Anti-money laundering and counter-terrorist financing measures - Australia

3. Legal systems and operational issues

Effectiveness and technical compliance

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3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings

Australia develops and disseminates good quality financial intelligence to a range of law enforcement bodies, customs, and tax authorities. AUSTRAC is a well-functioning FIU. The amount of financial transaction data in the AUSTRAC database, and the fact that all relevant competent authorities have access to this database and can use its integrated analytical tool, are strengths of Australia's AML/CTF system. AUSTRAC information is accessed by federal law enforcement as a routine in most cases but less so by State and Territory police who conduct most predicate crime investigations, and this information assists in the investigation of predicate offences.

However, the overall limited use of AUSTRAC information by law enforcement as a trigger to commence ML/TF investigations presents a weakness in the Australian AML/CTF system and should be addressed as a priority. Broader use of the sound institutional structure for combating ML would more effectively mitigate ML/TF risks.

Australia's main criminal justice policy objective is to disrupt and deter predicate crime, including if necessary through ML investigations/prosecutions. Australia focuses on what it considers to be the main three proceeds-generating predicate threats (drugs, fraud and tax evasion). Australia should expand its focus to ensure that a greater number of cases of ML are being identified and investigated adequately.

Stand-alone and third party ML offences are regularly prosecuted. However, legal issues have arisen in relation to the prosecution of self-laundering offences and ML of foreign predicates is not frequently prosecuted. The level of convictions for ML at the federal level and in Victoria is encouraging, but the level in the other States and Territories is lower than is warranted by their size and risks. Effective, proportionate and dissuasive sanctions have been applied to natural persons. However, no corporations have been prosecuted for ML offences and it appears that this option is not seriously considered or pursued – which is inconsistent with the risk profile.

The Australian authorities apply a range of criminal justice measures to disrupt serious criminal activity, including ML offences, as an alternative to pursuing the ML offence, but such measures are applied whether or not it may be possible to secure a ML conviction.

Confiscation of criminal proceeds, instrumentalities, and property of equivalent value is being pursued as a policy objective; mainly in relation to drugs and in relation to tax by the ATO. Competent authorities have increased their efforts to confiscate proceeds of crime, particularly since the establishment of the federal Criminal Assets Confiscation Taskforce. But it is unclear how successful confiscation measures are across all jurisdictions and total recoveries remain relatively modest.

The movement of undeclared currency ("cash smuggling") is identified as an increasing high risk in Australia and some steps have been taken to target cross-border movement of cash and bearer negotiable instruments (BNIs).

The focus of Australia's confiscation efforts are consistent with the primary risk identified in the NTA to the extent that the majority of assets recovered to date have flowed from the drugs trade and also from tax evasion. Australia is also at significant risk of an inflow of illicit funds from persons in foreign countries who find Australia a suitable place to hold and invest funds, including in real estate.

3.1 Background and Context

Legal System and Offences

3.1. The *Criminal Code Act 1995* (CC) contains Division 400, which contains the federal ML offences. Australia follows an all-crime approach for predicates, including State, Territory and foreign predicates. States have also criminalised ML. Federal seizure and confiscation provisions, both for ML and TF, are in the *Proceeds of Crimes Act 2002* (POCA). States and Territories have corresponding, but different, sets of laws.

3.2. AUSTRAC is the financial intelligence unit (FIU) for Australia. It is an administrative FIU in the AGD portfolio. The FIU branch in AUSTRAC is responsible for monitoring and analysing financial transactions report data, producing intelligence products and working with domestic agencies and international counterpart FIUs. AUSTRAC has been a member of the EGMONT Group since 1995.

3.3. The AFP is the federal police force. It works in coordination with the State and Territory police forces. AFP is responsible for federal crimes, which cover about half of the predicate offences and ML, as well as TF. The State and Territory police forces are responsible for non-federal predicates, which cover the majority of predicates, and ML. There is overlap in predicate-coverage between the federal and state/territory level, but together, both levels cover all predicates.

3.2 Technical Compliance (R.3, R.4, R.29-32)

3.4. See for the full narrative the technical compliance annex:

- **Recommendation 3 (money laundering offence) is rated compliant.**
- **Recommendation 4 (confiscation and provisional measures) is rated compliant.**
- **Recommendation 29 (financial intelligence unit) is rated compliant.**
- **Recommendation 30 (responsibilities of law enforcement and investigative authorities) is rated largely compliant.**
- **Recommendation 31 (powers of law enforcement and investigative authorities) is rated largely compliant.**
- **Recommendation 32 (cash couriers) is rated largely compliant.**

3.3 Effectiveness: Immediate Outcome 6 (Financial intelligence)

a) Types of reports received and requested (information to the FIU)

3.5. AUSTRAC receives a wide range of financial transactions reports. The following table summarises the report types AUSTRAC has received and subsequently analysed in recent years (see Table 3.1).

3.6. The number of reports that AUSTRAC receives is high because of the requirement to report all international fund transfers instructions (IFTIs). AUSTRAC also receives suspicious matter reports (SMRs) and considers that these reports are of a relatively high quality when it comes to the description of the suspicion that caused the reporting. The vastly larger volume and immediate filing of IFTIs and TTR s can make them more useful for intelligence and longer running operations, allowing larger money trails to be followed and wider networks to be identified. However, law enforcement found that SMRs can at times take longer to be submitted to AUSTRAC (up to 10 days).

3.7. AUSTRAC stores all transactions in a highly advanced and sophisticated database for receiving, storing and analysing financial transactions and related information: the Transaction Reports Analysis and Query (TRAQ) database. AUSTRAC can also request additional information from financial institutions (making two such requests in 2013-14). AUSTRAC has direct access to a wide range of information. AUSTRAC also has indirect access to information held by the AFP. This information may be entered manually into TRAQ as an external source of information and thereby serve the purposes of analysis. AUSTRAC may benefit by increasing the sources for its analysis; such databases could be information related to criminal convictions.

Table 3.1. Report types received and analysed by AUSTRCAC

Reports received by Austrac	2009-10	2010-11	2011-12	2012-13
IFTI (international funds transfer instruction reports)	18 095 756	35 666 743	53 770 266	79 334 421
SMR/SUSTR (suspicious transaction reports)	47 386	44 775	48 155	44 062
TTR/SCTR (threshold and significant cash transaction reports)	3 375 447	8 325 621	5 395 630	5 224 751
CBM/PC (cross-border movement of cash declarations)	35 527	30 342	29 525	30 725
CBM/BNI (cross-border movement of BNIs disclosures)	918	850	659	655
Total	**21 555 034**	**44 068 331**	**59 244 235**	**84 634 614**
SMR/SUSTR per FIU FTE staff member *	**615**	**533**	**573**	**595**
Total reports per FIU FTE staff member	**279 936**	**524 623**	**705 289**	**1 143 711**

* AUSTRAC staff dedicated to the FIU function.

Customs (ACBPS)

3.8. AUSTRAC also receives and inputs into its database the cross-border currency declarations and cross-border BNI disclosures that ACBPS collects from travellers.

b) Use and dissemination of financial information (Information from the FIU to law enforcement)

3.9. The Australian approach to the use and dissemination of financial intelligence and information is by 1) allowing direct access to the AUSTRAC database by partner agencies, thus giving them direct access to the raw data that it contains and specific reports from the database; and also by 2) disseminating analysis conducted by AUSTRAC.

i) Direct use of financial information and other relevant information

3.10. **A large number of Australian authorities access and use a broad range of financial and other relevant information in the FIU database to develop evidence and trace criminal proceeds, especially in relation to predicate offences.** Main sources used to identify predicate offences and potential ML and TF offences are intelligence, financial flows, human sources and use of coercive powers.

3.11. Authorised partner agencies access the AUSTRAC database directly online through the TRAQ Enquiry System (TES) – based on MOUs concluded with each partner agency. The MOUs govern the number of personnel from each agency permitted to use TES and the level of access granted to each user. The 41 agencies include all major federal, State and Territory law enforcement bodies. In 2012/13, these agencies had a total of approximately 3 200 personnel with access to TES. All use of the AUSTRAC information can be audited for security reasons. In each of the previous five years, over 2 million manual searches (more than 7000 each day of the year) have been conducted in the AUSTRAC database. Other access is role-based

(different agency staff with different levels of security or operational responsibility have differing levels of access to the AUSTRAC system). Some agencies, such as the AFP, have full online access to all data held by AUSTRAC. Other agencies, such as ATO, automatically receive copies of all SMRs.

3.12. AUSTRAC also forwards potential high risk reports, such as some SMRs, automatically to certain partner agencies within one hour of receipt, based on dynamic red flags that are set in coordination with each partner agency. Other flagged reports are made available within 24 hours. AUSTRAC refers and sends these SMRs to partner agencies based on the nature of the alleged offence, risk or other material fact.

3.13. **The amount of financial transaction data in the AUSTRAC database, and the fact that all relevant competent authorities have access to this database and can use its integrated analytical tool, are strengths of Australia's AML/CTF system.**

3.14. Access to information is also achieved through a network of AUSTRAC senior liaison officers (ASLOs). The network promotes the use of AUSTRAC financial intelligence by partner agencies. AUSTRAC data is also used as input for the ACC Fusion database that generates law enforcement intelligence.

3.15. Much of the use of financial information in investigations takes place through joint task forces, such as the ATO-led Project Wickenby and the AUSTRAC/ACC-led Eligo National Task Force (see also IO7).

Box 3.1. Joint task forces

Project Wickenby is consistently cited by all authorities as the best example of successful use of AUSTRAC information. Wickenby has existed since 2006. It aims to prevent people from promoting or participating in the abuse of tax or secrecy havens and to improve taxpayers' willingness to comply with their taxation obligations. The success of Wickenby is regularly communicated to the general public, and publicly measured by the amount of AUD that have been discovered and the number of successful prosecutions. Since 2006, 44 persons have been convicted for serious offences as a result of Wickenby, 3 of these were ML convictions. The total amount of money recouped under Project Wickenby since 2006 is over AUD 851 million. This includes over AUD 500 million in cash collections (payments of tax liabilities). This equates to about 5-6 convictions and the recovery of about over AUD 100 million annually. AUSTRAC information is said to be key to the success of Wickenby. In 2012 – 2013 AUSTRAC provided 55 intelligence reports to Wickenby (including international funds transfer pattern reports).

Eligo National Task Force is an ACC-led special investigation into the use of alternative remittance and informal value transfer systems by serious and organised crime. Eligo's aim is to put in place long-term prevention strategies, using criminal intelligence insights to disrupt ML, drive greater sector professionalism and make it harder for organised crime to exploit this sector. AUSTRAC is an active participant, as the FIU and as the financial regulator. Eligo is actively cited as an example of the use of financial intelligence to prevent and disrupt criminal activity. Despite efforts, law enforcement officials expressed frustration with the continued operation of apparently criminal, although registered, remittance businesses. Moreover, abuse of remittance businesses was cited as one of the most common methods used to launder, particularly, drug proceeds, Australia's largest ML threat.

Customs (ACBPS)

3.16. Because all international wire transfers are reported to AUSTRAC, smuggling cash and BNIs is considered an attractive alternative to bring illicit funds in and out of Australia without the certainty of being reported. AUSTRAC and all law enforcement agencies indicated that illicit cash coming from abroad (for example to buy real estate) - is a major typology in Australia despite the fact that, for example, buying real estate with cash would trigger a significant cash transaction report. Cash flowing out of Australia, mainly drugs proceeds that are used for the next transport of drugs, is also a high risk according to authorities.

