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Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Consultation Paper 'High value dealers: 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 *High value dealers: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime*. The Synod supports the inclusion of high value dealers 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 dealers in precious metals and stones 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 AUSTRAC risk assessment reported that often, money laundering is a transnational crime with funds laundered to pay for imported illicit goods and services which distances the

criminal income from the underlying crime.¹ These funds may be 'parked' offshore, then returned to Australia through the purchase of high-value moveable goods. This international dimension creates opportunities for criminal networks and presents complex challenges for Australian law enforcement and regulatory agencies.

The FATF study into trade-based money laundering (TBML) defined the process as "disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins. In practice, this can be achieved through the misrepresentation of the price, quantity or quality of imports or exports."²

The consultation paper makes the case for why high value dealers should have AML/CTF obligations (page 6):

If HVDs had obligations to collect, verify and report information, they could play a significant role in the detection and investigation of ML/TF offences. This would allow for suspicious transactions to be reported to authorities earlier in the transaction chain than occurs currently, thereby activating the protections of the Act and providing earlier opportunities for law enforcement to detect and disrupt criminal activities and deprive criminals of the proceeds of crime.

The AML/CTF regulation of HVDs would also enhance the sector's awareness of ML/TF risks and assist HVDs to identify 'red flags' that may be early indicators of criminality or potential misconduct.

1. What are the ML/TF risks posed by high-value dealers conducting transactions involving large sums of cash?

The cash may be derived from criminal activity.

2. What high-value goods pose a high ML/TF risk in Australia?

The Synod agrees with the consultation paper that AML/CTF obligations should apply to the buying and selling in cash of jewellery, antiques and collectibles, fine art, jet skis, boats, yachts, luxury motor vehicles and building, bathroom and kitchen supplies above a \$10,000 threshold.

The Synod also notes that John Cassara, a US AML expert and author of various trade based money laundering (TBML) publications, highlight the following goods that had featured in money laundering schemes:³

- scrap gold;
- precious metals and stones;
- tobacco;
- consumer electronics; and
- motor vehicles.

3. What high-value goods pose a low ML/TF risk in Australia?

4. Are there transactions conducted by high-value dealers involving small sums of cash that pose high ML/TF risks?

5. To what extent do existing mechanisms that allow for regulatory oversight of HVDs mitigate any ML/TF risks posed by HVDs?

¹ AUSTRAC, 'Money laundering in Australia 2011', 2011, p. 8.

² FATF, 'Trade based money laundering', June 2006.

³ Cassara, J., The Next Frontier in International ML Enforcement: Trade Based Money Laundering, Wiley, 2015, p. 172.

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

In their assessment of the UK anti-money laundering system, Transparency International UK concluded:⁴

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 goods should be included in the definition of high-value goods?

The Synod agrees with the consultation paper that AML/CTF obligations should apply to the buying and selling in cash of jewellery, antiques and collectibles, fine art, jet skis, boats, yachts, luxury motor vehicles and building, bathroom and kitchen supplies above a \$10,000 threshold.

The Synod also notes that John Cassara, a US AML expert and author of various trade based money laundering (TBML) publications, highlight the following goods that had featured in money laundering schemes:⁵

- scrap gold;
- precious metals and stones;
- tobacco;
- consumer electronics; and
- motor vehicles.

AUSTRAC reported that Australian money laundering methods “evolve to sidestep regulatory and law enforcement measures and to exploit market and technology developments, including harnessing new products or technologies such as e-commerce and m-commerce.”⁶ Therefore the definition of high-value goods would need to capture this diversity.

8. Should HVD be defined broadly to be any good over the threshold (like in the UK) or be defined more specifically to certain types of goods as suggested above?

9. Is a threshold of AUD10,000 to trigger AML/CTF obligations appropriate?

The FATF interpretative note for Recommendations 22 and 23 outline the designated threshold for dealers in precious metals and dealers in precious stones as USD/EUR 15,000⁷ and so AUD 10,000 would appear appropriate.

⁴ 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.

⁵ Cassara, J., *The Next Frontier in International ML Enforcement: Trade Based Money Laundering*, Wiley, 2015, p. 172.

⁶ FATF, ‘AML and CTF measures Australia Mutual Evaluation Report’, April 2015, p. 9.

⁷ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 81.

