COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

Public

TUESDAY, 9 NOVEMBER 2021

CANBERRA

BY AUTHORITY OF THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Tuesday, 9 November 2021

Members in attendance: Senators Carr, Ciccone [by video link], Grogan [by video link], McKim [by video link], O'Neill and Scarr [by audio link]

Terms of Reference for the Inquiry:

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism (AML/CTF) regime, with particular reference to:

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

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

ii. identifies emerging problems based on this reporting;

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

i. address governance and risk-management weaknesses within designated services, and

ii. identify weaknesses before systemic or large-scale AML/CTF breaches occur;

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

d. 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;

e. Australia's compliance with the Financial Action Task Force (FATF) recommendations and the Commonwealth Government's response to:

i. applicable recommendations in applicable FATF reports, and

ii. the April 2016 *Report on the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and associated rules and regulations*;

f. the extent to which adherence with FATF recommendations prevents systemic and reputational risks to Australia, the Australian economy, and Australia's capacity to access international capital;

g. 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;

h. the extent to which:

i. DNFBPs take account of money laundering and terrorism financing risks, and

ii. the existing professional obligations on DNFBPs are compatible with AML/CTF reporting obligations; and

i. any other related matter.

WITNESSES

CHEVIS, Mr John, Private capacity 13

COYNE, Dr John, Strategic Policing and Law Enforcement, Australian Strategic Policy Institute [by video link] 21

JEANS, Mr Neil, Principal, Initialism 1

LILLYWHITE, Ms Serena, Chief Executive Officer, Transparency International Australia [by video link] 28

MARSHAN, Mr Benjamin, Head of Policy, Financial Planning Association of Australia [by video link] 42

McWILLIAMS, Mrs Karen, Business Reform Leader, Chartered Accountants Australia and New Zealand [by video link] 42

OLIVER, Mr Patrick, Director, AML Experts 1

O'SHAUGHNESSY, Mr Aidan, Executive Director, Policy, Australian Banking Association [by video link] 35

QUINN, Mr Anthony, Founder and Director, Arctic Intelligence 1

STYLIANOU, Ms Vicki, Group Executive, Advocacy and Policy, Institute of Public Accountants 42

WALLER, Mrs Keddie, Head of Public Practice and SME, CPA Australia [by video link] 42

WEBER, Mr Scott, Chief Executive Officer, Police Federation of Australia 13

WILSON, Mr Russell, Non-Executive Director, Transparency International Australia 28

JEANS, Mr Neil, Principal, Initialism

OLIVER, Mr Patrick, Director, AML Experts

QUINN, Mr Anthony, Founder and Director, Arctic Intelligence

Committee met at 09:01

CHAIR (Senator Kim Carr): I declare open this public hearing of the Senate Legal and Constitutional Affairs References Committee inquiry into the adequacy and efficacy of Australia's anti-money-laundering and counterterrorism-financing regime. These are public proceedings being broadcast live via the web and in Parliament House. I remind witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in camera. If you are a witness today and intend to request to give evidence in camera, please bring this to the attention of the secretariat as soon as possible. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera, and such a request may also be made at any other time.

With those formalities over, I welcome our witnesses and I thank you for giving us evidence. I take it that you have all been informed about your rights under parliamentary privilege? Has the secretariat made that available to you?

Mr Jeans: Yes.

Mr Oliver: Yes.

Mr Quinn: Yes.

CHAIR: The committee has received your submissions Nos 6, 8 and 12. Do any of you wish to make any corrections to your submissions?

Mr Oliver: No.

Mr Quinn: No.

Mr Jeans: No.

CHAIR: Would any of you like to make a statement before we turn to questions?

Mr Oliver: Thank you for the opportunity to appear before this committee. Details of the firm and my experience are contained in our submission. I will highlight several things which may be of relevance to today's hearing. I currently advise, as the Managing Director of AML Experts and as a lawyer, on the AML act and rules, both from a legal and a consulting aspect. So I understand the complexities of both the law and the difficulties a reporting entity faces in the design and implementation of a compliant AML program. I have done so since 2006, at the commencement of this regime, so I'm long in the tooth. I have advised law firms and legal regulators on the implementation of AML laws in the UK, Ireland and New Zealand. In Australia, this has been limited to money laundering and financial crime risk. I have advised law firms on risk management strategy and processes, including anti money laundering. I am an AUSTRAC authorised external auditor and an AML court expert.

There are a couple of points I would like to focus on from my submission. Firstly, the Commonwealth's ongoing breach of both the FATF recommendations and the objects of the AML act places Australia at risk in the international sphere and also places Australian society at risk at domestic level from ongoing serious organised crime.

Secondly, the current AML laws and rules as they apply to reporting entities are overly complex, making it more expensive and problematic for reporting entities to comply than is actually necessary. Complexity arises from many aspects, including the definition of designated services; complex know-your-customer rules; and the all-crimes suspicious matter reporting obligations.

Thirdly, the extension of AML laws to designated non-financial businesses and professions, tranche 2, is entirely feasible, with the political will. Yes, it will impose costs on those professions, but not as much as some have argued. Those costs can be reduced by ensuring any extension is limited both in scope and breadth by following FADF recommendations and the simplification of the AML rules. Finally, greater compliance with the

AML act, which would result in reduced money laundering and serious crime risk and better AUSTRAC reporting, would be assisted by a civil penalty provision placed upon directors, owners and senior managers of reporting entities to take reasonable measures to ensure that a compliant AML program has been implemented. The current governance provisions at reporting-entity level do not assure this outcome. Thank you.

Mr Quinn: Thank you very much to the committee for giving me the opportunity to attend the hearing today and to allow me to present my opening statement. In my career to date, I've spent over 15 years operating in the financial crime risk-management sector, include over eight years at the Macquarie Bank where I was the program director responsible for implementing the AML, CTF and FCA programs to the banking and financial services group. In 2015 I founded Arctic Intelligence, which is a regulatory technology firm that provides enterprise-wide financial crime risk-assessment software to hundreds of clients in 10 countries and 21 industry sectors, including banks, credit unions, stockbrokers, money remitters, wealth managers, casinos, clubs and many small businesses in the legal, real estate and accounting sectors. We help them cost-effectively conduct financial crime risk-assessments and develop strong control frameworks.

When you hear us talk today about financial crimes, we are talking about crimes like money laundering, terrorism financing, human and wildlife trafficking, environmental crimes, bribery and corruption, tax evasion fraud and violations of sanctions laws. Financial crimes are reported to cost the Australian economy around $50 billion a year, but the human cost of financial crime is incalculable. Australia has a major drug problem. Tonnes of drugs are imported here every year, and over 1.3 million Australians have used ice within the last 12 months. There has been a significant rise in drug related gang violence, with murders and shootings happening almost every week, and we've seen a significant rise in drug-related domestic violence, addiction and suicide, which is having a devastating effect on our families and communities. Organised criminals use many sectors to claim the proceeds of crime, including many sectors that are currently unregulated in Australia but are regulated in almost every other country in the world.

The three key messages from my submission that I would like to read to the committee are as follows. The first point is that the Australian government has repeatedly failed to take the necessary actions to meet the Financial Action Task Force recommendations and has disappointingly lacked the political will and resolve to take action to address the many deficiencies the FATF has highlighted in various mutual evaluation reports going back many years. As a result, Australia is simply not meeting its international commitments and remains one of five out of 200 FATF member countries that have failed to expand the laws to lawyers, accountants, real estate agents, high-value dealers, and trust and company service providers. This inaction makes Australia an attractive destination for organised criminals and may even result in Australia being greylisted by the FATF, further damaging our international reputation. There is clear evidence internationally and domestically that these sectors are actively used by organised criminal networks, and Australia is no different from the other 195 countries that have already extended these laws to these sectors, many for a decade or more already.

The second point I would like to make is that, since the risk based approach places responsibility on regulated entities to first identify and assess how their businesses could be vulnerable to financial crime and then build an appropriate set of controls to manage these risks, there needs to be simplification and standardisation of financial crime risk assessment methodologies to make it easier for regulated entities as well as AUSTRAC, who are not equipped to provide oversight to tens or hundreds of thousands of entities adopting completely different risk assessment technologies. We believe that, through the broader adoption of technology, we can improve the overall effectiveness of financial crime risk mismanagement, drive down the cost of compliance and reduce the levels of non-compliance that across many sectors.

The final point I would like to make is that there is a lack of clearly defined roles, responsibilities, accountabilities and sanctions for board directors and senior management in the event that a reporting entity has materially breached the AML laws or rules. There is currently no mechanism for AUSTRAC to seek civil penalties against individuals, which was another criticism levelled at Australia by the FATF in its 2015 mutual evaluation report. The lack of consequences for individual board directors and senior managers has created an environment where understanding AML risks and controls is often not given the attention, the focus or the priority it deserves, which has been highlighted in many AML enforceable undertakings.

A related issue that impacts the ability for executives to provide effective governance and oversight of AML programs is the current lack of any mandated time-frame for conducting independent reviews, which in many countries such as New Zealand occur at least every two years and should also be adopted in Australia, which will reduce the likelihood of control deficiencies remaining undetected and unresolved for many years.

To close and to reiterate the main outcomes I would like to see from this inquiry: they are that we should expand the AML laws to tranche 2 sectors, explore ways to standardise and simplify enterprise financial crime

risk assessments, increase personal accountability for material non-compliance and, finally, mandate independent reviews to be conducted at least every two years. There are thousands of risk compliance professionals working tirelessly to protect Australians from the devastating effects of financial crime on our society. It is long overdue for politicians to play their part. Thank you for your time and for listening.

CHAIR: Thank you very much. Mr Jeans.

Mr Jeans: I would like to thank the committee for inviting me to give evidence to this important inquiry into Australia's AML/CTF regime. I represent Initialism, a consultancy that provides AML/CTF compliance and risk management services to businesses of all types and sizes covered by the AML/CTF Act. I have a background in financial crime risk management spanning almost 30 years, which includes working in law enforcement investigates complex financial crime and money laundering, working as a regulator, developing AML regulation, working at senior levels within global financial businesses and consulting on AML/CTF in Australia and internationally for the last 10 years.

Australia's AML/CTF regime has not appropriately matured or adequately evolved since its inception in 2007. This has resulted in a regime that currently does not comprehensively address Australia's money laundering vulnerabilities and falls short of minimum international standards. As a result, Australia is increasingly considered a laggard in the area of AML/CTF and consequently perceived as an attractive haven for criminal proceeds. The weaknesses in Australia's AML/CTF regime were identified by the FATF mutual evaluation in 2015. The findings of the FATF were replicated in the government's own 2016 statutory review report. In 2014, Australia was one of the first countries to be subjected to the current FATF evaluation process. However, since 2014, over 150 countries have been assessed by the FATF and, like Australia, many have found themselves needing to improve their AML/CTF regimes. However, unlike Australia, many other countries have over recent years made concerted efforts to address the weaknesses identified by the FATF.

Australia's inaction is evidenced by the appendix that accompanied the Department of Home Affairs submission to this inquiry, which sets out that 49 of the 84 recommendations from its own statutory review in 2016 are either ongoing or outstanding. In 2017 the Attorney-General's Department, which at that time had carriage for AML/CTF, published a comprehensive plan to address the statutory review report recommendations. That would have been completed by mid-2019. This plan was never implemented. Australia now has only a limited window of opportunity to address the weaknesses in its AML/CTF regime. In 2020 it is anticipated the FATF will review Australia's progress against the 2015 findings. This follow-up review has been delayed since late 2019.

Senator O'NEILL: Can I interrupt to clarify? Did you say 2020 then?

Mr Jeans: It was 2022—next year. As recently as two weeks ago the FATF president expressed frustration at member countries who are not aligning their AML/CTF regimes to the FATF standards, citing a lack of political will as a significant contributing factor. Whilst the weaknesses in the AML/CTF regime are multifaceted, Initialism's written submission to the inquiry focuses on three topics that result from a failure to mature and evolve the regime. First is the appropriateness of using designated services to determine whether a business is caught by the AML/CTF Act. The current services are out of date with industry reality, and this hardwired inflexibility has created different compliance obligations for businesses offering similar financial services.

Second, there is a need for more formalised board and senior management AML/CTF compliance, responsibility, accountability and sanctions. Board and senior management's responsibility and accountability are vital tools in ensuring businesses devote appropriate attention and resources to AML/CTF compliance.

Finally, there is the need to bring designated non-financial businesses and professions into Australia's AML/CTF regime. This will close the gap that allows criminals to exploit the legitimate services provided by legal accountancy and real estate professions to launder the proceeds of criminal activity in Australia and internationally.

It is my experience from my time in law enforcement that that businesses within the designated non-financial business and professions sectors can be used either unwittingly or wittingly to launder the proceeds of transnational organised crime. Since 2018, Initialism has worked with New Zealand to designate non-financial businesses and professions. I therefore have direct experience and insight into the actual impact the introduction of AML/CTF will have on these sectors. This experience contrasts with other submissions made to this inquiry that claim that the effort and cost of barriers to these sectors being brought into the AML/CTF regime. I look forward to answering any questions the committee may have.

CHAIR: Thank you very much. I thank the three of you. For formality's sake, the document you sought to table is the additional information dated 9 November, the inquiry into the adequacy and efficacy of Australia's

AML/CTF regime. Since there are no objections, we take that as tabled and, for formality's sake, that press be admitted. There are no objections to that?

Mr Jeans: No objection.

CHAIR: So be it. I might begin with Senator Scarr if he would like to kick off for the committee point of view.

Senator SCARR: Thank you to all of the witnesses appearing today. Obviously you all have a great depth of expertise in relation to this area, and it's much appreciated that you join us today. Just to make it somewhat easier, I might direct my questions to Mr Jeans. If the other witnesses want to add any points with respect to the questions I ask, then they should feel happy to do so. Mr Jeans, I read your submission in detail and the paper which Initialism prepared in relation to extension of the AML/CTF regime to designated non-financial businesses and professions into Australia. Can I take you to the second page of your submission, where you say that one of the barriers to entry has been:

> … the debate about Australia's inclusion of DNFBPs in the AML/CTF regime can be characterised as continuing to be bogged down by a lack of apparent political will resulting in federal government inaction, which has been justified in part by the hyperbole, scaremongering and catastrophic impacts predicted by the lobbyists for some DNFBP sectors.

I'm wondering if you can expand upon that in terms of how you're characterising the opposition to the extension of the AML/CTF regime to DNFBPs.

Mr Jeans: The opposition is longstanding. It primarily comes from the legal profession, who have consistently, in many countries, resisted the implementation or the imposition of AML/CTF covering their sectors. The issues or the concerns they have have been consistently found not to be correct or not to be appropriate, and that also includes New Zealand, who have recently gone through this process. I worked closely with them before the legislation came in, and there was a lot of fear and concern within the legal sector, the accounting sector and the real estate sector. But, 2½ years on, this is part of normal business. I've been working in this space for almost 30 years. Since 2003, there have been attempts to bring lawyers, accountants and real estate agents into the regime by the FATF standards, and there's been a consistent campaign which, in every country that I've been involved in, has lost credibility, and the reality is found to be different.

Senator SCARR: Have you had an opportunity to read the Law Council of Australia's submission?

Mr Jeans: I have, yes.

Senator SCARR: I read that submission and, from my perspective, they're raising bona fide concerns with respect to matters such as legal professional privilege, the prospect of managing these issues through existing professional conduct rules and standards and also a concern with respect to the disproportionate impact this could have—in particular, in an Australian context—on sole-practitioner firms. A lot of our regional and rural communities are serviced by sole practitioners who do everything. They do all the legal work in the town. There is a real concern that this regime, if it's not calibrated the right way, could have a disproportionate impact on them. Do you recognise that these are legitimate, bona fide concerns that are being raised by the profession?

Mr Jeans: Firstly, I may refer to Mr Oliver to address the legal privilege and confidentiality issues. I think that, as a practising lawyer, he is well placed for that. Then, if we may, we may come back to the costs, which are part of the submission we have made, the additional information.

Senator O'NEILL: Mr Oliver, in his submission, referred to the three jurisdictions in the UK, which all had different situations with regard to the law. If he could reference that in his answer, that would be helpful. And, Senator Scarr, your next question might be assisted by the extra document we've just received. I don't know if you've got it yet, but you might want to have a look at that.

Mr Oliver: In relation to legal professional privilege and client confidentiality, they are quite extensive and complex legal and ethical rules to understand. Legal professional privilege is related to legal advice and to litigation. The AML act itself says legal professional privilege will not be abrogated. That's section 242. The Law Council say in their submission that's not strong enough, but that's open for debate. Interestingly, New Zealand did put an extra amendment into their law, when they changed it, to bolster that. So legal professional privilege will not go away. Client confidentiality is a broader concept. All client discussions with lawyers should be confidential; however, there are exceptions. One of the main exceptions is if it's allowed by law or demanded by law. That's in section 9.2.2 of the Australian Solicitors' Conduct Rules. So that can be dealt with as well. Those issues, although they are complex, they can be overcome. In the UK and Ireland it did take quite a lot of thought about how those issues could be overcome, but they have been. They are now not an issue, both in the UK and in Ireland. It does help that lawyers end up with more training in relation to their ethical obligations. Training is a major piece in that area.

In relation to the proportionality of the rules or the laws, I think we're all arguing that the rules are complex. If they are correctly implemented and perhaps change the AML act, the impact on those smaller law firms will be not as much as the Law Council has said. Ireland, the UK and New Zealand are full of small law firms. Yes, there was an impact, but they still exist. There might be insurance issues which cause law firms to merge, but that's from an insurance perspective, not from the implementation of the anti-money-laundering laws. I was involved, in 2003 and 2004, in helping law firms in the UK and Ireland implement those.

Senator SCARR: Mr Oliver, are you aware that the Canadian supreme court overturned certain parts of the anti-money-laundering laws in Canada—

Mr Oliver: I am.

Senator SCARR: on the basis that they were contrary to principles relating to legal professional privilege and lawyer-client confidentiality? The Supreme Court of Canada actually overturned some of those laws on that basis.

Mr Oliver: I have read that case, yes.

Senator SCARR: We can talk about how we adapt the laws to the legal profession, but it does suggest to me that there's a real issue here, an issue of substance, in terms of how you calibrate these laws, how you apply them and how they should fit to the legal profession. There's a real substantive issue here. Would you agree with that?

Mr Oliver: Well, I agree with the fact that they have to be adapted.

Senator SCARR: You refer to the imposition of the laws on the UK legal profession. Is it your view that these laws have now been bedded down and there are no issues, or are there existing issues in the UK?

Mr Oliver: In relation to the three UK jurisdictions, they have been bedded down. They've been in place since 2004-05, when they implemented the third European directive, and there were some other issues around the Proceeds of Crime Act then. They have been implemented and they've been tweaked. One of the most important things in the UK is the slightly different regulatory model, where the Law Society of England and Wales has, for want of a better phrase, very detailed guidance. Once a law firm follows that, it basically has a safe harbour against any of the rules. That guidance is very good. The regulatory model is different. They have a Solicitors Regulation Authority, which does take action against errant solicitors. In Scotland, the Law Society of Scotland has a similar system. It's similar in Northern Ireland, and England-Wales is one jurisdiction.

Senator SCARR: Are you aware that the UK Treasury is undertaking a review of the AML laws?

Mr Oliver: I am.

Senator SCARR: You probably haven't had an opportunity to look at this. I'm happy to maybe provide the witnesses with a copy of this, just so they have an opportunity to respond. They can take it on notice. I just want to read and get your reaction to a submission which the UK law society made to that review of the law, dated 19 October 2021. Are you aware of the submission from the UK law society?

Mr Oliver: I am aware of it, but I've not read it.

Senator SCARR: I'll just read these paragraphs to you to get your reaction:

While we welcome HMT's commitment to making the AML regime proportional and effective, the current regime does not promote a risk-based approach.

Instead, it drives 'tick box' compliance to satisfy overly prescriptive requirements. This is a particular challenge for small firms.

The current AML regime places disproportionate compliance obligation on the legal profession, requiring activity that does little to prevent money laundering, the cost of which is ultimately passed on to consumers.

The AML system is designed with the financial sector in mind, so any reforms must address the different issues faced by the legal profession and they must be evidence-based.

The current regime's 'tick box' method undermines the effectiveness and proportionality of the measures and drives up costs for legal services consumers.

We look forward to helping develop and apply a regime that is both proportionate and effective in tackling economic crime, as well as being workable for our members.

Mr Oliver, can you understand that when I read this—and I'm not an expert in these matters as you and each of the other two witnesses are—it is raises a red flag in my mind that we have to be quite cautious about extending this regulatory regime both to the legal profession and also more broadly to accounting and real estate businesses, which in many cases are small businesses? During this period of time they've been absorbing all sorts of costs, and the last thing they need at this point in time is disproportionate regulation, which will simply drive up the costs to their end consumers. Can you understand my being wary about imposing those costs, when I read the submission coming out of the UK law society, which has been dealing with these issues for over a decade?

Mr Oliver: Well, from the quote—and I actually have seen that quote in a press release from the Law Society of England and Wales—it doesn't appear to me to be arguing against the AML laws. It's arguing for more of a risk-based approach, which Australia would be implementing anyhow. So I think that's not an appropriate argument in Australia.

CHAIR: Senator Scarr, have we still got you? Just bear with us for a moment. The joys of remote technology!

Senator O'NEILL: It's good when it works!

CHAIR: I'll ask a question while we're waiting. Is it your argument that it's not a question of regulation but of the calibre of regulation?

Mr Oliver: That's correct.

CHAIR: As with all small businesses, the issue of how they fit within the broader regulatory environment is the real issue here, not whether or not they fit within the regulatory environment.

Mr Jeans: Absolutely.

Mr Oliver: Correct, and that applies to current reporting entities, many of which are small businesses. In fact, the majority would be small businesses.

CHAIR: Accountants, for instance—the taxation department wants to know whether or not accountants are behaving ethically and properly, no matter the size of the accountancy firm.

Mr Jeans: Exactly. And if you go back to the FATF and the services that would be covered, they are very limited. They are conveyancing, the establishment and maintenance of companies, and managing the financial affairs of companies, so there's a very narrow set of legal accountancy services that should be caught by this piece of legislation. That undoubtedly results in a narrowing of the impact, simply by definition.

CHAIR: There is an argument about whether or not the risk based approach is in itself adequate.

Mr Jeans: Of course. I've been involved in the risk based approach since its inception, in the early 2000s. The risk based approach is not a panacea for all ills. It is something that needs to be worked on. You need to understand the risk and then adjust your program according to the risk. That risk based approach also includes AUSTRAC playing a role in granting exemptions from certain parts of the act and the rules to certain business cohorts, which they have done consistently already—for example, reducing the impact on pubs and clubs unless they've got over 16 poker machines. So there is precedent already that this legislation can be flexed and adjusted to meet the needs of these business sectors.

CHAIR: Senator Scarr, are you there?

Senator SCARR: Yes, I am here. Sorry about that; the connection fell out.

CHAIR: In the interregnum, we've had a short discussion about the nature of regulations for small business. I think that sums it up. Do you have further questions?

Senator SCARR: No, I'm happy for you to pass the call to other senators.

CHAIR: Senator O'Neill, would you like to take up the call?

Senator O'NEILL: I would. There are so many questions arising out of both of the conversations. Firstly, Mr Jeans, you indicated in your evidence to us today not only that the risk based approach needs simplification but also that AUSTRAC is not equipped for the task.

