



31 January 2017

Financial Crime Section
Transnational Crime Branch
Criminal Justice Policy and Programme Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
E-mail: antimoneylaundering@ag.gov.au

Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Consultation Paper 'Real estate professionals: 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 *Real estate professionals: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime*. The Synod supports the inclusion of real estate professionals under the AML/CTF Act for the reasons outlined on pages 6 and 7 of the consultation paper as well as 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 real estate agents 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 Synod itself is a buyer and seller of real estate and is likely to be subject to any obligations placed upon real estate professionals. The following answers are informed by the experience of Synod staff that have worked in real estate businesses of various sizes and different business sectors.

1. What services provided by real estate professionals pose a ML/TF risk?

Clearly the facilitation of the buying and selling of properties by real estate professionals pose a ML/TF risk.

FATF, in their 2013 typology research of ML/TF vulnerabilities of the legal profession found real estate investment accounted for up to 30% of criminal assets confiscated in the last two years demonstrating this as an area of vulnerability.¹

In 2004 Walker estimated \$651 million worth of laundered funds were invested in Australian real estate annually.² This estimate could potentially be now in excess of a billion dollars when applying the 63% increase Australian house prices have experienced since 2004.³

Prior to 1 December 2015, there was practically no impediment for a foreign investor purchasing real property in Australia. From December 2015, Foreign Investment Review Board (FIRB) approval is required although there appears no obligation upon real estate agents or conveyancers to ensure purchasers have complied with regulations⁴.

Exemptions from FIRB approval appear to allow loopholes for purchasers, such as if the purchaser is an Australian corporation with interests directly held by Australian citizens,

¹ FATF, 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals', June 2013, p. 24.

² John Walker, 'The extent of money laundering in and through Australia in 2004', Criminology Research Council, 2004, <www.criminologyresearchcouncil.gov.au/reports/200304-33.pdf>

³ <http://www.globalpropertyguide.com/real-estate-house-prices/A#australia>

⁴ <https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/International/Foreign-Investment-Register/>

permanent visa holders or New Zealand citizens⁵. This allows foreigners to use an Australian company with nominee shareholders⁶ as the property purchaser and not require approval.

The FATF advise that a risk analysis must be performed to determine where the money laundering and terrorist financing risks are the greatest with regard to real estate services which may include:⁷

- Traditional exclusive (and non-exclusive) seller representation;
- Traditional exclusive (and non-exclusive) buyer representation;
- Representation of both buyer and seller in the same transaction;
- A number of agents representing sellers or buyers;
- National and transnational referrals;
- Amalgamation or interaction of functions of other professionals, e.g. notaries, lawyers, lenders and valuers;
- Auctions;
- Mortgage loan assessment;
- Valuation/ appraisal; and
- Conveyance of property.

Australia's risk assessment noted that real estate can be used to launder funds by manipulating property values, mortgage and investment schemes, complex corporate vehicles and loan arrangements.⁸

The Australian Government has stated that it welcomes foreign investment and many businesses promote⁹ Australia's many opportunities for foreign investors to purchase real estate. The purchase process is advertised as simple with benefits¹⁰ including the ease that government approval is granted, the availability of speciality mortgage broker finance and the strong consumer protections available. Real estate foreign investment¹¹ is stated as being the largest sector for foreign investment approvals accounting for approximately 50% of the value of all approvals in 2014-15.

There is a significant risk of money laundering through real estate professionals that have set up Chinese based offices to attract Chinese investment into Australian property if the real estate businesses in question do not have significant AML/CTF processes in place. For example, McGrath Limited (McGrath), listed on the ASX¹²¹³ with owners including UBS, HSBC, JP Morgan, Citicorp, BNP Paribas, is one of the largest residential real estates in Australia.¹⁴ McGrath's ancillary services include home loans¹⁵ and a 'China Desk'¹⁶ which provides specialised services to facilitate the purchasing process for Chinese buyers. McGrath describes that a "driver of investor demand has been the participation of foreign investors. The value of

⁵ <http://firb.gov.au/resources/guidance/gn04/>

⁶ <https://www.davidgarry.com.au/services/nominee-director-and-shareholder-services.html>

⁷ FATF, 'RBA Guidance for Real Estate Agents', June 2008, p. 3-4.

