



NATIONAL AUSTRALIA BANK SUBMISSION

Capability of law enforcement to respond
to money laundering and financial crime

July 2024

Introduction

National Australia Bank (NAB) welcomes the opportunity to respond to the Joint Committee on Law Enforcement's inquiry on capability of law enforcement to respond to money laundering and financial crime. As a member of the Australian Banking Association (ABA), NAB has also contributed to its submission.

Financial crime has a devastating impact on NAB's customers and community. NAB remains dedicated to effectively managing financial crime risk and keeping customers, communities, and the financial system safe. NAB works closely with Government, other agencies and the private sector on money laundering and financial crime and we welcome the Government's action to date.

Executive Summary

Money laundering and financial crime are pervasive issues in Australia. They have significant detrimental impacts on the economy, our customers, and communities. NAB plays a crucial role by collaborating with law enforcement, alliances and government agencies to combat financial crime. While significant progress has been made, this inquiry presents an important opportunity to consider what more can be done to help deter, detect, disrupt and prevent financial crime.

In NAB's view, enhanced public and private sector coordination is critical to effectively address the scale of money laundering and other financial crimes occurring in the Australian financial system. Information sharing is essential to respond to the evolving threat landscape. Allowing banks to carefully and lawfully share information, including between private institutions, will harden the financial crime environment and help enable the detection of new and emerging threats.

a) the scale and forms of money laundering and financial crime in Australia, including their effect on the community and the economy, the types of criminal activities they fund, the methods employed by serious and organised crime, and emerging trends and threats;

Serious and organised crime is a persistent, constantly evolving threat to the community and the economy more broadly. Criminals are innovative and rapidly develop and use new techniques to commit financial crime and launder illicit funds through the Australian financial sector. This includes using emerging technologies and digitised platforms, and finding ways to circumvent Australia's current anti-money laundering and counter-terrorism financing (AML/CTF) and unexplained wealth laws.

Law enforcement, regulators and financial institutions are presented with significant challenges in countering money laundering and other financial crime activity. Public and private sector collaboration, including through information sharing, is essential to respond to the evolving threat landscape and counter criminal activity.

The scale of money laundering and other financial crime in the Australian financial system warrants specialised, organised responses from law enforcement, regulators and financial institutions. This activity has an outsized impact on the financial system, economy and communities. Significant funds are generated from illegal activities, such as scams and fraud, drug trafficking and tax evasion.

Methods used to obfuscate sources of funds and identities of those involved make it difficult to differentiate between legal and illegal funds and the true owners of illicitly derived wealth.

The harm on the Australian economy and communities include:

- Financial and emotional distress for scam victims who have lost large sums of money or had their identities stolen.
- Undermining trust in – and effectiveness of – government support programs as resources and services are diverted away from vulnerable Australians (e.g. National Disability Insurance Scheme fraud and Australian Tax Office fraud).
- Human exploitation (e.g. underpayment/non-payment of wages, poor living conditions, sexual exploitation, illegal brothels, human trafficking, debt bondage).
- Religious or ideological motivated violent extremism by organised groups and lone actors aimed at threatening the safety of Australian citizens and destabilising Australian sovereignty.

Some criminality related to money laundering can be very challenging for banks to successfully refer to law enforcement for investigation and prosecution. For example, matters involving home loan application fraud supported by false documents provided by the applicant or a person acting on their behalf are frequently rejected for investigation by police, despite the possible financial crime risks.

NAB welcomes the recent public release of AUSTRAC's Money Laundering and Terrorism Financing National Risk Assessments. These will support NAB's understanding of contemporary financial crime threats and vulnerabilities.

b) Australia's anti-money laundering and counter-terrorism financing (AML/CTF) legislation as well as comparison with other jurisdictions and the international standards set by the Financial Action Task Force;

NAB welcomes the Government's decision to modernise Australia's AML/CTF regime through changes to legislation, rules and guidance. Many of the proposals are welcomed and necessary to ensure Australia aligns with global practices and enhances its ability to mitigate and manage financial crime. Many of the proposed reforms require additional context, detail and guidance. Without this guidance, the objectives of creating a simple and modern AML/CTF regime may not be achieved.

