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Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Consultation Paper 'Legal practitioners and conveyancers: 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 *Legal practitioners and conveyancers: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime*. The Synod supports the inclusion of lawyers and conveyancers 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.

As noted on page 4 of the consultation paper, including legal practitioners and conveyancers:

.... under the AML/CTF regime would contribute to enhancing and systematising their awareness of ML/TF risks and aid these professionals in better understanding the identity of their clients, the source of the funds underpinning transactions and the nature of the transaction being handled. This may assist legal practitioners and conveyancers to identify early indicators of high risk transactions and criminality, and reduce their exposure to criminal liability. Suspicions about transactions would be reported earlier in the transaction chain, thereby activating the protections of the Act and providing earlier opportunities to detect and deter criminal and terrorist activities. More robust customer due diligence requirements for legal practitioners, in particular, would enhance Australia's visibility and transparency of beneficial ownership of trusts and company structures that are often established or initiated by legal professionals on behalf of their clients.

The meeting of approximately 400 Synod representatives from congregations across Victoria and Tasmania in 2014 passed a resolution which included bringing lawyers 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;*
 - (iv) *To require a bank or other financial institution which assesses that funds it is dealing with have a high risk of being associated with money laundering to refuse to deal with the funds unless instructed otherwise by the appropriate Australian law enforcement agency;*
 - (vii) *To share information automatically with the relevant foreign authorities when a foreign politically exposed person purchases property or transfers funds to Australia, unless the Australian authorities have some reason to carry out a prosecution of the person themselves and sharing the information would compromise that prosecution, or if the Australian Government has reasonable concerns the information is likely to be misused to carry out human rights abuses;*
 - (ix) *To establish a dedicated unit within the Australian Federal Police to investigate money and assets stolen from foreign governments and shifted to Australia by politically exposed persons and to seek to return the stolen assets where possible;*
 - (x) *To establish a national unexplained wealth scheme to combat the ability of organised criminals to profit from their crimes, where unexplained wealth provisions are not limited by having to prove a predicate offence;*
 - (xi) *To implement an effective non-conviction based confiscation and restraint mechanism to deal with criminal assets transferred from overseas to Australia; and*
- (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 FATF¹ advises that regardless of the strength and effectiveness of AML/CFT controls, criminals will continue to attempt to move illicit funds undetected and will, from time to time, succeed. They are more likely to target the Designated Non-Financial Businesses and Professions (DNFBP) sectors if other routes become more difficult and for this reason DNFBPs may be more or less vulnerable depending on the effectiveness of the AML/CFT procedures applied in other sectors.

1. What services provided by legal practitioners and conveyancers pose a ML/TF risk?

Of the four key behaviours AUSTRAC² identified in Australia’s current money laundering environment, one was to engage lawyers (among others) as professional experts to enhance “capacity to operate in both legitimate and criminal markets and conceal their illicit activity, including money trails”. It is unknown whether this behaviour is negligent, reckless or complicit.

The FATF³ found evidence in Australia that “criminals seek out the involvement of legal professionals in their money laundering schemes, sometimes because the involvement of a legal professional is required to carry out certain types of activities, and sometimes because access to specialised legal and notarial skills and services may assist the laundering of the proceeds of crime and the funding of terrorism. Case studies, STRs and literature point to the following legal services being vulnerable to misuse for the purpose of ML/TF:

¹ FATF, ‘RBA Guidance for Real Estate Agents, June 2008, p 5

² AUSTRAC, ‘Money laundering in Australia 2011’, p 10

³ FATF, ‘Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals’, June 2013, p 83.

- client accounts (administered by the legal professional);
- purchase of real property;
- creation of trusts and companies;⁴
- management of trusts and companies;
- setting up and managing charities;
- administration of deceased estates;
- providing insolvency services;
- providing tax advice;
- preparing powers of attorney; and
- engaging in litigation – where the underlying dispute is a sham or the debt involves the proceeds of crime.

2. Do any of these services pose a low ML/TF risk in the Australian context?

3. What are the effects of requiring legal practitioners and conveyancers 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 AUSTRAC⁵, use professionals, including legal practitioners and conveyancers, to help undertake transactions to:

- 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 FATF⁶ found that reporting entities are the best source of information with respect to beneficial ownership for law enforcement investigations. With lawyers and conveyancers complying with AML/CTF obligations and thus CDD requirements, they will then become a source of beneficial information enabling more timely and effective investigations.

