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AFP
AUSTRALIAN FEDERAL POLICE



Senate Legal and Constitutional Affairs References Committee

Inquiry into the Adequacy and Efficacy of Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Regime

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Submission by the
Australian Federal Police

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Contents

Introduction..... 3

The Threat Environment..... 3

 Australia as a target and destination 4

 Borderless and transnational nature of crime 4

 Combining traditional and alternative methods..... 5

 Rapid adoption of technological advancements 7

 Impact of COVID-19 7

The AFP’s role and key partnerships 7

 Money-laundering focus..... 7

 Targeting illicit wealth 7

 Key domestic partnerships..... 8

 International partnerships..... 9

Effectiveness and challenges under the regime12

 Designated Non-Financial Business and Professions 13

 Corporate entities..... 14

 Barriers to the proactive sharing of information 14

 Barriers in investigating and confiscating matters with international linkages 14

 Information handling and admissibility 15

 Money remitters and International Funds Transfer Instructions (IFTI) 15

 On-boarding identification checks and related offences..... 16

 Cash-in-transit services..... 16

 Digital platforms..... 16

 De-banking 17

Conclusion.....17

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Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs References Committee (the Committee) inquiry into the adequacy and efficacy of Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Regime.
2. Money laundering, in and of itself is a criminal offence, but it also enables criminals to profit from, or facilitate other criminal activities such as drug importation and terrorism. Money Laundering poses a significant and growing threat to Australia's national security as it subverts, exploits and distorts legitimate markets and economic activity. This in turn undermines the ongoing stability of Australian institutions and Governments, and corrodes community confidence.
3. AFP investigations focus on dismantling sophisticated, global and high-value money laundering schemes to disrupt those who pose a risk to the Australian community and Australia's interests. This is achieved by depriving criminals of the proceeds and benefits of their offending, preventing reinvestment of funds into further criminal enterprise, and in some cases interrupting terrorist activity.
4. At the core, money laundering efforts are continually evolving to evade detection by regulatory and law enforcement authorities. Recent AFP operational experience demonstrates that money laundering investigations are complicated by the:
 - vast array of current and emerging financial and commercial structures;
 - transnational nature of organised crime; and
 - sophistication of criminals, who go to great lengths to identify and exploit vulnerabilities in our existing frameworks.
5. As the complex methodologies associated with money laundering and predicate offending evolve, the AML/CTF regime must remain robust and flexible to adapt to the emerging and adapting criminal environment.
6. The recent amendments in the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* are welcomed by the AFP. However we consider further measures could strengthen the framework, including targeting vulnerable services and sectors which are being exploited by transnational, serious and organised crime groups.
7. This submission will focus on AFP operational experience in addressing criminal activity related to money laundering and predicate offending, and our view on the benefits and limitations of the AML/CTF regime.

The Threat Environment

8. The criminal threat environment is complex and constantly evolving but one constant remains: money and valuable property are key facilitators of, and the ultimate motivation for criminal activity, particularly by transnational, serious and organised crime (TSOC) groups.

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Australia as a target and destination

9. Australia continues to be an attractive destination for investment generally due to our stable legal and financial systems, but these structures are also a perceived "safe haven" for criminal ventures. A comprehensive and reliable legal system as well as relatively high property prices compared with other countries makes Australian property a lucrative environment for hiding and investing illicit funds with future revenue generating potential. In the past two years, 57.5% of the AFP-led Criminal Assets Confiscation Taskforce (CACT) total restraint value has been attributed to commercial and residential real estate. Criminals are however increasingly trying to circumvent asset restraint and forfeiture by undertaking actions to conceal the true ownership of property, including hiding assets behind complex corporate and trust structures or paying another party to pose as the purchaser of land and the legal title holder.
10. In addition to real estate, law enforcement continue to see an increasing number of instances where criminals use illegally sourced cash to purchase art, luxury motor vehicles, jewellery, designer clothing and handbags, high-end wine and electronics.

Case study – Investment of foreign proceeds of crime within Australia

In November 2018, the CACT restrained two houses and a commercial property as part of a proceeds of crime investigation into offshore funds allegedly being laundered in Australia by foreign nationals. It was alleged that the assets were purchased by a foreign national using a false identity. The 32-year-old subsequently left Australia and is believed to have relocated to the Caribbean.