Mr Quinn: That was me. My point there was that AUSTRAC—and I think they should be commended for the risk-assessment guidance they've provided various industry sectors, because they have a detailed understanding of different risks. My comment there was really around the fact that there is no real standardised approach to conducting risk assessments. You may have a list of risks for the types of customers you deal with or the types of products or services you offer, or how you offer them, but no structured or standardised methodology for how those risk assessments are conducted. Currently, there are 16,000 regulated entities across not just financial services but clubs and pubs, gaming, bullion dealers of different sizes.

Were the regulations to expand to those tranche 2 sectors, I think, there would be benefit from having more standardisation and simplification, which is really where we as a firm believe that technology can play a role. We're already providing guidance and support through technology to simplify this, to help regulated entities to understand the vulnerabilities their business could be exposed to, from a money-laundering perspective. Not just that, it's looking at the types of controls that are both appropriate and proportionate, rather than just, 'Here's a bunch of risks.' It's about what types of controls they need to put in place—

Senator O'NEILL: To make it effective.

Mr Quinn: to make it effective. It's about how they conduct control-effectiveness testing to determine whether their controls are designed properly, whether they've been implemented properly, whether they're operating effectively and how effective they are. There are lots of tools and technology available now that were not available when the tranche 1 regulations came in, in Australia, in 2006. There are many—

Senator O'NEILL: Phones have changed a bit since then, if people want to think about technology changes—

Mr Quinn: Exactly.

Senator O'NEILL: and technology's changed to make this much more likely to be successful and in an efficient way. You indicated that 195 countries have been able to get tranche 2 done. Australia is one of five that have been increasingly considered a laggard, Mr Jeans, and, by failure to implement tranche 2, are attractive to organised crime.

Mr Jeans: That's correct.

Senator O'NEILL: I note the Prime Minister was at G20 just recently and signed off on the statement there. Item 59 says:

We reaffirm our full support for the Financial Action Task Force (FATF) and the Global Network and recognize that effective implementation of Anti-Money Laundering/Countering the Financing of Terrorism and Proliferation (AML/CFT/CPF) measures is essential for building confidence in financial markets, ensuring a sustainable recovery and protecting the integrity of the international financial system.

We're not talking about a little thing, here today, are we? This is quite significant for Australia as an international global citizen, that we come to the party and catch up to the game. Mr Jeans and then Mr Oliver?

Mr Jeans: That's 100 per cent correct. As we've said today, we are really one of three countries that have failed to take action out of the 177 that have been assessed by the FATF, to date, in round 4. Those are Australia, Haiti and Madagascar. One thing they have in common is they're all islands, but I think we're the biggest island.

One of the other two countries, referenced in the submission, that have moved recently is the United States. They have introduced legislation, the Enablers Act, into Congress, and FinCEN, the AML regulator, has started to amend its definition of 'financial institution' under the banking secrecy act to include high-value dealers and other designated non-financial businesses. In addition to that, last month the FATF reported in a follow-up mutual evaluation of China that China has actually started drafting legislation that will be enacted, has undertaken a sectoral risk assessment of all the designated non-financial businesses and professions, and is in the process of developing supervisory responses to those risks. As we sit here today, we are in a cohort of Madagascar, Haiti and ourselves.

Senator O'NEILL: The Australian government actually did some work similar to what just described happening in China recently, but they did that back in 2016. They mapped out the pathway to proper international responsibility for Australians, and 49 of the 84 recs that were put forward remain ongoing. Basically, this government pulled up stumps in about 2016 and said: 'A bit too hard, a bit of resistance on the line. I don't think we'll bother.'

Mr Quinn: Yes, 100 per cent. I think the rhetoric around signing up to the G20 is very inconsistent to the actual practice—

Senator O'NEILL: You could talk about the gap between the announcement and the delivery. We've been noticing that with this government.

Mr Quinn: I think, basically, you're either agreeing to comply with the FATF standards or you're not. It's black and white. They're very prescriptive around what they expect countries to do, and they measure them about whether they're partially or fully or not compliant.

Senator O'NEILL: So signing up to this document is a bit of a smoke screen and a con job. The reality is there's work to be done and it isn't being done. That not only puts us at risk in terms of the movement of money, being a honey pot for organised crime and financial crime more broadly, but it puts us at risk of going onto the grey list. Can you explain what that means and the implications for the broader Australian economy of going on the grey list with FATF?

Mr Jeans: The grey list is basically a list of increased monitoring. As a data point for the committee, Turkey was put on the grey list a couple of weeks ago. Turkey is also a full member of the FATF. It's one of only two members of the full members of the FATF that have been put on the grey list—the other one being Iceland, which was removed because the government there moved very quickly to be removed from the grey list, because they understood the economic impacts of being put on the grey list.

What the grey list says is that other countries should have regard to the weaknesses in a particular country's regime and make sure those risks are appropriately mitigated. They don't necessarily recommend enhanced due diligence on everything, but what we see by definition is that this could have impacts on the financial institutions being able to operate internationally, because they would be required to be subject to more scrutiny on a transaction-by-transaction basis. It could also see impact in relation to access to capital markets. So this has a real world economy potential impact.

Senator O'NEILL: We're talking about significant slowdown and stickiness in the way money can move around the country if we get on the grey list.

Mr Jeans: Potentially, yes.

Senator O'NEILL: In terms of financial access and Australia's role as a significant financial hub for the Asia-Pacific, could you reflect on what would happen to our status if we end up on the grey list in terms of our regional capacity to play, I suppose.

Mr Jeans: Again, it would be the same. Singapore, Hong Kong and Indonesia are also members of the FATF, so they would have to take notice of any grey listing, and therefore that would ultimately impact the ability of Australia to do business in those countries, including China, Japan and other countries, and New Zealand as well. The FATF grey list is not the only grey list. The EU have their own separate grey list. The EU will consider whether Australia is meeting equivalent standards to the EU standards, and they have the ability to put Australia on an EU grey list.

Senator O'NEILL: There's been a bit of attention to Australia recently by key participants in the EU, including the French president, who called our Prime Minister a liar. There might be a little bit more attention focused on us and our compliance with FATF in that climate.

Mr Jeans: And Mr Macron is soon to be president of the EU.

Senator O'NEILL: Indeed. I do have another line of questioning, but I just want to give you the opportunity to put on the record the additional material you put in here, because this seems to be a counternarrative to: 'It's going to cost us a fortune to do this and Australian businesses are not able to cope with the cost of the implementation, despite the rest of the world doing it.' Could you speak to this document, because it does go into some detail about what you, as experts, perceive as the reality.

Mr Jeans: Absolutely. I think we'll share that, because it's a joint submission between all three parties. Paddy, would you like to lead?

Mr Oliver: It's based upon our experience of helping current reporting entities, large and small, with design and implementation of AML programs. It starts with what their current businesses practices are. Then what we did was map what, for instance, a law firm should be doing. A hypothetically well-run law firm should be doing most of those things in the table. Then we mapped what additional work, if any, would need to be undertaken in that business to design and implement an appropriate AML program as the law currently stands. Hopefully it wouldn't be at that standard. We then provided what we thought the costs were. I do know that there was a Queensland Law Society survey in 2017 or 2018, which did come up with some fairly large costings. I actually completed that survey. It was designed for one reason only.

Senator O'NEILL: Mr Oliver, to be very clear, you're telling us that, as a form of resistance to tranche 2, there has been deliberate and wilful construction of hyped up costs for the implementation of tranche 2 that doesn't reflect the reality of what it would cost to bring in these protections.

Mr Oliver: The survey itself was designed with one goal in mind, which was, in my opinion, to heighten the potential cost for implementation.

Senator O'NEILL: On what do you base the figures you have provided us with in your submission?

Mr Jeans: Practical reality.

Mr Quinn: That survey was undertaken in 2017. It's 2021 now. There've been massive advances in technology in terms of the KYC space. All these line items—in terms of collecting and verifying customer information, doing PEP and sanctions screening, doing individual customer risk ratings, and rescreening notifications—could be done by modern KYC providers for under $3 per client. Each of these are added up, compounded and, in my opinion, massively overstate the cost of compliance.

Mr Jeans: To give you some examples, if you analyse the submission and the Queensland Law Society survey, they're estimating that, for a law firm to understand why it's acting for a client before undertaking work—because law firms are required to obtain information regarding the purpose and the intended nature of the client

matter, to actually understand why the client is in their offices—is going to cost them between $50 and $122. Isn't that just part of normal professional practice? We can't really see there's a cost there.

As Anthony said, the cost of customer due diligence has come down exponentially because of technology and because of the solutions that have been provided. Having worked with law firms and with law firms in real estate and accountancy up and down New Zealand for over a year, the average cost to the law firm was $10,000—that includes small and medium sized law firms—to put in place a program, to put in place a risk assessment, and to adjust the systems and controls they already have to meet the obligations. And the obligations in New Zealand are more severe than they are in Australia. There are particular obligations that are more draconian than we currently have here. And then make some changes in terms of—

CHAIR: Senator McKim, would you like to take the call, and then we'll come to Senator O'Neill if we get a moment or two at the end.

Senator McKIM: Thanks for your submissions and your attendance this morning and for your supplementary statement this morning. I want to further explore this issue of cost. The Law Council has estimated that the total cost of tranche 2 compliance for a small law firm—and they've defined that as a firm of between one and five solicitors—would be around $119,000 per annum. You've provided some evidence in your supplementary submission this morning of what you think the actual cost would be, and also you've given evidence that basically you think the Law Council is trying it on—those are my words, not yours. What would the total quantum in approximate terms be to a small law firm of between one and five solicitors for complying with tranche 2?

Mr Quinn: We've estimated that to be $10,000. The Law Society estimates are over 10 times higher than that. I think some of that is a symptom of when that survey was conducted, because things have moved on significantly. Costs of risk assessments and AML programs, KYC, employment screening, training—all of those things that are requirements are very cost effective. I think the costs here are significantly overinflated in our experience—what we're charging as a technology provider, what we know of our peers that charge their customers for doing all of these services.

Mr Jeans: That would include a degree of consulting services to help the organisation understand what AML/CTF compliance means, to train their staff, to adjust their systems and controls, to put in new procedures in the areas where they would be needed.

Mr Oliver: There's also the fact that a well-run professional firm should have good client intake, should have good risk management, should have good policies and procedures, should have good training. Now, the cost then probably is reduced. A firm which is not so well run will have to do uplift, but that's no bad thing.

Senator McKIM: Can I just ask: is your estimate collectively based on your experience with other countries that have introduced tranche 2 that have similar legal frameworks to Australia?

Mr Oliver: Yes, it is.

Mr Jeans: This is New Zealand. This is our experience in New Zealand in 2018, where we spent a significant amount of time working with lawyers, working with accountants, working with real estate agents, to get themselves AML compliant to a piece of legislation which is 95 per cent the same as Australia's.

Senator McKIM: In your experience in places like New Zealand, would the cost burden on accountancy firms and real estate agencies be of a similar quantum?

Mr Jeans: Yes.

Senator McKIM: Thank you. I just wanted to explore a couple of other issues briefly before we run out of time. Firstly, just to be clear—I know you mentioned this, Mr Jeans; I'm happy for you or any of your colleagues to respond—is it your argument that Australia is actually more attractive to people who want to clean dirty money because we are such a laggard in international terms and because we are, along with Haiti and Madagascar, one of the only three countries that's not moving significantly, or have already moved, in that area? Is that your evidence?

Mr Jeans: That is my evidence, yes. This is, obviously, based on my law enforcement experience, which I appreciate is somewhat dated now. Criminals were using corporations, trusts and other legal vehicles to conceal their ownership of assets, and that includes real assets such as property, way back in the 1990s. That is still ongoing now. You can see the amount of money that's flowing into the country. These legal entities, these legal structures, create a perfect mechanism to be able to conceal ownership, to conceal identity. Simply what this legislation is requiring the law firms and the people that are creating those structures to do is to know who they're dealing with, and, if they believe the money is suspicious—that is, from criminal conduct—to report it to the proper authorities. That is the basis of this legislation. It's the same thing for banks, for financial institutions, for

pubs and clubs. It's understand who you're dealing with, understand why they're using you, and, if you believe that is suspicious because you believe there's criminal activity, report it to the authorities.

Mr Oliver: One of the outcomes of the professions not being caught by the AML act is the lack of awareness of general financial crime risk to those businesses. I have given plenty of AML talks around the country and I do get some interesting hypotheticals afterwards.

CHAIR: Can I just cut in for a minute? Can any of you gentlemen give us an estimate of the amount of unreported money that's flowing into the country or that is not being captured by the current regulatory regime covered by the entities that you believe should be part of the regulatory regime? Have we got any sense of the size of the problem?

Mr Oliver: When you say flowing in, one method would be for the funds to come directly into trust accounts. That would be caught by the international funds transfer instruction reports. But whether or not AUSTRAC will be able to—

CHAIR: So you don't have any sense of the scale of unreported monies flowing through real estate agents, lawyers, notables, other legal professions or accountants?

Mr Oliver: I think it's because, if the funds come from offshore, they will be subject to FD reporting—

CHAIR: Some form of reporting. I'm trying to get a sense of the scale of the problem that you're asking this committee to examine to be fixed.

Mr Quinn: I don't think anyone knows. That's the problem. That's the point. We don't know how much illegal money is flowing into any regulated or unregulated sector, because there's very little research that's been done in this area in terms of the flow of funds into the country. The last estimate was done in 2017, by the crime commission, which was about a $47 billion impact to the economy.

CHAIR: It was $47 billion?

Mr Quinn: That's correct. Since then, we've had multiple billion-dollar drug busts, so I would expect that, if they were to redo the survey now, that number would be higher.

Mr Jeans: One of the key points is that, because these businesses aren't captured by the regime, we don't have that level of transparency. Effectively, if they were reporting, we would have a—

CHAIR: It's hardly likely to be a survey question—what's the level of illegal activity in your business?

Mr Jeans: No. Absolutely.

CHAIR: Senator McKim.

Senator McKIM: This my last question, because I know we're close to being out of time. We heard evidence from you this morning that there's the chance that the FATF may choose to put Australia on the grey list. Would any of you folks like to hazard a guess as to the likelihood of that happening? If so, what's the process, and what are the time frames under which that might happen?

Mr Jeans: Again, it's difficult to put a likelihood on it, because it's a political process. But, if you look at previous activity and you look at where Australia is in the FATF process, we were one of the first countries to have weaknesses identified. There's been limited action on addressing those weaknesses. As to other countries that were reviewed earlier, take Turkey, for example. Turkey's initial evaluation was in 2019. Because there was that follow-up mutual evaluation, they've now been put on that grey list. We've known that we've been noncompliant for the longest, and we've done nothing about it. I think that would undoubtedly increase the likelihood.

The process, effectively, is that there is a follow-up mutual evaluation, where the FATF send in experts from other countries to come in and review the progress against the findings of the 2015 mutual evaluation. That report is then reported to the FATF secretariat. It is then subsequently discussed in the following plenary. The next plenary is in February, but I would imagine you'll be talking about the July plenary, at the earliest—maybe the October plenary. They would discuss the outcome of that evaluation. Then, within that plenary, a decision would be made on what sanctions would be imposed on or what action would be taken against Australia to mend its ways.

Mr Oliver: To put it another way: the longer it gets delayed, the higher the probability.

Mr Quinn: To add to that: the mutual evaluation report was 2015—six years ago. There are already 49 out of 84 recommendations that, by their own admission, have not been actioned. Tranche 2 is just one of a list of very many. The ball has well and truly been dropped.

Senator O'NEILL: And there is the third enhanced follow-up report, in November 2018, which indicates that much more work needs to be done. Is that the most recent one?

Mr Jeans: That is the most recent, yes.

Senator O'NEILL: Mr Chevis of Transparency International Australia, in response to the Bergin report, wrote:

The key takeaway—

of the report handed down by Patricia Bergin—

is: if you want to get away with industrial-scale money laundering in Australia, do it behind a corporate veil and share the blame around.

I want to take you to your evidence today that there needs to be formalised AML/CTF principles put in place for which the board members and the senior executives are responsible. Certainly we know from the audit inquiry through the Senate, when we looked at CPS 220 documents and spoke with APRA, there is a prudential risk if you don't do this, and the banks have actually figured out that they need to sort it out—particularly the Commonwealth and Westpac—in response to issues. So is AUSTRAC up to the job? What's its technical capacity and staffing capacity? How do we give it the capacity to interact with corporate Australia and make corporate Australia responsible for this? And are we in as bad a position as was described there, where people can get away with industrial-scale money laundering?

Mr Jeans: To answer that question, I was AUSTRAC's expert witness in both the CBA and the Westpac cases. I viewed the documentation and the evidence that was part of that civil claim. On that basis, AUSTRAC are more than capable of tackling accountability and responsibility. The problem is that the legislation and the rules do not allow them to have the appropriate mechanisms to do so at this point in time. We have seen, subsequently, that ASIC have attempted, under section 180 of the Corporations Act, to consider, this in both the CBA and the Westpac cases. They have struggled with both those cases, and both those cases have subsequently been discontinued.

I think we have a fundamental weakness here. APRA does have the power, but APRA obviously only regulates the banks; it does not necessarily regulate the whole code. If you look internationally, a key pillar of AML regimes is senior management accountability and responsibility, even down to the money-laundering officer being responsible and personally liable themselves. Making people responsible, making people's own wellbeing and own reputation and own assets be exposed, creates change and creates an appropriate level of focus.

Senator O'NEILL: So your evidence really is, if you give AUSTRAC the capacity, which we would do if we implemented tranche 2, then you have some confidence in their capacity to do the job.

Mr Jeans: Absolutely, yes.

Senator O'NEILL: APRA has sufficient power to manage the situation with the banks?

Mr Jeans: They do.

Senator O'NEILL: But we're going to talk about corporations that we're going to make more responsible, plus we're going to talk about different professions. Are the structures adequate and robust enough there to provide the vehicles if this legislation were to be enacted for it to be become a practically effective intervention in the laundering of money in Australia?

Mr Oliver: As Mr Jeans and Mr Quinn have said, and as I have put in my submission, having an accountability regime on a person in the act would go a long way. I know from my experience and from talking to my peers, when we talk to board directors the first question is, 'What's the likelihood of something happening to us?' Basically, nowadays we have to say 'nothing'. The sanctions are against the reporting entity, not against the person. It would be a long way to go to get a prosecution, but there's no emphasis really for a person in a reporting entity to undertake these, to implement an effective program.

Mr Quinn: There's no culpability for individuals or their role—wilfully or not—in overseeing a money-laundering incident. There is no sanction on individuals. The organisation might suffer a fine or penalty or have to put in remediation processes or be subject to class actions—

Senator O'NEILL: Enforceable undertakings.

Mr Quinn: or enforceable undertakings—or share prices might go down, but, ultimately, there is no individual accountability, and that's what needs to happen for things to change.

Mr Oliver: Like Mr Jeans, I've been involved as an expert witness in a matter. It just didn't go anywhere, because it's too difficult to link section 180 of the Corporations Act to issues in an AML civil proceedings issue.

Senator O'NEILL: If we're going to lose our international laggard reputation and, dare I say, rise out of the grey zone—we know we're grey listed—and take on the responsibility of being a good international corporate citizen, what is the best international legislation for us to look at? What should we follow? What is the best legislation that you think is compatible with the Australian model?

Mr Jeans: In my personal opinion, the United States model is getting there because of the personal responsibility on anti-money-laundering officers. The UK regime—and bear in mind the UK regime evolved directly out of the Barings issue. The Financial Services Authority, which I was a part of, was formed because of the Barings issue, which identified lack of management accountability in the collapse of the Barings bank. So the principles and requirements that the FSA enshrined in the work they do is that level of accountability, so I would suggest you look at both the US and the UK models as key models.

Mr Oliver: There are also examples in the Corporations Act, under 'financial services law', which I mention in my submission. It's relatively difficult to be struck off or to be banned as a director under the Corporations Act, but no director or senior manager has ever had the same sanction under the AML act. In the AML act, civil proceedings have been multiple times the amount that the Corporations Act fines have been.

Senator O'NEILL: And none of you made a submission that you thought there should be criminal sanctions embedded, although it is in a couple of other submissions?

Mr Jeans: There are criminal sanctions already in the AML/CTF Act, but that relates to 'participated in money laundering' not doing the right thing for anti-money-laundering. I think the civil regime would be appropriate.

Mr Oliver: [Inaudible] go very far—probably too far.

Senator O'NEILL: Okay. Thank you. I will probably have some questions on notice for you as well.

CHAIR: Thank you, Senator, and thank you to the three of you for appearing. It's of particularly great benefit to this committee to have your expertise made available to us. We appreciate it very much.

Mr Jeans: Thank you, Chair.

CHEVIS, Mr John, Private capacity

WEBER, Mr Scott, Chief Executive Officer, Police Federation of Australia

[10:08]

CHAIR: Welcome. Thank you both for your time today. I trust that information on parliamentary privilege has been provided to you. If not, there is further information able from the secretariat. The committee has received a submission from the Police Federation. It is submission No. 20. Mr Weber, do you wish to make any corrections to your submission?

Mr Weber: No.

CHAIR: Mr Chevis, I understand the committee has not received a submission from you—is that correct?

Mr Chevis: That's correct, yes.

CHAIR: Is there anything either of you would like to add to the capacity in which you appear today?

Mr Chevis: I'm an independent anti-money-laundering and counterterrorism financing adviser and consultant.

CHAIR: Would each of you like to make a brief opening statement before we go to questions.

Mr Weber: On behalf of the Police Federation of Australia, I represent over 65,000 police officers from around the country. Our submission highlights that we are really in favour and also want this legislation to be done with regard to making our job easier and also gathering more information and highlighting the issue of money laundering. On top of that it will actually reduce not only the fear but also the reality of counter-terrorism incidents occurring in Australia. In our submission, we highlight that we agree with the legislation, and we're happy to give further evidence. With regard to examples, my counterparts that are giving evidence tomorrow, whether it be AUSTRAC or the Australian Federal Police or the ACIC—I note there are some examples in there as well.

Mr Chevis: I have a rather lengthy opening address.

CHAIR: That always terrifies me. What do you have in mind?

Mr Chevis: It was merely in an attempt to try and make up for the fact that I had not made a submission under my own name.

CHAIR: Would you like to table your statement and give us a really brief synopsis to help us get a feel for it, because we won't have time to read it now. If you could table it now, we will take that as your opening statement as well.

Mr Chevis: That sounds like a good approach. My submission covers the fact that the FATF recommendations have heavily influenced Australia's anti-money laundering and counter-terrorism regime, but they themselves haven't changed very much in respect to anti-money laundering since about 1990 and they haven't been subject to any sort of evidence based process to determine how effective they are in actually addressing the underlying crimes.

I've made a couple of recommendations in relation to Australia's approach to anti-money laundering: an expansion of the collection of data on money laundering to include things like trade based money laundering, cash-intensive businesses and other areas; separation of the regulatory role, the FIU role, for AUSTRAC; the commencement of a national risk assessment on a continuous basis to provide a basis to understand money laundering, to determine the actual value of funds laundered through various sectors and various areas and to provide a baseline for the evaluation of the effectiveness of any measures put in place; and, lastly, amendments to the Criminal Code offences to provide a meaningful deterrent for money laundering through corporations, as you were discussing earlier. The current penalty is 1,500 penalty units for knowingly laundering $1 million dollars or over, and 1,500 penalty units is about $330,000, which is nowhere near enough to provide a credible deterrent for money laundering by or through corporations. That's a precis.

CHAIR: Thank you. Senator O'Neill, would you like to kick off for the committee, please?

Senator O'NEILL: Thank you. Our previous witnesses have indicated that in their view, as experts, between $47 billion and $50 billion of money is being laundered through Australia per annum. Mr Chevis, I quoted you to our previous witnesses where you said:

The key takeaway—

of the Bergin report—

is: if you want to get away with industrial-scale money laundering in Australia, do it behind a corporate veil and share the blame around.

