



**OFFICIAL**

## **Submission to the Legal and Constitutional Affairs References Committee: The adequacy and efficacy of Australia's anti-money laundering and counter- terrorism financing regime**

The Australian Criminal Intelligence Commission (ACIC) welcomes the opportunity to provide a submission to the Legal and Constitutional Affairs References Committee regarding the inquiry into the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

The ACIC is Australia's national criminal intelligence agency responsible for assessing the serious and organised criminal threat environment and its impact on Australia. To do this, the ACIC collaborates with government partners, industry and the community to collect, collate, analyse and disseminate information and intelligence that inform these threat assessments and appropriate response strategies.

### **Threat environment - Money laundering in Australia**

Money laundering remains a fundamental enabler of all serious and organised crime and is a significant and potentially lucrative criminal enterprise in itself. Money laundering occurs on a global scale with proceeds of crime transferred between jurisdictions, co-mingled with legitimate monies and integrated into legitimate markets. The ACIC considers money laundering a high risk and it is the most significant and widespread enabler of serious and organised crime impacting Australia.

Money laundering methods are becoming increasingly complex and adaptable. Traditionally the proceeds of a criminal offence would be located in close proximity to the offending party resulting in an easy attribution of the funds to the criminal offence. Professional money laundering syndicates are now extensively used by serious and organised crime groups to launder funds resulting in the funds being distanced from the predicate offence, often by a number of layers.

Australia's stable financial markets and valuable real estate market make the country an attractive destination for domestic and transnational criminal groups and individuals looking to invest or launder the proceeds of crime. Australia also continues to sustain very profitable crime markets, such as the illicit drug market, and as a result there is a need to launder the significant proceeds that these crimes generate. Tens of billions of dollars obtained through serious and organised crime are likely laundered in Australia each year.

To set up the structures needed to launder the profits of crime, serious and organised crime groups and criminal individuals almost certainly use a range of professional facilitators, both within Australia

**OFFICIAL**

and offshore. There is a diversity of professional facilitators who act as intrinsic enablers of serious financial crime and money laundering, including lawyers, accountants, offshore service providers and real estate agents.

### **The AML/CTF Act and its current implementation**

The ACIC views the AML/CTF Act to be largely successful in two main aspects: creating a culture of compliance among reporting entities, and the collation, access and provision through AUSTRAC of reportable transactions and intelligence for the use of intelligence and law enforcement agencies. Generally, the information provided by reporting entities is accurate, and AUSTRAC has sought to remediate reporting entities where information has not been adequate. AUSTRAC information is a vital tool for law enforcement and intelligence agencies, and recent improved programs and access has increased the value to partner agencies. AUSTRAC has consistently provided the ACIC and other law enforcement agencies information on trends and emerging risks generated from big data analysis of AUSTRAC information.

### **Money laundering occurring outside the formal banking sector**

Outside of the banking sector, money launderers rely on digital currency exchange (DCE) providers, remittance providers, underground banking, and gambling and junket services to move criminal proceeds offshore. Some DCEs and remitters continue to operate unregistered under the AML/CTF regime, and law enforcement has identified ongoing money laundering and terrorism financing risks with unregistered companies.

Specialists and industry insiders are increasingly involved in money laundering. These are often semi-professional, specialised roles that have a similar ability to move or obfuscate wealth, but are often unregulated or have limited professional standards or oversight in relation to money laundering. Specialists include: real estate agents; pre-insolvency and other company advisors; cryptocurrency traders and money remittance businesses (including cash-in-transit services); border and migration facilitators; financial lenders, mortgage and stock brokers; and bank employees. Payments and the movement of value that operate on the periphery of traditional banking services, (such as remittances and offsetting arrangements and cryptocurrencies) are being identified in almost all ACIC investigations into serious financial crime.

Current AUSTRAC regulatory action provides a wider deterrence effect on non-compliance; however it may not deter all businesses including money remitters and DCEs complicit in the laundering of proceeds of crime for their customers. Increased regulatory penalties and possible criminal charges may also be beneficial as part of a multi-faceted deterrence strategy.

### **Underground banking**

Professional money laundering networks are extensively used by serious and organised crime groups with overseas-based controllers facilitating and organising the collection and disbursement of proceeds of crime, with encrypted devices utilised to communicate between parties.

Strict currency controls in overseas jurisdictions have resulted in a substantial demand for physical currency in Australia and this demand is exploited by money laundering syndicates. Cash collected from serious and organised crime entities is 'sold' to persons/entities who then transfer equivalent funds offshore to a nominated bank account. These transactions are outside the normal banking channels and are therefore not identifiable through AUSTRAC information. Whilst eventually the

## OFFICIAL

cash may enter the banking sector it is often a number of layers away from the original source of the cash.

Previous and current ACIC investigations show that third party deposits made at ATM's are extensively used to place funds into the banking sector. Whilst financial institutions have reduced ATM deposit limits there are methods to overcome these thresholds.