Domestic proceedings were brought under section 19 of the *Proceeds of Crime Act 2002* (Cth) (POC Act), on more than one offence including alleging that the property was the proceeds and/or instrument of money laundering and giving false or misleading identity information and documents to a reporting entity contrary to the AML/CTF Act (this is classed as a serious offence under the POC Act). In June 2019, the three properties valued at \$4.2 million were forfeited to the Commonwealth by order of the Supreme Court of Victoria.

Borderless and transnational nature of crime

11. The international transfers of money and moveable property undertaken by TSOC groups are often characterised by opaque or unreported value transfers with no attribution of the beneficiary and sender, and between different financial systems and commercial hubs. This methodology enables criminals to disguise the illegitimate origins or uses of their criminal wealth.
12. Certain countries make for attractive final destinations or transshipment points for illicit proceeds, due to exploitable systems including:
 - Gaps in criminalisation – money-laundering is associated with a variety of predicate offences, some of which are not captured in certain countries (for example, taxation offences);
 - Differing legal systems - for example not all countries have non-conviction based proceeds of crime laws or orders covering property under the

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effective control of the suspect or corporate criminal offending, and will not recognise foreign orders of this nature;

- Insufficient resourcing capacity to adequately identify money laundering within their jurisdiction or respond to foreign requests for assistance.

13. These differences create ongoing challenges for Australian agencies in disrupting, investigating and prosecuting criminal activities.

Case study - Movement of proceeds of crime across jurisdictions

In 2013, restraining orders under section 19 of the POC Act were obtained over approximately \$29 million in suspected criminal proceeds held in Australian bank accounts operated by foreign nationals. It was alleged that the foreign nationals made six trips to Australia between 2010 and 2013, during which time they opened bank accounts.

Money was then transferred into these accounts from eight foreign companies with bank accounts in Hong Kong and China.

This matter was progressed without an associated criminal investigation and involved significant cooperation with a number of countries. However, the country of origin of the foreign nationals was only able to provide limited assistance, due to differences in their proceeds regime around non-conviction based confiscation. Ultimately, the matter was successfully resolved in 2018 by consent, leading to a substantial amount of funds being forfeited to the Commonwealth.

Combining traditional and alternative methods

14. Recent AFP investigations demonstrate the complexity of money laundering activities where several laundering methodologies are used, including by combining traditional and contemporary methods.
15. Traditional or 'historical' methodologies continue to be prevalent, despite legislative and regulatory safeguards targeted towards mitigating these risks. These include smurfing (structuring large amounts of money into multiple small transactions at banks), the use of foreign currency exchanges and wire transfers.
16. Criminals engaging in money laundering and terrorism financing will always develop new ways to obfuscate the movement of funds and property to give the appearance of legitimacy to their illegal activities, some of which the AFP have observed include exploiting corporate and trust structures or engagement with money laundering organisations (MLOs) which are professional crime groups that specialise in laundering on behalf of other criminal entities, without engaging in the predicate offending of their customers.

Case study - Off-setting and company structures

An AFP investigation targeted a Sydney-based MLO, which transferred in excess of \$100 million in cash from TSOC groups to daigou syndicates (an emerging form of cross-border exporting of stockpiled goods) and registered money remitters. Subsequent AFP investigations linked the source of those funds to over 500 kilograms of border controlled drug seizures.

The MLO created a corporate structure to enable the registration of a money remittance company with AUSTRAC, and established other companies to control related, but secret, bank accounts.

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The Australian money remittance business created fraudulent international funds transfer instructions to balance cash collected from Australian TSOC groups against equivalent funds deposited into bank accounts in an international jurisdiction. The bank accounts were rented by the MLO on an electronic marketplace and only used for a short time to avoid regulatory scrutiny. Shell companies with straw directors (that is, people willing to become company officers in name only) were also incorporated. The company bank accounts allowed large scale value transfers to be conducted and disguised by false invoices for offsetting cash in Australia.

The AFP-led CACT commenced proceedings under the POC Act in relation to assets linked to a number of suspects. Forfeiture orders have been made in relation to the sums of funds totalling \$1.184 million and luxury items with an approximate value of \$20,000. Further seized cash in the amount of \$400,000 has also been restrained.

