

Executive Summary

1. This report provides a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Australia as at the date of the on-site visit (30 July – 12 August 2014). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Australia's AML/CTF system, and provides recommendations on how the system could be strengthened.

A. Key Findings

- Overall, Australian authorities have a good understanding of most of Australia's main money laundering (ML) risks but need to develop their understanding further in certain areas. They coordinate very well activities to address key aspects of the ML / terrorist financing (TF) risks but some key risks remain unaddressed, and an underlying concern remains that the authorities are addressing predicate crime rather than ML.
- Authorities have a good understanding of TF risks, and are addressing them accordingly. They assess that TF is largely motivated by international tensions and conflicts.
- Operationally, national AML/CTF coordination is very comprehensive, but demonstrating its overall success is challenging, although results from national taskforces are showing positive trends. A stronger focus is required on monitoring and measuring success.
- Australia develops and disseminates good quality financial intelligence to a range of law enforcement bodies, customs and tax authorities. The amount of financial transaction data in the Australian Transaction Reports and Analysis Centre (AUSTRAC) database, and the fact that 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. However, the somewhat 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.
- 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). However, Australia should expand its focus to ensure that a greater number of cases of ML are being identified and investigated adequately.
- 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 Australian Taxation Office (ATO). Competent authorities have increased their efforts to

confiscate proceeds of crime, particularly since the establishment of the national Criminal Assets Confiscation Taskforce. But it is unclear how successful confiscation measures are across all jurisdictions, and total recoveries remain relatively low in the context of the nature and scale of Australia's ML/TF risks and have only modestly increased over the past few years.

- Australia's legal framework to combat TF is comprehensive. Australia has undertaken several TF investigations and prosecutions, and secured three convictions for the TF offence. Australia also successfully uses other criminal justice and administrative measures to disrupt terrorist and TF activities when a prosecution for TF is not practicable.
- Australia's legal framework to implement targeted financial sanctions is a good example for other countries. The automatic, direct legal obligation to freeze assets as soon as an entity is listed by the UN and the numerous designations made under the domestic regime are to be commended as best practices for other countries. However, effective implementation of the legal framework is difficult to confirm in the absence of freezing statistics, financial supervision, or supervisory experience and feedback on practical implementation by the private sector.
- Australia has not implemented a targeted approach nor has it exercised oversight in dealing with non-profit organisations (NPOs) that are at risk from the threat of terrorist abuse. Authorities have not undertaken a review of the NPO sector to identify the features and types of NPOs that are particularly at risk of being misused for TF.
- Most designated non-financial business and profession sectors are not subject to AML/CTF requirements, and did not demonstrate an adequate understanding of their ML/TF risks or have measures to mitigate them effectively. This includes real estate agents and lawyers, both of which have been identified to be of high ML risk in Australia's National Threat Assessment.
- The major reporting entities – including the big four domestic banks which dominate the financial sector – have a good understanding of their AML/CTF risks and obligations, but some AML/CTF controls, whilst compliant with Australian obligations, are not in line with FATF Standards¹.
- AUSTRAC has done a good job in promoting compliance with the AML/CTF standards by the vast amount of entities under its supervision. Australia has set up and developed a risk-based approach to supervision, although further improvement is required relating to the risk picture of the supervised entities. In mitigating risks through supervision, Australia should focus more on effective supervision and enforcement of individual reporting entities' compliance with AML/CTF obligations within the various sectors.
- Australia has not conducted a formal risk assessment on TF risks associated with legal persons and arrangements. The majority of legal persons are registered with the Australian Securities and Investment Commission (federal) while others with State or Territory authorities. While the information seems to be largely available to competent authorities and to the public, very limited verification is conducted on the information that is registered. Information on the beneficial owner of legal persons and legal arrangements is not maintained and accessible to competent authorities in a timely manner.
- Australia cooperates well with other countries in MLA matters, including extradition. Informal cooperation is generally good across agencies.

¹ The FATF Standards comprise the FATF Recommendations and their Interpretive Notes.

B Risk and General Situation

2. Australia has identified and assessed, and has a good understanding of most of, its main ML risks and has mechanisms in place to mitigate them. Domestic and foreign organised crime groups operate in Australia. The main sources of criminal proceeds are illicit drugs, frauds, and tax evasion. Australian drug markets are said to be some of the most profitable in the world, attracting interest from major syndicates in South East Asia and South America. Most laundering involves use of the banking sector, money remitters, and complex corporate structures, facilitated by gate-keepers. Australia is seen as an attractive destination for foreign proceeds, particularly corruption-related proceeds flowing into real estate, from the Asia-Pacific region. Outwards proceeds flows are directed mainly to major financial hubs in Asia and the Middle East, with tax proceeds also flowing to European havens.

