



ASIC
Australian Securities &
Investments Commission

Inquiry into the capability of law enforcement to respond to money laundering and financial crime

Submission by the Australian Securities and Investments Commission

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Overview

1. The Australian Securities and Investments Commission (ASIC) makes this submission to the Parliamentary Joint Committee on Law Enforcement *Inquiry into the capability of law enforcement to respond to money laundering and financial crime* (Inquiry), including:
 - a. the scale and forms of money laundering and financial crime in Australia;
 - b. Australia's anti-money laundering and counter-terrorism financing (AML/CTF) legislation;
 - c. proposed 'tranche two' reforms to extend the existing AML/CTF legislation to services provided by lawyers, accountants and other persons;
 - d. whether existing criminal offences and law enforcement powers and capabilities are appropriate to counter money laundering, including challenges and opportunities for law enforcement, such as those relating to emerging technologies;
 - e. the effectiveness of collaboration, coordination and information sharing between Commonwealth agencies, including law enforcement, and with authorities in other jurisdictions and the private sector;
 - f. the role and response of businesses and other private sector organisations, including their level of awareness, assistance to law enforcement, and initiatives to counter this crime;
 - g. the operation of unexplained wealth and asset recovery legislation; and
 - h. any related matters.
2. This submission focuses on (e) of the terms of reference. Specifically, the effectiveness of collaboration, coordination and information sharing between Commonwealth agencies, including law enforcement.
3. ASIC is established under the Australian Securities and Investments Commission Act 2001 (ASIC Act). ASIC is Australia's corporate, markets, financial services and consumer credit regulator.
4. The ASIC Act requires that in performing its functions and exercising its powers, ASIC must (among other things) strive to:
 - a. maintain, facilitate and improve the performance of the financial system and entities in it;
 - b. promote confident and informed participation by investors and consumers in the financial system; and
 - c. take whatever action we can, and which is necessary, to enforce and give effect to the law.

5. Money laundering is a key enabler of organised crime. AML/CTF activity can cross over into ASIC's regulated population, including entities that hold Australian financial services licenses (AFSLs), or into ASIC's jurisdiction, which may include investment scams and other fraud related to corporate bodies. ASIC works closely with and supports the principal law enforcement agencies active in money laundering prevention because of the complexity of organised criminal networks, which commonly exist within ostensibly legitimate corporate structures.
6. ASIC is committed to taking appropriate enforcement action and working alongside other law enforcement agencies in relation to AML/CTF matters to deter, disrupt and frustrate the criminal abuse of the financial system. ASIC's principal partners in activity against money laundering and organised crime include:
 - a. the Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia's AML/CTF regulator; and
 - b. the Australian Federal Police (AFP).
7. ASIC has signed Memoranda of Understanding (MOUs) with both AUSTRAC and the AFP, which among other things, allows for information exchange where permitted by the relevant statutory obligations. Information may be provided by one agency in compliance with a request from the other agency. Each agency may also provide information to the other agency, even if it has not been first requested, if the information would be likely to assist that other agency in administering or enforcing the particular laws for which that agency is responsible.
8. The legislation establishes a regime designed to make the Australian financial system hostile to financial crime and money laundering. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) provides the foundation of Australia's commitment to meet global standards for combating money laundering and terrorism financing developed by the Financial Action Task Force (FATF), the lead inter-governmental body that develops and promotes implementation of international anti-money laundering and counter-terrorism financing (AML/CTF) standards. AUSTRAC, as the primary AML/CTF regulator, has a broad range of statutory powers pursuant to that Act, including the power to commence proceedings in relation to the registration and operations of reporting entities, including entities that provide financial, gambling, bullion or digital currency exchange services.
9. While ASIC does not have any specific jurisdiction in relation to the AML/CTF Act, it commonly takes enforcement action in relation to related contraventions of the *Corporations Act 2001* (Corporations Act) and the proceeds of crime offences contained in the *Commonwealth Criminal Code*.
10. ASIC is an active law enforcement agency, taking enforcement action where necessary and liaising closely with AUSTRAC and AFP, among other agencies, in relation to organised criminal activity including scams and fraud. ASIC is active in consumer and investor protection and proactive engagement on industry risks through surveillance and supervision, licensing, regulatory guidance, and consumer and investor education through ASIC's Moneysmart program.