Case study- Money laundering organisations

Since 2015, an international MLO has facilitated the transfer of multi-million dollars of value into Australia. This MLO is an Australian Priority Organisation Target¹ (APOT) operating in multiple jurisdictions, including Australia, USA, Canada, China, Hong Kong and the United Arab Emirates (UAE), with links to other global MLOs. Funds laundered by the MLO are linked to illegal drug and tobacco importations, payments to black-market labour as well as the grant of significant investor visas and property purchases in Australia.

This MLO utilises an informal value transfer system (also known as off-setting) to launder the proceeds of crime, whilst facilitating capital flight from the originating country contrary to their domestic laws. Funds transferred in Australia by the MLO are off-set against equivalent amounts in the originating country. Laundering of funds by the MLO is enabled by:

- bank accounts in both countries, opened in the names of international students or tourists, used and controlled by the MLO to receive cash deposits and bank transfers;
- shell companies with no legitimate commercial purpose controlled by close associates and family members; and
- Australian money remittance businesses registered by AUSTRAC which exploit vulnerabilities in Australia's AML/CTF regime.

Australian registered remitters, and professional enablers, facilitating capital flight using offsetting arrangements are committing offences under both the originating country and Australian AML/CTF laws. The funds attributed to the MLO is linked to a number of identified registered money remitters. Vulnerabilities in the current framework such as ambiguities in reporting entity requirements to identify the true beneficiary and source of funds transferred internationally enable MLOs to operate within the registered remittance sector. This adversely affects Australia's formal financial sector and supports organised crime through the provision of money laundering services.

¹ The APOT initiative administered by the Australian Criminal Intelligence Commission (ACIC) assists the AFP and other law enforcement partners to identify and pursue significant transnational serious organised crime threats impacting Australia.

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Rapid adoption of technological advancements

17. Those involved in money laundering activities rapidly adapt to technological changes such as the emergence of new payment platforms and movements in the regulatory environment.
18. For example, the AFP is aware of launderers actively seeking to exploit new digital platforms and businesses, such as neo-banks (wholly online banks, reliant upon bespoke software and often artificial intelligence) or digital currencies which present new opportunities to launder funds and present challenges to law enforcement due to the speed and ease with which value can be transferred to other jurisdictions and the decentralised nature of transactions.

Impact of COVID-19

19. The COVID-19 pandemic created a significant change in the financial behaviours of law abiding citizens and offenders. For example, the diminished availability of casino junkets in Australia to launder illicit wealth and increased regulatory scrutiny of Australian casino operations has increased the prominence of trade-based money laundering, including daigou syndicates, as a laundering method.
20. The pandemic has also provided new opportunities to commit profitable predicate crimes, such as fraud and cyber-related scams, with the proceeds then laundered. For example, the rise in remote transactions has led to reduced ability for institutions to conduct in-person checks and balances. The roll-out of community-wide COVID-related financial packages has also increased fraud opportunities.

The AFP's role and key partnerships

Money-laundering focus

21. At a Commonwealth level, the AFP has primary responsibility for the investigation of money laundering offences in Division 400 of the *Criminal Code*. As a key facilitator for organised crime, the AFP has placed a priority focus on investigating MLOs to disrupt and dismantle their activities. In the last ten years, 530 charges have been laid under Division 400.

Targeting illicit wealth

22. The AFP-led Criminal Asset Confiscation Taskforce (CACT) is a multi-agency taskforce which brings together the skills and expertise the AFP, Australian Criminal Intelligence Commission (ACIC), Australian Taxation Office (ATO), Australian Transaction Reports and Analysis Centre (AUSTRAC) and Australian Border Force (ABF) to identify, trace, restrain and confiscate illicit wealth. The CACT is led by the AFP, with primary responsibility for the investigation and litigation of Commonwealth proceeds of crime matters resulting from a wide variety of predicate Commonwealth offences. The CACT also targets proceeds of foreign offending, through either the registration of foreign restraining and confiscation orders or by bringing domestic action under the POC Act.

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23. In the 2019/20 financial year, the AFP-led CACT restrained criminal assets in excess of \$260 million, a significant result across the taskforce's nine-year history. The CACT's strong restraint record has continued in the 2020/21 financial year, totalling in excess of \$187 million. These figures demonstrate the lucrative nature of the organised criminal environment.
24. Increasingly, criminal assets confiscation action is seen as not only a way to remove illicit wealth but also an important disruption tool, including in areas such as countering terrorism. For example, the POC Act enables the targeting of criminal assets where funds are intended to be used in, or in connection with, the commission of an offence, allowing these funds to be confiscated prior to them being sent offshore to fund terrorism.

