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Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Consultation Paper 'Accountants: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime'

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to make a submission to the consultation paper on *Accountants: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime*. The Synod supports the inclusion of accountants under the AML/CTF Act due to the very real harms money laundering does by allowing criminals to profit from the harms they cause. The Synod has had a particular focus on the impact of money stolen from developing countries being laundered through Australia. By addressing this issue, the Australia Government offers one less place for organised criminals and corrupt businessmen and government officials to shift stolen funds to. Australia is an attractive location for criminals to shift money to if they can do so, as we have a stable financial system meaning the laundered money will be secure for the criminals to benefit from.

The meeting of approximately 400 Synod representatives from congregations across Victoria and Tasmania in 2014 passed a resolution which included bringing accountants under the AML/CTF Act:

14.7.19.3. The Synod resolved:

(a) To continue its support for action by the Commonwealth Government to combat corruption,

both in Australia and internationally; and

(b) To request the Commonwealth Government:

(iii) To extend Australia's anti-money laundering/counter-terrorism financing laws to cover designated non-financial businesses and professions named in the Financial Action Task Force international standards, and specifically to real estate agents in relation to the buying and selling of property, dealers in precious metals and stones, lawyers, accountants, notaries and company service providers;

(c) To write to the Prime Minister, the Attorney General, the Leader of the Opposition and the Shadow Attorney General to inform them of this resolution.

The reasons for including accountants under the AML/CTF regime are well summarised in the consultation paper:

The AML/CTF regulation of accountants would also further enhance the profession's awareness of ML/TF risks and harden the sector against criminal exploitation. Accountants are vulnerable to risk and misuse for ML/TF purposes because many are likely to be unaware that their services are being exploited by criminals to establish opaque business structures and conduct transactions that disguise and launder proceeds of crime. AML/CTF obligations would prompt accountants to fully consider and better understand the identity of their client, the source of funds used by a client for a transaction and the nature of the intended business relationship with the client.

An obligation to conduct CDD would assist accounting professionals to identify 'red flags' that may be early indicators of criminality or potential misconduct....

The AML/CTF regulation of accountants would also more broadly:

- *Strengthen the reputation of the sector as a trusted intermediary, and build a collaborative partnership with AUSTRAC and law enforcement agencies to combat and disrupt ML/TF;*
- *Fill intelligence gaps and improve the ability for Australia's intelligence community to discover, understand and disrupt money laundering, terrorist financing, and the serious offences that predicate these activities;*
- *Reduce the harm and adverse impacts of ML and TF on the Australian economy and society;*
- *Enhance national security;*
- *Enhance Australia's international reputation as a destination for foreign business/investment, and*
- *More closely align Australia's AML/CTF regime with the FATF's international standards for combating ML/TF.*

1. What accountancy services pose a ML/TF risk?

Of the four key behaviours AUSTRAC identified in Australia's current money laundering environment, one was to engage accountants (among others) as professional experts to enhance "capacity to operate in both legitimate and criminal markets and conceal their illicit activity, including money trails."¹

The FATF states the functions performed by accountants that are the most useful to the potential launderer include:²

- Financial and tax advice – Criminals with a large amount of money to invest may pose as individuals hoping to minimise their tax liabilities or desiring to place assets out of reach in order to avoid future liabilities.
- Creation of corporate vehicles or other complex legal arrangements.
- Buying or selling of property – Property transfers serve as either the cover for transfers of illegal funds (layering stage) or else they represent the final investment of these proceeds after their having passed through the laundering process (integration stage).
- Performing financial transactions – Sometimes accountants may carry out various financial operations on behalf of the client (for example, cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers, etc.).
- Gaining introductions to financial institutions.

An example of a case where accountants appear to have failed to have carried out appropriate due diligence is that of Danial Kalaja. Unemployed [Daniel Kalaja](#), with a history

¹ AUSTRAC, 'Money laundering in Australia 2011', 2011, p. 10.

² FATF, 'RBA Guidance for Accountants', June 2008, p. 2-3.

of drug offences was found to be the leader of a Australian drug network empire subsequent known to the law enforcement as [operation -'Warrior'](#). Kalaja pleaded guilty in 2013 to numerous serious criminal offences including trafficking in dangerous drugs and received a 14-year prison sentence.

In 2014 Kalaja forfeited \$3.188 million in assets to the State of Queensland subject to a six year investigation. Court documents reveal the extent that Kalaja went to legitimise his drug wealth using property development.

