



ANTI-MONEY LAUNDERING

CURRENT ANTI-MONEY LAUNDERING RULES ARE NOT ENOUGH TO PROTECT AUSTRALIANS – THEY ONLY APPLY TO FINANCIAL INSTITUTIONS BUT DO NOT REQUIRE LAWYERS, REAL ESTATE AGENTS AND ACCOUNTANTS TO INFORM AUTHORITIES ABOUT SUSPICIOUS BEHAVIOUR. AUSTRALIA MUST EXTEND THE AML/CTF LEGISLATION TO COVER THESE GATEKEEPER PROFESSIONS, DELIVERING ON THE COMMITMENT MADE IN 2006.

Australia is a major destination of the world's dirty money. Much of this money is flowing out of poorer countries, and into the coffers of wealthy G20 States. We are profiting from the foreign crime, corruption and misconduct that robs people of their national wealth.

Australia needs to strengthen our existing laws to stop criminals prospering through our financial institutions. We can do this by widening the net of our **Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF)** legislation, which currently covers banks, casinos and bullion dealers.

Dirty money can be handled by or laundered through Australian lawyers, accountants and real-estate agents ('Designated Non-Financial Businesses and Professions').

Lawyers, accountants and real-estate agents should:

- Conduct customer **due diligence** - such as identifying the source of their funds and whether they are a 'Politically Exposed Person'¹ (or closely related to such a person).
- Lodge specified transaction and suspicious matter reports with the regulator, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**).

- Establish, implement and maintain an **AML/CTF program** specifying how they identify, mitigate and manage the risk of their services being misused to facilitate money laundering or terrorism financing.²

The Government should also **provide much needed resources to relevant agencies** such as the AUSTRAC, the Australian Federal Police and the Australian Securities and Investments Commission (ASIC), which are each tasked with handling money laundering related offences.

Together these agencies are expected to prevent, deter, disrupt and investigate money laundering and terrorism financing risks, and should ensure professional financial service providers are complying with the law, and penalise them if they are not.

These agencies should also enter into and exercise information sharing arrangements with foreign counterparts (particularly in our region), so that we know if any of their citizens holds significant assets in Australia.

Money Laundering

Money laundering is the process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities to make them appear legal.

¹ Politically Exposed Persons are individuals who hold or held a prominent public function, such as the head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-

owned corporations, or important political party officials. The term often includes their relatives and close associates.

² See more in Chapter 6 of the [AUSTRAC compliance guide](#).

PROBLEM

Money laundering allows criminals to enjoy the spoils of their crimes and enables corrupt officials to profit from their misconduct. While originating countries lose the laundered funds, they have many negative effects in recipient countries too, funding organised crime, contributing to local corruption and distorting the property and luxury goods market.³ Approximately \$US 1.6 trillion is estimated to be laundered annually.⁴

Real estate accounted for up to 30 per cent of criminal assets confiscated worldwide between 2011 and 2013.⁵ Transparency International's research found Australia to be especially poorly equipped to control money laundering in the property market. TI investigated 10 key loopholes in the system and found them all to be wide open in Australia.⁶

As the Australian media has revealed, the flaws in our system are clearly allowing people to channel questionable funds into the Australian property market. For example, despite an ostensibly low salary, Sudanese General James Hoth Mai Nguoth supported his son to purchase a \$1.5 million house in Victoria.⁷ Similarly, former Malaysian banker, Yeo Jiawei, who is currently incarcerated overseas for laundering money linked to the 1Malaysia Development Berhad (1MDB) scandal, reportedly used a foreign-based company to purchase properties on Queensland's Gold Coast.⁸

BACKGROUND

Australia can be proud of an active history supporting better international standards against illicit financial flows. This includes signing the:

- 2000 **Palermo Convention** against transnational organised crime – including money laundering.
- 2004 **UN Convention Against Corruption**, which criminalised the concealment and laundering of the proceeds of corruption, and instituted mechanisms for detecting and deterring money laundering.
- Working with world leaders to implement the **G20 Anti-Corruption Action Plan**, which includes

³ See Louis de Koker, 'Much more can be done to keep foreign criminal funds out of Australian property', *The Conversation*, 13 October 2015.

⁴ United Nations Office on Drugs and Crime, 'Estimating illicit financial flows resulting from drug trafficking and other transnational organized crime' October 2011.

⁵ FATF (2013) 'Money laundering and terrorist financing vulnerabilities of legal professionals', p. 24.

⁶ Transparency International (2017) 'Doors Wide Open – Corruption and Real Estate in Four Key Markets', p. 8.

⁷ Connie Agius, ABC News, 21 August 2018, <https://www.abc.net.au/news/2018-05-14/court-document-shed-new-light-on-alleged-money-laundering-case/9738920>

⁸ See Connie Agius, 'Court document sheds new light on alleged money laundering case involving former South Sudanese military general', ABC, 21 August 2018; Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', *The Guardian*, 13 January 2017; Grace Leong, '1MDB probe: Former BSI banker Yeo Jiawei gets 54 months' jail for money laundering, cheating', *The Straits Times*, 12 July 2017.

commitments to stop money laundering, recover stolen assets, identify Politically Exposed Persons, and deny entry to corrupt people and their assets.

However, there are grave concerns over Australia's efforts to fulfill its commitments. According to the **Financial Action Task Force (FATF)**, Australia's property market is an 'attractive destination' for the proceeds of corruption in the Asia-Pacific region.⁹ FATF also noted the flaw in our system in that our laws do not cover the 'high-risk'¹⁰ businesses - lawyers, accountants, real estate agents, precious stone dealers and trust and company service providers.¹¹

The issues in the Australian legislation have been noted domestically as well – the 2016 **Statutory Review of Australia's Anti-Money Laundering and Counter-Terrorism Financing Act**, had a clear message:

"Non-regulation of DNFBPs ... generates a significant gap in Australia's AML/CTF regime that provides opportunities for criminals to misuse DNFBP services to launder illicit funds"
-2016 Statutory Review¹²

Most concerning is that the Federal Government is dragging its heels – the first announcement to extend the AML/CTF legislation to cover lawyers, accountants and real-estate agents came already in 2006, when the said legislation was introduced.¹³ After 13 years of deliberations, instead of implementing this much-needed, and internationally recommended reform, it has indicated it may only implement technical tweaks.¹⁴

Australia is exposed to money laundering and terrorism financing risks while the AML/CTF legislation remains incomplete. Urgent action is needed.

⁹ FATF and APG (2015), 'Anti-money laundering and counter-terrorist financing measures - Australia', Fourth Round Mutual Evaluation Report, p. 7.

¹⁰ *Ibid*, p. 9.

¹¹ *Ibid*, p. 11.

¹² Attorney-General's Department (2016) 'Report on the Statutory Review of the AML/CTF Act and Associated Rules and Regulations', p 40.

¹³ 1 Nov 2006, then Attorney-General Phillip Ruddock, 2nd reading in House of AML/CTF Act announced the first tranche reforms and "*second tranche will cover real estate agents, jewellers, lawyers and accountants. Work on the second tranche reforms will commence after implementation of the first tranche has been started. The second tranche legislation will be tailored to meet the particular needs of the small business sectors to which it will apply.*"

¹⁴ These include revision of the secrecy and access provisions in Part 11 and amending the 'tipping off' provisions to allow greater sharing of information, enhancing the cross-border reporting regime to require reporting of other non-cash items, allowing reliance on customer identification performed by third parties and enhancing correspondent banking requirements. See more in Nathan Lynch, 'Government flip-flops again on money-laundering, counter-terror finance laws', MW, 17 October 2018.