3.17. Since 2011, ACBPS detected an average of AUD 10.5 million of undeclared cash per year. In 2012-2013, ACBPS detected 308 cases of undeclared currency at the border, amounting to AUD 7.6 million. Of these detections, 230 were incoming and 78 were outgoing. 107 fines were issued and two convictions obtained for offences relating to failing to declare cash. An additional 14 convictions were obtained in 2013-2014.

Table 3.2. Convictions for failing to report movement of cash over the threshold and BNIs when requested into and out of Australia

	2011-12	2012-13	2013-14	Total
Failure to report movement of cash over threshold into Australia	0	1	4	5
Failure to report movement of cash over threshold out of Australia	7	1	10	18
Receives cash moved into Australia without report	0	0	0	0
Failure to report BNI when requested	0	0	0	0
Total	**7**	**2**	**14**	**23**

3.18. AFP does not have figures on how many seizures have followed from these detections. Considering the risk of cash in Australia following the number and amounts of foreign-linked cash cases reported by the authorities, this suggests a low detection rate. Australian authorities also reported that an amount of AUD 1.1 billion is declared annually from an average of 30 000 travellers (that is an average of AUD 31 000 per traveller). Travellers who declare are generally not stopped by ACBPS, as there are no restrictions on the amounts of cash that can be moved across the border and as intelligence information would be needed to alert ACBPS to question a traveller. From the data and the on-site discussions it seems that custom officials would generally not pro-actively question a traveller who declares such large sums of cash.

ii) FIU analysis and dissemination

3.19. Because many federal partner agencies have direct access to AUSTRACs database and/or receive a copy of some reports that are submitted to AUSTRAC, dissemination (forwarding) of information (as received from reporting agencies) is less of an issue than it may be in other countries that have "closed buffer" FIUs. Nevertheless, AUSTRAC also pro-actively and reactively disseminates intelligence products. AUSTRAC ASLOs also produce intelligence reports for partner agencies, both reactively and proactively.

3.20. Reactive dissemination takes place when partner agencies request AUSTRAC to conduct specific analyses. This could be related to a case or to strategic intelligence needs (for example money flows to tax havens for ATO). Since other agencies have access to the AUSTRAC database, they could do this directly themselves; however, AUSTRAC's analytical experience adds value. AUSTRAC intelligence reports are also produced and disseminated proactively (i.e. on AUSTRAC's own initiative). For 2013-2014, AUSTRAC disseminated 752 reports and made 1314 disseminations to partner agencies[1].

1 Some reports go to more than one agency.

3.21. AUSTRACs intelligence reports tend to be based mainly on the reporting information that is available in the AUSTRAC database, and the intelligence reports that AUSTRAC staff shared with the assessment team were all based solely on reported information. These reports seemed to be of a good quality. Examples of the types of intelligence reports that AUSTRAC produces are network analysis reports, transaction trends and patterns reports, and typologies reports. For this, AUSTRAC has two intelligence teams that produce tactical and operational intelligence reports principally from analysing incoming reports (flagging based on red flags), and two other teams: a specialist financial revenue / tax data mining team and a research and development team applying advanced analysis across the entire database.

3.22. The information flow described applies both to ML and TF. AUSTRAC information is generally used for intelligence, but in limited circumstances has been used as evidence (with the exception of SMRs).

3.23. The 'federal authorities underlined the fact that the use of information from the FIU was a routine in almost all investigations with an economic crime component and that they found the information to be both high quality and useful. The ATO uses AUSTRAC information in direct support of their administrative powers, for example to raise assessments.

3.24. **FIU analysis and dissemination supports the operational needs of competent authorities, particularly at the federal level and in relation to predicate offence investigations. AUSTRAC analysis indicates that around 60% of this use relates to predicate crime and the rest to ML/TF investigations.** According to the statistics, AUSTRAC information (including from the 699 intelligence reports and regular database access) was used in 280 investigations in 2013.

Table 3.3. Use of Financial Intelligence and outcomes 2012-2013

Partner Agency	Direct agency access searches	AUSTRAC Intelligence assessments disseminated			SMRs disseminated	Significant Investigation Outcomes		Nature of usage and Outcomes
		Total	Pro-active	Requested				
USE (PARTIALLY) RELEVANT FOR ML/TF								
Federal Law Enforcement and Border Security agencies	1 008 851	814	58%	42%	9 717	212 (all cases)	114 (ML cases)	41% Money Laundering, 33% drug, 5% fraud – remaining matters include people smuggling, weapons offences, counterfeit goods and other predicates
State Law Enforcement	174 431	282	47%	53%	2 830	65 (all cases)		
National Security	29 514	18	90%	10%	325		N/A	Terrorism / terrorism financing matters
TAX AND SOCIAL SECURITY RELATED USE								
Australian Taxation Office	510 115	169	58%	42%	44 044		1 428	Tax administration matters leading to AUD 572 million in additional assessments

Table 3.3. Use of Financial Intelligence and outcomes 2012-2013 (continued)

Partner Agency	Direct agency access searches	AUSTRAC Intelligence assessments disseminated			SMRs disseminated	Significant Investigation Outcomes	Nature of usage and Outcomes
		Total	Pro-active	Requested			
Department of Human Services - Centrelink & Child Support	302 328	7	29%	71%	1 283	298	Frauds upon the Commonwealth resulting in annualised savings of AUD 4.4 million
OTHER USE							
Regulatory agencies	27 363	34	76%	24%	605	0	Market manipulation / consumer fraud.
Federal and State Corruption agencies	11 327	12	67%	33%	127	2	Corruption
Other agencies	204	5	67%	33%	0	1	State based evasion of tax
TOTAL (all use of AUSTRAC data)	**2 063 686**	**1 341**			**58 931**	**2 006**	

Note – Some agencies to which financial intelligence is disseminated are not investigative agencies, for example National Security can conduct inquiries and receive financial intelligence from AUSTRAC to enhance the security intelligence picture. Outcomes for National Security investigations are not published on security grounds.

Box 3.2. Use of financial intelligence

An example of the use of financial intelligence is **Operation Tricord** where financial intelligence assisted in building a comprehensive picture of a sophisticated, transnational ML scheme. The scheme involved multiple companies in Western Australia and Victoria believed to have been set up to launder funds generated through the exploitation of foreign nationals working on farms. By using financial intelligence produced by AUSTRAC, law enforcement strategies were developed to disrupt the alleged organised crime syndicate that had operated over many years. An AUSTRAC Senior Liaison Officer (ASLO) participated in both the investigative and financial teams, providing on-site support to investigators through ongoing searching and analysis of AUSTRAC holdings, and identifying entity linkages and funds flows offshore. The AFP CACT (see IO.8) utilised the intelligence to progress a mutual assistance request to Vietnam to identify syndicate assets held overseas. Following the 18-month investigation, over 45 search warrants were executed in Perth and Melbourne in early May 2014. At least AUD 15.7 million was moved through the accounts of the two ML syndicates, 22 people were charged with 38 offences, with 12 persons arrested for ML offences under subsection 400.3(1) of the CC, laundering in excess of AUD 1 million, detection of numerous firearms and the identification of at least 162 unlawful non-citizens, resulting in charges for harbouring of unlawful non-citizens under the *Migration Act 1958*. Prosecutions and sentencing is pending. This example demonstrates the entire cycle of the effectiveness of Australia's regime, including: suspect reporting by reporting entities; the value of the collection of IFTI reports to track funds movements out of Australia; the proactive and reactive use of financial intelligence; extensive law enforcement coordination and investigation; major

ML arrests; and the use of mutual legal assistance. The ML activity was complex, involving the use of companies, cash money and international wires.

Another example of the use of financial intelligence for TF investigations is **Operation Neath** (this is also described in IO.9, see below) where a group in Australia sent funds destined for use by the Somalia-based terrorist group al-Shabaab. AUSTRAC financial intelligence included several intelligence reports, online requests and alerts, ASLO engagement and analysis, and the dissemination of related assessment to ASIO and AFP. Three suspects were found guilty of conspiring to plan an Australian-based terrorist attack and sentenced to 18 years in jail.

c) Cooperation and exchange of information

3.25. **AUSTRAC and other competent authorities cooperate and exchange information to a large extent**. This is evident both in the use of cross-agency task forces and ASLOs. Another positive aspect is the degree to which AUSTRAC is able to exchange information and cooperate with foreign partner FIUs, often through the Egmont Secure Web (ESW).

3.26. **The FIU and its partner agencies use secure channels for exchanging information, and protect the confidentiality of information exchanged or used.** This is in accordance with the MOU between AUSTRAC and the partner agencies. International information exchange with FIUs is done by using the ESW, thus also protecting confidentiality in this regard.

d) Resources - AUSTRAC and law enforcement

3.27. AUSTRACs staff numbers have been reduced, from a peak of 370 in 2009 to 327 for the current budget year, and a projected 319 for 2014-2015. AUSTRAC indicated that the peak of staff related to additional resources needed in relation to the recent roll-out of the AML/CTF Act and Rules and its related awareness raising and training, as well as in anticipation of a second tranche of AML/CTF legislation (which was in the end not implemented). The subsequent reduction of resources has not prohibited AUSTRAC from handling an increasing number of reports and creating more output.[2]

3.28. As far as law enforcement bodies are concerned, the use of the overall budgets is within the authority of the commissioners of police. Long term resources are dedicated to combating ML/TF and financial crime through the ACC's *Targeting Criminal Wealth No. 2 Special Investigation*, task forces (such as the *Eligo National Task Force* and *Project Wickenby*) and the multi-agency Terrorist Financing Investigations Unit. The AFP had three permanent Money Laundering Short Term Teams. First established in January 2012, these teams focused solely on ML investigations. One team was merged into the AFP's general organised crime squad, one team was merged with a joint task force on alternative remittance services (Eligo), and the third team is still in place (7 staff in Melbourne). The New South Wales (NSW) Police and NSW Crime Commission also have specialist ML teams.

Overall conclusions on Immediate Outcome 6

3.29. **Australia's use of financial intelligence and other information for ML/TF and associated predicate offence investigations demonstrates to a large extent characteristics of an effective system.**

2 After the on-site, the federal government made AUD 650 million available to fight terrorism. AUD 20 million was said to be earmarked for AUSTRAC, to enhance its TF analysis and tracking capabilities. Although this took place after the cut-off date for the assessment, this should have a positive effect on AUSTRAC's resources.

AUSTRAC and partner agencies collect and use a wide variety of financial intelligence and other information in close cooperation. This information is generally reliable, accurate, and up-to-date. Partner agencies have the expertise to use this information effectively to conduct analysis and financial investigations, identify and trace assets, and develop operational and strategic analysis. This is demonstrated particularly well in joint investigate task forces, and when tracing and seizing assets.

3.30. **A large part of AUSTRAC analysis use relates to predicate crime and not to ML/TF, thus resulting in a relatively low number of ML cases.** Although AUSTRAC information is said to be checked in most AFP predicate crime investigations, that is not the case for the majority of predicate crime investigations which are conducted at the State/Territory level. Both AUSTRAC and law enforcement authorities could raise their focus on ML cases to achieve a larger number of criminal cases in this area.