I invite you to give us your view of the reality out there that we are still getting resistance to responding to from some of the professions.

Mr Chevis: Yes. Certainly the reality I think is in that ballpark of about $50 billion, keeping in mind that that comes from different sources. We have drug crime, we have fraud, we corruption and we have foreign predicate offences for which the money is laundered into or through Australia, and I don't think that figure is particularly outside the realms of reality. The laundering through corporations and other sorts of entities like law firms, accounting firms and real estate agents is a reality, and the current Criminal Code doesn't provide a realistic deterrent or an easy way to sheet blame home to individuals, and that's why we're not seeing prosecution of corporate entities for money laundering, because the penalties are so low. In some form there is a real opportunity to either include the designated non-financial businesses and practices in the AML/CTF regime as the FATF would see it in their prescriptive terms. Alternatively, beef up the Criminal Code penalties and modify the Criminal Code to allow for much easier prosecution of those entities and the individuals within them for money laundering and sidestep perhaps the need to include them in the AML/CTF Act. The FATF, under the new effectiveness measures, allows for these new sorts of differences. In reality, we need to show as a country that we have achieved the outcome, more so than ticking the box, as perhaps was the way before 2012.

Senator O'NEILL: Mr Weber, did you want to add anything about the impact of this amount of illicit money moving through the Australian economy and what is means on the ground for Australian citizens?

Mr Weber: We can see it every day. You are touching on the figures of the financial year of 2016-17, but it would have increased dramatically. Even though COVID has stopped some of the importation of illicit drugs, there has been a massive boom in the property market. Australia is that place where you can actually divert your illicit funds. We've just had the casino inquiries as well. There are huge issues and huge opportunities for people to do organised crime and that folds into other detriments to the community. Police officers on the ground are seeing this daily. With something as simple as illicit tobacco, which is damaging to the government's bottom line through taxation and through the health requirements, criminals make a large amount of money from something that should be taxed by the Australian government and also should be properly monitored. Regulating these other professions, as highlighted by Mr Chevis, is totally what we want to see. Again, I don't think it is an onerous task. We are playing catch-up to all other countries, as highlighted in the previous submissions. This is best practice across the world. We need to highlight that Australia is a place where people can go about their business freely but, on top of that, there are certain checks and balances to make sure that they are not eliciting ill-gotten gains and also not laundering money.

Senator O'NEILL: So is your evidence to the committee that investment in property and driving prices up is in part from the laundering of illicit money through the property market in Australia?

Mr Weber: No, I would not be saying that; I would be saying that that is a great opportunity. Look at the prices in the booms. We have seen places that have gone up a million dollars in two or three months. Again, if you have ill-gotten cash you can go to a real estate agent, get conveyancing with the lawyers and there are no punitive measures. A great way to launder it is through a corporation, through a business and have it in a sound investment, which makes it is extremely difficult for law enforcement to take back off them if it's done through those mechanisms.

Senator O'NEILL: So it is both to launder and to profit?

Mr Weber: Yes.

Senator O'NEILL: It is a very seductive model of business.

Mr Weber: That's right. Again, I will touch upon illicit tobacco. That is a sensational model in organised crime making money at the moment. There is a huge mark-up, there is a huge importation and it is not getting detected. Again, a lot of people see it as victimless crime but it is definitely not because it's putting money into the criminals, who go and do more serious offences. It is also damaging to the economy and damaging to the health not only of general citizenry but especially our young people who are going out and buying cigarettes at a lower price.

Senator O'NEILL: We had evidence earlier from Mr Quinn to indicate that there was a significant increase in crime, that Australia is becoming very attractive to criminals and that, in addition to the practical impact in the community, this could lead us to being grey-listed by FATF. Do you have a view about either of those matters?

Mr Weber: This is a very scary proposition. With the submissions coming from other law enforcement agencies, whether it be AUSTRAC or the Australian Federal Police, these are the fears, and this is why we are really strong behind this legislation. It is about making sure that we stop problems before they start. Again, we are playing catch-up with these huge issues. Australia at the present moment, and especially when we start to open up

to the world again, has a huge drug market. The mark-up for drugs here is higher than anywhere else. The profit margin is extremely great. Opportunities will occur over the next couple of years because there are heaps of areas where ill-gotten gains can be invested and then laundered as such. That money then goes back overseas. There is heaps of investment, heaps of issues that are ongoing. That's why we need the gatekeepers of professions that are meant to monitor the proper legality of purchases of companies and trusts. They need to be accountable as well, firstly with the information flow—the mandatory reporting. The next step to follow-up is obviously punitive measures or measures that actually reduce their capability to launder that money as well.

Senator O'NEILL: Just to be clear, I am going to ask you a couple of really straight questions. You have traversed this area somewhat, but exactly how would implementation of tranche 2 reforms aid law enforcement agencies in Australia in detecting, apprehending and prosecuting criminals, both domestic and foreign?

Mr Weber: Increasing the threshold and making more rules around it makes it more transparent. In the reporting mechanisms, especially from organisations that are playing by the rules, we would say, 'Hang on a minute, this is a statistical data coming back. An organisation of this size, a law firm or real estate agent of this size with this much turnover, technically they should be reporting maybe five or 10 incidents a year.' We would then look at other organisations that are of that similar size, that sort of organisation and find they have never reported anything at all. Why is that? It could draw our attention to that. We would look at our other databases and our other resources. It is also about exchange of information.

Intelligence is so important. I know you've discussed this many times on this committee before but that intelligence leads us down a direction where we can start to investigate and we can start to put those pieces together. This legislation ties it up in the bureaucracy. An average police officer or person would think it doesn't look right. They would look at the legal documents and think, 'It has been done by a lawyer or by a real estate agent or the accountants have oversighted it; it has to be legit.' When we have the checks and balances and they actually have to report, it gives us a good litmus test to progress forward with those organisations that won't abide by the rules, regardless of the laws we put in place.

Senator O'NEILL: What are the implications for Australia's international law enforcement reputation if we have another three years of failure by the government to implement tranche 2?

Mr Weber: Our members want this now. We want this legislation in place because, as I said before, we are playing catch-up. This is something that is world standard. It should be best practice for Australia. We are a leading law enforcement agency across the world but this is where we are dropping the ball. The AFP, especially with their international contacts, could probably answer that question better than myself. When we speak overseas, Australia is a guiding light for nearly all law enforcement, but it boggles my colleagues' minds that we do not do this.

Senator O'NEILL: So we have an intelligence hole, an intelligence gap, because of the failure of the government to implement tranche 2?

Mr Weber: We can see it. We just talked about the numbers. It is $50 billion a year. We are seeing inquiry after inquiry. We are seeing the casinos and the corruption issues popping up. Everyone knows about incidents or stories, and we see the drug trade coming here. We need to put these measures in place to start being preventative and stop these problems before they start, because all it will do is build up more momentum and cause more issues for Australians in the community.

Senator O'NEILL: In your submission, you called for increased legislative tools, as we've discussed, to combat organised crime and to give you back the capacity to be on a level playing field internationally with your compatriots in other countries. What would those tools look like? Would they be assisted by more resources for AUSTRAC? Is it law, physical resources, public education, changes to gambling laws? What needs to happen? I'm happy to take evidence from both of you.

Mr Chevis: Resourcing is one of the key issues. If the designated non-financial businesses and practices were brought in under the AML/CTF Act, we would see an increase of a regulated population of 16,000. Well, add another 160,000 is what the AUSTRAC submission stated. That will require something like a tenfold increase in resources for AUSTRAC. Resourcing is definitely a key issue.

I think there are also resourcing issues within the Australian Federal Police for the prosecution of money laundering matters, and I think there's also perhaps a cultural shift that might be worth examining inside AUSTRAC. The apparent failure to detect 23 million international funds transfers over a five-year period equating to $11 billion in Westpac implies perhaps that a process within AUSTRAC isn't capable of detecting non-compliance within regulated entities already, and, if you add another $160,000, there's perhaps a lower level of capacity of detection of non-compliance. So, yes, it's about resourcing but also cultural shift, or perhaps

carving off that regulatory function from AUSTRAC and giving it to a body dedicated to the regulation and enforcement of anti-money-laundering and counterterrorist financing regulation and law.

CHAIR: Can I just come in on Senator O'Neill's point? I just want to focus on this issue about responsibility. Professor Fels made some comments recently following matters with regard to some of the casino questions. Both of you have referred to that, and you referred to the $50 billion scale of the problem. You've referred to the banks—the two banks. Westpac and the Commonwealth Bank are both involved in quite substantial penalties, so there is clearly a major difficulty here in the regulatory area. What Professor Fels said is this:

Now, of course, behind every regulator's failure is a lack of backup from government. Typically, regulatory failure is not just a regulator not doing their job. Sometimes that happens, but usually the regulatory scheme is not that strong. There are other actions, signs and signals from governments. And it applies all around Australia. They don't give them an adequate budget or proper powers to investigate inadequate sanctions, and there are typically—as I think Charles was getting at—explicit or implicit signals to the regulator not to go in too hard.

That was a statement he made recently on the ABC on 28 October. Could you respond to that proposition?

Mr Weber: Again, the best scenario that I can give, using the police officer out on the street, is probably illicit tobacco. We know where it is, we know it's there, and we know it's against the law, but, with regard to resourcing, police officers have numerous other jobs to go to. On top of that, they actually don't know the legislation, the capability and how to enact it. The education and the training—unless they are special officers—are not there. Again, when we talk about resourcing with AUSTRAC, the size of the problem is just so vast, so the Federal Police and AUSTRAC actually need more basis for that.

CHAIR: I'm not asserting that this is a problem for the Federal Police per se. I'm saying, on that assertion by one of our leading regulators in the past, Professor Allan Fels, this is a problem of government—or governments; I don't want to make it a party political question. This is a problem of governments sending a signal implicitly or explicitly that this is not the priority. What do you say to that proposition?

Mr Weber: I totally agree. It's not the priority, because the legislation hasn't been done. We're lagging behind the rest of the world, and we're playing catch-up. We know where the best practice is, and it's been highlighted so many times to governments before in the past. I totally agree with regard to that, and that's why we're sitting here today, extremely supportive and wanting this legislation done sooner than later.

CHAIR: For instance, this morning we received a letter from the Russian ambassador, who tells us that he's disappointed with 'the lack of interest and engagement on the part of Australian colleagues'. This is with regard to money laundering and other such matters.

Suffice it to mention that there has been no AML/CTF related requests coming from Australia for the last three years.

Does that not tell you something about the level of political priority, or rather—as I said, I'm not seeking to blame the AFP in this matter, nor the agencies themselves—the lack of political priority emerging around these questions?

Mr Weber: I have no knowledge of that. But that does boggle my mind—why wouldn't you speak to that country? Not to cast any aspersions on Russia at all, but that's from the ambassador himself. You would think that Australia would be asking those questions quite regularly in regard to those issues.

CHAIR: We've got one here from the Chinese government that says that, in terms of their interest, similar types of commentaries are being made: 'They're only in charge of investigations under Chinese jurisdiction and have little knowledge of the adequacy and efficiency of the efficacy of Australia's anti-money-laundering regime. As the evidence that crime proceeds in Australia in real estate and other markets, Chinese law enforcement agencies have already provided to Australian counterparts requested information when investigations are launched.' As I read that, there's a suggestion that they're waiting, 'What about it?' Is there a problem at our end in terms of seeking to actually take these matters up?

Mr Weber: I think they're questions for the AFP. There might be some issues in regard to protocols, policies, procedures and the exchange of information and security of that.

Senator KIM CARR: Yes. I accept that. I can ask you these questions because they might be bound by other protocols about what they tell us in a public forum, other than perhaps stuff in camera. You're not bound by those protocols, are you—

Mr Weber: No, not at all.

Senator KIM CARR: in terms of your capacity to speak freely about the lack of political priority on these issues? I'll emphasise this—across the board. These are not problems confined to one particular regime; these are

a number of issues. You've raised a number of financial institutions or a number of instances in your presentation here today. But it comes down to the fact that regulators operate within a political environment, don't they?

Mr Weber: Yes, they do.

Senator KIM CARR: Is that a fair assumption to make?

Mr Weber: It's a fair assessment. We want people to back us so that we can do our job. It's extremely important, again, that we stop playing catch-up, we get best practice and then become a leader in regard to this.

Senator KIM CARR: That's right. That's right. This is clearly a responsibility in this parliament for the Commonwealth government at a national level.

Mr Weber: Yes. The advantage of the Commonwealth doing it and federal legislation is that you harmonise all the laws. We're all playing. Those organised crimes where it used to jump across the borders—and we've had this conversation before with this committee—the harmonisation of unexplained wealth is extremely powerful because then we can start to confiscate the assets. It comes back to your question earlier about resourcing. Once we actually know where the problem is and we confiscate those assets—and those assets can be utilised to actually fund more of AUSTRAC and more of these operations—it will have that ongoing effect where we can start to put those ill-gotten gains, those funds, back into actually stopping more of it occurring. That's a really good way to fund.

Senator O'NEILL: There's also a dissuasive effect of people seeing that occurring to other people who thought they were above and beyond the law. The practical reality of a government ignoring international requests from FATF is that the proceeds of criminal acts such as child exploitation, people smuggling and organ trafficking are actually being laundered in Australia. So the scale is quite large. Mr Chevis, I have already quoted you talking about the Bergin report. My question goes to you. Given the impact of that on real lives, do you support reforms that would increase the personal liability of directors and officers found to have engaged in material noncompliance with AML/CTF breaches? Do you think that that would be a sufficient incentive for directors, company officers, banks, other corporate entities, and those proposed to be brought in as DNFBPs to further tighten their internal compliance with AML/CTF?

Mr Chevis: Yes, I do. Bringing in personal liability for breaches of the AML/CTF Act would sharpen the focus inside the entities covered by the AML/CTF Act. Although, there is a whole range of money laundering that occurs outside of the entities that are currently regulated. So, if you were hoping to achieve actual effectiveness, you would need to consider all of the other methods of money laundering that we currently know about that don't necessarily use the reporting entities currently covered. I also think, as I mentioned before, that application of the Criminal Code and prosecution for money laundering may sharpen that focus as well, particularly if we can increase the penalties for corporations and also make it easier to prosecute people within entities for money laundering. That would cover all of the other entities that aren't currently covered by the AML/CTF Act and may never be covered by the AML/CTF Act—so not just DNFBPs but dealers of high-value goods, import/export companies, people involved in running nightclubs and bars and tattoo parlours and all of the cash intensive businesses. There are a whole range of other ways to money launder outside of the area that is currently covered by the AML/CTF Act, and in fact it appears that, because of the increase in the other methods, as people learn methods of circumventing the laws, the areas that are covered will become decreasingly relevant. So, yes, I support the application of personal liability, but we also need to look at charging people with money laundering and charging companies and entities with money laundering as well.

Senator O'NEILL: We are looking at, in particular, FATF and AML and CTF, but you're indicating that there is an additional body of work that needs to be done in other legislation that we should anticipate—if tranche 2 is actually brought to bear, there will be a reaction to that—

Mr Chevis: Yes, there will.

Senator O'NEILL: and a diversion to perhaps less efficient but nonetheless dangerous methods of money laundering that could grow at scale?

Mr Chevis: Well, effective methods. Whether they're dangerous or not, I wouldn't have an opinion, but they will be more effective methods. They may be, as you say, more expensive, less efficient for the launderer, but we already know that money laundering occurs by the movement of goods. So the value is not going through the banks or any other entity, for example. It's just movement of goods across borders to pay for drugs.

Senator O'NEILL: Are you aware, Mr Chevis, of the concept of being greylisted?

Mr Chevis: Yes, I am.

Senator O'NEILL: Could you explain what the impact on the Australian economy, industry and business would be if Australia were placed on the Financial Action Task Force grey list. I understand that one of the consequences would be increased monitoring. What would that do to the cost of international business?

Mr Chevis: One of the impacts is supposed to be increased monitoring, but that monitoring would occur in other countries. To have an impact on the Australian economy, it would have to occur in our major trading partners and it would have to occur within the banks in those major trading partners. As we've seen across the world, banks can be swayed to ignore these sorts of directives. I have a suspicion that, if Australia were placed on the grey list—and I have a suspicion that it's highly unlikely that Australia is going to be placed on the grey list, based on the countries that have been placed on the grey list in the past—I'm not sure it would have much of an impact at all. I know that's contrary to many of the opinions you'll hear here, but it's because of my understanding of how banks typically engage in things like enhanced customer due diligence. Where you have, say, Rio Tinto or BHP exporting iron ore, the Chinese banks that are dealing with the payment are unlikely to apply enhanced due diligence to those sorts of large exports. I'm not sure it's going to have much of an impact at all, and I don't think it's very likely that Australia will be placed on the grey list.

Senator O'NEILL: Even if the government continues to do nothing about tranche 2?

Mr Chevis: Sadly.

Senator O'NEILL: We're years and years behind.

Mr Chevis: Yes, sadly, and that's because of the way that the FATF functions.

Senator O'NEILL: Interesting.

Mr Chevis: I could make further submissions on that, if you like.

Senator O'NEILL: Yes. I might have some questions on notice. A final question: what can Australia learn from the experience of other jurisdictions, such as the UK and New Zealand, in the implementation of tranche 2? And, if you have anything to say about Turkey and the grey listing there, that might be of interest too.

Mr Chevis: I don't have a lot to say on Turkey at all, except to note that its GDP is half of Australia's, and we're the 13th biggest economy in the world; the FATF doesn't really come near large economies. The prime examples of where the FATF hasn't done work is in all of the money laundering and tax havens. We've got Delaware, South Dakota, Florida, Luxembourg, Lichtenstein, Switzerland, Cayman Islands, Panama. Most of them have never been touched by the FATF, and this is the reason I suspect we're not going to get grey-listed.

Senator O'NEILL: I think Senator Carr was just indicating Papua New Guinea. What's the situation there?

Mr Chevis: I do quite a lot of work with Papua New Guinea and have done for many years.

CHAIR: Could you give us an indication of what you believe the current situation is with Papua New Guinea?

Mr Chevis: In relation to anti-money laundering?

CHAIR: Yes.

Mr Chevis: I think that, like many developing countries, they have significant challenges. Like many developing countries, they are required, in many ways, to apply a greater comparative level of resources to compliance with FATF recommendations than, say, Australia would have to, but they are moving ahead and they've done quite well. They were on the grey list and they enacted the laws and got themselves off the grey list. I think they're on a good track.

CHAIR: Thank you. Senator McKim, you've been waiting patiently. Do you have anything further to add?

Senator McKIM: I do. Thanks, Chair. Good morning, folks. Thanks for your attendance this morning. Mr Chevis, I will start with you, please. You've previously said, 'Everyone in the world who is involved with AML/CTF knows that lawyers, real estate agents and accountants are well used by people who have illicit wealth to transfer.' Do you stand by that statement?

Mr Chevis: Yes, I do. All of those methods are well known amongst the anti-money-laundering circles but also, I suspect, amongst people who have money to launder.

Senator McKIM: Thank you. Would you agree with the propositions we've heard from other witnesses this morning that a consequence of Australia's failure to legislate for the gatekeepers in tranche 2 in our AML/CTF laws is that we are more attractive for people who want to launder money on a global scale?

Mr Chevis: Certainly our failure to address money laundering through those areas has made us more attractive, but how we go about reducing the attractiveness of those areas, I think, should be up for considerable debate. If we don't bring in tranche 2, I think we need to look very carefully at the prosecution of those entities for

money laundering, and also the prosecution of people within those entities for money laundering, in order to achieve, perhaps, a similar result or the same result as would be achieved if we brought tranche 2 in.

Senator McKIM: Thank you. I understand that. Just for clarity: in your view, would legislating for tranche 2 reduce Australia's attractiveness to money launderers?

Mr Chevis: On face value it would, but I think what should follow is a national risk assessment process or something similar and an evaluation of the effectiveness of the measures put in place.

Senator McKIM: And you would argue that that should happen subsequent to legislating for tranche 2? Is that right?

Mr Chevis: Ideally beforehand so we have a baseline of these sorts of money laundering seen through those areas and then a measure of the reduction, or at least an estimate of the reduction, achieved through whatever measures we put in place.

Senator McKIM: Thank you. AUSTRAC relatively recently released a money laundering and terrorism financing risk assessment in regard to major banks, and they found that one of the consequences of breaches of AML/CTF controls was 'widespread or concentrated real estate purchases with the proceeds of crime', which are 'driving property prices up and pricing legitimate buyers out of the market'. Would you agree with AUSTRAC?

Mr Chevis: I don't know that there's any effective way of measuring the impact on the price of real estate based on the laundering of proceeds. Certainly there's anecdotal evidence that that occurs, but there's no really hard and fast evidence of what level it occurs at and what impact that has on real estate pricing in Australia. But, on the face of it, it is very attractive to assume that, because real estate is a money-laundering methodology, it is pushing up the price. Certainly it would appear intuitively to be the case, but we don't necessarily have the evidence to really understand at what level the impact is.

Senator McKIM: Alright. Thanks. Based on your experience, could you explain the mechanics of how somebody might go about laundering money through real estate. What role would a lawyer or an accountant or a real estate agent play? How would money come into the country, if it was money from another jurisdiction that people were laundering, and how are the transactions disguised?

Mr Chevis: The methods and processes are probably too numerous to discuss in this sort of forum, but we know that there are a multitude of ways of getting illicit funds into Australia. You can move assets into Australia. You can move money through casino accounts. You can move it through real estate and law firm trust accounts. You can move it through hawala dealers and underground banking. The list goes on for how you get the money into Australia. Again, there are a multitude of ways that you can then go about purchasing property. One of the key ways that I saw not so long ago was the use of an Australian private company registered in a fake name to purchase property which would then not be linked to the offender. There are a multitude of ways that it can be achieved.

Senator McKIM: Is it pretty easy, if you've got the money behind you? Would you describe it as a relatively easy thing to do?

Mr Chevis: I have never tried it myself. Sorry, that was a bit flippant—

CHAIR: No room for humour here!

Mr Chevis: It would appear from the volume of real estate owned by politically exposed persons from foreign jurisdictions that it is too easy. I think that would be the underlying takeaway from that.

Senator McKIM: Would it be less easy or more difficult if tranche 2 were legislated?

Mr Chevis: One would hope so. But, again, without looking at what actually occurs within the entities that are being regulated, we won't really know. For example, they'll be asked to submit suspicious transaction reports or suspicious matter reports, as they're known in Australia. We know that law firms in particular and lawyers as individuals are rather reluctant to report suspicious matters across the world, and we can't know whether law firms, and even real estate agents and accounting firms, are going to react and start reporting suspicious matters as we perhaps would like them to. We also know from things like Westpac and the Commonwealth Bank that entities can sometimes be if not reluctant then not very good at reporting threshold transactions, so again we don't know whether they will report them. When it comes down to things like know your customer or customer due diligence, we don't know how well they'll do it, so we don't know whether we'll have an actual impact on crime or, in this case, an actual impact on money laundered into Australia from overseas.

Senator McKIM: Thanks, Mr Chevis, and thanks, Chair.

CHAIR: I thank you both for your appearance today. I take it, before we depart, that there are no other questions. As there are none, thank you very much indeed. I think you have agreed to take some modest requests on notice. Thank you very much.

Proceedings suspended from 10:48 to 11:13

COYNE, Dr John, Strategic Policing and Law Enforcement, Australian Strategic Policy Institute [by video link]

CHAIR: Welcome, Dr Coyne. Thank you very much for taking the time to give evidence today. I take it that information on parliamentary privilege has been provided to you?

Dr Coyne: Yes, it has.

