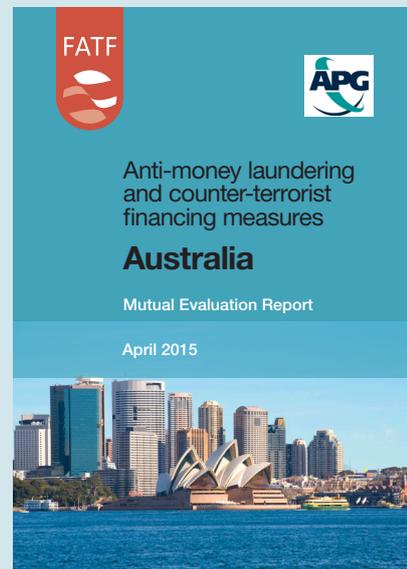




## *Anti-money laundering and counter-terrorist financing measures - Australia*

### **8. International cooperation**

Effectiveness and technical compliance



Citing reference:

FATF and APG (2015), "International cooperation" in *Anti-money laundering and counter-terrorist financing measures - Australia*, Fourth Round Mutual Evaluation Report, FATF, Paris and APG, Sydney  
[www.fatf-gafi.org/topics/mutualevaluations/documents/mer-australia-2015.html](http://www.fatf-gafi.org/topics/mutualevaluations/documents/mer-australia-2015.html)

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## 8. INTERNATIONAL COOPERATION

### Key Findings

**Australia cooperates well with other countries in mutual legal assistance (MLA) matters,** receiving an average of 300-400 MLA requests per annum which are processed in a timely manner in accordance with the case prioritisation framework.

**Some problems have been identified by Australia concerning other countries meeting the requirements of the *Foreign Evidence Act 1994*.** These problems translate into delays encountered in receiving information on requests made, but these issues are mitigated to some extent by direct cooperation with the ACA and AFP for assistance. Nevertheless, delays can exist as a result of the stringent requirements of the Act.

**Australia cooperates well in extradition, both making and receiving requests in ML and TF related matters, and informal cooperation is generally good across agencies.** Australia cooperates well in providing available beneficial ownership information for legal persons and trusts in relation to foreign requests, keeping in mind that what is not (required to be) available in Australia cannot be shared. But the ability to provide beneficial ownership information for legal persons and trusts in relation to foreign requests is limited.

**Australia maintains comprehensive statistics in relation to MLA and extradition matters,** including in relation to ML and TF, although there are some limitations in relation to categorisation of ML offences within the case management framework.

## 8.1 Background and Context

8.1. Proceeds of crime in Australia are generated by a range of criminality. Internationally, Australia is prone to receive proceeds of crime generated from abroad, particularly from countries in the region and sometimes involving foreign corrupt persons, who send funds to Australia which has a safer banking sector and is attractive for foreign investment. The real estate sector in particular may be attractive for foreign investment.

8.2. Australia has ratified the Vienna, Palermo, CTF, and Merida Conventions and has a strong framework for international cooperation. The main instruments used are bilateral treaties for MLA and extradition, the *Mutual Assistance in Criminal Matters Act 1987*, the *Extradition Act 1988*, and corresponding regulations. The Australian Central Authority in the federal Attorney-General Department is Australia's central authority for MLA and extradition.

## 8.2 Technical Compliance (R.36-40)

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

- **Recommendation 36 (international instruments) is rated largely compliant.**
- **Recommendation 37 (mutual legal assistance) is rated compliant.**
- **Recommendation 38 (mutual legal assistance: freezing and confiscation) is rated compliant.**
- **Recommendation 39 (extradition) is rated compliant.**
- **Recommendation 40 (other forms of international cooperation) is rated compliant.**

## 8.3 Effectiveness: Immediate Outcome 2 (International Cooperation)

8.4. Australia observed in its NTA for money laundering that there is almost always an international dimension to ML offences in Australia. Similar comments were made in the NRA for TF. Highest risk countries are not listed in the de-classified versions of those risk assessments, but authorities indicated during the mutual evaluation that some countries in the Middle East, south-east Asia and north Asia are of primary concern.

### *MLA and Extradition*

8.5. The Australian Central Authority (ACA) for MLA and extradition is within the federal Attorney General's Department (AGD). The ACA currently has 19 full time officers (11 in MLA and 8 in Extradition) who work within a case management and prioritisation framework for incoming and outgoing requests. Case prioritisation for MLA is based on factors such as court dates, crime type, national security issues, whether organised crime is an issue, and the overall seriousness of the offence involved in the request. Requests from high risk countries are managed within this set of factors but not given a higher level of priority.

8.6. Australia can provide MLA to another country on the basis of reciprocity; membership in a multi-lateral convention/treaty to which Australia is also a member; or a bilateral treaty (29 currently exist). Bilateral treaties are negotiated where the other state to the treaty requires such an instrument or where the volume of requests exchanged between Australia and the other state calls for a framework instrument to guide the processing of mutual requests (e.g. with the US).

8.7. In the 10 years between 2004-05 and 2013-14, Australia received 3 370 MLA requests; 163 related to ML and 1 477 (1/3 of all requests) related to ML predicate crimes.

**Table 8.1. MLA Requests: ML and Associated Predicate Offences**

FY	New Requests Made	ML	ML Predicates	Finalised	Refused
2004-05	205	8	41	191	0
2005-06	228	9	52	159	0
2006-07	239	5	106	242	0
2007-08	290	9	163	385	0
2008-09	340	12	173	338	0
2009-10	380	13	205	373	1
2010-11	427	15	200	438	0
2011-12	387	28	179	391	1
2012-13	398	38	198	385	1
2013-14	321	26	160	345	0
<b>TOTAL</b>	<b>3 370</b>	<b>163</b>	<b>1 477</b>	<b>3 011</b>	<b>3</b>

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8.8. Australia is unable, due to the case management system, to break down these statistics further, to show how many of the ML-related requests involved self-laundering, third party laundering, or foreign predicate crimes. None of the three refusals in this time period were in relation to ML cases. Over the same period, Australia received 28 terrorism-related MLA requests and 10 TF-related requests, none of which were refused.