Kalaja registered an Australian proprietary company in December 2003 called 'GDK Developments Pty Ltd' (GDK) with Kalaja as sole shareholder and his uncle as director. In March 2004 GDK purchased a \$385,000 development land block in Lowood, Queensland which was ultimately paid for with cash.

Initially, cash was 'structurally deposited' (multiple cash deposit amounts lower than the AML/CTF Act reporting limit of \$10,000) into Kalaja's bank accounts, then transferred to GDK's bank account where structured deposits also took place. The law firm completing the property conveyance also receipted 11 structured cash deposits (which avoided the reporting obligation under the FTR Act) and telegraphic deposits from the company's bank accounts.

Subsequent to the land purchase, the company's bank account statements were given to a 'Jim's Bookkeeping' franchisee who was instructed to create the first set of accounts for GDK showing the purchase of the land. Instructions to the bookkeeper, given by Kalaja's uncle, was that the GDK deposits belonged to Daniel Kalaja and were to be credited to a loan account in his name.

Jim's bookkeeping created the accounts and handed them to Kalaja's uncle who then provided them to another accountancy firm. However, the account history of the account's financial balances was not transferred to this later accountancy firm and thus reconstruction of balances was not possible without the information from the bookkeeper.

GDK developed the Lowood land and subsequent sale of developed lots eventually exceeding \$2.5 million. Prior to the sale of all Lowood land, the apparent development profitability led to a loan approval from a major bank for GDK to enable purchase of another development, a \$1.2 million development land block in Upper Caboolture in 2007.

Confiscation investigations commenced in 2008 prior to both developments being completed.

There is no evidence that any of the accountants involved in this case advised authorities of suspicious behaviour.

In the case of Yeo Jiawei, it would appear that Australian Taxation Accountants may not have done adequate due diligence. Yeo Jiawei has been accused of money laundering, used a Seychelles-based company for a series of purchases in the Australia.³ Yeo was sentenced to 30 months in prison in December 2016 by Singapore's district court for witness

³ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

tampering during a Singaporean investigation into alleged laundering of funds stolen from Malaysia's 1MDB state development fund.⁴

The court in that case heard that Yeo had acquired \$6 million of Australian property while allegedly playing a central role in the illicit movement of S\$23.9 million (\$22.6million) of 1MDB funds when employed as a wealth manager at BSI Bank Singapore.⁵

Money-laundering charges against Yeo are due to be heard in April, with the 34-year-old having denied committing the offences.

The Guardian Australia reported that Yeo is a director of a Seychelles-registered company that then paid a further \$6.9 million for commercial properties in Broadbeach, a year later.⁶

In September 2015, A Seychelles-registered company called Connect Capital Global Investments Limited, of which Yeo is a director, registered with the Australian Securities and Investments Commission as a foreign company, lodging documents showing its local agent is Australian Taxation Accountants in Surfers Paradise, which provides its registered office.⁷

The next month Connect Capital paid \$2.4 million for four retail premises in the ground floor of a building in Broadbeach.⁸

In December 2015 the company paid almost \$3.4 million for a further two retail premises nearby in Broadbeach, rented. Four days later Connect Capital paid just over \$1 million for a neighbouring shopfront in the same building.⁹

The Guardian reported that a spokeswoman for Australian Taxation Accountants said the company had no idea of Yeo's legal travails and said it was a "shock" to hear of his conviction and further charges.¹⁰

⁴ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

⁵ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

⁶ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

⁷ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

⁸ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

⁹ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

¹⁰ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

The Guardian reported that the Australian Federal Police had not been in contact with Australian Taxation Accountants in relation to any of the properties owned by Connect Capital, according to a spokeswoman for the accountancy firm.¹¹

Yeo's conviction in Singapore related to attempts to conceal his ties to Malaysian businessman Jho Low and hide his wealth, which grew by \$23.9 million over just 15 months while he was a wealth manager at BSI.¹²

Yeo denied wrongdoing throughout his trial, including the prosecutor's claim that he received "secret profits" from a 1MDB money laundering scam.¹³

2. Do any of the professional services provided by accountants and identified by the FATF as requiring regulation pose a low ML/TF risk in the Australian context?