The broad reform objective of making Australia's AML/CTF regime more principles-based is in line with international best practice. This will provide sufficient flexibility for entities to comply with obligations in the manner they determine to best achieve their risk mitigation objectives.

NAB urges the Government to further consult on the draft legislation to ensure Australia is well placed to manage risk through a modern and simple AML/CTF framework that materially contributes to the deterrence, detection and disruption of financial crime.

c) proposed ‘tranche two’ reforms to extend the existing AML/CTF legislation to services provided by lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones and implications for law enforcement;

NAB supports, in-principle, the proposal to extend the application of the AML/CTF regime to tranche two entities. The use of tranche two entities to facilitate financial crime by their clients is a widely reported and enduring financial crime typology. The inclusion of these industries will help reduce financial crime in Australia. It is also necessary to ensure Australia’s AML/CTF regime is in line with international best practice.

NAB has provided formal submissions in response to the Attorney-General’s Department’s consultations on reforming Australia’s AML/CTF regime. These outline NAB’s detailed views on the proposed changes to the AML/CTF regime, including with respect to tranche two entities. NAB is seeking to ensure we understand the impact on our customers and any consequential impact on NAB arising from the proposed changes. We urge the Government to further consult on key aspects of the reform.

d) whether existing criminal offences and law enforcement powers and capabilities are appropriate to counter money laundering, including challenges and opportunities for law enforcement, such as those relating to emerging technologies;

In their current state, criminal offences and law enforcement powers and capabilities are insufficient to counter money laundering. This is due to a number of factors, including:

- The sophistication, resilience, adaptability and resources of serious organised crime groups.
- The challenges presented by inconsistent state/territory and federal laws relating to unexplained wealth where offending frequently occurs across multiple jurisdictions.
- Restrictions on the exchange of information between appropriate entities to support the detection and prevention of criminal activity.

The complexity of the financial crime landscape and use of emerging and encrypted technologies by criminal groups make it extremely difficult for law enforcement to identify and disrupt money laundering and other complex financial crime activity on its own. Better collaboration between government and private sector organisations using emerging technology (such as tools for fraud detection, analysis, and risk detection) could help law enforcement and regulators react faster to emerging trends.

There is also an opportunity to consider legislative reform to facilitate more effective data sharing (see response to Section f. for further detail). Similarly, broadening access for key personnel in government agencies / law enforcement to AUSTRAC’s system and data (with appropriate safeguards) could help improve law enforcement capability to counter money laundering.

e) the effectiveness of collaboration, coordination and information sharing between Commonwealth agencies, including law enforcement, and with authorities in other jurisdictions and the private sector;

NAB is very supportive of collaboration between government and industry and actively participates in a range of current partnerships. NAB has Memorandums of Understanding (MOUs) with the Australian Federal Police (AFP), Australian Criminal Intelligence Commission and the Queensland

Police Service. The MOUs facilitate a heightened level of strategic and operational collaboration, including exchange of information and embedding of security cleared NAB staff with policing teams like the Joint Policing Cybercrime Coordination Centre (JPC3). These partnerships deepen the public-private sector understanding of more complex financial crime methodology and tactics used by organised crime groups.

NAB is also a foundational member of AUSTRAC's public-private-partnership, Fintel Alliance. Strengthening and tightening the Fintel Alliance and other partnership (e.g. between government bodies and industry partners), could also help facilitate better collaboration and communication about threats as they emerge. Enhanced public-private partnership and training will help law enforcement access the most relevant intelligence and evidence to support their investigations. For instance, law enforcement often request bank statements in isolation to 'follow the money' which is resource intensive and may not be the most effective means of achieving law enforcement objectives. NAB's experience is that the deeper engagement achieved through the MOU framework has led to more efficient and effective exchange of information that has benefited law enforcement and the bank. A critical component is the preparedness of law enforcement to share their investigation objectives and utilise a consultative approach to solving problems so the combined expertise of police and the bank's financial crime investigators and intelligence officers can be leveraged.