**Table 8.2. MLA Requests: Terrorism and Terrorist Financing**

FY	New Requests Made	Terrorism	Terrorist Financing	Finalised	Refused
2004-05	151	0	1	126	0
2005-06	167	0	1	94	0
2006-07	220	2	0	176	0
2007-08	225	6	3	298	0
2008-09	184	4	0	186	0
2009-10	182	2	1	192	0
2010-11	203	11	2	175	0
2011-12	263	1	0	225	0
2012-13	292	0	2	259	0
2013-14	353	2	0	303	0
<b>TOTAL</b>	<b>2 240</b>	<b>28</b>	<b>10</b>	<b>2 034</b>	<b>0</b>

8.9. Over the same 10-year period, Australia received 281 requests to obtain or enforce proceeds orders, but is only able to provide information in relation to those requests made between 2010 and 2014. During that period, Australia received 46 MLA requests for restraint or forfeiture action, all of which involved ML and associated predicate crimes. Of the 46 requests, nine restraint actions were taken and one forfeiture action, totalling approximately AUD 34.6 million in assets for both types of actions. At the time of the on-site visit, a further restraint request totalling AUD 3.7 million was under consideration. Bearing in mind that Australia is at some risk of receiving proceeds of crime from foreign predicate offences, including corruption offences, the

## INTERNATIONAL COOPERATION

authorities should continue to enhance efforts on effective restraint and forfeiture action pursuant to foreign requests received.

8.10. For expediency, MLA requests may be made directly to the ACA via email, post and fax, and not strictly through diplomatic channels. The time necessary to complete MLA requests is dependent on a number of factors, including whether the request involves coercive or non-coercive measures; whether the request is detailed or accurate enough to comply with the request; and whether witnesses from whom statements are requested can be located. The AFP's International Liaison Officers Network assists countries in making requests to Australia where required in order to ensure that requests to the ACA are not delayed. Authorities indicated that requests requiring a search warrant (bank records) may take two to three months, whereas non-coercive assistance (voluntary witness statements) may take one to two months. Feedback from 20 countries prior to the mutual evaluation shows that Australia's cooperation is good both in terms of the time taken to process incoming requests and the quality of the information provided by authorities.

8.11. Likewise, Australia pursues assistance from other countries in order to enforce criminal law in Australia. Since 2004 Australia has sought MLA in 201 instances from other countries relating to ML; 1 074 instances in relation to associated ML predicate crimes; and 90 MLA requests in relation to terrorism, including nine requests (one investigation) in relation to TF. In one case (Project Hyssop) involving an Australian-based narcotics syndicate, assistance was sought from other countries involving MLA and information exchanges through Egmont. This resulted in restraint action overseas totalling AUD 15 million in relation to narcotics trafficking and ML.

8.12. Australia has not always received the information sought in a form admissible within Australian courts in accordance with the *Foreign Evidence Act 1994*. The requirements of that Act are onerous for other countries to meet (agreed by Australia) and there will likely be delays in providing the information requested when meeting them. While these issues are mitigated to some extent by direct cooperation and assistance from ACA and AFP, delays can exist as a result of stringent requirements of the Act. Serious consideration should be given to easing the admissibility requirements.<sup>1</sup>

8.13. With respect to extradition, Australia cooperates bilaterally on the basis of several regimes including bilateral treaties; the London Scheme for Commonwealth countries; multilateral conventions/treaties; and whether a country has been designated as an extradition country under Australian regulations. A simplified and speedy system of "backed warrants" exists with New Zealand. Requests under this scheme are managed on a police to police basis. The CDPP appears in extradition proceedings on behalf of New Zealand, including reviews and appeals. According to the CDPP, challenges to surrender do not happen often. The CDPP is also involved in outgoing requests where extradition is sought of persons charged with federal offences.

8.14. Between 2004 and 2014, 228 extradition requests were received. In that ten-year period, 95 requests were granted, six of which related to ML and TF. In the same period Australia made 171 extradition requests. 113 requests were granted in that period.

**Table 8.3. Extradition Requests Received from Other Countries**

	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Requests received	15	21	22	12	17	30	23	22	23	43
Requests granted	12	11	8	9	10	6	5	10	11	13
Requests refused	1	2	0	1	2	1	0	1	2	2

1 The FEA was amended following the on-site visit to address these issues including more streamlined procedures to admit in evidence material obtained through MLA or agency-to-agency channels

8.15. As with MLA, Australia's cooperation in extradition has been good with positive feedback from other countries. In one instance, a country complained of delays by Australia in an extradition matter indicating Australia's bureaucratic requirements, but this is not reflective of the general feedback received from the 19 other countries that provided feedback.

### *Other Forms of International Cooperation*

8.16. AUSTRAC: There are no legal barriers for AUSTRAC to cooperate with other supervisory bodies. However, AUSTRAC indicated that it had never received a request from any foreign AML/CTF regulator/supervisor, neither directly or indirectly (through APRA). AUSTRAC has never submitted a request to a foreign AML/CTF regulator/supervisor. AUSTRAC stressed that the absence of international cooperation in the regulatory area may be caused by the fact that AUSTRAC is the FIU and the AML/CTF regulator/supervisor, something which is unique according to AUSTRAC. It is noteworthy that AUSTRAC has taken the initiative to set up regulatory overseas contacts with the FIUs of Canada and New Zealand.