3.31. **There are also some concerns with regard to the relative low number of money laundering and terrorist financing investigations outside the framework of the task forces related to the abuse of tax or secrecy havens, use of alternative remittance/informal value transfer systems and asset seizure.**

3.32. Although AUSTRAC information is regularly referred to as a catalyst for ML/TF and related predicate investigations, the ability for law enforcement to maintain details of outcomes that are attributed to financial intelligence could be improved.

3.33. **Overall, Australia has achieved a substantial level of effectiveness for IO.6.**

3.4 Effectiveness: Immediate Outcome 7 (ML investigation and prosecution)

3.34. **Australia's main policy objective is to disrupt and deter predicate crime, including if necessary through ML investigations/prosecutions. Australia focuses on what it considers to be the main three proceeds-generating predicate risks (drugs, fraud and tax evasion). However, Australia should expand its focus, to ensure that a greater number of cases of ML are being identified and investigated adequately.**

3.35. The assessors recognised that Australian law enforcement agencies are performing well, domestically and internationally, to combat serious and organised crime, including through their disruption and deterrence approach. At the federal level, all matters under investigation by the AFP with an economic crime component are said to be examined from a ML perspective and assessed as to whether a concurrent financial investigation is warranted. It is unclear, however, what such an examination entails in practice (e.g. AUSTRAC data check, or formal decision), and in what proportion of cases financial investigations do commence, as the authorities do not maintain such statistics. In the last three years, for example, the Commonwealth Director of Public Prosecutions (CDPP) received on average 1 700 briefs for narcotics and fraud per year from the AFP, as well as other Federal, State and Territory law enforcement agencies and an average of approximately 90 briefs for ML cases. The high number of briefs for drugs and fraud is consistent with their status as Australia's largest proceeds-generating predicate offences. However, the lower number of ML briefs suggests that more cases of ML from major proceeds-generating offences could be followed through.

3.36. Australian law enforcement agencies view ML investigations as one component, albeit an important component, in a holistic strategy to disrupt organised crime in Australia. Agencies therefore target incidents of crime and suspected offenders in a manner that is designed not to boost arrest and prosecution statistics, but to best disrupt organised criminal activity. In practice, this means that the authorities aim to disrupt ML activity but will not necessarily pursue a ML investigation/prosecution.

3.37. Primary sources to identify ML activity are intelligence, financial flows, human sources and use of coercive powers. AFP works in conjunction with agencies including ACC, AUSTRAC and ATO, as well as State/Territory agencies to investigate predicate and other serious offences. The ACC has significant intelligence gathering capabilities and some investigative capacity, and the results of these activities are passed to AFP for appropriate action. According to ACC records for the year 2013–14, 46% of ACC operational and intelligence resources were dedicated to combating ML and other financial crimes. The information on financial flows

held by AUSTRAC are an asset for AFP in investigating cases, if not for initially identifying criminal activity, then for allowing investigators to build investigations with recourse to the financial information held by AUSTRAC. They cited the IFTI information as particularly useful. According to AFP, recourse to AUSTRAC information is made in most financial cases. ATO also profiles and shares its information with AFP to enhance investigative capacity.

3.38. When ML activity is identified, the authorities look to their suite of available measures. This may result in a ML prosecution and/or one or more other appropriate measures, such as the case being handed to ATO to pursue tax remedies; to AFP to pursue criminal action on a predicate offence; or to CACT to pursue confiscation action under POCA. Authorities may also let the activity run to see what further intelligence can be obtained, including by developing human sources .

3.39. Task forces have been established to tackle key enablers of criminal activity, and have begun to have some success in detecting and disrupting key ML risks. Since 2012, the Eligo National Task Force that investigates the use of alternative remittance services by serious and organised crime had led to:

i. seizure of more than AUD 29 million cash;

ii. seizure of illicit drugs with a combined estimated street value of more than AUD 614 million;

iii. restraint of more than AUD 30 million worth of assets;

iv. disruption of 23 serious and organised criminal groups/networks and the identification of more than 166 targets, operating in more than 20 countries, previously unknown to law enforcement;

v. arrests of 123 people on 232 charges; and

vi. 26 convictions, including 7 for ML and 19 for predicate offences.

3.40. Since 2006, Project Wickenby, which investigates arrangements of an international character to avoid or evade taxation and similar offences, has led to 44 convictions, including 3 ML convictions. See IO.6 for more on these task forces.

3.41. At the State/Territory level, police focus is on the investigation of predicate offences, particularly drug offences and outlaw motor cycle gang activity. This is consistent with the risk identified in the NTA. However, most State cases follow through to a ML prosecution only in simple cases where offenders may be caught in possession of cash. Victoria obtains a reasonable level of substantive ML prosecutions and convictions and NSW (which together with Victoria accounts for half the population) generates a relatively large number of cash-possession ML cases. Information available through AUSTRAC and other financial information are used to support investigations into the predicate offence and for asset recovery action. In States and Territories where the number of ML investigations is low, this is mainly due to the complexities involved and the resource-intense nature of the investigations. However, Queensland and other States and Territories should focus much more on ML to achieve the generally satisfactory results that Victoria and to some extent NSW are achieving.

3.42. **The NTA of 2011 identified drugs (particularly methamphetamine or 'ice'), fraud and tax evasion as high-risk areas from a threat perspective. Consistent with this risk assessment, the authorities focus on these predicates, and to a lesser extent on related ML. However, the ML focus on these risks could be reinforced, and the overall ML focus could be broadened to cover other predicate offences such as all forms of corruption (including foreign corruption).** ACC identifies ice and ML as being key risks in the serious and organised crime environment and is currently dedicating most of its resources to these areas, including through Eligo National Task Force and its focus on the remittance sector. Despite the generally good results, several law enforcement entities indicated that actions to date had limited impact on the drugs market and major networks laundering drug proceeds. They also suggested that investigating major drug-related laundering was often frustrated through organised groups using complex corporate structures. Project Wickenby has focused on the tax avoidance/evasion risk. Task Force Galilee focuses on investment fraud, including boiler room activity located off-shore to defraud unsuspecting investors, which

is seen as a serious problem. Whilst this type of criminal activity is being disrupted, the prospect of detection, conviction, and punishment is not dissuading criminals from carrying out these proceeds-generating crimes and ML. Project Wickenby interventions are nevertheless improving taxpayers' willingness to comply with their taxation obligations. See also the boxes with information on task forces in IO.6.

3.43. **Legal issues have arisen in relation to the prosecution of self-laundering offences and ML of foreign predicates is not frequently prosecuted**. In *Nahlous v R* [2010] NSWCCA 58 and *Thorn v R* [2009] NSWCCA 294, the courts have criticised the practice of charging both predicate and ML offences as "double charging" when the criminality of the ML offence is completely encompassed in the predicate offence. Subsequently, the CDPP issued a litigation direction to prosecutors stating that the charging of the predicate offence and a ML offence will not be an abuse of process where it is necessary to charge both offences to reflect the overall criminality in the case. As indicated by the authorities, this issue presents a challenge for prosecutors in Australia in ML cases involving self-laundering.

3.44. Foreign predicate offences, including corruption offences, are not frequently prosecuted from the ML perspective – because Australia does not consider that foreign predicate offences are major predicates for ML in Australia. Authorities have referred to the difficulties of obtaining off-shore evidence and have generally found the most successful way to obtain restraint or forfeiture orders is to seek registration of foreign orders. However, federal and State action is not effectively coordinated. For example, while ML of foreign illicit proceeds through real estate is perceived to be a risk for Queensland (Gold Coast), Queensland has no ML convictions for this activity. AFP indicated that it does not focus on this risk, believing this ML activity relates to State level predicates, whereas the Queensland Crime and Corruption Commission stated it does not focus on this risk as it relates to foreign money and is thus a matter for AFP. At the same time, assessors took note of two examples of successful prosecution for foreign predicates (fraud and corruption) by AFP and the registration of two restraint orders from Papua New Guinea in Queensland.

3.45. CDPP charges stand-alone and third party ML offences and the majority of CDPP's ML prosecutions now involve these offences. However, it is more challenging to get convictions when ML is prosecuted with the predicate offence, according to CDPP. CDPP data indicates that about 95% of defendants are convicted for the ML offence when they are prosecuted for a stand-alone ML offence, whereas the figure is about 70% when defendants are prosecuted for ML jointly with the predicate offence. The authorities indicated that in many cases the ML offence may be withdrawn by the prosecutor as part of a plea bargain.

3.46. The number of prosecutions and convictions of ML offences is difficult to compile due to differences in criminalisation between the federal and State/Territory level, and between States and Territories, and the differences in keeping statistics. Overall, the assessment team considers that Australia has improved in terms of obtaining ML convictions since the last assessment and is achieving reasonable results in the risk and those geographic areas where Australia is focusing on ML. However, the overall results are lower than they could be. The increasing number of ML convictions being obtained is also encouraging (see below).

3.47. At the federal level, Australia criminalises ML under Division 400.3 to 400.8 of the CC consistent with the FATF Standards under offence categories based on the value of the property dealt with and the requisite mental elements of knowledge or recklessness. There are also offence provisions based on negligence within these categories, and an offence under 400.9 of dealing with property which is reasonably suspected to be proceeds of crime, which requires a less onerous mental standard than under the Vienna and Palermo Conventions. It is positive that Australia has criminalised certain behaviours beyond what is required in those conventions, but the availability of these lower mental element offences should not distract from pursuing serious level ML.

3.48. Consolidated statistics at the federal level for prosecution of ML offences under the offence provisions of Division 400 of the CC are set out in the table below.

Table 3.4. Federal prosecution of ML under Division 400 of the CC

Offence	2010-11	2011-12	2012-13	2013-14	Average	%
400.3	19	11	4	7	10	11%
400.4	18	20	13	15	17	17%
400.5	7	3	4	6	5	5%
400.6	19	8	25	26	20	20%
400.7	15	2	8	5	8	8%
400.8	2	4	2	1	2	2%
400.9	16	39	30	52	34	36%
Total	**96**	**87**	**86**	**112**	**95**	

3.49. At the State/Territory level prosecutions for foreign predicate ML offences, third party laundering and stand-alone laundering charges are less common than at the federal level. ML charges may also be withdrawn at the prosecution stage in order to obtain a plea and conviction for the predicate offence. The absence of deeming provisions in State/Territory legislation equivalent to the Commonwealth legislation can also make it more difficult for State/Territory authorities to prosecute cases under these provisions. Apart from NSW and especially Victoria, the number of prosecutions for the ML offence equivalent to the Vienna and Palermo standard is very low, and in the case of NSW many of the ML prosecutions are withdrawn to be considered as part of the predicate offence prosecution (however, this will not influence the conviction or total sentence). In Queensland, the Queensland Attorney General's (a Minister) consent is required for a prosecution to proceed and this may also act as an impediment for law enforcement AML action. As with the federal ML offences, the State/Territory offences contain differing mental elements of knowledge, recklessness, negligence, and suspicion.

3.50. An analysis of data on all convictions treated as ML offences or similar at both the federal and State/Territory level is set out in the table below.