CHAIR: If you need any further information, it's available from the secretariat. The committee has received your submission as submission No. 10. Do you wish to make any corrections or any additions to your submission?

Dr Coyne: No, I do not, thanks.

CHAIR: Would you like to make a brief opening statement before we go to questions?

Dr Coyne: Yes, I would, if that's okay.

CHAIR: Yes, of course.

Dr Coyne: First and foremost, I want to acknowledge the hard work of Australia's law enforcement agencies and their personnel working on anti-money-laundering and counterterrorism financing, as well as their broader fight against transnational serious and organised crime. I recognise their commitments and achievements, both of which are commendable. With that in mind, I do want to provide you, Chair, with a brief overview.

The AML regime, as you well know, exists for three reasons. The first one is the focus on regulatory compliance and enforcement. The second is to attempt to support law enforcement through the collection of criminal intelligence and evidence. Finally, it's concerned with reducing Australia's vulnerability to transnational serious and organised crime. As I highlighted, my following comments are not a criticism of law enforcement; they're a criticism of the strategy. Earlier this year, a colleague of mine, Dr Teagan Westendorf, and I undertook a detailed study of the methamphetamine and heroin trade in Australia. Out of that report, to put it simply, some $1.2 billion of value needs to be transferred from Australia out into the world to pay for just those two types of drugs. The figures that we got for that come from the Australian government's outstanding work in terms of wastewater analysis, which gives a really quite clear estimation of how much methamphetamine and heroin we consume in this country. So one can only draw the conclusion that, with over $1.2 billion of money heading offshore at least to pay for those drugs and a total consumer market for just those two drug groups of some $6.7 billion, the anti-money-laundering regime, in its current format, is not impacting significantly on money laundering in this country and from this country.

The second point I make is that quite often the counterargument here is, 'Things could always be worse. ' But I go back to the three points about why the AML regime exists, and none of those three points are really about preventing the situation from getting worse. So, with that in mind, I put it to you that there do need to be significant deliberations on updating and upgrading our AML regimes. If the committee were to take two points forward on that, I would say that the first one would be that we need to introduce the tranche 2 provisions—and they will be pivotal in dealing with this challenge—and the second is that we need to get far more innovative in this space and move away from a tendency of overregulating and towards a more innovative and agile approach to money laundering, counterterrorism financing and transnational organised crime in this country.

CHAIR: Thank you. You say we should be more innovative rather than overregulating. Perhaps you could give us an indication of what you mean by innovative rather than overregulating?

Dr Coyne: Let's take the finance sector. The focus on finance sector compliance with the AML provisions is really about compliance with the laws as they're written. For a financial institution to invest in more innovative approaches—the development of self-learning algorithms et cetera—that by no means accounts in any way to their compliance. So, in terms of the cost, it's an additional cost on top of compliance with the existing regulation. Secondly, whilst regulation and compliance are critical, the transfer of intelligence from the public to the private sector, especially in terms of the finance sector, is critical in proactively identifying cases of money laundering—by this, I mean anything from modus operandi through to detailed algorithms on sets of behaviour to be able to identify money-laundering behaviours.

CHAIR: For my sins, I've been placed on a number of scrutiny committees in this parliament—in regard to regulations and the Scrutiny of Bills Committee. There are a number of principles that those committees do examine in terms of the way in which legislation is written, and there's reluctance amongst parliamentary draftspeople to write laws which don't provide clear guidance to regulators as to what they're enforcing. What I thought you were saying to us—and perhaps you can enlarge on this, in case I've misunderstood you—is that

there should be a broader scope for discretion in the way in which regulations are enforced to keep pace with changes and the like. I know the argument. But it does present, if that is the proposition you're putting to us—

Dr Coyne: That is the case, Chair.

CHAIR: It does present quite a serious problem in terms of the normal provision of concerns in regard to liberties that citizens have a right to expect in terms of any legal enforcement—to know what it is that the law says and for regulators to know what it is that they're being asked to enforce. What do you say to that proposition? How do we actually get that balance right between trying to keep pace with technological change, changing patterns or cultural change and the need for clear guidance as to what the law actually says and minimising the level of discretion, which, in the wrong hands, can be grossly abused?

Dr Coyne: Chair, I absolutely agree with you in terms of discretionary power—first off, in its potential for abuse. I'm on the public record on several occasions, writing of my concerns around law enforcement powers et cetera, and we see this play out in the current environment with extraordinary powers in relation to policing and COVID-19. By no means am I presenting you with a simplistic case that this is the answer and that there aren't significant problems and challenges with that. First off, what I am saying to you is: what are the alternatives? A strictly regulatory prescriptive approach is several steps behind in terms of being able to deal with the challenge of money laundering, as well as other criminal activities. The second thing is that this is an approach that has been taken in other areas where we've seen a far more—and the one area that comes to mind is in relation to the government's role in security, moving from a very prescriptive model in terms of protective security to a far more principle based model and how that can be operated. It is not without challenges, and, by no means am I trying to argue that it's an easy pace forward, but I'm not convinced there's any other way. Indeed, when you go back to those numbers from the last 12 months, just from the consumption of methamphetamine and heroin in this country, there's roughly $5 billion floating around in our economy somewhere that comes from just that part of the criminal world. I take your point: I think that privacy is a critical component of this. I'm not asking for anything specifically to be prescribed. But, certainly, in applying modern technology and applying artificial intelligence, there are a great deal of ways that an individual's privacy will not be compromised, except when a case itself is examined.

CHAIR: The obvious comparison is to say: what is world's best practice? Internationally, how do we compare? The evidence put before the committee is that we are falling further and further behind. Leading countries in this field—and we've spoken of the United States and the United Kingdom, for instance, with which we like to compare ourselves on many other things—do have a reputation for the maintenance of a balanced approach in terms of civil liberties and protection of the public from organised crime. Would you agree?

Dr Coyne: I would agree with that, Chair, yes.

CHAIR: They would claim that. The American Civil Liberties Union may not share that view, but I'm saying that this is clearly the balance that we've got to find somewhere in this argument. Those jurisdictions don't rely, do they, on discretionary powers of regulators to pick and choose? You mentioned the security area. There are grave concerns about the misuse of security powers in regard to human rights and civil liberties emerging in that field.

Dr Coyne: I'm specifically speaking on the security side in regard to protective security or protective security requirements, and I don't think that would be a criticism of that. Where I'm talking about that is, for instance, if you were to look at the principle based approach that's applied to the security of public places, not necessarily security law in terms of surveillance. I think they're two very separate things and, I would be quick to add, again, I'm on the public record with regular publications around this about the dangers of overreach in terms of surveillance and those national security powers. Secondly, though, I still think that the issue here is it's not a binary discussion: do they have discretionary powers to go on fishing trips or do they have no powers? Do they have to specifically apply prescriptive law? What I'm saying here is, if a financial institution, a major bank, decided to apply a new technique for data mining its transactions and was willing to invest a significant amount of money in that to identify transactions that could be suspected of being involved in money laundering, should that be offset by the costs of other implementation or other compliance issues? That's what I'm looking at: would we have that sort of flexibility? That's where some of the flexibility needs to come in the system.

CHAIR: I come back to my specific point, though: when you compare us to the way in which the United States or the United Kingdom operates in this field, what would you say we could learn from them in that regard?

Dr Coyne: I think that we could learn from both the US and the UK in terms of the sharing of intelligence between the private and public sector and the flow of information in regard to criminal activity. That is particularly important, but we also need to look at it in context. I'm not so convinced that they have better practice

than what we've possibly got. I'm not necessarily agreeing that we should be looking at them and imitating their approaches. I think a far more innovative approach needs to be taken in this country.

CHAIR: Thank you.

Senator O'NEILL: I want to pick up the threads of what you've been saying, Dr Coyne, and thank you for your work in this area. You're urging us to just do the job, get tranche 2; you say it's pivotal. There's certainly been delay. All the evidence this morning has been that Australia is really being recalcitrant in terms of international citizenship. Yet you're saying perhaps there is a silver lining in terms of technology shifts that have occurred in the interim that may allow Australia to implement an even more efficient and effective model of tranche 2, if we are able to access the benefits of private sector R and D.

Dr Coyne: To some extent I think that regardless tranche 2 needs to be implemented. I can't see how else we can move forward. It's not anecdotal evidence; it's clear quantitative and qualitative evidence to indicate that there are elements of those who would be covered by tranche 2 that are directly involved in money laundering and transnational serious organised crime. I think the evidence speaks for itself.

Senator O'NEILL: Can you name those sectors clearly for us, Dr Coyne?

Dr Coyne: I would say right from the start the top accountants, the legal profession and real estate, and I think that something needs to be done.

Senator O'NEILL: I always try to translate what happens here in the parliament to normal conversation that's happening in Australia. Australians hold accountants, the legal profession and perhaps a little bit less so real estate agents in considerably high esteem as professionals, with their degree of expertise, long training, ethical requirements and oversight bodies that look after them. Why should Australians care about whether the government implements tranche 2 or not? What's in it for Australians, if the government continued to not act or if the government did act?

Dr Coyne: In terms of two drug types alone it means more than $1.2 billion moving offshore to pay off the wholesale-to-wholesale prices for illicit drugs. It means $5 billion-plus floating around our economy. That money is being laundered somewhere within the system, and what we're talking about in tranche 2 is a positive step forward to dealing with that.

It is quite interesting that from a cultural phenomenon sense those professions have long been trusted, regardless of your comment today about real estate. As professions, they've been long trusted in our communities over multiple generations, and they have been entrusted to self-regulate for a range of reasons. I suspect that now we're seeing sufficient evidence globally and nationally to say that it needs to change. My other point is that we need to encourage a type of thinking within the finance sector that's not just about complying with the letter of the law but also going those extra steps and being far more proactive about dealing with money laundering. Some of those financial organisations within the finance sector are already doing so. We're seeing banks being very proactive about shutting down accounts, for example. There are some really positive examples there, but I want to try to supercharge that, or I would like to see the committee supercharge that proactivity and find a way to encourage that in terms of legislation.

Senator O'NEILL: I want to step through some practical things you might be able to put on the record that people don't know. You talk about the enormous profit of the illicit drug trade, and you've indicated that $1.2 billion of a $6.2 billion trade in methamphetamine and heroin is going offshore. From previous witnesses we've heard the scale per annum of this practice is sitting about $47 billion to $50 billion across the nation. How are profits being washed, and what is the proportion of profits being washed in Australia in comparison to other jurisdictions, even in the Asia-Pacific region?

Dr Coyne: It's incredibly hard. The figure you gave of $47 billion is, I believe, an estimation of the total cost of transnational serious organised crime in this country, which is inclusive of law enforcement efforts and a range of other money that goes into that. Before giving evidence this morning I was having a conversation with a few colleagues from my previous employment, and I think it's very easy to want to draw binary statements around organised crime—that it's money being laundered through hard cash or through banks. What I suspect is that an incredible amount of money is laundered through trade-based money schemes, just from the volume of money we're talking about. Up until COVID came along, we were still seeing cash being moved via aircraft from the west coast to the east coast in terms of the drug trade. It's all of those things, and this is part of the challenge.

The other part for this committee to consider is that I would describe organised crime as amorphous. Since the 1960s, and through popular culture over the last two decades, we've seen this conception of organised crime as a hierarchical structure where there is a boss—a capo, a lieutenant, a captain—and then the structures underneath. Those structures do exist, but in reality, transnational serious organised crime has a tendency to be amorphous. It

fits and identifies opportunities and then rapidly exploits them. I'm not saying everything is used for money laundering—I wish I could give you a percentage saying 10 percent is done by this means or that means—what I am saying is that a significant amount of money laundering out of this country must be involved in trade-based money laundering because of the numbers involved.

Senator O'NEILL: For a non-literate person, what does trade-based money laundering look like? I've got a feeling this could be happening in everybody's backyard.

Dr Coyne: There are a variety of ways and structures to this, and there will be people appearing before you who are far more qualified to talk about the latest methods. This goes through transferring other products in kind—and in a legal sense we saw this a number of years ago with Mexican cartels moving cocaine to Hong Kong, swapping it for methamphetamine on a trades basis and then sending it back. So no money ever transferred hands. They were transferring drugs for drugs, as an example. It's value for value. If you think about it, there are things like international transfers in terms of purchasing goods that are never actually delivered, transfers between companies, the use of second- and third-party companies to transfer value for purchasing goods, the contamination of supply chains and those sorts of activities. It's a very broad church, but it's more than the average person in Australia just using a transfer in a bank account or an international transfer or a hard currency or an online credit card. It's far more complex and uses the complex nature of our supply chains and business structures to hide that activity.

Senator O'NEILL: We see that banks have been doing an awful lot of the heavy lifting in this area and they are making investments to make sure that they're complying, yet we've heard evidence this morning that there need to be civil penalties for CEOs and board members to really harness their focus on taking these AML/CTF laws seriously. What are your thoughts about civil penalties and corporations?

Dr Coyne: I'm in two minds about it. First off, I'm not convinced, in a general sense, that the stick is always the greatest motivator for people. Even if someone was going to do the wrong thing—I'll use the general issue of organised crime as an example—from all the offenders I've spoken to and when I speak to colleagues about their experience, no offender starts off in their life going, 'I think I'll get caught'. That's at the extreme end. I just don't think that it's as strong a motivator as people are inclined to believe—that the stick hanging over someone's shoulder is going to make them comply.

Secondly, I think that what we want here is that, if there's a degree of criminality or a general act of commission or omission that has led to an AML issue, they should be held accountable for that, but there are a lot of very grey zones in between that and not knowing. I also put it to you that, in terms of the AML legislation, I think that we're far better off getting the financial sector on board to be more proactive in terms of working together. We've seen the beginnings of this in AUSTRAC with the private and public sector working together. I would think that we would be far better off putting greater efforts into that collaboration than introducing more sticks and regulation.

Senator O'NEILL: In your special report into technology that you wrote in July 2018, you talked quite a bit about public law enforcement's lack of funding and investment re R&D in comparison to the private sector. Do you think that AUSTRAC has kept up with the increased use of technology by criminals?

Dr Coyne: I think it's struggling. I think you'll always find a gap between emerging technologies. Criminals have become really adept—as have our children, for that matter—at early adoption of new technologies. It takes organisations and bureaucracies a lot longer to develop them. Unfortunately, there are a couple of factors and strikes against organisations like AUSTRAC and the law enforcement space. First is the overarching demand for acting in the now. It's not like there's a whole heap of spare capacity within, say, the Australian Federal Police or AUSTRAC that's sitting there not being exercised right now or that could be focused on the future. The demands of the now are so intense. I always put it this way: the amount of reported crime—this goes for AML as well—far exceeds the capacity of law enforcement in this country to respond.

Senator O'NEILL: And that's before we bring in tranche 2.

Dr Coyne: That's correct. My point here is that it's very hard for them to be on the front foot there. Secondly, the nature of the bureaucracies is that we hold them to account. Successful organisations in R&D and technology, if we look at Google or Apple, are successful because of their failures, not in spite of them. When you're talking about R&D, in terms of our public institutions, of course we have very low tolerance for them failing in an initiative. As a result of that, being innovative and cutting edge and agile is incredibly difficult for our law enforcement agencies, so there is a gap between those. I would like to see that gap closed.

I note your comment about tranche 2. Regardless, I think there's some great value in low-hanging fruit in the early implementation of tranche 2, and it may require a readjustment of priorities within AUSTRAC as a result of

its implementation. And it's the luxury of working in a think tank: 'They should be funded with more money,' and the challenge for you as a legislator and the people in bureaucracy is that there's no extra money sitting around. I am well aware of that as well.

Senator O'NEILL: There's a bit of extra money sitting out there that we're not looking at though: $50 billion.

Dr Coyne: That could be the case.

Senator O'NEILL: In the same report I just referred to—*I can see clearly now!*—you recommend that AUSTRAC establish a regulatory sandbox to explore new policies of the kind you've been talking about and offsets for those companies that contribute to AML efforts. That's the innovative regulatory approach you were talking about earlier with Senator Carr. Has any progress been made with regard to that recommendation from you about a regulatory sandbox?

Dr Coyne: There's been some progress. There is a greater cooperation between AUSTRAC and the finance sector, and there's an incredible amount of goodwill. If you're asking the question directly, as you put it, I don't see evidence that that's the case, and I think we need to get smarter in that space.

Senator O'NEILL: Mr Scott Weber gave evidence earlier this morning about the impact of bringing in legal and real estate accountants. He cited property being sold through different real estate agents in the same market where there might be five per cent, and it looks like there are shady dealings, that would trigger a response where there were no reported shady dealings by another competitor, and that would help them get some surveillance over the sector. That's a practical way, that bringing this legislation forward in tranche 2 would operate, and it would give the police some capacity to interact with their international comrades about matters.

Could you respond to my concern that, in the absence of being able to gather intelligence, the AFP, AUSTRAC and regulatory bodies in Australia don't have information tradeability in the international context, and they're relying on incoming intel—for example, the cocaine that was being laundered. Intel came from overseas to AUSTRAC for that, didn't it? Can you talk about that ecosystem for me?

Dr Coyne: Sure. There are multiple parts. There's no point—when I was first trained in intelligence, almost three decades ago, it was said to me that intelligence isn't a self-licking ice-cream, in the sense that you don't just collect it for the purpose of collecting it. You collect it to do something with it. The first part of your question is in relation to—it would be great to have this additional intelligence, if you are able to process it, gain meaning from it and use it in a meaningful sense. That's the No. 1 problem. That will mean new capabilities are required. Whether that is new people or whether that is new analytical capability, in terms of artificial intelligence, that's two separate things.

Senator O'NEILL: Or both.

Dr Coyne: Or both, that's right. Generally, it is both because both are required. I should have added that. The challenge we have—it goes, to some extent, to Senator Carr's comments earlier. I'm picking up on his concern again. It was always difficult. At one stage of my career, I was responsible for releasing intelligence for the Australian Federal Police. In doing so, I needed to sign off—generally, there were 20 or 30 different acts that prevented you from sharing certain intelligence with certain people. Say, an intelligence report that was written by a staff member who had access to AUSTRAC material could only be given to an intelligence agency or a law enforcement agency.

There are all these sorts of control mechanisms, so it's not a clear-cut process. It is very much a complex system, in terms of intelligence exchange. There are two formal exchanges internationally. The first one is what they call 'police to police', which is police exchanging information and intelligence but not in an evidentiary form. Then there's the exchange of evidentiary, under things like mutual assistance agreements et cetera.

So there is this great challenge in terms of, as Senator Carr said, offsetting the requirements and the rightful requirements of privacy, national security and community security. All of these need to be weighed up. It is an incredibly complex system, but, as I would often remind myself in the past, these protections are put in place to protect the very specific reasons. For instance, the Privacy Act isn't an impediment to law enforcement; it's a necessary protection in the activities of law enforcement and intelligence.

Senator O'NEILL: Could I ask two related questions? What do you think the impact on Australia's law enforcement reputation and collaboration would be if the government continued to fail to implement tranche 2? And, to compare and contrast that with nations similar to Australia that have successfully implemented tranche 2, what have the outcomes been?

Dr Coyne: There can be no doubt that there's goodwill in terms of police-to-police cooperation with our wider allies and partners—and, by that, I mean everyone from the Thai police to those of the UAE—and that police-to-

police relations for the exchange of information and intelligence are strong and robust. The relationships in terms of our more formal agreements with AML are robust wherever they are in place, and there are many countries where they're not in place.

The other issue, though, is always a nagging thing. Earlier, I mentioned that transnational serious organised crime is amorphous. It tends to seek out where the vulnerabilities are, and it's incredibly difficult to address AML/CTF in a global regime if we are the weak link in that. I think that's the broader issue, and there is some frustration and some confusion within the AML community globally about why we won't implement tranche 2.

Senator O'NEILL: If you could go to the second part, I'll then come back to your comment there, but where this tranche—

CHAIR: Could I just follow that up?

Senator O'NEILL: Yes.

CHAIR: So, in your judgement, why is it that we won't implement stage 2?

Dr Coyne: I wouldn't hazard a guess at understanding legislators and policymakers. From my perspective, there is some concern—

CHAIR: It's pretty straightforward. We don't initiate legislation. As you know, I'm a Labor senator; we don't initiate legislation. So you have to be more specific when you talk about legislators in this regard.

Dr Coyne: Thank you, Chair. I think there's a general reluctance because of the complexity of the task at hand and its likely economic implications. The longer we've left it, the more complex it's seemed to be. I think that has concerned a number of those involved, and there's this hope that the existing regime will work.

Senator O'NEILL: The existing regime that other people have implemented, with us riding on the coat-tails—

Dr Coyne: Correct.

Senator O'NEILL: without doing the work ourselves? It makes us sound like a nation of bludgers. That's not a very good image, is it?

CHAIR: Given ASPI's approach to many other things, I'm just wondering whether or not that's consistent with the normal approach you'd take. I've cited this before, so you may have heard this evidence, but Professor Allan Fels made this observation on the ABC: 'Now, of course, behind every regulator's failure is a lack of backup from government. Typically, regulatory failure is not just a regulator not doing its job. Sometimes that happens, but usually the regulatory scheme is not that strong; there are other actions, signs and signals from government, and it implies, all around Australia, that they don't give them an adequate budget, proper powers to investigate or adequate sanctions. They're giving implicit signals to regulators not to go too hard.' Is that an explanation that you would concur with?

Dr Coyne: The first thing I'd say is that, as you well know, ASPI is an independent policy think tank. Secondly, we don't have a corporate position on anything. I'm engaged by the council here, and by the executive director, as a senior member of staff. As a result of that I'm engaged to provide my opinions. Certainly, there is no ASPI opinion on money laundering. There are very few in ASPI, other than me and my deputy, who would deal with that issue in any sense.

CHAIR: Do you think the quote by Professor Allan Fels I've given you is a reasonable explanation for regulatory failure?

Dr Coyne: At times, I think that's a reasonable expectation. Having said that, though, I think there's always a danger—it answers your own question—in presenting it as either one or the other. I think there are a range of factors here. For instance, I would say, as I did in my original evidence, there seems to be some confusion about the role of law enforcement. It isn't to ensure that things don't get worse; it's to have a marked improvement in our community safety. Arresting people, seizing drugs and seizing cash—those are KPIs. The actual aim, the strategic intent, is making our society safer and reducing the impacts of, for example, drugs on our community. So I do think at times that there are strategic policy issues that relate to regulators, and I think at times your reference is correct.

Senator O'NEILL: I'm sure you would be aware of the Prime Minister's recent visit to Europe and participation in the G20. There was a statement, item No. 59 in the declaration that was put out following that gathering, regarding AML/CTF and CPF:

We reaffirm our full support for the Financial Action Task Force (FATF) and the Global Network … We confirm our support for strengthening the FATF recommendations to improve beneficial ownership transparency and call on countries to fight money laundering from environmental crime, particularly by acting on the findings of the FATF report.

How at odds is that statement, signed off out of Rome, with the reality in Australia today under the leadership of Mr Morrison?

Dr Coyne: I think the fact remains that we still haven't implemented tranche 2. Right to the beginning of my evidence, the situation isn't about stopping things from getting worse. The bottom line is the figure that you quoted to me: the cost of organised crime, the last time it was assessed, which I believe was three or four years ago, was $47 billion. I suspect if that assessment were done today it would be significantly more, and that's the real test. To reiterate—and I think Senator Carr was touching on this before—I'm not criticising law enforcement. In fact, I led my evidence with a very clear statement about the efforts of law enforcement, and I commended them on that. I think, though, that more needs to be done.

Senator O'NEILL: But they can't do more if the government doesn't give them a legislative platform from which to operate, can they?