NAB has experienced instances where we have referred matters to the AFP JPC3, which has then requested the matter be referred to a state-based law enforcement financial crime unit, which has in turn requested for NAB to attend a local police station to make a referral in person to the uniform constable at the front desk. This is an inefficient process that often results in the crime not being recorded by law enforcement and critical financial crime intelligence being lost.

f) the role and response of businesses and other private sector organisations, including their level of awareness, assistance to law enforcement, and initiatives to counter this crime;

There are significant opportunities to enhance collaboration across the financial sector by enabling private-to-private information sharing. These could involve:

- Simplifying 'tipping off' provisions to enable robust information sharing capability.
- Simplifying or realigning Privacy Act provisions.
- Changes to other legislation that impacts Australia's financial crime controls, including the AML/CTF Act.

The inability of private institutions to share relevant information with each other, while recognised as practical and sensible in many regards, nonetheless creates barriers to identifying and mitigating large-scale money laundering and financial crime risk. NAB is supportive of the objectives of tipping off provisions. However, NAB believes opportunities for disrupting and preventing money laundering and terrorism financing through private-to-private information sharing can outweigh the risks. The knowledge and capability of institutions, such as NAB, is not being fully utilised in Australia's fight against serious and organised crime due to limitations imposed by the tipping off provisions. Combined industry intelligence products could also aid in expediting law enforcement action while also increasing the effectiveness of the process.

Examples of where private-to-private information sharing could lead to better mitigation and management of financial crime risk include enabling sharing of:

- Suspicious Matter Reports (SMRs) between institutions to ensure customer behaviour is being assessed and investigated across the industry, rather than in a siloed manner.
- information between banks about vulnerable customers that have been the victims of fraud, to ensure account activity is being assessed and investigated across the industry.
- customer exit information across banks if it relates to financial crime to enable other banks to better assess the risks relating to the specific customer and determine whether to increase monitoring or similarly exit the customer.

Limitations on information sharing between private institutions may also have a negative impact on innovation in the financial sector. Generative AI creates the opportunity for financial institutions to analyse large volumes of information to identify and better understand financial crime risks, and implement effective risk management controls as a result. Financial institutions will generally need support from third parties (both on and offshore) to develop and deploy these technology solutions. However, these third parties are limited in the support they can provide to develop, test and deploy new intelligence, detection and other capabilities due to tipping off provisions which NAB considers 'outdated'.

Further, the expansion of Australia's AML/CTF regime to include approximately 100,000 tranche two entities will demand a vastly increased number of people with financial crime risk management skills. The domestic job market for appropriately trained and experience people is already tight and will not be able to meet this demand. Reporting entities will need support from third parties to implement and be compliant with new laws. The current laws inhibit the use of third parties to supplement capacity and resources. For example, tipping off laws mean newly regulated tranche two entities would be unable to leverage resources of major consulting firm to assist them investigate unusual activity and submit SMRs to the regulator.

NAB understands the Government is considering changes to the tipping off offence as part of its consultation on reforming Australia's AML/CTF regime. NAB encourages the Government to consider framing the tipping off offence in a way that could help facilitate private-to-private information sharing on financial crime risks, subject to appropriate protections being in place. Allowing banks to carefully and lawfully share information will harden the financial crime environment and help enable the detection of new and emerging threats.

g) the operation of unexplained wealth and asset recovery legislation, the Criminal Assets Confiscation Taskforce, and the Confiscated Assets Account; and

No feedback provided.

h) any related matters.

No feedback provided.

Conclusion

Thank you for the opportunity to provide comments on the capability of law enforcement to respond to money laundering and financial crime. The inquiry presents an important opportunity to examine scope of the challenges posed by money laundering in Australia and explore ways to better detect, deter and disrupt criminal abuse of the financial system. NAB would be happy to discuss any aspect of this submission with the Committee.