3. Australia has properly identified and assessed, and has a good understanding of, its TF risk, and is addressing it accordingly. Globally, the amounts of funds generated to finance terrorism vary between groups. Funds raised by groups that are part of an international network can be significant in the TF context. These groups have the financial infrastructure to undertake sizeable fundraising and money transfer operations. Small domestic groups and lone wolf terrorists are also a significant TF risk. While the amounts raised by these radicalised groups or individuals are much smaller, their intent to undertake violent acts in Australia can pose a direct threat to the Australian community. The authorities have periodically and successfully disrupted domestic terrorism plots, and the associated funding. Recently, the emerging TF risk has involved some Australians funding travel from legitimate sources to fight in conflict zones. Some funds have also been raised through abusing registered and informal “pop-up” charities linked to humanitarian fund-raising.

C Overall level of compliance

4. Australia has a strong institutional framework for combatting ML, TF, and proliferation financing. Australia’s measures are particularly strong in legal, law enforcement, and operational areas, and targeted financial sanctions; some improvements are needed in the framework for preventive measures and supervision, in particular for designated non-financial businesses and professions. In terms of effectiveness, Australia has achieved high results in international cooperation, and substantial results in risk, policy and coordination, the use of financial intelligence and combating terrorist financing and proliferation financing. Only moderate or minor improvements are needed in these areas. Major improvements are needed in other areas, as noted below.

C.1 Assessment of risk, coordination, and policy setting

5. Australia has a good understanding of most of its main ML risks and coordinates comprehensively to address most of them. However, some key risks remain unaddressed and, inconsistently with the FATF Standards, the authorities are focussed more on predicate crime rather than ML. TF risk is well understood and actions are being taken to mitigate it, particularly by disrupting domestic terrorist activities. Australia has produced a national report on each of its ML (the National Threat Assessment—NTA) and TF risks (the National Risk Assessment—NRA), which are supplemented by ongoing risk analysis efforts. Australia has used the results of the assessments to help shape aspects of how it combats ML and TF and has a national strategy for combating organised crime which identifies ML as an intrinsic enabler of organised crime.

6. Operational activities are coordinated using a mixture of standing committees and task forces that include federal and State and Territory agencies, which is salient as Australia is a federation. The objectives and activities of most of the competent authorities are generally consistent with the ML/TF risks, with the major exception being a lack of focus on addressing risks from abuse of complex corporate structures, real estate (including through regulating relevant designated non-financial businesses and professions (DNFBPs)).

7. Australia does not have a developed national policy setting out what the overall AML/CTF system is meant to achieve, or how its success should be monitored or measured, making it challenging to determine how well the ML/TF risks are being addressed. Accordingly, national metrics about how well the authorities’ efforts are addressing ML/TF risks are limited, and the authorities were challenged to present convincing

evidence about what outcomes their efforts are achieving. Exemptions from requirements for reporting entities and the application of enhanced or simplified measures are not based primarily on the results of the NTA, NRA or other efforts to assess ML/TF risks. The authorities coordinate and cooperate to a large extent to combat the financing of proliferation of weapons of mass destruction.

C.2 Financial intelligence, ML, and confiscation

8. Australia develops and disseminates good quality financial intelligence to a range of law enforcement bodies, customs and tax authorities. AUSTRAC is a well-functioning financial intelligence unit (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, is a strength 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 somewhat 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. Broader use of the sound institutional structure for combating ML would mitigate ML/TF risks more effectively.

9. 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). At the federal level, the authorities charge stand-alone and third party ML offences, but legal issues have arisen in relation to the prosecution of self-laundering offences, and ML related to foreign predicates including corruption is not frequently prosecuted. At the State/Territory level, prosecutions for substantive ML offences, including third party laundering and stand-alone laundering charges, are less common.

10. Since the last assessment, Australia has improved in terms of obtaining ML convictions, and is achieving reasonable results in relation to the key risk and those geographic areas where Australia is focusing on ML, but the overall results are lower than they could be relative to the nature and scale of the risks. The authorities have applied a range of sanctions for ML offences to natural persons, but no corporations have been prosecuted for ML offences. The authorities apply other criminal justice measures to disrupt serious criminal activity, including ML offences, but in accordance with their policy of disruption of serious and organised crime such measures are applied whether or not it may be possible to secure a ML conviction.

11. Confiscation of criminal proceeds, instrumentalities, and property of equivalent value is being actively pursued as a policy objective in Australia. The competent authorities have enhanced their efforts since the last assessment with the amounts being restrained and confiscated increasing at the federal level, although overall the figures remain relatively modest in the context of the nature and scale of Australia's ML/TF risks. The majority of assets recovered to date have flowed from the drugs trade and also from tax evasion (using ATO recovery powers). The Criminal Asset Confiscation Taskforce (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 or when foreign predicate offending is involved.

12. At the State and Territory level, the combined recoveries are about twice the value of recoveries made at the federal level due to the heavy emphasis on drug-related recoveries. Australia is taking some steps to target the cross-border movement of cash and bearer negotiable instruments (BNIs). Australia remains 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.