Table 3.5. Convictions equivalent to Vienna/Palermo conventions ("knowledge", "recklessness")*

	2010-11	2011-12	2012-13	Average
Federal (CDPP)	40	28	38	35
Australian Capital Territory (ACT)	0	1	1	1
New South Wales (NSW)	27	25	23	25
South Australia (SA)	5	5	5	5
Tasmania (TAS)	1	2	0	1
Victoria (VIC)	63	77	100	80
Western Australia (WA)	0	2	0	1
Queensland (QLD)	0	0	0	0
Total – All potential Vienna/Palermo convictions	**136**	**140**	**167**	**148**
Other convictions (possession of suspected proceeds or negligent dealing in proceeds or receiving of stolen goods offences)				
Federal (CDPP)	14	31	29	25

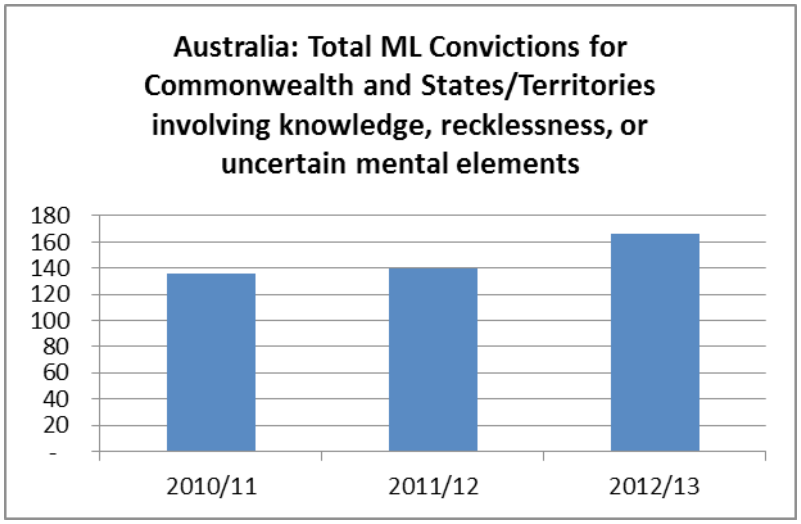
* The data may slightly overstate the level of convictions equivalent to the Vienna and Palermo standard because they include a few cases where the mental element of the offence is unknown.

Table 3.5. Convictions equivalent to Vienna/Palermo conventions ("knowledge", recklessness")* (continued)

	2010-11	2011-12	2012-13	Average
Australian Capital Territory (ACT)	0	1	5	2
New South Wales (NSW)	108	112	106	109
South Australia (SA) (no suspicion offence)	0	0	0	0
Queensland (QLD) (receiving offences only)	1 415	1 294	1 444	1 384
Tasmania (TAS)	1	1	0	1
Victoria (VIC)	1 680	1 934	2 242	1 985
Western Australia (WA) (no suspicion offence)	0	0	0	0
Total – Other Convictions	**3 218**	**3 373**	**3 926**	**3 506**
Grand Total	**3 360**	**3 514**	**4 099**	**3 658**

* The data may slightly overstate the level of convictions equivalent to the Vienna and Palermo standard because they include a few cases where the mental element of the offence is unknown.

3.51. As shown above, the bulk of convictions that the authorities consider as ML are for the possession type. The following chart shows the increase over the last three years in total number of convictions for ML offences potentially equivalent to the Vienna and Palermo standards.



3.52. **The authorities have applied a range of sanctions for ML offences to natural persons. However corporations have not been prosecuted for ML offences and it appears that this option is not seriously considered or pursued**. A unique issue arises in relation to prosecution of corporations that are reporting entities due to section 51 of the AML/CTF Act, which has the effect of making it difficult to prosecute them for the ML offence so long as they report the transaction (although they may continue to carry out the transaction – there is no consent mechanism). As far as natural persons are concerned, because at the federal level, 35% of ML cases are prosecuted under 400.9 of the CC or under the negligence provision of the other offences, the sanctions imposed may be at the less severe end of the range, including suspended jail sentences and fines. Overall, data provided indicates that persons are jailed in 58% of the cases involving a ML conviction, with one person receiving a sentence of 14 years (which seems dissuasive). The graded nature of the Division 400 offences with differing mental elements also enables for proportionate sanctions to be applied. Overall, however, many sentences may have been combined with sentences for predicate offences in a number of cases, making it difficult to determine what sanctions are imposed in practical terms for the ML offence.

3.53. Consolidated statistics for sanctions imposed under Division 400 of the CC are set out in the table below.

Table 3.6. Sanctions imposed under Division 400 of the CC

	2010-11	2011-12	2012-13	2013-14	Total	%
Jail	40	36	31	42	149	58%
Jail (suspended sentence)	9	16	18	15	58	23%
Fine	1	6	4	6	17	7%
Community service	2	0	8	5	15	6%
Recognisance order	2	0	4	7	13	5%
Other	0	0	1	2	3	1%

3.54. At the State/Territory level, penalties are relatively light, often resulting in fines for possession or handling type charges. Alternatively, the offences may be combined with the overall sanction for the predicate offence.

3.55. **The Australian authorities apply a range of criminal justice measures to disrupt serious criminal activity, including ML offences.** Such measures are applied whether or not it may be possible to secure a ML conviction. As the stated strategy of the authorities is to consider at an early stage how best to disrupt the criminal activity identified, using any measure available from their 'tool kit' or suite of measures, a ML investigation and prosecution will not necessarily be the chosen remedy, even when possible. The focus may instead be action on the predicate offence, asset recovery proceedings and/or other disruptive action. The assessors recognised that Australia's focus on disruption to combat serious and organised crime was having some effect on these issues. However, they were unable to give it much weight in relation to IO7 as the disruption measures are applied whether or not it may be possible to secure a ML prosecution, and a demonstrable effect on reducing ML activities was also not clear.

Overall conclusions on Immediate Outcome 7

3.56. Overall, Australia demonstrates some characteristics of an effective system for investigating, prosecuting, and sanctioning ML offences and activities. The focus remains on predicate offences, recovery of proceeds of crime, and disruption of criminal activity rather than on the pursuit of convictions for ML offences or the disruption of ML networks, both at the federal and State/Territory levels. However, in the areas of identified risk, Australia is achieving reasonable results and the increase in the number of ML convictions over recent years is heartening. This demonstrates an increased focus on ML compared to the previous FATF/APG assessment. It should be relatively easy to achieve a substantial or even high level of effectiveness by:

- expanding the existing ML approach to other (foreign) predicate offences including corruption,
- focussing more on ML within task forces,
- being able to demonstrate the extent to which potential ML cases are identified and investigated,
- addressing investigative challenges associated with dealing with complex ML cases, including those using corporate structures,
- pursuing ML charges against legal entities, and
- by ensuring that all States and Territories focus on substantive type ML.

3.57. **Australia has achieved a moderate level of effectiveness for IO.7.**

3.5 Effectiveness: Immediate Outcome 8 (Confiscation)

3.58. **Confiscation of criminal proceeds, instrumentalities, and property of equivalent value is being pursued as a policy objective in Australia.** Following a general policy review on criminal asset recovery work, the Criminal Assets Confiscation Taskforce (CACT) was established in 2011 and became operational under POCA in January 2012. It has assumed primary responsibility from the CDPP at the federal level for restraint and confiscation of proceeds of crime, except in cases where a conviction is required and no prior restraint order has been obtained. The primary policy objective of CACT is to draw on agency skills to target the criminal economy and take the profit out of crime.

3.59. CACT has been operational under POCA for only two years and aims to take a more proactive approach to litigating proceeds of crime matters and testing the POCA. While it is too early to say whether its efforts are having a marked impact on recovery of proceeds of crime, restraint figures have surged, which is a positive sign. CACT is led by the AFP with around 100 personnel, consisting of forensic accountants, financial investigators, investigators, secondees, and support staff, and supported by over 30 in-house litigation lawyers and litigation assistants in conjunction with the ACC and ATO and the intelligence resources they have at their disposal. As it is not necessary to prove a predicate offence for the purposes of sustaining proceeds of crime action based on ML offences, AFP statistics do not show whether ML cases are based on suspected drug crime or other types of offending. However, based on discussions, most of the focus of the work seems to have been on dealing in proceeds related to drug cases and some fraud activity. Focus on recovery of proceeds of crime arising from, and in connection with, other predicate offences has not been clearly demonstrated, although some recovery action in relation to other predicate offences has taken place. ATO, through Project Wickenby, has targeted recovery of monies from tax crimes. As these recoveries relate to tax administration, they are made in most cases through ATO's taxation powers rather than under POCA

3.60. All States and Territories have conviction and non-conviction based confiscation schemes. The NSW Crime Commission and the Queensland Crime and Corruption Commission in particular, pursue non-conviction based recovery of criminal proceeds as a policy objective. The authorities in Victoria have also been successful in pursuing significant recoveries as a policy objective, but in other States the policy steer and priority is inconsistent.

3.61. **The competent authorities have increased their efforts to confiscate proceeds of crime since the last FATF assessment, with the amounts being restrained and confiscated increasing at the federal level. Overall, however, the figures remain relatively low in the context of the nature and scale of Australia's ML/TF risks and have only modestly increased since the last assessment.** The total value of amounts recovered at the federal level since 2006-2007 has increased from AUD 12.65 million in 2006-2007 to AUD 65.74 million in 2013-2014. The CACT figures are also showing an upward trend in restraint actions, even though few cases have yet progressed to final confiscation or forfeiture orders.

3.62. CACT takes non-conviction based asset recovery proceedings in most cases allowing for a lower civil standard of proof; however cases can become difficult to pursue when complicated company or overseas structures are used. In addition, under POCA the CACT must provide an undertaking to pay damages to the property holder in all actions it commences to restrain and forfeit property. As such, the CACT is required to consider the potential risk and liability prior to commencing proceedings. This requirement can act as a disincentive to take immediate action in complex matters, especially when successful outcomes may be reliant on overseas evidence not to hand or not forthcoming.

3.63. In line with the authorities' overall objective of disruption, a decision may be made by CACT at the outset to refer the case to ATO to consider whether there has been an avoidance of tax and to use its civil tax recovery powers. The authorities advise that currently around 25 - 30% of cases are referred to the ATO by CACT. ATO has made significant recoveries under Project Wickenby on unpaid tax liabilities, including those related to tax crimes, using its tax recovery powers. While this has been an effective means of recovery, the ATO recoveries are not made under proceeds of crime legislation (POCA). AUD 2.7 million has been recovered under POCA powers in connection with Project Wickenby.

3.64. Unexplained wealth orders are available to target the kingpins of serious and organised crime when they cannot necessarily be linked to criminal offences on available evidence, but to date CACT has not used the

powers due to difficulties with the current legislation and no such orders have been obtained. The procedures allow for a reversal of the onus of proof and require defendants to explain how their wealth was accumulated once it is established the defendant has links to general criminal activity. Amendments to the unexplained wealth regime to improve the investigation and litigation of unexplained wealth matters are currently before the federal Parliament.

3.65. CACT has faced challenges in pursuing domestic restraint and confiscation action based on ML involving complex corporate structures and foreign predicate offences where assets are located in Australia. For the latter, the authorities indicated that the challenge is due to the need to obtain foreign evidence and the requirement to give the undertaking as to damages to the property holder if proceedings are commenced. CACT has now begun to work with foreign jurisdictions to register orders obtained abroad under mutual legal assistance procedures against assets identified locally and it has been successful in a few cases to date. CACT aims to continue to process other cases, including cases involving foreign jurisdictional differences, which will require testing before the Australian courts.