3. What are the benefits of requiring accountants to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?

The benefits include compliance with FATF AML/CTF international standards which will also likely impede the activity of Australian-based and overseas-based crime groups who, according to AUSTRAC, use professionals, including accountants, to help undertake transactions to:¹⁴

- obscure ultimate ownership through complex layers and structures;
- conceal proceeds of crime;
- legitimise illicit funds;
- avoid tax;
- avoid regulatory controls;
- provide a veneer of legitimacy to criminal activity;
- avoid detection and confiscation; and
- frustrate law enforcement investigations.

The FATF found that reporting entities are the best source of information with respect to beneficial ownership for law enforcement investigations. With accountants complying with AML/CTF obligations and thus CDD requirements, they will then become a source of beneficial information enabling more timely and effective investigations.¹⁵

4. To what extent are the FATF's customer due diligence obligations already reflected in existing regulation (including self-regulation) for Australian accountants?

¹¹ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

¹² Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

¹³ Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', The Guardian, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>

¹⁴ AUSTRAC, 'Money laundering in Australia 2011', 2011, p. 28.

¹⁵ FATF, 'AML and CTF measures Australia Mutual Evaluation Report', April 2015, p. 111.

5. To what extent do existing mechanisms that allow for regulatory oversight of accountants mitigate any ML/TF risks that may be posed by the services accountants provide?

The AML/CTF Act applies to accountants when they provide an existing designated service that relates to money lending and services provided as holder of an AFS licence.

6. What lessons can be learned from the experience of regulating accountants under AML/CTF regimes in other jurisdictions?

Transparency International UK reported in November 2015 that accountancy agencies in the UK were identified by law enforcement authorities for large volumes of low quality or incomplete reports of suspicious activity.¹⁶

In their assessment of the UK anti-money laundering system, Transparency International UK concluded:¹⁷

The current regulatory system for these sectors relies on a patchwork of 22 different supervisors – mostly private sector institutions – to ensure that firms abide by the rules. It is this system that is structurally unsound.

The UK has experimented with a low-cost model of supervision that relies on outsourcing responsibility for regulatory oversight to a wide range of private sector bodies. This approach, unique to the UK, has led to an environment where standards of supervision vary widely. Ineffective supervision – where it occurs – leads to inadequate compliance with the rules by firms within the sector, low reporting of suspicions and poor quality reporting.

This is not a path the Australian Government should seek to follow and a properly resourced AUSTRAC should regulate the DNFBP sectors.

7. What accountancy services should be regulated under the AML/CTF regime?

Any service that is perceived as a risk including those identified by the FATF as most useful to the potential launderer including:¹⁸

- Financial and tax advice services.
- Creation of corporate vehicles or other complex legal arrangements.
- Buying or selling of property.
- Performing financial transactions such as cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers.
- Gaining introductions to financial institutions.

John Cassara recommended that AML/CTF programs be expanded to cover suspect trade and value transfers which would infer that any commercial transaction dealing accountants conduct for clients.¹⁹

8. Do any of the accountancy services identified by the FATF for AML/CTF regulation pose a low ML/TF risk in the Australia context?

¹⁶ Kevin Bridgewater, 'Don't Look, Won't Find. Weaknesses in the Supervision of the UK's Anti-Money Laundering Rules', Transparency International UK, November 2015, p. 2.

¹⁷ Kevin Bridgewater, 'Don't Look, Won't Find. Weaknesses in the Supervision of the UK's Anti-Money Laundering Rules', Transparency International UK, November 2015, p. 5.

¹⁸ FATF, 'RBA Guidance for Accountants', June 2008, p. 2-3.

¹⁹ Cassara, J., 'The Next Frontier in International ML Enforcement: Trade Based Money Laundering', Wiley, 2015, p. 184.

9. Should auditing, compliance services and assurance services be regulated under the AML/CTF regime?

FATF states that money laundering and terrorism financing assessment risks include assessment of customer types, country or geographic areas (including regions or areas within countries if applicable), products, services, transactions and delivery channels.²⁰

10. How would AML/CTF obligations impact on the client confidentiality obligations of accountants?

11. What other aspects of the accountancy sector would be impacted by AML/CTF obligations?

Section 7 Questions

7.1 Enrolment and scope of services

• Should accountants be required to enrol with AUSTRAC?

The Synod believes that accountants should be required to enrol with AUSTRAC so that AUSTRAC is able to assess and monitor how thoroughly the sector implements and complies with AML/CTF obligations introduced to cover the services provided by accountants. This will allow AUSTRAC to take necessary educational and corrective actions.

• What accountancy services should be regulated under the AML/CTF Act?