The ACIC considers that increased information sharing between financial institutions on account holders conducting suspicious activity would reduce the amount of funds that can be laundered. This should occur alongside financial institutions meticulously applying the 'know your customer' rules under AML/CTF regime where large cash deposits are being made to accounts not consistent with the declared occupation or normal business usage of the customer.

### Money remittance sector

Money remitters are required to be registered with AUSTRAC and undertake certain reporting. However, details required under the current regime are limited for both registration and reporting. The money remittance sector in Australia has been identified as a major financial industry in Australia with 6,524 money remitters registered with AUSTRAC as at the 1 July 2021. A number of these money remitters have global reach; however, many specialise in one particular geographical location servicing the corresponding diaspora in Australia.

A number of registered money remitters use informal value transfer systems (IVTS), otherwise known as offsetting, where funds are received in one particular geographical location and an equivalent amount is then made available in another geographical location. These transactions are made outside the banking sector and are therefore reliant on the correct reporting by the money remitter of the source and destination of funds. Investigations of these money remitters show that billions of dollars are being moved annually in Australia by IVTS.

Due to de-banking a number of money remitters now use bank accounts held in the names of companies which have been set up by associates/family members. These are often titled to reflect an import/export business and thus conceal the true nature of the transactions on the account. None of these nominee companies are registered with AUSTRAC as money remitters. Complex relationships also exist with other money remitters who utilise their own IVTS networks to conduct transactions on another money remitter's behalf. Again, this restricts the identification of the ultimate beneficiary and source of funds.

ACIC investigations have identified a number of money remitters involved in the transfer of proceeds of crime overseas via IVTS. There remain some businesses who fail to register and report to AUSTRAC, and others who do not consistently comply with their obligations – primarily small remitters.

The ACIC considers a number of amendments could assist in reducing the money laundering risks in relation to the money remittance sector, including:

- (a) Conducting probity checks/ due diligence on persons/entities seeking registration as a money remitter, including further audit and review of the business model to understand IVTS networks.
- (b) Clarifying information required under the AML/CTF rules in relation to information that is required to be provided by money remitters for international funds transfers.
- (c) Increased emphasis on 'know your customer' requirements by money remitters.

## OFFICIAL

## OFFICIAL

### Trade-based money laundering including transfer of high value assets

Trade-based money laundering (TBML) is recognised internationally as a growing strategic threat, particularly as criminal networks adapt to stronger regulation of banking and financial sectors.

TBML is the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins. Goods are purchased and are imported/exported as a means of transferring value through jurisdictions.

Often entities used are shelf companies, with third-party settlement companies used for trade payments. Often money remitters are used for payments under the guise of trade with the use of IVTS again complicating tracing of funds sent and received.

Recent ACIC investigations have identified high value assets such as watches and jewellery being purchased by the use of proceeds of crime and exported overseas. Jewellers are not covered as reporting entities however large cash amounts would be identified when business takings are deposited to any bank accounts.

The ACIC consider that appropriate emphasis of the 'know your customer' rules, which apply to financial institutions, already specified under the AML/CTF rules should assist in identifying TBML.

### Casinos and gambling

Casinos in Australia are 'reporting entities' as defined by the AML/CTF regime. This obliges them to, amongst other things, record and report a range of financial transactions conducted at their premises. Notwithstanding this, the casino business model is often exploited by organised crime groups for the purpose of laundering proceeds of crime.

Prior to COVID the ACIC had observed significant money laundering occurring through casinos in Australia. The use of casino junkets and the opportunities they provide for criminal exploitation and money laundering has been extensively reported on by the ACIC and its partner agencies. The various State royal commissions into the Crown Casino have also identified the nature and extent of money laundering occurring at that casino.

Casinos in Australia attract high-wealth individuals from China (amongst other countries) to travel to Australia to gamble. Gambling is illegal under Chinese law and capital flight restrictions enforced by the Chinese Government combine to obstruct access to funds by individuals for gambling (and other) purposes in Australia. A means by which these funds can be accessed is through 'underground banking' methods. This may include providing criminals cash in Australia in return for a corresponding amount in China, and/or further abroad. These transactions occur outside the Australian banking system and are not identifiable through AUSTRAC information.

Casino junkets can function as pseudo-banks to enable proceeds of crime to enter the casino environment. The junket provides avenues for the co-mingling of illicit wealth with legitimate gambling funds. Cash can be deposited into a junket account and subsequently cashed-out or transferred offshore, ostensibly as winnings. In addition, a number of the junket operators operate in various jurisdictions and as part of their service to clients, also operate a money remittance service allowing money to be transferred both in and out of Australia via their own internal client ledger accounts.

Gambling junket operations are vulnerable to criminal exploitation due to their lack of transparency, the concealment of ownership and distribution of funds and the opaqueness of casino engagement with junket participants, as the casinos only maintain a direct relationship with the junket tour operator.

