatory policies at the middle level of the [regulatory] pyramid where persuasion is generally most needed to achieve compliance. Specifically, our findings indicate that policies may be more successful when the industry has some input and policies are coupled with education and consistent inspections. More severe strategies (regulatory investigations, penalties, civil suits and arrest/jail time) should be added where compliance has been difficult to achieve.¹¹⁴

Further:¹¹⁵

Results offer support for a model of corporate regulatory enforcement that blends cooperation with punishment –the type and amount of enforcement response to be determined by the behaviour of the manager/ company (i.e., responsive regulation).

¹⁰⁸ Dan Ariely, 'Predictably Irrational', Harper, London, 2009, 197-201 and <http://danariely.com/2012/06/10/women-men-and-math-problems/>.

¹⁰⁹ Dan Ariely, 'The (Honest) Truth about Dishonesty', HarperCollins Publishers, London, 2012, 242.

¹¹⁰ Daniel S Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice* Vol. 42, No. 1, (August 2013), 215.

¹¹¹ Tess Hardy, 'Digging into Deterrence: An Examination of Deterrence-Based Theories and Evidence in Employment Standards Enforcement', *Industrial Law Journal*, May 2021, 145.

¹¹² Natalie Schell-Busey, Sally Simpson, Melissa Rorie and Mariel Alper, 'What Works? A Systematic Review of Corporate Crime Deterrence', *Criminology and Public Policy* Vol. 15 No. 2, (2016), 401.

¹¹³ *Ibid.*, 404.

¹¹⁴ *Ibid.*, 406.

¹¹⁵ *Ibid.*, 408.

Thus, at the top and even middle levels of the enforcement pyramid, multiple “levers” may need to be pulled to achieve compliance.

6. The extent to which:

- (a) DNFBPs take account of money laundering and terrorism financing risks, and
- (b) the existing professional obligations on DNFBPs are compatible with AML/CTF reporting obligations.

There is strong evidence that large numbers of DNFBPs do not pay any regard to the risks that transactions they are carrying out might be associated with money laundering.

The Age reported in October 2020 of an Australian lawyer that advises clients to use Seychelles' private foundations to conceal the actual ownership of companies and conceal activities from law enforcement agencies. He was quoted as advising, "In the event of a lawsuit or tax investigation or regulatory inquiry, your client can swear under oath, 'I am not the legal or beneficial owner of this company', which could be the difference between being charged with/ jailed for tax evasion and walking away a free man."¹¹⁶

Australian shell companies and money laundering

For example, shell companies with straw directors to conceal the real owners of the company can be used as vehicles for money laundering by foreign people. Research by Findley, Nielson and Sharman found Australian corporate service providers were near the top of corporate service providers in terms of being willing to set up an untraceable shell company even when there was a significant risk the company in question would be used for illicit purposes.¹¹⁷ Such shell companies can be used by foreign nationals to conceal their identity and ownership of assets in Australia.

The World Bank and UN Office on Drugs and Crime (UNODC) have previously conducted research showing how shell companies with concealed ownership are used to facilitate a range of criminal activity. They published a report reviewing some 150 cases of corruption where the money from laundered. In the majority of cases:¹¹⁸

- A corporate vehicle (usually a shell company) was misused to hide the money trail;
 - The corporate vehicle in question was a company or corporation;
 - The proceeds and instruments of corruption consisted of funds in a bank account; and
 - In cases where the ownership information was available, the corporate vehicle in question was established or managed by a professional intermediary to conceal the real ownership.
- In two-thirds of the cases, some form of surrogate, in ownership or management, was used to increase the opacity of the arrangement.¹¹⁹ In half the cases where a company was used to

¹¹⁶ Nick McKenzie, Charlotte Grieve and Joel Tozer, 'Lawyer who built a booming practise on finding loopholes', *The Age*, 20 October 2020.

¹¹⁷ Michael Findley, Daniel Nielson and Jason Sharman, 'Global Shell Games: Testing Money Launderers' and Terrorist Financiers' Access to Shell Companies', Centre for Governance and Public Policy, Griffith University, 2012, 21.

¹¹⁸ Emile van der Does de Willebois, Emily M Halter, Robert A Harrison, Ji Won Park and J. C. Sharman, 'The Puppet Masters', The World Bank, 2011, 2.

¹¹⁹ *Ibid.* 58.

hide the proceeds of corruption, the company was a shell company.¹²⁰ One in seven of the companies misused were operational companies, that is, 'front companies'.¹²¹

There are Australian businesses that offer a service to provide Australian 'straw' nominee directors for foreign nationals seeking to invest in Australia, like ABN Australia.¹²²

Nominee directors can conceal the real controllers of a company, making it harder for entities with anti-money laundering obligations to conduct due diligence to know whom they are really dealing with. The UK Government had previously revealed that 6,150 people acted as directors of more than 20 UK registered companies, with some people being directors in over 1,000 companies, clearly indicating some directors were acting as front people for the ultimate beneficial owners.