Case study- Restraining criminal assets for terrorism

In 2016, \$535,000 was forfeited to the Commonwealth as part of an AFP investigation into members of a large family who had travelled to the Syrian conflict zone in support of Islamic State. The forfeited funds were proceeds from the sale of their former family residence located in Sydney. It was suspected that the funds were intended to be used in the commission of a terrorism offence.

Key domestic partnerships

25. The AFP routinely works in partnership with other agencies, recognising that money laundering requires whole of government cooperation in the detection, disruption and prosecution of serious and organised financial related crime impacting on the Commonwealth.

AUSTRAC

26. The AFP strongly endorses the work AUSTRAC performs in compliance and enforcement, and acknowledges the critical impact that AFP-AUSTRAC collaborative efforts have on combatting money laundering and terrorism financing, especially the role of AUSTRAC's financial intelligence function in identifying assets for restraint and forfeiture.
27. Together with other law enforcement partners, the AFP has supported significant regulatory action undertaken by AUSTRAC into contraventions of the AML/CTF regime, including its Federal Court action against a major bank for contravening the threshold transaction reporting requirements of the AML/CTF Act on 53,750 occasions between November 2012 and September 2015, together with other contraventions.
28. In partnership with state police forces, the AFP also contributed to AUSTRAC's court action against one of Australia's largest gambling companies for failing to enrol as a reporting entity and to submit suspicious matter reports, both of which were required by the AML/CTF Act.
29. The Joint Threat Financing Group (JTFG) is a joint AFP-AUSTRAC initiative housed within AFP locations across Australia. The JTFG hold strong relationships with key members of the financial sector which allow the JTFG to operate on a direct police-

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bank relationship under existing law enforcement powers and the privacy principles, where required, which exist separate to the AML/CTF architecture.

Commonwealth Director of Public Prosecutions

30. The CDPP prosecutes the vast majority of money laundering matters on behalf of the AFP, and the strong working relationship between AFP and CDPP officers is fundamental to successfully combating money laundering.
31. One critical component of this relationship is the provision of pre-brief advice by the CDPP on complex matters. This advice contributes to critical decisions made by the AFP during investigations, enhancing overall investigative outcomes.

Counter Foreign Interference Task Force

32. As a member of the Counter Foreign Interference Task Force (CFITF), the AFP is working with partners to understand how hostile foreign actors undertaking espionage and foreign interference use money laundering typologies to finance activities.

International partnerships

33. Given the increasingly globalised nature of financial systems and the speed with which funds can be laundered through multiple countries, relationships with international partners remain critical in the AFP's efforts to target money laundering and the confiscation of illicit wealth.
34. Australia has a well-developed, mature and wide spread international network of operational Police and support staff based at Australian embassies and consulates across the globe. The AFP maintains strong intelligence and operational relationships with international partners through its active involvement in various group such as:
 - Five Eyes Law Enforcement Group's Money Laundering Working Group and Controllers Practitioners Groups;
 - Camden Asset Recovery Interagency Network;
 - Asset Recovery Interagency Network – Asia Pacific;
 - United Nations Office of Drugs and Crime;
 - Interpol and Europol, where AFP is the Australian representative for money laundering; and
 - Asia Pacific Group (APG)
35. Where the principals controlling money laundering syndicates are beyond Australian borders, the AFP leverages its international relationships to disrupt and dismantle those syndicates. For example, cooperation between the AFP, ACIC and overseas law enforcement agencies resulted in the disruption of the KHANANI MLO. The MLO acted on behalf of TSOC groups and terrorist organisation to launder billions of dollars annually between Pakistan, the UAE, United States, United Kingdom, Canada, Australia, and other countries. The AFP also worked closely with the US Office of Foreign Assets Control to deny the MLO access to the US banking system, and supported regulatory action undertaken by UAE regulators.

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36. The AFP-led CACT has also observed an increasing number of incoming and outgoing requests for international assistance with foreign countries over the past decade. As at 1 July 2021, over 10% of AFP proceeds of crime matters involve the registration of foreign proceeds of crime orders over property located in Australia. This is done pursuant to the *Mutual Assistance in Criminal Matters Act (MACMA) 1987 (Cth)*. In addition, proceedings may be brought under the POC Act and MACMA that relate to proceeds of crime laundered into Australia from overseas and outgoing requests involving cooperation with foreign law enforcement partners to restrain assets internationally (including through registration of Australian orders overseas).