The FATF also note that the threshold should include situations where the transaction is carried out in a single operation or in several operations that appear to be linked. This is to counteract when transactions are structured below reporting thresholds to avoid reporting and other obligations.

10. Should Australia set an upper limit on all cash payments that applies universally (i.e. prohibit any business from accepting a cash payment for goods and services above a prescribed threshold)?

11. What impact would AML/CTF compliance costs have on HVDs?

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

13. How important are cash transactions to HVDs?

14. If HVDs were regulated under Australia's AML/CTF regime as suggested in this paper, would the majority of HVDs refuse to accept cash for high-value goods to exempt themselves from regulation?

7.1 Enrolment and scope of services

• Should all HVDs be required to enrol with AUSTRAC, or just HVDs that conduct high-value transactions?

At this stage it would be worthwhile starting with HVDs conducting high value transactions having to enrol with AUSTRAC. After this has been in place, an assessment should be made to determine if other HVDs have become an a channel for money laundering that would justify them also having to enrol with AUSTRAC.

• What factors should be taken into account in determining whether an entity is carrying on a business that involves the buying and selling of high-value goods?

7.2 Customer due diligence (CDD)

• What CDD obligations should apply to HVDs that conduct high-value cash transactions?

As per FATF Recommendation 22 (DNFBPs CDD).⁸

• Do HVDs have any existing CDD obligations that would address the AML/CTF obligations?

• Should simplified CDD measures be available for some high-value cash transactions provided by HVDs?

-If yes, in what circumstances?

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

⁸ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 19-20.

measures.”⁹ Given that FATF state that interpretative notes are also relevant to DNFBPs where applicable, this would also appear to be applicable to HVDs.¹⁰

7.3 Ongoing customer due diligence

• What OCDD obligations should apply to HVDs?

As per FATF Recommendation 22 (DNFBPs CDD).¹¹

• Are there existing OCDD obligations or industry standard practices that address ongoing due diligence obligations under the AML/CTF Act?

7.4 Reporting obligations

• Should all reporting obligations apply to HVDs?

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

• Should enrolled HVDs be able to voluntarily report suspicious matters to the AML/CTF regulator that relate to unregulated services (e.g. where the transaction is not a high-value cash transaction but nonetheless raises ML/TF suspicions)?

The FATF Recommendation 23 states that “dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.”¹² In addition the Synod is supportive of HVDs being able to report any additional suspicious matters beyond what will be required of them under AML/CTF legislation and regulations.

• Should HVDs that do not accept high-value cash transactions and are not regulated under the AML/CTF regime be able to voluntarily report suspicious matters to the AML/CTF regulator?

Unregulated HVDs should be able to make suspicious transaction reports to AUSTRAC.

7.5 Internal controls– AML/CTF programs

• Should HVDs have an obligation to develop and maintain an AML/CTF program?

The Synod believes that HVDs should be required to document what procedures and processes they will follow to ensure compliance with their AML/CTF obligations, once such obligations have been introduced.

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

A risk-based approach for HVDs would comply with the FATF Recommendations¹³ and would complement Australia’s existing AML/CTF approach.

7.6 Record-keeping

• What records should HVDs that are regulated under the AML/CTF regime 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

⁹ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 64.

¹⁰ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 81.

¹¹ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 19-20.

¹² FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 20.

¹³ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 63-65.

amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity.”¹⁴ A similar obligation should apply to HVDs that deal in high value transactions.

• To what extent can record-keeping obligations for AML/CTF purposes leverage off other record-keeping obligations or practices that HVDs may have (for example, under taxation or corporations law)?

Various requirements are legislated by the *Income Tax Assessment Act 1936*, *Corporations Act 2001* and *Australian Charities and Not for Profit Commission Act 2012* with seven years the maximum retention period which is also that required by AML/CTF and the FTR Acts.

7.7 Monitoring and supervision

• Who should monitor and supervise HVDs for compliance with AML/CTF obligations? - AUSTRAC or existing professional bodies, or both (i.e co-regulation)?

The Synod believes that AUSTRAC should monitor HVDs that are regulated, so that AUSTRAC can assess compliance by the HVD sector with AML/CTF obligations and take corrective action should HVDs fail short of what is required.

• What regulatory approach should be adopted for HVDs?

- Risk-based approach or prescriptive?

A risk based approach complies with the FATF Recommendations¹⁵ and complements Australia’s existing AML/CTF approach.

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¹⁴ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 15.

¹⁵ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 63-65.