How ASIC collaborates with other law enforcement agencies in relation to AML/CTF matters

11. ASIC is a key partner in the Serious Financial Crime Taskforce (SFCT), an ATO-led joint-agency taskforce established in 2015. The SFCT brings together the knowledge, resources and experience of relevant law enforcement and regulatory agencies, including ASIC, AUSTRAC and the AFP, to identify and address serious and complex forms of money laundering and organised crime, among other things.
12. ASIC is a member of the Fraud Fusion Taskforce (FFT) which aims to prevent fraud and serious organised crime in the National Disability Insurance Scheme (NDIS) and other government programs. Where it has appropriate jurisdiction, ASIC collaborates to assist the FFT to take action against individuals and businesses exploiting the NDIS.
13. ASIC regularly engages with AUSTRAC in two ways:
 - a. between operational staff, in order to assist in their conduct of relevant investigations. This engagement is typically directed to ensuring that the activities of the two agencies are aligned and that, so far as is possible, information and documents can be exchanged and to ensure that the Corporations Act and the AML/CTF Act are applied consistently;
 - b. between senior executive staff, in order to promote strategic alignment, share information and discuss matters of mutual interest.

ASIC regulatory collaboration

14. ASIC has regular collaboration with AUSTRAC for the purposes of information sharing. This occurs in the following forms:
 - a. regular liaison meetings between senior executives from each agency to discuss thematic issues. This includes the quarterly Inter-Agency Payments Forum;
 - b. liaison on law reform that impacts both agencies, including current law reform relating to Payments Licensing and Digital Asset Facilities. As these reform progress, ASIC will liaise with AUSTRAC on developing regulatory guidance for these sectors;
 - c. episodic engagements to share information relating to specific supervisory activities of each agency – for example, a review of the AML/CTF arrangements of banks and other entities by AUSTRAC, review by ASIC of proposed digital currencies and reactive surveillances of licensees and in respect of potential unlicensed conduct identified by ASIC.

ASIC enforcement action

15. ASIC has undertaken AML/CTF related activity, arising out of its jurisdiction to investigate and take enforcement action against Australian companies and their officers and directors for

breaches of Australian law. ASIC's suspicions can arise out of matters which became public as a result of AUSTRAC proceedings or the conduct of Royal Commissions.

16. Since 2018, ASIC has undertaken significant investigations into various corporations, including Crown Wealth Group and Star Entertainment Group (Star), each directed to whether their respective directors and officers had breached their obligations pursuant to the Corporations Act to exercise their duties with the required degree of due care and diligence. In each case, ASIC's investigations were commenced due to suspicions of breaches of duties to monitor and supervise the AML/CTF obligations of the relevant entity.

Case study – Star Entertainment Group

17. On 13 December 2022, ASIC commenced civil penalty proceedings in the Federal Court against 11 current and former directors and officers of Star for alleged breaches of their duties under section 180 of the Corporations Act by failing to exercise their powers and discharge their duties with a due degree of care and diligence in the face of numerous instances of money laundering and criminal associations.
18. ASIC's claims have three separate components, being:
- a. that between 2017 and 2019, members of the Star board breached their director duties by approving the expansion of Star's relationship with certain individuals with known criminal associations and failed to inquire into whether Star should be dealing with them, including by failing to query management on the risk of Star breaching the AML/CTF Act;
 - b. that the former Star executives, including the Chief Executive Officer, General Counsel and Chief Casino Officer breached their duties by:
 - i. not adequately addressing the money laundering risks that arose from dealing with Asian gambling junket 'Suncity' and its funder, as well as continuing to deal with them despite becoming aware of reports of criminal links; and
 - ii. not appropriately escalating these issues to the board; and
 - c. that the former Star General Counsel and Chief Financial Officer allowed misleading statements to be made to Star's bankers regarding the use of China Union Pay cards (CUP cards) to obfuscate the fact that funds withdrawn using the CUP cards were used for gambling (that use being in contravention of facility arrangements between Star and NAB, CUP card scheme rules and Chinese government regulations). ASIC also alleges that they, and the former Chief Executive Officer, failed to report those matters to Star's board.
19. During its investigation, ASIC engaged with AUSTRAC and the gaming regulators in New South Wales and Queensland. A trial date is set for 10 February 2025.

Case study – Operation Nightwolf

20. On 25 October 2023, the AFP arrested and charged seven individuals in relation to a suspected money laundering syndicate through the Changjiang Currency Exchange money remitting chain. Two of the individuals charged were connected with Prospero Markets Pty Ltd (Prospero), a retail OTC derivatives issuer holding an AFSL.
21. ASIC commenced an investigation into Prospero and associated entities due to concerns about connections between Prospero’s management and the individuals charged with money laundering offences, the potential for funds to have been laundered through Prospero and mingled with client money, the risk of client money being misappropriated and the potential for Prospero’s AFSL to be used to facilitate money-laundering activities.
22. ASIC’s investigation has focused on protective actions through the following workstreams:
 - i. in December 2023, ASIC suspended Prospero’s AFSL and received an undertaking it would not deal in client monies;
 - ii. in April 2024, the Federal Court made orders, on ASIC’s application, to have Prospero wound up and have liquidators appointed, ultimately securing ~\$19.6m of client funds; and
 - iii. between May and June 2024, ASIC cancelled AFSLs of related entities Everest Asset Management and Airrails.