Fintel Alliance

37. The AUSTRAC-led Fintel Alliance (FA) was established in 2017 and provides a public-private partnership which brings together domestic and international experts to work collaboratively in the fight against money laundering, terrorism financing and other serious crimes.

38. With support from the FA, the AFP led a major incident room with the big four banks to service all information requests during the resolution of Operation IRONSIDE. The level of assistance and information exchange was unprecedented and contributed to significant asset restraint by the AFP's CACT. Continued engagement, both within the FA and bilaterally with partners will lead to a significant improvement in the efficiency, depth and utility of information sharing from the banks with direct benefits to AFP operations. Additionally, the AFP has recently signed an MOU with one of the majors, allowing members to engage and collaborate on a range of financial and cyber-crime matters, resulting in enhanced intelligence and investigation outcomes.

Financial Action Task Force

39. Australia has committed to the implementation of Financial Action Task Force (FATF) Recommendations, which provide internationally accepted benchmarks for the assessment of countries' AML/CTF regimes.

40. The AFP has increased its emphasis on disrupting and dismantling money laundering syndicates. Under the previous Operation ZANELLA and the current Operation AVARUS, the AFP has an overarching remit for investigations focussed on money laundering offences under the Criminal Code, as well as other operations which target priority laundering activities. The AFP has demonstrated a continued commitment to the implementation of the FATF recommendations by applying the full range of investigative techniques to money laundering and associated predicate offending investigations.

41. The AFP has successfully investigated, prosecuted and pursued restraint and confiscation action across a variety of matters involving a range of typologies and criminal actors. Among the money laundering investigations undertaken by the AFP (and those noted within this submission) are those directed at tax fraud schemes, insiders within the aviation industry engaged in self-laundering techniques, Australian-based criminal syndicates laundering drug profits, and foreign nationals using casino bank accounts to launder cash.

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42. To enhance this capability, the AFP has instituted a cooperative approach to investigations, where the AFP has contributed to higher levels of coordination in efforts to target illicit proceeds (where assets are located both in an outside Australia) including through its participation in joint agency initiatives, hosting partner agency members in teams focused on money laundering, out-posting investigators to Commonwealth and state government agencies, and strong international engagement and bilateral relationships.
43. Since the last FATF review, the CACT has established a Maximum Impact Prioritisation Matrix (the Matrix), to ensure that the work of the CACT is targeted effectively. While the Matrix considers the quantum of assets that could be removed, this is not a determinative factor, and needs to be considered alongside other factors that affect the likely impact of the matter on serious and organised crime (including the deterrent/disruption value and public and community interests) and risk factors.
44. For example, the CACT has chosen to strategically litigate a number of matters in areas where there is a need for greater deterrence, including child care benefits fraud, health care fraud and fraud against the National Disability Insurance Scheme, as well as matters aimed at countering child exploitation. This assists the CACT to prioritise matters in accordance with its goal to disrupt, deter, deprive and punish serious and organised crime by delivering a coordinated, innovative and proactive approach to identifying and removing the proceeds, instruments and benefits of criminal activities and contributing to the delivery of the Commissioner's intent to have the maximum impact on crime.

Asia-Pacific Group

45. In terms of our regional efforts, the AFP holds the permanent co-chairing position in the Asia-Pacific Group (APG) on behalf of the Australian government. The APG's objective, as an inter-governmental task force consisting of 41 member-countries, is to contribute to the reduction of serious financial crime (money laundering and terrorist financing) in the region and in doing so contribute to the stability of the Australian and international financial systems. The APG have five primary functions:
- Mutual evaluations: The APG assesses the levels of compliance by its member jurisdictions with the global AML/CTF standards through a mutual evaluation (peer review) programme;
 - Technical assistance and training: The APG Secretariat coordinates bi-lateral and donor-agency technical assistance and training in the Asia/Pacific region for its member jurisdictions in order to improve compliance with the global standards;
 - Typologies research: Research and analysis into money laundering and terrorist financing methods and trends is a key function of the APG to assist policy and law makers as well as law enforcement agencies and the general public to identify and respond to new and emerging trends, methods, risks and vulnerabilities;

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- Global engagement: The APG contributes to international AML/CTF policy development and actively engages with the global network of FATF-Style Regional Bodies. The APG also participates in a number of FATF working groups and in its plenary meetings; and
 - Private sector engagement: Private sector engagement is critical to the APG's overall objectives. The APG actively engages with financial and non-financial institutions, non-profit organisations, training centres and universities in the Asia-Pacific to better inform the general public and specialists about global issues relating to money laundering, terrorist financing and proliferation financing.
46. The APG supports AFP operations through typologies research on global trends and emerging issues in money laundering and terrorist financing; training for officers on the international standards against money laundering and terrorist financing; and advice to the AFP, and wider Australian government, on the direction of policy development in the United Nations and the Financial Action Task Force.
47. This support is provided to all member-countries, supporting the integrity of their financial systems and assisting to target harden the Asia/Pacific region.
48. In addition to the strategic priorities set out in the APG Strategic Plan, in 2020, the Malaysian Co-Chair established a set of priorities for 2020-2022, including a focus on DNFBP supervision, data analytics and Public-Private Partnerships.

Effectiveness and challenges under the regime

49. The AFP welcomes the recent reforms in the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* to harden the financial sector against and dismantle the criminal business model to stop criminals from enjoying the profits of their illegal activities.
50. Coupled with recent amendments to the money laundering offence provisions in the *Crimes Legislation Amendment (Economic Disruption) Act 2021*, these reforms demonstrate a commitment to constantly refining our frameworks to ensure they are fit for purpose in the current threat environment.
51. The AFP makes regular use of section 49 AML/CTF Act notices including for counter-terrorism matters. Over time, reporting entities have become used to receiving and responding to the notices covering a range of information such as bank statements, IP address information, and CCTV recordings.
52. Direct access to transaction information, including threshold transaction reports, submitted by reporting entities continues to be of high utility to the AFP and its partner agencies to proactively target individuals and criminal groups involved in money laundering operations.
53. However, as a result of continued operational use and advancements to the threat environment, the AFP has identified a number of key and often interdependent risks under the current AML/CTF regime.

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Designated Non-Financial Business and Professions

54. The AFP continues to support measures to harden designated non-financial business and professions (DNFBPs) and stop them from being exploited for money-laundering purposes.
55. First and foremost these professions receive and hold information and insights which could greatly benefit law enforcement investigations and outcomes targeting TSOC. In contrast to international counterparts, the lack of regulation of DNFBPs in Australia means not only that activities carried out by or through these professions remain largely invisible, but there is an inability to create a complete picture of Australia's money-laundering and terrorism financing risks. Data collected from these sectors would enable a comprehensive approach to risk assessments ensuring any trends and vulnerabilities are appropriately identified and addressed, thus enabling law enforcement to effectively protect the community.
56. Secondly, the AFP's experience is that these sectors possess inherent vulnerabilities which puts them at risk of being exploited by those who undertake money-laundering ventures. As the majority of funds that flow through banks are legitimate, so too are those within these professions.
57. Numerous investigations have been carried out into suspected criminal activities of persons employed by DNFBPs who use their technical proficiency to avoid regulatory and law enforcement security, and deliberately subvert rights to safeguard their clients' interests. However, the AFP has also undertaken investigations where members of these professions have been either unwitting or reckless facilitators, or ambivalent to the money-laundering risks.

Case study: use of solicitor's trusts accounts to conceal cash deposits

In 2013 a multi-agency investigation was initiated into the activities of an organised crime syndicate involved in trafficking illicit drugs within Tasmania. Enquiries with the Land Information System Tasmania in relation to one of the suspects identified that he was the owner of a property which he had purchased for over \$150,000 a few years earlier. There was no mortgage attached to the property.

Enquiries with AUSTRAC identified that at the time of the suspect's purchase, the vendor's solicitor had deposited the sum of over \$1 million into his solicitor's trust account. Over \$180,000 of that deposit was in cash. This information had been lodged with AUSTRAC by the bank where the solicitor held his trust account. AUSTRAC record searches in the name of the suspect were not able to identify any cash withdrawals from any bank accounts that could explain the accumulation of, or aggregation of, the relevant cash given by the financial circumstances of the suspect.

In this case, the AFP was able to rely upon evidence of the cash deposit and lack of identifiable income to seek restraint and forfeiture of the property under the POC Act on the grounds that it was reasonably suspected of being the proceeds of crime. However, this was only possible because the amount of cash deposited into the solicitor's trust account was almost identical to the consideration for the property. Had the relevant cash been part of a larger bundle of banked cash deposits, it is unlikely that the same conclusions would have been able to be drawn.

OFFICIAL

Corporate entities

58. Corporate entities (as many of the case studies throughout this submission involve) remain attractive to money launderers because companies can open and operate bank accounts and independently engage in transactions. These means are an effective way to disguise the flow of illicit funds, and straw directors are a proven method of protecting those ultimately in control of corporations. The AFP considers continuing enhancements as part of the Government's Modernisation Business Registers program, in relation to company and director registrations could assist in reducing the use of corporate structure for money laundering.

Barriers to the proactive sharing of information

59. Currently, information derived under the POC Act can only be shared with other agencies if disclosure satisfies a listed purpose. Section 266A sets out the POC Act's information disclosure framework and permits disclosure of information obtained under relevant POC orders to the recipients for the listed purposes in that section. As a result, this restricts information from being disclosed to a Commonwealth, State or Territory Authority for its intelligence, regulatory or disciplinary functions.
60. These limitations reduce the usefulness of information and documents gained through the POC Act's information gathering powers, and have been a barrier to agencies working effectively together to take a multi-faceted approach to identifying and combatting money laundering vulnerabilities and risks.
61. Though AUSTRAC, Australian Prudential Regulation Authority, and ASIC each have responsibilities or functions relating to criminal as well as regulatory and intelligence matters, information may only be used in respect of their criminal functions. This decreases the ability of these agencies to take a nuanced and case-specific enforcement approach, especially in cases of corporate crime where civil options may be a more effective option as criminal prosecution may not be possible.

Barriers in investigating and confiscating matters with international linkages

62. Increasingly, illicit funds are moved between jurisdictions via traditional finance, remittance services, value transfer which occurs through offsetting between entities and jurisdictions, cash and digital currencies. AFP investigations must be able to quickly obtain information from around the world to identify criminality and seize the proceeds of crime, but are increasingly frustrated by existing information gathering powers which have not moved with globalisation.
63. Often, information must be obtained using processes under the MACMA, to ensure it is admissible in criminal and civil proceedings. This process itself causes significant delays, however it is further complicated where there is no clear jurisdiction, or the relevant jurisdiction is not willing or able to provide assistance. For example, when dealing with Digital Currency Exchanges based in foreign jurisdictions, there can be issues in obtaining account holder information.

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64. Further while many international exchanges may provide account holder information for intelligence purposes there is no clear method for obtaining that information in an evidentiary format when they are not based in jurisdictions that provide for the use of mutual assistance requests. This raises difficulties under the *Foreign Evidence Act 1994* as it applies to testimony and annexed exhibits obtained as a result of a request made by or on behalf of the Attorney-General to a foreign country for the testimony of a person, but leaves minimal options where it is not possible to make such a request. The AFP welcomes further discussion on this matter.

Information handling and admissibility

65. The AML/CTF Act enables the AFP to seek material from reporting entities in a timely manner while investigating active money-laundering syndicates. However, the AFP continues to experience admissibility issues with information gained under section 49, notably:

- Information that is associated with an SMR cannot be used as evidence, and
- Limitations on banks (under section 126 of the Act) from speaking to evidence in court (i.e. through affidavits or witness statements).

66. Current practice creates duplicate work for both the financial institution and law enforcement where other mechanisms such as Crimes Act search warrants are required to re-gather this information for admissibility in court. Not only does this cause double handling of evidence, but issues around continuity of evidence and significant delay in proceeding with investigations, including restraint action under the POC Act, due to time lapses.

67. The AFP recognises the difference in processes reflects different intended use of the information received (for example, intelligence versus evidentiary purposes) however given the substantial overlap in information obtained, in our view the efficiencies achieved would justify streamlining processes for obtaining information for us in both investigation and prosecution.

Money remitters and International Funds Transfer Instructions (IFTI)

68. The process of off-setting used by Australian registered money remitters to informally transfer value on behalf of clients based in other countries relies upon access to funds in Australia.

69. The International Funds Transfer Instructions (IFTI) reports that a remitter submits to AUSTRAC does not, and is not required to, record the true source of the funds. This allows MLOs to hide the true origin and destination of the funds and makes it easier to legitimise funds through inaccurate IFTI reports.

70. The AFP considers a number of potential strategies could address these risks, including:

- amending the AML/CTF Rules to make the provision of certain information on IFTI- Designated Remittance Arrangements mandatory and remove the discretion of remitters submitting these reports;

OFFICIAL

- enhancing the entry requirements for those seeking to operate as remitters in Australia; and increasing regulatory and law enforcement responses to the role played by remitters in money laundering through: additional audits of "at risk" remitters, additional penalties, pursuing criminal investigations against the corporate entity and their officers and education outreach programs delivered to remitters explaining the consequences of breaching the AML/CTF regime.

On-boarding identification checks and related offences

71. AFP investigations repeatedly identify the use of fraudulently obtained identification credentials to open bank accounts for laundering ventures. This amounts to a single point of failure as laundering activities are able to manifest once the individual has gained access to the financial system. Operational experience in conducting these investigations demonstrates that criminals are able to undermine and exploit customer online on-boarding identity verification processes currently implemented by reporting entities. While the business rely on the government provided services, such as the Document Verification Services (DVS), there remain vulnerabilities related to other frameworks outside of AML/CTF, including the digital identity and biometric systems.
72. Further, the AFP has had significant difficulties in utilising the existing AML/CTF offences pertaining to false identification documents as they do not align with modern techniques used by criminals to open bank accounts. The AFP welcomes further discussion on these issues.

Cash-in-transit services

73. Operation IRONSIDE, which allowed the AFP to access an encrypted communications platform used by various crime groups, provided an insight into the continued possession of bulk cash by criminal groups as a result of their illegal ventures. The problem of storage and transportation of cash holdings faced by criminal groups has been further complicated by state, territory, and international border restrictions brought about by COVID-19.
74. The operation identified the use of licenced cash-in-transit companies (exempted from regulatory reporting requirements via the 2017 amendments to the AML/CTF regime) to both collect illicit funds on behalf of criminal groups, including MLOs, and then transfer those funds into Australian and overseas bank accounts. This process effectively creates a buffer for the criminal origins of the funds collected by the cash-in-transit group, before those funds are introduced into the banking system.

Digital platforms

75. Criminal syndicates are taking opportunities to exploit new digital platforms used for retail transactions, the conversion between digital currencies and short term financing, to launder money and exploit the vulnerabilities in AML/CTF reporting obligations.
76. During Operation SUTHERLAND, a recent drug importation investigation in Western Australia, the AFP identified the potential use of a cryptocurrency facilitator (that is, a mobile telephone-based software application) and local business to purchase

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drugs via Dark Net marketplaces and launder the proceeds of those offences. Neither the local business nor the operators of the software application in the above example are required to make a report to AUSTRAC, as the reporting obligation rests with the digital currency exchange to which the operators of the application send the converted funds.

De-banking

77. In response to increased risks and opportunities for money laundering, the AFP has identified a tendency for banks to self-initiate the closure of customer accounts (a process known as 'de-banking'). The AFP welcomes additional precautions taken by these institutions to mitigate money laundering risks, however we strongly encourage coordination with law enforcement before engaging in de-banking practices due to impacts for ongoing AFP investigations when criminal groups are pushed outside of the AML/CTF reporting regime.
78. The AFP also suggests a stronger emphasis on front-loading vigilance towards onboarding procedures, to ensure that only valid customers can open a bank account in the first place.
79. The AFP supports the new exemptions developed under Chapter 75 of the AML/CTF Regulations, which permit law enforcement agencies to request from AUSTRAC that specific reporting entities be granted exemptions from certain AML/CTF Act obligations, where provision of designated services to a customer would assist in the investigation of serious offences. However, operational experience is that this practice is not always adopted by reporting entities. The value of the Chapter 75 exemption is contingent on early engagement between the bank in question, law enforcement, and AUSTRAC.

Conclusion

80. Money-laundering to support or further criminal ventures continues to grow in both size and complexity, where criminals find ways to exploit current vulnerabilities in the current AML/CTF regime or opportunities outside the regime.
81. It is essential that robust and flexible legislative frameworks are available to respond to this threat and ensure the efforts of TSOC groups to subvert, exploit and distort legitimate markets and economic activity can be disrupted and prevented.
82. The AFP welcomes the opportunity to appear before a hearing to discuss our operational experiences further.