## OFFICIAL

## OFFICIAL

These vulnerabilities are demonstrated through the use of junkets to circumvent capital flight restrictions, the relationship between the casino and junket operator and links to serious and organised crime.

These risks could be mitigated through further oversight and information collection, which may require amendment to State, Territory or Commonwealth legislation, including the AML/CTF Act, as the legislation does not currently define junkets as a regulated service.

In other instances, the casino environment offers opportunities for organised crime to co-mingle illicit cash with legitimate gambling funds in an attempt to conceal the money's criminal origins. This occurs in circumstances where illicit cash is placed in the casino system as an account credit or in return for gambling chips and is then layered through various means until value is transferred outside of the casino account infrastructure or back into cash form.

Australia is becoming increasingly hostile to international casino junket operators due to ongoing money laundering concerns from increased law enforcement activity and adverse media attention.

A related issue is offshore betting platforms, which are another avenue through which money can be laundered. While their use is currently illegal in Australia, they can be easily accessed through the use of VPN. Serious and organised crime entities may have both access to and control of offshore wagering platforms. Betting activity through offshore platforms also conceals betting activity on corrupted sports and racing events and the potential laundering of criminal wealth, representing a considerable tax loss for Australia.

### Cryptocurrency

Some serious and organised crime groups have shown an interest in using cryptocurrency to launder the proceeds of crime, particularly since the onset of the COVID-19 pandemic, which has made it more difficult to offload bulk cash. While DCE providers must be registered with AUSTRAC, they may provide money laundering services for criminal groups via the purchase of cryptocurrency to launder the proceeds of crime.

### Bulk cash movements

Serious and organised crime possess bulk cash from their criminal activities, and moving that cash interstate and overseas is one method of hiding the source of the funds. For example, in Western Australia alone, a total of \$50 million in cash was seized from organised crime in late 2020 to 2021. This includes \$13 million confiscated from a truck in Western Australia that is Australia's biggest-ever cash seizure (the previous record was \$8.5 million in New South Wales in 2018).

### Professional facilitators

Professional facilitators, some of whom fall under the Designated Non-Financial Businesses and Professions (DNFBPs) are not currently within the scope of the AML/CTF regime. Australia's current AML/CTF regime does not fully reflect the diversity of professional facilitators that have evolved to act as intrinsic enablers of serious financial crime and money laundering. This has created significant opportunities for these facilitators to enable the movement of funds without the requirement to report to authorities.

Increasingly, the globalised and complex nature of the financial sector, and the legislative and regulatory rules that govern it, make it necessary for serious and organised crime groups to engage on and off-shore professionals with specialist knowledge and skills in order to launder their profits. These professional facilitators include lawyers, real estate agents and accountants, as well as

## OFFICIAL

## OFFICIAL

liquidators, financial advisers and high-value dealers of valuable metals and precious gems (excluding bullion dealers who are covered under the AML/CTF regime). As industry professionals and subject matter experts these facilitators provide their specialist skills and knowledge to undertake activities such as establishing complex corporate and trust structures or storing and laundering illicit wealth in high-value commodities that obfuscate the origin and beneficial ownership of wealth.

Some professional facilitators are likely to be unwitting participants in crime; however, many are likely complicit in, or wilfully blind to, the criminal activity, often making significant personal financial gains from the association. Some are also recruited through extortion or intimidation.

Ways that professional facilitators may support serious financial crime activities include:

- **Lawyers** can provide knowledge of tax law, company law and trust law, and advice on the use of company structures and trusts.
- **Offshore service providers** often work closely with legal professionals and can facilitate the creation of offshore corporate structures and associated bank accounts.
- **Accountants and financial advisers** often work closely with legal professionals to assist in concealing illicit wealth and advise on tax evasion strategies.
- **Liquidators and pre-insolvency advisers** may be used to facilitate illegal phoenix activities.
- **Real estate agents** can facilitate the concealment of illicit wealth and money laundering through buying and selling high-value property.

Even where professional facilitators are not necessary to enable money laundering, they likely add significant value and security for serious and organised crime groups. Serious and organised crime groups may use professional money laundering organisations or self-managed businesses, but then also draw on professional facilitators to bring efficiency and security through their professional knowledge and capabilities, insulating their clients from law enforcement and regulatory attention. For example, there is no obligation for real-estate agents to confirm and report the identity of their clients. This has multiple repercussions, including the sale of property to international customers who do not have approval to purchase property in Australia through the Foreign Investment Review Board.

## Conclusion

The ACIC supports the scope of the AML/CTF regime being expanded to cover DNFBPs. The inclusion of DNFBPs under the AML/CTF would require many professional facilitators to report suspicious transactions, particularly those in areas that pose high money laundering and/or terrorism financing risks. It would also create repercussions and legal avenues to penalise professional facilitators who are complicit or reckless in their involvement with money laundering, though we note policy considerations on the costs to business of regulation. It is important to create an environment that increases the costs and risks of the professional facilitation of money laundering in Australia.

## OFFICIAL