⁸ AUSTRAC, 'Money laundering in Australia 2011', 2011, p. 25.

⁹ <https://www.ibuynew.com.au/tools-advice/buyer-s-guide/how-to-buy-australian-property-as-a-foreign-invest>

¹⁰ <https://www.homeloanexperts.com.au/non-resident-mortgages/buyers-guide/>

¹¹ <https://www.ibuynew.com.au/tools-advice/buyer-s-guide/how-to-buy-australian-property-as-a-foreign-invest>

¹² <https://irp-cdn.multiscreensite.com/c84a5a97/files/uploaded/131115%20McGRATH%20ANNOUNCES%20INTENTION%20TO%20FLOAT%20ON%20ASX.pdf>

¹³ <http://www.asx.com.au/asxpdf/20151208/pdf/433ngn3z516hdp.pdf>

¹⁴ <http://www.asx.com.au/asxpdf/20151214/pdf/433rzc381vlfyb.pdf>

¹⁵ JP Morgan, Bell Potter, Luminis Partners, 'McGrath Initial Public Offering', 2015, p. 58.

¹⁶ <https://www.mcgrath.com.au/about/china-desk>

approved foreign investment in residential property in Australia has increased from an average of approximately \$6 billion annually during the 1990s to more than \$34.7 billion in FY2014.”¹⁷ McGrath’s was the agent for a \$16 million harbour side residential property in 2015. The purchaser, ‘FLMD Pty Ltd’ (FLMD), incorporated in Australia in the same month of the property purchase, lists the major shareholder as Chinese born, Jing Qi Gu. Gu’s listed residential address in Australia is a rented Sydney 2-bedroom unit.¹⁸

Savills PLC¹⁹ (Savills) is a UK publicly listed company and a leading global real estate service provider with 700 owned and associate offices in 60 countries. Savills is the largest management firm in Hong Kong and China advising corporate, institutional and private clients “seeking to acquire, lease, develop or realise the value of prime residential and commercial property in the world’s key locations”.

Asian investment in Australia, according to Savills’ 2014 research, indicates over \$2.1B US of capital inflows from Malaysia, Singapore, Hong Kong and China with Singapore accounting for more than half.²⁰



Source: Real Capital Analytics.

The Savills PLC Group states in their 2015 Accounts that the Group is subject to Financial Services, Chartered Surveyor, tax, anti-bribery and anti-money laundering laws and regulations across a number of international jurisdictions.

Woobuyers operate the website ‘woobuyers.com.au’ which advertise their skills in attracting Chinese buyers through their direct marketing channels, social media marketing, and targeting to high net worth individuals.²¹ They arrange “roadshows” for groups of overseas buyers to inspect properties and their network includes real estate partners, accountants, bankers,

¹⁷ JP Morgan, Bell Potter, Luminis Partners, ‘McGrath Initial Public Offering’, 2015, p. 42.

¹⁸ 4103A Hordern Towers, 393 Pitt Street is owned by Jane Thuy An Ngo thus would appear being rented to Jing Qi Gu; <http://www.ksouhouse.com/rp.php?q=Sydney&sta=nsw&id=401577>.

¹⁹ <http://www.savills.com.au/about-savills/>

²⁰ Savills Research, ‘Insight China: At Home, Abroad and in Australia’, December 2014, p. 17-18.

²¹ <http://www.woobuyers.com.au/chinese-real-estate-services>

migration agents and lawyers to facilitate transactions. They also use 'You Tube productions' to market properties.²²

Below are some examples of where money laundering either took place in the selling and buying of properties or there would have been strong reason for thorough due diligence to have taken place.

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 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

²² <https://www.youtube.com/watch?v=8XprAC5Wm-c>

company Rural Development Services. This money was reported to be intended for a mini-hydro power plant in PNG highlands, which never eventuated.²³

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.²⁴

In 2011, PNG Taskforce Sweep charged Mr Wartoto with the misappropriation of \$5 million.²⁵ 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]”.²⁶ On 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 2011.²⁷ 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.²⁸

On 30 August 2012, PNG authorities issued a restraining order to cover property owned by Eremas Wartoto in PNG.²⁹

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).³⁰ 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

²³ ‘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.