Dr Coyne: I think there's also an issue of resourcing in amongst this.

Senator O'NEILL: Can I go to that statement about beneficial ownership and transparency. We've talked about accountants, we've talked about the legal profession and we've had some evidence about that this morning. With regard to real estate in particular, beneficial ownership transparency is critical. How does Australia compare with other jurisdictions in our region with regard to beneficial ownership transparency?

Dr Coyne: From my perspective, we are far ahead in terms of the Indo-Pacific region. In law enforcement, that's a term I'm not necessarily particularly comfortable in using, but I think it adequately describes our broader region. There are a number of major challenges in terms of legislation in the Pacific. The same can be said of various locations across the near region in the Asia-Pacific, and certainly the same could be said of parts of North Asia.

Senator O'NEILL: By comparison to 'best in show'—the exemplars of FATF regulation around the world—how transparent is the ownership of property in Australia?

Dr Coyne: I think that's a really broad question, and a tough one to give an accurate answer to in 20 words or less, but I would say that we've got a way to go in being able to prove beneficial ownership in comparison to, say, the US, the UK and parts of Europe.

Senator O'NEILL: What will be the impact of bringing real estate in under tranche 2 on transparency around ownership in Australia?

Dr Coyne: It depends. Again, this depends on the legislation that's pushed through, but I would suggest that it will have some impact. This is one of the concerns of Senator Carr: this would enable, with the right legislation, law enforcement to access that kind of information to undertake more detailed analysis. It certainly addresses some of the pervasive feelings of some law enforcement figures over the last two or three decades around, for instance, the use of home ownership and apartments and other things like that. I do think there's some benefit in there. There is also a requirement to put protections within that legislation.

Senator O'NEILL: In terms of government announcements about FATF, there's a big gap between what they've said they're going to do, even up to as recently as the G20 on the international stage, and what's actually happened. We are way, way behind the government's own time line that was set out of 2016. I note that we have had multiple ministers across multiple administrations under the Liberal-National government leadership. All of this impacts on how our dollar is actually valued and traded. The Australian dollar is actually one of the most traded in the world. What does failure to comply with FATF and bringing in tranche 2 mean for the Australian economy?

Dr Coyne: I'm not an economist, but I will make a broad comment about it. It's about trust in our economy and about ongoing trust in our economy. There's no doubt. It's a long time since I did my MBA, but there is a range of reasons why the Australian dollar performs the way it has over the last three decades. We can draw the conclusion that the trust in our economy, the trust in our brand, the trust in our dollar, is critical to the future economic success of the nation and that AML/CTF provisions are an important component of that trust.

Senator O'NEILL: Thank you very much, Dr Coyne.

CHAIR: Dr Coyne, we have to conclude at this point. Thank you very much for your appearance today. We do appreciate the time you have given us. If there are any other questions, perhaps we can put them to you on notice. Would you mind that?

Dr Coyne: No worries at all, Chair.

Proceedings suspended from 11:57 to 13:45

LILLYWHITE, Ms Serena, Chief Executive Officer, Transparency International Australia [by video link]

WILSON, Mr Russell, Non-Executive Director, Transparency International Australia

CHAIR: I welcome representatives from Transparency International Australia, both in person and on videoconference. Thank you for taking the time to give evidence today. Information about parliamentary privilege has been provided to you, I trust. If you need further information then it's available through the secretariat.

The committee has received your submission, No. 17. Do you wish to make any corrections or additions to your submission?

Mr Wilson: We don't wish to make any corrections. I understand that we have had an addition provided.

CHAIR: Thank you, we'll take that as read. Ms Lillywhite, can you hear me? No? We'll fix that. Mr Wilson, would you like to make an opening statement while we try to fix our audio?

Mr Wilson: I would love to, but Ms Lillywhite is the one who was going to make the opening statement!

CHAIR: I see. Can you hear me now, Ms Lillywhite?

Ms Lillywhite: Yes, I can hear you now.

CHAIR: There we are, all sorted! Would you like to make a brief opening statement before we go to questions?

Ms Lillywhite: Thank you, I would like to do that.

Transparency International Australia thanks the committee for the opportunity to appear today. As we have made clear in our submission, Australia is currently exposed to money laundering and the flow of dirty money. FATF has confirmed that Australia has become a destination of choice for illicit financial flows, particularly corruption related proceeds, which too often end up in the property market. It's our view that our weak AML regime, flaws in our corporate registry and the lack of a public register of beneficial ownership are allowing that to happen. Indeed, AUSTRAC agrees. In their 2015 report, AUSTRAC stated that the laundering of illicit funds through real estate was an established money-laundering method in Australia.

By way of further evidence, today we are tabling an annexe to our submission which provides 10 well-reported examples of money laundering through the real estate sector; we've sent that through to you, and my colleague can also table it. These examples show that money laundering into Australia's property market is coming from countries far and wide—from Sudan, China, Malaysia, PNG and Russia, among others. It also shows that money laundering is linked to a variety of people—Sudanese generals, Malaysian bankers, PNG's political elite and Chinese high rollers through casinos and property.

Money laundering is not a faceless crime, and I request the committee give this consideration. It has devastating impacts both in Australia and overseas, and it can reasonably be argued it is driving up property prices in Australia and locking many Australians out of owning their own home. Since making our submission in August, we've seen the release of the Pandora Papers, which laid bare the need for much greater scrutiny of offshore corporate structures and the flaws in Australia's own corporate registry system and anti-money-laundering regime. Since then, we've had the Victorian royal commission into the Crown casino in Melbourne; that has concluded, and Commissioner Finkelstein's report found Crown's behaviour was 'illegal, dishonest, unethical and exploitative'. He found Crown links to criminal gangs and repeated breaches of money laundering laws. But, despite that, he recommended the casino be allowed to keep its licence, albeit under a two-year grace period. I think the headline question for this committee to consider is: how much evidence of money laundering in Australia will it take before the law is changed and enforcement is ramped up?

We understand that some lawyers, accountants and real estate agents are opposed to being covered by the AML/CTF Act on the grounds of a compliance burden, but we believe there are avenues open to prevent or at least ease this burden. There are good working examples on our doorstep, such as New Zealand. We also think that the financial services sector, banks in particular, would welcome a fairer sharing of the responsibility to bear the brunt of scrutinising customers and their transactions for potential money laundering. In short, we need a broader approach to tackling money laundering so the compliance burden isn't solely shouldered by financial institutions.

In closing, our submission makes clear what needs to be done, not only complying with FATF recommendations but other strategies, such as: putting in place a national risk assessment of money laundering risks; the establishment of a public register of beneficial ownership; and strengthened capacity for AUSTRAC to both detect noncompliance among entities it currently regulates and broaden its mandate to other entities that are

being used to commit and enable money laundering. It's important to remember that criminality finds opportunity, and the flaws and weaknesses in Australia's AML regime are providing that opportunity.

CHAIR: Thank you.

Senator SCARR: Thank you, Transparency International Australia, for appearing before us today. I lived and worked in Papua New Guinea for a time, and I was also company secretary of a company with two operations in Laos. I found, in terms of discharging my obligations, that a lot of the work Transparency International Australia did was extremely important, so I have a high regard for the organisation.

I would like to deal with some of the practical issues, in particular in terms of the class order referred to as 'politically exposed persons'. I've just had a chance to have a quick look at the supplementary submission you presented today, and I think some of the people listed in that submission potentially fall within that category of politically exposed persons. I'm assuming, as I ask these questions, that the vast majority of lawyers, accountants and real estate agents try and do the right thing the vast majority of the time; people might disagree with me but that's my starting premise. What do I do, practically, if I'm running a small conveyancing business, and maybe I'm doing other things as a lawyer—I've got a conveyancing clerk and a receptionist—and someone approaches me and says they want me to act as a lawyer for them in a conveyance? Typically, that would be a service that might cost $600 or something; it's been a while since I've been involved in it! What can I do practically to check and verify whether or not the person who approaches me is either a politically exposed person or a relative of or in some way connected with a politically exposed person? How do we make this practical, especially for the small businesses who are out there trying to do the right thing?

Ms Lillywhite: Thank you for that question. There is no doubt that, for the small businesses, there is a learning curve that needs to take place. There needs to be training delivered for those small-business operators you mentioned, so that they have the skills and capacity to understand what suspicious transactions look like and have a better understanding about what meaningful due diligence looks like. There are a number of different ways they can do that. If, for example, we had a public register of beneficial ownership, that would provide a basis from which they could have the skills to do 'know your customer' in a more effective way. Similarly, in reforming our AML system there are opportunities to link it to a broader ecosystem of reform that is needed. It could be linked to our sanctions listing, so these small-business operators know where to look for information; are there potential clients listed on any sanctions list, for example?

If our corporate register was more robust than it currently is now, including, for example, the corporate register that ASIC has oversight of—currently it's almost impossible to have confidence that the data is held in that asset corporate register, because there is no verification of any of the data listed in that corporate register. For those small-business entities, it is very difficult for them to know where to go to get accurate information. That's why we would suggest that, ideally, when we bring on tranche 2 and expand the scope to include other entities that are currently not regulated, there needs to be a period of grace and that there is scope for professional industry associations to assist in the training. It will be necessary to have a better understanding about exactly what a politically exposed person is and whether or not that information includes information as to members of their family and the wealth they may have accumulated which is not consistent with the salary they earn, for example. I completely agree with you that there is work to be done, but this is not insurmountable.

Senator SCARR: There is work to be done. I hear what you say about beneficial ownership, in terms of our corporate registers et cetera; I appreciate that point. One of the points you make in your submission—if I go to page 7—is:

> There is also the risk given the reliance on commercial databases by reporting entities to identify high-risk customers, as these databases can often have missing or incorrect data. The FATF have said commercial databases are "not necessarily comprehensive or reliable as they generally draw solely from information that is publicly available and thus the subscribing financial institutions or DNFBPs have no way of verifying the accuracy, comprehensiveness and/or quality of the information contained in the database". We recommend that the AUSTRAC should either develop a database for reporting entities—funded from fees charged on reporting entities—or should at least audit the commercial databases.

From my perspective, it's one thing to ask my hypothetical small conveyancing law firm that's dealing with 100 conveyancers, trying to keep the lights on and pay the rent et cetera, to engage in trawling through databases and working out if someone's related to someone who was a general in some particular sensitive environment. It's another thing—and I think it's a far more reasonable thing—to expect a small business to access a government database to check and verify whether or not a red flag has been raised with respect to an individual. Would you agree with that statement?

Ms Lillywhite: In principle, yes, I would. I'll also suggest that my colleague Russell contribute to this response. The point you make is a very good one. If we had a reliable, accurate database which—I note that

Treasury currently has the Modernising Business Registers program underway, which is a welcome step. They are attempting to consolidate what are currently 31 different corporate registers in Australia into one corporate register, and they are planning to introduce a director identification number, which is also a very welcome development, because many people can register companies and there can be inconsistencies in the way their names are spelt—that could be done intentionally or otherwise. We welcome the introduction of a director identification number.

But the initiatives that have been put in place do not go far enough. They don't address the issue of ultimate beneficial ownership disclosure, and what is proposed does not address the issue of the use of trusts and nominee directors, both of which can be used as a veil of secrecy with intended opaqueness—as a vehicle, effectively, to give a form of legitimacy, if a company is registered in Australia, and which can, in some circumstances, be used for the purposes of money laundering.

I agree in principle that, if there were one centralised, accurate, reliable database that had information that joined the dots around issues around politically exposed persons and sanctions lists—that linked to sanctions lists held by DFAT, the World Bank and others—this would greatly assist small business operators to address that issue to be better placed to know their customer and to have confidence in the system. My colleague Russell is an expert on AUSTRAC and these things as well, so perhaps he has a follow-up response.

Mr Wilson: I'd just say a couple of things. One is in regard to the first issue that you raised, which was about what a conveyancing lawyer can practically do to identify a politically exposed person. It's as simple as doing an internet search. That should throw up whether there are any issues associated with that individual and whether that individual satisfies the definition of being a politically exposed person. A further step is to consult the sanctions list available on the department of foreign affairs website as to whether there are any issues in respect of sanctions with regard to that particular person.

Certainly there have been calls, for many years, in regard to the last issue about a properly validated database of persons who are directors of companies, for example, rather than simply the collection of information, which is unverified, that currently appears on the ASIC website. The argument has largely been that the existence of such a database would diminish the compliance costs of the other institutions which are regulated by AUSTRAC and that they could then just simply rely on that database for the purposes of performing their KYC checks et cetera. Obviously there are issues associated with resourcing the creation of that database and risks associated with being the sole source of truth, if I can put it that way.

Senator SCARR: So you're actually advocating that my mythical conveyancing lawyer should just google the name of a potential client. I think the professional standards require this anyway, to be frank, in terms of understanding who they're getting instructions from and what those instructions are. So, someone approaches me. I put their name into a search engin If there's some sort of indirect relationship with someone who is, potentially, doing something untoward in Myanmar, for example, or they've got some background in Russia, most internet searches that I conduct as your local conveyancing lawyer are just not going to pick it up, are they, really? My concern is that there's a concrete, practical procedure that your small-business owner can follow in terms of where to go and what to do. And that almost creates a safe harbour for them in the event that it turns out that the person they're dealing with is a cousin of a Sudanese general who somehow came into ungotten means. That's the concern I have in terms of how we make it practical.

I note your reference to the internet search. But, when I go to the submission from Transparency International, it actually talks about the risk of using commercial databases being that you might not get all of the information. I think both points are right. The first thing I would do is an internet search. That's probably the obvious thing to do. Do you have any further thoughts in terms of how we make this practical for that small business, in particular, so they're not overly exposed? We do have relationships with quite a few of our neighbours, and some of those neighbours, as Transparency International know, are high-corruption-risk countries. How do we make it, practically, as easy as possible for those organisations to deal with this change when it comes?

Mr Wilson: The reference to my connection with AUSTRAC is the fact that I spent 10 years as AUSTRAC's first general counsel. I therefore really helped AUSTRAC implement the current legislation and also put into place a lot of practices and procedures to do with administering the legislation. One of the things which AUSTRAC did, and continues to do, is to issue a lot of practical guidance in terms of how to comply with the various requirements.

I'm reasonably confident there is already stuff available on its website with regard to what a politically exposed person is, for example, and how you might go about identifying a politically exposed person. I agree that it's a bit more problematic to have a list, as such, which is regularly updated which sets out not just the prime individual, let's say, but all of their relatives and so on as well. That's a difficult proposition and that's where I think the

problem lies in having either a government or a commercial database in terms of the maintenance of it for that purpose. But the issue probably goes back to: what has the conveyancing lawyer done to try to satisfy themselves that this person is either a politically exposed person or not, or on a sanctions list or not? If they can show that what they did was reasonable in the circumstances then that might well be sufficient. Guidance from AUSTRAC may assist with that.

Senator SCARR: Okay. That was very useful.

CHAIR: Senator O'Neill.

Senator O'NEILL: I'm pleased that Senator Scarr has got that practical assistance there, because there has been some static on the line for some time, Ms Lillywhite and Mr Wilson, from the government about implementing this, despite claims in international fora and publicly in Australia about implementation. They have failed to act and there have been a litany of reasons advanced as to why it is too difficult to do, despite the evidence we received this morning that more than 195 countries have gone ahead and got their house in order with tranche 2 while Australia's been twiddling its thumbs.

Regarding the statement that you've made that Australia is an attractive destination for foreign proceeds, particularly corruption related proceeds, are you able to detail the kinds of criminals—I think you've provided us with supplementary evidence this afternoon—and how they are washing their money? How does the practical reality work in the examples that you've provided to the committee this afternoon?

Ms Lillywhite: I guess there are a number of ways in which that can practically be done and the way in which dirty money is flowing into Australia. I think John Chevis this morning indicated that there are many and varied ways that money is coming into Australia, and we've provided today, as you said, a number of examples of the extent of that and how that's being done. Certainly there are examples of it being done through casinos. There are numerous examples through the purchase and sale and, indeed, renovation and upvaluing of property in the real estate sector but also, of course, the purchase and sale of high-end luxury goods such as cars, yachts, art and jewellery. There are other common ways of effectively trade based money laundering that exist. Then, of course, it happens through a series of cash based entities, such as tattoo parlours and nail parlours. There are many cash based entities that exist that all provide for money laundering to get here.

But the point I want to touch on relates to the fact that effectively what we are seeing is the proliferation of professional service firms whose business model is actually to assist foreign individuals or entities to secure a nominee director, whom in some cases they advertise as having an Australian-sounding name, and to assist with the registration of companies in Australia that can then be used as a vehicle for money laundering. Similarly, there are also some law firms that promote their services as providing a back door to ASX listing. So I think it's necessary that we look at, as I said, this broader ecosystem of some of the other professional service firms and the way they're operating and how they're assisting those who want to operate in Australia under a veil of secrecy through the use of either nominee directors or trusts. That's why we would also recommend that, in addition to a public register of beneficial ownership disclosure, that include trust disclosure and a requirement for nominee directors to disclose who they're acting on behalf of. Russell, I'll let you continue.

Senator O'NEILL: Just before we go to Mr Wilson, just so I'm clear on what you've just said to me, we're not just talking about the prevention of money laundering. You're now indicating that there are indeed some law firms and other companies that provide professional services that basically say to criminals, 'Come on in; we'll facilitate your money laundering,' and that is going on under the noses of AUSTRAC and other policing agencies?

Ms Lillywhite: That's right.

Senator O'NEILL: That's quite shocking, isn't it?

Ms Lillywhite: As we've made clear in our submission, the misuse of legal persons and arrangements for money laundering remains very attractive for criminals. There are current loopholes in our system that allow for non-licensed third-party providers to actually sell nominee director or shareholder services, and that effectively hides the real identities and the ultimate beneficiaries and allows for these sorts of opaque business structures to flourish. We included in our submission an example of a Gold Coast based company that actually advertises that it provides resident director services allowing international companies to purchase nominee directors, and its website says that for a cheap price you can ensure 'a cost-effective and seamless solution' to overcome the 'major hurdle' that the director residency rule can be for overseas businesses wishing to establish in Australia. This is just one of many nominee service providers that are available in Australia and actually have a business model that is based on promoting confidentiality of services. In our submission, we also included an example of a law firm that provides this back-door ASX listing service.

Senator O'NEILL: That reality is very important for us in terms of our understanding of the resistance from within the sector. I'm not saying that all law firms or all real estate agents, nor all accountants, hold such low standards and display such a lack of professionalism, but criminals will flow like water to the lowest point, if there's a weakness there and an opportunity for somebody to make a quick buck in the way that you've just described. Australia is allowing them to do that, so they're doing that without fear of being caught up in the law, by the sounds of things.

Before I move off that, you've talked a number of times now about the public register of beneficial ownership. You've also added that there needs to be trust disclosure and nominee director disclosure. This corruption is not just related to overseas entities. I've got a transcript here of Geoffrey Watson SC, counsel assisting the New South Wales Independent Commission against Corruption from 2011 to 2015, talking about land purchase on the Mid North Coast of New South Wales in the Hawks Nest area. It says: 'The Obeids operation is simple, straightforward, and it's used over and over and over again. You have their involvement disguised or concealed by a $2 company with directors who are associates of the Obeids, but with a different surname. They love a little trustee, a discretionary trust in which these people who are cooperative agree to hold benefits on trust for the Obeid family.' Is that the sort of practice that is possible for Australian businesses to conduct, which is basically a licence to launder money in Australia?

Ms Lillywhite: It's an example of the deficiencies within our current corporate register system that I've mentioned. It's an example of the fact that we don't have a register of trusts. It's an example of the fact that it is not necessary for nominee directors to disclose who they're acting on behalf of. It's an example of the fact that we don't have a public register of beneficial ownership, which contributes to the first set of questions that were put to us as to how we go about assessing and determining—undertaking the necessary due diligence—to determine whether a person or an individual is fit and proper to conduct business in Australia. The examples that you just made reference to are certainly replicated in the current gaps within our anti-money-laundering regime, noting that it's not just our AML/CTF legislation; it is the ecosystem that I mentioned. We need to fix other things alongside implementing tranche 2.

Mr Wilson: There's no issue about these structures currently being legally legitimate—they are—and there's not necessarily an issue that they cease to be legitimate structures that can be used. The issue is more of beneficial ownership and the use of them—particularly nominee directors, for example—to hide the actual beneficial owner who is, in your example, purchasing the land. That's the problem. It's not uncommon to see this kind of layering happening to seek to hide the ultimate beneficial owner as well, as in companies, trusts et cetera.

Senator O'NEILL: It sounds like AC/DC might have had it right. It sound like you can do dirty deeds very cheaply in Australia at the moment. A $2 company and off you go, and no-one will know what's going on. Thank you. I'll come back.

CHAIR: Thank you very much. Senator McKim.

Senator McKIM: Good afternoon, folks, and thank you for your very comprehensive submission and your appearance today. Ms Lillywhite, you've recently been quoted as calling Australia a go-to destination for dirty money and you've made some similar comments to that today. Just to be clear, is it your view that Australia is a go-to destination for dirty money at least in part because of a lack to legislate trance 2 into the AML/CTF legislation and also because of a lack of an ultimate beneficial ownership register in Australia?

Ms Lillywhite: I think the short answer is yes. The fact that Australia is lagging behind international developments with regard to disclosure of beneficial ownership, the fact that Australia has not implemented tranche 2—all of this is creating an attractive destination. It's not just Transparency International that has this view; the Financial Action Task Force has confirmed that Australia is an attractive destination for dirty money from particularly the Asia-Pacific region, but of course we've given examples of money coming from as far afield as Africa. When you have gaps and weaknesses in an anti-money laundering regime, that does make it an attractive destination. Similarly, we also have other enabling factors, which I'm not suggesting are a problem, but we have a relatively stable and robust banking system, we have a relatively strong rule of law, and we have a very buoyant, at the moment, real estate sector, and then we also have sectors that are known as entities that are used for money laundering that are not currently covered.

Senator McKIM: In your opening remarks, you said that—I'll just paraphrase you, and please tell me if I'm being unfair here—it could be reasonably argued that some of the lack of rigor in our frameworks in Australia is driving property prices up and locking Australians out from owning their own home. I note that AUSTRAC has made some similar comments in a recent report, which it released a few months ago—one of its money laundering and counter-terrorism fining risk assessments for major banks. Can you explain how you can come to that view and how that argument would run?

Ms Lillywhite: To start off with it is actually really, really difficult to find solid evidence to actually hang your hat on, if you like, and confirm that money laundering in real estate has definitely driven up the price of property in Australia, but I do think there is enough anecdotal evidence to suggest that that's not an unreasonable position to hold, and I think also the fact that we have this gaping hole in our law does mean that Australia is a more attractive destination than others. Of course, the whole kind of model of this is based on secrecy and opaqueness. Money launderers don't tend to publicly get themselves out there, so it is an area that is difficult to find concrete evidence of, but I believe that the anecdotal evidence and the gaps in the law make it not an unreasonable position.

Senator McKIM: In terms of a mechanism for this to happen, you're basically, as I understand it, arguing that people who want to launder money through real estate would effectively be competing at auction or competing in the marketplace with ordinary Australians who want to buy a home, and that increase in demand, if you like, would be one of the things that would be driving prices up?

Ms Lillywhite: I think it's a contributing factor, and I think it's also worth noting again that there are professional service firms who will act on behalf of others to purchase property in Australia. I happen to be in the situation where I'm selling my own family home this weekend at auction and was surprised to learn that there was an expression of interest in our family home from a professional service firm based in Sydney that has advised our real estate agent that it is acting on behalf of a high net worth individual based overseas. You can imagine what I thought when I heard that.