Any service that is perceived as a risk including those identified by the FATF as most useful to the potential launderer including:²¹

- Financial and tax advice services.
- Creation of corporate vehicles or other complex legal arrangements.
- Buying or selling of property.
- Performing financial transactions such as cash deposits or withdrawals on accounts, retail foreign exchange operations, issuing and cashing cheques, purchase and sale of stock, sending and receiving international funds transfers.
- Gaining introductions to financial institutions.
-

John Cassara, US expert in AML, research recommended that AML/CTF programs be expanded to cover suspect trade and value transfers which would infer that any commercial transaction dealing accountants conduct for clients.²²

- Should accountants that provide tax advice, auditing and book-keeping be regulated?

The FATF strongly encourage countries to extend CDD requirements of Recommendation 22 to the “rest of the professional activities of accountants, including auditing”.²³

7.2 Customer due diligence (CDD)

• What CDD obligations should accountants have?

As per FATF Recommendation 22²⁴ (DNFBPs CDD) which states that CDD and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to lawyers,

²⁰ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 64-65.

²¹ FATF, 'RBA Guidance for Accountants', June 2008, p. 2-3.

²² Cassara, J., 'The Next Frontier in International ML Enforcement: Trade Based Money Laundering', Wiley, 2015, p 184.

²³ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 20.

²⁴ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', pp. 19-20.

notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements; and
- buying and selling of business entities.

• Should simplified CDD measures be available for some services provided by accountants?

FATF, in their interpretative notes, states: “there are circumstances where the risk of money laundering or terrorist financing may be lower. In such circumstances, and provided there has been an adequate analysis of the risk by the country or by the financial institution, it could be reasonable for a country to allow its financial institutions to apply simplified CDD measures.”²⁵ Given that FATF also stated that interpretative notes are also relevant to DNFBPs where applicable, this is applicable for accountants.²⁶

• When should the obligation for accountants to conduct CDD on clients commence?

As per FATF Recommendation 22²⁷ (DNFBPs CDD).

7.3 Ongoing customer due diligence

• What ongoing due diligence obligations should apply to accountants?

As per FATF Recommendation 22 (DNFBPs CDD) which incorporates requirements from Recommendations 10 and 12.²⁸

7.4 Reporting obligations

• Should all reporting obligations apply to accountants?

Dependent as to classification of designated services and if exceptions will be applied.

• Should accountants be able to voluntarily report to AUSTRAC suspicious matters that relate to services they provide that are not subject to AML/CTF regulation?

This would seem to be required under FATF Recommendation 23²⁹.

7.5 Internal controls– AML/CTF programs

• Should accountants have an obligation to establish, implement and maintain an AML/CTF program to identify, mitigate and manage ML/TF risks?

AUSTRAC states that “the requirement for reporting entities to have an AML/CTF program for their business is a cornerstone of Australia's AML/CTF regime. The AML/CTF program establishes the operational framework for a reporting entity to meet its compliance obligations under the AML/CTF Act. An AML/CTF program should specify how the reporting entity identifies, mitigates and manages the risk of its products or services being misused to

²⁵ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 64.

²⁶ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 81.

²⁷ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 19-20.

²⁸ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 19-20.

²⁹ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 20.

facilitate money laundering or terrorism financing.”³⁰ Thus it is important that accountants be required to have a ‘program’ that outlines what procedures they will undertake to ensure they meeting their AML/CTF obligations.

• **What are the implications of a risk-based approach for accountants?**

Implementing a AML/CTF risk-based approach for accountants would comply with the FATF Recommendations³¹ and complements Australia’s existing AML/CTF approach.

7.6 Record-keeping

• **What records should accountants be required to keep?**

FATF recommends that “financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity”.³²

7.7 Monitoring and supervision

• **Should AUSTRAC monitor and supervise accountants for compliance with AML/CTF obligations? If not, how would the sector be regulated?**

FATF states that “countries should ensure that accountants are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.”³³ Specifically for Australia, the FATF recommends the extension of supervision of the DNFBPs for AML/CTF compliance beyond casinos and bullion dealers to include services offered by other DNFBPs including accountants (among others).³⁴

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³⁰ <http://www.austrac.gov.au/chapter-6-amlctf-programs>

³¹ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 63-65.

³² FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 15.

³³ FATF, ‘RBA Guidance for Accountants’, June 2008, p. 8.

³⁴ FATF, ‘AML and CTF measures Australia Mutual Evaluation Report’, April 2015, p. 103.