²⁴ Sam Koim, ‘Investigation Taskforce Sweep June 2013 Report’, *Post Courier*, 2 August 2013, p. 46.

²⁵ Sarah Elks and Rowan Callick, ‘Property of PNG fugitive seized’, *The Australian*, 15 May 2013.

²⁶ Sam Koim, ‘Investigation Taskforce Sweep June 2013 Report’, *Post Courier*, 2 August 2013, p. 46.

²⁷ 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).

²⁸ Nick McKenzie & Richard Baker, ‘Alleged PNG crime boss on 457 visa wanted over theft of \$30m’, *The Age*, 10 May 2013.

²⁹ Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May, 2013.

³⁰ Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May, 2013.

Trustees of the Wartoto PNG trust, which the PNG authorities believed was under the effective control of Mr Wartoto.³¹

The Australian Federal Police (AFP) lodged a successful application to have Mr Wartoto's property seized.³² 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.³³

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.
- 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 2010.³⁴

Eremas Wartoto went on trial in PNG in February 2016.³⁵ 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).³⁶ These funds were on top of an alleged K7.9 million (\$3.6 million) paid to SWT, a company owned by Eremas Wartoto.³⁷ Taskforce Sweep has alleged that Mr Yakopya has

³¹ Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May, 2013.

³² Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian*, 15 May 2013.

³³ Application filed in Brisbane by Commissioner of the Australian Federal Police, District Court of Queensland, April 26 2013 (number BD1440/2013).

³⁴ 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>

³⁵ <http://www.looppng-sb.com/content/australian-federal-agent-gives-evidence-wartoto-trial>

³⁶ Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

³⁷ '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.

misappropriated a total of K16.575 million (\$7.5 million).³⁸ He has been committed to stand trial.³⁹ 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.⁴⁰

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.⁴¹ 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.⁴²

Paul Tiensten was also charged in relation to dishonestly approving a government grant of 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.⁴³ He was convicted on this charge and Judge Gibbs Salika said that Mr Tiensten had used his "political muscle" to force the grant through.⁴⁴ 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.⁴⁵

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.⁴⁶

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

³⁸ 'Investigation Taskforce Sweep 2013 Report', *Post Courier*, 2 August 2013.

³⁹ Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier*, 2 August 2013, p. 46.

⁴⁰ 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>

⁴¹ Liam Fox, 'Ex-minister arrested on return to PNG', *ABC News*, 17 November, 2011.

⁴² '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.

⁴³ 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.

⁴⁴ Rowan Callick, 'PNG gets moving on scourge of corruption', *The Australian*, 2 December 2013, p. 9.

⁴⁵ '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.

⁴⁶ '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>

were released by the National Planning Office to the groups for infrastructure projects that were never built. The case failed for procedural reasons.⁴⁷

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 Ngouth

General James Hoth Mai Ngouth 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.⁴⁸

On 1 October 2014, the Ngouth 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.⁴⁹ Ngouth 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.⁵⁰

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.

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.⁵¹ In one deal, Mr Onn sold an apartment development site in Sydney's Potts Point, 10 Wylde Street⁵², for \$15.5 million in 2007, realising a profit of \$10.8 million.⁵³

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.⁵⁴ 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

⁴⁷ Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian*, 1 April 2014, p.7.

⁴⁸ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.

⁴⁹ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.

⁵⁰ The Sentry, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.

⁵¹ Mark Baker, 'Tycoon dodges millions in land tax', *The Sydney Morning Herald*, 23 April 2013.

⁵² <http://www.smh.com.au/world/catch-him-if-you-can-the-mysterious-escape-of-malaysias-second-richest-man-20130427-2ildf.html>

⁵³ Mark Baker, 'Tycoon dodges millions in land tax', *The Sydney Morning Herald*, 23 April 2013.

⁵⁴ Bruno Manser Fund, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, p. 4.

state annually and the ancient rain forest of Borneo was being devastated.⁵⁵ 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.⁵⁶

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.⁵⁷

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.