3.66. CACT has taken some action to recover proceeds which have been moved outside Australia through requests made under the mutual legal assistance channels. Difficulties have been encountered when funds are located outside Australia, including in investment and boiler room frauds investigated by ASIC. In addition, the authorities do not generally take action under POCA to recover proceeds of crime in fraud cases when there are identified victims, because under POCA, funds recovered are paid into the Confiscated Assets Account and shared with the Australian community to fund anti-crime initiatives. As a result, the authorities do not, as a matter of policy, actively pursue POCA action with a view to restitution of victims, although victims are able to apply to the court during proceeds of crime proceedings to have their interest in property recognised, e.g. through applying for an exclusion or compensation order. Australia does share funds under its sharing program to countries that have provided assistance to Australia in response to mutual legal assistance requests or domestic investigations, and in cases involving restitution of victims abroad.

3.67. As a result of the transfer of the bulk of asset recovery responsibilities, including litigation, to the CACT, the CDPP no longer has specialist litigation resources and personnel for asset recovery work. This is in line with the drop in POCA work now undertaken by the CDPP. As would be expected, CDPP restraint and confiscation figures have declined. CDPP continues with its designated role in cases where a conviction is necessary and no prior restraint order has been obtained.

3.68. At the State and Territory level, comparison of figures for recovery of proceeds of crime is difficult because different jurisdictions take different approaches to data collection. Between 2010-2011 and 2012-2013, Victoria authorities confiscated AUD 54 million in criminal assets (some of which was returned to victims under compensation orders). In the same period, the NSW authorities confiscated assets with a realisable estimated value of around AUD 60.8 million. In NSW and Queensland, the State Crime Commissions pursue non-conviction based confiscation, whilst in other States the DPP takes either criminal or non-conviction based confiscation action. Non-conviction based proceedings are generally not pursued in fraud cases when there is an identified victim, as there is no mechanism to provide restitution to victims and funds are paid into consolidated revenue. The combined recoveries at State/Territory level are about twice the value of recoveries made at the federal level under POCA due to the heavy emphasis on drug related recoveries. Settlement of these cases tends to be more straightforward and less complex than cases undertaken at the federal level by CACT.

3.69. Overall statistics for actual recovery of proceeds, tax liabilities, and instrumentalities of crime are set out in the tables below. A large number of recoveries have been made through ATO but these are recoveries linked to tax evasion under ATO taxation powers, not via POCA recovery powers.

Table 3.7. Confiscation of proceeds of crime (in AUD millions)

	2009-10	2010-11	2011-12	2012-13	Average
Confiscated Proceeds					
CACT/CDPP	25.8	13.9	43.1	20.0	25.7
States[1]	56.5	56.7	48.3	61.4	55.7
Cross-border cash confiscations[2]	n/a	n/a	n/a	n/a	n/a
Victim restitution[3]	n/a	n/a	n/a	n/a	n/a
Total Confiscated Proceeds	**82.3**	**70.6**	**91.4**	**81.4**	**81.4**

Notes

1. Some States report value of orders obtained rather than assets confiscated
2. Australia was unable to provide information on the value of cross-border related confiscations
3. Australia was unable to provide information on the value of compensation orders issued to victims

3.70. Separate from the confiscation of proceeds of crime collections, ATO made the following tax collections (in AUD million) in respect to serious non-compliance audits. These figures include results from Project Wickenby and non-Wickenby activities which relate to the tax implications of organised crime work.

Table 3.8. Total tax collections: ATO's Serious Non Compliance Audits

Year	Tax liabilities collected (in AUD millions)
2012-13	91.24
2011-12	119.83
2010-11	109.50
2009-10	81.90

3.71. The Australian authorities regularly make large seizures of drugs due to the size of the domestic drug market and the prevalence of drug offending. The table below sets out the quantum of drugs seized annually:

Table 3.9. Quantum of drugs seized*

Year	Amount (in kilograms)
2012-2013	19 628
2011-2012	23 802
2010-2011	9 358
2009-2010	7 851

* The estimated whole sale value of the seized drugs would have been AUD 438 million (2009-2010); 782 million (2010-2011); 1.01 billion (2011-2012); and 2.67 billion (2012-2013).

3.72. The following table provides information on the values of money recovered as provided to the AFP by the Australian Financial Securities Agency, which operates the Confiscated Assets Account in its capacity as the Official Trustee for the purposes of the POCA. Amounts recovered relate to orders made by the AFP and CDPP[3].

3 The payments into the Confiscated Assets Account are less costs and fees incurred by the Official Trustee in realising the property.

Table 3.10. POCA: Amounts recovered into the Confiscated Assets Account from Forfeiture Orders and PPOs* for the period 2006-07 to 2013-14

Financial Year	Total amount (in AUD)
2013-14	65 759 185.26
2012-13	20 033 263.34
2011-12	43 095 166.75
2010-11	13 948 991.37
2009-10	25 843 496.07
2008-09	16 669 702.61
2007-08	19 014 501.93
2006-07	12 657 119.95

* Sections 47, 48, 49, 92, 116 & 134 of the POCA

3.73. No comprehensive information was available to assess the whole system involved in restraint and confiscation of assets, except in relation to the CDPP and CACT. These statistics on applications for restraint and forfeiture orders, together with a comparison against property actually confiscated (i.e. recovered), are set out in the table below.

Table 3.11. Restraint and confiscation of assets in relation to the CDPP and CACT

	2009-10	2010-11	2011-12	2012-13	Average
Number of freezes, seizures, & other restraints	44	48	191	228	128
Value of assets frozen, seized, or restrained (AUD millions)	21.1	42.9	116.7	62.5	60.8
Average value (AUD)	480 680	894 717	611 060	274 123	476 142
Number of forfeiture, pecuniary penalty, etc., orders	142	126	144	86	125
Value of forfeiture, pecuniary penalty, etc., orders (AUD millions)	25.4	24.2	75.6	25.3	37.6
Average value (AUD)	179 186	191 912	524 706	293 659	302 084
Value of confiscations (AUD millions)	25.8	13.9	43.1	20.0	25.7
Relative to restraint	122%	32%	37%	32%	42%
Relative to orders	102%	58%	57%	79%	68%

3.74. Funds paid from the Confiscated Assets Account for sharing with foreign governments and entities under sharing arrangements are set out in the table below. The significantly higher figure for 2013-14 relates to a case involving the repatriation of funds to a trustee in bankruptcy overseas for compensation of victims.

Table 3.12. Funds paid from the Confiscated Assets Account for sharing with foreign governments and entities under sharing arrangements

Year	Sharing with foreign governments and entities (in AUD)
2013-14	44 600 000
2012-13	0.00
2011-12	0.00
2010-11	0.00
2009-10	4 653 907
2008-9	280 446
2007-8	3 860 000
2006-7	4 015 348

3.75. **Australia is taking some steps to target the cross-border movement of cash and BNIs. However the authorities were unable to provide information about how much of the detected cash is seized or confiscated, and insufficient action is taken to investigate significant declarations**. All persons entering or leaving the country are required to declare whether they are carrying more than AUD 10 000 in currency. In 2012-13, ACBPS detected 308 cases of undeclared cash amounting to about AUD 7.6 million and subsequent seizures are continuing to grow in overall size and value. In 2013-14, there were 430 detections totalling AUD 16 710 909. Around two thirds of these cases involve incoming movements. Fines are issued in cases of undeclared movements over the limit and in serious cases the matters are referred to AFP for further investigation and prosecution. In 2013-14, 167 fines were imposed and 14 individuals were convicted of offences relating to failing to declare cash. Cases of airlines employees transporting significant sums of money have been prosecuted and imprisoned for ML offences and the proceeds seized and confiscated.

3.76. All declarations made at border points and collected by ACBPS are filed with AUSTRAC. If significant sums are declared and an ACBPS officer develops a reasonable suspicion, such as where there is targeted intelligence indicating laundering, they would actively question the traveller. However, it is not clear whether travellers declaring significant sums are questioned in all circumstances. Nor are declarations of significant sums actively reviewed, investigated, or profiled by AUSTRAC when automatically passed on from ACBPS.

3.77. Statistics on border cash detections by ACBPS are set out in the table 3.13 below and demonstrate a recent improvement in the number of detections of undeclared cash.

3.78. **Australia's confiscation efforts are consistent with primary risk identified in the NTA to the extent the majority of assets recovered to date have flowed from the drugs trade and also from tax evasion. Australia is also at significant risk of an inflow of illicit funds from persons in foreign countries who find Australia a suitable place to hold and invest funds, including in real estate.** Cash non-declarations/seizures at border points also indicate illicit funds are entering Australia. The authorities do not appear to be investing serious effort in mitigating this risk, including when foreign predicate offences may be involved.

Table 3.13. border cash detections by ACBPS

Border Cash Detections	2011-12	2012-13	2013-14	Average
Number of cash detections				
- incoming	225	230	300	251
- outgoing	54	78	130	87
Total Cash Detections	279	308	430	339
Number of fines imposed	82	107	167	119
Fines as percentage of detections	29%	35%	39%	35%
Total value	**AUD 5 478 165**	**AUD 7 656 212**	**AUD 16 710 909**	**AUD 9 948 428**
Average Value	**AUD 19 635**	**AUD 24 858**	**AUD 38 862**	**AUD 28 397**

Overall conclusions on Immediate Outcome 8

3.79. Overall, Australia demonstrates some characteristics of an effective system for confiscating the proceeds and instrumentalities of crime. The framework for police powers and provisional and confiscation measures is comprehensive and is being put to good use by the CACT, which is showing early signs of promise as the lead agency to pursue confiscation of criminal proceeds as a policy objective in Australia. At the State/Territory level, the focus has remained primarily on recovery of proceeds of drugs offences. The quantum of proceeds confiscated is relatively low in the context of Australia's ML/TF risk and has only increased modestly since the last FATF assessment, which suggests that criminals retain much of their profits.

3.80. **Australia has achieved a moderate level of effectiveness for IO.8.**

3.6 Recommendations on legal system and operational issues

3.81. The following recommendations are made in relation to the legal system and operational issues:

Financial intelligence (IO.6)

- The authorities should develop a comprehensive long-term plan for law enforcement to improve the use of AUSTRAC information to increase the number of ML/TF and financial investigations, and to increase the commitment to fight these crimes. In the short term, this should include setting performance indicators.
- The authorities should earmark funds to establish financial crime/ML/TF operational teams within AFP and state police forces, and be committed to keep these funds / operational teams in place for a longer time.
- AUSTRAC should better tailor its information to the needs of its users (outside the context of joint task forces).
- AUSTRAC should (be enabled to) increase the number of sources of information available in its database, for example (but not limited to) criminal conviction records.

ML investigations and prosecutions (IO.7)

- More emphasis should be placed on the detection, prosecution and punishment of ML offences (not

only the disruption of predicate criminal activity) to dissuade potential criminals from carrying out proceeds generating crimes and ML, both at the federal and even more so at the State/Territory level.

- Authorities should pro-actively monitor the extent to which potential ML cases are identified and investigated and should address investigative challenges associated with dealing with complex ML cases, including those using corporate structures.
- ML cases involving other predicate offences where there is risk, should be proactively pursued, alongside the existing emphasis on drugs and fraud cases, and all States and Territories should focus on substantive type ML offences.
- Self-laundering offences should continue to be charged where appropriate, and more investigations and prosecutions for foreign predicate ML offences, including proceeds of foreign corruption, should be pursued.
- Consideration should be given to imposing ML sanctions on corporations in suitable cases.
- Authorities should consider harmonising State and Territory level ML offence provisions with the federal provisions to improve effectiveness of the State and Territory offences e.g. by inclusion of deeming provisions similar to those in the federal legislation.