The benefits of requiring legal practitioners and conveyancers to comply with AML/CTF obligations when performing services that may pose an ML/TF risk are outlined on page 5 of the consultation paper.

4. To what extent are due diligence obligations captured by existing regulation for legal practitioners and conveyancers?

5. To what extent do existing mechanisms that require regulatory oversight of legal practitioners and conveyancers mitigate any ML/TF risks that may be posed by the services they provide?

⁴ To deal with in the TCSP section submission

⁵ AUSTRAC, 'Money laundering in Australia 2011', p. 28.

⁶ FATF, 'AML and CTF measures Australia Mutual Evaluation Report', April 2015, p. 111.

The FATF⁷ evaluation of Australia stated that the AML/CTF Act applies to lawyers, notaries and other independent legal professionals when they provide an existing designated service that relates to money lending and services provided as holder of an AFS licence. 'Solicitors' are also referred to in the FTR Act and require that they report cash transactions exceeding \$10,000.

6. To what extent are due diligence obligations captured by existing regulation for legal practitioners and conveyancers at a national, state or territory level?

7. Is there evidence of a systemic problem with legal practitioners allowing ML or TF to occur by (negligently, recklessly or complicitly) failing to institute adequate measures?

Of the four key behaviours AUSTRAC⁸ identified in Australia's current ML environment, one was to engage lawyers as professional experts to enhance "capacity to operate in both legitimate and criminal markets and conceal their illicit activity, including money trails". It is unknown whether this behaviour is negligent, reckless or complicit.

There is significant evidence that some conveyancers and solicitors involved in conveyancing have a high risk appetite when it comes to cases of possible money laundering. Below are some examples of where money laundering either took place in the selling and buying of properties where there would have been strong reason for thorough due diligence to have taken place.

John Spriggs

John Spriggs, found guilty in Queensland of serious criminal drug related offences, was subject to proceeds of crime proceedings in Queensland commenced in 2007 and settled in 2016. Court documents reveal that one of the assets subject to confiscation proceedings, a Gold Coast residential property, was purchased in 2000 by Spriggs for the total cost of \$275,000 and paid for in an unusual manner.

The real estate received two deposits - \$5,000 cash and \$5,000 cheque. The Bundall conveyance lawyer received the \$265,000 remainder with Spriggs paying 190 separate payments over a period of two weeks. These payments consisted of:

- \$181,000 in 181 \$1,000 money orders purchased from more than 14 different post offices;
- \$40,000 in 6 cash payments; and
- \$44,000 in 3 bank cheques.

The lawyer issued 190 separate receipts for these payments and there is no evidence a report of suspicious behaviour was made to authorities. Spriggs, who was believed to be unemployed at the time, said the monies were saved from employment, business operations and gambling wins on horses. The funds were stored in a home safe, a bank security box and his bank account.

Danial Kalaja

Unemployed Daniel Kalaja, with a history of drug offences was found to be the leader of a Australian drug network empire subsequent known to the law enforcement 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

⁷ FATF, 'AML and CTF measures Australia Mutual Evaluation Report', April 2015, p. 167.

⁸ AUSTRAC, 'Money laundering in Australia 2011', p. 10.

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 professionals in this case advised authorities of suspicious behaviour.

Leonard Capon

Leonard Capon is an Australian business man, who was arrested and charged by Task-Force Sweep in 2012 after allegedly misappropriating K1,485,085 (\$668,400) through his company Rural Development Services. This money was reported to be intended for a mini-hydro power plant in PNG highlands, which never eventuated.⁹

Leonard Capon owns one property in Queensland, in Benowa, bought for over \$800,000 in April 2009. The ANZ Bank acted as the mortgagee.

He has also bought and sold a property in Queensland, in Southport, which was jointly owned with Diana Dauge Dona. It was bought for \$500,000 in August 2012. It was sold for over \$400,000 just over six months later in February 2013.

Eremas Wartoto

Eremas Wartoto is a politically connected Papua New Guinean businessman. He was committed to stand trial in absentia.¹⁰

In 2011, PNG Taskforce Sweep charged Mr Wartoto with the misappropriation of \$5 million.¹¹ Mr Wartoto has been charged over the "payment of K7.9m [\$3.2 million] of RESI [Rehabilitation Education School Infrastructure] funds allocated for Kerevat NHS [National High School]".¹² On

⁹ 'Australian man charged with fraud in PNG', *The Australian*, 25 November 2012; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

¹⁰ Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

¹¹ Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian*, 15 May 2013.

¹² Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

the 30 August 2011, Mr Wartoto was charged; but then obtained an Australian foreign skilled workers visa and fled to Queensland on the 3 September 2011.¹³ He was charged with two counts of misappropriation of property of Papua New Guinea in contravention of section 383(1) (a) of the *Criminal Code Act 1974* (PNG). Mr Wartoto claimed that he was 'too ill' to travel back to Port Moresby, despite the fact that he frequently travelled internationally within the two year period that he was in Australia.¹⁴

On 30 August 2012, PNG authorities issued a restraining order to cover property owned by Eremas Wartoto in PNG.¹⁵

On 24 April 2013, Papua New Guinea made a 'Mutual Assistance Request' to the Australian Federal Police, asking for assistance in registering a 'Foreign Restraining Order' that was made in 2012 against Mr Wartoto under the *Proceeds of Crime Act 2005* (Papua New Guinea).¹⁶ On the 26 May, 2013, the District Court of Queensland registered the Foreign Restraining Order over Mr Wartoto's five Australian properties and four bank accounts believed to be associated with Mr Wartoto.

The PNG authorities had stated they believed Mr Wartoto engaged in "asset protection measures" in relation to his Australian assets to prevent these being seized under the PNG *Proceeds of Crime Act 2005*. These asset protection measures included the registration of second mortgages over Australian properties in favour of Litia Ilam and Louisah Wartoto as Trustees of the Wartoto PNG trust, which the PNG authorities believed was under the effective control of Mr Wartoto.¹⁷

The Australian Federal Police (AFP) lodged a successful application to have Mr Wartoto's property seized.¹⁸ The AFP's application to the court was under section 35 of the *Mutual Assistance in Criminal Matters 1987* (Cth) requesting that the Official Trustee in Bankruptcy take custody and control of property.¹⁹

The five properties in Queensland owned by Mr Wartoto in Queensland are in:

- Bentley Park, bought for nearly \$250,000 in February 2004. It was jointly owned by Eremas Wartoto and Louisah Wartoto and the Westpac Bank provided the mortgage. The mortgage was cancelled on 9 July 2010. The property was gifted to Eremas Wartoto Pty Ltd on 22 June 2010.
- Edmonton, bought for over \$500,000 in September 2007. The ANZ bank provided a mortgage. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.
- Cairns, bought for nearly \$600,000 in April 2010. Jointly owned with Louisah Wartoto. The ANZ bank provided the mortgage.

¹³ Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of \$30m', *The Age*, 10 May 2013; and Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May, 2013 (number BD 1440/2013).

¹⁴, Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of \$30m', *The Age*, 10 May 2013.

¹⁵ Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May, 2013.

¹⁶ Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May, 2013.

¹⁷ Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May, 2013.

¹⁸ Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian*, 15 May 2013.

¹⁹ Application filed in Brisbane by Commissioner of the Australian Federal Police, District Court of Queensland, April 26 2013 (number BD1440/2013).

- Cairns, bought for over \$400,000 in November 2010. The ANZ Bank provided the mortgage on the property. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.
- Mount Sheradan, bought for over \$500,000 in January 2011. The ANZ Bank was the mortgagee. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.

The two Cairns apartments – 13/99 Esplanade Cairns City and 1105/58-62 Mcleod Street Cairns City – were put on the market in September 2015. The Esplanade unit sold for \$420,000, \$155,000 less than Mr Wartoto purchased it for in 2010. The Mcleod St unit, meanwhile, was being advertised for “offers over \$314,000” in May 2016 – \$101,000 less than Mr Wartoto purchased it for in 2010.²⁰

Eremas Wartoto went on trial in PNG in February 2016.²¹ However, we have been unable to find any additional reports on the progress of the trial, other than it was still continuing in May 2016.

Jeffery Yakopya

Jeffery Yakopya the former assistant secretary in the PNG National Planning and Monitoring Department was arrested by Taskforce Sweep after allegedly approving a K1,975,006 (\$0.89 million) variation claim lodged on behalf of Sarakolok West Transport Ltd (SWT).²² These funds were on top of an alleged K7.9 million (\$3.6 million) paid to SWT, a company owned by Eremas Wartoto.²³ Taskforce Sweep has alleged that Mr Yakopya has misappropriated a total of K16.575 million (\$7.5 million).²⁴ He has been committed to stand trial.²⁵ Jeffery Yakopya owns one property in Queensland, in Bentley Park, bought for over \$400,000 in November 2009.

In December 2016 Jeffery Yakopya was found guilty to paying his own company K5 million to build three Bailey bridges in the Komo-Margarima district, Hela province. Only one bridge was built. He was sentenced to nine year in prison with hard labour by the Waigani National Court.²⁶

Paul Tiensten

Paul Tiensten was the former Minister for National Planning and Monitoring for PNG and the Member of Parliament for Pomio. In September 2011 he fled to Brisbane after being summonsed by Taskforce Sweep to answer questions over misappropriation of funds at the Department of Planning, and upon returning to PNG was subsequently arrested.²⁷ Paul Tiensten was charged and committed for trial over the alleged misappropriation of funds from this department, after allegedly diverting funds of approximately K3.4 million (\$1.5 million) from Mesu Investment Limited intended for the Karalai Plantation Rehabilitation to his family company Tolpot Services Limited.²⁸

Paul Tiensten was also charged in relation to dishonestly approving a government grant of

²⁰ Dominic Geiger, ‘Cairns property listed as belonging to alleged fraudster being sold’, *Cairns Post*, 3 May 2016, <http://www.cairnspost.com.au/news/cairns/cairns-property-listed-as-belonging-to-alleged-fraudster-being-sold/news-story/d455d58a545563c0134dc34ed13114ea>

²¹ <http://www.looppng-sb.com/content/australian-federal-agent-gives-evidence-wartoto-trial>

²² Sam Koim, ‘Investigation Taskforce Sweep June 2013 Report’, *Post Courier*, 2 August 2013, p. 46.

²³ ‘Sweep team arrest two more’, *The National*, 3 January 2012; and Sam Koim, ‘Investigation Taskforce Sweep June 2013 Report’, *Post Courier*, 2 August 2013, p. 46.

²⁴ ‘Investigation Taskforce Sweep 2013 Report’, *Post Courier*, 2 August 2013.

²⁵ Sam Koim, ‘Investigation Taskforce Sweep June 2013 Report’, *Post Courier*, 2 August 2013, p. 46.

²⁶ Sally Pokiton, ‘Public servant sentenced to 9 years in jail’, *Loop*, 29 December 2016, <http://www.looppng-sb.com/png-news/public-servant-sentenced-9-years-jail-49144>

²⁷ Liam Fox, ‘Ex-minister arrested on return to PNG’, *ABC News*, 17 November, 2011.

²⁸ ‘Tiensten in custody on second charge’, *Post Courier*, 18 November, 2011; and Sam Koim, ‘Investigation Taskforce Sweep June 2013 Report’, *Post Courier*, 2 August 2013, p. 46.

approximately K10 million (\$4.5 million) to facilitate the set up an airline called 'Travel Air', owned by Eremas Wartoto, despite the money having been earmarked for rural air freight subsidies.²⁹ He was convicted on this charge and Judge Gibbs Salika said that Mr Tiensten had used his "political muscle" to force the grant through.³⁰ He was sentenced on 28 March 2014 nine years in prison with hard labour, but four years of the sentence will be suspended if he repays the money.³¹

In April 2015, a further three years was added to his prison sentence by the National Court in relations to the use of over one million US dollars of funding that was intended for the rehabilitation of a plantation in East New Britain. He was found guilty of one count of official corruption, on count of obtaining goods by false pretence and one count of misappropriation.³²

In 2008, Wu Shih-tsa, a businessman from Singapore, testified in a Taiwan court that six PNG officials had received part of a \$19 million bribe, including Paul Tienstein. Paul Tienstein denied knowledge of the bribe. Paul Tiensten was also accused of a \$90 million fraud involving executives of four landowner associations in Gulf province, in which funds were released by the National Planning Office to the groups for infrastructure projects that were never built. The case failed for procedural reasons.³³

Paul Tiensten's wife Julie Tiensten owned one property in Queensland, in North Quay Brisbane City, bought for nearly \$600,000 bought in May 2009. The contact address for Julie Tiensten on purchase of the property was a property owned by Eremas Wartoto in Edmonton. The North Quay Brisbane City property was sold on 14 November 2013 for over \$450,000.

General James Hoth Mai Nguoth

General James Hoth Mai Nguoth served as the Sudan People's Liberation Army's (SPLA) chief of staff from May 2009 until being dismissed and replaced by General Paul Malong Awan in April 2014. Prior to that post, General Hoth Mai served as Deputy Chief of Staff for Logistics. Even as a senior official in the SPLA, his salary was never more than about US\$45,000 per year.³⁴

On 1 October 2014, the Nguoth Oth Mai (the son of General Hoth Mai's 23 year old son) became the owner of 7-8 Wiringa Close, Narre Warren North for \$1.5 million.³⁵ Nguoth Oth Mai was studying in China until mid-December 2013. The residence is situated on a one-acre lot backing up to a forested area bordering nearby Lysterfield Lake, a popular destination for sailing, canoeing, and mountain biking. The home is described by the realty company that sold it as "perfecting the balance between serenity and glamour." The home boasts four bedrooms, a top-of-the-line kitchen, a two-tiered home theatre, a sauna, and an infinity pool. When The Sentry visited the home in August 2016, a BMW 316i used by one of Hoth Mai's daughters was parked in front of the house.³⁶

It does not appear to be publicly known how General Hoth Mai's family have access to the wealth used to purchase the assets they own.

²⁹ Liam Fox, 'PNG businessman up on yet more fraud charges', ABC News, 21 May 2013; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

³⁰ Rowan Callick, 'PNG gets moving on scourge of corruption', *The Australian*, 2 December 2013, p. 9.

³¹ 'Tiensten jailed', *Papua New Guinea Post Courier*, 31 March 2014; and Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian*, 1 April 2014, p.7.

³² 'Former PNG minister gets 3 more years in jail', Radio New Zealand, 17 April 2015, <http://www.radionz.co.nz/international/pacific-news/271445/former-png-minister-gets-3-more-years-in-jail>

³³ Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian*, 1 April 2014, p.7.

³⁴ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.

³⁵ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.

³⁶ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.

Onn Mahmud

It was reported in the Australian press in 2013 that Onn Mahmud, the brother of the then chief minister of Sarawak in Malaysia, had a property portfolio of Sydney commercial and residential property worth an estimated \$100 million.³⁷ In one deal, Mr Onn sold an apartment development site in Sydney's Potts Point, 10 Wylde Street³⁸, for \$15.5 million in 2007, realising a profit of \$10.8 million.³⁹

Onn Mahmud founded the Regent Star company in Hong Kong in the 1980s. As director of Archipelago Shipping, the monopoly for timber exports from Sarawak, Mr Onn was in a position of power that no purchaser of timber could circumvent. It is alleged by the Bruno Manser Fund that whoever wanted to buy tropical wood from Sarawak had to pay a commission to Onn's Regent Star at a fixed price per cubic meter.⁴⁰ Only then was it approved for export. With its aggressive logging, Sarawak by this time had become the world's largest exporter of tropical wood. More than 10 million cubic meters were leaving the state annually and the ancient rain forest of Borneo was being devastated.⁴¹ The main consumer for Sarawak's timber was Japan. At the beginning of 2007, the tax authorities in Tokyo discovered that nine Japanese shipping companies, which were transporting timber from Sarawak to Japan, had allegedly been making - since the beginning of the 1980s - annual payments of millions of dollars to Regent Star in Hong Kong. The Bruno Manser Fund reported that tax authorities came to the conclusion that the kickbacks were for the government in Sarawak.⁴²

However, it was reported that Regent Star was initially found in 2007 to have received RM32 million kickbacks from Japanese shipping companies, but an appeal tribunal reversed the findings a year later, ruling that the monies paid for "brokerage services" to Onn Mahmud's firm were legitimate and could be written off as tax rebates.⁴³

Clearly real estate professionals would have been involved in the purchases of properties in Australia related to each of these people and it is not known to the Synod if any of these bodies undertook due diligence to assure themselves the funds used in each transaction had a legitimate source. The Synod notes that of the people named, only Paul Tiensten and Jeffery Yakopya were convicted of the offences they were arrested for.

Drug Offenders in Queensland

In September 2015 the Crime and Corruption Commission of Queensland released a report into the assets of Queensland drug offenders. They examined proceeds of crime data for matters received between 1 January 2009 and 31 December 2014, of 223 drug offenders who had had

³⁷ Mark Baker, 'Tycoon dodges millions in land tax', *The Sydney Morning Herald*, 23 April 2013.

³⁸ <http://www.smh.com.au/world/catch-him-if-you-can-the-mysterious-escape-of-malaysias-second-richest-man-20130427-2iildf.html>

³⁹ Mark Baker, 'Tycoon dodges millions in land tax', *The Sydney Morning Herald*, 23 April 2013.

⁴⁰ Bruno Manser Fund, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, p. 4.

⁴¹ Bruno Manser Fund, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, p. 4.

⁴² Bruno Manser Fund, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, p. 4. See also Luke Hunt, 'Taib Mahmud's Really Excellent Retirement', *The Diplomat*, 7 March 2014, <http://thediplomat.com/2014/03/taib-mahmuds-really-excellent-retirement/>

⁴³ Joseph Sipdan, 'Taib as TYT would be as powerful as Dr M, says Rafizi', Malaymail online, 25 February 2014, <http://www.themalaymailonline.com/print/malaysia/taib-as-tyt-would-be-as-powerful-as-dr-m-says-rafizi>

assets restrained as of 11 March 2015.⁴⁴ The Crime and Corruption Commission found 66% of the offenders owned real estate.⁴⁵ The average drug offender had 46% of their assets in real estate.⁴⁶

The Crime and Corruption Commission found that less than 10% of assets held by Queensland drug offenders were registered in another name, although proceeds of crime data almost certainly underestimate the frequency of this.⁴⁷

8. Is more regulatory oversight of legal practitioners and conveyancers justifiable?

More regulatory oversight of legal practitioners and conveyancers is justified, given that the priority actions identified by the FATF⁴⁸ included a recommendation that that lawyers (among others) “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.”

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

Transparency International UK reported in November 2015 that legal agencies in the UK were identified by law enforcement authorities for large volumes of low quality or incomplete reports of suspicious activity.⁴⁹ Further, it was found that 42% of the most serious types of suspicious activity in legal services were assessed to be poor quality or incomplete, raising concerns about ‘gaming’ of the reporting system.⁵⁰

In their assessment of the UK anti-money laundering system, Transparency International UK concluded:⁵¹

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.

⁴⁴ Crime and Corruption Commission, Queensland, ‘Assets of Queensland drug offenders’, Sept 2015, p.

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⁴⁵ Crime and Corruption Commission, Queensland, ‘Assets of Queensland drug offenders’, Sept 2015, p.

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⁴⁶ Crime and Corruption Commission, Queensland, ‘Assets of Queensland drug offenders’, Sept 2015, p.

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⁴⁷ Crime and Corruption Commission, Queensland, ‘Assets of Queensland drug offenders’, Sept 2015, p.

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⁴⁸ FATF, ‘AML and CTF measures Australia Mutual Evaluation Report’, April 2015, p. 10.

⁴⁹ 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.

⁵⁰ 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.

⁵¹ 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.

10. How would AML/CTF obligations impact on client confidentiality and other ethical obligations of legal practitioners and conveyancers? In particular, how would the AML/CTF obligations impact on legal professional privilege?

The FATF⁵² state that “lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report suspicious transactions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.”

11. What impact would AML/CTF compliance costs have on access to legal services within the community?

12. What additional administrative structures will legal practitioners need to put in place to comply with the requirements of the AML/CTF regime?

13. How would regulating the legal profession for AML/CTF purposes impact on the delivery of services to clients (particularly in the context of urgent legal matters that require immediate advice)?

14. What other aspects of the legal profession would be impacted by AML/CTF obligations?

15. Would regulation as a reporting entity under the AML/CTF Act affect the independent referral bar? What regulatory model would minimise the impact on the independent referral bar (e.g. reliance on CDD performed by instructing solicitors and /or clerks operate the trust) accounts)?

16. What broader impacts could the regulation of AML/CTF legal practitioners and conveyancers have?

The FATF⁵³ calls into question the current effectiveness of AML/CTF preventive measures in the Australian financial system as a whole due to the current reliance 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. Regulation would therefore improve overall effectiveness of Australia’s AML/CTF preventative measures.