Senator McKIM: Again—

Senator O'NEILL: You probably thought a lot more and knew a lot more about it than most people who are putting their property in the hands of a real estate agent. That's part of the concern really, isn't it, that a lot of people are doing this and they have no idea what's going on because they think the government is looking after it? Sorry, Senator McKim. Some of this evidence is quite shocking.

Senator McKIM: It's not shocking to me that companies have seen a business opportunity in this space and are taking advantage of it. It's been going on in many years in this country and it's one of the reasons that the Greens have been campaigning strongly for tranche 2. I want to ask, Ms Lillywhite, about an ultimate beneficial ownership register. Can you explain in really broad terms to the committee how introducing such a register would help to detect money laundering and terrorism financing and how it would work? Who would be captured, who would host the register, how would people get access to information on the register?

Ms Lillywhite: There are lots of different models around the world. As an opening comment I'd say that this is the trend. The introduction of a beneficial ownership register is the global trend. FATF itself is reviewing its own recommendation with regard to beneficial ownership disclosure. There's a recent consultation that they've conducted and they're looking at potentially making stronger provisions around that. The EU, for example, has introduced its own directive which requires EU countries to put in place a beneficial ownership disclosure register. It's one reason why, for example, the UK has one of the more sophisticated systems. It's not perfect, but it's a lot better than what we've got. Encouragingly, Canada recently announced that they would be putting in place a public register of beneficial ownership with a significant budget allocation to do so. There currently isn't a one-size-fits-all, and different countries have made different progress if you like. There are some countries that have beneficial ownership disclosure laws. There are others that have a beneficial ownership register, such as the UK, EU countries, Slovakia, for example. Then there are countries such as Australia, Mongolia and Sierra Leone that have said, 'Well, we might think about introducing one.' They made commitments at the UK anti-bribery summit in 2016 and they made commitments—different governments, I might add, not just our current government—at the G20 through the anti-corruption working group and through the UN Convention against Corruption. Even our own Open Government Partnership commitments were made to introduce a beneficial ownership register, and yet it just hasn't happened.

To go back to what Russell said on this point: the purpose of a beneficial ownership register is to try to give some visibility as to who's actually pulling the strings, who's in the driving seat, who's going to benefit either from a business transaction or through having a company registered in Australia. It also provides greater visibility of whether or not, if you know who the ultimate beneficiary is, that person is in fact a politically exposed person or the son or daughter of a high-ranking general in a particular country.

As to how it will operate: undoubtedly, there is work to be done on determining that. As I said, there are many different models that can be used. I think the critical point, though, is that it needs to be a public register. In Australia to date there has been some talk about introducing a beneficial ownership register which is only available to certain government departments—for example, to the ATO, for the purposes of trying to identify

phoenixing or tax evasion. But that's not enough; we actually need to know who will ultimately benefit from these transactions. Perhaps Russell has something to add to that.

CHAIR: It will need to be very brief, Mr Wilson, because we're out of time, I'm afraid.

Mr Wilson: I have nothing really to add with regard to that, but may I just add this—and the committee may well be aware of it: corruption and dealing with the proceeds of corruption have actually been made national security issues recently by the Biden administration. I think that's a relevant point because now it's not just financial integrity or sustainable development but about far bigger and broader issues as well.

CHAIR: Thank you very much.

Senator O'NEILL: Chair, may I just indicate that I'll have some questions about AUSTRAC? You made a number of comments about AUSTRAC and your concern about their inability to notice systemic and large-scale breaches, so there are questions on notice to come.

CHAIR: No problems. You don't mind taking questions on notice about that?

Mr Wilson: That's fine.

CHAIR: Do the best you can to answer them—that would be terrific. Thank you very much for your appearance today and for giving us your time.

O'SHAUGHNESSY, Mr Aidan, Executive Director, Policy, Australian Banking Association [by video link]

[14:32]

CHAIR: I welcome the representative from the Australian Banking Association by videoconference. I thank you for taking the time to give us evidence today. I trust that information on parliamentary privilege has been provided to you—is that the case?

Mr O'Shaughnessy: Yes.

CHAIR: The committee has received your submission, No. 22. Do you wish to make any corrections or make further additions?

Mr O'Shaughnessy: I have a short opening statement.

CHAIR: Would you like to proceed with your brief opening statement?

Mr O'Shaughnessy: Thank you. The Australian Banking Association thanks the committee for this opportunity to appear and welcomes the committee's considered approach in examining how Australia's AML/CTF regulatory arrangements can be streamlined, modernised and strengthened.

The ABA has six recommendations to enhance the effectiveness of the Anti-Money Laundering and Counter-Terrorism Financing Act, which I'm happy to talk to you about today. These include, firstly, to simplify the AML/CTF act and rules, which remain largely unchanged from when they were first enacted in 2006, almost 15 years ago. In particular, the requirements relating to customary due diligence are overly complicated. Simplification and modernisation of know-your-customer obligations is one area where this would have the greatest regulatory impact.

Secondly, make both the rules and the act technology agnostic. The third recommendation is that, concurrently with the simplification and modernisation of the act and rules, Australia adopts the FATF recommendations 22, 23 and 28, which relate to designated non-financial businesses and professions. The fourth recommendations is that Australia adopt the FATF guidance of permitting simplified due diligence in certain situations. The ABA would also like to see Australia aligning the Australian domestic AML regime with the Wolfsberg Anti-Money Laundering Principles for Correspondent Banking. Finally, the ABA would welcome Australia updating and modernising the Australian international fund transfer instruction reporting obligations, also known as IFTIs. In addition to simplification and modification of the legislation, the provision of more advice and guidance by AUSTRAC for its regulated population would provide greater certainty on how reporting entities can best comply with AML obligations. An expansion of AUSTRAC guidance would also assist in reducing regulatory costs for new and existing reporting entities.

The ABA consulted on the scope of this inquiry with its member banks before making a submission. The committee's terms of reference focus on matters of AML/CTF policy and adherence to international standards, as well as matters that relate to non-financial businesses and professions and the detection and prevention of money-laundering outside the banking sector. It is the role of parliament to review policy, the performance of AUSTRAC and Australia's AML/CTF laws as they relate to other jurisdictions. It is not for individual banks to have a view on these matters, and that is why the Australian Banking Association made a submission and will give evidence on behalf of our members today. I'm happy to take your questions.

CHAIR: Thank you very much, Mr O'Shaughnessy. Senator McKim, would you like to kick off for the committee please.

Senator McKIM: Thanks, Chair; and thanks, Mr O'Shaughnessy, for your appearance today. AUSTRAC said in a recent risk assessment of banks that they expect banks to report any suspicions of professional facilitators or enabling parties to illicit activity. Are you aware of that expectation from AUSTRAC?

Mr O'Shaughnessy: All of the provisions in the AML/CTF Act apply to tranche 1, which is the financial institutions and casinos. My understanding is that those obligations are naturally something banks would report to AUSTRAC through a suspicious matter report. Last year, AUSTRAC received over 300,000 suspicious matter reports, so that is something I think would happen on a daily basis.

Senator McKIM: When I asked AUSTRAC about this at a recent Senate committee hearing, they basically said they are relying on banks to tell them when lawyers, accountants and real estate agents might be facilitating money laundering because lawyers, accountants and real estate agents are actually not covered under the act, as you know and as you've submitted in tranche 2. How confident are you that banks can actually identify suspicious activity by lawyers, accountants and real estate agents, and would you agree that it would be preferable for the reporting requirements to be placed on those professions rather than using banks as the de facto reporters?

Mr O'Shaughnessy: I think they take their obligations under the AML/CTF Act incredibly seriously, so when they form a view or a suspicion about a particular transaction or customer they will report it regardless of what profession that customer is. In taking these obligations seriously, it has been the industry's view that implementing tranche 2 would be good for Australia because it would make us compliant with the FATF standards.

Senator McKIM: Given what AUSTRAC have said, do you think it would it reduce the regulatory burden on banks if banks didn't have to concern themselves with reporting on lawyers, accountants and real estates, the gatekeeper professions caught in tranche 2, because those professions were required to report themselves rather than the banks having to report?

Mr O'Shaughnessy: I think it goes to my first recommendation. The customer due diligence requirements and obligations under the act are 15 years old. In that time, the legislation hasn't changed much but technology has come ahead in leaps and bounds. If this committee was minded to recommend that both the act and the rules were simplified, particularly the customer due diligence rules, that would reduce the regulatory burden not just for banks but also for the 14,000 existing reporting entities and any new reporting entities that would come on board. I heard this morning from a number of consultants in the industry about the different technologies that are being used already in Australia and overseas, and they have had a significant impact in reducing the costs of complying with the legislation.

Senator McKIM: If tranche 2 were included in the AML/CTF Act, and the gatekeepers were brought within the scope of that legislation, would that reduce the risks to Australian banks? Specifically, would it reduce the risks of Australian banks inadvertently assisting money laundering and terrorism financing?

Mr O'Shaughnessy: Australian banks, as we stand today, take our obligations incredibly seriously. We're trying to meet not only the AUSTRAC standards but also the FATF standards—and we also try to exceed those. As we look at the legislation as it stands today, strengthening it, simplifying it and modernising it will go to meeting the objective of the AML/CTF regime.

Senator O'NEILL: I am disappointed that we aren't hearing from some of your members. I had hoped that we would have heard from the big four because they have insights into how this is being managed that are not available for people who are from the DNFBP sector. I'm keen to understand how that's being implemented, what the costs have been and what new technologies are being employed as the banking sector comes to take it seriously. I have a few questions that you might need to take on notice. Firstly, could you find out how much the banks have invested per annum since 2013 as a lump sum in meeting the FATF requirements?

Mr O'Shaughnessy: I'm happy to do so.

Senator O'NEILL: Could you do that for that period—and per annum, so we can see if there's been an escalation. I suspect there was quite a significant investment post the AUSTRAC cases regarding Westpac and the National Australia Bank, and technology changes will have led to different opportunities. I'm keen to understand those figures per annum, particularly by institution, for Westpac, Commonwealth, ANZ, NAB, Macquarie and St George—because they're the biggest ones—to get a sense of the scale, the cost and the degree of activity that's happening.

Mr O'Shaughnessy: I'm happy to do so.

Senator O'NEILL: That was my reason for wanting the banks to be here. I want to acknowledge that, in the absence of government action to implement tranche 2, the banks really are the thin blue line and are providing the heavy lifting in terms of any action on money laundering and counterterrorism financing.

Other witnesses have given evidence discussing the effectiveness and the long-term sustainability of self-reporting processes. What has been the experience of the banking sector of the effectiveness of self-reporting and the regulatory burden that places on your business? Is that really your role? What should AUSTRAC be doing in terms of detecting?

Mr O'Shaughnessy: There are two points here: one is my first recommendation and the second is how AUSTRAC uses information. On the first point, for self-reporting, I think banks appreciate and understand the objectives of the legislation and want to meet those objectives. My first recommendation is that the legislation is 15 years old and needs to be simplified in areas around allowing not just banks but the 14,000 reporting entities to use new technologies to report information in a more efficient manner and do customer due diligence.

The second point is that self-reporting to AUSTRAC from the 14,000 reporting entities builds the full picture for AUSTRAC and law enforcement. It is unlikely that one bank will have the whole picture, and multiple entities feeding information into AUSTRAC and other law enforcement entities allows those enforcement agencies to build the whole picture.

Senator O'NEILL: How much, in your view, would the whole process in Australia be improved if tranche 2 had already been implemented? What would the impact on banks be with the implementation of tranche 2?

Mr O'Shaughnessy: It is an interesting question because I am not quite sure much would change with banks. There is a culture of positive compliance with international standards in the banking sector because we are reliant on overseas markets, so when it comes to capital and liquidity, we try and adhere to or exceed the requirements of capital and liquidity. When it comes to international accounting standards, we adopt the international standards into the Australian rules. When it comes to AML/CTF obligations, we try to meet and exceed the FATF standards. When we go overseas and say, 'We seek the funds that Australians need to buy their home or purchase their car,' the overseas investors always have a checklist of all these different obligations that are imposed on banks, and we try to demonstrate how we comply with those. I recognise that FATF have rated us non-compliant in certain areas. Where that is the case, our members provide further information to overseas investors so that those overseas investors are satisfied that Australia's banking system is secure, robust, well capitalised and takes its obligations seriously.

Senator O'NEILL: So there is a regulatory compliance burden placed on Australian entities, the 14,000 already captured, because of doubt about our transparency and our compliance with FATF. Is that correct?

Mr O'Shaughnessy: Having the FATF rating on certain recommendations change from non-compliant to compliant would certainly be more efficient for banks as they seek funds overseas. But right now, we're meeting those obligations through our own efforts to work with our investors in overseas markets to show how we comply with both the letter of the law and the objectives of the money laundering legislation.

Senator O'NEILL: I don't want a verbal you but I want to be clear here. Because Australia has so many elements that are non-compliant, it requires workarounds by the banks to be able to access international capital and comply?

Mr O'Shaughnessy: I would not say 'workaround'. It would be for the Australian banks demonstrating to overseas markets the steps that banks here take to ensure that we meet both the spirit and the objectives of the legislation. I would call it more 'paperwork' than anything else.

Senator O'NEILL: So it is inefficient and it definitely doesn't meet your test of simplification, which you said was the priority that should occur?

Mr O'Shaughnessy: The preference would be we will continue to meet our obligations but it might become a bit more efficient if FATF gave us a compliant rating.

Senator O'NEILL: If time allows, I will get to the 2016 plan of work from the government. I think 49 of the 84 recommendations are ongoing or outstanding. That leads to a concern about Australia's capacity to stay out of the grey-listing zone with FATF. What does grey listing mean? What impact would that have on the efficiency of business for Australia, if we end up on a grey list?

Mr O'Shaughnessy: I was listening to some of the witnesses this morning, who described that a grey listing might require increased monitoring of Australia by overseas jurisdictions. When it comes to the banking sector, as I said, we take AML/CTF obligations quite seriously. Year on year, as we seek the funds to provide credit to Australians, we demonstrate to overseas investors how we comply with banking capital and liquidity requirements, accounting requirements and financial stability board reporting requirements and AML/CTF obligations. So we are already doing the work there.

Senator O'NEILL: You are doing the work but there is a tranche that has not yet been advanced. It will put the whole ecosystem at risk, if the government doesn't push on with tranche 2. Given that we have acknowledged there has been significant investment by banks made in recent years into AML and CTF compliance and the reliance of AUSTRAC on banking SMRs and other intelligence, does the ABA or your membership believe that criminals will instead target non-regulated sectors and move their money beyond the banking sector? If so, do you have any evidence of this taking place?

Mr O'Shaughnessy: I would not have any evidence of that taking place, sorry.

Senator O'NEILL: Do you have a view about the likelihood of money starting to move away from you more regulated, more oversighted flows of money into the less observed and less reported sectors of the economy?

Mr O'Shaughnessy: Listening to the law enforcement agencies this morning, that would be a logical assumption.

Senator O'NEILL: The ABA submission states that the sector supports the implementation of tranche 2 as a priority, as have most of the witnesses today. What benefits do you see for Australia as a destination for clean

international capital if these reforms are passed? Could you also reflect on that in terms of Australia's positioning in Asia and the Asia-Pacific region as a significant financial services hub?

Mr O'Shaughnessy: Australia's position in Asia, in the sphere of AML/CTF, there is credit to AUSTRAC. Its financial intelligence unit is recognised as being possibly one of the best in the world. We've observed over the last few years the amount of work it has done with our neighbours in Asia, which not only lifts standards here in Australia but has lifted standards with our neighbours as well. Right now, when Australian banks go to overseas funders to seek the funds we need to serve Australians, we are seen as a strong and solid banking system. We have gone through the GFC and we have just gone through a global pandemic, and both of those have demonstrated not just here at home but overseas that we have a banking system that is able to solid and stable. Throughout that time, part of that process of demonstrating we are solid and stable has been banks doing individual work with their overseas investors to demonstrate how they comply with capital, liquidity, accounting and AML obligations.

Senator O'NEILL: Your submission supports that complete implementation of the recommendations from the 2016 statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. You indicated at items 22, 23 and 28 in your opening statement were critical recommendations that remain outstanding from that review. Do you want to speak to that and give us a sense the impact of the failure to regulate?

Mr O'Shaughnessy: Recommendations 22 and 23 relate to designated non-financial businesses and professions. Recommendation 22 is obviously the customary due diligence obligation, and recommendation 23 is the reporting of a suspicious matter to AUSTRAC. Recommendation 28 goes more to the supervision model applied. I actually think right now is almost the perfect time. We have all been conscious in Australia about putting red tape and regulatory costs on small business. There are 14,000 entities already reporting to AUSTRAC, so they suffer that the cost of the regulatory burden there, hence the recommendation we made to simplify the customer due diligence rules, which will actually remove much of the red tape because you can use technology to solve the problem for these small businesses. If I look at the other jurisdictions Australia is best to compared to, like the United Kingdom, the European Union and our trading partners in Singapore, they have implemented tranche 2. We can learn from all of those jurisdictions, New Zealand included, on how they have used technology to actually make it a much simpler implementation and not a very expensive one so that the benefits of implementing it now using technology far outweigh the costs. I listened to some of the experts this morning estimating the cost to New Zealand. It was always a concern that it would be a regulatory impost, and a significant one, on these professions, but I think, given the advancement of technologies, used not just by banks today but across the economy, the cost is significantly lower and the benefit remains.

Senator O'NEILL: Given the importance of detection and given evidence we've had today about how important it is to have CEOs and board members cognisant of responsibilities, even being personally responsible for making sure that AML/CTF requirements are adhered to, I want to point to an article by Charlotte Grieve in the *Sydney Morning Herald* on 27 August this year which talked about incentives to cut corners when the employment of contractors becomes a financial risk. I recall evidence that we received during the auditor's enquiry that banks were sometimes actually just bringing in staff from an auditing company, with the auditing company making claims that they had high-level counterterrorism finance analysis skills, which were found to be somewhat lacking. Is it important to have staff within the bank carefully monitored, perhaps even with KPIs, to make sure that they are doing their work properly, rather than leaving it to chance and external contractors coming in?

Mr O'Shaughnessy: I'm not aware of that article. I'm afraid I can't comment without reading it.

Senator O'NEILL: We might send that one to you on notice, Mr O'Shaughnessy, just to get your view.

Mr O'Shaughnessy: No problem.

Senator O'NEILL: With regard to AUSTRAC, I have a couple of quick questions. One of the things I noticed when I looked at the enforceable undertakings was that there weren't very many of them on the AUSTRAC website. There was one about a pub in Bradbury that was quite old. Bradbury is a suburb of outer western Sydney in New South Wales. It was George Thomas Hotels. It went to the level of training and vetting to make sure that people understand their responsibilities. I want to go to the level of vetting that banks undertake to ensure their own staff are not involved in using the bank's systems for money laundering. How common is it that banks have to report their own staff to law enforcement for breaches?

Mr O'Shaughnessy: I can assure you the banks take their anti-money-laundering counterterrorism financing obligations very seriously. We have a tough regulator who's willing to take action. We've seen that in recent years. There has never been greater focus and attention on this. A lot of banks are risk managers. Whether it is

money-laundering risk or operational risk or credit risk, they are risk managers, so every process, policy and procedure in a bank is about making sure that the right steps are followed. It's not just trusting your stuff; it's also verifying that trust. You trust your staff to take steps in accordance with the policy, but there is verifying as well, through processes like internal audit and elsewhere. If there was ever a matter where an issue was found, you would expect banks would take the appropriate action and report it to either law enforcement or AUSTRAC, or both.

Senator O'NEILL: So we're not seeing in-house management of issues where staff have done the wrong thing. Would they always be reported, or would it be treated quietly as an in-house manner? What happens if there's whistleblowing? We are seeing a concern about the culture of whistleblowing being dissuaded.

Mr O'Shaughnessy: I don't know that I would agree with that view. In recent years, the Australian Banking Association, as part of our Better Banking program, introduced whistleblowing protection within the industry, and that has been bedded down over recent times. I think that's actually working well and there is actually a culture of speaking up in the industry. We have just come out of a royal commission, and I think we fully appreciating what was revealed during that royal commission and we have learned the lesson that, if you see something, you should speak up.

Senator O'NEILL: Mr O'Shaughnessy, I appreciate the fact that the policies are in place, but I still hear from whistleblowers who are concerned about being shut down right across the financial services sector, not just in banking, so I don't know that all is well with the world there just ye I want to go to the level of collaboration between the major banks' cybersecurity and anti-money-laundering teams. What's the level of that, and is the ABA concerned about Australian bank accounts being sold on the dark web?

Mr O'Shaughnessy: This year Home Affairs introduced quite a large piece of legislation called critical infrastructure legislation, which looks at the topic of cybersecurity. Included in that, they're looking at different sectors across the economy. Looking at those critical sectors that need to be addressed first it isn't banks because, in the engagement with the banking regulators and banks themselves, it is recognised that banks take cybersecurity incredibly seriously. It is one of the topics, including AML, that dominates the conversation of board members in all of our banks because it is a clear and present risk. In interviews with CEOs, when they're talking about this, they will talk about a huge number of phishing attacks on banks' software and hardware and services, so it is front and centre for all banks. They take it incredibly seriously.

It's good that Home Affairs is actually introducing this legislation. We need to get it right, but it is critical that the banking sector and other sectors cooperate with the Cyber Security Centre, ReportCyber and others to make sure that these types of risks are managed. I'll go back to an earlier point that banks are risk managers—so managing cyber-risk, AML risk, [inaudible] risk and credit risk is the culture within banks. So they don't shy away from these dangers. They actually say, 'How do we mitigate this risk or prevent this risk from happening?'

Senator O'NEILL: The bank accounts that are being sold on the dark web, what's the scale of that? Is that a new place that money laundering is occurring?

Mr O'Shaughnessy: I understand the question, but I'm not sure quite what you're referring to. Are you referring to an article or a paper?

Senator O'NEILL: No, nothing in particular, but I understand that there are reports of Australian bank accounts being sold on the dark web.

Mr O'Shaughnessy: I'm not aware of that report. I'm happy to take that on notice and have a look at that for you.

Senator O'NEILL: Thank you. It would be good if you could do that and find out a little detail about how that is detected and what has been going on with that, and whether there's a threshold for reporting customer accounts on the dark web to the privacy commission or the Australian Information Commissioner.

I want to also go to the issue of money laundering through cryptocurrencies and some changing interactions between different parts of your membership in relation to engaging with cryptocurrencies. I know that some cryptocurrencies have just been cut off and shut down. The CBA look like they have taken significant steps lately to engage with that, allegedly to engage with the youth market. What's the risk of cryptocurrency with regard to money laundering?

Mr O'Shaughnessy: It's a fantastic piece of technology and a concept that I think everybody across the finance centre is looking at—cryptocurrencies, blockchain, and the benefits they can offer. The simplest issue with cryptocurrencies is its anonymity. A basic tenet or a core obligation of the AML/CTF Act is: know where the money's coming from, know where the money's going to. And because certain types of virtual assets have a level of anonymity, or can be traded on exchanges with a level of anonymity, it does not allow traditional players in the

finance sector to report, with confidence, that they know where the money has come from and they know where the money is going to. That's the problem the entire industry, not just in Australia but around the world, is grappling with.

I do note that in the last two months the FATF have finalised or updated their guidance on virtual asset service providers. That is something I'm hoping that Australia will look at and adopt in the coming years. I think there is a desire on the part of certain operators within the digital assets and digital currency space to be brought into the regulatory sphere. I think that will help us grow that environment once we can together figure out how best to ensure that Australia remains protected but also embrace what these technologies can offer us.