8.17. ASIC: Under the ASIC Act, ASIC can share any information that is in its possession and can exchange information directly with foreign law enforcement agencies, including Interpol. ASIC may seek further information from regulated entities based on a foreign request when the request is in support of a civil or administrative regulatory matter. If a request is solely related to criminal matters, it needs to come to ASIC via AGD and the MLA channel. To date, almost all information exchanges resulting from foreign requests have related only to direct or basic beneficial ownership in addition to other readily available information such as information on directors and senior managers, corporate status or licensing information of entities registered with ASIC. ASIC has been able to respond to these requests quickly. When requests are made for more extensive beneficial information beyond what is readily available to ASIC (i.e. basic information), law enforcement authorities use their powers to secure that information if it relates to information held in Australia. However, if foreign requests relate to public companies, beneficial ownership tracing notices may be issued by ASIC. ASIC can share and exchange ML/TF-related information. While an MOU is not necessary for ASIC to share information, ASIC nevertheless has 76 bilateral and multilateral MOUs with foreign counterparts. ASIC has no AML/CTF-related responsibilities and exchanges of information with foreign FIUs are made via AUSTRAC. When ASIC's enforcement branch becomes aware of AUSTRAC-related information that might be of interest to a foreign counterpart, the enforcement branch refers the matter to ASIC's international cooperation branch, who works with AUSTRAC to determine the best way to convey that information to the foreign agency; this may involve telling a foreign counterpart to request information from Australia via the FIU.

8.18. APRA: APRA's international cooperation is limited to the exchange of information related to prudential supervision. While MOUs are not required to exchange information with foreign counterparts, APRA has approximately 25 MOUs with counterparts with whom they are likely to share information on a regular basis. APRA reported that they have not had many requests to exchange information. APRA noted that it would reject requests that were not related to prudential supervision. APRA did not have a formal policy for how to respond to AML/CTF requests; authorities stated that if it received a request related to AML/CTF it would either refer the matter directly to AUSTRAC or it would deny the request and recommend the counterpart contact AUSTRAC.

8.19. AFP: The AFP's International Liaison Officer Network consists of 99 liaison officers in 29 countries attached to Australian embassies and high commissions often supported by a number of MOUs – which are not necessarily required for police-to-police cooperation. The Network is the first point of contact for law enforcement enquiries to be raised with Australian law enforcement domestically. It operates with foreign counterparts to exchange information on asset recovery matters, often having knowledge of assets in jurisdictions where they are located well before an MLA request is made. The AFP is also the designated INTERPOL National Central Bureau (NCB) for Australia and facilitates international enquiries to and from relevant Australian and foreign law enforcement, government, and regulatory agencies. Australia has provided case material to illustrate the effectiveness of the Network.

8.20. ACBPS: The ACBPS has a network of 50 MOUs with relevant foreign counterparts. As with the AFP, MOUs are not required to cooperate and exchange information with other customs and border protection services. ACBPS can share information with other law enforcement agencies, such as the AFP, but not with

intelligence agencies, except through the relevant agency in Australia (e.g. AUSTRAC). Recently, the ACBPS established a Trade Enforcement Unit to target trade-based ML in Australia and is in the process of establishing international connections to exchange information relevant to trade-based ML. Currently, this new unit is involved in a major trade-based ML investigation with the United States.

8.21. ATO: The ATO has a number of instruments which permit international cooperation in the exchange of information with foreign counterparts, including double tax agreements, multi-lateral tax conventions and MOUs. The ATO belongs to the Joint International Tax Shelter Information Centre, which is designed to facilitate the sharing of information amongst partner agencies, including intelligence and individuals of interest (in particular financial intermediaries). However, the ATO can only share information with other tax administrations, including information held relating to trusts that are meeting the strict legal requirements of confidentiality obligations. The ATO is not able to share information with other non-revenue agencies, unless other agencies are involved in investigating a criminal offence.

### Overall conclusions on Immediate Outcome 2

8.22. The Immediate Outcome is achieved to a very large extent. Australia uses robust systems for MLA, as demonstrated by their statistics, although there are some limitations in relation to the categorisation of ML offences within the case management framework. Informal cooperation is generally good across agencies. Although diagonal cooperation does not appear to be permitted with ASIC and APRA, this is not a significant issue. Australia cooperates well in providing available beneficial ownership information for legal persons and trusts in relation to foreign requests, keeping in mind that what is not (required to be) available in Australia cannot be shared.

8.23. **Australia has achieved a high level of effectiveness for IO.2.**

## 8.4 Recommendations on International Cooperation

8.24. In relation to IO.2, Australia should (noting that the Foreign Evidence Act 1994 was amended post on-site):

- Establish mechanisms to ensure that if a foreign request is made for beneficial ownership information beyond basic information in relation to legal persons and arrangements, it can provide that information.

## 8. INTERNATIONAL COOPERATION

### Recommendation 36 – International instruments

a8.1. Australia received a largely compliant rating for Recommendation 35 (the predecessor to Recommendation 36) in the 2005 MER. One deficiency was noted, namely that Australia has not fully implemented the TF Convention because of insufficient measures to identify beneficial owners of accounts and transactions. Recommendation 35 was not addressed in mutual evaluation follow-up reports given the strength of the rating for the recommendation.

a8.2. **Criterion 36.1** – Australia ratified the following instruments (with dates):

**Table A8.1. Instruments ratified by Australia**

Title	Date	Comments
Vienna Convention	16 November 1992	no reservations
Terrorist Financing Convention	26 September 2002	no reservations
Palermo Convention	27 May 2004	no reservations
Merida Convention	7 December 2005	no reservations

a8.3. **Criterion 36.2** – Deficiencies in the TF offence (i.e. the scope of terrorist acts in the TF Convention covered) affect the implementation of the TF convention (see Recommendation 5).