Yeo Jiawei

Yeo Jiawei who has been accused of money laundering, used a Seychelles-based company for a series of purchases in the Australia.⁵⁸ Yeo was sentenced to 30 months in prison in December 2016 by Singapore's district court for witness tampering during a Singaporean investigation into alleged laundering of funds stolen from Malaysia's 1MDB state development fund.⁵⁹

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.⁶⁰

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

Yeo Jiawei's foray into Australian property began with a \$1.3 million oceanfront apartment in Surfers Paradise, which he bought in 2014 direct from a collapsed developer.⁶¹

⁵⁵ Bruno Manser Fund, 'Rain forest robbery. How Sarawak's Chief Minister became a billionaire. Tong tara', March 2011, p. 4.

⁵⁶ 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 Madmud's Really Excellent Retirement', *The Diplomat*, 7 March 2014, <http://thediplomat.com/2014/03/taib-mahmuds-really-excellent-retirement/>

⁵⁷ 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>

⁵⁸ 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>

⁵⁹ 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>

⁶⁰ 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 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.⁶²

The Guardian reported that Australian Federal Police were examining whether money illegally taken from Malaysia's 1MDB state development fund has shifted into Australia.⁶³

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.⁶⁴

The next month Connect Capital paid \$2.4 million for four retail premises in the ground floor of a building in Broadbeach.⁶⁵

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.⁶⁶

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.⁶⁷

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.⁶⁸

⁶¹ 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>

⁶² 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>

⁶³ 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>

⁶⁴ 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>

⁶⁵ 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>

⁶⁶ 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>

⁶⁷ 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>

⁶⁸ 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->

The Guardian reported that Yeo's \$1.3 million apartment purchase in 2014 was directly from the developer, Juniper Group, which had fallen into receivership in 2012. Developers of large projects routinely obtain "exemption certificates" to allow them to market off-the-plan apartments to overseas buyers.⁶⁹

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.⁷⁰

Yeo denied wrongdoing throughout his trial, including the prosecutor's claim that he received "secret profits" from a 1MDB money laundering scam.⁷¹

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 assets restrained as of 11 March 2015.⁷² The Crime and Corruption Commission found 66% of the offenders owned real estate.⁷³ The average drug offender had 46% of their assets in real estate.⁷⁴

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.⁷⁵

Examples from AUSTRAC

A case involving the purchase of real estate was provided by AUSTRAC in their 2009 typologies.⁷⁶ Authorities began investigating a suspect allegedly involved in illegally raising investment funds and operating an unregistered managed investment scheme. AUSTRAC began monitoring the financial activities of the suspect and his associates, and analysis of the information gathered indicated that the suspect was sending funds from Australia to two accounting firms in New Zealand. The funds were then transferred back to Australia, where they

news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge

⁶⁹ 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>

⁷⁰ 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>

⁷¹ 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>

⁷² Crime and Corruption Commission, Queensland, 'Assets of Queensland drug offenders', Sept 2015, p. 3.

⁷³ Crime and Corruption Commission, Queensland, 'Assets of Queensland drug offenders', Sept 2015, p. 4.

⁷⁴ Crime and Corruption Commission, Queensland, 'Assets of Queensland drug offenders', Sept 2015, p. 9.

⁷⁵ Crime and Corruption Commission, Queensland, 'Assets of Queensland drug offenders', Sept 2015, p. 12.

⁷⁶ AUSTRAC, 'Case 5 – Funds from illegal investment schemes laundered in New Zealand', <http://www.austrac.gov.au/typologies-2009-case-studies>

were used to purchase luxury vehicles and real estate, and for gambling. A suspect transaction report (SUSTR) detailing the main suspect's activities was also submitted to AUSTRAC. AUSTRAC information showed that the amount of funds returning to Australia was greater than the amount originally sent to New Zealand. Authorities concluded that the suspects were raising money from the public in Australia and New Zealand to fund the managed investment scheme, and that the funds were being transferred to New Zealand and then back to Australia to disguise their origins. Further investigations followed, and both suspects were charged with operating an unregistered managed investment scheme and sentenced to two years imprisonment.