Authorities following up with directors to disclose if they are nominee directors may also help detect situations where a person has been made a company director without their knowledge. The introduction of the Director Identification Number may assist with detecting nominee directors and with preventing people from being made directors without their knowledge or consent.

As examples of such cases where nominee directors have been used to try and conceal criminal activity in Australia, the Australian Taxation Office (ATO) and the Australian Federal Police obtained the conviction of Philip Northam to six years in prison for tax evasion related offences in 2020. Australian companies were stripped of their assets and left in a position where they were unable to pay their tax debts. Once the company's assets were stripped, new straw directors and shareholders were put in place before the company was wound up. The joint ATO and AFP investigation was able to recover \$4.5 million of lost government revenue from the criminal conduct.¹²³

In the case of the Plutus Payroll fraud, the criminals involved set up a significant number of shell companies with straw directors. One of the criminals involved had a full-time role in managing and controlling the straw directors.¹²⁴ Plutus issued false invoices to the shell companies and siphoned out the PAYG not paid on behalf of the client companies using its payroll service.¹²⁵ To try to escape action by the ATO, the shell companies would be wound up and replaced with a new shell company with a new straw director.¹²⁶ It was found that Devyn Hammond would sign off on records in place of the straw directors and impersonate them in e-mails.¹²⁷ The scheme allegedly defrauded the Commonwealth Government of \$105 million over three years.¹²⁸ As of July 2020, 16 people had been charged concerning the criminal conduct, and five had been sentenced to prison.¹²⁹

¹²⁰ Ibid. 34.

¹²¹ Ibid. 39.

¹²² <https://www.abnaustralia.com.au/business-services/nominee-director>

¹²³ ATO, '19-year tax fraud probe ends in jail time for scheme promoter', 17 August 2020, <https://www.ato.gov.au/Media-centre/Media-releases/19-year-tax-fraud-probe-ends-in-jail-time-for-scheme-promoter/>

¹²⁴ Cactus Consulting, 'Plutus Payroll Case Study; Significant tax fraud', 26 November 2019.

¹²⁵ Ibid.

¹²⁶ Cactus Consulting, 'Plutus Payroll Case Study; Significant tax fraud', 26 November 2019; and David Marin-Guzman, 'Architect' of Plutus tax fraud pleads guilty', *The Australian Financial Review*, 26 November 2019.

¹²⁷ David Marin-Guzman, 'Fourth Plutus tax fraud conspirator sentenced to jail', *The Australian Financial Review*, 10 July 2020.

¹²⁸ ATO, 'Plutus Payroll founder jailed in Operation Elbrus', 31 July 2020.

¹²⁹ Ibid.

Geelong baker Barry Santoro allegedly had his identity stolen and was convicted of corporate offences for companies he did not know he was the director of. He was one of several people, including people who were homeless, who were allegedly used as straw directors to allow the actual beneficial owners of the companies to cheat the tax office and other creditors of more than \$100 million.¹³⁰ The alleged scheme involved stripping businesses of their cash and assets to cheat the ATO and other creditors and then phoenixing under a different name. The straw directors were installed to shield the real directors from liquidators, creditors and the Australian Securities and Investments Commission.¹³¹ In the same scheme, Christopher Somogyi, who had been homeless at the time, was fined more than \$6 million through director penalty notices and other fines after his identity was allegedly used without his knowledge as a straw director for several companies.¹³²

Case of Yeo Jiawei

In addition to the cases already outlined above, the case of Yeo Jiawei demonstrates that lack of attention Australian BNFBPs pay to money laundering risks. Yeo Jiawei, accused of money laundering, used a Seychelles-based company for a series of purchases in Australia.¹³³ Yeo was sentenced to 30 months in prison in December 2016 by Singapore's district court for witness tampering during a Singaporean investigation into alleged laundering of funds stolen from Malaysia's 1MDB state development fund.¹³⁴ He was sentenced to another 54 months in prison on 12 July 2017 for money laundering and cheating after having pleaded guilty to the charges.¹³⁵

The court, in that case, heard that Yeo had acquired \$6 million of Australian property while allegedly playing a central role in the illicit movement of S\$23.9 million (\$22.6million) of 1MDB funds when employed as a wealth manager at BSI Bank Singapore.¹³⁶

Yeo Jiawei's foray into Australian property began with a \$1.3 million oceanfront apartment in Surfers Paradise, which he bought in 2014 direct from a collapsed developer.¹³⁷

The Guardian Australia reported that Yeo is a director of a Seychelles-registered company that then paid a further \$6.9 million for commercial properties in Broadbeach a year later.¹³⁸

The Guardian reported that the Australian Federal Police were examining whether money illegally taken from Malaysia's 1MDB state development fund has shifted into Australia.¹³⁹

¹³⁰ Dan Oakes, 'Bake made director of companies he'd never heard of in \$100m tax scam, court hears', ABC News, 27 August 2018.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', *The Guardian*, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

¹³⁴ Ibid.

¹³⁵ Grace Leong, '1MDB probe: Former BSI banker Yeo Jiawei gets 54 months' jail for money laundering, cheating', *The Straits Times*, 12 July 2017, <https://www.straitstimes.com/business/banking/1mdb-probe-former-bsi-banker-yeo-jiawei-found-guilty-of-money-laundering-cheating>

¹³⁶ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', *The Guardian*, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

In September 2015, a Seychelles-registered company called Connect Capital Global Investments Limited registered with the Australian Securities and Investments Commission as a foreign company. The company lodged documents showing its local agent is Australian Taxation Accountants in Surfers Paradise, which provided its registered office.¹⁴⁰

The next month Connect Capital paid \$2.4 million for four retail premises on the ground floor of a building in Broadbeach.¹⁴¹

In December 2015, the company paid almost \$3.4 million for a further two retail premises nearby in Broadbeach. Four days later, Connect Capital paid just over \$1 million for a neighbouring shopfront in the same building.¹⁴²

The Guardian reported that a spokeswoman for Australian Taxation Accountants said the company had no idea of Yeo's legal travails. The spokeswoman said it was a "shock" to hear of his conviction and further charges.¹⁴³

The Guardian reported that the Australian Federal Police had not been in contact with Australian Taxation Accountants in relation to any of the properties owned by Connect Capital, according to a spokeswoman for the accountancy firm.¹⁴⁴

The Guardian reported that Yeo's \$1.3 million apartment purchase in 2014 was directly from the developer, Juniper Group, which had fallen into receivership in 2012. Developers of large projects routinely obtain "exemption certificates" to allow them to market off-the-plan apartments to overseas buyers.¹⁴⁵

It appears none of the Australian DNFBPs that had dealings with Yeo Jiawei conducted adequate due diligence on the source of the funds, if they conducted any due diligence at all.

Yeo's conviction in Singapore related to attempts to conceal his ties to Malaysian businessman Jho Low and hide his wealth, which grew by \$23.9 million over just 15 months while he was a wealth manager at BSI.¹⁴⁶

Yeo denied wrongdoing throughout his trial, including the prosecutor's claim that he received "secret profits" from the 1MDB money-laundering scam.¹⁴⁷

Case of Daniel Kalaja

As another example of DNFBPs not showing any concern for money laundering activities, unemployed [Daniel Kalaja](#), with a history of drug offences, was found to be the leader of an Australian drug network empire subsequent known to the law enforcement [operation -'Warrior'](#). Kalaja pleaded guilty in 2013 to numerous serious criminal offences, including trafficking in dangerous drugs and received a 14-year prison sentence.¹⁴⁸

¹⁴⁰ Yeo was a director of Connect Capital Global Investments Limited. Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Queensland Crime and Corruption Commission, 'CCC recoups \$1.6 million from convicted drug trafficker', 12 September 2014, <https://www.ccc.qld.gov.au/news/ccc-recoups-16-million-convicted-drug-trafficker>

In 2014, Kalaja forfeited \$3.188 million in assets to the State of Queensland following a six-year investigation. Court documents reveal the extent that Kalaja went to legitimise his drug wealth using property development.

Kalaja registered an Australian proprietary company in December 2003 called 'GDK Developments Pty Ltd' (GDK) with Kalaja as sole shareholder and his uncle as director. In March 2004, GDK purchased a \$385,000 development land block in Lowood, Queensland, which was ultimately paid for with cash.

Initially, cash was 'structurally deposited' (multiple cash deposit amounts lower than the AML/CTF Act reporting limit of \$10,000) into Kalaja's bank accounts, then transferred to GDK's bank account, where structured deposits also took place. The law firm completing the property conveyance also receipted 11 structured cash deposits (which avoided the reporting obligation under the FTR Act) and telegraphic deposits from the company's bank accounts.

Subsequent to the land purchase, the company's bank account statements were given to a 'Jim's Bookkeeping' franchisee who was instructed to create the first set of accounts for GDK showing the purchase of the land. Instructions to the bookkeeper, given by Kalaja's uncle, was that the GDK deposits belonged to Daniel Kalaja and were to be credited to a loan account in his name.

Jim's Bookkeeping created the accounts and handed them to Kalaja's uncle, who then provided them to another accountancy firm. However, the account history of the account's financial balances was not transferred to this latter accountancy firm, and thus reconstruction of balances was not possible without the information from the bookkeeper.

GDK developed the Lowood land and subsequent sale of developed lots eventually exceeding \$2.5 million. Prior to the sale of all Lowood land, the apparent development profitability led to a loan approval from a major bank for GDK to enable the purchase of another development, a \$1.2 million development land block in Upper Caboolture in 2007.

Confiscation investigations commenced in 2008 prior to both developments being completed. There is no evidence that any of the professionals, in this case, advised authorities of suspicious behaviour.

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