#### *Weighting and Conclusion*

a8.4. Australia has ratified all the relevant Conventions. In terms of implementation, Australia has implemented most of the relevant articles; however, deficiencies in the TF offence affect the implementation of the TF Convention. **Recommendation 36 is rated largely compliant.**

### Recommendation 37 - Mutual legal assistance

a8.5. Australia received a compliant rating for Recommendation 36 and a largely compliant rating for Special Recommendation V (both of which are the predecessors to the combined new Recommendation 37) in the 2005 MER. Neither of the previous recommendations were the subject to follow-up reporting by Australia on the basis of the ratings. The requirements in (new) Recommendation 37 are much more detailed.

a8.6. **Criterion 37.1** – The *Mutual Assistance in Criminal Matters Act 1987* (MACMA) (amended in 2012 to streamline procedures) provides a basis for legal assistance to foreign jurisdictions. Section 11 provides the federal Attorney-General with general power to receive requests from foreign countries. Section 9 provides that assistance may be provided to a foreign country subject to conditions determined by the Attorney-General. MLA treaties are not required in Australia to render assistance. However, Australia has concluded up to 29 MLA treaties (which may be necessary in order for Australia to request assistance from other jurisdictions). Under the MACMA, Australia may provide assistance as follows:

- Non-coercive powers: no applicable offence threshold applies – it must simply be a ‘criminal matter’. Australia can prioritise requests relating to foreign ‘serious offences’ attracting a maximum penalty of imprisonment for at least 12 months, death, or a fine exceeding 300 penalty units.
- Coercive measures: MACMA section 13(1A) and following sections provide for such measures as taking of evidence for criminal proceedings, provision of material, applying for search and/or surveillance warrants, authorisation for proceeds of criminal restraints, etc.

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a8.7. Australia can also make MLA requests to obtain documents and other evidence (e.g. witness testimony) from foreign countries in a form admissible in Australian courts under the *Foreign Evidence Act 1994*.

a8.8. **Criterion 37.2** – The Australian Central Authority (ACA) within the AGD is Australia’s central authority for MLA. The AGD maintains a website that contains fact sheets and other information for countries wishing to make MLA requests to Australia. The ACA also maintains a case management system which records the details of each MLA request. Case officers are responsible for updating the database, and can utilise a function which sets up a timeline of ‘next actions’ for the case officer to complete certain actions to process the request. The database is accessible by case officers only.

a8.9. **Criterion 37.3** – MACMA section 8(1), (1A) outlines mandatory grounds and section 8(1B) outlines discretionary grounds for the Attorney-General to refuse foreign assistance requests. None of the grounds stipulated in those sections are unreasonable or unduly restricted. They relate, for instance, to requests for assistance where offences are of a political nature or where the death penalty or torture might apply. In addition, section 13 states that there must be a “proceeding” in the foreign country before the Minister can issue an authorisation to take evidence. That term is defined in section 3(1) to include an inquisitorial proceeding before an investigative Magistrate or a grand jury but does not include a criminal investigation. Section 15 allows the use of search and seizure powers based on a request for use in both proceedings and investigations.

a8.10. Discretionary provisions provide that a request may be refused if the provision of the assistance may result in the death penalty being imposed on a person; and after taking into consideration the interests of international criminal co-operation in the circumstance of the case, the request should not be granted (section 8(1B)). Section 9 of MACMA allows the Attorney-General to render the assistance and impose conditions on the requesting country.

a8.11. **Criterion 37.4** – Assistance is not refused on the sole ground that the offence involves fiscal matters, as this is not a ground for refusal under section 8 of the MACMA. Nor is assistance refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs.

a8.12. **Criterion 37.5** – Section 43C of the MACMA provides that a person must not intentionally disclose the existence or nature of an MLA request received by Australia, except insofar as is necessary for the performance of his or her duties (in executing the request), or with the approval of the Attorney-General. An offence against this section carries a penalty of imprisonment for 2 years. A confidentiality clause is also included in the majority of bilateral treaties Australia has concluded on MLA. Further, officers of the ACA who are involved in handling MLA request are subject to section 79 of the Crimes Act, which deals with official secrets. Breaches of this section are an offence under Australian law. Officers also hold security clearances and operate under the ‘need to know’ principle when sharing information within Government.

a8.13. **Criterion 37.6** – Under section 8(2) of the MACMA a request by a foreign country for assistance may be refused if, in the opinion of the Attorney General, the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received. Dual criminality is, therefore, a discretionary ground of refusal in relation to requests for all assistance (whether the request involves coercive measures or otherwise). If Australia does provide assistance when the offence for which assistance is required is not an offence in Australia, section 9 of the MACMA allows the Attorney-General to impose conditions on the requesting state. Hence, Australia does have a mechanism to provide MLA if dual criminality is a presumptive requirement.

a8.14. **Criterion 37.7** – Australia assesses the alleged conduct of the person to determine whether that conduct, had it taken place in Australia, would constitute an offence under Australian law at the time that the request was received. The dual criminality test does not require that the foreign offence and the notional Australian offence be comprised of the same elements. Australia does not place a focus on the categorisation of the offence but on the alleged underlying conduct involved. Moreover, if an equivalent and qualifying Australian offence could be established based on any part or parts of the total foreign conduct, then dual criminality may be established.

a8.15. **Criterion 37.8** – Australia has a range of powers and investigative techniques available in the international context for MLA request. Those powers under MACMA include:

- The production, search and seizure of information, documents or evidence (including financial records) from financial institutions or other natural or legal persons: Sections 12-13 allow Australia to seek and provide a document or other article. Sections 14-15 allow Australia to seek and provide material obtained by search and seizure subject to the provisions of the MACMA.
- Witness statements: Voluntary witness statements can be obtained at any time including the early investigative stage without the need for a formal MLA request, since this is not a coercive power. Under section 13, a witness who is not a suspect can be compelled to give evidence or produce documents before a court, including via video-link to the foreign court, if foreign proceedings are on foot. Sections 26-27 facilitate the travel of a person in custody to voluntarily give evidence in a foreign proceeding.
- Service of documents: While many of Australia's bilateral treaties specifically refer to the service of documents as a type of assistance that may be provided, Australia will consider a request for service of documents from any country.
- A broad range of other powers and investigative techniques: Surveillance devices (Part IIIA, section 15C), stored communications warrants (Part IIIA, section 15B), telecommunications data (Part IIIB, section 15D), and forensic procedures (Part IVA, section 28).

### *Weighting and Conclusion*

a8.16. **Recommendation 37 is rated compliant.**

## **Recommendation 38 – Mutual legal assistance: freezing and confiscation**

a8.17. Australia received a C rating for Recommendation 38 (numbered the same in the 2013 assessment Methodology) in the 2005 assessment.

a8.18. **Criterion 38.1** – Australia can identify, freeze, seize or confiscate the proceeds or an instrument of a foreign serious offence on request by another country. A foreign serious offence is defined as an offence against a law of a foreign country, the maximum penalty for which is death, imprisonment for a period exceeding 12 months or a fine exceeding 300 penalty units (being AUD 51 000). Sections 34 –35M of the MACMA set out requirements for receiving and dealing with requests made by foreign countries. These provisions provide for the enforcement of foreign orders, including: forfeiture orders (which include laundered property and proceeds), pecuniary penalty orders (which designate a value rather than a property), restraining orders, production orders, monitoring orders, and search warrants to identify and seize property. Action can also be taken against the instruments of offences (used in or intended for use in) if the action is conviction based.

a8.19. **Criterion 38.2** – Section 34(2) of the MACMA provides for the registration and enforcement of non-conviction based foreign forfeiture orders and foreign pecuniary penalty orders. This provision enables the forfeiture of property that is, or is alleged to be, the proceeds or an instrument of a serious foreign offence, or the benefit derived from a serious foreign offence, regardless of whether the person alleged to have committed the offence has been convicted of that offence, or whether charges have been laid against that person. Section 34(3)(b) of the MACMA enables a non-conviction based foreign restraining order to be enforced over property where the identity of the person who committed the serious foreign offence is not known.

a8.20. **Criterion 38.3** – Seizure and confiscation actions are coordinated by the ACA, the central authority for extradition and MLA, in partnership with the CACT within the AFP. Casework officers liaise with government departments and law enforcement on MLA requests.

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a8.21. The AFP also coordinates arrangements with other countries relating to seizure and confiscation action. Section 34B of the MACMA provides that property subject to a foreign forfeiture order may be disposed of, or otherwise dealt with, in accordance with any direction of the Attorney-General or of a person authorised by the Attorney-General in writing. Section 34D of the MACMA provides that a foreign pecuniary penalty order may be enforced as if it were a debt due to the federal government. Money paid to the federal government under a foreign pecuniary penalty order registered under section 34 of the MACMA is credited to the Confiscated Assets Account. Section 297 of the POCA sets out a number of mechanisms for managing, and when necessary, disposing of payments made into the Confiscated Assets Account. The way in which restrained property is dealt with is covered by Division 3, Part 4-1 of the POCA (section 35C of the MACMA). However, before disposing or destroying of property, the Official Trustee must consult with the foreign country that made the request relating to the property covered by the foreign restraining order (see section 35C(2) of the MACMA and section 278 of the POCA).

a8.22. **Criterion 38.4** – Legislation allows Australia to share confiscated proceeds of crime with any country in the absence of any specific treaty obligations. Under the POCA, the federal Minister for Justice can approve the sharing of confiscated assets with a foreign country if, in the Minister’s opinion, the foreign country has made a significant contribution to the recovery of those proceeds or to the investigation or prosecution of the unlawful activity. Australia has bilateral MLA treaties with 29 countries. These treaties generally include provisions relating to dealing with confiscated assets. Additionally, Australia has ratified a number of international conventions that have proceeds of crime and asset sharing provisions, including the Merida Convention. Any request for sharing proceeds of crime made under the Merida Convention, or by a country with which Australia has ratified a MLA treaty that has obligations with respect to proceeds of crime, will be considered by Australia in accordance with the terms of the treaty.

### *Weighting and Conclusion*

a8.23. **Recommendation 38 is rated compliant.**

## **Recommendation 39 – Extradition**

a8.24. Australia received a compliant rating for Recommendation 39 in the 2005 assessment. In 2012, Australia amended the *Extradition Act 1988 (the Extradition Act)* in order to streamline and modernise the extradition process further. The reforms aim to reduce the length of the process, including the amount of time a person spends in custody, in new and ongoing extradition cases. In particular, the amendments:

- Enable a person to elect to waive the extradition process entirely, subject to appropriate safeguards
- Aim to reduce the time spent by persons in Australian custody, by streamlining the early stages of the extradition process, subject to safeguards
- Extend the availability of bail to the later stages of extradition proceedings, and
- Enable a person to be prosecuted in Australia where extradition has been refused ensuring that refusal to extradite does not mean that a person escapes justice.

a8.25. **Criterion 39.1** – Extradition is governed by the Extradition Act. The Act applies when a country is designated as an “extradition country”. This designation generally occurs by way of domestic regulation. Australia has designated by regulation extradition countries individually, with countries which it has treaty and for countries without a treaty, for a group of Commonwealth countries under the London Scheme, and for all countries automatically that are also parties to the Vienna, Palermo, Merida, and CTF Conventions. Countries that have an extradition treaty with the UK, which was inherited by Australia, fall within the definition of “extradition country” without the need for designation by regulation. These provisions make ML and TF extraditable offences in Australia. Under the Extradition Act, generally a person can be surrendered for an “extradition offence”, which is an offence against the law of the other country (i.e. the requesting country) punishable by at least 12 months imprisonment. Dual criminality is also a requirement for extradition (section 19(2)). ML is criminalised in the Criminal Code and applies to all serious offences. While deficiencies

in relation to the TF offence have been identified, the underlying conduct of TF has been criminalised with a broad range of TF offences. Therefore, the deficiencies in the TF offence do not apply to Recommendation 39 as the classification of the offence does not affect dual criminality requirements.

a8.26. The Extradition Unit within the ACA coordinates extradition requests. The Unit maintains a casework database allowing cases and ‘next-steps’ to be monitored. It also has processes and practices in place to execute matters in a timely fashion and to prioritise cases effectively. Extradition requests may also involve a number of other agencies including the CDPP, the AFP and other Commonwealth, State or Territory law enforcement, revenue or regulatory bodies. The ACA represents the foreign country in extradition proceedings in Australia. The CDPP only has a role in outgoing extradition cases if the matter is being prosecuted by the CDPP.

a8.27. There are no unreasonable or unduly restrictive conditions on extradition. Section 15B(3) allows the Attorney-General to refuse extradition if the person sought in Australia may be subject to torture or the death penalty. Section 7 of the Extradition Act also provides for “extradition objections” to be determined which relate to offences of a political character, prejudice on account of race, religion etc., offences solely under military law and not the ordinary criminal law, and cases of double jeopardy.

a8.28. **Criterion 39.2** – Australia does not refuse extradition on the basis of nationality. Section 45 of the Extradition Act contains provision for prosecution in lieu of extradition of any person (including Australian citizens). The Attorney-General can consent to a such a prosecution only after: 1) determining not to surrender the person to an extradition country; 2) being satisfied that the conduct occurring outside Australia would have constituted a “notional Australian offence” under the law of the federal government, State or Territory of Australia had it occurred there.

a8.29. **Criterion 39.3** – Under section 19 of the Extradition Act, the dual criminality requirement is assessed as part of a broader assessment of a person’s eligibility for surrender. Section 19(2)(c) sets out the test for when dual criminality is satisfied. Section 10 provides further detail on the interpretation of provisions relating to offences. Section 10(3) provides:

- Where the conduct or equivalent conduct consists of two or more acts or omissions, regard may be had to all or to only one or some of those acts or omissions, and
- Any difference between the denomination or categorisation of offences under the law of the country and the law of Australia, or the law in force in the part of Australia, as the case requires, shall be disregarded.

a8.30. Australia does not therefore assess the dual criminality requirement based on the categorisation or the terminology used to describe the relevant offences.

a8.31. **Criterion 39.4** – There are a number of provisions in the Extradition Act for simplified processes. For instance:

- Part II of the Act provides for simplified extradition procedures between Australia and New Zealand known as the ‘backing of warrants scheme’. The scheme is administered by the police forces in Australia and New Zealand.
- A person may waive their participation in the extradition process subject to certain safeguards. If a person elects to waive the extradition process, not all stages in the extradition process will need to be completed and consequently the time the person spends in custody in Australia can be reduced. A person can elect to waive the process once they have been arrested in Australia (either pursuant to a provisional arrest request or a full extradition request). A person may waive their participation in the extradition process for their return to the requesting country for offences which are ‘extradition offences’ and those which are not classed as such (i.e. those that are punishable by less than 12 months’ imprisonment). If satisfied, the magistrate must commit the person to prison or on bail pending the Attorney-General’s determination whether the person should be surrendered to the requesting country.

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a8.32. While extradition requests made and received by Australia are transmitted formally through the diplomatic channel, provisional arrest requests can be made and received directly from central authorities or through the Interpol channel. This assists in not delaying the delivery of such requests given the urgency and time sensitivities associated.

### *Weighting and Conclusion*

a8.33. Australia has comprehensive measures for extradition. **Recommendation 39 is rated compliant.**

### **Recommendation 40 – Other forms of international cooperation**

a8.34. Australia received a compliant rating in 2005 for Recommendation 40. The requirements in new Recommendation 40 are considerably more detailed.

a8.35. **Criterion 40.1** – Australian competent authorities including AUSTRAC, AFP, ACC, APRA and ASIC can provide a range of information to their foreign counterpart authorities in relation to ML, predicate offences and TF. Information can be shared both simultaneously and upon request.

a8.36. **Criterion 40.2** –

1. The competent authorities have a lawful basis for providing cooperation. (AUSTRAC: AML/CTF Act, section 132; AFP: the AFP Act, section 8(1) and AML/CTF Act section 132; ACC: the ACC Act, section 59AA, AML/CTF Act, section 132; APRA: the APRA Act, sections 56(5)(a)–(b); ASIC: the ASIC Act, section 127(4); the NSW Police Force: section 6(2)(c) of the *Police Act 1990* (NSW); the New South Wales Crime Commission (NSWCC): section 13 of the *Crime Commission Act 2012* (NSW); the Queensland Crime and Corruption Commission (QCCC): section 55 of the *Crime and Corruption Act 2001*.)
2. Government agencies in Australia are not only authorised to use the most efficient means to cooperate within existing frameworks, they are required to do so.
3. All authorities use clear and secure gateways, mechanisms or channels. The AML/CTF Act allows AUSTRAC and designated law enforcement and national security agencies to communicate AUSTRAC information with foreign counterparts. AUSTRAC had 67 exchange instruments with counterpart foreign financial intelligence units (FIUs) effective in 2014. AUSTRAC uses Egmont's secure web as the primary channel for international exchange. ASIC has a clear and secured gateway for foreign requests; a dedicated email address is available on the ASIC's website. ASIC plans to improve the level of security of the information exchanged with foreign counterparts in 2015, through for example enhanced encryption. Section 127 of the ASIC Act provides that information received from foreign regulators, including their requests, is treated as confidential information. ASIC complies with the requirements of the Protective Security Policy Framework (PSPF). APRA also communicates and exchanges information with foreign counterparts using encryption tools. State and Territory law enforcement agencies use the AFP Liaison Officer network. Where necessary, State and Territory police services enter into Memoranda of Understanding with the AFP.
4. The competent authorities have processes for prioritising and executing requests: the ACC and ASIC have dedicated teams for coordinating and responding to foreign requests within a maximum of 28 days. The ACBPS also has a dedicated unit for the coordination and operational assistance to and from foreign counterparts. ASIC has a dedicated team, International Cooperation Requests (ICR), which coordinates international requests to and from ASIC. ICR has key performance indicators of 14 days to send out requests and 28 days to respond to international requests. These are subject to complexity of requests, resourcing and other operational issues. Priority is given to requests relating to enforcement matters.

Requests made pursuant to the International Organisation of Securities Commissions (IOSCO) Multilateral Memoranda of Understanding (MMOU) and bilateral Memoranda of Understanding (MOUs) that require authorisation under the *Mutual Assistance in Business Regulation Act 1992* (MABRA) are given highest priority. ICR has and maintains a database (OIRs), which has built in milestones for acknowledgement and request sent/response sent. There is also an ability to categorise an activity as urgent.

5. The competent authorities have clear processes for safeguarding the information received. The PSPF sets for all agencies detailed requirements for a number of matters, including information asset classification. Agencies are also required to have internal policies to manage and protect the records, as well as to ensure that records are retained, classified, and filed. They are also required to have Information Security Policies for securing information, security classification and protective markings, dissemination limiting markers, handling, access and control. The following legislative instruments prescribe details regarding the protection of information held by APRA and ASIC: section 56 of the APRA Act and section 127 of the ASIC Act. Section 60A (Secrecy) of the AFP Act places specific constraints on the AFP in relation to the disclosure of prescribed information.

a8.37. **Criterion 40.3** – AUSTRAC has entered into a range of agreements to give effect to multilateral or bilateral arrangements; APRA and ASIC have entered into Memoranda of Understanding (MoUs) and Multilateral Memoranda of Understanding (MMoUs) with a wide range of foreign counterparts.<sup>1</sup> Similarly, the AFP relies on a range of police-to-police and government-to-government MoUs<sup>2</sup>.

a8.38. **Criterion 40.4** – AUSTRAC seeks feedback from foreign counterparts on assistance received in a timely manner. ASIC also sends feedback to the International Organisation of Securities Commissions (IOSCO), of which it is a member, on the quantity and quality of information exchanged pursuant to the IOSCO Multilateral MoU. APRA participates in international surveys on information exchange and cooperation arrangements conducted through international standard setting bodies such as the International Association of Insurance Supervisors.

a8.39. **Criterion 40.5** – The relevant statutes and agreements that empower the sharing of information by competent authorities as identified in Criterion 40.2 above do not unduly restrict information exchange. Where the statutory provisions provide for an approval process, information sharing is generally limited only by the requirement to establish that the foreign request is relevant and proportionate.

a8.40. **Criterion 40.6** – The MOU which facilitates the exchange of information by competent authorities contains confidentiality provisions which safeguard against improper disclosure of information. Authorities also have the discretion to impose additional conditions to safeguard exchanged information. See, for example, section 56 of the APRA Act and section 127(1) of the ASIC Act. Internal policies of Australian agencies (federal, State and Territory) prioritise the protection of information received from international bodies. It is

1 For a full list of these, please refer to [www.apra.gov.au/AboutAPRA/Pages/ArrangementsandMoUs.aspx](http://www.apra.gov.au/AboutAPRA/Pages/ArrangementsandMoUs.aspx) and [www.asic.gov.au/asic/asic.nsf/byheadline/OIR+-+Memorandum+of+Understandings?openDocument](http://www.asic.gov.au/asic/asic.nsf/byheadline/OIR+-+Memorandum+of+Understandings?openDocument).

2 See: [www.afp.gov.au/media-centre/news/afp/2005/June/singapore-and-australia-sign-cooperation-agreement.aspx](http://www.afp.gov.au/media-centre/news/afp/2005/June/singapore-and-australia-sign-cooperation-agreement.aspx)

[www.afp.gov.au/media-centre/news/afp/2012/july/the-afp-and-fbi-unite-against-terrorism-and-transnational-crime.aspx](http://www.afp.gov.au/media-centre/news/afp/2012/july/the-afp-and-fbi-unite-against-terrorism-and-transnational-crime.aspx)

[www.afp.gov.au/media-centre/news/afp/2011/november/AFP-and-Indonesian-National-Police-sign-new-agreement-to-combat-transnational-crime.aspx](http://www.afp.gov.au/media-centre/news/afp/2011/november/AFP-and-Indonesian-National-Police-sign-new-agreement-to-combat-transnational-crime.aspx)

[www.afp.gov.au/media-centre/news/afp/2012/february/AFP-and-serbian-police-sign-new-agreement.aspx](http://www.afp.gov.au/media-centre/news/afp/2012/february/AFP-and-serbian-police-sign-new-agreement.aspx)

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a standard operational principle of law enforcement bodies that the information received can only be used for the purposes for which it was provided.

a8.41. **Criterion 40.7** – For AUSTRAC, international exchange information is classified with a protective marking applied to information covered by a specific secrecy provision of an Act, consistent with the PSPF. Part 11 of the AML/CTF Act provides the secrecy provisions in this case. Security containers and system controls provide physical and online protection to stored information. The PSPF protects information holdings, including international exchange information. The provisions allow competent authorities to refuse to disclose information where the requesting competent authority is unwilling or unable to agree with the conditions of disclosure.

a8.42. **Criterion 40.8** – AUSTRAC conducts enquiries within Australia on behalf of foreign counterparts. In addition, sections 8–10 and 18 of the MABRA empower competent authorities (i.e. ASIC and APRA) to provide assistance in response to a request from a foreign regulator. While APRA can only provide such assistance with Ministerial approval (section 8), ASIC senior staff can exercise the Minister’s power to authorise the obtaining of information or documents.

a8.43. **Criterion 40.9** – AUSTRAC has an adequate basis for international cooperation on issues related to ML, predicate offences and TF under section 132(1) of the AML/CTF Act. That section authorises AUSTRAC to provide information so long as the foreign government provides undertakings to protect confidentiality, controls the use of the information and ensures that the information should only be used for the purpose for which it is communicated.