AUSTRAC provided another example of proceeds of crime being used to purchase property in Melbourne.⁷⁷ Analysis of AUSTRAC information revealed that a husband and wife were regularly undertaking structured international funds transfers to Asia. Over a number of years the couple, who were joint directors of a company registered in their names, had regularly sent international funds transfers to Asia via various bank branches in Victoria using cash generated from their company. They had sent more than \$3 million overseas in this manner.

Further investigations revealed that approximately \$4.8 million in taxable income for the couple was unaccounted for. It was alleged that the transfers represented undeclared income generated from the couple's business. It was suspected that the remitted funds were transferred to a second overseas account and then sent back to Australia via large international funds transfers.

It was believed that after the couple received the funds back in Australia, the funds were invested in real estate in Melbourne. Thus, the funds from the tax evasion were successfully laundered and integrated back into the Australian economy. A proceeds of crime investigation into the couple's assets was successful in restraining \$16 million of real estate.

2. Are there circumstances where the buying and selling of real estate in the Australian context poses a low ML/TF risk?

The vast majority of real estate transactions currently occur without real estate professionals making any risk assessment and they make few inquiries to know who the ultimate beneficial owner in the transaction is. There is lower risk where the transaction is occurring through a financial institution that is already a reporting entity required to make a risk assessment and to conduct due diligence of its customers. However, real estate professionals are often willing to engage in cash transactions. Many appear willing to facilitate transactions which are highly suspicious, such as a Chinese buyer being willing to pay much higher than market rate for a property.

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

Many of the benefits of requiring real estate professionals to comply with AML/CTF obligations when performing services that may pose an ML/TF risk are outlined on pages 6 and 7 of the consultation paper:

- It would make Australian real estate a less attractive option to launder proceeds of crime or hide funds to finance terrorism (although the Synod is not aware of any cases of the latter, but is aware of a number of cases of the former);
- It would spread the compliance burden more fairly between Australian businesses, reducing the risks faced by financial institutions in dealing with transactions involving real estate professionals;

⁷⁷ AUSTRAC, 'Case 9 – Couple attempted to dodge millions in tax through money laundering', <http://www.austrac.gov.au/typologies-2009-case-studies>

- Would increase the awareness of real estate professionals to ML/TF risks in their sector, which would help detect such cases and also is likely to deter criminals from seeking to launder funds through Australian real estate with the increased risk of detection;
- It would provide 'early warnings' that would enhance the ability of law enforcement and national security agencies to detect and disrupt criminal activities;
- Increase visibility and transparency of beneficial ownership of trusts and company structures that purchase and sell property, assist in the identification of individuals seeking to circumvent Australia's foreign investment requirements and prevent the fraudulent sale of property by individuals with no title to the property;
- Fill intelligence gaps and improve the ability of Australia's intelligence community to discover, understand, and disrupt money laundering, terrorist financing, and the serious offences that predicate these activities;
- Reduce the harms and adverse impacts of ML and TF on the Australian economy and society as well as the harms and adverse impacts of ML and TF on the economies and societies in other parts of the world, through Australia not being a destination for funds stolen from these other places or through stopping the financing of terrorism in other places from Australia;
- Enhance national security;
- Enhance Australia's international reputation as a destination for law-abiding foreign business and investment; and
- More closely align Australia's AML/CTF regime with the FATF's international standards for combating ML/TF.

4. To what extent are the AML/CTF customer due diligence obligations already reflected in existing regulations (including self-regulation) for Australian real estate professionals?

The NSW Government introduced updated fraud prevention guidelines for the real estate industry in October 2012. These guidelines were introduced to combat identity fraud and scams in the industry.⁷⁸ The guidelines provide a set of practices and procedures for agents to confirm the identity of vendors or their appointed representatives, as well as a list of possible fraud warning signs and a proof of identity checklist.⁷⁹ The guidelines were developed following two publicised incidents in 2010 and 2011 that resulted in properties being sold in WA without the knowledge and consent of the lawful property owners.⁸⁰

Due to this legislation, in NSW real estate professionals require that a client provide a driver's licence as verification of identity. They also request to know who the beneficial owner is, but do not undertake due diligence to verify beneficial ownership.

In NSW people are required to register to participate as a bidder in an auction. By contrast, anyone in Victoria can join in on an auction without any requirements to reveal identity prior to purchase.

The WA Government has strengthened the real estate industry's verification of identity practice. The practice recommends that conveyancers and other property professionals take reasonable steps to verify the identity of their clients and confirm their clients' authority to give instructions when dealing with a particular property.⁸¹

⁷⁸ AUSTRAC, 'Real estate and AML/CTF regulation', <http://www.austrac.gov.au/sa-brief-real-estate-amlctf-regulation>

⁷⁹ AUSTRAC, 'Real estate and AML/CTF regulation', <http://www.austrac.gov.au/sa-brief-real-estate-amlctf-regulation>

⁸⁰ AUSTRAC, 'Real estate and AML/CTF regulation', <http://www.austrac.gov.au/sa-brief-real-estate-amlctf-regulation>

⁸¹ AUSTRAC, 'Real estate and AML/CTF regulation', <http://www.austrac.gov.au/sa-brief-real-estate-amlctf-regulation>

5. To what extent do existing mechanisms that allow for oversight of real estate transactions mitigate the ML/TF risks posed by services that provide for the buying and selling of real estate?

The case studies above suggest that existing mechanisms that allow for oversight of real estate transactions fail to adequately mitigate ML/TF risks.

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

Transparency International UK reported in November 2015 that real estate agencies in the UK were identified by law enforcement authorities for large volumes of low quality or incomplete reports of suspicious activity.⁸² Only 0.05% of all suspicious activity reports in 2013/2014 in the UK were from the real estate agency sector.⁸³

In their assessment of the UK anti-money laundering system, Transparency International UK concluded:⁸⁴

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.

Global Witness has exposed short-comings in the UK AML/CTF regime when it comes to the purchase of real estate. In July 2015 they released a report on portfolio of real estate worth £147 million in well-known London locations that appeared to be owned by someone with ties to Rakhat Aliyev, a notorious figure from Kazakhstan, accused in the EU of money laundering and murder.⁸⁵

In the UK, the Gaddafi family were about to transfer £10 million into a mansion in Hampstead.⁸⁶ The High Court in London ruled that the property rightfully belonged to the Libyan state as it had been purchased with diverted Libyan government revenue.⁸⁷ Saadi Gaddafi had been able to purchase the property through a British Virgin Island shell company, Capitana Seas Limited.⁸⁸

⁸² 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.

⁸³ 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.

⁸⁴ 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.

⁸⁵ Global Witness, 'Mystery on Baker Street', July 2015, p. 1.

⁸⁶ Global Witness submission, 'Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK', 1 April 2016, p. 3.

⁸⁷ Global Witness submission, 'Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK', 1 April 2016, p. 21.

⁸⁸ Global Witness submission, 'Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK', 1 April 2016, p. 21.

Global Witness revealed that former governor of Balesya State in Nigeria, Diepreye Alamiyeseigha, had acquired at least three Lodon properties valued at around £3.15 million, while he was in public office. Between 1999 and 2003, the properties had been bought for Diepreye Alamiyeseigha as bribes by state contractors, using a British Virgin Island shell company wholly-owned by Diepreye Alamiyeseigha.⁸⁹

Global Witness has also noted the challenges thrown up by the use of shell companies registered offshore to make purchases of property in the UK, throwing up a significant challenge to combat money laundering. They report that at least £122 billion worth of property in England and Wales is now owned by companies registered offshore and 75% of properties whose owners are under investigation for corruption make use of this kind of secrecy to hide their identities.⁹⁰

To help tackle this problem the European Union's 4th Anti-Money Laundering Directive will require all EU companies to have to supply up-to-date beneficial ownership information to a national register.⁹¹

7. Should the term 'real estate' be defined under the AML/CTF regime? If yes, how?

The Synod agrees with the consultation paper that the approach to be adopted should be to use the term 'real estate' and rely on its ordinary meaning (without defining the term in the legislation). The Synod believes it is desirable to allow for the broadest possible interpretation of what constitutes real estate.