Senator O'NEILL: That's a question on notice, then, probably for the Commonwealth Bank, and any other banks that are members of your association and are adapting their businesses to engage with cryptocurrencies: how are they overcoming that threshold issue of the identity of that money and its movement through cryptocurrencies?

Mr O'Shaughnessy: I can probably answer that right now. The CBA initiative is in pilot stage, and it is working in close cooperation with regulators. In that pilot are 10 digital assets, and they are traded within that safe environment. There's another bank, called Revolut, which is applying for a banking licence in Australia. They have what they call the garden wall; their customers are within the garden as well. So there is not actually an answer to these problems yet, but I think it's just sitting down in real-life scenarios with real-life customers and figuring out: 'Well, if we were to recommend something in Australia, what could it look like?'

Senator O'NEILL: Is that actually a regulatory sandbox approach? I asked questions about that earlier today. Is that, by default, a regulatory sandbox approach that's being undertaken by the private sector in the absence of government action?

Mr O'Shaughnessy: I think you could call it something similar to that, yes. It is a pilot that is looking at saying: 'It is in a controlled environment. How best do we ensure that it's a good service for customers but also meet our obligations and, as problems arise, engage with those outside the sandbox, like the regulators, to say, 'Here's a scenario; how should we treat this?'"

Senator O'NEILL: That's very helpful. Thank you very much.

Senator SCARR: Thank you, Mr O'Shaughnessy, for attending today. There are three areas I'd like to cover with you. The first relates to debanking and derisking. In conjunction with the introduction of AML procedures, a phenomenon has arisen where customers in particular sectors which the banking industry might see as more high-risk have suffered debanking. Is the Australian Banking Association looking at whether or not it's getting the balance right between meeting its obligations with respect to AML requirements and making sure that legitimate businesses and legitimate customers aren't being prejudiced by overzealous debanking processes?

Mr O'Shaughnessy: I note the release from AUSTRAC last week, which called debanking a complex and global problem. The issue pretty much rests with anybody who reports to AUSTRAC. The banks that report to AUSTRAC must be able to tell AUSTRAC and other law enforcement bodies where the money has come from and where it is going. When you have a bank which has a direct relationship with the customer, that is relatively easy: you can identify who the customer is, the source of wealth and where it's going. It becomes more complex for certain parts of the economy where a bank's customer has customers. They might be—I'll give the example we've just discussed—trading virtual currencies. So it has become very difficult for a bank or another reporting entity to say with confidence, 'With that customer, who's trading with other customers that we can't see, we know where the money has come from and where it is going.'

So it becomes very hard, with these particular sectors, to balance adhering to the AML/CTF legislation. I'll go back to my earlier point: the legislation is 15 years old. We would love to see it simplified and modernised to see if we can address some of these issues in debanking. This is not the case in every sector. Some sectors are probably too high-risk for banks, because they have a certain risk appetite. Some of our banks have obligations imposed on them by their overseas partners in correspondent banking. For some sectors, satisfying legislative requirements like sanctions or AML/CTF may be impossible given the anonymity of certain products and services used in those sectors.

Senator SCARR: One of the examples we heard at a Senate select committee looking at the fintech regtech industry was that a lady entrepreneur had set up bitcoin business and a bank had made a decision to debank her business, but, after that decision was made, she had tremendous difficulty in her personal capacity. She had been a director and owner of the bitcoin business. She then had issues in her personal capacity opening a bank account with anyone. Obviously, that raised issues in terms of her just getting things as simple as utilities connected or renting premises. Are you aware of those sorts of issues that are in the system, and how do we address those?

From my perspective, hearing the testimony from that person—she was absolutely beside herself and no-one would tell her why they wouldn't open a bank account with her. She thought that it was because she previously had her own bitcoin business that had been debanked, for some of those reasons you probably just outlined, but it was then impacting her as an individual. There was no evidence before the committee she'd been involved in anything untoward, but she was suffering from this phenomenon of debanking.

Mr O'Shaughnessy: There are a number of things. I get how some customers might be frustrated if a bank they've been with says, 'We can no longer offer you services.' There's a section of the AML/CTF Act, section 123, which is the tipping-off provision. So, once a bank or any reporting entity forms a suspicion and reports that suspicion to AUSTRAC, they must not tip off the company or the individual on which that suspicion has been formed. The purpose of that is the report goes to AUSTRAC and AUSTRAC shares it with law enforcement, and law enforcement will then make the choice and contact the bank and say, 'Let the activity continue, because we want to see whether money goes.' So there's this obligation if the bank forms a suspicion and reports it to AUSTRAC they cannot tell the individual about the suspicion being formed. If they do, they breach the act. I think it is actually a criminal offence if an individual in the bank does it, so the consequences of a bank doing it are severe. But I do fully appreciate, at the other end, the customer is told nothing and has no visibility of why their account has been closed. That's one of the areas. There are other examples of why a bank account would be closed.

Senator SCARR: I've two more areas I want to touch upon. In your submission from the ABA, 27 August 2021, there's a paragraph, which I'll quote for the benefit of everyone:

Should the above reforms progress, the current AUSTRAC industry contribution model will also need updating, such that it is representative of the AUSTRAC regulated population—

You didn't cover that in your opening statement, Mr O'Shaughnessy. I'm wondering what would you propose as part of that? What's the ABA actually proposing in practice in terms of who bears what cost? From my perspective, obviously the banks have economies of scale and the expertise. At the other end of the spectrum, which I continue to refer to in the course of these proceedings, is the single law practitioner who's running a little conveyancing business and he's trying to grapple with the regulatory burden and do everything else they have to do. Where should the cost of this fall in a fair and equitable way?

Mr O'Shaughnessy: A good question. Banks do have economies of scales, but I would probably argue that when it comes to the AML/CTF legislation it needs to modernise so that all reporting entities can use new technologies to adhere to their obligations. So we may have economies of scale, but the cost of administering and adhering to the obligations under the act are significant. If, in that review of the AML/CTF Act, the role and regulated population of AUSTRAC gets expanded, the ask is simply that the government adheres to their cost recovery guidelines, that those that generate the cost of regulation bear the cost of regulation. Right now—I keep repeating this figure—AUSTRAC has over 14,000 reporting entities reporting to AUSTRAC. Of those, only 500 actually pay the AUSTRAC levy. So 500 entities out of 14,000 fund AUSTRAC in its entirety, and that is an issue—that, if AUSTRAC changes its role or expands its role, it has to be a much more equitable model on how it's funded. I do note that in the last decade, AUSTRAC, due to the work of banks and other reporting entities, has allowed the tax office to issue notices for an extra $2.9 billion in tax, which I think has been recovered. That would be one suggestion that, rather than having industry fund AUSTRAC, the recoveries, the industry and the reporting entities facilitate, in partnership with AUSTRAC, can be used to fund AUSTRAC and then fight further financial crime.

Senator SCARR: This is my last question. This has been a consistent theme through your evidence in terms of the need to modernise and simplify procedures under our existing AML legislation. To the extent that we look at rolling out the legislation, the tranche 2, is it your evidence that we should undertake that modernisation and simplification process in conjunction with rolling it out to tranche 2 to make sure that the process is as efficient as possible as we extend it across to thousands and thousands of additional businesses?

Mr O'Shaughnessy: Absolutely, Senator. And not just that; it would also benefit the existing 14,000 reporting entities. Modernising the legislation will benefit existing and new reporting entities. So, absolutely, yes.

CHAIR: Thank you very much, Mr O'Shaughnessy.

Proceedings suspended from 15:17 to 15:25

MARSHAN, Mr Benjamin, Head of Policy, Financial Planning Association of Australia [by video link]

McWILLIAMS, Mrs Karen, Business Reform Leader, Chartered Accountants Australia and New Zealand [by video link]

STYLIANOU, Ms Vicki, Group Executive, Advocacy and Policy, Institute of Public Accountants

WALLER, Mrs Keddie, Head of Public Practice and SME, CPA Australia [by video link]

CHAIR: Welcome. I thank you all for giving us your time today. I trust that parliamentary privilege information has been provided to you; there's additional material available if you require it. We have here submission Nos 5, 9, 11 and 37. Are there any additions or corrections to those submissions? Would anyone like to make any changes? All good? Okay. Would each or any of you like to make an opening statement?

Ms Stylianou: Thank you, Chair. I will start and then pass on to my colleagues. Thank you for the invitation to present to the committee today. Firstly, I would like to acknowledge the traditional custodians of the lands of Australia and their continued connection with the land, waterways and communities and pay our respects to their elders past, present and emerging. Chartered Accountants Australia and New Zealand, CPA Australia, Financial Planning Association of Australia and Institute of Public Accountants together represent over 350,000 finance professionals in Australia, New Zealand and around the world. Through our combined membership, we represent over 80 per cent of financial planners who have actively been involved in the regime for over 10 years.

We welcome moves to strengthen regulations that fight money laundering and terrorism financing. Money laundering and terrorism financing are illegal practices that severely damage our financial system. We support the global initiatives to combat this activity and recognise the importance of Australia meeting its obligations as a member of the Financial Action Task Force. As professional associations for accountants and financial planners, we are committed to acting in the public interest and contributing to a robust system that prevents criminals from using Australia for illegal activities. Our members work across a wide range of sectors, including in practice, from large firms to sole practitioners, large financial services providers to self-licensed advice businesses; in business, from major multinationals to SMEs; the public sector; not-for-profits; and academia. We hold our members to high professional and ethical standards, including the requirement to undertake a degree of customer due diligence, to meet recordkeeping requirements and to undertake screening for and be aware of suspicious behaviour by new and existing clients.

Lastly, I refer to the IPA's office in the UK, which is an authorised supervisor for AML purposes and supervises approximately 2,000 member firms. We know from their experience that a proportionate, risk based approach is essential and that an overly complex system, such as in the UK, has resulted in significant compliance costs in order to meet the AML/CTF obligations. I now hand over to Keddie Waller from CPA Australia.

CHAIR: Thank you.

Mrs Waller: In our submissions, we have aimed to assist with shaping the future design and implementation of the expansion of the regime to include the accounting profession, balancing regulation with risk and strengthening our members' contribution to detecting and recording potential money laundering and terrorism financing. We note the importance of undertaking an analysis of the AML/CTF risks compared to the cost of compliance for businesses that would be captured, including if applicable any industry contribution levy. It is important to be cognisant that money laundering and terrorism financing risk is proportionate to the size of a business; the number, nature and location of clients; and the value of transactions, so policy responses should therefore be pragmatic.

For example, we are supportive of imposing the obligation to undertake customer due diligence, or CDD, obligations on all providers of accounting services. Not only should such an obligation reduce the risk of money laundering and terrorism financing but it is also good practice for firms to verify their customers' identities. However, the ATO and the Tax Practitioners Board recently released client verification guidelines that align with the AML/CTF CDD requirements, meaning that tax practitioners are now performing these checks. Furthermore, professional accountants have additional obligations under their code of ethics which require that they must respond when they become aware of noncompliance or suspected noncompliance with laws and regulations. This includes money laundering, terrorism financing and proceeds of crime. It is therefore evident that some of the AML/CTF requirements and obligations significantly overlap with or emulate existing professional requirements imposed on the members of the accounting profession by their respective professional bodies. Importantly, these obligations only apply to qualified accountants, as opposed to those who may call themselves accountants but who are not members of a professional accounting body. I would now like to hand to Karen McWilliams from Chartered Accountants Australia and New Zealand.

Mrs McWilliams: In developing our responses to the committee, we engaged with our respective memberships within Australia and overseas, particularly in New Zealand, where our members are already subject to requirements under New Zealand's AML/CFT legislation. From their experience, there are some critical factors that we consider will assist with achieving the greatest benefit from tranche 2. Firstly, an assessment should be undertaken on which existing mechanisms have led to the successful identification of money laundering and terrorism financing activity. Such an assessment should then be used as a basis to determine any future requirements and obligations for accountants.

Secondly, as Vicki and Keddie have highlighted, our members are already subject to a wide range of existing professional ethical standards. The inclusion of accountants should take into consideration existing regulatory obligations and industry oversight that could be effectively leveraged. The duplication of existing compliance obligations on accountants would exacerbate any compliance burden and associated cost, particularly for our small-practice members. An unintended consequence could be higher costs to small businesses and consumers for accounting services as small practices seek to pass on their increased costs. Further, small practices may cease to offer designated services if compliance obligations are excessive, which may in turn inadvertently displace the risk of money laundering and terrorism financing to service providers that are not members of a professional body or are outside the regime. We recommend a cost-benefit analysis of the regulatory options for accountants is undertaken, including if applicable any industry contribution levy.

Thirdly, there should be extensive consultation with a broad range of stakeholders throughout the process, including raising awareness with consumers. This will contribute to a more effective and efficient regime and establish a collaborative approach to increasing the resilience of Australia's financial system to criminal threats. Critically, the design must recognise accountants are inherently different from financial institutions and will require specific amendments to the regime, rather than simply being captured under the current regime. I'd now like to hand over to Ben, representing the Financial Planning Association.

Mr Marshan: From the perspective of Financial Planning Association members, financial planners have been subject to part B programs for over 10 years, and have been outsourced professionals for the part A programs of financial service product issuers. Our members have benefited greatly from the willingness of product issuers to develop and adopt an industry standard ID verification form through collaboration between the Financial Services Council and the FPA. Unfortunately, not all issuers have adopted the industry standards—superannuation funds in particular—and though the government has added financial planners to the statutory declaration's approved witness list not all issuers will accept financial planners ID verifying their clients, despite the professional relationship they have with their clients.

An emerging issue we would like to see supported by the government and AUSTRAC is a technology-first ID verification process used by part A entities to support the know-your-client obligations. Despite significant advances in ID verification services over the past 10 years, virtually no product providers will accept a technology enabled ID verification service, and they would prefer to still receive a certified photocopy and a wet signature on a form. While this is generally frustrating, the current pandemic has shown the issue with this approach when trying to support Australian consumers to manage their financial affairs.

In conclusion, while Australia has comprehensive and tough anti-money-laundering and proceeds-of-crime laws in place, further efforts to prevent financial crime are a good thing. As professional bodies, we stand ready to assist with this challenge, and we welcome the chance to discuss our submissions and these issues with you here today.

Senator SCARR: I thank you all for attending today. I think you're the first witnesses we've had during the course of the day who are representing people who form tranche 2 and who will actually be impacted by the rolling out of the tranche 2 reforms. I think your evidence is going to be important—as has been all the evidence we have heard during the course of today.

Does there need to be a simplification and a modernisation of the know-your-client and customer due diligence requirements under the legislation prior to rolling it out to tranche 2? As part of that modernisation process, does consideration need to be given to the specific circumstances of each of the professional bodies that you represent to make it fit for purpose for each profession?

Mrs McWilliams: I think I'm probably best to respond to the second part of your question, which is around whether it requires a tailored response. As I indicated, accountants will need to have a tailored response to this. They're not the same as financial institutions in that their interactions with their clients are different. They are already subject to a wide range of obligations under existing ethical and professional standards, and as Keddie indicated, they're already under the ATO as tax practitioners. All of those things need to be taken into account. I

suspect Ben is best placed to specifically comment on the know-your-client CDD and how that should perhaps be modernised before rolling out.

Mr Marshan: As I noted in my opening, financial planners have been subject to part B obligations under the AML/CTF Act, and have been doing the know-your-client requirements on behalf of product issuers for over 10 years. I'll probably take a slightly contradictory view to my colleagues in that financial planners are under so much regulatory change at the moment. The know-your-client obligations, the ID verification obligations, and the forms we've developed with the Financial Services Council are fairly well embedded and have been for 10 years. Any changes to the process or the obligations around that are just another change and another cost that financial planners are going to have to bear. So, from our perspective, the FPA is quite comfortable with the item 54 reporting obligations that financial planning licensees have, and we wouldn't really want to see a change in the know-your-client obligations at this point.

I guess the main point would be that, when you have a professional relationship with a client, it's quite easy to know who your client is from a financial planning perspective because you're generally dealing with an individual. It's much more complicated, I think, in accounting because you have a lot of different business structures and trust structures and organisational structures, and knowing your client and providing the right kinds of documentation in that framework is a lot more challenging than it is for financial planners.

Senator SCARR: Okay. The Institute of Public Accountants?

Ms Stylianou: I might just add to what my colleagues have said. I think it's important to also look at the client and document verification requirements that are flowing through the ATO and the Tax Practitioners Board at the moment. We're looking at having a consistent standard and at developing minimum standards. I think in time we'll see how the implementation goes, what needs to be changed and how it can be tweaked. I might also add that there are also a lot of other regulatory reforms that are flowing through: there are the director ID requirements and the Modernising Business Registers changes that are taking place. So I think it's also important and useful to have a look at the cumulative effects of these and other regulatory reforms and to see how they're implemented and how practically they're going to work in the future.

Senator SCARR: Is it fair to say that we shouldn't be looking just at what's under the AML legislation but we also need to consider the professional standards and the ethical requirements of those who are members of your relevant organisations and also what's happening in the taxation space in terms of director identification? We need to consider all of that globally and then, once we've done that, come up with the most user-friendly, efficient and effective process which is suitable for each profession—is that a fair comment?

Ms Stylianou: Yes, I would agree with that. I think it's critical to take a holistic approach rather than just focusing on the AML requirements, which obviously are critical and are core to this. However, it's not just the FATF recommendations and requirements and the AML legislation; it's so many other things that are happening across the board, including technological advances, which are going to be a big part of compliance with all of these requirements. As my colleagues have said, the accounting professional and ethical standards are also a critical part of this. There's a whole regime that surrounds those. So I think, yes, it is critical to take all of these things into consideration, along with the overall impact on reducing ML and TF.

Senator SCARR: We received some evidence with respect to the modernisation of processes and the use of technology which is bringing down compliance costs, which is quite favourable to all the participants in this process. There was some evidence provided with respect to cost of compliance. I'm interested in what is the latest information coming out of jurisdictions like the United Kingdom and New Zealand with respect to cost of compliance, especially for smaller service providers. Australia is a country with vast areas and regions, and many of the members of the profession will be providing support to small regional centres. I'm alive to what impact the imposition of additional compliance will have on those small accounting practices and the service they provide to their communities, so I'm interested in any further information you have on cost of compliance in jurisdictions like the United Kingdom or New Zealand.

Mrs Waller: I'm happy to start from a New Zealand perspective if you like. We've had a lot of feedback from our small and sole practitioners based in New Zealand that the cost of compliance is quite excessive and not really in a risk-reward balance when you're looking at the benefit that it's actually giving back to both the system and the integrity and also the consumer. The complexity of the framework they have to comply with means that they have resorted to outsourcing their CDD obligations, because it is such a process to go through. That can cost anywhere from $50 as an individual up to $500, depending on the structures that are there, such as trusts, which have been alluded to before. So we're very mindful that there is an excessive cost that is coming through in that New Zealand framework. We wouldn't want to see that replicated here—especially because it's going to be passed on to the end consumer because the small business, being the professional accountant, often can't absorb those costs.

Senator SCARR: Mrs Waller, is it possible for you to take that issue on notice. It is a very important issue. We received evidence earlier today along the lines that some of the submissions around the costs being incurred by professional services firms are overblown, exaggerated, and there is a bit of a Henny Penny approach being undertaken by some of the professional services agents in terms of the cost. So is it possible for you to take it on notice and provide additional information in respect of what your members are actually seeing in New Zealand.

Mrs Waller: Definitely.

CHAIR: Could I make one other suggestion. Would it be possible for the secretariat to provide the *Hansard* of the evidence that has been provided on these cost issues and ask the witnesses if they could comment on that in addition to your question? There is a marked discrepancy in evidence we have seen from some of the submissions and some of the material we have seen today. Would it be acceptable to you, Senator Scarr, if we got those two things put together?

Senator SCARR: I think that's a very good suggestion, Chair. From my perspective, this is a key point; and there is a discrepancy, as you have alluded to. I think that would be very helpful. I actually think it's extraordinarily important that each of the professional associations—

CHAIR: I think it's important also to get an understanding of what is actually being said in regard to new technologies and the areas of activity that are subject to compliance costs. There could be some argument about what it is that we are actually measuring. So we can actually look at the evidence that is being presented and you can make your own judgements as to the validity of the claims that have been made.

Ms Stylianou: May I also add, in terms of costs, that it will obviously be dependent on the requirements. If you look at the UK example, which has a very complex system, I'll give you one example of cost: software that, up until next month, we provide free of charge to our member firms to do some of their CDD work. It is no longer viable for us to provide that free of charge, so that is now going to be provided at a cost of 260 pounds annually, which is about $475. That's for the small firms, and the majority are very small firms. So that is one cost. And then, of course, there are other levies that they have to pay as well. So all of those things would have to be taken into consideration.

CHAIR: Indeed.

Senator SCARR: The final question I have is around the role of the professional services organisations. From my perspective, it's going to be absolutely fundamental, as the law is reformed and rolls out to tranche 2, that the professional associations work hand-in-glove with the government in terms of coming up with the right policy mix for each of the professions and making sure that the system is as effective and efficient as possible. It seems to me that the professional associations are going to be at the coalface in terms of rolling it out, assisting their members to get up to speed with the new regulations and introducing it in their practices. I'm interested in your thoughts in respect of that proposition. Is that a fair comment?

Mrs McWilliams: I think it is. Our experience in New Zealand is that we need to be working very closely with government not only as the legislation is designed, the subordinate legislation and regulations, but also in the implementation part and guidance and so forth. It has got to be a very collaborative process. We have to leverage what is already in existence for our members, effectively, and then, as you say, work out where the gaps are for where there are additional bits needed to take it up to the level of FATF requirements. Certainly, what we found out through the New Zealand experience is that the implementation time is really quite key. It can be quite an uplift for some member firms, and so we need to work very closely with them and build that into their processes so that they're ready when it comes into effect. Often it takes time, following the passing of legislation, to come up with what this means in practice.

Mr Marshan: Can I just add to that? Having gone through 12 or 13 years of these know-your-client obligations and assisting issuers, I still have members today ringing and asking how they ID certain types of individuals and certain types of companies. Different products have different requirements, so, 12 or 13 years into the regime, there is still a lot of confusion. The simpler and clearer you can make it upfront, obviously the easier it is over time to roll it out; but, if you create a highly complex requirement for a particular profession, it can go on for a long time.

CHAIR: Can I add to that question? In other areas of industry policy, where there's a change in compliance, it's not unknown for the Commonwealth to provide assistance to industry associations to help industry firms come to grips with the new regime. Would that type of program, for a limited period, be of assistance? It may well be that, in some areas of regulation, there'll never be a point at which firms actually come to understand things. In the R&D tax area, for example, I know there are firms that are constantly managing to have a misunderstanding, many, many years after it was introduced, and they rely on taxation accountants who might end up at the

practitioners board because of their misunderstandings of things. Would that principle—of industry associations being given some temporary assistance to help in the transition to a new regulatory regime—be of any value?

Mrs Waller: I would like to comment first and say that I think that would absolutely be welcomed by the profession. What we have seen, especially in our smaller and sole practitioner firms, is that they have undertaken a significant amount of reform and regulatory change in the last 24 months. What we've also seen in the last 12 to 24 months is the impact of COVID and trying to support their SME clients through that change. They've had significant capacity issues; they've had to invest a lot in remote working in areas that were locked down for long periods of time, and that's had a considerable impact on their capacity, their resourcing and, obviously, their financial means to implement more change. So we would definitely welcome that opportunity.

Ms Stylianou: I'll just add that assisted compliance, I think, is something that's been used in the UK, quite effectively. As Keddie said, that would be extremely welcome.

CHAIR: In the United Kingdom, how did that industry support work? Can you explain that?