a8.44. **Criterion 40.10** – AUSTRAC provides feedback to foreign countries on a range of matters, including on behalf of other Australian domestic agencies receiving information from overseas as the result of a spontaneous disclosure or in response to a request. AUSTRAC has provided feedback on such matters as: the timeliness of the response by the overseas FIU; whether Australian agencies were already aware of the information; and if new information was relevant, how the information was used and whether spontaneous disclosures led to further requests for information. Feedback is requested routinely following each international exchange.

a8.45. **Criterion 40.11** – Section 132(1) of the AML/CTF Act authorises AUSTRAC to communicate AUSTRAC information, including information from reporting entities obtained by authorised officers under AUSTRAC’s information-gathering and enforcement powers. Company and business information from ASIC is also exchanged with foreign FIUs. Information obtained by AUSTRAC from a government body becomes AUSTRAC information and is subject to the same protections afforded under the AML/CTF Act.

a8.46. **Criterion 40.12** – As noted earlier, AUSTRAC has statutory authority under the AML/CTF Act to cooperate with foreign counterparts, ASIC and APRA have authority to do so under the MABRA. APRA is also authorised to disclose information to foreign counterparts under section 56 of the APRA Act; ASIC can also release information it holds to assist foreign counterparts pursuant to section 127(4) of the ASIC Act.

a8.47. **Criterion 40.13** – Financial supervisors are able to acquire information from financial institutions and share them with foreign counterparts under the authority of sections 8-10 and 18 of the MABRA. While APRA can only provide such assistance with ministerial approval (section 8), ASIC senior staff are able to exercise the Minister’s power to authorise the provision of information, documents or evidence. ASIC and APRA are also able to share the information available to them through their routine operations; section 127(4) of the ASIC Act and sections 56(5)(a)–(b) of the APRA Act.

a8.48. **Criterion 40.14** – APRA and ASIC are not restricted from sharing regulatory and prudential information that is not institution-specific. ASIC can share with foreign agencies the information it holds on financial institutions’ business activities, beneficial ownership, and fit and properness under the conditions set in section 127 of the ASIC Act. Disclosure of information on financial institutions’ activities by APRA is authorised under certain conditions by section 56 of the APRA Act. It is further provided in section 56(3) of the APRA Act that institution-specific information can be released where the information is disclosed for the purposes of a prudential regulation framework law. APRA and ASIC are also designated agencies under the AML/CTF Act, which gives them access to AUSTRAC information.

a8.49. **Criterion 40.15** – Financial supervisors can provide assistance to a foreign regulator under the MABRA; however, this requires Ministerial approval. See also criteria 40.2, 40.8, 40.13 and 40.18.

a8.50. **Criterion 40.16** – Information conveyed to Australian financial supervisors is protected by secrecy and confidentiality provisions in statutes and relevant MoU. See criteria 40.6 and 40.7 above.

a8.51. **Criterion 40.17** – Law enforcement authorities are able to exchange domestically available information with foreign counterparts for intelligence or investigative purposes. Subsection 8(1)(bf) of the AFP Act includes, as an AFP function, the provision of police services and police support services for the purposes of assisting, or cooperating with, an Australian or foreign law enforcement, intelligence, security or government regulatory agency. “Police services” is defined as including services performed by way of the prevention of crime, including information exchange. “Police support services” includes any service *related to* the provision of services by an Australian or foreign regulatory, intelligence or security, or law enforcement agency. State and Territory police services and the AFP are able to exchange domestically available information with foreign counterparts through the AFP’s International Liaison Officer Network.

a8.52. **Criterion 40.18** – The AFP can use its powers to conduct inquiries, including investigative techniques, and obtain information on behalf of foreign counterparts under sections 8(1)(bf) of the AFP Act. The ACC is permitted to conduct inquiries and obtain information on behalf of foreign counterparts, in the exercise of its general intelligence power under section 7A(a) of the ACC Act. State and Territory law enforcement bodies are able to conduct inquiries on behalf of foreign counterparts under the authority of the MACMA.

a8.53. **Criterion 40.19** – The AFP’s powers provide a basis for the AFP to form joint investigative teams and establish bilateral or multilateral agreements where required. The ACC is afforded similar powers to form joint investigative teams and bilateral/ multilateral arrangements to enable joint investigations under section 17(2) of the ACC Act. ASIO is afforded similar powers in section 19(1)(c) of the *Australian Security Intelligence Organisation Act 1979* (Cth). State and Territory law enforcement bodies have been less likely to require the creation of such joint investigations. However, where the need arises, they have the authority to do so under the MACMA or under the broad authority they are given to perform their functions. See, for example, section 6(2)(c) of the *Police Act 1990* (NSW).

a8.54. **Criterion 40.20** – The relevant statutory provisions identified in response to criterion 40.2 are not limited to direct disclosures of information and do not require that the information only be transmitted between counterparts. For example, subsection 8(1)(bf) of the AFP Act includes, as an AFP function, the provision of police services and police support services for the purposes of assisting, or cooperating with, an Australian or foreign law enforcement, intelligence, security, or government regulatory agency. The majority of information exchanges channelled through AUSTRAC each year is indirect in nature. AUSTRAC facilitates foreign exchanges with all its domestic partner agencies across the regulatory, law enforcement, revenue, intelligence and social justice spheres. Similar provisions for indirect cooperation are provided to APRA (section 56 of the APRA Act, and ASIC (section 127 of the ASIC Act).

### *Weighting and Conclusion*

a8.55. ASIC and APRA may conduct enquiries for purposes of complying with a request from a foreign regulator. As an FIU, AUSTRAC can also provide all the information to foreign requests as required by Recommendation 40; as a regulator, AUSTRAC can share all relevant information that it holds or that it can obtain from reporting parties. **Recommendation 40 is rated 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
NOCRCP	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