C.3 Terrorist financing and proliferation financing

13. It is positive to note that Australia has undertaken several TF investigations and prosecutions, and secured three convictions for the TF offence. Australia also successfully uses other criminal justice and administrative measures to disrupt terrorist and TF activities when a prosecution for TF is not practicable. Australia had successfully disrupted two domestic terrorist plots (Pendennis and Neath) at the time of the on-site visit. Australia also uses these other measures to address the most relevant emerging TF risk – individuals

travelling to conflict zones to participate in or advocate terrorist activity. Australian authorities identify and investigate different types of TF offences in each counter-terrorism investigation, and counter-terrorism strategies have successfully enabled Australia to identify and designate terrorists, terrorist organisations and terrorist support networks. Australian authorities have not prosecuted all the different types of TF offences, such as the collection of funds for TF, or the financing of terrorist acts or individual terrorists, and the dissuasiveness of sanctions applied has not been clearly demonstrated.

14. Despite the general risks identified by the authorities in the NRA, Australia has not undertaken a risk review of the NPO sector to identify the features and types of NPOs that are particularly at risk of being misused for TF. Subsequently, there is no TF-related outreach to, or TF-related monitoring of, this part of the sector that would be at risk and that account for a significant share of the sector's activities.

15. Australia has a sound legal framework for targeted financial sanctions relating to terrorism and proliferation, but it is difficult to determine the effectiveness of the system. Under the Australian legal framework, the legal obligation to freeze assets is automatic upon designation at the UN; no additional action by Australian authorities is needed to give legal effect to a designation (although email alerts are sent to subscribers). This is a best practice for other countries. The Department of Foreign Affairs and Trade (DFAT) has primary responsibility for compliance with sanction requirements. However, DFAT does not adequately monitor or supervise the financial sector for compliance with the requirements of the FATF Recommendations, as would be expected of a supervisory authority. In addition, no financial institutions are supervised or monitored for compliance with the targeted financial sanctions (TFS) requirements (as in financial supervision) by any other competent supervisory authority. The absence of freezing statistics, financial supervision, supervisory experience, and feedback on practical implementation by the private sector made it difficult to confirm the level of effectiveness of the system.

C.4 Preventive measures and supervision

16. Regulated entities generally have adopted preventive measures required under the Australian regime, but some controls are not yet in line with FATF Standards.

17. Australia's AML/CTF regime has changed significantly since the last mutual evaluation report in 2005. The regime, introduced in 2006, significantly expanded the number of businesses subject to AML/CTF obligations – known as reporting entities. Under the new AML/CTF regime, the preventive measures' requirements have been brought more in line with FATF Standards, although deficiencies remain. Except for gaming and bullion, other DNFBP sectors are not subject to AML/CTF obligations. Understanding of ML/TF risks and implementation of preventive measures is better among larger players and in the regulated sectors.

18. Within the remittance sector, effective implementation of AML/CTF controls varies, depending on the industry's size and resources. The banks, particularly domestic ones, account for a large share of banking sector assets and international funds transfers in the system, but do not fully implement preventive measures to the extent envisaged by the FATF, especially where they meet Australian domestic requirements which do not meet the FATF standard. Most DNFBPs, including real estate agents and legal professionals, are also not subject to AML/CTF controls or suspicious transaction reporting obligations, even though they are highlighted as being high-risk for ML activities.

19. To a large extent, licensing, registration and other controls implemented by Australia, adequately prevent criminals and their associates from entering the financial sector. An important factor AUSTRAC uses in identifying ML/TF risk at the Reporting Entity Group (REG) level is the volume and value of transaction reports (suspicious matter report (SMRs) and international fund transfer instructions (IFTIs)) as an indicator of the volume of funds flowing through an entity, the size of an entity as a proxy measure of the number of customers, products and distribution channels. It is not sufficiently clear that AUSTRAC, when risk profiling REGs or individual reporting entities, collects and uses sufficient information necessary to adequately determine the level of inherent risk of the REG and individual reporting entities, beyond the information from transaction reports.

20. AUSTRAC succeeds to a fair extent in promoting compliance with the AML/CTF requirements among the sectors it has engaged. The focus of supervision is targeting what AUSTRAC considers to be the

high-risk entities for enhanced supervisory activity, and to test the effectiveness of REG's/reporting entities' systems and controls in practice. However, the number of enforcement actions and the subjects of these actions do not convincingly demonstrate that reporting entities are subject to effective and proportionate sanctions.

C.5 Transparency and beneficial ownership

21. Australia has undertaken an assessment of the ML risks associated with legal persons and arrangements but did not comprehensively assess all forms of legal persons (including foreign companies operating in Australia). Legal persons and trusts were assessed as medium to high risk for ML but limited measures exist to mitigate risk associated with legal persons and very limited measures exist to mitigate the ML risk associated with legal arrangements. Authorities are nevertheless aware that legal persons can be, or are being, misused for ML. Australia has not conducted a formal assessment of the TF risks associated with legal persons and arrangements.

22. Overall, there is good information on the creation and types of legal persons in Australia, but less information about legal arrangements. Federal and State/Territory registries are publically available for legal persons and what is recorded is available to competent authorities. However, measures need to be taken, including imposing AML/CTF obligations on those who create and register legal persons and arrangements, in order to strengthen the collection and availability of beneficial ownership information.