8. What real estate services should be regulated or excluded under the AML/CTF regime?

The Synod agrees with the consultation paper that the services that should be regulated under the AML/CTF Act should include:

- The buying and selling of real estate on behalf of a person, where the service is provided in the course of carrying on a business;
- Acting as a broker between the vendor of real estate and a potential purchaser and the service is provided in the course of carrying on a business;
- Providing property management services where large cash payments are accepted for the payment of rent; and
- Providing a conveyancing service to a person in relation to the purchase or sale of land, where the service is provided in the course of carrying on a business.

The Synod agrees with the discussion paper that auctioneers, commercial agents, property developers, builders and real estate brokers should be caught under the AML/CTF legislation, with obligations to carry out customer due diligence and report suspicious clients and suspicious transactions to AUSTRAC.

9. When should the obligations for real estate professionals to conduct CDD arise?

As per FATF Recommendation 22 (DNFBPs CDD).⁹²

In terms of the sale of property, the requirement to conduct due diligence of both parties would be best triggered between exchange and settlement, with the sale contract conditional upon the

⁸⁹ Global Witness submission, 'Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK', 1 April 2016, p. 21.

⁹⁰ Global Witness submission, 'Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK', 1 April 2016, p. 2.

⁹¹ Global Witness submission, 'Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK', 1 April 2016, p. 4.

⁹² FATF, 'International Standards on Combating ML and FT & Proliferation; The FATF Recommendations', p. 19-20.

identification of the ultimate beneficial owners on both sides of the contract. This would limit the time required to conduct CDD to the point at which a sale would otherwise proceed. As a further deterrent to money laundering, the buyer should lose their deposit for the sale if they do not assist in the identification of the ultimate beneficial owner on the buyer side of the transaction.

10. What factors should be taken into account in determining whether a person is in the business of buying and selling real estate?

11. Should real estate professionals have obligations to identify both parties to a real estate transaction?

The FATF interpretative note for Recommendation 22 (DNFBPs, CDD) states that “Real estate agents should comply with the requirements of Recommendation 10 [CDD requirements] with respect to both the purchasers and vendors of the property”.⁹³

The UK system of only requiring CDD to apply to the seller has been exposed by Global Witness as deeply flawed, having allowed stolen funds from developing countries to be used to buy property in the UK.

The Synod agrees with the consultation paper that the obligation to conduct CDD should arise at the time that there is an exchange of contract between the vendor and purchaser. In the case of property management or leasing services, the obligation to conduct CDD should arise the first time the business is prepared to accept a large cash payment under the property management or leasing arrangements.

The Synod also believes that where a real estate professional is unable to verify the identity of a client (including beneficial owners) and the purpose and intended nature of the business relationship, the real estate professional should be required to terminate the business relationship, unless explicitly instructed by a relevant law enforcement agency not to do so.

12. Should real estate professionals be required to comply with AML/CTF obligations if they provide property management and leasing services and accept large sums of cash as payment from tenant/leases?

The Synod believes that real estate professionals should be required to comply with AML/CTF obligations if they provide property management and leasing services and accept large sums of cash as payment from tenant/leases. As the consultation paper points out there is a money laundering risk in such transactions if criminals purchase the property and then use the tenant or lease payments as a means to launder proceeds of crime.

Should real estate professionals be required to enrol with AUSTRAC?

The Synod believes that real estate professionals should be required to enrol with AUSTRAC, so that AUSTRAC is able to understand and monitor the real estate professional population and better assess which businesses pose a higher risk.

What ongoing due diligence obligations should apply to real estate professionals?

As per FATF Recommendation 22 (DNFBPs CDD) which incorporates requirements from Recommendations 10 and 12.⁹⁴

Should all reporting obligations apply to real estate professionals?

⁹³ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 82.

⁹⁴ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 19-20.

The Synod believes that real estate professionals should have obligations to submit suspicious transaction reports and international funds transfer instruction reports. Given the large sums involved in many real estate transactions the Synod notes it would mean almost all transactions involving real estate professionals would need to be reported if threshold transaction reporting applied. The Synod believes the advice of AUSTRAC is critical on the question of threshold transaction reporting, as the question is if receiving threshold transaction reports from real estate professionals would be of sufficient use to AUSTRAC to warrant the requirement being imposed.

How do real estate professionals carry out international funds transfers? For example, through Australian banks? Western Union?

International transfers are usually conducted through banks. However, some international funds transfers have occurred by cash without the involvement of financial institutions. Such transactions should automatically trigger a suspicious transaction report.

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

The Synod believes that real estate professionals should be able to voluntarily report to AUSTRAC any suspicious matter that might relate to money laundering or financing or terrorism even where the service in question is not subject to AML/CTF regulation. This would seem to be required by FATF Recommendation 23.⁹⁵

Should real estate professionals 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 facilitate money laundering or terrorism financing.”⁹⁶ Thus it would be appropriate for real estate professionals to have to have a program that outlines what procedures they will follow to meet their AML/CTF obligations.

Do real estate businesses that operate internationally already have AML/CTF programs in place that comply with FATF standards?

To the knowledge of the Synod the vast majority of real estate businesses operating internationally have no such programs. In fact it is the reverse. The Synod has been told anecdotally of real estate businesses operating in China that actively seek to attract funds into Australia to buy real estate with no questions asked, even when the source of the funds seems highly suspicious.

What records should real estate professionals be required to keep?

The Synod believes that real estate professionals should be required to retain the following records for seven years:

- The provision of a regulated service to a client;
- The customer due diligence procedure undertaken for clients who was provided, or was proposed to provide, a regulated service;
- Electronic funds transfer instructions; and
- Any required AML/CTF program the real estate professional is required to have in place.

⁹⁵ FATF, ‘International Standards on Combating ML and FT & Proliferation; The FATF Recommendations’, p. 20.

⁹⁶ <http://www.austrac.gov.au/chapter-6-amlctf-programs>

To what extent do AML/CTF record-keeping obligations mirror existing record-keeping obligations for real estate professionals?

It is the Synod's understanding that the in most Australia states the existing record-keeping obligations for real estate professionals are inadequate to be regarded as serving as record-keeping obligations for the purposes of AML/CTF.

Should AUSTRAC monitor and supervise real estate professionals for compliance with AML/CTF obligations? If not, how would the sector be regulated?

The Synod believes that AUSTRAC should monitor and supervise real estate professionals for compliance with AML/CTF obligations initially. As this is a business sector that appears to have believed it is low risk and appears unfamiliar with conducting effective due diligence of clients, it would be inappropriate to allow professional bodies to regulate or co-regulate real estate professionals, until such time as the sector is culturally committed to seriously addressing ML/TF risks it faces. Allowing professional bodies to regulate or co-regulate at this time is likely to result in AML/CTF obligations not being taken seriously by real estate professionals and a weak level of implementation of AML/CTF measures by the sector.

Are there professional bodies that could regulate or co-regulate real estate professionals?

As per the answer above, the Synod does not believe there are professional bodies that could regulate or co-regulate real estate professionals at this time. For example, the Real Estate Institute of Australia website has only two references to money laundering that we were able to find. One in their September 2015 newsletter and one in their December 2016 newsletter. The September 2015 article was in response to the FATF review of Australia's AML/CTF compliance.⁹⁷ The December 2016 article appears to have been provided by the Attorney General's Department seeking to encourage submissions to this consultation paper.

The REIA website does not contain any links to any policies on the issue of ML/TF, suggestive of how much this sector is unfamiliar with ML/TF risks and their general assumption they are low risk and therefore do not need to take ML/TF risks seriously.

What advice and assistance should the AML/CTF regulator provide to support real estate professionals to implement AML/CTF obligations?

AUSTRAC will need to provide extensive advice and assistance to get real estate professionals across the sector to take ML/TF risks seriously and implement an appropriate level of measures to mitigate those risks.

Dr Mark Zirnsak
Director
Justice and International Mission Unit
Synod of Victoria and Tasmania
Uniting Church in Australia
Phone: (03) 9251 5265

Acknowledgement: The Synod thanks Gillian Donnelly from Just Integrity Solutions for the assistance with this submission.

⁹⁷ https://reia.asn.au/wp-content/uploads/2015/09/REIA_News_No49_Sept15.pdf