Specifically, the FATF⁵⁴ identified Australian professional facilitators, such as lawyers and conveyancers, were almost universally understood as a major money laundering risk but authorities are not currently addressing the risk by including them within the scope of the AML regime. Regulation would therefore address this major money laundering risk.

⁵² FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 83.

⁵³ FATF, ‘AML and CTF measures Australia Mutual Evaluation Report’, April 2015, p. 13.

⁵⁴ FATF, ‘AML and CTF measures Australia Mutual Evaluation Report’, April 2015, p. 5.

This action would therefore more proactively address the identified money laundering risks in relation to foreign proceeds of crime being invested in Australia, including enhancing detection through facilitation of timely tracing of criminal assets, alleviating abuse of legal persons, arrangements and real property whilst applying necessary scrutiny on cash intensive activities.⁵⁵

Section 7 Questions

7.1 Enrolment and scope of services

• Should legal practitioners and conveyancers be required to enrol with AUSTRAC?

The Synod supports legal practitioners and conveyancers having to enrol with AUSTRAC, so that AUSTRAC is able to monitor and assess compliance of legal practitioners and conveyancers with AML/CTF obligations that are introduced and take any necessary actions to ensure compliance.

7.2 Customer due diligence (CDD)

• What CDD obligations should legal practitioners and conveyancers have?

As per FATF Recommendation 22⁵⁶ (DNFBPs CDD) which states that CDD and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to lawyers, 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 legal practitioners and conveyancers? -If yes, what client type and/or transactions?

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.”⁵⁷ Given that FATF also stated that interpretative notes are also relevant to DNFBPs where applicable, this would also appear to be applicable to legal practitioners.⁵⁸

• When should the obligation for legal practitioners and conveyancers to conduct CDD on clients commence? Should it be at the point at which the client first seeks advice, or only once there is a retainer in place?

⁵⁵ FATF, 'AML and CTF measures Australia Mutual Evaluation Report', April 2015, p. 45.

⁵⁶ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 19-20.

⁵⁷ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 64.

⁵⁸ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 81.

As per FATF Recommendation 22 (DNFBPs CDD).⁵⁹

7.3 Ongoing customer due diligence

- **What ongoing due diligence obligations should apply to legal practitioners and conveyancers?**

As per FATF Recommendation 22 (DNFBPs CDD) which incorporates requirements from Recommendations 10 and 12.⁶⁰

7.4 Reporting obligations

- **Should all reporting obligations apply to legal practitioners and conveyancers?**

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

- **Should the obligation to lodge suspicious matter reports apply to legal practitioners?**

FATF Recommendation 23 state that lawyers, notaries, other independent legal professionals (among others) “should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in paragraph (d) of Recommendation 22.”⁶¹ These activities are:

- 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 legal practitioners and conveyancers be able to voluntarily report suspicious matters to the AML/CTF regulator that relate to a service that is not a designated service?**

This would seem to be required by FATF Recommendation 23.⁶²

7.5 Internal controls– AML/CTF programs

- **Should legal practitioners and conveyancers have an obligation to develop and maintain an AML/CTF program?**

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 facilitate money laundering or terrorism financing.”⁶³ Thus it is the view of the Synod that legal

⁵⁹ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 19-20.

⁶⁰ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 19-20.

⁶¹ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 20.

⁶² FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 20.

⁶³ <http://www.austrac.gov.au/chapter-6-amlctf-programs>

practitioners and conveyancers should have an obligation to develop and maintain a basic AML/CTF program that outlines what procedure they will follow to meet their AML/CTF obligations.

- **What are the implications of a risk-based approach for legal practitioners and conveyancers?**

A risk-based approach for legal practitioners and conveyancers would comply with the FATF Recommendations⁶⁴ and complements Australia's existing AML/CTF approach.

7.6 Record-keeping

- **What records should legal practitioners and conveyancers 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."⁶⁵

- **To what extent can record-keeping obligations for AML/CTF purposes leverage off other record-keeping obligations or practices (for example, under taxation or corporations law, and laws governing the use of legal practitioners' trust accounts)?**

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

- **Should AUSTRAC monitor and supervise legal practitioners and conveyancers for compliance with AML/CTF obligations?**

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 lawyers, notaries and other independent legal professionals (among others).⁶⁶

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⁶⁴ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 63-65.

⁶⁵ FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 15.

⁶⁶ FATF, 'AML and CTF measures Australia Mutual Evaluation Report', April 2015, p. 103.