Confiscation (IO.8)

- More emphasis should be placed on the confiscation of proceeds of crime reflecting the identified risks from all major revenue generating offences (including fraud and corruption) to increase the volume of confiscation cases to make crime unprofitable, at both the federal and State/Territory level.
- CACT is encouraged to continue its positive action to date to pursue restraint and forfeiture orders, including in difficult cases.
- The authorities should enhance their capabilities to pursue restraint and confiscation action based on ML involving complex corporate structures, foreign predicate offences, and investment frauds where assets are located in and outside Australia.
- State and Territory law enforcement should expand their primary focus beyond recoveries relating to drug offending.
- The authorities should give consideration to allowing restitution of victims of crime under POCA.
- The authorities should take proactive steps to investigate declarations of cross-border movements of significant amounts of cash, which may be an indicator of proceeds of foreign predicate offences being laundered in Australia.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Recommendation 3 – Money laundering criminalisation

a3.1. Australia was rated largely compliant for Recommendation 1 and Recommendation 2 (ML offence). The main shortcomings that were noted at the time related to lack of effectiveness, and the less than compliant (implementation of the) criminalisation of ML at the State and Territory level. ML is criminalised at the federal and the State/Territory level. This section focuses primarily on the federal level.

a3.2. **Criteria 3.1 and 3.11 –** ML is criminalised under Division 400 of the federal *Criminal Code Act 1995* (the Criminal Code, or CC). Vienna Article 3(1) (b) and (c) and Palermo Article 6(1) have been implemented (section 400.2 CC covers receipt, possession, concealment, disposal, import, export and engaging in banking transactions, which also covers transfer, conversion , disguising, and acquisition). Participation, association or conspiracy, aiding and abetting, counselling or procuring, incitement and conspiracy are all covered under part 2.4 of the CC (attempt, complicity and common purpose, joint commission, commission by proxy, incitement and conspiracy). Knowledge is required (beliefs, recklessness or negligence), although section 400.9 CC separately criminalises "dealing in property reasonably suspected to be proceeds of crime".

a3.3. **Criteria 3.2 and 3.3 –** The CC applies a threshold approach, with predicate offences for ML comprising all indictable offences—i.e. those offences whose penalty is a minimum of 12 months imprisonment (section 400.1 CC and section 4G *Crimes Act 1914*). An extensive overview was provided by the authorities, a sufficient range of offences within each of the categories of offences are criminalised under Australian criminal law, either at the Commonwealth level, or at the State level/Territory. Federal predicate offences are predicates for the federal ML offence, and State/Territory predicate offices are predicates for State/Territory and federal ML offences.

a3.4. **Criterion 3.4 –** The definitions of 'proceeds of crime' and 'property' in section 400.1 CC extend to any money or other property that is wholly or partially derived or realised, directly or indirectly, by any person from the commission of an offence that may be dealt with as an indictable offence. Property is defined as real or personal property of every description, whether situated in Australia or elsewhere and whether tangible or intangible, and including an interest in any such real or personal property. This includes financial instruments, cards and other such items regardless of whether they have intrinsic value.

a3.5. **Criterion 3.5 –** Section 400.13 CC explicitly provides that that the prosecution does not need to establish that a particular offence has been committed, or that a particular person committed an offence in relation to the money or property, in order for those assets to be considered proceeds of crime. The prosecution must, however, prove beyond reasonable doubt that the proceeds are either the proceeds of a crime, or are intended to become, or are at risk of becoming, an instrument of crime.

a3.6. **Criterion 3.6 –** The definitions of "proceeds of crime" and "instruments of crime" both cover crimes against laws of a foreign country.

a3.7. **Criterion 3.7 –** Sections 400.1 and 400.2 CC formally apply to persons that commit the predicate offence. However, case law has limited the ability to charge both for the predicate offence and for self-laundering where the criminality of the ML offence is completely encompassed by the criminality of the predicate offence (e.g. the decisions of the New South Wales Court of Criminal Appeal in *Nahlous v R* (2010) 201 ACrimR 150; *Thorn v R* (2010) 198 ACrimR 135; *Schembri v R* (2010) 28 ATR 159). This has led to the issuing of a litigation instruction (number 10 of May 2013) that restricts the use of the self-laundering provisions in line with case law.

a3.8. **Criterion 3.8 –** Intent and knowledge (belief, recklessness, negligence) must normally be proven (sections 5.2 and 5.3 CC) but can be inferred from objective factual circumstances. Under section 400.9 CC (reasonably suspected proceeds), a range of possible examples of such circumstances is given which will satisfy the offence provision. Section 400.9 carries a lower penalty. All other sections require knowledge and

intent to be proven. Absolute liability applies to the value of the property laundered, but mistake of fact as to the value of the property can be a defence to the particular offence charged (but not the lesser offence).

a3.9. **Criterion 3.9 –** CC Division 400 provides for different charges for different monetary thresholds (amounts involved), with the maximum penalties also differing depending on the level of fault (intention, knowledge, recklessness, negligence and reasonable suspected proceeds). This allows for proportionate sanctioning. Sanctions for natural persons range from 25 years imprisonment and/or AUD 255 000 (intentionally laundering AUD 1 million or more), to a fine of AUD 1 700 (negligence, laundering less than AUD 1 000). These sanctions are dissuasive.

a3.10. **Criterion 3.10 –** Part 2.5 CC sets out the general principles, physical and fault elements of corporate criminal responsibility. Section 12.1 provides that the Criminal Code applies to bodies corporate in the same way as it does to natural persons (the term corporate body means legal person), and section 4B of the Crimes Act enables a fine to be imposed for offences that only specify imprisonment as a penalty. Section 12.3 indicates that to prove intention, knowledge or recklessness, the fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence. This could be done by proving that the body corporate's board of directors, or high managerial agent, intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

a3.11. Sentencing is based on a formula from imprisonment to financial penalty, all based on sections 4AA(1), 4B(2), and 4B(3) of the Crimes Act. This means that the maximum penalties for legal persons under Division 400 of the CC range from a fine of AUD 1 275 000 (intentionally laundering AUD 1 million or more) to AUD 8 500 (negligent laundering less than AUD 1 000).

Weighting and Conclusion

a3.12. **Recommendation 3 is rated compliant.**

Recommendation 4 - Confiscation and provisional measures

a3.13. In its 3rd assessment, Australia was rated compliant for Recommendation 3 (confiscation and provisional measures). Most confiscation action is brought under the *Proceeds of Crime Act 2002* (POCA), although each State and Territory has its own complementary system. This section focuses primarily on the federal level.

a3.14. In addition to what is required by Recommendation 4, authorities can also issue non-conviction based forfeiture orders which are decided upon a civil standard and directed at persons, property, or equivalent value (sections 47, 49 and 116 POCA). Property-based civil forfeiture orders apply to any suspected indictable offence, foreign offence, or offence of "Commonwealth concern", while those directed at a person or equivalent value can be applied for a suspected "serious offence" (defined as an indictable offence punishable by 3 or more years' imprisonment plus other conditions). Finally, unexplained wealth orders (section 179A-T POCA) could be issues that would require a person to pay an amount equal to a portion of the person's total wealth if the person cannot satisfy the court that the money is not derived from certain offences.

a3.15. **Criterion 4.1 –** The POCA has broad provisions to confiscate (referred to as "forfeiture" in POCA) proceeds of crime. Part 2-2 (section 48) covers conviction-based forfeiture orders that apply to all indictable offences (i.e. those with 1 year imprisonment or more), which includes ML, TF, and predicate offences. Corresponding value is also covered through Part 2-4 POCA (section 116), where a pecuniary penalty order (fine) can be issued for the value of the benefits from the unlawful activity. POCA (section 329) defines proceeds and instruments of crime. Property is proceeds of an offence, located anywhere, if it is wholly or partially, directly or indirectly derived or realised from the commission of an offence. Property is an instrument of an offence if the property, located anywhere, is used or intended to be used in, or in connection

with, the commission of an offence. Property remains proceeds or instrumentality of crime even after transfer or exchange, except when the property is acquired by a bona fide third person or is inherited (section 330).

a3.16. **Criterion 4.2 –** Provisional measures are covered under Parts 2-1A (freezing orders, which apply to financial accounts) and 2-1 POCA (restraining orders, which apply to property) and can be executed on the basis of a reasonable suspicion or conviction. Property can be restrained when a person is charged with an indictable offence (section 17), suspected of committing a serious offence (section 18), or when property is suspected to be the proceeds of an indictable offence (section 19). In addition to the regular investigative measures that are used to investigate offences and that can lead to the application of provisional measures and confiscation (see Recommendation 31), Chapter 3 POCA provides for examination orders, production orders (also for financial institutions relating to accounts and transactions, also over particular periods, and search and seizure of tainted property or evidential material). Section 36 of POCA enables the court to set aside a disposition or dealing with property, which contravenes a restraining order when that disposition or dealing was either not for sufficient consideration or was not in favour of a person acting in good faith.

a3.17. **Criterion 4.3 –** Rights of bona fide third parties are protected through sections 29 and 29A POCA, which enable a person whose property is the subject of a restraining order to have his or her property excluded from that order. Sections 69, 72, 73, 77, 81, 94, 94A, 99, 107, and 179L of POCA are also relevant.

a3.18. **Criterion 4.4 –** Chapter 4 POCA contains the procedural provisions relating to the management of property, the provision of legal assistance and how confiscated property can be used. The Australian Financial Security Authority (AFSA) is responsible for securing, managing and realising restrained property. Part 4-1 sets out the powers and duties of AFSA which include how it may deal with controlled property. All confiscated money, and the funds derived from the sale of confiscated assets, is placed into the Confiscated Assets Account which is managed by AFSA. Money and assets that are forfeited can only be used for purposes specified in POCA (shared with other jurisdictions in case of joint investigations, the States or Territories). Funds can also be used for local crime prevention, law enforcement, drug treatment and diversionary measures.