23. The existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date information on beneficial owners is available in a timely manner. It is also not clear that information held on legal persons and legal arrangements is accurate and up-to-date. The authorities did not provide evidence that they apply effective sanctions against persons who do not comply with their information requirements. Overall, legal persons and arrangements remain very attractive for criminals to misuse for ML and TF.

C.6 International Cooperation

24. Australia cooperates well with other countries in mutual legal assistance (MLA) matters. MLA requests are processed in a timely manner in accordance with a case prioritisation framework. Australia cooperates well in extradition. Both making and receiving requests in ML and TF related matters and informal cooperation is generally good across agencies. But the ability to provide beneficial ownership information for legal persons and trusts in relation to foreign requests is more limited. Nevertheless, Australia cooperates well in providing available beneficial ownership information for legal persons and trusts in relation to foreign requests.

25. 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. AUSTRAC cooperates well with its foreign counterparts. Informal cooperation is generally good across agencies.

D Priority actions

26. The prioritised recommended actions for Australia, based on these findings, are:

- Undertake a re-assessment of Australia's ML risks in keeping with the requirements and guidance issued in relation to Recommendation 1, and formalise the ongoing processes for re-assessing risks. Australia should also identify metrics and processes for monitoring and measuring success.
- The authorities should place more emphasis on pursuing ML investigations and prosecutions at the federal as well at the State/Territory level. The authorities should increase efforts to address ML risks associated with:
 - predicate crimes other than drugs and tax, including foreign predicates;

- the abuse of legal persons and arrangements and the real estate sector;
 - identity fraud;
 - fraud; and
 - cash intensive activities.
- CACT should continue its good early work and demonstrate its effectiveness over time to confiscate the proceeds and instrumentalities of crime.
 - AUSTRAC should incorporate more (inherent) risk factors besides data analysis from filed reports into identifying and assessing the risk of reporting entities. AUSTRAC should consider opportunities to further utilise its formal enforcement powers to promote further compliance by reporting entities through judicious use of its enforcing authority.
 - Australia should ensure financial institutions are actively supervised for implementation of DFAT lists, most likely through a legislative amendment to the statute identifying and authorising the agency responsible for supervision.
 - Australia should implement a targeted approach in relation to preventing NPOs from TF abuse. As a first step, Australia needs to undertake a thorough review of the TF risks that NPOs are facing (beyond the issues already covered in the NRA) and the potential vulnerabilities of the sector to terrorist activities.
 - Ensure that lawyers, accountants, real estate agents, precious stones dealers, and trust and company service providers understand their ML/TF risks, and are required to effectively implement AML/CTF obligations and risk mitigating measures in line with the FATF Standards. Ensure that reporting entities implement as early as possible the obligations on enhanced customer due diligence (CDD), beneficial owners, and politically exposed persons introduced on 1 June 2014.
 - Australia should assess the risks of TF posed by all forms of legal persons and arrangements. Australia should also take measures to ensure that beneficial ownership information for legal persons is collected and available. Trustees should be required to hold and maintain information on the constituent elements of a trust including the settlor and beneficiary.

Table 1. Effective Implementation of Immediate Outcomes

Effectiveness	
1. Risk, Policy and Coordination	Substantial
<p>Australia is achieving Immediate Outcome 1 to a large extent as demonstrated by its good understanding of most of its major ML risks and of its TF risks, as well as its very good coordination of activities to address key aspects of the ML/TF risks. Australia identified and assessed most of its major ML risks but more attention needs to be paid to understanding foreign predicate risks, and vulnerabilities that impact its AML/CTF system. AML/CTF policies need to better address ML risks associated with foreign predicate offending the abuse of legal persons and arrangements, and laundering in the real estate sector, particularly through bringing all DNFBPs within the AML/CTF regime.</p> <p>More current information about ML/TF risks also needs to be communicated to the private sector. The identification of low or high ML/TF risks by the authorities should drive exemptions from requirements and strongly influence the application of enhanced or simplified measures for reporting entities. While cooperation, particularly on operational matters, is very good across relevant competent authorities, including for proliferation matters, Australia could better articulate an AML/CTF policy and maintain more comprehensive national statistics to demonstrate how efficient and effective its AML/CTF system is, including by developing ways to show that its disruption strategy for predicate crime addresses ML risks.</p>	
2. International Cooperation	High
<p>The Immediate Outcome is achieved to a very large extent. Australia uses robust systems for mutual legal assistance, 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 the Australian Securities and Investment Commission (ASIC) and the Australian Prudential Regulation Authority (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.</p>	
3. Supervision	Moderate
<p>In identifying ML/TF risk at the group level, an important factor on which AUSTRAC relies are the varying forms of reporting (i.e. SMRs, TTR s and IFTIs) and unverified self-reporting of compliance to determine reporting entity risks. Other risk factors should be considered and AUSTRAC supervisory practice should extend to more individual reporting entities. AUSTRAC's approach does not seem sufficiently nuanced to adequately account for the risks of individual reporting entities in a REG. More generally, AUSTRAC's graduated approach to supervision does not seem to be adequate to ensure compliance.</p> <p>The majority of deficiencies identified by AUSTRAC through its compliance activities are voluntarily remediated by REs based on recommendations and requirements issued by AUSTRAC after an assessment. No monetary penalties for violations of the AML/CTF preventive measure obligations have ever been pronounced. Rather, AUSTRAC had applied sanctions to a limited extent in the</p>	

Effectiveness

form of enforceable undertaking, which amounts to – among other things – a formal agreement that the reporting entity will comply with AML/CTF requirements. The assessors concluded that the use of sanctions for non-compliance has had minimal impact on ensuring compliance among reporting entities not directly affected by the sanction. The private sector shared similar views about the depth, breadth, and effectiveness of the supervisory regime. In addition, there is no appropriate supervision or regulation of most higher-risk DNFBPs because they are not subject to AML/CTF requirements. Overall, the authorities were unable to demonstrate improving AML/CTF compliance by reporting entities or that they are successfully discouraging criminal abuse of the financial and DNFBP sectors.

4. Preventive Measures

Moderate

Australia exhibits some characteristics of an effective system for applying preventive measures in financial institutions and DNFBPs. The major reporting entities – including the big four domestic banks which dominate the financial sector – have a good understanding of their AML/CTF risks and obligations, as required by Australian obligations. These obligations are not in line with FATF Standards. In general, the major reporting entities and other high risk reporting entities subject to more regular supervisory engagement appear to have a reasonable understanding of ML/TF risks and preventive measures that comply with the Australian AML/CTF regime. Reporting entities have demonstrated that they are aware of their requirement to have AML/CTF programmes and reported having implemented the necessary internal AML/CTF controls. However, a number of aspects of the AML/CTF regime – including those that relate to internal controls, wire transfers, correspondent banking, etc. – do not meet FATF Standards. As a result, reporting entities' implementation of AML/CTF measures will not meet the FATF Standards if its internal controls are developed solely to meet the Australian requirements.

In addition, while the requirements have been revised with respect to CDD and politically exposed persons (PEPs), none of the reporting entities reported they were able to fully implement these requirements at the time of the on-site. As a result, at the time of the on-site visit, reporting entities were working to transition from the pre-June 1 AML/CTF Rules, which were not in line with the FATF Standards. At the same time, a lot of reliance is placed on the banking and financial sector as gatekeepers due to the absence of AML/CTF regulation and requirements on key high-risk DNFBPs such as lawyers, accountants, real estate agents and trust and company service providers. As a result of these factors, the effectiveness of the preventive measures in the financial system as a whole, and DNFBPs, is hence called into question to some extent.

5. Legal Persons and Arrangements

Moderate

Legal persons and legal arrangements were identified as presenting medium to high risks for ML in the NTA of 2011 and the use of complex corporate structures in ML schemes was frequently cited by law enforcement spoken to by the assessment team. There is good information on the creation and types of legal persons in the country available publicly, but less information about legal arrangements. The ATO has made some improvements to the Australian Business Register (ABR) that involve collecting information on associates and trustees for new registrations from December 2013.

The authorities seem to appreciate the extent to which legal persons can be, or are being misused, for ML and had some awareness in relation to TF. They could do more to identify, assess, and understand the vulnerabilities of both for ML and TF, as past assessment efforts seem to have

Effectiveness

focused more on underlying predicate crime. While Australia has implemented some measures to address the specific risk identified in the 2011 NTA to legal persons and legal arrangements, other measures need to be taken, including imposing AML/CTF obligations on those who create and register them to strengthen the collection and availability of beneficial ownership information.

Concerning beneficial owners of legal persons and legal arrangements, the existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date information on beneficial owners is available in a timely manner. It is not clear that information held on legal persons and legal arrangements is accurate and up-to-date. The authorities did not provide evidence that they apply effective sanctions against persons who do not comply with their information requirements. Overall, legal persons and arrangements remain very attractive for criminals to misuse for ML and TF.

6. Financial Intelligence

Substantial

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. 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 investigative task forces, and when tracing and seizing assets.

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 Australian Federal Police (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.

There are also some concerns with regard to the relatively 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.

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.

7. ML Investigation and Prosecution

Moderate

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 the pursuit of convictions for ML offences or disruption of ML networks both at the Commonwealth 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.

Effectiveness

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,
- focusing 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
- ensuring that all States and Territories focus on substantive type ML.

8. Confiscation

Moderate

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. Relatively modest amounts are being confiscated, which suggests that criminals retain much of their profits.

9. TF Investigation and Prosecution

Substantial

Australia exhibits most characteristics of an effective system for investigating, prosecuting, and sanctioning those involved in TF. It is positive to note that Australia has undertaken several TF investigations and prosecutions, and also secured three convictions for the TF offence. Australia also successfully uses other criminal justice and administrative measures to disrupt terrorist and TF activities when a prosecution for TF is not practicable. Australia had successfully disrupted two domestic terrorist plots (Pendennis and Neath) at the time of the on-site visit.² Australia also uses these other measures to address the most relevant emerging TF risk – individuals travelling to conflict zones to participate in or advocate terrorist activity.

Australian authorities identify and investigate different types of TF offences in each counter-terrorism investigation, and counter-terrorism strategies have successfully enabled Australia to identify and designate terrorists, terrorist organisations, and terrorist support networks. Australian authorities have not prosecuted all the different types of TF offences, such as the collection of funds for TF, or the financing of terrorist acts or individual terrorists, and the dissuasiveness of sanctions applied has not been clearly demonstrated.

² Another plot was disrupted soon after the on-site visit. AUSTRAC also took action in November 2014 to cancel the registration of remittance dealer (Bisotel Rieh Pty Ltd) concerned that its continued registration may involve a TF risk. This followed a period of engagement and notification of action by AUSTRAC.

Effectiveness

10. TF Preventive measures & financial sanctions**Moderate**

Australia demonstrates some characteristics of an effective system in this area. Terrorists and terrorist organisations are being identified in an effort to deprive them of the resources and means to finance terrorist activities.

A strong area of technical compliance is in the legal framework for TFS against persons and entities designated by the United Nations Security Council (UNSC) (United Nations Security Council Resolution (UNSCR) 1267) and under Australia's sanctions law (for UNSCR 1373). Australia has co-sponsored designation proposals to the UNSCR 1267/1989 Committee and adopted very effective measures to ensure the proper implementation of UN designations without delay. Australia has also domestically listed individuals and entities pursuant to UNSCR 1373 (including most recently two Australians fighting overseas for terrorist entities) and received, considered and given effect to third party requests. Australia actively works to publicly identify terrorists and terrorist organisations.

Furthermore, the TFS regime is administered robustly. Australia has procedures for:

1. the identification of targets for listing,
2. a regular review of listings, and
3. the consideration of de-listing requests and sanctions permits.

The authorities make a concerted effort to sensitize the public to Australian sanctions laws and to assist potential asset holders in the implementation of their obligations.

However, the private sector is not supervised for compliance with TFS requirements and was unable to demonstrate that the legal framework is effectively implemented. Effective implementation is difficult to confirm in the absence of freezing statistics, financial supervision, supervisory experience and feedback on practical implementation by the private sector. Designating Australians previously convicted for terrorism or terrorist financing, who openly join designated terrorist organisations could improve the system's effectiveness.³

NPOs are an area for improved efforts and specific action. According to the NRA, charities and NPOs are a key channel used to raise funds for TF in or from Australia. However, the lack of a targeted TF review and subsequent targeted TF-related outreach and TF-related monitoring of NPOs leaves NPOs and Australia vulnerable to misuse by terrorist organisations. Since 2010 there has also been no effort directed at NPOs to sensitise them to the potential risk of misuse for TF. While the Australian Charities and Not-for-Profits Commission (ACNC) actively works to improve transparency, it has no specific TF mandate and it has not conducted outreach to the NPO sector regarding TF risks.

³ At the time of the on-site, two of these individuals were under consideration by the government for designation. Designation of these two persons subsequently took place on 13 November 2014, after the on-site.

Effectiveness**11. PF Financial sanctions****Substantial**

Australia demonstrates to a large extent the characteristics of an effective system in this area. The issues listed under IO10 and that relate to UNSCR 1267 also apply to IO11.

Even though IO11 suffers from the same issues as IO10, IO10 has additional shortcomings in relation to NPOs that do not apply to IO11. In addition, the overall domestic cooperation in relation to country sanction programmes for Iran and DPRK seems sound, which may have a positive effect on the implementation of targeted financial sanctions that are related to these country programmes. This domestic cooperation benefit does not apply in the case of IO10 / UNSCR 1267, which is not a country programme.

Table 2: Compliance with FATF Recommendations

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> Mitigation policies have not been taken to mitigate high risks identified in the NTA related to certain entities and services. Most main, but not all, ML risks were identified and properly assessed. Reporting entities are not required to mitigate or carry out enhanced measures for high risks, identified by the authorities. Exemptions, and the application of simplified measures, are not based solely on low risk but include other variables such as regulatory burden and the desirability of promoting the risk-based approach. Scope issue - accountants, lawyers, trust and company service providers, most dealers in precious metals & stones, and real estate agents are not reporting entities and thus not subject to risk mitigation requirements.
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> Australia does not have a formalised AML/CTF policy that draws on risks identified in the NTA and NRA.
3. Money laundering offence	C	The Recommendation is fully met.
4. Confiscation and provisional measures	C	The Recommendation is fully met.
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> The Australian definition of 'terrorist act' is somewhat narrower than the definition in Articles 2(1)(a) and (b) of the TF Convention. The provision or collection of funds to be used by an individual terrorist for any purpose is not covered.
6. Targeted financial sanctions related to terrorism & TF	C	The Recommendation is fully met.
7. Targeted financial sanctions related to proliferation	C	The Recommendation is fully met.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
8.	Non-profit organisations	NC	<ul style="list-style-type: none"> • No sectorial TF risk assessment. • Subsequently, no relevant outreach to NPOs. • Subsequently, no relevant measures applied to those NPOs that would be identified as high risk and that account for a significant portion of the financial resources and/or international activities.
9.	Financial institution secrecy laws	C	The Recommendation is fully met.

Compliance with FATF Recommendations

	Recommendation	Rating	Factor(s) underlying the rating
10.	Customer due diligence	PC	<ul style="list-style-type: none"> • Exemptions in operation within the AML/CTF Act and Rules may diminish the application of CDD in situations envisaged by the FATF Standard (e.g. signatories associated with an Australian correspondent banking relationship, no CDD requirements on reloadable stored value cards below a certain threshold or occasional transactions below nominated thresholds which appear to be linked). • There are deficiencies in the verification requirements in relation to an agent of a customer, trustees and beneficiaries. • Exemptions and simplified due diligence measures in relation to trusts that are registered and subject to regulatory oversight, and companies which are licensed and supervised, are not permitted by the standard and do not appear to be based on proven low risk. • There are deficiencies in the breadth of the identification information required across all legal persons / arrangements. Specifically, not all information specified in criterion 10.9 is required in each entity type and not all information collected is required to be verified. • There is no requirement to understand the control structure of non-individual customers, or understand the ownership structure. • There is no requirement to identify the beneficiary of a life insurance policy until payout. • Due to the wording of the requirements in relation to enhanced due diligence, a reporting entity may satisfy its enhanced CDD by completing identification which is considered normal due diligence. • There is no requirement in law to terminate the business relationship when the reporting entity is unable to comply with CDD requirements. The law does not permit reporting entities to stop performing CDD even if there is a risk of tipping off.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
11.	Record keeping	LC	<ul style="list-style-type: none"> • Certain customer-specific documents are exempt from record-keeping requirements. • There is no clear obligation in the AML/CTF Act that transaction records should be sufficient to permit reconstruction of individual transactions, although this is partly addressed by requirements in other legislation. • No formal requirement for reporting entities to ensure that the records be available swiftly to domestic competent authorities upon appropriate authority.
12.	Politically exposed persons	LC	<ul style="list-style-type: none"> • The notions of close associate, which requires beneficial ownership of a legal person or arrangement, and of family members, which only apply to the spouse, parents and children, are too restrictive. • Important officials of political parties are not covered. • There is no specific requirement for life insurance.
13.	Correspondent banking	NC	<ul style="list-style-type: none"> • The obligations to gather and verify information on the AML/CTF regulation applicable to the correspondent bank; the adequacy of its internal controls; information on the ownership, etc. only apply based on the risk evaluated by the reporting entity. • There are no specific obligations for payable-through accounts.
14.	Money or value transfer services	LC	<ul style="list-style-type: none"> • There is no obligation for MTVS providers to include their agents in their AML/CTF programme, though it is permissible. • MTVS providers are not required to monitor their agents' compliance with the AML/CTF programme.
15.	New technologies	LC	<ul style="list-style-type: none"> • There is no obligation specific to the identification, mitigation and management of the ML/TF risks posed by new technologies to reporting entities.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
16.	Wire transfers	PC	<ul style="list-style-type: none"> The obligations in relation to the intermediary and the beneficiary financial institutions have not been updated to reflect FATF Recommendation 16. MVTS providers are not required to apply the requirements of Recommendation 16 in the countries in which they operate. No freezing action is undertaken in the context of Recommendation 16.
17.	Reliance on third parties	PC	<ul style="list-style-type: none"> It is not explicitly provided that the reporting entity relying on a third party remains ultimately responsible for CDD measures. There is no obligation to gather information in relation to the regulation and supervision of the third party located abroad or on the existence of measures in line with Recommendations 10 and 11 for the third parties located abroad and regulated by foreign laws. The geographic risk has not been taken into account when determining in which countries the third parties can be based.
18.	Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> There is no obligation beyond the nomination at management level of a compliance officer, the audit function is limited and there is no indication of the frequency of the audit or guarantee of its independence. These deficiencies also apply at the group level. With respect to branches and subsidiaries located abroad, there is no obligation for financial institutions to apply the higher standard or Australia regime to the extent possible. There is no obligation to apply measures to manage ML/TF risks and to inform AUSTRAC when the host country does not permit the proper implementation of AML/CTF measures consistent with Australia's AML/CTF regime

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
19.	Higher-risk countries	PC	<ul style="list-style-type: none"> Reporting entities are required to apply enhanced due diligence to their relationships and transactions with DPRK despite the FATF's call to do so. Among the measures for enhanced due diligence listed in the Rules, some address normal due diligence rather than enhanced due diligence. See Recommendation 10.
20.	Reporting of suspicious transaction	C	The Recommendation is fully met.
21.	Tipping-off and confidentiality	C	The Recommendation is fully met.
22.	DNFBPs: Customer due diligence	NC	<ul style="list-style-type: none"> Scope issue: DNFBPs other than casinos and bullion dealers are not subject to AML/CTF obligations. Casinos: The identification threshold exceeds that set forth in the Recommendation 22. See Recommendations 10, 11, 12, 15 and 17.
23.	DNFBPs: Other measures	NC	<ul style="list-style-type: none"> Scope issue: DNFBPs other than casinos and bullion dealers are not subject to AML/CTF obligations. See Recommendations 18, 19, 20 and 21.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
<p>24. Transparency and beneficial ownership of legal persons</p>	PC	<ul style="list-style-type: none"> • There is no clear process for the obtaining or recording of companies' beneficial ownership information. The processes for the creation and the public availability of information (including on beneficial ownership) relating to legal persons, other than companies and entities incorporated at State and Territory levels, vary throughout the country. • There is no mechanism to ensure that information on the registers kept by companies is accurate. • There is no requirement for companies or company registers to obtain and hold up-to-date information to determine the ultimate natural person who is the beneficial owner beyond the immediate shareholder. Companies are not required to take reasonable measures to obtain and hold this information. • Bearer share warrants are not prohibited and may be permissible. • There is not a general disclosure obligation regarding nominee shareholders. • Australia does not monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.
<p>25. Transparency and beneficial ownership of legal arrangements</p>	NC	<ul style="list-style-type: none"> • There is no obligation for trustees to hold and maintain information on trusts. • There is no obligation for trustees to keep this information up-to-date and accurate. • There is no obligation for trustees to disclose their status to financial institutions and DNFBPs. • There are no proportionate and dissuasive sanctions available to enforce the requirement to exchange information with competent authorities in a timely manner.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
26.	Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> Absence of fit and proper obligations for currency exchange businesses. ML/TF risks of individual reporting entities are not adequately identified through AUSTRAC's risk-based approach The ML/TF risk profile relies too much on the amounts of the transactions reported.
27.	Powers of supervisors	PC	<ul style="list-style-type: none"> AUSTRAC's powers (inspection and production of documents) are conditional upon the consent of the reporting entity. In absence of such consent, a court order is needed. Sanctions for the violation of AML/CTF obligations are civil and criminal penalties (fines and imprisonment). With the exception of remitters, AUSTRAC does not have the power to withdraw, restrict or suspend the reporting entity's licence. This power resides with the prudential regulator, who can only revoke a license for breaches of the Banking Act, its regulations, or the Financial Sector (Collection of Data) Act. Sanctions do not extend to directors and senior management.
28.	Regulation and supervision of DNFBPs	NC	<ul style="list-style-type: none"> Scope issue: Only casinos and bullion dealers are subject to AML/CTF obligations. Casinos: State and Territory licensing authorities do not have express AML/CTF responsibilities to qualify as competent authorities. In addition, not all legislation requires the licensing authority to consider the associates of the applicants. See Recommendation 26.
29.	Financial intelligence units	C	The Recommendation is fully met.
30.	Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> In Queensland, ML prosecutions need to be authorised by the Queensland Attorney-General.
31.	Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> There is no mechanism in place to identify in a timely manner whether natural or legal persons own or control accounts.

Compliance with FATF Recommendations

Recommendation		Rating	Factor(s) underlying the rating
32.	Cash couriers	LC	<ul style="list-style-type: none"> Lack of either dissuasive or proportionate sanctions for cash couriers, inconsistent with overall risk and context.
33.	Statistics	LC	<ul style="list-style-type: none"> Some statistics crucial to tracking the overall effectiveness and efficiency of the system related to investigations, prosecutions, convictions, and property confiscated are not maintained nationally, reflective of the wide range of agencies involved at the federal and State and Territory levels.
34.	Guidance and feedback	LC	<ul style="list-style-type: none"> None of the guidance applies to most DNFBPs. Limited guidance available for identifying high risk customers or situations.
35.	Sanctions	PC	<ul style="list-style-type: none"> The only sanctions available for violation of AML/CTF obligations are civil and criminal penalties (fines and imprisonment) imposed by a court. The range of fines is sufficiently broad to be viewed as allowing proportionate and dissuasive sanctions. Sanctions do not apply to most DNFBPs as they are not regulated by competent authorities. Sanctions do not extend to directors and senior management if it is the reporting entities that breach the AML/CTF Act or rules.
36.	International instruments	LC	<ul style="list-style-type: none"> Deficiencies in the TF offence (i.e. the scope of terrorist acts covered in the TF Convention) affect the implementation of this convention.
37.	Mutual legal assistance	C	The Recommendation is fully met.
38.	Mutual legal assistance: freezing and confiscation	C	The Recommendation is fully met.
39.	Extradition	C	The Recommendation is fully met.
40.	Other forms of international cooperation	C	The Recommendation is fully met.

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