Ms Stylianou: It's worked in different ways. They've looked, for example, at whether certain sectors need to have exemptions. They've assisted them with their understanding, education and awareness, and they've assisted them with how different parts of the regime apply to different sectors, but I think the problem with the UK, from my understanding, is that it's so overly complex.

CHAIR: So you've got some philosophical objections to the regime, but I'm interested in how the government in the United Kingdom assists firms to come to grips with the regulatory regime. Are you saying that the government provides assistance through industry associations for that adjustment?

Ms Stylianou: Yes. It does. It provides assistance, but it's a very different kind of regime, because they've set up OPBAS as it is, which is a supervisor, and then they've authorised professional associations to be supervisors, so there is assisted compliance. I don't know if that's exactly what you're getting at, but—

CHAIR: When I was a minister, the Labor government provided management consultancy services through Enterprise Connect, for instance. It would work with industry associations to lift the capability of firms in a whole range of areas.

In my historic experience, the biggest problem is a small enterprise firm—for example, a trade firm—moving into a larger capacity and understanding their regulatory requirements, even for basic requirements such as payroll. Now, you're dealing with this on a daily basis. You're actually providing a service to firms to meet their regulatory obligations. That's what taxation and various other financial services provide on a daily basis.

Now, if the Commonwealth is asking for an additional level of compliance, then maybe there is a case for there to be further assistance so that people understand what's required and that takes away the argument: 'It's too hard. It's too difficult. It's too costly.' We're being told there are a range of ways of dealing with that, to minimise costs so that we understand the nature of the ask. It's not the same as the Commonwealth Bank, but it is certainly a requirement to register—particularly when the beneficial ownership test and other such matters are critical to our capacity to defend the country against corruption—and so maybe we have to provide some assistance to small enterprises and, in your case, for financial service companies to be able to provide it. That's the argument I put to you. We have done it in the past; I know that from my direct experience. Is there a case for it to happen in the financial services area as well?

Ms Stylianou: Yes, there definitely is a case for it.

CHAIR: Senator Scarr, I have intruded on your questions. Have you finished with that?

Senator SCARR: I was happy with your intrusion. You're a welcome visitor. I'm happy to pass back to you, Chair.

CHAIR: But are you done? As you know, I'm looking at the clock—I'm always looking at the clock—Senator Scarr—

Senator SCARR: No, I'm done.

CHAIR: You're done? Thank you. Do any of my other colleagues have questions? Senator O'Neill?

Senator O'NEILL: I'm ready to roll. I just want to be clear about your submission to us today. I did hear you say, 'We welcome moves to strengthen AML/CTF.' You're aware that tranche 2 is a long, long, long time coming. Is there now some acceptance amongst the accounting profession and the Financial Planning Association that it is inevitable that tranche 2 must proceed?

Ms Stylianou: Yes, Senator. Certainly from the IPA's perspective, it's something that—we've been involved in consultations from the days of the Attorney-General's Department for many years, really. There has been an

expectation that tranche 2 will be introduced, so I think that it is just a case of 'when' rather than 'if' if I could say that.

Senator O'NEILL: Much promised, but undelivered. I wasn't involved in the 2015 MER, and neither was I involved with the 2016 significant review. I don't know if you've had a chance to look at submission No. 32, which is the Department of Home Affairs submission to this inquiry, but, at the end of its submission, it has tracked what happened with the 84 recommendations that were made. No doubt you were a part of the consultation back in 2016, which was when the government was promising to do this. A lot of water has gone under the bridge between 2016 and now, including the royal commission and changes that you've been talking about here in terms of regulatory change. This is a massive body of work that remains unattacked. Are you concerned about the wastefulness of having gone through this process in 2016 only to have to recommence it here in 2021?

Ms Stylianou: From our perspective, we thought it would happen sooner or later. There is so much regulatory reform that goes on. It's constant; it's relentless, really. I was involved in 2015 and 2016, and I remember presenting before the Financial Action Task Force and being almost interrogated, as it were. So I do have memories of all of that, but I suppose it's just a case of, 'Here we are; it'll happen when it happens.' It's not something that's within our control, but there is so much other regulatory reform that happens, and I suppose we just wish to ensure that all of the regulatory reform that has happened since 2015 and 2016 is taken into consideration.

Senator O'NEILL: Yes, because it's a bit of a dog's breakfast as you describe it. There's a little bit here and a little bit there and a little bit over here, and there's no clarity, I think, for the sector about exactly what now might have to happen. So I guess my first serious question to you is: has the government discussed with any of you and your organisations its plans, as of today, to implement tranche 2, which will cover your profession?

Ms Stylianou: I can't speak for the others—they can speak—but not with the IPA.

Senator O'NEILL: So it's still somewhere on the horizon but not a focus for government and certainly not a conversation that's live for you. You are representing the Institute of Public Accountants?

Ms Stylianou: Yes, correct.

Senator O'NEILL: Can I ask Mrs Waller from CPA?

Mrs Waller: No, we have not had any direct conversations.

Senator O'NEILL: So this is not an item of work for the government and you are not in conversation with them about tranche 2?

Mrs Waller: We have not had a direct conversation on tranche 2 recently.

Senator O'NEILL: Mrs McWilliams, for CA ANZ?

Mrs McWilliams: Likewise, we have had no direct conversations with government about the current status of this.

Senator O'NEILL: Of the tranche 2 reforms to AML/CTF?

Mrs McWilliams: Yes.

Senator O'NEILL: And Mr Marshan?

Mr Marshan: As I noted in our introduction, financial planners are already item 54 reporting entities, so we're already under the AML/CTF Act and are part of the regime. Tranche 2 is not something that we've had a discussion with government about, because we are already within this.

Senator O'NEILL: Yes, you're within tranche 1, based on your evidence.

Mr Marshan: Yes.

Senator O'NEILL: But I want to be clear about this: you will still be impacted by tranche 2, but you are not in any conversation with the government currently about tranche 2?

Mr Marshan: That's correct.

Senator O'NEILL: Does it surprise you, then, that recently in Rome, at the G20, Australia signed off the leaders declaration on AML/CFT/CPF, reaffirming 'our full support for the Financial Action Task Force and Global Network' and stressing 'the relevance of the risk based approach of the FATF recommendations with the aim to ensure legitimate cross-border payments and to promote financial inclusion', among many other things? Does it surprise you, Ms Stylianou, that the government continues to herald its action on FATF regulations overseas yet it is not engaged with you at all on tranche 2?

Ms Stylianou: I can't say that I'm aware of what activities or discussions the government has had with others. I can only say that they haven't had any with us.

Senator O'NEILL: Mr Marshan, are you aware of this international stance—looking like a good international citizen but not doing any of the work at home?

Mr Marshan: I'll be honest: I'm a little bit more focused on my kindergarten child's reading abilities than on following what's happening in the news in Rome. So, no, I haven't followed that. Sorry.

Senator O'NEILL: Okay, but how Australia is represented does matter. We are part of an international economy, and money is moving across borders all the time. Your clients and your members would be critical in the ethical movement of that money, so what we present to the world as our public face does matter, doesn't it?

Ms Stylianou: Yes, I suppose it does, but it's just not something that I can really comment on.

Senator O'NEILL: Thank you. Mrs McWilliams, do you have a comment?

Mrs McWilliams: No. As we've indicated, Australia has committed to implementing the Financial Action Task Force reforms, but I guess it's a matter for government as to the timing of when those are implemented.

Senator O'NEILL: Based on evidence we received this morning and confirmed in submissions, are you aware that Australia is being described as a laggard in implementation of tranche 2?

Ms Stylianou: I am aware of what's being written in some of the submissions and what's being written in the media, and I have looked at the FATF website.

Senator O'NEILL: In your view, is there any other significant legislation that you consulted on with this government as far back as 2015 and 2016 that remains completely unaddressed, or is this it?

Ms Stylianou: I think that there might be examples along the way but nothing that is relevant to this.

Senator O'NEILL: So it is a pretty big oversight by the government not to implement this despite their rhetoric to the effect that they were actually doing it.

Ms Stylianou: I think it's really just up to government. It's not something I can comment on.

Senator O'NEILL: In the four years since the government promised a cost-benefit analysis of regulatory options for designated non-financial businesses, has there been, to your knowledge, any effort whatsoever to start that cost-benefit analysis process, which is so important to you that you've given evidence about it this afternoon?

Ms Stylianou: Not that I'm aware of. It is something certainly that we would definitely emphasise. I know that, back in 2015-16, the Attorney-General's Department did recommend that, and it is something that we would definitely seek to happen.

Senator O'NEILL: But, currently, there has been no work done about the financial implications of tranche 2 on your members. Is that correct?

Ms Stylianou: Not that I'm aware of apart from what we've been doing ourselves.

Senator O'NEILL: I'm surprised you didn't actually have that information from the government years ago, but I am particularly concerned that, as we sit here with international declarations about supporting the FATF reforms and tranche 2, the government has not interacted with you to get a cost-benefit analysis underway at all. It would be useful for your members I'm sure, and I'm sure they'd be interested in knowing what that might be. You've spoken about New Zealand, and you've also spoken about the UK. In those jurisdictions and any others, are you aware of the effects of the implementation of tranche 2-like reforms in other jurisdictions and their impact on the viability of businesses? I know that there's a costing change. What has happened in other jurisdictions? Has there been a collapse of the industry? Has there been a significant failure of small or medium businesses as tranche 2 has been implemented in other jurisdictions?

Ms Stylianou: I don't have any particular knowledge of that—only what I've read in other submissions. I don't have any particular knowledge of other jurisdictions.

Senator O'NEILL: Mr Marshan, have you got any response to that? Do you know anything about other jurisdictions and the loss of financial planners?

Mr Marshan: I know plenty around other jurisdictions and loss of financial planners but not in direct relation to money-laundering and terrorism-financing laws.

Senator O'NEILL: Okay. Mrs Waller?

Mrs Waller: I'm not aware of an impact on the viability of any of the businesses for professional accountants. I know it's had a cost impact but not around the continued financial viability.

Senator O'NEILL: And Mrs McWilliams?

Mrs McWilliams: What our experience has been with New Zealand—it's important to note that the New Zealand regime is activity based. It's based on whether or not you undertake a captured activity as an accountant, as opposed to just being an accountant. We do know that some of those smaller firms that might have only undertaken one or two captured activities a year have moved away from doing that work so that they are not part of the regime, as opposed to those who perhaps do a significant amount and are therefore fully within it. I wouldn't say it has affected the viability, but we have seen some firms cease some of the services that they've provided in order to be able to continue to service their clients at that lower cost, where they are in that smaller end.

Senator O'NEILL: So, in some ways, it could become a specialised field with some people carving themselves out of it?

Mrs McWilliams: With it being activity based, it is based on those higher-risk activities. Effectively, members are choosing not to do higher-risk activities that are captured by the regime and are seeking to focus their efforts on lower-risk clients and therefore able to just stay servicing them as they would have done normally. But it would have been those that only had a few clients who might have been in the higher-risk category or had a few pieces of work for them that were considered higher-risk and captured. It was very much on that border.

Senator O'NEILL: Do you have any significant interactions with AUSTRAC currently?

Ms Stylianou: IPA has had interactions not recently but certainly over the years, in terms of training, education, awareness—that type of thing.

Senator O'NEILL: But you wouldn't call it an ongoing and intimate relationship with AUSTRAC? You don't report significantly to them?

Ms Stylianou: No.

Senator O'NEILL: Ms Waller?

Mrs Waller: No. Similar.

Senator O'NEILL: Mr Marshan?

Mr Marshan: The Financial Planning Association has not scheduled but somewhat regular meetings with AUSTRAC on a variety of issues on a regular basis. Two to three years ago, AUSTRAC worked with the Financial Planning Association on a post-implementation review to get an understanding of how financial planners were engaging with AUSTRAC and engaging with the ID verification obligations around the risks, in terms of the services they provided, in terms of anti-money-laundering counterterrorism financing activities. So, yes, we have dialogue with them. I can ask them questions when I need to without any problem.

Senator O'NEILL: But you'd say your last formal consultation with them about it was, what did you say, two to three years ago?

Mr Marshan: No. That was a specific consultation. Whenever AUSTRAC update rules and make changes to their rule books, we are involved in those consultations and will have conversations with them about those changes as they relate to financial planners?

Senator O'NEILL: And that's because you're captured in tranche 1 part B?

Mr Marshan: Correct.

Senator O'NEILL: Ms McWilliams?

Mrs McWilliams: We don't have regular engagement with AUSTRAC. To Vicki's point, we've had some ad hoc engagement with them over time with various bits of guidance, but it has been very limited.

Senator O'NEILL: Once tranche 2 is implemented, you will have an incredible asset to share with AUSTRAC, in terms of reports of anything you see that you think is suspicious or unclear. As was revealed today—I think in evidence from the police representatives—they would have comparative sightings across the industry. If you're a big tier-1 company, you might have five per cent of your transactions about which you would say, 'This needs a little bit of an investigation,' and you would report it and then AUSTRAC would get onto it. What change and what benefits to the Australian system and international finance do you believe will be unleashed when tranche 2 is implemented and your respective professions are engaged?

Ms Stylianou: What benefits?

Senator O'NEILL: Yes.

Ms Stylianou: I suppose the idea is that, in terms of the objectives of the legislation, the wider the net is cast, so to speak, the more suspicious and potential illegal activities might be caught in that net, which would benefit

the economy more broadly. I'm going by the policy objectives in the legislation, which we've always supported. To us, that's certainly one of the main benefits.

Senator O'NEILL: Is there anybody who wants to add anything to that?

Mrs Waller: Yes. I'll make an additional comment, if I can. If we have an ability to collaborate and look at how tranche 2 is implemented so that we have some cohesion across obligations, be that through the ATO, the Tax Practitioners Board, the Corporations Act or AUSTRAC, so that we can have a level of consistency, I think that'll bring a level of integrity to the system. The other thing is the potential level of efficiency. At the moment, as Ben alluded to it in his opening comments, there can actually be different points when having to go through some of those CDD obligations, because it's not always accepted by all parties. If we can look at actually bringing that together and having consistency in recognition in one element of verification that could be shared, that could give a lot of efficiencies and integrity to the system.

Senator O'NEILL: Absolutely.

Mr Marshan: We obviously have been involved in reporting suspicious transactions to AUSTRAC over the years. The reality is, and AUSTRAC confirmed this in the review, there are virtually none that come through financial planning, because the relationship between the financial planner and their client is of a type such that financial planners are generally across enough information about the financial position of the client to be on top of those kinds of risks. Financial planners often won't engage with clients where they see risky types of behaviour but will report them because of their professional obligations they have. There has been virtually no suspicious amount of reporting that's come through financial planners as a profession, because of the relationship planners have with their clients. Where they have, they tend to have been where the test for suspicious matter reporting events is set in such a way—for example, somebody doing renovations or building their house is taking regular amounts of money or transferring regular amounts to different builders and contractors—that it tends to trigger the reporting programs, rather than there being anything suspicious to report.

Senator O'NEILL: Nonetheless, with the breadth of the profession you represent there, once you've got the skill set and you know how the system works there is the old expression 'gun for hire'. We heard today about 'professional service providers' who are advertising their services about how to get around Australian law to overseas entities. There are unethical operators in every industry, and I'm sure there would be some who, after a period of time of skilling up, could literally become a very valuable asset to somebody who wanted to launder money within the country or from overseas. I guess there's a reason for capturing that, isn't there?

You raised the issue of overlaps and duplications; we had some evidence about that today, with the tranche 2 requirements and current professional standards. Can I ask you to take on notice anything that you think, in addition, you want to alert the committee to? Where are the aspects of tranche 2, to the very best of your knowledge, already covered in Australian law? If there is anything further you need to add to what you've already put on the record, I would appreciate having that.

Senator Carr asked a little bit about collaboration, and the costs and the benefits of doing so. The UK implementation was focused on collaboration with industry bodies such as yours. How can the government best work with you to ensure these reforms are implemented in a way that doesn't result in onerous regulation on your profession while still getting the job done and restoring Australia to the good books, in terms of an international corporate participant in the world economy?

Mrs Waller: One of the benefits of working with a profession like ours is that we have the ability to engage directly with our members who will be implementing this at the coalface. Quite often we see policy intention or legislative obligations we're looking to achieve in an outcome. But, when it gets to implementation or how it unfolds, we don't always hit the mark. If you engage with the profession—and we use that as a conduit to the members who will be implementing this at the coalface, understanding assisting systems and processes of how that can come into a day-to-day setting—you will get the best outcome because you'll be able to leverage what's already there, understand how it's going to unfold and ensure it's going to hit that policy intent.

Senator O'NEILL: Which makes it even more inexplicable that you are not being consulted by the government at all, given your knowledge. Did you want to add something, Ms Stylianou?

Ms Stylianou: I was just going to agree with what Keddie said. I was going to make similar points—that it's the sort of stuff we have already been talking about. To your point previously, where you talked about where tranche 2 is already covered in the existing requirements: I think that sort of mapping and stocktake will be very, very critical as we move forward.

Senator O'NEILL: Mrs Waller, you indicate very clearly in your submission you are supportive of applying tranche 2 to the gatekeeper businesses. What kind of regulatory framework do you think would be most effective to implement, and what kinds of whistleblower protections do you want for your members?

Mrs Waller: In terms of the regulatory side of what we'd like to see: it's about working with that existing framework. We already spoke about the fact that there are obligations under the tax profession and under the TPP obligations. We also have obligations under our professional code of conduct with our NOCLAR, or noncompliance. It's about whether we can look at how we can bring those obligations together so that we're streamlining those; that'll have the best impact. In terms of whistleblower protection, I think it would be the same sorts of protections that we would expect and that we already have in some of these places, to ensure that they have legislative protection. I think one of the challenges you see is when you're dealing with a small business. If you have someone who comes in who may have a suspicious activity, they would be quite readily identifiable if they were then to report that individual. So we need to ensure that we put protections in place to support these small practitioners and small professionals so that they're not going to be targeted if they actually are doing the right thing and reporting noncompliance.

Senator O'NEILL: That's a very good point. Did you want to add anything, Ms Stylianou?

Ms Stylianou: No, that's fine. Thank you.

Senator O'NEILL: Ms Stylianou, you talked about the structure in the UK setting, and I understand that, with the law societies in that country, there are three different jurisdictions and they have slightly different models et cetera. We've got jurisdictional challenges that have become very obvious to us during COVID. I'm interested in your view about what the best way to proceed would be. Is AUSTRAC the appropriate place, with sufficient expertise? Does it have adequate resources? Does it have the right people to implement and monitor tranche 2 successfully in terms of capturing your profession? If yes, why? And if not, why not?

Ms Stylianou: My understanding is that AUSTRAC would need additional resources if tranche 2 were to come into play, given that there would be up to, potentially, 100,000 different entities that would need to report, one way or another. As with other regulators, we're constantly saying to government, 'Please ensure that they are adequately resourced to do what they need to do.' For example, with ASIC and the ASIC industry funding levy, you've seen what has happened there—

Senator O'NEILL: Especially with financial planners.

Ms Stylianou: Yes, especially with financial planners. We're also advocating for similar relief for liquidators and auditors, I might say. However, we don't want to be in a similar situation, where it's the profession and the industry bearing the cost through increasing levies. I know that in the UK there's a levy paid to [inaudible], for example. We don't want to be in a situation where there's another cost to industry and to the profession because AUSTRAC, or whichever agency it might be, is not adequately funded and resourced. At the moment—and I stress that—it looks like AUSTRAC is the most likely candidate to take this on, but that's really something else that I should imagine will be subject to consultation.

Senator O'NEILL: You would hope so.

Ms Stylianou: I would hope so, yes.

Senator O'NEILL: But it is a few years in between drinks, shall we say, in terms of consultation—2016 to 2021. It's definitely not a love affair, is it!

Ms Stylianou: I think there's a lot to be consulted on in terms of tranche 2. If we were to start today, I don't know how long it would take, but I would certainly hope that sufficient time would be given to careful consideration, including the cost-benefit analysis and all of the other things we've talked about.

Senator O'NEILL: Does anyone else want to add anything to that? Is AUSTRAC the best place for it to be managed?

Mrs McWilliams: Talking about whether or not AUSTRAC is the best place, I'd probably echo Vicki's thoughts on that. To Vicki's comments about ensuring it has sufficient resources, I think that also goes to the earlier comment about working in collaboration with the industry associations, such as ourselves, to ensure that we provide the necessary knowledge and understanding of the sector to the people within AUSTRAC—if it is AUSTRAC—who will be regulating and supervising the sector. Certainly, our experience in New Zealand is that it took a bit of time for the supervisor to get up to speed on the various differences across the tranche 2 professions. They're not all the same; in fact, they're actually very different, and so that does require quite different knowledge and understanding. I think it's important for whoever is going to be doing that to work very

closely with the relevant industry associations across the tranche 2 professions to ensure that there is that understanding of how it will work.

Senator O'NEILL: How confident are you that the professionals, who have incredible licence, because they are considered to be a profession, because there's an ethical stance that's embedded in the whole concept of 'profession', because there's so much power—how confident are you that yours is a clean industry, that you haven't got in there people who are making their wealth out of facilitating exactly the kind of behaviour that tranche 2, which in my view should have been implemented a long time ago, in my view, is designed to prevent?

Ms Stylianou: I think that, no matter how much you legislate or regulate, it would be virtually impossible to ensure that there are no bad actors and no bad players in any profession or in any industry. All we can hope to do is minimise it. When you look at the professional accountants, being the members of the three professional accounting bodies, we have in place robust systems that have been in place for approximately a hundred years, so there's a certain level of confidence. The accountants are, after all, called 'the trusted advisers', according to a lot of research and surveys. That's something that they take very seriously. Our job and role as professional associations is to make sure that we do everything so that they maintain that trusted-adviser status. However, I would make a distinction between members of the professional accounting bodies and those who are not members of the professional accounting bodies because 'accountant' is not protected at law, so there might be some out there who call themselves accountants. We have no regulatory oversight of those people. So I would make that distinction.

Senator O'NEILL: It's a little bit like cosmetic surgeons in another inquiry we had the other day. They're actually not surgeons, yet they're operating in that way. Can I remind you of the recent media reports about the practices in auditing companies where there have been gross breaches of professional standards, with tests being taken with people having answers prior to going into them. In the context of that reality, do you remain confident that the standards of ethical behaviour are really robust? Or are they being eroded by the practice of making money over the practice of doing the right thing?

Ms Stylianou: I think the point to emphasise is that there are consequences, that if people do breach the rules and the regulations there will be consequences for doing that. I think that's what sets the profession aside from the others, if I may put it that way.

Senator O'NEILL: Yes. The consequences in that sector only came because of the US regulator, not an Australian regulator. Perhaps there's some warning there.

Ms Stylianou: I suppose there's something to be said for the fact that they were self-reporting, but I'm not going to get into that.

Senator O'NEILL: We should get into that! Thank you, Chair.

CHAIR: Thank you very much. It's much appreciated. I thank you all very much for your attendance today and the advice you've provided to us. I'll take, Senator O'Neill, that you'll be moving that all documents that have been presented for tabling be received.

Senator O'NEILL: Happy to move that one, Chair.

CHAIR: Thank you very much. There's no objection, so we agree with that. We propose 3 December for the return of questions on notice. Senator O'Neill, you'd be happy to move that way?

Senator O'NEILL: Yes. Happy to do so.

CHAIR: Thank you very much. There are no objections, so that's agreed. With those formalities over, I thank each and every one of you very much for coming today and giving us your time. That concludes today's proceedings. The committee will take all questions on notice by 3 December. I thank all the witnesses who have been in attendance today, and I thank Hansard, broadcasting and the secretariat for their assistance today. I declare the hearing adjourned.

Committee adjourned at 16:29