Weighting and Conclusion

a3.19. **Recommendation 4 is rated compliant.**

Operational and Law Enforcement

Recommendation 29 - Financial intelligence units

a3.20. Australia was rated compliant for Recommendation 26 (FIU). Since Australia's last mutual evaluation, the FATF Standards on FIUs have been significantly strengthened by imposing new requirements which focus, among other issues, on the FIU's strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

a3.21. Australia's FIU is AUSTRAC established in 1989 under the *Financial Transaction Reports Act 1988* (FTR Act) and from 2006 by the AML/CTF Act. AUSTRAC's role as an FIU is discussed under R29. Other functions that AUSTRAC exercises (such as supervision) are discussed elsewhere. The key piece of legislation for AUSTRAC is the AML/CTF Act. However, the FTR Act remains in force as long as its provisions do not contradict the provisions of the AML/CTF Act.

a3.22. **Criterion 29.1 –** The AML/CTF Act confirms the establishment and functions of AUSTRAC AUSTRAC's functions are: "to retain, compile, analyse and disseminate eligible collected information" (sections 209, 210, and 212). "Eligible collected information" comprises all types of reports that reporting entities are required to file with AUSTRAC, as well as other information that AUSTRAC obtains from government bodies and reporting entities upon request.

a3.23. **Criterion 29.2 –** AUSTRAC is the central agency for the receipt of disclosures filed by reporting entities under both AML/CTF Act and FTR Act. These disclosures include reports of suspicious matters (SMRs), reports of threshold transactions, reports of , IFTIs, compliance reports, reports about physical currency and bearer negotiable instruments (see subsections 41(2), 43(2), 45(2), 47(2), 53(8)) and 55(5)), as well as reports obliged under the FTR Act-significant cash transactions by cash dealers, reports of significant cash transactions by solicitors, and reports of suspect transactions (SUSTRs) (see sections 3, 7, 15A, and 16).

a3.24. **Criterion 29.3 –** Section 49(1) of the AML/CTF Act enables AUSTRAC to collect further information from any reporting entity or even any other persons (legal or natural) once an SMR has been filed by a reporting entity. This goes beyond the standard, which only requires that FIUs can obtain and use additional information from any reporting entities. Other databases are not integrated into AUSTRACs analytical tool (except for the electoral role). AUSTRAC can gather information from the AFP, ACBPS, ACC, Immigration and public company information database (including the public ASIC database database), other commercial services (including World Check) and State/Territory Police where AUSTRAC staff are posted.

a3.25. **Criterion 29.4 –** AUSTRAC's Operations Division is responsible for both operational and strategic analysis. Concerning operational analysis, AUSTRAC employs automated analysis systems to categorise reports of suspicious matters based on a series of rules which are defined and continually reviewed by AUSTRAC in collaboration with its partner agencies. These rules enable AUSTRAC's automated system to identify those reports which relate to specific key risks, for potential further analysis by AUSTRAC (intelligence reports). Intelligence reports are shared with other agencies, spontaneously or upon request. Partner agencies also have direct access to all information in the AUSTRAC database (all types of reported transactions and intelligence reports) and can undertake their own searches or analysis. Concerning strategic analysis, the Operations Support Branch has a dedicated strategic analysis section which includes a typologies team. The typologies team uses data mining technology to develop ML/TF typologies, sanitised case studies, ML/TF indicators, and reporting summaries. Strategic intelligence reports can be used by AUSTRAC business units and by partner agencies for any purpose. The strategic analysis team also produced the NTA and NRA.

a3.26. **Criterion 29.5 –** Section 212 (1) of the AML/CTF Act provides the functions of the AUSTRAC CEO which includes disseminating "eligible collected information" (i.e. information received by AUSTRAC). As partner agencies have on-line full access to AUSTRACs database ('SMRs and analysis) and also use the AUSTRAC analysis tool, dissemination of information is technically not as important as it would be in other countries (sections 125 - 133C AML/CTF Act). Access to the database and disseminations are based on the Australian Protective Security Policy Framework (PSPF, see below). The Egmont Secure Web system is used for international disseminations. The AUSTRAC database tracks all access by each user

a3.27. **Criterion 29.6 –** AUSTRAC protects its information as follows: section 121 of the AML/CTF Act prohibits the disclosure of AUSTRAC information except in cases specified in the legislation. Additionally, the aforementioned PSPF sets detailed requirements for governance, staff members' protective security roles and responsibilities, risk management elements including security vetting, and information asset classification and control, including for AUSTRAC. AUSTRAC has also internal policies for employees who have an obligation to manage and protect the records they create and/or receive in the course of business. Employees are required to ensure that records are retained, classified, and filed according to the provisions of the AUSTRAC Information Management Policy (IMP). The IMP outlines procedures for handling and storage of AUSTRAC information, whilst the AUSTRAC Information Security Policy outlines procedures for securing information, security classification and protective markings, dissemination limiting markers, handling, access and control. All AUSTRAC employees are subject to a security vetting process undertaken by the Australian Government Security Vetting Agency (AGSVA). AUSTRAC's personnel security policy determines that AUSTRAC must also identify designated security assessment positions within the agency that require access to official information and assets. Information security is maintained within AUSTRAC's risk management framework. There are designated IT units that have responsibility to develop, implement, and maintain the security of all AUSTRAC services, in cooperation with AUSTRAC's security advisor. Physical access to AUSTRAC building facilities is also limited to appropriately cleared staff.

a3.28. **Criterion 29.7 –** AUSTRAC is established as a statutory authority within the Attorney-General 's Department's Portfolio. The powers and functions of AUSTRAC are set out in detail in Part 16 of the AML/CTF Act. The legal and institutional framework does not grant full operational independence and autonomy,

to allow for accountability to Parliament. The AML/CTF Act provides a reserve capacity for the Minister to issue written policy principles and directions to the AUSTRAC CEO, which the CEO has to comply with (section 213 AML/CTF Act). These written policy principles can relate to any issue but not to a specific case (section 228(2) AML/CTF Act) and must be tabled in Parliament (sections 213(2) and 228(5) AML/CTF Act). AUSTRAC can make arrangements for information exchange with domestic competent authorities and foreign counterparts. AUSTRAC is an independent body and has its own distinct structure and core functions. AUSTRAC has its own operational resources, including financial budget and staff, allocated through the normal governmental processes. Once allocated, there are no specific provisions that would require further approvals from government or partner agencies to obtain and deploy the resources needed to carry out its functions. There is a general consultation requirement; however, any failure to consult in relation to the performance of a function does not affect the decision taken.

a3.29. **Criterion 29.8 –** AUSTRAC is a founding and active member of the Egmont Group, and served as Chair of the Egmont Committee in 2008-2009.

Weighting and Conclusion

a3.30. The power of the minister to provide written policy principles or instructions to AUSTRAC is a limitation to the operational independence and autonomy of the FIU and a technical shortcoming. Because the assessors are of the view that the instruction powers cannot be used in practice because of likely public disapproval, it is a shortcoming that should not have an effect on the overall compliance. Australia is also to be commended for providing AUSTRAC with the legal tools to be able to obtain and use additional information from any other natural or legal person, which goes beyond the FATF requirement to obtain information from reporting entities. **Recommendation 29 is rated compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

a3.31. In its 3rd assessment, Australia was rated largely compliant for old Recommendation 27 (law enforcement authorities). The deficiency related to effectiveness, which is not assessed in this section under the 2013 Methodology. The new Recommendation 30 contains much more detailed requirements.

a3.32. **Criterion 30.1 –** The AFP is the primary law enforcement agency for the investigation of federal offences, including ML associated predicate offences, and TF. The *Australian Federal Police Act 1979* (AFP Act) establishes the AFP which is the federal police force (section 8 AFP Act), chiefly responsible for federal crimes, and its functions also include the investigation of State/Territory offences that have a federal aspect (section 4AA AFP Act). A State offence may be identified as having a federal aspect where it potentially falls within federal legislative powers because of the elements of the State offence or the circumstances in which it was committed, or because the investigation of that State offence is incidental to an investigation of a federal or Territory offence.

a3.33. The AFP had three permanent Money Laundering Short Term Teams. First established in January 2012, these teams focused solely on ML investigations. One team was merged into a general crime squad before the on-site, one team was merged with a joint task force on alternative remittance (Eligo National Task Force), and the third team is still in place (7 staff in Melbourne). State and Territory police forces also have responsibility for investigating ML offences set out in State legislation.

a3.34. The AFP also has a dedicated TFIU to focus on TF investigations, intelligence, education and liaison. The TFIU is a multi-agency unit and includes representatives from a number of Commonwealth and State Government agencies.

a3.35. In addition, The *Australian Crime Commission Act 2002* (the ACC Act) establishes the ACC, mainly a law enforcement intelligence agency. The functions of the ACC include the investigation, when authorised by the ACC Board, of matters relating to federally relevant criminal activity (section 7A ACC Act). The ACC uses its coercive powers in collaboration with its partner agencies: it does not conduct investigations into criminal activity on its own since its role is primarily to be the national criminal intelligence hub and not

a supra-national police force. The ACC Board (which includes the heads of federal, State and Territory law enforcement agencies) approves Special Investigations and Special Operations in which the ACC may use coercive examination powers (set out in Division 1A and 2 of Part II of the ACC Act). The ACC's far-reaching coercive powers means it has broader investigative powers than those available to the police forces and it operates in effect as a standing Royal Commission. ML is relevant to ACC investigations, such as the current Targeting Criminal Wealth Special Investigation.

a3.36. **Criterion 30.2 –** AFP and State and Territory Police investigators are authorised to undertake both predicate and ML investigators in tandem or individually depending on the nature and desired outcomes of the particular investigation. However, this is not the case for Queensland where there is a legal requirement for the DPP to request the Queensland Attorney General to authorise a ML prosecution.

a3.37. **Criterion 30.3 –** The bodies described above have the authority to identify, trace, and initiate the freezing and seizing of property. In addition, the AFP-led CACT conducts investigations and litigation arising from the POCA (POCA) and is responsible for the majority of POCA work. The CACT has the ability to identify and pursue criminal assets and also works in partnership with relevant Commonwealth, State, Territory and international law enforcement agencies to identify, investigate and litigate appropriate asset confiscation matters at the federal level.

a3.38. **Criterion 30.4 –** Australia recognises tax and social security fraud as an ML predicate offence. Regarding tax, the ATO has the primary responsibility for investigating tax evasion and tax fraud and conducts both (civil) audits and (criminal) investigations of taxation-related matters. The ATO undertakes investigations either of its own accord, or with partner law enforcement agencies, or in multi-agency task force operations (for example Project Wickenby). The ATO investigators have recourse to a number of Acts which impose criminal sanctions (*Tax Administration Act 1953, Crimes (Taxation Offences) Act 1980* and the CC). Where a tax-related matter intersects with an associated non-tax related offence (e.g. drug-trafficking), the investigation would be considered 'serious and/or complex' and the ATO will liaise with the AFP and CDPP to coordinate the various aspects of such an investigation. However, the ATO investigators do not conduct 'stand-alone' (i.e. without a predicate tax offence) ML investigations as these are the responsibility of the AFP and ATO's scope is somewhat limited. The ATO investigators are required to be qualified in accordance with "Australian Government Investigation Standards" and are able to prepare complex briefs of evidence for use in criminal court matters. Department of Human Services investigators have powers and procedures similar to the ATO, in order to focus on social security fraud.

a3.39. **Criterion 30.5 –** In July 2014, the AFP launched the Fraud and Anti-Corruption Centre, responsible for operational fraud and anti-corruption efforts at the federal level. At the State level (but not at the federal level), independent anti-corruption bodies exist in New South Wales, Queensland, Western Australia, Victoria, Tasmania and South Australia. Like Royal Commissions, these bodies have extensive investigate and coercive powers. Cases may be referred to the (C)DPP.

States and Territories:

a3.40. Australia also provided extensive information for Recommendation 30 for the state level. In general, states follow the same model as the federal government, with one unified police force and a centralised DPP body.

Weighting and Conclusion

a3.41. Besides the limitation in Queensland where the Attorney-General needs to authorise a ML prosecution, the responsibilities of law enforcement are sufficient. **Recommendation 30 is rated largely compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

a3.42. In its 3rd assessment, Australia was rated compliant for old Recommendation 28. In February 2010, existing relevant provisions in the Crimes Act were replaced with new regimes based on national model

legislation. The new Recommendation 31 contains much more detailed requirements in the area of law enforcement and investigative powers.

a3.43. **Criterion 31.1 –** Australian authorities have authority to obtain information from financial and other institutions and seize and obtain evidence in law enforcement investigations of ML, TF, and predicate offences. State and Territory authorities have similar authority as that provided to the federal authorities under POCA and the Crimes Act. General information gathering powers pursuant to warrants in the Crimes Act can be utilised, as well as the specific information gathering power set out in section 49 of the AML/CTF Act. ACC also has the power to obtain documents (section 29 ACC Act 2002). POCA (section 213) requires financial institutions to provide any information or document relating to accounts and certain transaction information For any other information held by financial institutions and for information held by anyone else (including DNFBPs), POCA section 202 allows a magistrate to issue a production order, requiring a person to produce one or more property-tracking documents to an authorised officer, or make one or more property-tracking documents available for inspection. POCA (section 225) also authorises a magistrate to issue a warrant to search premises (for evidence gathering). Similar general powers are available to investigate predicate offences (section 3E(1) Crimes Act). Ordinary and frisk search powers are available to officers (sections 228 POCA and 3E(2) and 3E(6)(b) Crimes Act). Tainted property and evidence can be seized (sections 228(1)(d) POCA) and 3E(6) and 3E(7) of the Crimes Act). The ACC may apply for a warrant to enable the search of premises and seizure of evidence (section 22 ACC Act). The ATO can use sections 263 and 264 of the *Income Tax Assessment Act 1936* to search premises and require people to provide information in tax related cases. The AFP and other law enforcement agencies can obtain witness statements in any matter when a witness is prepared to provide a statement. There is no legal basis necessary, as this is not a coercive power. A witness statement is not admissible as evidence in criminal proceedings (except in some limited situations where a witness has died or is not able to give evidence), but witnesses can be subpoenaed to go to court to give evidence. The ACC has the power to compel witnesses to give evidence on themselves and others under investigation.

a3.44. **Criterion 31.2 –** The Crimes Act (Part IAC and 15KA and 15KB) authorises undercover operations and obtaining of evidence. The *Telecommunications (Interception and Access) Act 1979*, Parts 2-5, authorises the AFP, ACC, the Australian Commission for Law Enforcement Integrity, and State law enforcement agencies to intercept communications for investigations of a "serious offence". This includes ML, terrorism, and TF, serious cartel offences, cybercrime offences, offences involving organised crime, murder, kidnapping, serious drug offences, and certain other offences punishable by at least seven years imprisonment. The *Surveillance Devices Act 2004* authorises Commonwealth and State and Territory law enforcement agencies to access computer systems for a "relevant offence", i.e. offences punishable by three years imprisonment and certain other offences. The Crimes Act allows for controlled delivery operations (sections IAB, 15HA, and 15GE) involving a serious Commonwealth offence, which includes ML, terrorism and TF, and a number of other offences punishable by three years imprisonment. It is not clear whether this covers all predicate offences, unless the investigation also includes a ML offence.

a3.45. **Criterion 31.3 –** While there are mechanisms in place to identify in a timely manner which natural or legal persons own or control a specific account, there is no (general) mechanism in place to identify in a timely manner whether specific natural or legal persons own or control accounts.

a3.46. **Criterion 31.4 –** The competent authorities investigating ML, TF, and associated predicate offences are able to ask for all information collected and held by AUSTRAC. Subsection 126(1) of the AML/CTF Act allows the AUSTRAC CEO to designate officials or a class of officials to access this information. Forty-one authorities or agencies, including national security agencies and federal, State and Territory Police and Crime Commissions, are currently so designated.

Weighting and Conclusion

a3.47. Law enforcement and investigative authorities generally have all the powers that they need to investigate ML/TF. However, there is no mechanism in place to identify in a timely manner whether natural or legal persons own or control accounts (such as a register of accounts, or asking all account holding financial institutions at the same time if they have certain account holders). **Recommendation 31 is rated largely compliant.**

Recommendation 32 – Cash Couriers

a3.48. In the 2005 evaluation Australia was rated partially compliant on Special Recommendation IX. The main deficiencies identified were that (i) there was no system for declaration or disclosure of bearer negotiable instruments (BNIs) and, therefore, (ii) no sanctions for false declaration or disclosure relating to BNIs and (iii) no ability to stop or restrain BNIs in relation to a false declaration or disclosure. Recommendation 32 contains new requirements that were not assessed under the 2004 Methodology, but which are assessed under criteria 32.2 and 32.10 of the 2013 Methodology.

a3.49. **Criteria 32.1, 32.2 and 32.3 –** Australia implements a combination of declaration (for cash) and disclosure (for BNI) systems for incoming and outgoing cross-border transportation of currency and BNIs. For cash (whether Australian or foreign), the AML/CTF Act requires a declaration for all physical cross-border movements above the threshold of AUD 10 000, whether by travellers or through mail and cargo. For BNIs, the traveller must, if required to do so by a police officer or a customs officer: (i) disclose whether or not the person has with him or her any BNIs; and (ii) disclose the amount payable under each BNI that the person has with him or her; and (iii) produce to the officer each BNI that the person has with him or her. The definition of the BNI is given in section 17 of the AML/CTF Act, in line with the FATF definition. The Outgoing Passenger Card contains a question for outgoing currency and BNI, and directs travellers to the related CBM-PC or CBM-BNI form. The Incoming Passenger Card contains the same questions; however, it does not inform passengers about the need to obtain CBM-PC of CBM-BNI (neither of which is easily available online) (sections 53, 55 and 59 AML/CTF Act).

a3.50. **Criterion 32.4 –** Sections 199 and 200 of the AML/CTF Act authorise police and customs officers to require a person to declare or disclose currency and BNIs, search the person, and seize the currency or BNI. In case of a false/failure to declare/disclose, regular law enforcement powers will be used (see Recommendation 31).

a3.51. **Criterion 32.5 –** If a person fails to make a declaration of currency (under sections 53 or 55), there are two types of sanctions available: civil or criminal. Under the civil penalty (section 186), the person is subject to a fine of (i) AUD 850 if the total amount of the physical currency involved in the alleged contravention is AUD 20 000 or more, or (ii) AUD 340 otherwise. Under the criminal penalty, the person is liable to imprisonment of 2 years or a fine of AUD 85 000, or both for failure to make a report. Sections 136 and 137 also provide for imprisonment of 10 years or a fine of AUD 1.7 million for (i) giving false or misleading information, or (ii) producing a false or misleading document to competent authorities, including the customs, the police and AUSTRAC. These provisions apply to information and documents in relation to cross-border movement of currency or BNIs. Overall, the sanctions envisaged under civil responsibility appear to be proportionate, but not dissuasive (a fine of AUD 850 is more than 20 times smaller than the amount of undeclared currency if it is more than AUD 20 000, for example). On the other hand, the sanctions under criminal responsibility appear to be dissuasive, but not proportionate as they are rather high.

a3.52. **Criterion 32.6 –** Declarations of physical currency have to be made either to AUSTRAC or a police or customs officer. That officer must forward the report to AUSTRAC within 5 business days (section 56 AML/CTF Act). Therefore, the FIU receives all declarations of physical currency transportation. BNI-disclosures are made available to AUSTRAC within 5 days (section 60 AML/CTF Act). Detected BNI-declaration failures require follow-up by AFP officers. AUSTRAC has access to AFP and ACBPS databases.

a3.53. **Criterion 32.7 –** Domestic cooperation in relation to the cross-border transportation of currency and BNIs is based on a number of MOUs concluded between the ACBPS, Department of Immigration and Border Protection (DIBP) and AUSTRAC. In addition to that, AUSTRAC provides access to its information both to ACBPS and DIBP. The ACBPS also co-ordinates its efforts in monitoring cross-border activity with AFP and ACC, and also through liaison officers. ACBPS investigations that contain proceeds of crime elements and/or indications of ML are referred to the CACT within the AFP as a matter of course. ACBPS officers undertake customs as well as immigration checks at all ports of entry into Australia. Also, the Border Management Group (including with AUSTRAC) was established. It coordinates border security activities, including cash smuggling issues, across government agencies and is led by the ACBPS.

a3.54. **Criterion 32.8 –** Subsections 199(5) and 199(10) of the AML/CTF Act allow competent authorities (the customs and the police) to seize physical currency (no specific time limit) where there is suspicion that it may afford evidence of a false declaration (under section 53). This provision is somewhat broader than the requirement under 32.8(b), as a mere suspicion of false declaration is sufficient to seize the currency. Subsections 200(12) and 200(13) provide for the seizure of BNIs where a person has made a false disclosure. In case of a suspicion of ML/TF, sections 199(3) - 199(5) allow customs to examine the traveller and his belongings, and seize currency. Section 200 has similar provisions for BNIs, and section 201 allows for an arrest warrant based on suspicion of ML/TF.

a3.55. **Criterion 32.9 –** AUSTRAC is able to exchange information that it has access to with its foreign counterparts with whom it has an MOU or an exchange instrument.

a3.56. **Criterion 32.10 –** For information security in relation to AUSTRAC: see Recommendation 29. These general government provisions equally apply to the ACBPS.

a3.57. **Criterion 32.11 –** See criterion 3.9, Recommendation 4 and criterion 5.6.

Weighting and Conclusion

a3.58. The lack of dissuasive and proportionate sanctions is a shortcoming, considering the overall risk profile of Australia. The attractiveness of the use of cash smuggling (caused by the tracking of every international wire transfer) and the abundance of typologies related to smuggled cash are risk factors taken into account in this conclusion. **Recommendation 32 is rated largely compliant**.

Table of Acronyms

ABN	Australian business number
ABR	Australian business register
ACA	Australian Central Authority
ACBPS	Australian Customs and Border Protection Service
ACC	Australia's Crime Commission
ACNC	Australian Charities and Not-for-Profits Commission
AFP	Australian Federal Police
AGD	Attorney General's Department
AIC	Australian Intelligence Community
AML	Anti-money laundering
APG	Asia/Pacific Group on Money Laundering
APRA	Australian Prudential Regulation Authority
ARSN	Australian registered scheme number
ASIC	Australian Securities and Investment Commission
ASIO	Australian Security Intelligence Organisation
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CACT	Criminal Asset Confiscation Taskforce
CDD	Customer due diligence
CDPP	Commonwealth Director of Public Prosecutions
CFT	Countering the financing of terrorism
CotUNA	Charter of the United Nations Act
CT	Combat terrorism
DAR	Dealing with assets regulation
DFAT	Department of Foreign Affairs and Trade
DNFBP	Designated non-financial businesses and professions
FIU	Financial intelligence unit
FTR	Financial transaction report
IDC	Interdepartmental Committee
IFTI	International fund transfer instructions
ILGA	Independent Liquor and Gaming Authority

TABLE OF ACRONYMS

IMP	Information management policy
IOSCO	International Organisation of Securities Commissions
KYC	Know your customer
MACMA	Mutual Assistance in Criminal Matters Act 1987
ML	Money laundering
MLA	Mutual legal assistance
MMOU	Multilateral memoranda of understanding
NOCRP	National organised crime response plan
NPO	Non-profit organisations
NRA	National risk assessment
NTA	National threat assessment
OCTA	Organised crime threat assessment
OSAS	Online sanctions administration system
PEPs	Politically exposed persons
PSPF	Protective security policy framework
REG	Reporting entity group
REs	Reporting entities
RNP	Remittance network provider
SMR	Suspicious matter report
SUSTR	Suspect transactions
TF	Terrorist financing
TFIU	Terrorism financing investigations unit
TFS	Targeted financial sanctions
TTR	Threshold transaction report
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution