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Industry perspectives on money laundering and financing of terrorism risks in non-financial sector businesses and professions

Julie Walters, Hannah Chadwick, Kim-Kwang Raymond Choo & Russell G Smith

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Foreword

In its *Organised Crime in Australia* report, the Australian Crime Commission stated that '[c]ontemporary estimates suggest that the level of money laundering in and through Australia is at least $10 billion a year' (ACC 2011: 3). Minimising opportunities for money laundering represents an important means of reducing the incidence of large-scale organised, financial crime in Australia. As financial institutions work towards full compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act), it is suspected that criminals may look to non-financial services sector businesses and the professional sectors in order to facilitate the laundering of illicit funds and the financing of terrorist activities.

The existing anti-money laundering/counter-terrorism financing (AML/CTF) regulatory framework is, at present, focused on the financial, gaming and bullion services sectors. However, in order to implement Australia's international obligations set out by the Financial Action Task Force (FATF) on Money Laundering and to make the use of professional services unattractive to those seeking to engage in money laundering and financing of terrorism, the Australian Government would need to extend the regulatory requirements to specified services provided by certain business and professional groups. Such regulatory controls would be in addition to the existing professional regulatory regime applicable to some registered practitioners such as legal practitioners, as well as the ordinary provisions of federal and state or territory criminal laws aimed at controlling money laundering and financial crime.

In order to provide evidence upon which any future reforms to the AML/CTF Act can be developed, the Australian Institute of Criminology (AIC) undertook research into the prevalence and future threat to Australia's non-financial services sector businesses and professions becoming involved in money laundering or financing of terrorism activities. In 2009, the AIC hosted a series of roundtable discussions at which executives and senior policy officers of business and professional associations from around the country met to discuss the proposed legislation and the nature and extent of risks to the sectors. These meetings revealed the necessity for more comprehensive insight into, and data on, the nature and extent of risks of money laundering and financing of terrorism to these sectors.

The AIC then undertook extensive research in order to determine industry perceptions of the level of risk that exists for legal practitioners, accounting professionals, real estate businesses, dealers in precious metals and precious stones, and trust and company service providers that are the business and professional sectors included within the FATFs recommendations. Different types of participants in each sector were assessed separately because of the considerable variation in roles, regulation and threats. In addition, the AIC undertook a survey of the legal sector to determine attitudes towards the proposed legislative reforms and perceptions of the level of risk of money laundering and financing of terrorism faced by the legal profession.

The research has been limited by having to rely on public source materials only and generally, the publicly available evidence of intentional money laundering and financing of terrorism in the business and professional groups examined was very limited. Accordingly, few examples of illegality that involved these businesses and professions were able to be identified. The absence of publicly available evidence of involvement in ML/TF does not, necessarily, imply that such conduct does not exist; rather, it is an indication that such conduct has not been detected by existing controls, or is not publicly available. Further exploratory research

using qualitative research methods and making use of law enforcement and intelligence agency resources, would be needed to provide a thorough assessment of the actual levels of risk.

The present study did, however, make good use of information obtainable from industry participants and industry bodies, case law and international publications. In order to ensure the validity of the findings, the AIC also spent considerable time and effort having them reviewed and workshopped with key agencies and professions affected by, or working in, the AML/CTF sector. The information presented relates to that examined by the AIC and does not necessarily reflect the policy position of the Australian government or other stakeholders.

Adam Tomison
Director and Chief Executive

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Acronyms

AAADA	Australian Antique and Art Dealers Association
AAT	Association of Accounting Technicians
ADIs	authorised deposit taking institutions
AFP	Australian Federal Police
AFSL	Australian Financial Services Licence
AIC	Australian Institute of Criminology
AML	anti-money laundering
AML/CTF	anti-money laundering/counter-terrorism financing
APESB	Accounting Professional and Ethical Standards Board
API	Australian Property Institute
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
BAS	business activity statement
BSA	Bank Secrecy Act
CALDB	Companies Auditors and Liquidators Disciplinary Board
CBIA	Committee of Business Incorporators Australia
CDD	customer due diligence
COAG	Council of Australian Governments
CSA	Chartered Secretaries Australia
DNFBPs	designated non-financial businesses and professions
FATF	Financial Action Task Force
FinCEN	Financial Crimes Enforcement Network
GST	goods and services tax
HKICPA	Hong Kong Institute of Certified Public Accountants
HMRC	Her Majesty's Revenue and Customs
ICAA	Institute of Chartered Accountants in Australia

IPA	Insolvency Practitioners Association
ITSA	Insolvency and Trustee Service Australia
JFBA	Japanese Federation of Bar Associations
LPP	legal professional privilege
MFAA	Mortgage and Finance Association of Australia
MIFA	Master Investment Futures Agreement
ML/TF	money laundering/terrorism financing
NAB	National Australia Bank
NIA	National Institute of Accountants
NSW OFT	New South Wales Office of Fair Trading
OLSC	Office of the Legal Services Commissioner
PCA	Property Council of Australia
PCMLTFA	*Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000*
PEPs	politically exposed persons
REIA	Real Estate Institute of Australia
REI NSW	Real Estate Institute of New South Wales
SARs	suspicious activity reports
SOCA	Serious Organised Crime Agency
TCA	Trustee Corporations Association of Australia
The Tribunal	Administrative Decisions Tribunal Legal Services Division

Legislation

AML/CTF Act	*Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)
Corporations Act	*Corporations Act 2001* (Cth)
Legal Profession Act	*Legal Profession Act 2004* (NSW)
Legal Profession Regulation	Legal Profession Regulation 2005 (NSW)
Notaries Act	*Public Notaries Act 1997* (NSW)
PATRIOT Act	*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 200*1 (US)
Pawnbrokers Act	*Pawnbrokers and Secondhand Dealers Act (1996)* (NSW)
POCA 2002 UK	*Proceeds of Crime Act 2002* (UK)
PSBA Act	*Property, Stock and Business Agents Act 2002* (NSW)
TAS Act	*Tax Agent Services Act 2009* (Cth)

Executive summary

Money laundering is the process by which criminals, particularly those involved in serious and organised crime, seek to convert illegally derived funds into assets that appear to be legitimate. Criminals use a range of sometimes complex procedures and transactions to disguise the proceeds of what they have done so that their funds cannot be traced and confiscated by the authorities. Such complex financial processes can also be used to disguise the origins of funds used to finance terrorist activities. In this case, often legitimately derived funds are used for illegal terrorist purposes.

Both types of activity have created concern for governments across the globe and led to the development of a sophisticated regulatory regime designed to deter and to prevent these illegal activities and to obtain financial intelligence for use by law enforcement and counter-terrorism agencies. Under Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act), at 30 June 2012, some 8,444 entities were enrolled with the Australian Transaction Reports and Analysis Centre (AUSTRAC) on the Reporting Entities Roll and the financial intelligence gathered is used by AUSTRAC and its partner agencies to examine cases of alleged financial crime, which may then be referred for investigation by police and where appropriate, referral for prosecution. In 2011–12, AUSTRAC provided financial intelligence to 19 Australian Government agencies and 20 state and territory government agencies that conducted two million searches of its data holdings (AUSTRAC 2012a).

As financial institutions and other regulated businesses work towards full compliance with the AML/CTF Act, it is suspected that criminals may increasingly look to the professional sectors in order to facilitate the laundering of illicit funds and the financing of terrorist activities. Professionals, such as legal practitioners and accountants, are potentially attractive to criminals because of their capacity to create corporate vehicles, their expert knowledge and the lack of suspicion that is generally directed towards them due to their high social standing. It is for these reasons that FATF recommendations require members to extend AML/CTF regulation to 'designated non-financial businesses and professions' (DNFBPs). It has been internationally recognised that legal practitioners, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers pose a ML/TF risk because of the nature of the services that they provide.

To be FATF compliant, Australia would need to extend the application of the AML/CTF Act to include these services. Whether it is desirable to do so largely depends on the level of risk of involvement in money laundering and financing of terrorism found to be present, and whether the costs of regulating them outweigh the likely benefits to be derived in terms of deterring financial crime, assisting in the investigation and prosecution of those alleged to have acted illegally, and in generating financial intelligence for law enforcement and other government agencies. Consideration also needs to be given to the need for Australia to be compliant with FATFs recommendations.

The present study

The Australian Institute of Criminology (AIC) undertook research in order to determine how industry views the level of risk that exists in the business and professional sectors representing legal practitioners, accounting professionals, real estate businesses, dealers in precious metals and precious stones and trust and company service providers, that are

the business and professional sectors included within the Financial Action Task Force (FATF) on Money Laundering recommendations. The research considered different types of participants in each sector separately because of the considerable variation in roles, regulation and threats. In addition, the AIC undertook a survey of a sample of practitioners within the legal sector to determine attitudes towards the proposed legislative reforms and perceptions of the level of risk of money laundering and financing of terrorism faced by the legal profession. Of course, it could be argued that those industry groups yet to be regulated could have sought to understate the level of risk that they perceived within their sectors so as to reduce the possibility of additional government regulation occurring. Nonetheless, it was apparent to AIC researchers that the industry representatives who agreed to participate in the study acted with integrity in discussing their views openly with the AIC.

The present report provides a review of public source information and the results of consultations with representatives of professional associations in Australia. It reviews the current regulatory environment in order to determine the likelihood of those working in the professional groups and businesses being implicated in money laundering or the financing of terrorism. The regulatory requirements examined included mechanisms for registration or licensing, client/customer identification and requirements governing financial transactions. These existing controls were not created to respond to risks of money laundering and the financing of terrorism (ML/TF) and some may be unsuited to detecting risks of this nature within the sectors examined. In addition, unwitting involvement by professional advisers may be difficult to detect.

An overview of the extent of regulation of these non-financial businesses and professions in selected countries in the European Union, North America and Asia was also undertaken. The United Kingdom was found to have the most extensive incorporation of DNFBPs into its anti-money laundering/counter-terrorism financing (AML/CTF) regulatory regime, followed by selected European Union and Asian countries. The experience of other nations indicated that regulating businesses using the AML/CTF regime did not completely ameliorate the risks of money laundering and terrorism financing taking place in those sectors.

Official crime data on money laundering and terrorism financing in these sectors from police, prosecution agencies, the courts and internal professional disciplinary sources was also reviewed. The AIC sought the views of industry representatives concerning the areas of their business that may be exposed to risks of money laundering and terrorism financing, including both intentional involvement of professionals and their clients/customers in illegal activities, as well as inadvertent complicity in money laundering and financing of terrorism activities.

On the basis of the sources examined, there was little evidence of intentional money laundering taking place in any of the business and professional groups in question. The research revealed that some professionals might demonstrate crime risks connected with some types of transactions, although these predominantly involved either fraud perpetrated by individual professionals for the purposes of personal gain, or licensing breaches in relation to occupations that required practitioners to pass specified character assessments. Evidence of unwitting involvement in money laundering through facilitation of business processes and procedures was more difficult to detect, although the individuals consulted during the research were confident that these risks were low. Arguably, the industry representatives consulted by the AIC could simply have been unaware of instances of unwitting involvement in money laundering taking place within their sector.

Legal practitioners

The current professional regulation of legal practitioners embodies a number of aspects of AML/CTF regulation required under international obligations, and, indeed, legal practitioners are currently subject to considerably greater regulation than the other business and professional groups who may be subject to AML/CTF regulation in Australia. Existing professional rules governing the practice of legal practitioners in Australia do not explicitly require any formal identification requirements for new clients or beneficial owners of funds held in trust, although legislation and rules governing professional practice, as well as principles of sound business conduct, mean

that client identification is invariably undertaken by legal practitioners in Australia. Trust account transactions were identified by the industry representatives consulted as potentially involving a high risk of involvement in money laundering activities. An example of a legal practitioner based in Australia being directly involved in money laundering was an investigation reported as one of AUSTRACs typologies in which a solicitor had engaged in structuring transactions. Legal disciplinary procedures have identified cases in which solicitors have been involved in moving or hiding funds illicitly for personal gain.

Accountants

Accountants are not statutorily regulated as a single profession, although most of the services provided by accountants are subject to some form of statutory controls. Current regulations governing tax agents and the use of Business Activity Statements (BAS) do not include specific customer identification requirements or obligations to report suspicious financial activities. Accountants who offer services subject to AML/CTF regulation must comply with the AML/CTF obligations when providing those services to their customers, as is the case with any service provider. The types of services with existing AML/CTF requirements that are most likely to be offered by an accountant are also those that require the accountant to obtain an Australian Financial Services Licence. Some services, such as establishing business structures, are however, unregulated with respect to the services provided by accountants. Accountants are, however, subject to the ethical rules and codes of practice of the accounting professional bodies which include disciplinary regulation. The professional bodies describe this as a co-regulatory environment. Membership of a professional organisation is, however, voluntary and this results in some accountants being able to practice outside these regulatory controls.

A number of AUSTRAC typology and case study reports involved accountants being implicated in money laundering activities. In one case, an Australian accountant had been convicted of structuring offences. Two other notable money laundering cases have involved four Australia-based accountants and an Australian based in Vanuatu, but these have yet to be concluded in the courts. These charges have not been proved, although they potentially point to offshore structures as high-risk transactions for accountants. These charges and another involving terrorism financing charges, resulted from law enforcement efforts rather than professional disciplinary controls. One accountant has now been convicted of financing of terrorism, although a non-custodial sentence was imposed. Professional disciplinary measures are intended to deal with complaints and breaches of the accounting professional bodies' standards and do not involve investigations of a criminal nature.

Real estate agents

Real estate agents, like legal and accounting professionals, do not have any statutory customer identification requirements to comply with, and this represents a key vulnerability of the sector. Industry representatives identified customer identification as a risk for real estate transactions, although it was stressed that the risk was linked to the type of transaction involved. The AUSTRAC typology relevant to this sector suggested that purchasing property in a false name, or using cash, was a concern for real estate transactions. The disciplinary mechanisms for real estate agents are able to identify failures to meet auditing and other financial regulatory requirements, but are less well-suited to identifying other forms of money laundering or financing of terrorism.

Dealers in precious metals and stones

Pawnbrokers and secondhand dealers (in New South Wales) are subject to regulation that mirrors AML/CTF international obligations in relation to customer identification, but with the exception of suspicious transaction reporting requirements. Jewellers, valuers and wholesale dealers in precious stones do not have statutory registration or licensing requirements, although members of the valuers'

industry body are subject to some self-regulation. No instances were discovered of dealers in precious metals and stones, or transactions involving unregulated metals and stones, being linked to money laundering or the financing of terrorism. Industry representatives pointed to the risks of diamonds, particularly, as a convenient and liquid means of storing and transporting value across international borders, but they were unable to provide actual cases where this had occurred.

Trust and company service providers

Trust and company service providers include a diverse group of businesses subject to very different levels of regulatory control. Providers of office space, registered address providers and businesses offering post office boxes are unregulated with respect to the core AML/CTF obligations.

Company formation agents are required to undertake some customer identification steps in connection with documents submitted to the Australian Securities and Investments Commission (ASIC). Auditors and liquidators are registered with ASIC and the Companies Auditors and Liquidators Disciplinary Board is able to deal with complaints against members of these groups. Insolvency and Trustee Service Australia performs the same role with respect to bankruptcy trustees. Corporate trustee companies have customer identification and record-keeping obligations and are supervised by the Attorney-General of each state and territory, who is able to conduct audits.

Two instances were found where companies were used to facilitate terrorist activities, although not the financing of terrorism, and to launder the proceeds of crime. The role of company service providers in each case was, however, unclear. Some industry representatives considered that the disparity in regulation between states/territories presented a risk factor for illicit transactions.

Conclusion

Generally, the evidence of intentional money laundering and financing of terrorism provided by the business and professional groups that participated in this research was very limited. There were few examples of money laundering and even fewer of financing of terrorism that the industry groups consulted were able to identify as having involved the members of their businesses and professions. It was not possible to assess the level of risk among those professionals who operate outside current legislative and professional regulatory controls (such as individuals who practice illegally) and it is among these groups that levels of risk may well be higher. In addition, it is possible that the representatives of the businesses and professional associations consulted might simply have been unaware of the criminal activities undertaken by some individuals within their associations. Further exploratory research using qualitative research methods would be needed to provide a thorough risk assessment relating to these individuals.

The risk-based approach of AML/CTF regulation would likely see different regulatory burdens between the broad span of businesses included in the FATF's definition of DNFPBs in response to the different types and degrees of risks. Australia's risk-based approach allows reporting entities to tailor their compliance programs and expenditure to the level of risk they determine to be applicable to their individual circumstances, with the outcome being that low-risk entities might be likely to have relatively low levels of compliance costs.

The present study has made use of the data obtainable from public sources, industry participants and industry bodies, case law and international publications. Further studies of this kind would benefit from access to de-identified information from the law enforcement community, as well as archived disciplinary cases from all of the industry bodies involved in co-regulatory environments. Reliance on public-source material carries with it a number

of limitations including the inability to examine confidential intelligence information held by law enforcement and intelligence agencies as well as the fact that the documented cases on the public record are only those that have been detected, proved and publicised. Arguably, other instances of undetected and unreported matters involving professionals may exist but may not be identifiable. The information presented in this report relates to that examined by the AIC and does not necessarily reflect the policy position of the Australian government or other stakeholders.

Introduction

Both money laundering and financing of terrorism represent an area of continuing concern for governments, law enforcement agencies and financial institutions worldwide because of the large sums of money involved and the impact this has on government resources and communities. Although the actual amount of the proceeds of crime available for laundering will never be known with accuracy, the latest estimate of the amount of money laundered through the global financial system is 'equivalent to 2.7 percent of global GDP (2.15–4%) or US$1.6 trillion in 2009' (UNODC 2011: 7). In its *Organised Crime in Australia* report, the Australian Crime Commission stated that '[c]ontemporary estimates suggest that the level of money laundering in and through Australia is at least A$10 billion a year' (ACC 2011: 46).

Australia has developed a complex array of responses to the problems of organised and financial crime that include the AML/CTF regulatory regime. In particular, whole-of-government initiatives focused on coordinating operational efforts of Commonwealth law enforcement and regulatory agencies responsible for addressing and combating organised crime provide a sophisticated response to money laundering and financing of terrorism as outlined by AUSTRAC (2011: 5):

> Money laundering is one of the three critical organised crime risks to the Australian community identified in the classified 2010 Organised crime threat assessment and articulated in the unclassified and published Organised crime in Australia 2011. Both of these reports were developed by the Australian Crime Commission, the Commonwealth agency established to combat serious and organised crime. Money laundering is considered a critical risk because it enables serious and organised criminal activity, it can undermine our financial system and economy and it can corrupt individuals and businesses. Based on the 2010 Organised crime threat assessment, combating money laundering is a priority under the Commonwealth Organised Crime Strategic Framework. The Framework provides a united strategic direction for all agencies with responsibility for combating organised crime and sets the objectives for the Commonwealth Organised Crime Response Plan. The plan, released in November 2010, coordinates and unites the operational efforts of Commonwealth law enforcement and regulatory agencies responsible for addressing/combating organised crime.

Those seeking to launder funds or to engage in acts of terrorism may increasingly turn their attention to the professional and non-financial business sectors

as banking and other financial institutions work towards full compliance with AML/CTF regimes. The Federal Financial Institutions Examination Council suggest that non-financial professional service providers, such as legal practitioners and accountants who act as advisors for their clients,

> …allow for ongoing business transactions with multiple clients. Generally, a bank has no direct relationship with or knowledge of the beneficial owners of these accounts, who may be a constantly changing group of individuals and legal entities (FFIEC 2007: 283).

Professionals, such as legal practitioners and accountants, are potentially attractive to criminals because of their capacity to create corporate vehicles, their expert knowledge and the lack of suspicion that is generally attached to them due to their high social standing. A former Chief Executive Officer of the Australian Crime Commission noted that:

> a growing number of organised crime groups [have been] using professional facilitators and service providers, including financial advisers and accountants...this enables them to carry out criminal activity in areas where they lack the necessary skills or knowledge, such as complex financial crimes (Jacobs 2009: 3).

Increased regulation of financial institutions has reportedly led those wishing to launder funds to seek out sophisticated advice from the professions to set up of money laundering schemes (He 2006).

Internationally, FATF (2012) has sought to coordinate global efforts to minimise risks of money laundering and terrorism financing by promoting its Forty Recommendations that ask countries to incorporate these principles into their criminal justice systems, law enforcement procedures and financial regulatory systems. FATF has considered occupations that hold legitimate roles in accessing financial services and businesses that facilitate access to creating companies and other legal structures to hold an increased vulnerability to those seeking to enter illicit funds into financial systems (FATF 2004). FATF (2012) has described businesses and professions that perform these roles as gatekeepers to financial systems and argued that their potential involvement in illicit transactions stems from the increased scrutiny placed on financial services. As financial services become more difficult to use undetected for illicit purposes, the attraction of services to navigate funds into the financial system or through alternative channels arguably increases.

In 2003, FATF expanded its Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing (the Recommendations) to include DNFBPs. The Australian Government would need to examine the desirability of extending the application of the AML/CTF Act to specified services provided by a number of business and professional sectors not currently regulated. The sectors that could be subject to regulation include legal practitioners, accountants, real estate agents, dealers in precious metals, and trust and company service providers. The question that has arisen is whether it is necessary and desirable to extend the AML/CTF Act to specified services provided by these business and professional sectors. The determination of this issue largely depends on the level of risk of involvement in money laundering and financing of terrorism found to be present and whether the costs of regulating them outweigh the likely benefits to be derived in terms of minimising financial crime and assisting in the investigation and prosecution of those alleged to have acted illegally.

Definition of non-financial businesses and professions

The FATF's suggested definition of DNFBPs encompasses casinos, real estate agents, dealers in precious metals, dealers in precious stones, legal practitioners, notaries and other lawyers, accountants, and trust and company service providers.

Real estate agents, dealers in precious metals and stones, and trust and company service providers are not traditionally considered 'professions' in the same way as service providers such as accounting, medical, and legal practitioners are, as they lack the educational barriers to entry of traditional professions and do not have the same level of internal regulation regarding professional conduct. This report, for simplicity, describes all of the DNFBPs included in its scope as 'professions', even where this description might not be entirely appropriate.

As casinos are currently reporting entities under the existing AML/CTF Act, they are not addressed further in this report.

Legal practitioners and accountants

The FATF Recommendations (2012) define lawyers, notaries, other independent legal professionals and accountants who are subject to regulation as including 'sole practitioners, partners or employed professionals within professional firms', but excluding 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CTF measures (FATF 2012: 113). Recommendation 22(d) of the current FATF Recommendations of 2012 requires lawyers, notaries, other independent legal professionals and accountants to apply customer due diligence (CDD) and record-keeping requirements when they prepare for or carry out transactions for their clients 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 (FATF 2012: 20).

The legal practitioners in Australia considered in the scope of this report are solicitors, barristers and public notaries. The report refers to these occupations within the broader legal profession as 'legal practitioners'. The structure of the profession in Australia means that solicitors and public notaries are primarily the practitioners that supply the services identified by the FATF to clients.

Australian public notaries predominantly prepare and certify documents for use overseas. The common functions of notaries that are of particular interest are authenticating documents and certifying copies, witnessing signatures and authenticating identity, preparing and witnessing Powers of Attorney, witnessing documents and authenticating transactions for businesses, and preparing and certifying wills, deeds, and contracts and other documents for deceased estates. Each of these activities could be relevant to typologies of ML/TF, as well as financially motivated predicate offences.

The accounting professionals included in the scope of this report are public practitioners providing services to individuals and legal persons, and tax agents, providing limited services for tax matters to the public. The disciplinary mechanisms and disciplinary outcomes of public practitioners are the focus of the reports' discussion of accounting professionals. This is the area of the industry deriving the majority of its income from business taxation and personal taxation and accounting services (FATF 2005c).

Real estate agents

Agents representing property vendors are the core group from the real estate industry considered in this report. Property valuers, mortgage brokers and buyers' agents have also been included because of their contributing roles in the sale of property and the potential for that role to be implicated in money laundering.

Dealers in precious metals and stones

The precious metals and stones industry has four key components—mining companies, refineries (turning rough diamonds into polished diamonds), manufacturers and retailers. All four components of the industry are involved in buying or selling precious metals and stones, although this report focuses on retail and wholesale participants in the industry.

Retail participants include new and secondhand dealers in jewellery, precious stones and precious metals. Retailers include jewellers and auctioneers as well as pawnbrokers, secondhand dealers and antique dealers when buying or selling precious metals and stones. Pawnbrokers are differentiated from secondhand dealers in state and territory legislation by lending money to the public on the security of pawned goods.

As bullion dealers are currently reporting entities under the AML/CTF Act, they are not discussed in the scope of this report.

Trust and company service providers

The FATF definition of trust and company service providers refers to persons or businesses that provide any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person (FATF 2012: 114).

The service providers operating in Australia that are not included in other categories of DNFBPs considered in the scope of this report are company formation agents, company secretary service providers and company director service providers, post office box and locked bag providers, office space lessors, businesses providing registered addresses and public trustees.

Auditors and liquidators, and insolvency practitioners are also discussed as trust and company service providers. Despite the substantial overlap with the legal and accounting professions for membership and education requirements, service providers in these fields do not completely fit into either professional group.

Scope of the current project

This report is intended to inform policymakers concerning industry perspectives of the potential threats and vulnerabilities of non-financial businesses and professions to ML/TF. The AIC assessed the risk of unwitting and complicit money laundering or terrorism financing activities that may be engaged in or facilitated by various DNFBPs. This assessment sought to determine vulnerabilities of DNFBPs in Australia by assessing the current regulations applied to each sector, the barriers to entry, any customer identification requirements for providing services, auditing requirements and the disciplinary mechanisms established by legislation. The input of industry bodies and other professional organisations into monitoring the professions was also considered as part of the vulnerability framework.

The level of risk was assessed by examining previous examples of ML/TF in each of the professional groups that have been publicly reported. It is important to note that such activities might involve businesses in two ways. The clients and customers of businesses might engage in illegal activities, and use the business as a money laundering or terrorism financing facilitator, or the businesses might engage in these acts directly. Case studies and the outcome of disciplinary proceedings for each sector are presented where such information was available. The limited evidence available in the public domain is supplemented by a presentation of the opinions of representatives from each sector who were consulted by the AIC.

This assessment also sought to provide information on the size and characteristics of the DNFBPs in Australia. For legal practitioners and accountants, particularly, the income information provides some insight into the relative importance of services identified by participants and FATF as high risk. The extension of AML/CTF controls to DNFBPs in the United States, the United Kingdom, Belgium, France, Germany, Hong Kong, Singapore, Republic of China, Taiwan (Taiwan) and Canada are documented in the report.

The study also examined whether the existing regulatory controls and other controls in place for each sector were able to discover any evidence of ML/TF, should it exist. To this end, the disciplinary outcomes, cases and views of industry representatives addressing fraud and theft were also considered, as were reports of disciplinary proceedings and the nature of matters drawing individuals to the attention of disciplinary bodies.

Additional relevant information is also presented in other AIC reports, published separately. These report the results of a comparative review of AML/CTF regimes in selected countries worldwide (Walters et al 2011) and a survey of a sample of legal practices

in eastern Australian jurisdictions to ascertain their perceptions of the AML/CTF regime (Choo et al. forthcoming).

Methodology and research design

The report is based on publicly available information, the results of consultations undertaken with industry representatives and additional follow-up information from industry organisations to identify the relevant legislation, case law, disciplinary outcomes, typologies and vulnerabilities for each sector. The AIC's position external to the law enforcement community restricted the analysis to publicly available information and qualitative data. This is subject to a number of limitations discussed below.

Regulatory and other legal instruments

The legislation and supporting regulations for each sector were documented by first examining any relevant federal instruments and then reviewing the relevant state and territory-based instruments. Owing to the complexity involved in each state and territory's regulatory framework, it was decided to use the case study of New South Wales to illustrate the ways in which professional regulation is undertaken in each of the relevant sectors.

Cases and statistics

Case law databases were examined for any relevant criminal cases, with New South Wales being again used as a model. The information from New South Wales was supplemented by cases and data from other states, where the industry participants drew attention to relevant cases or to readily available and comprehensive information.

Publicly available information on disciplinary cases from all relevant regulatory bodies and industry organisations was examined to show the extent to which members of the DNFBPs had been involved in ML/TF.

The following sources were examined:

- media releases from the Australian Federal Police (AFP) and from ASIC;
- AUSTRAC's typologies and case studies report series;
- Office of the Legal Services Commissioner (OLSC) NSW annual report series and website;
- New South Wales Office of Fair Trading website information;
- Consumer Affairs Victoria annual report series;
- Institute of Chartered Accountants in Australia annual report series and website;
- CPA Australia website;
- New South Wales Bar Association annual report series and website;
- Mortgage and Finance Association of Australia website;
- industry-based commentary websites and publications; and
- media news reports of relevant cases.

Of particular importance were the typologies and case studies reports published by AUSTRAC (2012–07). These were examined for each relevant sector and sanitised case studies and scenarios based on intelligence, investigations and pending cases were extracted. It should be noted that these typology examples do not necessarily involve cases in which allegations have been proved and suspects convicted of relevant offences. Rather, AUSTRAC and other agencies use typologies to inform businesses about the methods that may be used to launder money or to finance terrorism (AUSTRAC 2010).

Opinions of industry participants

Representatives from industry organisations and regulatory bodies were invited to participate in one of five industry-specific roundtable discussions. The roundtables attracted 42 participants from prominent industry organisations and those representing different roles within each DNFBP area. All participants were briefed about the project and the role of the AIC and were given a list of key topics to be covered. The participants were also given industry-specific money laundering case studies, predominantly sourced from overseas jurisdictions, as background information. These case studies are reproduced in *Appendix 1*.

The AIC received additional information after the roundtables on disciplinary proceedings from CPA Australia, OLSC NSW, Legal Practice Board of Western Australia, Legal Services Commission (Queensland), the National Council of Jewellery Valuers and the Mortgage and Finance Association of Australia. The Australian Antique & Art Dealers Association informally provided information on the regulation of antique dealers.

Some of the industry representatives provided additional information, or additional opinions on the subject matter, in response to receiving a draft outline of the report. The additional information has been incorporated into the report. Any additional opinions offered by members of the professions have been flagged as such and were included into the risk assessment.

The 11 industry stakeholders present at the legal profession roundtable represented the:

- Law Council of Australia;
- Law Society of New South Wales;
- OLSC NSW;
- Legal Services Commissioner of Victoria;
- Law Institute of Victoria;
- ACT Law Society;
- Legal Services Commission, Queensland;
- Queensland Law Society;
- Law Society of Western Australia; and
- Law Society of South Australia.

The accounting profession roundtable was held with seven participants from the Institute of Chartered Accountants in Australia, the National Institute of Accountants Australia, Accounting Professional and Ethical Standards Board, the National Association of Accounting Technicians and CPA Australia.

Eight representatives from the Australian Property Institute, Real Estate Institute of Australia, Valuers Registration Board (Queensland), ACT Office of Fair Trading, Real Estate and Business Agents Supervisory Board and Settlement Agents Supervisory Board, Mortgage and Finance Association of Australia and the Australian Property Council participated in the real estate sector roundtable.

The precious metals and stones roundtable was attended by eight representatives from the Diamond Guild Australia, Auctioneers and Valuers Association of Australia, National Council of Jewellery Valuers, Gemmological Association of Australia, International Coloured Gemstone Association and the Minerals Council of Australia.

The eight industry representatives attending the trust and company service providers and insolvency practitioners roundtable were from the Institute of Internal Auditors Australia, Association of Superannuation Funds Limited, Insolvency Practitioners Association, Tax Institute of Australia, Financial Planning Association of Australia and the Committee of Business Incorporators Australia.

The range of participants, representing differing viewpoints and interests, at each roundtable offered a range of responses and opinions on the risks in each sector. The views of those participants, reported in the section *Assessments of risk in the non-financial business and professional sectors in Australia* have been included to reflect the diversity of opinions offered during the consultations and do not reflect the view of a single organisation.

Limitations of the research

The roundtables grouped industry participants from each of the broad sectors identified by FATF. Some services and transactions can involve participants from more than one of the business sectors or none at all. Real estate sales and purchases illustrate this point. A legal practitioner might undertake conveyancing for a transaction facilitated by a real estate agent where the buyer has used a mortgage broker to identify the loan ultimately used to finance the purchase. Alternatively, the buying and selling parties may conduct the transaction without involving any of these service providers or only some of them.

In this particular example, the real estate industry participants discussed conveyancing issues at length during the sector roundtable event as those participants considered it a key topic within their industry. The legal practitioners' event, conversely, involved little discussion of conveyancing risks and instead focused on issues such as trust funds and self-regulation. The resultant conveyancing discussions in this report, based on the data

collection outcomes, are presented with others from the real estate sector for this reason.

Service providers such as auditors, liquidators and insolvency practitioners were considered along with trust and company service providers. There was substantial overlap between the services offered by trust and company service providers and other professions such as legal and accounting services. Membership of a law society or accounting professional body is a prerequisite for membership of the Insolvency Practitioners Association of Australia. Legal and accounting practitioners, as well as dedicated company formation agents, may facilitate customers wishing to create legal structures. The roundtable discussion held for trust and company service providers included these services with the intention of facilitating a more in-depth discussion. This report's analysis of these services is contained within the sections discussing trust and company service providers.

Data sources

The data used in this report were sourced from publicly available information and from industry associations and participants. The AIC's mandate as a research agency precluded the authors from accessing information gathered by law enforcement agencies as this intelligence may be sensitive, untested and part of continuing investigations. Operational sensitivities therefore place considerable limitations on the findings of this report.

Industry supplied evidence

The publicly available details of disciplinary cases from professional organisations were quite restricted in most cases and usually did not contain information on how breaches were committed. This was a serious limitation where illegal activities involved fraud or transactions amounting to money laundering. Some representatives, such as those from the legal profession in some states, provided additional information ameliorating this problem to an extent. Many of the disciplinary case reports from the relevant regulators of the professional also lacked the detail needed to identify examples of activities that might be classified as money laundering in other matters.

Law reporting

Case reports of money laundering offences are key pieces of evidence necessary to establish the nature and extent of money laundering in the sectors in question. Often charges of this nature are heard in the lower courts whose decisions are not extensively reported. The authors examined money laundering cases that had progressed beyond lower courts to be documented in law reports or published in other forums such as legal databases. Without access to the decisions of lower courts, the authors could not undertake an assessment of the circumstances of all of the proven money laundering cases in Australia.

Scope

Almost all aspects of all of the DNFBPs have some state-based regulatory requirements. There are differences in the approaches taken by each state. Even in the case of the legal profession where many of the requirements to practise are the same, the states still vary with respect to aspects relevant to money laundering, such as financial auditing practices that are able to detect a range of financial irregularities that may be indicative of money laundering. In other businesses, such as pawnbrokers, the variation between state-based requirements is considerable. In order to provide some level of detail and comparability between sectors, the current research focused on the legislation and regulations applicable in New South Wales only. Any conclusions based on information derived only from New South Wales need to be treated with the limitations of this source in mind.

The well-documented difficulties associated with identifying transactions used to finance terrorism (see Smith, McCusker & Walters 2010) are also reflected in the scope of this project. The project has focused on money laundering threats and vulnerabilities rather than also separately considering the financing of terrorism because of the following factors:

- the paucity of cases of terrorism financing in Australia and other jurisdictions, particularly those beyond examples involving businesses in the financial sectors in the United States and United Kingdom;

- the absence of other evidence, outside of case law, of terrorism financing taking place in Australia; and
- the difficulty of identifying any proxy measures for terrorism financing transactions outside of direct evidence.

Uneven input from industries

This report contains more detailed discussions of the risks and vulnerabilities of legal practitioners and accounting professionals than those of the other DNFBPs. The uneven focus on these two professions is the result of several factors. Legal practitioners and accounting professionals, and to a lesser extent participants in the real estate industry, form more cohesive groups than businesses described as trust and company service providers or dealers in precious metals and stones. Gathering input from trust and company service providers, and dealers in precious metals and stones, as groups was more problematic than from the other sectors in part because of the looser association between businesses. This reflects the wider range of services provided by business in these two 'industries' than in the other three sectors.

Legal practitioners and accounting professionals, and also to a lesser extent real estate industry participants, are also each subject to more regulation and self-regulation than the other two industries. The existing requirements for legal practitioners, accounting professionals and real estate participants are complex and because they have been regulated for extensive periods of time, more information was available for examination.

Timeframe

The research conducted for this study involved extensive review of publicly available evidence both from within Australia and internationally. In order to ensure that the information accurately reflected what was known by those working in each sector, preliminary drafts of the report were circulated for comment and feedback from all relevant stakeholders. This iterative process of review and revision took some considerable time and delayed finalisation of the final draft report, but it was important to ensure that the views of relevant stakeholders and Australian Government agencies were considered and integrated in the final report.

Plan of report

An overview of the size and where available, the income sources of DNFBPs in Australia, is provided in the next section entitled *Designated non-financial businesses and professions in Australia*. The report presents a regulatory overview of each of the types of service providers in Australia in the section entitled 'professional regulation in Australia at present'. The overview contains:

- the requirements businesses must meet to provide a specific service;
- the registration and licensing systems;
- the auditing mechanisms; and
- the oversight and disciplinary mechanisms.

The self-regulatory mechanisms used in each sector are outlined in conjunction with the legislative requirements.

The key AML/CTF legislation and regulation applicable to the DNFBPs in the United States, United Kingdom, Belgium, France, Germany, Hong Kong, Singapore, Republic of China, Taiwan (Taiwan) and Canada are outlined in the section entitled *The characteristics and regulation of non-financial businesses and professions overseas*. The relevant case law shaping the application of AML/CTF measures in these countries is also documented. Any available information on the characteristics of the DNFBPs is also provided for these countries in this section.

The section entitled, *Assessments of risk in the non-financial business and professional sectors in Australia* presents the opinions and limited direct evidence of ML/TF by DNFBPs in Australia. These are framed within the more general risks of crimes in the professions that have been presented in the preceding section entitled *Crime risks in the non-financial business and professional sectors*

in Australia. Dishonesty in the professions, as well as the specific predicate offences of tax fraud, mortgage fraud and financing fraud, are also examined in these sections.

These two sections also present the evidence available of ML/TF in the DNFBP sectors in Australia. The evidence discussed includes cases of ML/TF that involve participants in these industries and charges that are still pending. The matters of interest in any disciplinary proceedings initiated by external bodies and from industry associations are presented. The cases and proceedings are supplemented by the opinions of key representatives from each profession on the risk areas for money laundering.

The key vulnerabilities and threats to each DNFBP are summarised in the final concluding section as are suggestions for future research.

Designated non-financial businesses and professions in Australia

This section presents information on the size and other characteristics of the professions and businesses that provide services as legal practitioners, accounting professionals, real estate agents and related services, dealers in precious metals and stones, and as trust and company service providers. Understanding the size and income characteristics of these businesses and professions is important to identify the types of businesses and professional practices that might be most at risk of involvement in money laundering and financing terrorism, and in order to devise appropriate risk reduction measures.

Legal practitioners

Current information on the number of legal practitioners in Australia is not available, although based on the information provided by jurisdictions to the National Legal Profession Reform Taskforce (2010), it was reported that 61,633 practising certificates were issued in 2008–09. Details of the number of practising certificates issued to both solicitors and barristers in 2008–09 for each state and territory are shown in Table 1.The Taskforce also reported that based on the information provided by each jurisdiction, there were an estimated 5,073 admissions to legal practice in 2008–09, although these numbers are only estimates given some limitations in the data received from several jurisdictions (National Legal Profession Reform Taskforce 2010).

This compares with an earlier estimate of 29,159 solicitors working in 7,566 practices in Australia in 2002 reported by the Australian Bureau of Statistics (ABS 2003a). The Bureau has also reported that there were 15,326 businesses providing legal services and legal support services at June 2008

Table 1 Legal practising certificates issued in Australia by service type in 2008–09

	NSW	Vic	WA	NT	SA	Qld	Tas	ACT
Solicitors	24,715	13,587	4,112	456	3,439	8,209	450	1,399
Barristers	2,107	1,831	192	43	n/a	981	39	73
Total	26,822	15,418	4,304	499	3,439	9,190	489	1,472

Source: National Legal Profession Reform Taskforce 2010: 6

Table 2 Size of solicitors' practices in 2001–02

Size	Proportion of practices (%)	Cumulative proportion (%)	Practices (n)
1 principal	69.2	69.2	5,234
2 principals	17.8	87.0	1,350
3–5 principals	10.4	97.4	783
6–9 principals	1.4	98.8	108
10+ principals	1.2	100.0	91

Source: ABS 2003a

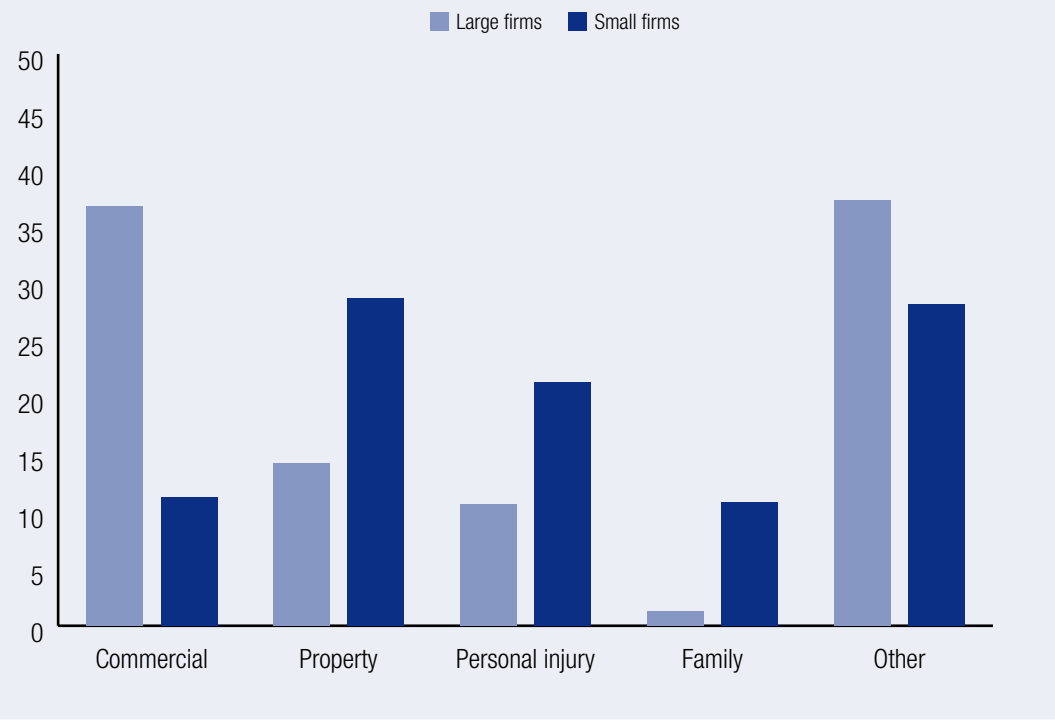
(ABS 2009). The bulk of these (n=11,244) were solicitors firms, patent attorneys, or payroll and legal support services. Unincorporated businesses comprised 65.4 percent of these businesses and 20.1 percent were incorporated. The remaining 14.5 percent of businesses offered services in the name of trusts.

The vast majority of solicitors' firms in 2001–02 were very small businesses (ABS 2003a). More than 97 percent of all practices in 2001–02 had fewer than six principals (as illustrated in Table 2) and more than two-thirds of all practices had a single solicitor only. Corporate practices represented a very small proportion of solicitors firms in 2001–02.

Income

Legal practices in Australia generated $10.6b in income in 2001–02. Government solicitors and public prosecutors contributed $414m to this figure, legal aid bodies contributed $326m and patent attorney firms generated $888m. Private solicitor practices generated $8.4b in income in 2001–02 and barristers' practices generated $1.1b in the same period (ABS 2003a).

Figure 1 Income distribution for legal services for small (fewer than 6 principals) and large (more than 6 principals) solicitors' practices in 2001–02 (%)



Source: ABS 2003a

Table 3 Source of revenue for solicitors' firms in 2001–02

Type of service	Proportion of income (%)
Property	21.0
Wills, probate and estate activities	3.6
Banking and finance	6.3
Commercial	24.7
Family	5.8
Criminal	1.7
Environmental	1.0
Intellectual property	2.5
Industrial relations	2.9
Personal injury	15.6
Administrative/constitutional law	0.9
Other legal	9.3
Other revenue	4.7

Source: ABS 2003a

Table 4 Accounting professionals in 2008–09

Subcategory	Estimated number of practices	Estimated number of individuals
Public accountants	9,491	n/a
Tax agents	n/a	24,000
BAS agents	n/a	n/a
Total	>9,491	>24,000

Note: Public accountant figures from 2008. Tax agent estimate is from 2009

Source: IBIS World 2008. Industry estimates from CPA Australia and the Institute of Chartered Accountants Australia presented during Roundtable discussions

The overall contribution to gross domestic product in Australia from private legal practices for 2001–02 was $7.2b being income less expenditure. Solicitors' practices contributed $6,316.7m and barristers practices contributed the remaining $896.8m.

Small practices (with fewer than 6 solicitors) contributed 46.9 percent of the $8.4b of income generated, with the remaining 53.1 percent coming from firms with more than six principals. The combined income generated by small and large firms was approximately the same in 2001–02, although the type of services generating it differed between the two. Commercial legal services generated the largest proportion (36.7%) of income for large firms. Smaller firms, by contrast, received the largest proportion of income (28.6%) from property matters. Figure 1 outlines the contributions from other types of work to the total income for small and large solicitors' firms in 2001–02. Property matters contributed 14.2 percent of income for large firms (ABS 2003a).

Apart from commercial and property services, the additional types of work that might constitute financial or real estate transactions listed as sources of income by the Australian Bureau of Statistics are will, probate and estate activities, and banking and finance services. Financial and property transactions contributed 55.6 percent of revenue for solicitors' firms (of all sizes) in 2001–02. Table 3 provides the breakdown for all types of services for all solicitors' firms for this period.

Commercial and property services remained the two legal services generating the largest percentages of income for solicitors' firms, patent attorney businesses, service/payroll entities and other legal support service providers (ABS 2009).

Table 5 Size of accounting practices in 2001–02

Size	Proportion of practices (%)	Cumulative proportion (%)	Practices (n)
1 principal	67	67.0	6,610
2 principals	21.6	88.6	2,134
3–4 principals	8.7	97.3	854
5–9 principals	2.3	99.6	226
10–19 principals	0.3	99.9	25
20+ principals	0.1	100.0	11

Source: ABS 2003b

Table 6 Income sources for accounting practices in 2001–02

Category	Percentage
Business taxation	37.0
Personal accounting and taxation	18.0
Assurance services	17.0
Management and business consulting	12.0
Financial planning and investment advice	2.8

Source: ABS 2003b

Table 7 Sources of income by accounting firm size in 2001–02

	Principals (n)						
	1	2	3–4	5–9	10–19	20+	All
Business tax	45.6	50.5	49.5	36.3	36.6	23.5	36.7
Personal accounting and tax	31.9	24.9	22.9	19.5	22.9	6.7	18.0
Auditing and assurance	3.6	4.5	7.3	9.6	15.7	31.8	16.5
Insolvency, reconstruction and bankruptcy	3.1	0.3	4.9	9.2	5.6	9.1	6.2
Management and business consulting	6.5	9.0	8.0	8.4	10.9	18.3	12.1
Financial planning and investment	1.5	4.4	3.9	3.6	3.0	2.3	2.8
Other	5.5	4.1	1.0	11.8	3.0	6.1	5.8
Total (professional work)	97.8	97.6	97.6	98.3	97.7	97.8	97.8

Source: ABS 2003b

Accountants

There were 9,860 accounting practices in Australia in 2002 (ABS 2003b). Industry representatives estimated that there were 24,000 tax agents in 2009. Official statistics and representatives from the accounting profession associations were unable to reveal the number of BAS agents. Table 4 shows that some estimates (IBIS World 2008) suggest that the number of accounting firms decreased to 9,491 in 2008.

Two-thirds (n=6,573) of accounting firms identified in 2001–02 were businesses with a single principal accountant. The proportion of accounting practices with more than four principals was just 2.7 percent in 2001–02 (ABS 2003b). The composition of accounting practices is outlined in Table 5.

Table 8 Real estate businesses

Subcategory	Estimated number of businesses	Estimated number of individuals
Agents	10,001	25,910
Property developers	n/a	n/a
Property valuers	n/a	7,500
Mortgage brokers	n/a	13,245
Total	10,001	46,655

Note: Real estate agent figures from 2003. The number of individuals represents the number of sales employees in the industry. Property valuers estimate based on membership of the Australian Property Institute in 2009. This figure includes other occupations but does not represent all property valuers. Mortgage brokers estimate based on membership of the MFAA in 2009. This figure includes other occupations but does not represent all mortgage brokers

Sources: ABS 2004; API nd

Table 9 Type of real estate businesses in Australian in 2002–03

Type of business	n	%
Franchise	3,639	36.4
Non-franchised agency	4,545	45.4
Other real estate business	1,818	18.2
Total	10,001	100.0

Source: ABS 2004

The average number of employees in each firm in 2001–02 was 3.5, although for large firms (with at least 20 principals or partners), the average number of employees was 1,824.

Accounting practices employed 81,127 people at 30 June 2002. Of the 46,474 practising accountants at 30 June 2002, 14,942 were principals or proprietors of accounting firms.

Income

Smaller practices derived higher proportions (78%) of income from business taxation and personal accounting and taxation than the average. For larger firms, by contrast, these categories of income represented only 30 percent of all revenue. Assurance work (32%) and management and consulting (18%) contributed greater proportions (ABS 2003b).

Table 6 shows the sources of income for the group as a whole. The largest proportion of income, across the group, was generated from business accounting.

Table 7 provides the breakdown of income sources for firms according to the number of principals or partners.

Real estate agents

Table 8 shows best estimates of the number of participants in the real estate industry in Australia at present. There were 10,001 businesses providing real estate agents services in 2003, employing 25,910 sales staff. There were 7,500 valuers (and other professionals) with membership to the Australian Property Institute in 2009 and the Mortgage and Finance Association of Australia's (MFAA) membership base included 13,245 mortgage brokers (and other professionals) in 2009.

Business size

Real estate businesses in Australia in 2002–03 were predominantly small businesses (ABS 2004). Of the total of 10,001, 39 percent (3,900) employed four or less people, 34.1 percent (3,401) employed between five and nine people, 20.6 percent (2,060) employed between 10–19 people and only 0.6 percent (60) had more than 50 employees (ABS 2004).

Real estate businesses were also split into franchises and non-franchised firms. Table 9 shows that around one-third of all real estate businesses were franchises and 45 percent were non-franchised businesses.

Table 10 Sources of income for real estate agencies 2002–03

Source	Income ($m)	%
Sales commissions	5,000.6	73.3
Property management commissions	1,135.2	16.6
Leasing/letting commissions/fees	318.7	4.7
Other rent, leasing and hiring income	24.7	0.4
Consulting fees	57.7	0.8
Property valuations	66.6	1.0
Conveyancing work	3.8	0.1
Interest	16.6	0.2
Other	194.8	2.9
Total	6,818.7	100.0

Source: ABS 2004

Table 11 Real estate sales income by type, 2002–03

Type of sales	Income ($m)	Percentage of total income
Vacant land—residential	231.3	3.4
Vacant land—non-residential	58.8	0.9
Residential properties	4,162.7	61.0
Commercial, industrial and retail properties	523.8	7.7
Other non-residential properties	24.0	0.4

Source: ABS 2004

Table 12 Sources of income for real estate agents by number of employees, 2002–03

Number of employees	Property sales and leasing		Property management		Other		Total
	$m	%	$m	%	$m	%	$m
0–4	565.1	72.5	169.6	21.8	44.5	5.7	779.2
5–9	1,382.5	79.0	308.4	17.6	58.6	3.4	1,749.4
10–19	1,942.5	84.1	293.3	12.7	74	3.2	2,309.8
20–49	969.5	79.5	179.6	14.7	70.2	5.8	1,219.3
50–99	153.5	65.6	47.4	20.3	33.1	14.2	234
100+	306.2	58.1	136.8	26.0	83.9	15.9	526.9

Source: ABS 2004

Table 13 Dealers in precious metals and stones

Subcategory	Estimated number of businesses	Estimated number of individuals
Secondhand dealers and pawnbrokers	n/a	n/a
Retailers and wholesalers	>1,224	n/a
Valuers	n/a	>550
Total	>1,224	>550

Note: The figures for retailers and wholesalers are estimates based on membership of the Jewellers Association of Australia and the Diamond Guild Australia in 2009. Businesses may be members of both associations. The figure does not represent all retailers and wholesalers and might include other occupations. The figures for valuers are based on membership to the National Council of Jewellery Valuers in 2009. The figure does not represent all jewellery valuers

Sources: DGA nd; JAA nd

The total number of employees in the industry in 2002–03 was 67,934, which included 9,426 working directors of incorporated businesses and 3,549 partners and proprietors of unincorporated agencies. The industry employed a total of 25,910 sales people and 316 land valuers in the same period.

Income

The largest category of income for real estate businesses in 2002–03 was from commissions on the sale of properties. Table 10 outlines the total amount and proportion of income from all sources in 2002–03, while Table 11 shows the source of sales commission income for the same period. Residential property sales commissions were the single largest source of income and generated 61 percent of the total revenue for the industry in that year (ABS 2004).

The proportion of income generated by property sales commissions and leasing commissions varied for real estate firms of different sizes in 2002–03. Real estate agents with 10–19 generated the largest proportion of income from property and leasing commissions, representing 84.19 percent of income, whereas agents with 100 employees or more received 58.11 percent of income from these activities. Table 12 shows the distribution of income from firms according to the number of employees.

Small firms (with 4 employees or less) generated 11.4 percent of the industry's total income in 2002–03, companies with 10–19 employees generated 33.9 percent and companies with more than 100 employees generated 7.7 percent of the total income for the industry.

Dealers in precious metals and stones

There are no estimates of the number of pawnbrokers and secondhand dealers, including antique dealers, in Australia. The best estimates available for the number of businesses engaged in retail and wholesale jewellery trading, shown in Table 13, are industry association memberships. There were 1,224 members of the Jewellers Association of Australia and the Diamond Guild Australia, although it is possible that the 24 members of Diamond Guild Australia are also members of Jewellers Association of Australia. The National Council of Jewellery Valuers had 550 members in 2009.

Trust and company service providers

There is little information on the size of each of the types of businesses offering trust and company services that operate in Australia. Australia Post (2008) reports that there are 4,530 outlets that may provide post office box and locked bag services. This figure does not include the number of other businesses providing these services. The Trustee Corporations Association of Australia (TCA) is the industry body for trustee companies. TCA had 50 members in 2006 (TCA 2006c). This figure includes all state trustees but does not include all of the corporate providers. The numbers of businesses providing other trust and company services are unavailable.

Professional regulation in Australia at present

Legal practitioners

Legal practitioners and the provision of legal services in Australia are primarily regulated at state and territory level. Each state and territory, with one exception, has enacted a Legal Profession Act against the background of model laws developed over the period 2002–06 under the imprimatur and policy decisions of the then Standing Committee of Attorneys-General. The exception is South Australia, whose *Legal Practitioners Act 1981* (SA) predates this period, but nevertheless regulates legal practitioners.

While some slightly different approaches may have been taken in some jurisdictions, the fundamental core standards regulating the way legal practitioners work and conduct legal practice remain the same.

At the time of writing, the primary legislation regulating legal practitioners in Australia is the:

- *Legal Profession Act 2006 (ACT);*
- *Legal Profession Act 2004 (NSW);*
- *Legal Profession Act 2006 (NT);*
- *Legal Profession Act 2007 (Qld);*
- *Legal Profession Act 2008 (WA);*
- *Legal Profession Act 2007 (Tas);*
- *Legal Profession Act 2004 (Vic); and*
- *Legal Practitioners Act 1981 (SA).*

The scheme of regulation created under the Standing Committee of Attorneys-General model:

- introduced a substantial degree of regulatory uniformity (either through uniform provisions or the adoption of common standards) in key areas such as qualifications and suitability for admission, suitability to be granted practising entitlements, trust money and trust account regulation, information disclosure such as reporting show cause events, suspension and cancellation of practising entitlements, investigation and external intervention in the affairs of a law practice, and complaints and discipline; and
- provided for automatic recognition of practising entitlements across jurisdictional boundaries, accompanied by extensive information sharing and cooperation among regulatory authorities and the courts.

Depending on the jurisdiction concerned, regulatory functions under the legislation are shared between the law society, the bar association and/or an independent statutory regulatory or board (such as a legal services commissioner).

In addition to legislative regulation, legal practitioners are subject to ethical duties set out in legal profession rules (ie rules of professional conduct) and the common law. Unlike other professions, the rules of professional conduct that apply to legal

practitioners are not voluntary codes of practice, but derive from the role of the legal practitioner as an officer of the court and his or her duty to the court and the administration of justice. Because of this, legal practitioners are, in addition to legislative controls, subject to the inherent disciplinary power of the court.

There are two key concepts underpinning discipline of the legal profession in Australia. First is unsatisfactory professional conduct, which is defined by legislation as including conduct that falls short of the standard of competence and diligence that the public is entitled to expect of a reasonably competent legal practitioner. The more serious concept is professional misconduct, which includes a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence and conduct (whether or not occurring in connection with legal practice) that justifies a finding that the practitioner is not a fit and proper person to engage in legal practice.

Complaints against legal practitioners are initially investigated by the relevant law society, bar associations and/or independent statutory regulator (depending upon local arrangements). If it is concluded that there is a reasonable likelihood that a disciplinary tribunal would find the practitioner guilty of unsatisfactory professional conduct, but the practitioner has otherwise been generally competent and diligent, the matter can be dealt with by way of penalties such as a fine and/or public reprimand and/or a compensation order and/or imposing conditions on the practitioner's practising entitlements. However, matters relating to professional misconduct or unsatisfactory professional conduct that cannot appropriately be dealt with summarily are referred to an independent disciplinary tribunal. A finding by a disciplinary tribunal that there has been unsatisfactory professional conduct or professional misconduct can attract a range of orders by the tribunal. These include cancellation or suspension of the practitioner's practising certificate, imposing conditions on the practising certificate, a compensation order, or an order recommending to the Supreme Court that the person be removed from the roll (ie disbarred from the profession). In addition, there are publicly available discipline registers that must record the names of legal practitioners against whom disciplinary action has been taken and the nature of that disciplinary action. The Law Council of Australia and the Australian Bar Association are the key national industry organisations for the legal profession in Australia. The roles of both organisations involve both representation of and advocacy for members. These organisations do not perform regulatory or disciplinary functions; however, the Law Council and Australian Bar Association have ratified uniform, national conduct rules for solicitors and barristers respectively. Solicitors also have existing requirements to report cash transactions of $10,000 or more under the *Financial Transaction Reports Act 1988* (Cth).

The Council of Australian Governments (COAG) is in the process of developing nationally uniform state and territory laws to regulate the legal profession. At present, the Australian legal profession is a highly regulated profession and there are sufficient regulatory differences across jurisdictions to effectively impede the development of a truly Australian legal profession and national legal services market. COAG, in furtherance of its microeconomic reform program, agreed to the drafting of a new uniform law to be adopted by each state and territory, which will provide a single, uniform and simplified piece of legislation, supported a national regulatory framework. The overall goal is to move towards a more functional and efficient Australian legal services market by establishing an integrated regulatory framework that includes each state and territory, underpinned by uniform legislation. This approach is expected to facilitate the seamless delivery of legal services throughout Australia, which will also improve the overall level of protection for consumers of legal services (LCA 2010).

Legal professional regulation in New South Wales

Regulatory model

The *Legal Profession Act 2004* (NSW) (Legal Profession Act) limits legal practice to Australian legal practitioners (those admitted to the profession in New South Wales or another state or territory) who hold a practising certificate. The Legal Profession Admission Board (Admission Board) makes a recommendation for admitting an applicant to the profession by issuing a compliance certificate. An applicant for admission

must meet education and training requirements, set out in rules for admission used by the Admission Board and be assessed as a fit and proper person to be admitted to the legal profession. The assessment of a person's suitability to enter the legal profession is stringent and requires disclosure of, for example, offences (including spent convictions) in Australia or a foreign jurisdiction where there has been a finding of guilt or acceptance of a guilty plea, whether or not a conviction has been recorded. The Supreme Court of New South Wales admits a practitioner to the profession.

The Law Society and Bar Association of New South Wales issue practising certificates for solicitors and barristers. Solicitors are bound by the rules set by the Law Society of New South Wales. Barristers are similarly bound by the rules of the New South Wales Bar Association. The OLSC, appointed by the New South Wales Attorney-General, the Law Society and the Bar Association, co-regulate solicitors and barristers in New South Wales.

The *Legal Profession Act* and *Legal Profession Regulation 2005* (NSW) (Legal Profession Regulation) establish ongoing obligations for legal practitioners in New South Wales. They include requirements for dealing with funds held in trust, mortgage financing and managed investment schemes.

Solicitors are bound by the Revised Professional Conduct and Practice Rules 1995 of the Law Society of New South Wales (1995). The Practice Rules were made by the Council of the Law Society of New South Wales. The Statement of Principle for the Rules relating to relations with clients notes '[p]ractitioners should not, in the service of their clients, engage in, or assist, conduct that is calculated to defeat the ends of justice, or is otherwise in breach of the law' (Law Society of New South Wales 1995: np).

Conduct that is in contravention of the *Legal Profession Act,* the *Legal Profession Regulation*, or legal professional rules that does not result in a conviction may still lead to a finding of professional misconduct or a less serious finding of unsatisfactory professional conduct. Professional misconduct is defined by the Act as a substantial or consistent failure to meet standards of competence or diligence or no longer being a fit and proper person to engage in legal practice. Specific examples offered by the Act of professional misconduct include convictions for serious offences, tax offences, or offences involving dishonesty.

Barristers in New South Wales are bound by the New South Wales Barrister's Rules issued by the New South Wales Bar Association (NSWBA 2011). These rules specify clearly the requirements for barristers to act honestly and in accordance with the law. Rule 12, for example, provides:

> A barrister must not engage in conduct which is:
>
> (a) dishonest or otherwise discreditable to a barrister;
>
> (b) prejudicial to the administration of justice; or
>
> (c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute (NSWBA 2011: 3).

Public notaries in New South Wales are further regulated by the *Public Notaries Act 1997* (NSW) (Notaries Act). The Notaries Act limits eligibility for appointment as a public notary to those with at least five years' standing as a solicitor or barrister. The Supreme Court of New South Wales may appoint public notaries once the Admission Board approves an application for admission as a notary. The Admission Board maintains a roll of public notaries.

The Supreme Court of New South Wales may order the name of a public notary to be removed from the roll for incompetence as a public notary, misconduct as a public notary, or for another reason as the court sees fit. Misconduct as a public notary includes professional misconduct or unsatisfactory professional conduct as a legal practitioner under the *Legal Profession Act.* Public notaries may also be removed from the roll by a decision from the Administrative Decisions Tribunal or if the notary ceases to be a legal practitioner.

The Notaries Act prohibits performing notary services to one's employer, or clients of one's employer, unless the employer is a legal practice. The Notaries Act also criminalises providing notary services without being legitimately on the roll held by the Admission Board.

Trust fund regulation

Legal practitioners holding funds in trust are bound by obligations in the *Legal Profession Act* and *Legal*

Profession Regulation. The Legal Profession Act requires legal practices to hold trust funds in a trust account and does not limit the number of trust accounts a practice might operate. Most practices, however, are likely to have only one or two trust accounts (C Cawley personal communication 9 June 2009). The definition of trust funds in the Legal Profession Act does not include funds held by a practice for a financial service offered by that practice, or for other managed investment schemes or mortgage financing. Barristers may not receive trust money in the course of practice as a barrister.

Practices are prohibited from withdrawing funds from a trust account unless they are made electronically or by cheque. The Legal Profession Act specifically prohibits cash withdrawals, ATM withdrawals, or telephone banking transfers or withdrawals.

Controlled monies are funds that must be paid into a controlled money account for that client only. The same limits on withdrawal methods apply to controlled money accounts. Transit money, defined as funds with instructions to pay it to a third party, is regulated in the Legal Profession Regulation.

Any trust money received as cash must be deposited into a general trust account. The Act prohibits following any instructions from the client to do otherwise. Any transit money taken as cash must also be deposited into a general trust account before following the payout instructions for the money. Controlled money received as cash must also be paid into a controlled money account. These controls combined with obligations under the *Financial Transaction Reports Act 1988* (Cth) mitigate many of the risks that a legal practice could unwittingly be used to launder cash. Furthermore, the regime under the Legal Profession Act for annual external examination of trust accounts, combined with the regulator's own powers of random inspections and investigations provide an effective safeguard against deliberate attempts to launder cash through law practice trust accounts.

Practices are prohibited from using trust money to pay debts or to satisfy a judgement made against the practice. Trust money may be used to pay fees for legal services if a client has authorised doing so. The Act places a further prohibition on mixing trust money with other funds.

Legal practitioner associates are required by s 263 of the Legal Profession Act to report any irregularities in the practice's trust accounts or trust account ledger to the Law Society and any other authority responsible for trust account regulation. Legal practitioners are further required to make the same reports of any reasonably suspected irregularities in the trust account or ledger of another practice. Legal practitioners are not liable for any loss or damage suffered by complying with s 263.

Section 265 prohibits receiving and recording funds under a false name. The practice must also record all of the names used by a client known by more than one name.

All trust account records must be externally examined once every financial year. The external examiner may also examine the affairs of the practice connected with the operation of the trust account. The Law Society, if not satisfied this process was completed in accordance with the regulations, may appoint another external examiner. The external examiner must submit a report to the Law Society on completing the examination. The Legal Profession Act also allows the Law Society to appoint an investigator to examine the affairs of a legal practice, including trust accounts, on a routine or other basis.

The Legal Profession Regulations require trust accounts to be held only at authorised deposit taking institutions (ADIs). The Law Society Council may approve ADIs to hold trust accounts. ADIs are required by the Legal Profession Act to report any suspected offences or deficiencies in trust accounts to the Law Society Council on forming a suspicion. ADIs must also produce records for the external examiner of a trust account or for Law Society investigators.

Legal practices cannot conduct managed investment schemes. Managed investment schemes must be conducted by separate entities and these entities are regulated by ASIC. All financial services, including any financial services when offered by legal practices, may only be offered by an Australian Financial Services Licence (AFSL) holder. The financial services that require the provider to hold an AFSL are already subject to AML/CTF obligations.

Disciplinary processes

Complaints about legal practitioners must be lodged with the OLSC. The OLSC may refer complaints to the Law Society or Bar Association. Complex or serious matters such as those involving fraud or trust account breaches are usually referred on (OLSC 2009a). The OLSC is more likely to retain consumer issues, those of public interest, or those involving conflicts of interest for professional associations.

The OLSC, Law Society and Bar Association take disciplinary action to the Administrative Decisions Tribunal Legal Services Division (the Tribunal) for hearing. All three may make a decision on some complaints without referring the matter to the Tribunal. Appeals against Tribunal decisions may be heard in the Supreme Court of New South Wales.

Complaints investigated by the OLSC have several possible outcomes. The OLSC may dismiss complaints if it considers the Tribunal unlikely to find the legal practitioner guilty of unsatisfactory professional conduct or of professional misconduct. The OLSC may initiate Tribunal proceedings if a guilty finding is likely. If a finding of unsatisfactory professional conduct is likely (not a finding of misconduct), the OLSC itself may retain the matter and choose to impose a caution, issue a reprimand, or dismiss the complaint in some circumstances.

The Tribunal may impose a range of sanctions for findings of unsatisfactory conduct—cancelling practising certificates, imposing fines of up to $10,000, issuing private or public reprimands and imposing orders for further education (OLSC 2007a). Findings of professional misconduct may attract these sanctions and may also result in removing the practitioner from the roll of legal practitioners. The Tribunal, in cases of professional misconduct, may impose a fine of up to $75,000.

Complaints referred to the Law Society by the OLSC are investigated by a solicitor in the Professional Standards Department. The investigator reports to the Professional Conduct Committee. The Professional Conduct Committee makes a final decision on whether the Tribunal is likely to find the legal practitioner guilty of unsatisfactory professional conduct or professional misconduct. The Professional Conduct Committee can dismiss the complaint if it is in the public interest to do so, impose a sanction, or refer the matter to the Administrative Decisions Tribunal Legal Services Division for hearing. Matters with a reasonable likelihood of a finding of guilty of professional misconduct cannot stay with the Law Society and must be referred to the Tribunal.

Complaints referred to the Bar Association are investigated by one of four Professional Conduct Committees in the Professional Conduct Department.

Reporting of offences

Section 730A of the *Legal Profession Act 2004* (NSW) imposes a positive obligation on regulators who suspect on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law, to report the suspected offence to any relevant law enforcement or prosecution authority and to make available to the authority the information and documents relevant to the suspected offence in its possession or under its control.

Accountants

Accountants in Australia are not subject to statutory regulation as a single profession. The services provided by accountants and members of the broader profession are regulated individually. Most of the services provided by a public accountant are subject to some regulation, although not all of the services offered by accounting professionals are captured by the separate pieces of legislation.

The services regularly provided by an accountant in public practice subject to regulatory controls are tax matters, financial advice, company auditing services and liquidation services, and bankruptcy trustee services.

Tax agents

Subsection 1 of s 251L of the *Income Tax Assessment Act 1936* (Cth) criminalises charging a fee for preparing or lodging tax liability-related documents, giving advice, preparing an objection, or dealing with the Tax Commissioner unless registered as a tax agent. The six Tax Agents' Boards maintain a register of tax agents. Tax agents are registered for three year periods. The registration requirements are

based on assessments of being a fit and proper person. The fit and proper person assessment includes meeting education and experience requirements, character assessments and being free of convictions for serious tax offences in the last five years.

Tax Agents Boards currently receive complaints about tax agents and deal with matters from the Tax Agent Integrity Unit at the Australian Taxation Office (ATO). The sanctions available to the Tax Agents Board are to issue a caution or to suspend or cancel registration.

The *Tax Agent Services Act 2009* (Cth) (TAS Act) will replace the Tax Agents Board with a national Tax Practitioners Board. The Tax Practitioners Board will register tax agents and BAS agents. The TAS Act establishes a Code of Professional Conduct for tax and BAS agents. The Code of Professional Conduct requires tax and BAS agents who receive money or property from a client to be held on trust to account for that money or property to the client (s 30(10)).

Failure to comply with the Code may result in the Tax Practitioners Board issuing a caution to the tax or BAS agent, applying an order, or suspending or terminating the registration of the agent. The TAS Act provides civil penalties for offering tax and BAS services without registration. Civil penalties are also available for making false or misleading statements or being reckless as to whether a statement is false or misleading. The Act does not set out identification or verification procedures for tax or BAS agents.

The Tax Practitioners Board's role will include investigating breaches of the TAS Act or regulations. The investigative powers extend to requesting documents and witnesses.

Financial advice

The *Corporations Act 2001* (Cth) requires businesses providing financial services, including accountants who provide financial advice, to obtain an Australian Financial Services Licence (AFSL) which is issued by the Australian Securities and Investments Commission (ASIC). AFSL holders who provide any of the designated service item(s) in Table 1 S6 of the AML/CTF Act have obligations under the AML/CTF Act and are regulated by AUSTRAC. An AFSL holder who is acting in the capacity of the holder of that licence and makes an arrangement for a person to receive a designated service is providing designated service item 54 of S6 of the AML/CTF Act. Reporting entities providing designated services falling within item 54 have reduced obligations under the AML/CTF Act. For example, reporting entities providing only item 54 services may adopt a 'special' AML/CTF program, which sets out the entity's applicable customer identification procedures (Part B) but not the general requirements (Part A) of a standard AML/CTF program. The regulation of auditors, liquidators and bankruptcy trustees are discussed in the trust and company service providers subsection of this section of the report.

Industry association and self-regulation

The accounting profession has a number of industry bodies that have self-regulatory functions for members. The key accounting professional bodies in Australia are CPA Australia, the Institute of Chartered Accountants in Australia (ICAA) and the National Institute of Accountants (NIA). The Association of Accounting Technicians (AAT) is a professional organisation for accounting and finance paraprofessionals.

Membership to any of the accounting professional bodies is voluntary. Membership to CPA Australia, ICAA and NIA is available on meeting education and experience requirements. The educational and experience-based membership requirements for AAT are based on accounting or bookkeeping qualifications.

CPA Australia and the ICAA established the Accounting Professional and Ethical Standards Board (APESB) in 2006. NIA is also a member of the APESB. APESB is independent from CPA Australia, ICAA and NIA, but issues ethical and occupational standards for members of CPA Australia, ICAA and NIA. The APESB's standards are enforced by the accounting professional bodies and not by APESB.

APESB has issued Quality Control for Firms (APES 320) that incorporate international accounting and auditing standards. The member industry bodies of APESB conduct reviews of their member firms against the APES 320. Firms with assurance practices are bound by more stringent requirements in the APES 320.

The professional accounting bodies investigate and may apply disciplinary action to matters stemming from complaints made to the organisation about their members, matters identified in public practice quality review processes and completed regulatory disciplinary matters or legal proceedings. The professional accounting bodies do not have the investigative powers of law enforcement agencies or government regulators.

The sanctions available to the professional accounting bodies are not uniform. CPA Australia may forfeit or suspend membership to CPA Australia, issue a fine, or review the member's practice. The ICAA may forfeit membership to the ICAA, impose a fine, or require additional training. The Disciplinary Tribunal of NIA may impose fines or withdraw or suspend membership.

The sanctions available to the AAT are also limited to suspending or cancelling membership to the organisation, fines of up to $10,000, censure, or admonishment. Other industry associations, such as the Association of Taxation and Management Accountants and the Taxation Institute of Australia, are able to impose similar sanctions on members.

APESB standards

The APES 110 Compiled Code of Ethics for Professional Accountants is the code of conduct for members of the professional accounting bodies. APES 110 establishes five fundamental principles for accountants bound by the Code of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. APES 110 does not have specific requirements for customer identification, auditing or monitoring received funds or transactions, or record keeping. Auditing and record keeping requirements for trust accounts are contained in separate APESB standards.

The APES 320 Quality Control for Firms provides principles and procedures for quality control for firms. APES 320 directs firms to consider the integrity of clients when accepting new clients or continuing a relationship. APES 320 does not have specific customer identification requirements. The guideline states that firms should determine the information they need for accepting a client and suggests considering the identity and reputation of clients, key owners and related parties. The guideline directs accounting firms to retain client engagement documentation in accordance with statutory and regulatory requirements, but does not include blanket standard document retention practises.

APS 10 Trust Accounts, currently under review by APESB, contains trust account requirements for accountants bound by the APESB's guidelines. APS 10 defines trust money as any funds held or received on behalf of any person in the course of offering or performing public accounting services (including financial planning, investment advisory and taxation services), where the firm has no present entitlement to the money.

APS 10 requires accountants opening a trust fund to notify the financial institution of the nature of the account although it does not require a separate account for each client. The guideline requires an annual audit of trust accounts and trust account records, and for the results of the audit to be available to the member accounting professional bodies.

Real estate agents

Regulation for persons acting as real estate agents, buyers' agents, stock and station agents, onsite property managers and strata management agents, is at the state and territory level in Australia. The legislation that outlines the requirements for entry into the profession and some operational regulations is contained in the following statutes:

- *Agents Act 2003* (ACT);
- *Property, Stock and Business Agents Act 2002* (NSW);
- *Agents Licensing Act* (NT);
- *Property Agents and Motor Dealers Act 2000* (Qld);
- *Land Agents Act 1994* (SA);
- *Auctioneers and Real Estate Agents Act 1991* (Tas);
- *Estate Agents Act 1980* (Vic); and
- *Real Estate and Business Agents Act 1978* (WA).

Property valuers have licensing or registration requirements and other regulations in some Australian states. The relevant legislation governing property valuers is:

- *Valuers Act 2003* (NSW)—licensing requirements;
- *Land Valuers Licensing Act 1978* (WA)—registration requirements; and
- *Valuers Registration Act 1992* (Qld)—registration requirements.

South Australia and Tasmania have educational requirements for performing property valuation services. Valuers in South Australia can become approved valuers on application to the Commissioner of Consumer Affairs. The requirements are established in the *Land and Business (Sale and Conveyancing) Act 1994* (SA). *The Land Valuers Act 2001* (Tas) has educational and experience requirements but, like South Australia, does not set out a formal licensing regime.

COAG has sought to establish a national licensing system for the real estate industry that would include licensing for property valuers. The Valuers Registration Board of Queensland has expressed concerns about the stringency of any proposed national standards and has reservations about the current mutual recognition processes between states (VRB 2008).

Regulation of real estate agents in New South Wales

The licensing requirements for real estate agents are in the *Property, Stock and Business Agents Act 2002* (NSW) (PSBA Act). The PSBA Act criminalises providing real estate agent services for a fee without a licence. Sales staff employed by a licence holder must obtain a registration certificate. Licence holders must meet minimum education requirements and be a fit and proper person. The current education requirements are set out in the *Property, Stock and Business Agents (Qualifications) Order 2003* (NSW).

The PSBA Act also has requirements for operating a trust account as a real estate agent. The key aspects require all money received by an estate agent to be paid into a trust account and for an external audit on all trust accounts to be conducted by a qualified person. Additional regulations for managing a trust account, such as record keeping requirements, are in the *Property, Stock and Business Agents Regulations 2003* (NSW).

The New South Wales Office of Fair Trading (NSW OFT) publishes rules of conduct for real estate agents. Breaches of the rules of rules, regulations, or the PSBA Act may result in disciplinary action by the Commissioner for Fair Trading. Members of the public are able to make complaints to the NSW OFT for investigation. The NSW OFT is also able to investigate matters outside of consumer complaints that may also warrant disciplinary proceedings.

The sanctions available to the Commissioner are:

- cautions, reprimands and issuing public warnings about licence holders;
- fines up to $11,000 for individuals or up to $22,000 for companies;
- directives and undertakings;
- licence conditions, suspensions and cancellations; and
- disqualification from holding a licence or managing and conducting the business of a licence holder.

The disciplinary decisions made by the NSW OFT can be appealed to the Administrative Decisions Tribunal.

Trust account auditing in New South Wales

All money received by a real estate agent on behalf of another person must be paid into a trust account. Trust accounts must be held at ADIs approved by the Director-General of the Department of Fair Trading.

The PSBA Act further requires real estate agents to undertake external auditing of any trust accounts. The auditor is required to lodge the audit report with the Director-General. Other records held by real estate agents may be viewed by an authorised inspector. An authorised inspector may also view financial records held at ADIs upon serving the institution a notice to do so.

The Director-General has the authority to freeze real estate agents' trust accounts under the PSBA Act.

Conveyancing requirements in New South Wales

Conveyancing in New South Wales can be undertaken by a solicitor, a licensed conveyancer,

or by the individual purchasing the property. The NSW OFT issues licences for conveyancing in accordance with the *Conveyancers Licensing Act 2003* (NSW). The Act contains requirements for maintaining trust accounts, record keeping and external auditing.

Regulation of real estate agents in Western Australia

The Real Estate and Business Agents Supervisory Board regulates the real estate industry in Western Australia. The Board receives complaints about industry participants in Western Australia and prior to 2007, heard disciplinary matters for the industry. The State Administrative Tribunal now undertakes this role.

Mortgage brokers

Mortgage brokers acting only as an agent for other lending companies, or providing services to lenders under contractual agreement, do not currently have AML/CTF obligations. Those who offer a designated service under the AML/CTF Act have AML/CTF obligations when providing those services only.

Licensing, registration and regulation of mortgage brokers is done at the state and territory level. Western Australia requires brokers to obtain a licence and the Australian Capital Territory requires brokers to register. New South Wales and Victoria have a negative licensing (disqualification) system.

The *Consumer Credit Administration Act 1995* (NSW) requires brokers to retain records of all transactions for seven years. The Act authorises officers of the Director-General of the Department of Fair Trading to investigate complaints made against brokers including authorisation to enter their business premises. The Director-General may issue an order prohibiting brokers from providing services where other disciplinary action has been ineffective. In 2008, COAG agreed to transfer the regulation of mortgage brokers to the Commonwealth (COAG 2008a).

Regulating property developers in Queensland

Queensland is the only jurisdiction requiring property developers to obtain a licence. The licensing obligations are in the *Property Agents and Motor Dealers Act 2000* (Qld). Property developers are also subject to the *Property Agents and Motor Dealers (Property Developer Practice Code of Conduct) Regulation 2001* (Qld).

Individuals selling more than six residential properties in one year, or marketing properties in which they have an equity stake of at least 15 percent, must obtain a licence as a sole trader. Those operating a business as a property developer need an individual (director) licence. Those affected by a bankruptcy action, convicted of a serious offence in the last five years and disqualified as company directors by ASIC cannot hold a licence.

Corporate licences are limited to companies that have not been placed into receivership or liquidation and whose executive officers and directors meet the requirements of an individual licence. Executive officers and directors with a suspended or cancelled property agent licence, or who have caused a payout from the property agents and motor dealers claim fund, will also render an application for a corporate licence invalid. Sales persons must obtain a registration certificate.

Property developers in Queensland are not required to have a trust account. All funds they receive that are subject to a cooling-off period must be deposited into the trust account of a real estate agent, the Public Trustee, or a solicitor within three days of receipt.

The Department of Fair Trading maintains a register of enforceable undertakings issued to property developers and reserves the right to set conditions on the licences issued (Queensland Government 2009).

Industry bodies

The real estate sector, as with the accounting and legal sectors, has numerous industry bodies, some of which perform disciplinary and compliance functions. Generally, the real estate industry bodies do not have the powers of rulemaking, compliance and enforcement that the organisations for accountants and legal practitioners hold.

Real Estate Institute of Australia

The Real Estate Institute of Australia (REIA) is an industry association with a membership pool comprising Real Estate Institutes from each state and territory. Membership of the state-based Institutes is voluntary, although REIA estimates that approximately 80 percent of all real estate agents are members of the state organisations (REIA 2008). REIA conducts research and lobbying activities and does not issue directives to real estate agents in the same way as accounting industry bodies issue advice or rules.

The Real Estate Institute of New South Wales (REI NSW), along with similar organisations in all other states, is a member of REIA. REI NSW's members are individuals and legal entities in the industry including those working in property management, auctioneering and as buyers' agents. REI NSW has a code of conduct for members. The organisation, unlike accounting bodies, does not offer guidelines for risk reduction, although it does offer a compliance review service. This process is a compliance risk assessment covering topics including OFT NSW supervision guidelines, banking and trust account practises, conflicts of interest and privacy. The compliance review is not a mandatory aspect of membership and is marketed as a service only (REI NSW nd).

REI NSW does not appear to have mechanisms for enforcing compliance with the code of conduct, although it previously offered a complaints resolution service to the public. The REI NSW Legal Council still takes complaints from real estate agents about other members. The organisation has not released the details of any complaints it has received.

The Australian Property Institute

The membership base of the Australian Property Institute (API) encompasses:

- residential, commercial, plant and machinery valuers;
- property analysts and investment advisors;
- property fund and asset managers;
- property and facility managers;
- property legal practitioners; and
- property researchers and academics.

Membership to the API is voluntary.

The API identifies its primary role as being to set practice standards, including professional and ethical conduct, and to provide education to members and others in the profession. The API has a division in each state and territory. The Code of Ethics, available from the API Western Australia, is a broad statement of values. The Rules of Conduct outline requirements for any arising conflicts of interest and some basic requirements for maintaining client relationships (API 2008a, 2004).

The state and territory divisions of the API are headed by a Divisional Council. The API's By-Laws require each Divisional Council to appoint a Complaints Chair. Complaints made are referred to the complaints committee for hearing. Serious breaches are referred to a Disciplinary Tribunal. The Committee can impose lower level sanctions, such as fines of up to $5,000 or reprimands, although the Tribunal may impose fines of up to $20,000 and expel the member (API 2008b).

Property Council of Australia

The Property Council of Australia (PCA) is an industry body that engages in advocacy and public affairs for businesses in the property investment industry. The PCA's members include real estate investment trusts, fund managers, and property developers and managers. Membership is voluntary and restricted to legal entities rather than to individuals. PCA does not offer advice or professional conduct standards for members.

Mortgage and Finance Association of Australia

MFAA is an industry body for mortgage brokers, finance brokers, mortgage managers, and bank and non-bank lenders. The MFAA has a lobbying role, as well as issuing conduct guidelines and standards including a Code of Practice.

The MFAA investigates complaints made against members and a tribunal holds disciplinary hearing for cases with sufficient evidence. Findings of misconduct may result in sanctions spanning from censure to expulsion from the MFAA and a fine.

The MFAA offers an AML/CTF program for all mortgage brokers. The course aims to help brokers understand the requirements of lenders and to provide a standard accreditation mechanism for the industry.

Dealers in precious metals and stones

Pawnbrokers and secondhand dealers, including antique dealers

Secondhand dealers and pawnbrokers are the only traders of precious metals and stones to require a licence or to seek registration in order to trade. They are also the only traders of precious metals and stones who are subject to other specific legislative requirements. The legislation currently regulating secondhand dealers and pawnbrokers across Australia is:

- *Secondhand Dealers and Pawnbrokers (Amendment) Act 2001* (Vic);
- *Pawnbrokers and Secondhand Dealers Act (1996)* (NSW);
- *Secondhand Dealers and Pawnbrokers Act (2003)* (Qld);
- *Secondhand Dealers and Pawnbrokers Act* (SA);
- *Pawnbrokers and Secondhand Dealers Act 1994* (WA);
- *Secondhand Dealers Act (1906)* (ACT);
- *Pawnbrokers Act (1902)* (ACT);
- *Consumer Affairs and Fair Trading Act 1990* (NT); and
- *Secondhand Dealers and Pawnbrokers Act (1994)* (TAS).

Tasmania requires pawnbrokers and secondhand dealers to notify the police one month in advance of commencing business. The other states and territories require pawnbrokers and secondhand dealers to obtain a licence. Mutual recognition legislation in each state and territory allows traders to apply to have their licences validated in other states and territories.

The Tasmanian legislation still requires pawnbrokers and secondhand dealers to conduct identity checks on customers selling or pawning items and to maintain records of goods received and sold.

Pawnbrokers and secondhand dealers in New South Wales

The *Pawnbrokers and Secondhand Dealers Act (1996)* (NSW) (Pawnbrokers Act) criminalises conducting either type of business without obtaining a licence. Individuals must be judged fit and proper persons, be over 18 years of age and not be disqualified from holding a licence. Corporations and each of their directors must also be judged fit and proper and not be disqualified from obtaining a licence. Licences are granted by the Director-General of the Department of Fair Trading.

The Pawnbrokers Act establishes identification requirements for people pawning or selling items to a licensed dealer. Dealers are prohibited from accepting items that are not reasonably believed to belong to the person presenting them to the dealer and the dealer must complete some title verification steps.

The specific identification requirements for those presenting goods to a secondhand dealer or pawnbroker in New South Wales are set out in the *Pawnbrokers and Secondhand Dealers Regulation 2008* (NSW). Customers wishing to sell or pawn goods must present either:

- a card or document issued by the Commonwealth or a state or territory government that bears the customer's photograph, name, address and signature; or
- a combination of cards or documents that include a photo, name, address and signature. One of these must be issued by the Commonwealth or a state or territory government;
- a foreign document, such as a passport, bearing the required information, or a combination of documents that include one issued by a foreign government and documented evidence from a landlord or hotel with current residential address.

The customer must also present evidence of their date of birth from a government-issued source such as a driver's licence.

Pawnbrokers and secondhand dealers are required to maintain records of all transactions and be able to readily provide those records to a police officer, the Director-General of the Department of Fair Trading, or an inspector of the Department. Failure to do so is a criminal offence under the Pawnbrokers Act. The *Pawnbrokers and Secondhand Dealers Regulation 2008* (NSW) currently requires all but small dealers

to maintain electronic records of all transactions and to send these to the Commissioner of Police within three days of a transaction taking place.

The *Fair Trading Act 1987* (NSW) outlines the investigation powers of the Department of Fair Trading. Investigators are given the ability to search premises and to obtain documents, information and other evidence when investigating contraventions to this Act or any other administered by the Fair Trading Minister. This includes the Pawnbrokers Act.

Antiques dealers are classified as secondhand dealers in New South Wales. Dealers in antiques, as secondhand dealers, require a licence from the Department of Fair Trading and are subject to the same customer identification and record keeping requirements.

The Australian Antique and Art Dealers Association (AAADA) is a national industry body. The AAADA has a code of practice for members and offers a dispute resolution service to members of the public with a complaint against a member. Membership to the organisation is voluntary and the AAADA does not perform disciplinary functions additional to those of the Department of Fair Trading.

Jewellers and valuers

Jewellers in each state and territory are not subject to industry-specific regulation establishing customer identification requirements, registration or licence requirements, or auditing requirements. Jewellery valuers are similarly unregulated.

The industry has numerous active industry associations such as the Jewellers Association of Australia, the Diamond Guild of Australia, the National Council of Jewellery Valuers, the Gemmological Association of Australia, the International Coloured Gem Stone Association, and the Australian Jewellery and Gem Industry Council. All of these organisations have self-regulatory mechanisms, although membership is voluntary. Members found to have breached the respective ethical guidelines may have their membership suspended or be expelled from the associations. These associations rely on the threat to individual reputation that professional misconduct poses as their principal mechanism to ensure standards of practise.

Membership of the National Council of Jewellery Valuers is restricted to valuers who have completed targeted training in gemmological study, gemstone grading and the detection of synthetic gemstones. Members must adhere to professional standards and meet continuing professional development requirements.

The retailing components of the precious metals and stones industry are the subject of a number of international initiatives. The Kimberley Process was established by United Nations Resolution 55/56 and commenced in 2003. It is designed to certify the origin of rough diamonds from sources that are free of conflict in order to prevent funding war through the diamond trade. The Process requires participating governments to ensure that all shipments of rough diamonds are imported or exported in a secure container with a government-validated certificate stating the diamonds are from sources free of conflict.

Currently, 74 governments are signatories to the Process (including the Australian Government) and it represents over 99 percent of the global production of rough diamonds (World Diamond Council nd). Individual Australian retailers and manufacturers are not responsible for complying with Kimberley Process obligations. The Australian Government complies with its international obligations by using customs and trade legislation and regulations.

The Kimberley Process certification can be an effective mechanism to identify the country of origin. It does not, however, prevent purchasing diamonds with the proceeds of crime or for any illicit purpose. The certificate process does not include a chain of custody (World Diamond Council nd).

There are other international initiatives (such as the Council for Responsible Jewellery Practices, the Madison Dialogue and No Dirty Gold) that seek to engage industry members, civil society groups and governments to implement and maintain industry practices that are more socially, ethically and environmentally responsible. Australian industry members are involved in some of these organisations and they have contributed to proposals aimed at improving sector regulation such as the Worldwide Jewellery Ethical Trading Scheme. With the exception of the Kimberley Process, however, no initiatives have been established in a way that obliges compliance by industry members.

Trust and company service providers

Trust and company service providers are not regulated as a single industry in Australia, reflecting the diversity of the services provided.

Company formation agents

Company formation services are provided by casual lodging parties or registered agents. Registered agents are registered with ASIC. Registered agents are able to submit the company formation documentation required by the *Corporations Act 2001* (Cth) electronically to ASIC. Casual lodging agents cannot (ASIC 2008a).

The Corporations Act (s 1308) criminalises making false or misleading statements in documents submitted to ASIC in accordance with the Act. Individuals who fail to take reasonable steps to ensure information submitted to ASIC is correct are also guilty of an offence. ASIC may cancel the registration of a company formation agent if they are found guilty of an offence under s 1308 of the Corporations Act.

The Committee of Business Incorporators Australia Inc is the industry body for company formation agents. Members can make complaints against each other for violating the stated rules, or acting in a manner prejudicial to the organisation and the committee will give the member 14 days to respond. The sanctions available in response to complaints are to expel or suspend the member from the organisation.

Company secretary and company director services

The Corporations Act requires companies to lodge the identification details of directors and company secretaries with ASIC within 28 days of appointment.

Individuals may not offer company director and secretary services without specific court approval if they are undischarged bankrupts, subject to a personal insolvency agreement or subject to a composition under the *Bankruptcy Act 1966* (Cth), or have been convicted of a fraud offence or an offence under company law, or imprisoned for one of these offences, in the last five years (ASIC 2008b).

ASIC has the authority to ban individuals from becoming a company director or secretary under other circumstances. Individuals may be disqualified from managing corporations (including acting as a director or secretary) if they have managed two companies that have been wound up while under their control or within 12 months of holding the office. The Corporations Act does not make a distinction between secretaries directly employed by a company and those offering the service on another basis.

Chartered Secretaries Australia (CSA) is an industry body for company secretaries. Membership to CSA is restricted to those who have completed specific tertiary education requirements. CSA has guidelines on ethical and professional conduct for its members, although the mechanisms available for enforcement are not clear.

The Australian Institute of Company Directors has less restrictive membership requirements and as with CSA, membership is voluntary. They will expel or suspend members if they are convicted of an offence under the Corporations Act, become disqualified from managing a corporation, or display conduct that disadvantages the organisation.

Auditors, liquidators and insolvency practitioners

The Corporations Act requires auditors to register with ASIC and outlines the requirements needed to be eligible for registration. Auditors must meet educational requirements or gain experience in the field and be a fit and proper person. Those disqualified from managing corporations are unable to be registered auditors.

Receivers, administrators and company liquidators are also registered by ASIC. Registration for liquidators, also contained in the Corporations Act, has similar requirements as those for auditors. Liquidators must meet educational and expertise requirements and be a fit and proper person. Those prohibited from managing corporations are also ineligible for registration as a liquidator.

Insolvency and Trustee Service Australia (ITSA) administers the registration of bankruptcy trustees and debt agreement administrators. ITSA investigates complaints made against practitioners and the Inspector General in Bankruptcy may cancel a person's registration.

The Companies Auditors and Liquidators Disciplinary Board (CALDB) receives applications from ASIC and the Australian Prudential Regulation Authority to conduct disciplinary hearings for auditors and liquidators. CALDB determines if an auditor or liquidator has failed to undertake their duties correctly or is otherwise ineligible to remain registered. CALDB is able to cancel or suspend memberships, admonish or reprimand, or issue directives for specific undertakings.

Insolvency Practitioners Association (IPA) is an industry body for bankruptcy trustees and liquidators. Membership to the IPA is restricted by educational requirements, existing membership of CPA Australia, ICAA, or Law Society and completion of further education in insolvency practise. Membership to the IPA is voluntary.

Public trustees

Public trustees provide services including:

- making wills;
- acting as an executor for a deceased estate;
- managing trusts; and
- attorney services.

Each Australian state and territory has a public trustee. With the exception of Victoria, where the public trustee is a state-owned company, these remain government agencies. The Office of the Public Trustee in the Northern Territory also manages property restrained by proceeds of crime laws.

Corporate trustees are currently regulated at the state and territory level. The state attorneys-general supervise trustee companies, receive financial reports and are authorised to impose sanctions for non-compliance. Trustee companies are required to maintain customer information records and records of all transactions (TCA 2006a).

The *Trustee Companies Act 1964* (NSW), for example, authorises the Attorney-General to inspect any records of estates managed or administrated, audit all books and accounts, and review the operations of the company. Like mortgage broking, corporate trustee regulation became a Commonwealth responsibility in 2009 (COAG 2008b).

The Trustee Corporations Association of Australia (TCA) is the industry body for public and corporate trustees. The TCA's membership base includes all of the public trustees and a majority of the corporate trustees in Australia (TCA 2006b). The TCA's objectives are primarily advocacy and education for employees in the industry.

Third party providers of a registered address

The Corporations Act requires companies to supply ASIC with the address of a registered office. Registered offices need not be physically occupied by a company. Companies that obtain a registered office through a third party must be able to provide ASIC written consent to use the premises as a registered office.

There is no evidence of state and territory or federal legislation or regulation with identification, auditing, or other requirements for third-party providers of registered addresses.

Office space

Commercial, industrial and retail property leasing is regulated at the state and territory level. Commercial property leases permit businesses and companies to occupy the property and to use the address for the purpose of their business. The initial term of a commercial lease is usually five years. Commercial tenants are not obliged to provide proof of their identification or of the existence and legitimacy of their business in order to complete a lease agreement.

Leases in New South Wales that exceed three years should be registered in an abbreviated memorandum with the Land Titles Office. The *Retail Leases Act 1994* (NSW) does not cover retail leases for less than six months or those that exceed 25 years.

Post office box and locked bag providers

Post boxes and locked bag services are available through Australia Post outlets and businesses licensed with Australia Post to provide these services. Other businesses, such as service stations or newsagents, may provide private post boxes using the address of the principal business.

The *Australian Postal Corporation Act 1989* (Cth) sets out the obligations, financial arrangements and monitoring requirements of Australia Post but does not contain identification requirements for obtaining services.

Australia Post policies require personal and business customers to provide photo identification with their application for a post office box or locked bag. Persons applying for post office boxes for use by a business must produce a copy of the company letterhead stating their Australian Business Number so that Australia Post can verify that the company exists.

Australia Post will supply a locked bag for business purposes on the receipt of the company letterhead with the business' Australian Business Number on it, which also states that the services will be used for the purposes of the company. The applicant must also submit certified copies of the business registration documents. The character of the individual, past criminal offences and financial stability are considered by Australia Post when it approves applications. These requirements are also company policies and not statutory requirements.

Businesses unaffiliated with Australia Post are able to rent post boxes to customers and provide a legitimate address based on the box number and the business' address. Private post boxes are not regulated in any way by state and territory or federal instruments and are not self-regulated by industry bodies.

Post Office Agents Association Limited is an industry association for licensees and mail contractors of Australia Post. It is primarily a representative organisation and does not have additional business conduct requirements for members.

The characteristics and regulation of non-financial businesses and professions overseas

On 15 February 2012, FATF (2012) issued revised standards on combating ML/TF and the proliferation of weapons of mass destruction. FATF stated that the revisions to the FATF recommendations addressed new and emerging threats, clarified and strengthened many of the existing obligations, while maintaining the necessary stability and rigour in the recommendations. Key changes of interest to the legal profession include:

- increased clarity in the risk-based approach including guidance on the types of clients, countries and transactions that may be higher or lower risk;
- the ability to provide options for simplified due diligence and also complete exemptions from due diligence requirements;
- for due diligence on trusts, the protector and settlor are now required to be identified;
- the standards now require a company register to be established in each country, which should at least have information on shareholders or members, directors and basic regulating powers; and
- trustees are required to hold information on beneficial owners and provide information on beneficial ownership to regulated entities, although this requirement may be applied by common law and foreign politically exposed persons should be subject to enhanced due diligence whether they are the client or the beneficial owner and enhanced due diligence should apply to domestic politically exposed persons (PEPs) on a risk-based approach.

FATF's Recommendations concerning DNFBPs state that countries should extend the CDD and record keeping requirements established for financial institutions to casinos, dealers in precious metals and stones, real estate agents, trust and company service providers, and accountants and legal practitioners when they engage in specified financial or real estate transactions (FATF 2012: rec. 22 & 23). FATF and FATF-style regional bodies, evaluate their members' implementation of the Recommendations including the extent to which member countries enforce the requirements put into legislation and enforceable instruments. FATF publishes the results of the mutual evaluation processes and between 2000 and 2006, maintained a list of non-compliant countries and territories it considered to have substantial gaps in implementing the Recommendations. FATF revised its review process for non-compliant jurisdictions in 2007 and published a list of jurisdictions with strategic implementation deficiencies in 2010, along with recommendations for other nations to adopt specific methods to protect their financial systems from the potential risks associated with non-compliant countries (FATF 2010).

It is within this context of mutual evaluation that many jurisdictions have engaged in substantial debate over the application of AML/CTF regimes to the professions. The result of this debate has been the adoption of a variety of approaches. This section considers the experiences of a number of countries in seeking to extend their AML/CTF regime to DNFBPs. In Japan, for example, the Act on the Prevention of Transfer of Criminal Proceeds (Law No 22 of 2007) regulates 'specified business operators' that include lawyers. Article 8 of the Act delegates authority to the Japanese Federation of Bar Associations (JFBA) to make rules applicable to lawyers. This means that a limited industry self-regulation model applies under which the JFBA has implemented rules for the verification of client's identity and record keeping. These rules are designed to address AML/CTF concerns. There is currently no suspicious matter reporting requirement on Japanese lawyers, following vigorous opposition by legal practitioners and the JFBA.

Legal practitioners in a number of countries have expressed concern that implementing AML/CTF requirements for the legal profession would have a damaging effect on the practitioner/client relationship and impinge on the ability of practitioners to provide a fully informed service to their client. The obligation to submit suspect transaction reports has been one aspect of AML/CTF regulation that has caused considerable concern for legal practitioners in Australia and elsewhere (LCA 2007). The basis of this concern is that it is a central tenet of the rule of the law that people should be able to obtain independent and skilled advice about the application of the law to both themselves and their affairs. This necessarily requires that a person be free to communicate fully and frankly with their legal adviser and that, in turn, requires a guarantee of confidentiality. For this reason, legal practitioners have a professional obligation to keep the affairs of their clients confidential and to ensure that members of their staff do likewise. This duty of confidentiality extends to all matters divulged to a solicitor by a client, on his or her behalf, from whatever source and is reflected in professional conduct rules (and in the common law governing fiduciary relationships).

Professional conduct rules provide for exceptions to this overarching duty. Importantly, this includes where the practitioner discloses the information for the purpose of avoiding the probable commission of a serious criminal offence. The legal profession's primary concern with the imposition of a suspicious matter reporting obligation on legal practitioners is that it could undermine the relationship of trust and confidence between legal practitioner and client. In the view of the profession, these concerns cannot be addressed simply by the insertion of a provision that preserves legal professional privilege (LPP). This is because the breadth of information and material that is protected from disclosure by LPP is significantly narrower than that encompassed by client confidentiality. If a suspicious matter reporting obligation is applied to practitioners, clients are likely to refrain from providing non-privileged material to legal advisers, even though this material may be crucial to the formulation of accurate and complete legal advice. Importantly, this includes clients who may wish to avoid public disclosure of their material for reasons that are entirely legitimate, such as for personal or legitimate business reasons. Other reservations expressed by professionals facing inclusion in the AML/CTF regime have included fears of unwittingly committing a criminal offence while carrying out professional responsibilities (He 2006).

Finally, it is arguable that prosecution and disciplinary action for the same conduct could raise questions of double jeopardy. While British law finds no grounds to apply double jeopardy law in these circumstances, there is the potential for it to be used in countries that have ratified the European Convention on Human Rights. In deciding whether an individual is facing criminal proceedings, the Convention focuses on the body of the legal processes as opposed to the structure. A defendant who is facing disciplinary action in these jurisdictions could argue that the proceedings constitute criminal proceedings and that parallel investigations would lead to a process of double jeopardy (Middleton 2005).

The following discussion focuses on a sample of countries only namely, the United States, Canada, the United Kingdom, selected European countries (Belgium, France, Germany and Switzerland) and selected Asian countries (The Republic of China, Hong Kong SAR, Singapore and the Republic of China, Taiwan). These were chosen to be illustrative of the range of regulatory models that exist in developed nations. Limitations in the availability of information in English prevented full descriptions of these countries' systems in all cases.

United States

Regulation

The *Annunzio-Wylie Anti-Money Laundering Act 1992* (US) permitted the Secretary of the Treasury to require any financial institution to file a report of a suspicious transaction. The AML/CTF legislation in the United States includes the *Currency and Foreign Transactions Reporting Act* (US) (known as the Bank Secrecy Act (BSA)), the *Money Laundering Control Act 1986* (US) and the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 200*1 (US) (the PATRIOT Act).

The BSA is the central legislation for the AML/CTF regulatory system in the United States. The PATRIOT Act amended the BSA in 2001 and substantially increased the regulatory requirements intended to prevent and detect money laundering in the United States. The PATRIOT Act, in addition to expanding the regulatory regime, also increased the penalties for money laundering offences.

The BSA defines financial institutions in the United States and this now includes depository institutions, securities broker-dealers, mutual funds, money service businesses and futures intermediaries. The BSA now also covers travel agencies, jewellery dealers, insurance companies, finance companies, unregistered investment companies and persons involved in real estate settlements and closings but these institutions are not necessarily subject to the same level of regulation.

Some AML/CTF provisions extend to all businesses and to all individuals. The *Annunzio-Wylie Anti-Money Laundering Act 1992* (US) requires all businesses to keep customer identification records for all currency transactions between US$3,000 and US$10,000. Section 31 USC 5331 requires all individuals involved in trade or business (except financial institutions, which are covered by the BSA) to report currency received for goods in excess of US$10,000 to the Financial Crimes Enforcement Network (FinCEN), the financial intelligence unit in the United States.

Legal practitioners

Legal practitioners are not defined as financial institutions under the BSA and are therefore not subject to most of the BSA's requirements. The American Bar Association has expressed concern regarding the potential impact of AML/CTF obligations on legal practitioners' ethical requirements and LPP (FATF 2005a), preferring instead its *Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing* (ABA 2010). The American Bar Association President stated in 2011 that:

> in our view, the Voluntary Guidance is the most effective means of both combating money laundering and avoiding the passage of federal legislation or adoption of rules that would impose unnecessary, costly, and burdensome new regulations on lawyers and the legal profession and adversely affect the clients that we serve (Zack 2011: 1).

FinCEN is reviewing the question of the application of AML requirements to legal practitioners, particularly with regard to real estate transaction and corporate formation capacities. Since 2009, a number of bills have been introduced into Congress that would bring legal practitioners within the remit of the BSA. At the time of writing, the Treasury Department and key senators on the Senate Homeland Security and Governmental Affairs Committee are working on alternatives to previous bills with the intent of reintroducing similar measures early in the 112th Congress (see ABA 2012).

Accountants

Accountants in the United States are not defined as 'financial institutions' under the BSA and are therefore not subject to most of the AML requirements under this Act (FATF 2006).

Dealers in precious metals and stones

BSA defines dealers in precious metals and stones as financial institutions but these businesses have not yet attracted any industry specific regulation from FinCEN. In June 2005, FinCEN released an interim ruling requiring dealers in precious metals, stones, or jewels to establish an anti-money laundering program. This rule applies to dealers who

sold at least $50,000 worth of 'covered' goods in the preceding year. Covered goods include jewellery, numismatic items and antiques. This sale limit was included to ensure the requirement did not affect small businesses or hobbyists (FinCEN 2005).

Real estate agents

Real estate agents were included in the definition of financial institutions and theoretically subject to AML/CTF requirements, although FinCEN has not yet issued specific rules for businesses involved in the settlement of real estate transactions. The practical implication of this is that real estate agents are not specifically subject to AML/CTF regulation.

Trust and company service providers

Companies acting as an agent in the formation and administration of companies are not subject to the requirements of the BSA and therefore are not subject to AML/CTF requirements (FATF 2005b).

Characteristics of designated non-financial businesses and professions

Reflecting the absence of AML/CTF regulation for legal practitioners and accounting professionals, the bulk of businesses with AML/CTF obligations in the United States are money service businesses. DNFBPs constitute 6.9 percent of the total regulated sector only, as the data in Table 14 indicate. Most of the non-financial businesses are dealers in precious metals and stones. These businesses comprise 20,000 of the businesses shown as non-financial businesses in Table 14 (FATF 2006). The remaining DNFBPs in this figure are casinos and card clubs.

The estimate of the number of dealers in precious metals and stones in the United States is derived from FinCEN estimates of businesses with AML/CTF requirements. The sector consists of businesses ranging from sole traders to listed public companies.

The United States Economic Census 2002 (USCB 2002) counted 76,341 real estate agents (offices of real estate agents and brokers, excluding lessors and activities associated with real estate) in the United States, with at least one employee in 2002 and 646,290 businesses with no employees (predominantly self-employed individuals with unincorporated businesses).

United Kingdom

Regulation

Money laundering is criminalised in the United Kingdom by the *Proceeds of Crime Act 2002* (UK) (POCA 2002 UK), as amended by the *Serious Organised Crime and Police Act 2005* (UK). The United Kingdom also regulates money laundering through the *Money Laundering Regulations (UK)*. The 2003 regulations were recently amended in favour of the *Money Laundering Regulations 2007* (UK), which were created to implement the European Union's Third Money Laundering Directive (Law Society (United Kingdom) 2008). These regulations took effect in December 2007.

The Money Laundering Regulations 2007 (UK) expanded the DNFPBs included in the AML/CTF regime in the United Kingdom. The 2007 provisions included auditors, accountants and tax advisors, independent lawyers, trust and company service providers, real estate agents, high-value dealers (including dealers in precious metals and stones) and casinos in the AML/CTF regime.

On 1 October 2012, the *Money Laundering (Amendment) Regulations 2012* came into force following a review of the 2007 Regulations carried out by HM Treasury. The principal amendments to the Regulations were:

- extending the use of reliance, a mechanism by which a firm can rely on the CDD carried out by a third party to minimise the duplication of checks;
- exempting from the scope of the 2007 Regulations credit institutions that offer time to pay for non-refundable services but do not lend or advance money;
- bringing UK estate agents selling overseas property within the scope of the 2007 Regulations;
- amending the fit and proper persons test applied by Her Majesty's Revenue and Customs (HMRC) to decide whether a person is suitable to run a Money Service Business;
- clarifying the right of an individual to appeal against a HMRC decision that he or she is not a fit and proper person;
- amending the enforcement powers of the Office of Fair Trading, HMRC and the Financial

Table 14 Estimated size of the regulated sector in the United States in 2005–06—financial sector, money service businesses and non-financial businesses

Sector	Estimated numbers	%
Financial services	56,447	18.7
Money service businesses	224,844	74.4
Non-financial businesses	>20,845	6.9
Total	>302,136	100

Sources: FATF 2006; FDIC 2005

Services Authority to ensure compliance with the Regulations (HM Treasury 2012).

The Law Society (United Kingdom) (2009) reported that there were approximately 150,000 regulated private sector entities providing legal services in the United Kingdom. The regulatory requirements are services based and include buying and selling property on behalf of a client, forming a company or trust on their behalf and managing money on a client's behalf.

The regulatory process in the United Kingdom involves practitioners submitting suspicious activity reports (SARs) to the Serious Organised Crime Agency (SOCA) based on suspected misconduct (HM Treasury 2007). *Know your customer* is a principal aspect of CDD in the United Kingdom and requires that client identification be based on documents, data and information obtained from a reliable independent source (HM Treasury 2007). Users of the submitted SARs include the HM Revenue & Customs to detect significant numbers of people with undeclared income as noted in a recent report by the House of Commons Committee of Public Accounts (2008).

Since January 2006, barristers practising in England and Wales have been regulated by the Bar Standards Board, whereas solicitors are supervised by the Law Society (UK). The Law Society (UK) contains the Solicitors Regulation Authority that through its Solicitors Disciplinary Tribunal is responsible for hearing and ruling on all allegations of misconduct. According to a 2008 report by the Solicitors Regulation Authority, the majority of allegations and preceding enquiries into misconduct are made against individual practitioners from single partner firms. In the past 12 months, the number of solicitors fined, suspended and reprimanded for misconduct has significantly increased as indicated in Table 15 (SRA 2008). Data are unavailable on the extent of disciplinary action taken in respect of ML/TF by legal practitioners in the United Kingdom.

Regardless of an increase in disciplinary orders made by the Solicitors Disciplinary Tribunal, a recent study reported that 65 percent of solicitors polled continue to use customer identification methods that are insufficient and not recommended in the country's AML regulations (Montgomery 2008).

The question of whether privileged communications should be subject to reporting requirements has been the subject of considerable debate in the United Kingdom, as has the question of the extent to which legal practitioners should be covered by AML/CTF legislation (Dietz & Buttle 2008).

The most contested issue is whether AML/CTF legislation was intended to override LPP. The decision of the Court of Appeal in *Bowman v Fels* [2005] EWCA Civ 226, concerning POCA 2002 (UK), confirmed that this was not the case. Legal practitioners are indeed exempt from reporting requirements if they are acting in the process of giving legal advice to a client. These decisions put limitations on the ability to include legal practitioners within the AML/CTF regime and simultaneously highlight the difficulty in adopting identical legislation to cover professionals generally and legal practitioners specifically.

Further issues debated in United Kingdom case law have revolved around the offence of making an arrangement to launder money. *Bowman v Fels* questioned whether legal practitioners could be involved in arrangements for money laundering if they did not immediately disclose any knowledge or suspicion. It was found that this section of POCA 2002 (UK) was not intended to cover legal

practitioners in the context of legal advice or litigation and as stated above, it would not override LPP.

Section 330 of POCA 2002 (UK) provides that a relevant professional adviser who suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering is exempted from making a money laundering report where that knowledge was gained in privileged circumstances. This reporting exemption does not apply where the information is provided with the intention of furthering a criminal purpose. The legislation defines a relevant professional adviser broadly. The definition includes an accountant, auditor, or tax adviser who is a member of a professional body (or a person in partnership with a professional adviser or who is employed by one). The relevant professional bodies are not comprehensively listed. The concept of a privileged communication emphasises that the professional in question must be advising, representing, or assisting a client (such as by taking a statement). Business communications between the professional and the client are not exempt.

The following provisions in the *Money Laundering Regulations 2007* seek to ensure that LPP is preserved, although questions still remain concerning inroads into client confidentiality. These provisions were not subject to amendment by the *Money Laundering (Amendment) Regulations 2012*.

> Regulation 37(7): A person may not be required under this regulation to provide or produce information or to answer questions that he would be entitled to refuse to provide, produce, or answer on the grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.
>
> Regulation 38(3): Paragraphs Regulation 38(1)(d) and (e) and Regulation 38(2) do not apply to recorded information that the relevant person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client and, for this purpose, regulation 37(11) applies to this paragraph as it applies to regulation 37(7) (Money Laundering Regulations 2007).

There have been occasional cases in the United Kingdom in which solicitors have been convicted of money laundering. Others have been convicted of providing assistance for various offences including money laundering (Middleton 2008).

Failing to report knowledge or suspicion of money laundering to the competent authorities in the absence privileged circumstances can lead to criminal and professional sanctions as illustrated in the case of *R v Duff* [2003] 1 Cr App R (S) 88.

> Duff, a 43-year-old English solicitor in sole practice, became friends with, and then represented a man who was later convicted of large-scale drug crime. The man had passed Duff £70,000 in cash between April and May 1997; £10,000 was for legal costs, £50,000 was for an investment in Duff's practice and £10,000 was for another company established by Duff to promote

Table 15 Disciplinary outcomes for solicitors in the United Kingdom 2007–08

Solicitors Disciplinary Tribunal orders	12 months prior to June 2007	12 months prior to June 2008	Percentage change 2007–08	Monthly average to June 2008
Fined	89	111	25	9.3
Struck off	73	63	-14	5.3
Suspended	38	54	42	4.5
No order	7	8	14	0.7
Reprimand	18	32	78	3
Other	26	27	4	2.2
Total	252	294	17	24.5

Source: SRA 2008: 4

his practice. In March 1998 the drug dealer was arrested in possession of £5m of cocaine. Duff was instructed to act for him. In September 1998 he was accused of a much wider drug conspiracy. At this point Duff became suspicious. He consulted Law Society literature and reached the conclusion that he was within the law. He took no advice from the Law Society or from another legal adviser. In April/May 1999 the drug dealer was convicted. Duff took advice about his interpretation of the legislation and was reassured by another solicitor that he was correct. He was arrested in October 1999. When interviewed he was not entirely frank although he later said this was a result of having no proper advice. He pleaded guilty to two counts under s 52 of the Drug Trafficking Act 1994 and was sentenced to six months' imprisonment. The Court of Appeal dismissed his application for leave to appeal that sentence ([2004] NICA 43, (Transcript) *R v McCartan*: np).

Legal (and other) professionals should also be aware that communications from a client with the intention of furthering a criminal enterprise, or having a criminal purpose, are excluded from LPP (Rees, Fisher & Bogan 2008). Professionals can also be liable in civil law to victims of money launderers that have engaged their professional services (Masefield 2008).

Legal practitioners in the United Kingdom are allowed to reduce client due diligence in certain cases when undertaking business with an individual or entity in a jurisdiction with equivalent anti-money laundering obligations. HM Treasury has issued a list of jurisdictions outside of the European Economic Area that are considered to have equivalent anti-money laundering legislation to the European Union's Third Money Laundering Directive in May 2008. The Law Society, however, cautioned that the list of equivalent jurisdictions issued by HM Treasury is voluntary, non-binding and does not have the force of law and

> in the case of Argentina, Australia, Brazil, Canada, Mexico, and the United States, the anti-money laundering legislation does not apply to lawyers, that is a requirement under the Third Directive. Other countries on the list have been reviewed by FATF that has deemed aspects of their compliance only partial or in some cases there are aspects that are non-compliant. As such, it is not clear that reliance on the list issued by HM Treasury would satisfy the requirements set out in the Money Laundering Regulations 2007 for assessing equivalence (Law Society (United Kingdom) 2009: 16).

Reliance on this list is not considered a valid justification to override the need to assess the risk profile of individual transactions and to continue to operate risk-based procedures when dealing with customers based in an equivalent jurisdiction.

Characteristics of designated non-financial businesses and professions

FATF (2007) estimated that the size of the UK's total regulated sector was 206,566 entities. DNFBPs in the United Kingdom, like those in Australia, comprise a substantial proportion of the regulated sector in 2007 (see Table 16). The financial sector made up 27.2 percent of the total of known businesses regulated for AML/CTF purposes, money service businesses contributed 30.1 percent and DNFBPs comprised the remaining 42.7 percent.

Table 17 presents the best estimates of the number of businesses providing regulated non-financial services in the United Kingdom in 2007.

Accountants

Accountants in the United Kingdom do not have any requirements to register with government bodies or to join professional bodies. FATF, as a result, was not able to estimate the total number of accountants at the time of the 2007 Mutual Evaluation.

High-value dealers (including dealers in precious metals and stones)

High-value dealers are all businesses that will accept payments of €15,000 or more in cash. The definition is not restricted by the types of goods sold. Dealers of precious metals and stones are included in the definition of high-value dealers only if they accept payments in cash above the threshold. All businesses willing to accept cash above the threshold are required to register with HMRC. The register currently has 1,500 businesses recorded. As FATF note, many businesses that might be

considered dealers of high-value goods in other jurisdictions impose self-restrictions on the value of cash payments and therefore are not considered high-value dealers for AML/CTF purposes in the United Kingdom.

Legal practitioners

The AML/CTF obligations in the United Kingdom extend to solicitors, barristers, conveyancers and notaries when performing specified functions for clients:

- buying or selling property;
- managing client money, securities, or other assets;
- opening or managing bank accounts, securities or other assets;
- organising contributions to establish, operate, or manage a company; or
- creating, operating, or managing companies, trusts or similar structures.

The Law Society reportedly represents over 115,000 solicitors in England and Wales (Law Society (United Kingdom) 2009). There are 100,938 solicitors with practising certificates in England and Wales, 1,976 in Northern Ireland and 9,637 in Scotland. England and Wales' 100,938 solicitors work within 9,081 firms, most of which are sole traders and 3,592 of Scotland's solicitors were the principal solicitors of private firms. England, Scotland and Wales have at least 12,673 solicitors' firms (FATF 2007).

England and Wales have a further 14,000 barristers, most of whom are self-employed. A further 585 barristers work in Northern Ireland and Scotland has an additional 460 barristers ('advocates' in Scotland). The total number of barristers in the United Kingdom is 15,045, based on these figures, and presumably this also represents the best estimate of the number of businesses if most are self-employed persons (FATF 2007).

Most notaries and providers of conveyancing services are solicitors in the United Kingdom. There are, however, 230 separate firms providing conveyancing and an additional 70 notaries public practising as notaries only and not included as solicitors in the United Kingdom in this count. FATF reported that the UK's conveyancing firms conducted £39b in property transactions in 2005.

The Law Management Section Financial Benchmarking Survey (Law Society United Kingdom 2006), surveying a sample of 269 firms with more than 30 employees, found the median billings per fee-earning legal practitioner for 2006 were £104,379 and the median billings for a partner were £4727,640 in the same period. All but five companies responding to the survey had appointed a money laundering control officer and more than half had made a report (presumably a suspicious transaction report) to the FIU. At the time of the survey in 2006, 12 percent of the companies participating were Limited Liability Partnerships and more than half of respondents indicated the intention to move to that business model.

Real estate agents

FATF estimated that 10,000 real estate agents were operating in the United Kingdom in 2007. There are two industry bodies for real estate agents—the Royal Institute of Chartered Surveyors and the National Association of Estate Agents—each of whom undertakes a character assessment prior to admitting members. Approximately 25 percent of all real estate agents are not members of either industry association and were therefore not subjected to these assessments.

Table 16 Estimated size of the regulated sector in the United Kingdom in 2007– financial sector, money service businesses and non-financial businesses

Sector	Estimated numbers	Percentage of total
Financial services	28,969	27.2
Money service businesses	32,131	30.1
Non-financial businesses	>45,588	42.7
Total	>106,688	100.0

Sources: FATF 2007

Table 17 Regulated entities in the United Kingdom in 2007—estimates of service providers

Business type	Providers (n)
Casinos	140
Real estate agents	10,000
High-value dealers	1,500
Solicitors	>12,673
Barristers	15,045
Conveyancers	230
Notaries	1,000
Accountants	No estimate available
Trust and company service providers	5,000
Total	>45,588

Sources: FATF 2007

Other selected European Union countries

The AML/CTF regulatory regime extends to numerous DNFBPs throughout the European Union reflecting the common adoption of the EU's money laundering directives (IMF 2006). The following material provides information on a selection of European countries' regulations. These countries' AML/CTF regimes follow the requirements of the Third EU Money Laundering Directive currently in force. In 2012, the European Commission undertook a review of the EU framework which is expected to lead to the introduction of the Fourth EU Money Laundering Directive late in 2013.

Other estimates of the revenue generated by some of the regulated DNFBP sectors are that the accounting, book-keeping, auditing and tax activities in Norway and EU countries produced a turnover of between €55,000m and €60,000m between 2004 and 2005, and legal activities produced revenue of approximately €60,000m during the same time period and in the same countries (Alajaasko 2008). Of the 125 million persons employed in Europe in 2004, 2.5 million worked within the real estate sector and together constituted 897,800 of all registered enterprises earning a total of €460,000m (Eurostat 2004).

Belgium

Belgium's AML/CTF regulatory regime encompasses real estate agents, diamond merchants (but not other dealers in precious metals and stones), some legal practitioners (notaries, bailiffs and solicitors), accounting professionals (auditors, chartered accountants, external tax advisors, certified accountants and certified tax accountants) and casinos including gaming halls (IMF 2006). Private security firms that transport cash for clients are also included in the regime.

Legal practitioners in Belgium, like those in the United Kingdom, also have obligations under the regime when engaging in specific transactions—buying and selling real estate including:

- commercial property;
- managing funds, securities and other assets;
- opening or managing bank accounts, savings accounts or portfolios;
- arranging contributions to establish, administer or manage a company; creating, administering or managing trusts, companies or similar structures; and
- acting for or on behalf of a client in any financial or real estate transaction.

The inclusion of any service providers connected to the creation, administration or management of trusts, companies and other similar structures covers all providers of trust and company services companies.

France

The professions included in France's regulated sector are similar to those in Belgium, reflecting the common adoption of the EU's money laundering Directives. Real estate agents, casinos and gaming houses, accountants and high-value dealers (including dealers of precious metals and stones, as well as art and antiques dealers) have AML/CTF obligations in France. Legal practitioners engaging in real estate and financial transactions also have AML/CTF requirements for those transactions (IMF 2005).

All suspicious transactions are to be reported to the French financial intelligence unit, Tracfin, who after analysis decides whether a case should be referred to the Office Central pour la Repression de la Grande Delinquance for investigation. Since 2006, there has been an average annual increase of 3.6 percent in the number of reports submitted to Tracfin. The majority—80.5 percent—of all reports are made by the financial sector, compared with 0.01 percent by legal practitioners, 0.04 percent by real estate agents, 0.01 percent by high-value dealers and 0.48 percent by investment companies (Tracfin 2007). The Conseil National des Barreaux represents and regulates legal practitioners in France and is responsible for the organisation and design of ongoing professional development for legal practitioners (Conseil National des Barreaux 2008). It is obligatory for all financial transactions made by legal practitioners on behalf of a client to be deposited into a CARPA account (Lawyers' fund for Pecuniary Settlements). CARPA accounts were established by the French Bar Association and are managed by the National Union of Lawyer's Funds that acts as an intermediary between the funds and the Ministry of Justice. It is comprised of more than 180 local bar associations in metropolitan France, France's overseas departments and Noumea (UNCA nd: 2). CARPA, similar to client accounts found in the United Kingdom and Australia, oversees the management, monitoring and auditing of third party client funds and ensures absolute traceability. From the moment that finances are deposited into the account, be they in cheque or cash format, certain fundamental pieces of information are established:

- identification of the sources and beneficiaries of finances;
- the description and nature of transactions; and
- proof of a connection between the pecuniary settlements made by legal practitioners and institutions within the framework of their professional service (Wienhofer 2003: 4).

Real estate agents in France are regulated by the legislation of Hoguet 20 July 1972 that is implemented by the government office responsible for competition, consumer affairs and the repression of fraud (Direccion generale de la concurrance, de la consommation et de la repression des fraudes), which is located within the ministry of finance, economy and employment. (FATF 2011).

Germany

In Germany, legislation implementing the EU's Third Money Laundering Directive commenced operation in October 2008, with the provisions extending to financing of terrorism. German laws governing boycotts however, mean that it is illegal for designated entities to apply certain lists of prohibited persons for due diligence purposes. The prohibition extends to lists such as the US Office of Foreign Asset Control list. This creates difficulties for entities that conduct business both in Germany and countries where lists of proscribed persons apply (Blöcker 2008). Germany has also adopted AML/CTF requirements for legal practitioners (IMF 2004). Solicitors and notaries engaging in real estate, financial or trust transactions are included in the designated sector as are real estate agents, accountants, tax consultants, auditors and casinos.

Switzerland

Switzerland became a signatory to the Vienna Convention on 21 September 1988. This Convention concerns drug trafficking, but embodies the first internationally accepted definition of money laundering, along with the requirement for signatory countries to make the provisions of the Convention sovereign law. More recently Switzerland has been praised for its cooperation in transnational financial regulation and AML/CTF. Switzerland has been a participant in freezing Al Qaeda funds and in targeting the financing of their cells (International Relations and Security Network 2001).

Switzerland has also implemented extensive legislative and reporting requirements that make the placement stage of money laundering more difficult. The Swiss financial system, however, continues to deal with shell companies and similar offshore entities that may make Switzerland vulnerable to layering and integration. While the US Department of State praises Switzerland for increased diligence (Wechsler 2001), the CIA World Factbook offers an opinion of Switzerland's vulnerabilities as 'Switzerland remains a safehaven for investors…' (CIA 2008 np), that arguably includes money launderers.

Hong Kong

Regulation

Hong Kong has not included most of the non-financial businesses identified by FATF in the regulated sector. Some, however, have CDD and record keeping obligations issued through industry bodies and regulators. Real estate agents have AML/CTF obligations established by the Estate Agents Ordinance (cap 511) and additional legislation and conduct rules issued by the industry regulator (FATF 2008a).

In Hong Kong, since July 2008, legal practitioners are subject to mandatory CDD and record-keeping obligations specified in a circular with practice directions issued by the Law Society of Hong Kong (Ho 2008). Notaries in Hong Kong require seven years' experience as a solicitor and must pass an examination to work as a notary public. Notaries in Hong Kong are not able to control or hold money or assets on behalf of clients.

The Hong Kong Institute of Certified Public Accountants has issued guidelines including AML/CTF obligations for members. The obligations include CDD and record keeping, as well as reporting, but are not enforceable for accountants. Auditors must be registered CPAs in Hong Kong and are bound by the Hong Kong Standard on Quality Control 1: Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information and other Assurance and Related Services Engagements, a code of ethics (issued by the Hong Kong Institute of Certified Public Accountants) and other standards that have included CDD and record-keeping requirements. Auditors can be disciplined for failure to comply and in this sense, are included in the regulated sector.

Trust and company services providers may be legal practitioners or accountants and be included in the industry body AML/CTF directives, although the industry has providers outside of these professions. There are two additional industry bodies for trust and company service providers—the Hong Kong Institute of Chartered Secretaries and the Association of Incorporated Services Limited—although providers are not compelled to join either association. The industry, as such, is not part of the regulated sector.

Dealers in precious metals and stones are also not included in the regulated sector by legislation or industry standards.

Characteristics of designated non-financial businesses and professions

The figures in Table 18 estimate the numbers of designated non-financial professional businesses regulated for AML/CTF purposes in Hong Kong. The total estimated number of providers is 11,533. The figures presented in Table 19 estimate the number of financial service providers (banks, insurers, insurance agencies, insurance brokers, and dealers in securities and futures) in Hong Kong in 2006–07. The best estimated number of DNFBPs is more than twice the number of providers of financial services.

Legal practitioners

Hong Kong had 5,741 solicitors with a practising certificate in May 2007. Of these, 4,678 were employed in 705 private legal firms, 1,965 of which were sole traders or partners. Just under half of the 705 firms (n=315) were sole practitioners and most of these small firms did not employ a second solicitor. A further 53 legal firms were foreign owned. A further 1,063 solicitors were employed by government agencies or other businesses and 2,818 were assistant solicitors or consultants in law firms.

Accountants

Accountants in Kong Hong must be members of the industry body in order to use the title Certified Public Accountant. Auditors must attain an additional

practising certificate. The industry body, the Hong Kong Institute of Certified Public Accountants (HKICPA), had 26,042 individual members in May 2007. There were 3,596 members qualified to perform auditing functions.

The HKICPA listed 3,491 CPA firms in 2008. FATF (2008a) reported a slightly different figure of 3,245 in May 2007. More than half of accounting businesses (n=1,853) in Hong Kong in 2007 were individuals practising in their own names. Of the remaining 1,392 companies, most were registered firms (n=1,170) that were sole traders (n=973) or small businesses with less than five partners (n=185). There were 222 corporate accounting firms in 2007.

Dealers in precious metals and stones

Of the 1,500 estimated dealers in precious metals and stones in Hong Kong, 1,000 are wholesalers or retailers and the remaining 500 are manufacturers. The industry employs approximately 2,500 people.

Singapore

Legislation

DNFBPs comprise a very small proportion of Singapore's regulated sector. Almost all businesses with AML/CTF obligations in Singapore are those regulated by the Monetary Authority of Singapore. Legal practitioners and trustees (although not company service providers who are not legal practitioners or trustees) are the only non-financial industries with preventative AML/CTF requirements. The Law Society of Singapore issues the AML/CTF requirement for legal practitioners and the Institute of Certified Public Accounts of Singapore regulates approved trustees. The best estimate of the total number of designated non-financial businesses regulated for AML/CTF in Singapore is 845 (FATF 2008b).

Although legal practitioners in Singapore are required to report any suspected money laundering, it is not an offence for an advocate and solicitor or his clerks or employees, or an interpreter to fail to disclose any information or other matters that are items subject to LPP under s 39 of the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (Cap 65A). Items subject to LPP are:

- communications between the legal practitioners and the client, or any person representing the client, made in connection with the provision of legal advice;
- communications between the legal practitioner and the client, or any person representing the client, made in connection with legal proceedings, or in contemplation of legal proceedings, for the purposes of such proceedings; and
- items enclosed with, or referred to, in such communications and made:
  - in connection with the provision of legal advice; or
  - in connection with or in contemplation of legal proceedings and for the purposes of such proceedings when they are in the possession of a person who is entitled to possess them, but excluding any communications or items held to further a criminal purpose (FATF 2008b).

Singapore defines trust companies as businesses providing services to establish a trust, act as a trustee, arrange for any person to act as a trustee, or to provide trust administration services. There are some trust company service providers that are not licensed trust companies. Trustees and administrators of business trusts, trustee managers of registered business trusts and administrators of estates of deceased persons are except from the licensing requirement. Banks and holders of financial services licences are also exempt as are legal practitioners. These types of businesses, however, are already regulated for AML/CTF preventative measures. Public accountants and accounting firms are also exempt and these businesses are not regulated for AML/CTF purposes in Singapore.

Company service providers are not explicitly regulated for AML/CTF purposes although, as in other countries, the type of businesses able to offer these services is limited. The persons able to file documents on behalf of third parties are determined by the Business Registration Act, the Companies Act and the Limited Liability Partnerships Act, and are limited to legal practitioners, accountants (members of the Institute of Certified Public Accountants of Singapore), chartered secretaries (members of the

Table 18 Regulated entities in Hong Kong in 2008—estimates of service providers

Business type	Number of providers
Accountants	3,491
Real estate agents	4,257
Solicitors firms	705
Notaries	380
Total	8,833

Source: EAA 2008; FATF 2008a; HKICPA 2008; Law Society of Hong Kong 2009

Table 19 Regulated entities in Hong Kong—estimates of service providers in 2006–08

Sector	Business type	Number of providers
Financial services		4,021
Money service businesses		2,501
Non-financial businesses		8,833
Total		>15,355

Sources: HKMA 2008; OCI 2008; Securities and Futures Commission 2008

Singapore Association of Chartered Secretaries and Administrators) and members of other proscribed professional bodies. Legal practitioners performing company services are regulated for AML/CTF prevention measures.

Characteristics of designated non-financial businesses and professions

DNFBPs make up a very small proportion of Singapore's regulated sector. Almost all businesses with AML/CTF obligations in Singapore are those regulated by the Monetary Authority of Singapore. Legal practitioners and trust companies are the only non-financial industries with preventative AML/CTF requirements. The requirements do not extend to company service providers that are not legal practitioners.

The Law Society of Singapore issues AML/CTF guidance for legal practitioners and the Institute of Certified Public Accounts of Singapore regulates approved trustees. The best estimate of the total number of DNFBPs regulated for AML/CTF in Singapore is 845 (FATF 2008b).

Legal practitioners

The FATF (2008b) reported that Singapore had 806 legal practices in 2006. Singapore's legal practices generated S$837m in revenue in 2000. Most of the revenue was derived from litigation and alternative dispute resolution (41%), corporate law (22%) and conveyancing and property work (21%; Statistics Singapore 2003).

Most of Singapore's legal practices in 2009 were small businesses (88%), with less than five practitioners employed, 10 percent were medium sized businesses with six to 30 practitioners and large firms made up two percent of the total number in 2009 (Law Society of Singapore 2009). Singaporean firms generated 76 percent of the total receipts for the industry and foreign firms received 34 percent (Statistics Singapore 2003).

Trust and company service providers

Singapore defines trust companies as businesses providing services to establish a trust, act as a trustee, arrange for any person to act as a trustee, or to provide trust administration services. There were 39 licensed trust companies in Singapore in October 2008. There are some trust company service providers that are not licensed trust companies. Trustees and administrators of business

trusts, trustee managers of registered business trusts and administrators of estates of deceased persons are exempt from the licensing requirement. Banks and holders of financial services licences are also exempt as are legal practitioners. These types of businesses, however, are already regulated for AML/CTF preventative measures. Public accountants and accounting firms are also exempt and these businesses are not regulated for AML/CTF purposes in Singapore. There were an additional 33 businesses providing trust services in October 2008 although 19 of these were banks, eight were merchant banks, six were solicitors or barristers and all are already regulated for AML/CTF requirements (MAS 2008).

Republic of China, Taiwan

Legislation and characteristics of designated non-financial businesses and professions

Dealers in precious metals and stones and trust businesses are the only designated non-financial service providers to be included in Taiwan's AML/CTF regime. Jewellers in Taiwan, in addition to dealing in precious metals and stones, also perform other functions associated with financial institutions such as currency exchange. There are no current estimates of the total numbers of jewellers operating in Taiwan.

Foreign currency exchange, a regulated money service business in Taiwan since 2007, is also performed by a wide range of other firms outside of their core businesses. The types of businesses permitted to provide this service are hotels, travel agencies, department stores, handicraft shops, jewellery stores, convenience stores, administrative offices of national scenic areas, sightseeing service centres, railway stations, temples, museums, institutions and associations providing services to foreign travellers or hotels located in remote areas. Unfortunately, the number of businesses providing currency exchange services outside of their core business is not available. The Asia/Pacific Group on Money Laundering (APG 2007) reported the volume of foreign currency transactions passing through jewellers and other small businesses between 2004 and 2006. These are shown in Table 20. The hotel industry was a significant participant in currency exchange and foreign currency transaction in this period.

Canada

Regulation

Canada's money laundering, possession of the proceeds of crime and terrorism financing offences are in its Criminal Code. In 2000, Canada introduced both the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000* (PCMLTFA) and established the Canadian Financial Intelligence Unit.

The PCMLTFA currently applies to real estate brokers and accountants/accounting firms. The amendments to the PCMLTFA pre-published on 30 June 2007 and enacted in December 2007 mean that whole or part of the PCMLTFA applied to legal counsel and legal practitioners, British Columbia notaries, public and notary corporations and dealers in precious metals and stones as of December 2008.

Legal practitioners

Legal practitioners in Canada are governed by the statutes and regulations of the provincial or territorial law society of the province in which they engage in legal practice. The law societies licence legal practitioners and regulate professional conduct, competence and capacity to practise pursuant to legislation in each jurisdiction. The Federation of Law Societies in Canada is a non-statutory representative body of the Law Societies that facilitates regulatory development and cooperation. Legal practitioners (including judges and students) are also represented by the Canadian Bar Association, which is a voluntary association.

In March 2003, legal practitioners and Quebec notaries (who provide legal advice under the Quebec civil code) were exempted from complying with the regulatory provisions of the PCMLTFA when the government revoked the regulatory provisions as they applied to legal counsel. This decision

was made as the result of a legal challenge by the profession when the government had initially proceeded to mandate suspicious and prescribed reporting, client identification, record keeping and internal compliance measures when counsel were carrying out various activities on behalf of a client or entity. These activities included receiving or paying funds (other than those relating to professional fees, disbursements, expenses or bail), purchasing or selling securities, real properties, business assets or entities, or transferring funds or securities by any means.

By amendment to the PCMLTFA in December 2006, legal practitioners were made exempt from the suspicious and prescribed transactions reporting requirements of the legislation. Regulations requiring verification of parties to financial transactions enacted under the legislation and in force from December 2008 are applicable to legal practitioners. However, pursuant to an interim injunction obtained through litigation that challenged the constitutionality of the legislation, these regulations cannot apply to legal practitioners without the consent of the Federation of Law Societies of Canada and the other parties to the litigation. The litigation is currently adjourned. If consent is not given, the federal government is entitled to reconvene the litigation on the constitutional question. A decision in this respect is pending. As such, legal practitioners are not subject to the new regulations.

Following the revocation of AML/CTF regulatory provisions as they applied to legal practitioners, the Federation of Law Societies of Canada introduced additional professional rules to address money laundering risks. These included the adoption of a model 'No Cash Rule', pursuant to which each member law society has implemented rules restricting legal practitioners from receiving cash in amounts over Can$7,500. All Canadian law societies have adopted local rules that mirror the substance of the new 'know-your-client' model rule, which was adopted by the Federation in March 2008. This new rule describes the measures legal practitioners and Quebec notaries must take and the records they must keep to verify a client's identity. The purpose of this rule is to help practitioners determine whether clients are attempting to use them as an intermediary for ML/TF. Regulations imposing client identification and verification obligations on legal practitioners were implemented in all but three jurisdictions (the Barreau du Quebec, the Chambre des Notaires, and the Law Society of Saskatchewan) at the end of 2008 (IBA 2009).

British Columbian notaries

British Columbia notaries public (including notary companies) have reporting requirements under the PCMLTFA when they engage in receiving or paying funds (other than those received or paid for professional fees, disbursements, expenses or bail), purchasing or selling securities, real property or business assets or entities, or transferring funds or securities by any means.

These specific regulatory requirements include reporting suspicious transactions (where there are reasonable grounds to suspect that a transaction or an attempted transaction is related to the commission, or attempted commission, of a money laundering offence or a terrorist financing offence), the reporting of terrorist property (where there is

Table 20 Value of foreign currency transactions in non-money service businesses in Taiwan, 2004–06 (US$)

Industry	2004	2005	2006
Hotel	30,883,998	32,149,006	30,995,288
Handicraft store	6,096,725	9,626,600	8,544,887
Department store	4,775,183	5,154,872	4,407,651
Travel agency	233,726	289,815	2,599
Jeweller	0	0	138,227
Other duty free store	852,352	632,852	719,135
Total	42,843,988	47,855,150	44,809,793

Source: APG 2007: 136

Table 21 Inclusion of non-financial businesses in anti-money laundering/counter-terrorism financing regimes in selected countries

Profession	Australia	United States	United Kingdom	Belgium	France	Germany	Hong Kong	Singapore	Taiwan
Lawyers	No	No	Yes[a]	Yes[a]	Yes[a]	Yes[a]	Yes	Yes	No
Accountants	No	No	Yes	Yes	Yes	Yes	Yes	No	No
Real estate	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
Metal	Yes	Yes	Yes[b]	No	Yes[b]	No	No	No	Yes
Stones	No	Yes	Yes[b]	Partially[c]	Yes[b]	No	No	No	Yes
Trust and company services	No	No	Yes	Yes	Yes[d]	Yes[d]	No	Partially[e]	No

a: Legal practitioners do not have AML/CTF obligations unless engaging in financial or real estate transactions

b: Dealers in precious metals and stones are considered high-value dealers and are regulated

c: Diamond merchants are regulated in Belgium but not dealers in precious stones generally

d: Trust and company service providers are included in the regulated sector by the Directive 2005/60/EC of the European Parliament and of the Council (EU Third Directive)

e: Trust companies (and trust service providers) are included in the regulated sector

Note: This Table has not summarized the position in Switzerland and Canada

property under the accountant's possession or control that is owned or controlled by or on behalf of a terrorist group) and the reporting of cash transactions involving Can$10,000 or more.

Notaries are obliged to maintain the following records—large cash transaction records, receipt of funds records, copies of official corporate records and copies of suspicious transaction reports.

Notaries are obliged to identify any individual or entity where a person conducts a large cash transaction, when an individual has been the subject of a suspicious activity report and an individual or entity about whom the reporting entity has kept a receipt of funds record. Where a large transaction report is required, the reporting entity must take reasonable measures to determine whether the individual is acting on behalf of a third party and what the nature of the relationship is between the individual and the third party.

Finally, notaries are required to maintain a compliance regime involving the appointment of a compliance officer and the development and application of written policies.

Accountants

Accounting professionals have specific regulatory requirements when they perform the following activities on behalf of a client—receiving or paying funds, purchasing or selling securities, real property or business assets or entities or transferring funds or securities by any means. The requirements also apply when accountants/accounting firms give instructions regarding these activities or when they act on a voluntary basis.

Dealers in precious metals and stones

Dealers are only affected if they engage in purchases or sales of C$10,000. The relevant regulatory requirements are similar to those that have been applied to accountants/accounting firms.

Real estate agents

The PCMLTFA applies to real estate brokers and sales representatives who are acting as agents for the sale or purchase of real estate. The relevant regulatory requirements are similar to those that have been applied to accountants/accounting firms.

Trust and company service providers

Trust and company service providers are not separately regulated in Canada. They do not generally fall under the PCMLTFA Act unless they also operate in a regulated category such as a trust and loan company.

Comparative analysis of regulatory requirements

A comparative summary of the regulatory environment for nonfinancial sector businesses and professions in selected countries is provided in Table 21. The United Kingdom has the most extensive regulation of these sectors for AML/CTF purposes, followed by selected EU and Asian countries. Regulation of these sectors in the United States is comparable to those in Australia, at present.

Legal practitioners

Hong Kong and Singapore are the only two countries that have included all legal practitioners within the AML/CTF regulated sector for all clients and transactions. Almost all of the other jurisdictions considered in this section have included legal practitioners in the regulated sector only when engaging in financial and real estate transactions. The United Kingdom, Belgium, France and Germany have, for example, taken this approach.

Legal practitioners in the United States are not generally subject to AML/CTF regulation. However, in 2010, the American Bar Association introduced its Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money-Laundering and Terrorist Financing in order to assist legal professionals to avoid money laundering and terrorist financing risks when providing services to clients.

Legal practitioners in Canada were initially included in the regulated sector in 2001 with customer identification, record keeping, reporting and internal compliance procedures for all transactions involving:

- receiving or paying funds other than those representing fees for services, disbursements, expenses or bail;
- purchasing or selling securities, real estate, business assets or entities; or
- transferring funds or securities.

The Canadian requirement also extended to providing advice on transactions of these types. The federation of Canadian Law Societies and the Law Society of British Columbia instigated a constitutional challenge (primarily to the mandatory reporting requirement) on the basis that it undermined LPP. The challenge was adjourned after the Canadian Government repealed the requirements for legal practitioners with Part 1 of the *PCMLTFA of Canada* that provides the customer identification, suspect transaction reporting and record keeping requirements. Legal practitioners are still bound by Part 2 of the PCMLTFA that requires them to report cross-border movements of currency or other instruments of value.

Following the revocation of AML/CTF regulatory provisions as they applied to legal practitioners, the Federation of Law Societies of Canada introduced additional professional rules to address money laundering risks including the restriction of legal practitioners receiving cash in amounts over Can$7,500 and rules concerning client identification and verification (IBA 2009).

AML/CTF requirements for legal practitioners in the United Kingdom, Belgium, Germany and Singapore are also complicated by the concept of LPP. The requirements for legal practitioners to report suspicious transactions do not apply to information gained in circumstances protected by LPP. In France, for example, client confidentiality and privilege are protected through the use of CARPA accounts. Investigations by police and financial institutions into client CARPA holdings are permitted in the event of an offence directly linked to the account in question. Such investigations are conducted by the CARPA Control Commission. The Control Commission is composed of major organisations within the sector. It also recommends spot checks of transactions below €40,000 and obligatory investigation of anything above this amount (Wienhofer 2003). The CPRA Control Commission reportedly carried out 88 investigations of this nature between 1996 and the year 2000 (UNCA 2000).

Accountants

The United Kingdom, Belgium, France and Germany have included accountants in the regulated sector as directed by the EU's Third Money Laundering Directive. Hong Kong's accountants have AML/CTF obligations if they are members of HKICPA. Accountants performing auditing tasks must be a registered member of the

industry body and are thus all encompassed in the guidelines issued by HKICPA.

Real estate agents

Real estate agents are regulated for AML/CTF purposes in almost all of the countries considered here with the exception of the United States and Singapore. Singapore's inclusion of legal practitioners, with the exclusion of real estate agents, is interesting as is the reverse situation in Taiwan where real estate agents have AML/CTF obligations and legal practitioners do not.

Trust and company service providers

The European countries examined including the United Kingdom include trust and company service providers within the regulated sectors. The other countries considered in this chapter do not. Singapore includes trust companies, performing in Singapore many of the functions FATF have sought to have included in the regulated sector, but have excluded company service providers. Legal practitioners providing this service in Singapore have obligations, although accountants (whether providing company services or not) are not included in the regulated sector.

Crime risks in the non-financial business and professional sectors

Those working in non-financial businesses and the professions can become involved in ML/TF in a variety of ways, although there are two areas of primary concern. First, they may be involved in the commission of financial crimes that generate funds that require laundering or that may be used to finance terrorist activities. They may then seek to launder those funds themselves. Conduct of this nature involves intentional criminality that would attract liability under the criminal law if proved. Second, they may become unwittingly involved in money laundering or the financing of terrorism by providing advice to their clients or customers that could be used in connection with the laundering of funds or the financing of terrorist activities (see He 2006).

The Director-General of the Swedish National Economic Crimes Bureau, Ms Gudrun Antemar, raised concerns about the involvement of professionals acting unwittingly as advisers and facilitators for money laundering in the keynote speech in the 2005 United Nations congress on crime prevention and criminal justice.

> [T]he tracing and return of the proceeds of crime has become more complicated. International co-operation has to be enhanced in order to launch effective countermeasures. Especially the occurrence of shell corporations and offshore financial centres as safe havens for illicit funds must be addressed. The involvement of professionals such as lawyers and accountants acting as advisers and facilitators is also of great concern. Access to transaction records of banks and other financial institutions is also an important issue (UNAFEI 2006: 35).

In the same way that legitimate businesses will look at market forces and new opportunities, perpetrators of financially motivated crime and terrorism financiers will also seek new areas to exploit for ML/TF to maximise their illicitly gained profits and to evade the scrutiny of law enforcement agencies and regulators. Non-financial businesses and professions, in addition to financial services businesses, are at risk of becoming a conduit for the movement of illicit proceeds. The attractions of the criminal exploitation of these professions have been explained in the following way:

> 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 DNFBP sectors if other channels become more difficult. For this reason, DNFBPs, including dealers in precious metals and stones may be more or less vulnerable depending on the effectiveness of the AML/CFT procedures applied

> in other sectors. A risk-based approach allows DNFBPs, including dealers, to more efficiently and effectively adjust and adapt as new money laundering and terrorist financing methods are identified (FATF 2008c: 4).

Despite the lack of empirical evidence about the involvement of professionals acting unwittingly as advisers and facilitators of money laundering, the potential vulnerability of these individuals and businesses remains a concern to governments and regulators. Nelen (2008) suggested possible links between the real estate sector and organised crime groups by explaining how the former is attractive to organised crime groups for money laundering activities. Four incidents that happened between 2003 and 2005 in the Netherlands were cited as supporting evidence.

> These four cases reflect both a symbiotic and a parasitic dimension of the relationship between organized crime and the real estate sector. The symbiotic element is reflected in the fact that people who render financial and legal services—like brokers and lawyers—may function as intermediates between legitimate markets and criminal entrepreneurs. Recently, at both national and international level, the compromising conduct of these facilitators has been increasingly at issue in public discussion, as have the possible measures that should be taken against such conduct. The parasitic element in the aforementioned cases is that co-operative relationships sometimes take a turn to the worse. Especially, in the second (Endstra's) case, symbiosis may have turned into protection rackets and extortion. According to Endstra himself in secret testimonies to police intelligence officers shortly before he was killed, he was forced—along with other real estate dealers—to pay large sums of money to a group of criminals (Nelen 2008: 752).

In Australia, during the second reading of the Financial Transaction Reports Amendment (Transitional Arrangements) Bill 2008, it was asserted that:

> Australian authorities also identified other methods that served as money-laundering vehicles. Examples include cash smuggling into and out of Australia and the use of legitimate business to mix proceeds of crime with legitimately earned incomes or profits. Law enforcement has also recognised a growing trend in the use of professional launderers and other third parties to launder criminal proceeds (House of Representatives 2008b: 4).

Publicly available evidence to support the involvement of professionals is limited, although the Australian Crime Commission (2011) has identified professionals as being facilitators for the creation and use of so-called 'phoenix companies' that are used in connection with the evasion of taxation.

> There is evidence of links between phoenix activity and organised crime. Phoenix activity occurs when directors of a company that is about to be liquidated transfer assets to another company that they also control. This leaves no assets to pay creditors but enables the business to continue under the new company. Complaints concerning phoenix activity are increasing in Australia and the activity is being used to avoid tax and superannuation liabilities in a range of industries. Professional facilitators such as insolvency practitioners, solicitors and tax agents have been identified as assisting individuals to take part in phoenix activity (ACC 2011: 41).

Williams (2002: 66) noted that the accountancy profession:

> provides a representative sample of the business community in that it is basically sound and populated by people of great skill and integrity, with isolated instances of fraud and impropriety being committed by a small minority of the profession driven by a mixture of greed and incompetence assisted by the presence of an environment in which inside knowledge is available of the client's business affairs. Experience indicates that the risk is highest with sole practitioners due to lack of accountability and peer 'supervision', but again experience indicates that fraud and dishonesty can also be perpetrated in partnership situations where lack of proper controls can enable strong personalities or deviant personalities (sometimes one and the same) to abuse the system.

The degree of personal culpability involved in professional misconduct and crime may vary

considerably (Smith forthcoming). The concept of dishonesty lies at the heart of most property offences and is a matter of fact for juries to determine in criminal cases. The *Criminal Code Act 1995* (Cth) defines dishonest as 'dishonest according to the standards of ordinary people; and known by the defendant to be dishonest according to the standards of ordinary people' (s 130.3). Standards of honesty for the criminal prosecution of professionals are determined in the same way as for other accused persons. In professional disciplinary proceedings, however, standards of dishonesty are determined by the professional regulatory body in question who will consider whether the conduct 'would reasonably be regarded as disgraceful or dishonourable' by professionals in the same profession 'of good repute and competency' (*Allinson v General Council of Medical Education and Registration of the United Kingdom* [1894] 1 QB 750, 760–761).

Smith (forthcoming) has explored the ways in which professionals can become involved in acting illegally, either for their own benefit, or on behalf of their clients, by assessing the intentions behind their actions and the extent to which these are blameworthy. Prior research into financial crime by professionals has identified situations in which legal practitioners have unwittingly been involved in illegal activities conducted by their clients, as well as intentionally involved in fraud and money laundering (Smith 2004). An analysis of the differing levels of criminality and or misconduct in which professionals may be involved has been undertaken by Smith (forthcoming), who concluded that the vast majority of professionals will never encounter, or be involved in situations of money laundering during their careers and if they do, will act appropriately to report their suspicions officially to police and regulatory agencies. A small number will, however, act illegally themselves or facilitate money laundering by their clients and it is to this very small group of unprofessional individuals that effective preventive and disciplinary measures need to be directed. Arguably, the existing criminal law and disciplinary sanctions provide an acceptable response to intentional misconduct of this nature. The question remains whether unwitting involvement of professionals should be dealt with through the AML/CTF regime or conventional regulatory measures. Arguably, existing professional controls are not well suited to preventing unwitting involvement in money laundering, leaving the possibility that the AML/CTF regime may provide a more effective means of preventing and detecting unintentional conduct of this nature. What is needed is for the risk environment in which professionals practice to be publicised and for the dangers of involvement in money laundering to be illuminated and explained.

The nature of predicate offences

The relationship between money laundering and the commission of predicate offences was discussed in a speech by the director of the United States Department of the Treasury's FinCEN, James H Freis Jr at the Florida Bankers Association Town Hall Meeting in Tampa, Florida in 2008:

> And while they are often viewed as separate criminal enterprises, acts of fraud and acts of money laundering are interconnected: the financial gain of the fraudulent activity ultimately needs to be integrated into the financial system. Therefore, money laundering is often a malignant and pernicious product of fraud. By fighting fraud, you are fighting money laundering. And in turn, by identifying money laundering, you could be alerting law enforcement to a criminal attempting to mingle the proceeds of fraudulent activity committed against innocent victims (Fries 2008).

Historically money laundering activities were linked to narcotics trafficking and organised crime. An article reported that $13m was seized under the Western Australia's proceeds of crime laws in financial year 2007

> with more than $52 million having been seized from criminals and tipped into State [of Western Australia's] coffers since 2000…Most money forfeited to the State has come from drug dealers who automatically lose their assets after being convicted. But the police and the Director of Public Prosecutions can also freeze assets suspected of being used to commit crimes,

Table 22 Predominant predicate crime for money laundering in the United States

Destination	Origin points	Predominant predicate crime
Southern Arizona	California	Narcotics trafficking
Southwest Border	New York, New Jersey, North Carolina and Florida	Trafficking in person
Texas	New York, Florida, North Carolina and New Jersey	Trafficking in person (narcotics trafficking to a lesser extent)

Source: Adapted from United States Department of the Treasury 2007: Table 4

> gained through illegal activity or believed to be unexplained wealth (Knowles 2008: np).

In Canada, lawyers have been convicted of laundering the proceeds of drug-related offences in two cases. In *R v Root* (2008 ONCA 869), the Ontario Court of Appeal ordered a former federal prosecutor to stand trial for a second time on allegations of money laundering that stemmed from a lengthy RCMP investigation. In 2006, the defendant was found not guilty on five charges relating to money laundering. However, the Crown successfully appealed the acquittals with respect to four of the five charges—conspiracy to commit an indictable offence of laundering proceeds of crime, conspiracy to commit an indictable offence of possession of proceeds of crime, attempting to launder proceeds of trafficking in cocaine and attempting to possess proceeds of crime. The Ontario Court of Appeal dismissed the appeal on the fifth charge of counselling a police officer to commit the offence of laundering proceeds of crime. In *USA v Martin G. Chambers* (Federal Circuits, 11th Cir. 24 June 2005), a Vancouver lawyer was sentenced to just over 15 years in a Florida state prison following his conviction in 2003 for laundering US$700,000 in purported cocaine trafficking money (IBA 2009).

The volume of possible predicate offences for money laundering has, however, increased considerably over time. Lewisch (2008) argues that the potential predicate offences, in most jurisdictions, include vaguely defined offences as well as tangible standard crimes against foreign property. A distinguishable primary offence is difficult to discern in some cases. Lewisch offers the example of dealing with the assets of a criminal or terrorist organisation that has been declared illegal. The illegality of the organisation determines the illegality of dealing with the assets of that organisation and of other ancillary activities (Lewisch 2008).

In Singapore, the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (Cap 65A) was amended in 2006 to expand the list of money laundering predicate offences from 189 to 297 offences (CAD 2007). The total number of money laundering predicate offences was increased to 362 (CAD 2007) in February 2008.

In the United States, the predominant predicate crime types observed are narcotics trafficking and trafficking in persons (see Table 22), while the 'primary sources of laundered funds in Hong Kong are illegal gambling, fraud and financial crime, loan sharking and vice' (FATF 2006: 5).

The second reading of the Financial Transaction Reports Amendment (Transitional Arrangements) Bill 2008 also noted that

> [w]hile narcotics offences provide a substantial source of proceeds for crime in Australia, the majority of illegal proceeds are derived from fraud related offences. One Australian government estimate suggested that the amount of money laundered in this country ranges from $2b to $3b per year (House of Representatives 2008b: 4).

Although possible categories of predicate offences, as explained by Lewisch (2008: 407), are

> not theoretically predetermined [and are] decided upon by the legislator according to its 'political will', some predicate crime types are more frequently associated with professionals than others.

Three predicate crime types commonly associated with those in the professions are as follows.

Taxation fraud

For regulatory agencies, such as the ATO, managing serious non-compliance and tax evasion has become progressively more complex over the last 10 years. Legal practitioners and/or accountants may be employed as advisers to develop bespoke schemes using complex tax laws to reduce or defer tax burdens (such as by transferring intangible assets to jurisdictions with a low tax rate and paying the overseas company for use of those assets in the jurisdiction of origin). On occasions, professional advisers may be involved in acts of deliberate wrongdoing, although in most cases they may be unaware of the illegal activities in which their clients are engaged and unwittingly provide advice that is used to facilitate taxation fraud. Jurisdictions with a strong banking secrecy regime may be exploited by criminals and corrupt professionals for tax fraud and avoidance and money laundering activities.

It is a criminal offence in Singapore, for example, for customer information to be disclosed by a bank in Singapore or any of its officers to any other person except as expressly provided in the Banking Act—see subsection 47(1), Banking Act (Cap 19). Subsection 47(5) of the Banking Act also states that:

> Any person (including, where the person is a body corporate, an officer of the body corporate) who receives customer information referred to in Part II of the Third Schedule shall not, at any time, disclose the customer information or any part thereof to any other person, except as authorised under that Schedule or if required to do so by an order of court'. Any person who contravenes subsection 47(1) or 47(5) shall be guilty of an offence and shall be liable on conviction—
>
> (a) in the case of an individual, to a fine not exceeding S$125,000 or to imprisonment for a term not exceeding 3 years or to both; or
>
> (b) in any other case, to a fine not exceeding S$250,000.

Banking secrecy can, however, be exploited as explained by Hartung (2008: 28).

> …when one potential client walked into a well-known private bank earlier this year to open an account, one of the first questions asked was whether he would report the funds. Not reporting the funds meant that taxes may not be assessed. The cases in Lichtenstein and at UBS highlight how the balance between secrecy, avoiding money laundering and cooperating in international tax investigations is a delicate dance. If banks here don't determine how to balance client reporting with client confidentiality and consequently face allegations of protecting tax evaders or money launderers, Singapore, too, could come under pressure to disclose more information and lose some of its advantages.

Tax fraud and tax evasion perpetrated by professionals such as accountants and financial advisers are notoriously difficult for the ATO and law enforcement agencies to prevent and to detect. Such offenders are able to use their professional training and skills to devise elaborate schemes to defraud the revenue and to disguise their illegal conduct. The ATO estimated that 'around $16b was sent directly to tax havens from Australia and approximately $18b was sent directly from tax havens to Australia' (ATO 2008a: np) in the 2006–07 financial year alone.

Project Wickenby was formed in February 2006 to investigate suspected cases of widespread and systematic international tax avoidance and evasion. A number of government organisations, including the ATO, the Australian Crime Commission, the AFP, AUSTRAC, Commonwealth Department of Public Prosecutions and ASIC are involved in the task force.

From commencement in 2006 to 2012, Project Wickenby has raised over $1.3b in liabilities and over $600m in collections. This includes cash collected from compliance activity, as well as improved tax-compliance behaviour from taxpayers and their close associates. As at the end of May 2012, Project Wickenby had resulted in 26 convictions for indictable offences, with a further 69 people convicted of summary offences, as well as one extradition (ATO 2012). The CDPP has taken action to restrain property valued at approximately $25m in relation to a number of Wickenby matters (CDPP 2012).

Box 1 Wickenby investigation involving money laundering and tax fraud

In May 2003, the defendant, using a company he controlled in the British Virgin Islands, purchased a debt of $11m owed by an Australian public company to another entity, for $1. In November 2003, the defendant sold $2,236,459 of the debt to Barat Advisory Pty Limited, the defendant's company in Australia, for $1.5m that Barat Advisory did not pay to the British Virgin Islands company.

In April 2004, the Australian public company repaid the debt of $2,236,459 to the defendant's company, Barat Advisory by issuing to it a parcel of 55,911,475 shares at four cents a share.

In May 2004, the defendant engaged the services of a tax lawyer at a Sydney law firm to set up an offshore structure to which the defendant could transfer the shares. The structure included five companies set up in St Vincent and the Grenadines and five foundations known as 'stichtings' set up in the Netherlands—each of the offshore companies was owned by one of the Dutch stichtings. The offshore companies held a number of bank accounts in Switzerland.

The defendant's interest in the assets of the offshore structure was secured by documents prepared by the tax lawyer, including a deed of charge and a separate contract titled a Master Investment Futures Agreement (MIFA) between the defendant and each of the offshore companies and by way of a deed of charge between the defendant and each of the Dutch stichtings. The effect of the MIFA was to entitle the defendant to 99 percent of the value of the offshore companies upon termination of the MIFA in exchange for the defendant making an annual payment of $10 to each of the stichtings.

The tax lawyer travelled to the Netherlands and Switzerland to set up the structure. Documents obtained by way of Mutual Assistance from the Netherlands and Switzerland identified the defendant as the beneficial owner of the Dutch stichtings and of the Swiss bank accounts of the five offshore companies. The structure was managed out of Switzerland by a financial services agent located in Zurich at the defendant's direction.

The prosecution case, which was accepted by the jury, was that the transfer of the 55,911,475 shares to the offshore companies involved the transfer of the legal title only. The beneficial ownership to the shares remained with Barat Advisory in circumstances where the defendant was the controlling mind of the companies and it was his intention that the companies hold the shares on trust for Barat Advisory.

Once the shares were transferred offshore, 6,062,180 of the shares were sold between July and November 2004. Forty-eight million of the shares were disposed of by swapping them in February 2005 with one million shares in a Swiss technology company held by a former colleague of the defendant's valued at between $8.5m and $10.1m. The disposal of the 48 million shares resulted in a net capital gain to Barat Advisory of at least $6.5m.

The one million shares in the Swiss technology company were then held by one of the offshore companies in a Swiss bank account and sold between February 2005 and June 2005 for $8.4m. Amounts totalling $5.6m were transferred from Switzerland to the Australian bank account of Barat Advisory and used to make purchases of jewellery ($100,000), a yacht ($270,000), the deposit ($200,000) and stamp duty ($269,492) for a residential property in Neutral Bay Sydney, payment towards a motor vehicle ($71,534) and to pay out three loan accounts ($2,389,200). Other transfers were made directly to third parties for the purchase of artwork (totalling $704,753) and to pay for membership fees to an exclusive resorts group ($495,141).

Between May 2005 and November 2006, the defendant engaged an accounting firm to prepare financial documents and the tax returns of Barat Advisory. During that period, the defendant failed to advise his accountants about the offshore structure set up to hold the parcel of shares issued to Barat Advisory, their disposal and the correct source of the $5.6m received by Barat Advisory's Australian bank account.

The tax return for Barat Advisory lodged with the ATO for 2005 failed to disclose the net capital gain of between $6,549,090 and $8,221,331 made on the disposal in February 2005 of the 48 million shares issued to Barat Advisory in April 2004. The tax properly payable to the Commonwealth on the net capital gain was between $1,964,727 and $2,466,399.

The defendant was charged with one count of dealing in proceeds of crime worth $1,000,000 or more pursuant to s 400.3(1) of the Criminal Code and one count of doing an act with the intention of dishonestly obtaining a gain from the Commonwealth pursuant to s 135.1(1) of the Criminal Code.

The defendant pleaded not guilty. In November 2010, following a four week trial, the jury found the defendant guilty of both charges. On 17 December 2010, the Supreme Court of NSW sentenced the defendant to eight and a half years imprisonment with a non-parole period of four years and nine months.

In April 2011, the defendant appealed to the NSW Court of Criminal Appeal against his convictions and sentence. In March 2012, the NSW Court of Criminal Appeal dismissed his appeal.

Source: CDPP (2012: 68–69)

Annual reports of the Commonwealth Department of Public Prosecutions provide details of a number of prosecutions arising from Wickenby investigations in which professional advisers have been unwittingly involved in offshore tax evasion by their clients (CDPP 2012, 2011). The details of one recent case prosecuted following a Wickenby investigation indicate the critical role that professional advisers can play in unwittingly facilitating the evasion of taxation by their clients (see Box 1). Proceedings have not been initiated against any of the professional advisers involved in the case reported in Box 1.

Two examples of deliberate, as opposed to unwitting, involvement in taxation-related crime by professionals have also received media attention. In one case, a Brisbane accountant was sentenced to three years and six months imprisonment with a non-parole period of eight months by the Brisbane District Court for submitting false goods and services tax (GST) claims worth $174,293. In another case, an Adelaide accountant was sentenced to three years and three months imprisonment, with a non-parole period of 12 months, by the District Court of South Australia for attempted GST fraud and forgery amounting to $4,560,007 (Bannon 2008).

In the United States, the Internal Revenue Service Criminal Investigation Division has reportedly undertaken 147 investigations involving promoters, clients and other individuals involved in abusive trust schemes (schemes that take advantage of the financial secrecy laws of some foreign jurisdictions and the availability of credit/debit cards issued from offshore financial institutions for the purpose of tax evasion) in the 2008 fiscal year. A total of 71 individuals were sentenced as a result of these investigations (IRS 2008).

In the United Kingdom, the House of Commons estimated the amount of tax lost at over £2b a year with the aid of more than two million people (HCCPA 2008). HM Revenue & Customs has reportedly

> raised £27 million from investigating [suspicious activity reports] but expected to raise £74 million...[and the department] expected to use the [suspicious activity reports]made to the Serious Organised Crime Agency under the Money Laundering regulations, to detect significant numbers of people with undeclared income (HCCPA 2008: 6).

Mortgage fraud

Cases arising in the United States and other jurisdictions suggest that professionals in the real estate and legal sectors are at risk of being exploited as intermediaries where they fail to verify information submitted on loan applications or are actively involved in fraudulent activities themselves. FinCEN also remarked that 'real estate and financial industry insiders were frequently named in mortgage loan fraud [Suspicious Activity Reports]' (FinCEN 2009b: v).

The risks were recently highlighted in a report by FinCEN:

> Mortgage loan fraud can be divided into two broad categories: fraud for housing and fraud for profit. Fraud for housing generally involves material misrepresentation or omission of information with the intent to deceive or mislead a lender into extending credit that would likely not be offered if the true facts were known. Fraud for housing is generally committed by home buyers attempting to purchase homes for their personal use. In contrast, the motivation behind fraud for profit is money. Fraud for profit involves the same misuse of information with the intent to deceive or mislead the lender into extending credit that the lender would likely not have offered if the true facts were known, but the perpetrators of the fraud abscond with the proceeds of the loan, with little or no intention to purchase or actually occupy the house. Suspicious activity reporting confirms that fraud for profit is often committed with the complicity of industry insiders such as mortgage brokers, real estate agents, property appraisers, and settlement agents (attorneys and title examiners) (FinCEN 2008: 4).

The risks highlighted by FinCEN are reflected in the volume of SARs linked to suspected mortgage frauds. US financial institutions filed 37,313 SARs that cited suspected mortgage loan fraud in the 2006 calendar year. This represented a 44 percent increase on the volume of comparable SARs filed

in the preceding year when the overall increase in SARS was around seven percent (FinCEN 2008). The volume of mortgage fraud SARs filed by financial institutions rose to 46,717 in 2007 (FBI 2008e).

In 2008, mortgage brokers in the United States accounted for 62.07 percent of participants reported in SARs that described fraud for profit and 58.55 percent of participants reported in SARs that described fraud for housing. The 12 months to 30 June 2008 saw financial institutions filing 62,084 SARs that reported a suspected mortgage fraud. This represented a further 44 percent increase on the mortgage fraud reports received to 30 June 2007 and accounted for nine percent of all SARs filed by deposit taking institutions in 2007–08 (FinCEN 2009a).

One reason for the increase in mortgage fraud-related SARs (in the United States) may be that lenders are increasingly identifying suspected fraud prior to loan approval and reporting the activity (FinCEN 2008). Investigations undertaken by the FBI has reportedly resulted in

> …462 mortgage fraud cases…in Fiscal Year 2007, up from 295 in 2003, and currently there are more than 1,400 pending cases nationwide (Bennett 2008: np)…US$595.9m in restitutions, US$21.8m in recoveries, and $1.7m in fines in Fiscal Year 2007 (FBI 2007a np).

The Department of Justice and FBI conducted 'Operation Malicious Mortgage' from 1 March 2008 to 18 June 2008. The targeted law enforcement operation resulted in 11 individuals being charged with, pleading guilty to, or sentenced in federal courts in connection with mortgage loan fraud schemes (FBI 2008a).

> Accused persons A and B, former mortgage brokers, pleaded guilty to conspiracy to commit money laundering of the proceeds from their individual mortgage fraud schemes and were sentenced to serve 24 months in federal prison followed by 3 years of supervised release and 6 months in federal prison followed by 2 years of supervised release respectively. Accused person C, a former mortgage broker, pleaded guilty to conspiracy to commit wire fraud and four counts of wire fraud in connection with his role in a similar but separate mortgage fraud scheme. Accused person D, a former real estate developer, pleaded guilty to conspiracy to commit bank fraud, in connection with his scheme to defraud over 20 banks in Mississippi with fraudulent loans totalling approximately US$14.5m. Accused person E, the attorney of accused person D, and accused person F, the office manager of accused person D, were charged with conspiracy to commit bank fraud and misprision of a felony respectively (FBI 2008a: np).
>
> In May 2008, a federal grand jury returned a 25-count indictment against accused person G, a former mortgage broker, and his daughter, accused person H, in connection with a mortgage loan fraud scheme (FBI 2008a: np).

There are other examples, outside of those generated by Operation Malicious Mortgage, of mortgage fraud cases implicating professionals in the United States.

McFarland, a legal practitioner that had acted for mortgage lenders and a title insurance company, was convicted 170 charges including money laundering, bank fraud and wire fraud. McFarland and several conspirators inflated the market value of more than 100 properties and used the inflated amounts to secure mortgages for straw buyers. McFarland wrote the title insurance and finalised the mortgages on the properties. The group divided the proceeds between them and the resulting loss to the lenders involved was more than US$10m (*United States v. McFarland*, 255 Fed. Appx. 462).

A certified public accountant (accused person A) and a church pastor (accused person B) were each convicted of one count of conspiracy to commit mail fraud, wire fraud and money laundering, and two counts of aiding and abetting mail fraud in a further US case. Accused person B and his wife were persuaded by accused person A to buy a new home instead of remodelling their home in 2002. The public accountant then introduced the couple to a mortgage broker. The mortgage broker later referred them to a real estate agent. The parties settled on a sale price of US$525,000 for a house sourced by the real estate agent. Accused person B, with the assistance of the mortgage broker, applied for a mortgage loan and listed the wife of accused person B as a co-borrower. Both accused persons are

then alleged to have caused fraudulent tax returns to be submitted to the mortgage company in order to assist accused person B's procurement of home loans (United States v Bullock, 243 Fed. Appx. 107).

More recently, in October 2008, a former Los Angeles-based real estate developer was sentenced to 14 years imprisonment for allegedly masterminding a US$50m mortgage fraud scheme (FBI 2008c) whereby the banks were deceived into funding inflated mortgages. The accused person, the seventh defendant to plead guilty in the scheme, was also ordered to pay US$42,676,269 in restitution to two of the defrauded banks.

A former real estate agent in Georgia, in a separate incident, was convicted of charges of conspiracy, bank fraud, wire fraud and money laundering connected to a multimillion dollar mortgage fraud scheme. The defendant allegedly used

> his specialized knowledge of real estate and residential mortgage financing…[and] orchestrated a mortgage fraud scheme that has caused millions of dollars in losses to lenders and untold damage to neighbourhoods...Eleven other defendants have already been sentenced to prison terms in related cases, with sentences ranging from eight months to more than ten years in federal prison (FBI 2008d: np).

The real estate agent was sentenced to 14 years imprisonment, followed by five years of supervised release and ordered to pay US$11,194,300 in restitution.

In March 2009, 24 defendants—most of whom were professionals in the mortgage loan industry including mortgage brokers, loan officers, loan processors, attorneys, accountants, an appraiser and a banker—were charged with federal offenses related to mortgage frauds in the Chicago area (United States v Mohammed Ali Moallem and Bahidad Javid (09 CR 228), United States v Abe Karn, Donna Books, Hichem Julani and Daniel Lietz (09 CR 229), United States v Marwan Atieh and Ruwaida Dabbouseh (09 CR 230), United States v Ruwaida Dabbouseh and Khalil Qandil (09 CR 231), United States v Khaja Moinuddin, Mohammed Nasir and Ruwaida Dabbouseh (09 CR 232), United States v Louis L. Javell, Aysha M. Arroyo and Juan Gil (09 CR 233), United States v Michael Salem, Hakim A. Jaradat and Robert Goldberg (09 CR 234), United States v Hakim A. Jaradat, Oscar Paredes, Maryam Khan and Ruwaida Dabbouseh (09 CR 235), United States v Babajan Khoshabe, Sunil Kaushal and James Kotz (09 CR 236), United States v Siamak Safavi Fard, Sunil Kaushal and Noel Parmar (09 CR 247)). The defendants' roles in the fraudulent transactions allegedly included preparing loan applications and other documents known to contain false identity, employment and income information, creating and providing advice on creating fraudulent banking information, fabricating income tax returns, creating fictitious documents verifying employment and rental income, creating false appraisals and submitting the falsified applications and supporting documents to the lenders (FBI 2009a: np).

Other cases suggest that more structured organised crimes groups may have worked with professions in the real estate sector to orchestrate mortgage fraud schemes. A documented member of an organised crime group (and alleged leader of a corrupt enterprise) and a licensed real estate broker were charged in April 2009, along with 22 other individuals

> with using a corrupt enterprise to conduct a pattern of racketeering activity, namely, wire fraud, bank fraud, and money laundering. The charged racketeering activity all stems from an extensive mortgage fraud scheme based in San Diego, California, that involved 220 properties with a total sales price of more than $100m dollars (FBI 2009b: np).

The 24 defendants allegedly:

- identified properties for sale throughout Southern California that had been on the market for an extended period of time and for which the original asking price had been reduced;
- recruited straw buyers who were willing to allow their names and credit histories to be used to obtain mortgages and to become the identified purchaser of the properties on behalf of the racketeering enterprise;
- prepared and submitted offers to purchase the identified properties that substantially exceeded the asking price for those properties;

- hired real estate appraisers, including one of the co-defendants, to prepare inflated appraisals for the identified properties. The inflated appraisals were then used to fraudulently induce lenders to believe that the loans extended to the buyers would be fully secured by the value of the properties being purchased;
- prepared and submitted false loan applications for the buyers in order to induce lenders to make loans to persons and at terms that the lenders otherwise would not have funded;
- prepared and submitted false documents and information in response to lender verification inquiries, including 'CPA letters', verification of employment forms, verification of rent forms and 'discrepancy letters';
- ensured that the buyers purchased the identified properties with mortgages amounting to 100 percent of the purchase price of the property, thus ensuring that the defendants did not have any money at risk in the fraudulent transactions;
- arranged to have the amount of money that exceeded the asking price (the 'kickback amount') paid at the close of escrow to a shell construction company maintained by the racketeering enterprise; and
- falsely informed the lenders that the 'kickback amount' would be used to pay for handicap access and upgrades to the identified properties, thereby falsely inducing the lenders to believe that the entire loan amount would be secured by the value of the identified properties.

The defendants' shell construction firm allegedly did not make any alterations or improvements to any of the properties. The 'kickback amount' was allegedly disbursed to members and associates of the racketeering enterprise as payment for their participation in the scheme.

The buyers subsequently failed to make the required mortgage payments for the properties. The properties were foreclosed and the lenders' suffered severe financial losses (FBI 2009b).

Financing fraud

Di Nicola and Zoffi (2005) argued that professionals may also be involved in usurious money lending schemes that can benefit them personally and also generate funds that may require laundering. Usury in Italy, for example

> now acts through professionals who are ready to grant loans to individuals, families and small and large companies who find themselves in financial difficulties and therefore cannot borrow on the normal market. Usurers include a large number of professionals, among them legal practitioners, accountants and even notaries, who take advantage of friendships and connections in the financial, banking and judicial sectors, to systematically expropriate the companies belonging to the victims of usury (Di Nicola & Zoffi 2005: 203–204).

Finally, professional financial advisers may also be involved in dishonest investment scams through greed and a desire for personal advancement. Such cases often involve practitioners living beyond their means and trying to maintain an inappropriately extravagant lifestyle. Cases in this category often involve financial advisers who misappropriate client funds. Some of the largest and most complex instances of professional dishonesty in Australia's history have involved financial planners and advisers, not all of whom have been qualified accountants. The largest investment fraud in Australia's history was perpetrated by an accountant, David Gibson, who defrauded 600 clients of $43m in the 1980s, using managed investment funds and employing a Ponzi scheme in which early investors were paid dividends out of the investments of subsequent investors. Gibson was sentenced to 12 years' imprisonment with a non-parole period of nine years (Brown 1998).

Assessments of risk in the non-financial business and professional sectors in Australia

This section provides an assessment of the level of risk of money laundering present in the non-financial business and professional sectors in Australia using information provided by industry and professional associations and the opinions expressed by their representatives who agreed to participate in roundtable discussions conducted by the AIC in February 2009 and follow-up correspondence with the roundtable participants. Any comments provided independently of the roundtable discussions, or those where the opinion expressed was different from that of the professional group view, are referenced to the individual participant with that person's agreement for this to be presented in this report.

Legal practitioners

New South Wales statistics

The OLSC receives approximately 3,000 complaints each year, conducts approximately 300 investigations and handles around 2,000 consumer disputes (OLSC 2009a). The OLSC received 2,742 new complaints in 2006–07, finalised 3,042 complaints, opened 459 investigations and closed 536 investigations (OLSC 2007b). Of the 459 opened investigations, 277 were dismissed without a reasonable likelihood of a misconduct finding and 34 were dismissed because any finding of misconduct was at the lower end of culpability and the practitioner was generally competent and diligent. A further 59 other complaints were made more than three years after the incident in question and were not accepted. The OLSC issued 19 reprimands in 2006–07 for issues such as failures to communicate, delays in progressing a matter, competence and diligence issues, acting with conflicts of interest, minor misleading conduct, releasing funds without authority, bringing the administration of justice into disrepute, discourtesy and failing to prepare properly (OLSC 2007b). The OLSC issued 17 cautions and commenced six matters with the Legal Services Division of the Administrative Decisions Tribunal.

The Law Society and Bar Associations each conduct about 600 investigations per year (OLSC 2009a). In 2007–08, the Bar Association received 52 conduct complaints about barristers. Of these, 41 were referred to the Council of the Bar Association by the OLSC and the remaining 11 were made by the Council. The Council dealt with a total of 47 complaints in the same year. The Council dismissed 33 of these, referred seven others to the Tribunal, while the remaining seven were withdrawn (NSWBA 2008). To place these figures in context, there were 2,076 barristers with practising certificates in 2008.

None of the matters examined by the OLSC in 2006–07, or those examined by the Law Society or Bar Association in 2007–08 were the result of a money laundering or terrorism financing matter.

New South Wales disciplinary proceedings

Removal from the Supreme Court roll is the most severe sanction reserved for legal practitioners in New South Wales found guilty of professional misconduct. In most jurisdictions, the details of disciplinary action involving legal practitioners are publicly reported in a Register that records, among other things, the full name of the person against whom disciplinary action was taken and the particulars of that disciplinary action. Legal practitioners' names in New South Wales were struck off the Supreme Court roll, predominantly for misappropriating funds from trust accounts, other trust account breaches and misappropriating funds from other sources. Other examples of professional misconduct included failing to meet the auditing requirements on funds held in trust, forgery and using false documents, misleading clients, other practitioners and the Law Society, failing to pay fees to other practitioners and over charging clients and failing to protect the interests of a client (OLSC 2009b).

The following cases outline the matters involving legal practitioners in New South Wales that resulted in both criminal and disciplinary proceedings (OLSC nd):

- *Law Society of NSW v G* [2007] NSWADT 38—the practitioner misappropriated $171,759.87 by falsifying documents over a 12 month period and depositing the money into a personal account. The misappropriations were noticed by the practitioner's employer via some irregularities in cheques the practitioner requested that he sign. After pleading guilty to the charges, the practitioner was sentenced and her name was struck from the roll.
- *Prothonotary of the Supreme Court v A* [2006] NSWCA 29—the practitioner deposited trust monies into his personal account instead of a trust account. The practitioner pleaded guilty to misappropriating funds, obtaining money by deception, and obtaining money with false and misleading statements. The practitioner was sentenced to nine years' imprisonment on pleading guilty to the charges and his name struck from the roll.
- *R v A* [2000] NSWCCA 315—a client told a practitioner that he was dissatisfied with the interest paid on a bank deposit. The practitioner forged a second client's signature to create a fraudulent loan agreement and used the client funds from the second client to pay off his creditors. The practitioner was found guilty of obtaining value by deception, declared bankrupt, had his name removed from the roll and was sentenced to four years' imprisonment.
- *Regina v H* [2000] NSWCCA 183—the practitioner misappropriated trust funds for his personal use and pleaded guilty to fraudulent misappropriation. The practitioner was sentenced to three years' imprisonment, a recognisance to be of good behaviour for five years and ordered to reimburse the Fidelity Fund of the Law Society of New South Wales $120,000. The practitioner was also prohibited from applying for a practising certificate for five years, working as a paralegal, or having sole administration of trust funds.

There were no examples of legal practitioners in New South Wales who were involved in a criminal case involving money laundering matters at the time of writing. The New South Wales cases that involved criminal convictions, like those resulting in disciplinary outcomes only, were predominantly for fraud offences involving trust monies. The New South Wales disciplinary proceedings do not show evidence of legal practitioners unwittingly or complicitly assisting clients to launder funds, although cases of this nature might not be detected or reported officially. The common theme across these cases is one of the practitioner knowingly obtaining client funds for illicit personal gain.

Disciplinary proceedings from other Australian states

Between 2004 and 2009, only one legal practitioner in Western Australia was criminally prosecuted for fraud. Two others were suspended, while criminal investigations took place for fraud and trust account offences (Legal Practice Board of Western Australia nd).

- *The Legal Practitioners Complaints Committee v S* [2005] WASAT 196—the practitioner borrowed $13m from finance companies to purchase earth moving and computer equipment and then spent the funds on lifestyle purchases. The practitioner pleaded guilty to 37 counts of fraud and was sentenced to six years' imprisonment. The Legal Practitioners Complaints Committee argued that the convictions constituted unsatisfactory conduct. The practitioner was suspended from practice and later struck off.
- *The Legal Practitioners Complaints Committee v A Practitioner* [2007] WASAT 277—the practitioner was appointed power of attorney for a client and failed to administer the client's estate after they had passed away. The practitioner is alleged to have sold properties valued at around $2m and withdrawn $70,000 from the client's cheque account for personal use [the practitioner was sentenced to seven and a half years imprisonment and ordered to pay compensation to the family involved (C Slater personal communciation 12 June 2009)].
- A third practitioner has been suspended pending the outcome of a criminal investigation into an alleged trust account fraud.

The cases from Queensland that involved legal practitioners found guilty of a criminal offence also involved matters where the solicitor defrauded or failed to fulfil a professional duty to a client. Seven legal practitioners were prosecuted for criminal offences in Queensland and struck off the roll between 2003 and 2009. The most common charge, as with other states, was the misappropriation of funds. Two matters involved fraud and others concerned falsifying documents, forgery and fabricating evidence (Legal Services Commission, Queensland nd).

The Western Australian and Queensland matters, like those in New South Wales, did not provide evidence of practitioners assisting clients to enter illicit funds into the financial system or to disguise the origins of those funds. Instead, the practitioners from these states predominantly obtained personal gain from client monies.

Money laundering allegations and charges

AUSTRAC typologies

AUSTRAC's Typology and case studies reports include case studies that were initiated or supported by transaction or suspicious matter reports submitted to AUSTRAC by its regulated entities. In compiling these reports, AUSTRAC draws on the combined knowledge of its financial intelligence analysts and partner agencies, to provide real-life examples of how services and channels are misused. To date, very few typology reports have involved legal practitioners, partly due to the fact that the legal sector is yet to be fully regulated for AML/CTF purposes. One example involved a solicitor who was alleged to have remitted funds and carried cash from Australia to Hong Kong in amounts below the $10,000 reporting threshold. The solicitor was reported to be working with another solicitor in Hong Kong who was alleged to have established front companies in the British Virgin Islands and accounts in Hong Kong in order to receive the funds remitted by the solicitor. Some of the funds transferred out of the country in the structured transactions were returned to Australia by the Hong Kong solicitor or sent to other countries (AUSTRAC 2007).

This case highlights the ability of the legal practitioner in Hong Kong to create business structures that have been used to receive funds and remit them back to Australia. The typology does not clarify whether the legal practitioner's role in this scenario was dependent on the practitioner's occupation or whether this is incidental to the funds transfers.

Australian legal professionals have also advised AUSTRAC of receiving unusual requests from prospective clients, particularly targeted at passing funds through solicitors' trust accounts. Examples of these requests include:

- a foreign company requesting legal services involving debt recovery, with the legal firm receiving substantial payments into its trust account from purported debtors (both in Australia and overseas) with little debt recovery work actually being required to be undertaken by the firm

- a foreign investor transferring large amounts into a firm's trust account, ostensibly for property and other investments, but then halting the investment and asking for the money to be paid to multiple recipients according to the direction of a third party (AUSTRAC 2011: 28).

Tax cases

Although not examples of money laundering, a number of legal practitioners have been investigated for serious tax evasion that arguably could have entailed attempts to disguise the proceeds of unlawful activity (namely tax evasion). In most jurisdictions, conviction of a tax offence must be reported to the professional regulator, together with an explanation as to why, notwithstanding the conviction, the practitioner should continue to be regarded as a fit and proper to hold a practising certificate. Failure to disclose such a conviction would be a matter deemed to be professional misconduct.

One legal practitioner has been linked to a tax evasion case investigated in Operation Wickenby. The practitioner was found guilty of conspiring to dishonestly cause a risk of loss to the Commonwealth in 2010. Gregory outlined a mechanism to enable a client who had been convicted of tax evasion and a bankruptcy offence to evade paying tax to the Australian Government by claiming income as payment for legal fees. The court found that that he received a fee of $22,000 for his role in the scheme. In March 2003, he was found to have sent an email to the Swiss-based accounting firm that the court held was a calculated deception to enable his client to evade his tax. He consented to a pecuniary penalty order for the fee he received and $1,000 in legal fees, and was sentenced to two years' imprisonment to be released on recognisance after serving 12 months (*R v G* 2010 [VSC 121]; see also ACC 2011: 41).

The ATO has also taken a keen interest for a number of years in pursuing members of the bar who have failed to lodge income tax returns (sometimes for their entire career) and who had accumulated substantial tax debts prior to declaring themselves bankrupt (Braithwaite 2005). For example, one famous Sydney barrister accumulated tax debts of $3.1m, was declared bankrupt, but continued to practise at the bar. Another barrister who practised at the criminal bar accumulated $835,000 worth of unpaid taxes and penalties and was convicted in 1996 of failing to file tax returns over a period of 17 years. At his trial, he admitted that he had paid no tax during all his years at the bar (Barry cited in Braithwaite 2005).

The problem of barristers failing to pay income tax was addressed by the ATO's 'Legal Profession Project' that used various forms of negotiation, publicity and self-regulation to encourage legal practitioners to comply with their income tax obligations (Braithwaite 2005). In one case, proceedings were taken against a senior NSW barrister for the recovery of $955,672.92 in unpaid income tax for the years ended 30 June 1992 to 30 June 1999. Before lodging these returns, the barrister in question had not lodged any income tax return since 1955 and had declared himself bankrupt, prior to which it was alleged he had transferred property to his wife and a family trust in order to avoid paying his creditors, including the ATO. Proceedings were taken to have these transactions set aside, with the High Court ruling in favour of the trustee in bankruptcy (see *The Trustees of the Property of JDC, A Bankrupt v C* [2006] HCA 6, High Court of Australia, 7 March 2006).

Opinions of sector representatives

Almost all of the representatives from the legal sector who participated in the roundtable stated that they were unaware of legal practitioners being involved in laundering money for their own gain or on behalf of their clients. The participants considered the AUSTRAC typology report and a situation described by the NSW Legal Services Commissioner as isolated case studies and in their view, statistically insignificant. Those who held the view that legal practitioners were not involved in money laundering pointed to the absence of any money laundering criminal cases involving legal practitioners. Some participants considered that any future increase in the volume of prosecutions of legal practitioners for money laundering would be indicative of a problem within the profession that the profession could deal with, although there was no consensus on how to gauge the level of existing or future sector-wide money laundering risks. The sector's

professional associations had rarely seen evidence of practitioners involved in criminal activities and almost never seen cases of money laundering. When legal practitioners were involved criminal matters, these invariably involved fraud without money laundering being present.

Some participants, however, differed from the majority view and suggested that there could be a small proportion of legal practitioners involved in money laundering activities, either complicitly or unwittingly, but that evidence of this was difficult to locate. The absence of evidence could be due to lack of involvement in money laundering, failure to detect such instances, failure to report them officially, or failure of the authorities to investigate and prosecute allegations. Further research is needed to examine this in more depth.

Opinions concerning disciplinary action

Breaches of ethical codes of practice could provide an indication of the involvement of practitioners in money laundering, although this would be dependent on complaints having been made from other members of the profession or the public. As outlined in the *Professional Regulation in Australia at Present* section, above, , the disciplinary data examined as part of the present research provided no instances of action having been taken in connection with money laundering. Participants suggested several reasons for this.

- Disciplinary action, overall, was rare; one jurisdiction had had only one solicitor's name having been removed from the register in the last decade for a theft from a trust account. The most common types of matters brought to disciplinary bodies were in connection with consumer matters such as invoicing and fees, and occasionally where solicitors conspired with their clients to hide assets in adversarial cases such as those involving family law.
- The way professional conduct matters are recorded and categorised makes it difficult to identify specific types of behaviours, such as those relating to money laundering.
- Participants indicated that because there were no money laundering typologies that specifically related to the legal sector, it was difficult to identify and categorise relevant matters arising from disciplinary proceedings.

The absence of any significant numbers of legal sector-specific typologies for Australia and the absence of reported criminal cases of money laundering involving the legal profession make it difficult for legal practitioners to identify suspicious transactions. The existing regulatory system is able to identify fraud and may therefore be able to identify money laundering if it occurs as a type of fraudulent behaviour but the participants were not aware of this particular type of fraudulent behaviour occurring.

Opinions concerning higher risk activities

In response to a question about possible areas of risk, certain activities were postulated by some roundtable participants as potentially involving higher risks of money laundering than other professional activities, although not all of the participants agreed that all of these activities would entail higher levels of risk and no participants were able to identify actual examples of money laundering having occurred in connection with these activities. The types of legal work identified as potentially carrying higher risks included:

- transactions involving trust accounts;
- cash transactions;
- high-volume work, such as small criminal matters with a quick turnover;
- creating complex business arrangements and structures, and giving advice on these types of structures; and
- matters finalised over long periods of time, such as where the beneficiaries of an estate were unaware of the funds available.

Risks associated with trust accounts

Receiving cash or property that is to be deposited into a trust account was viewed by some roundtable participants as particular area of risk if a client intended to launder money through them. Others took the view that the legislation and professional rules governing the keeping of trust accounts would minimise risks of abuse for money laundering purposes. The use of trust accounts is an important protective mechanism for clients' money generally. It is not the trust account

per se that presents a risk but the possible use by a client intending to launder money.

Of course, not all legal practitioners operate trust accounts. Barristers do not have trust accounts and participants estimated that approximately 40 percent of sole practitioners working as solicitors also did not have the need to operate trust accounts and refused to do so in order to avoid the regulatory burdens associated with auditing such accounts. The volume of complaints stemming from trust accounts led some practices to elect not to have them unless the nature of their practice required otherwise.

One participant commented that the trust account rules effectively allowed legal practitioners to act as a private banker by receiving funds from clients and paying funds out when and as instructed by their clients. The professional bodies indicated that, although this practice is legal, it is not advisable. Other practices, such as transferring funds into a general practice account when concerns arose over the payment of costs, were not uncommon and although permitted by some retainer contracts, it is the source of complaints (C Slater personal communication 12 June 2009).

Trust accounts have been used to facilitate tax evasion and welfare fraud on behalf of clients, although these were rare occurrences. In rare instances, trust accounts have been used in connection with fraud perpetrated against clients, such as where client funds have been taken without authorisation. Participants were unaware of trust accounts having been used to hide the proceeds of crime for clients.

Further risks arise owing to inconsistencies in the regulation of trust accounts in different jurisdictions. Some states, such as Victoria, have more robust regulation than others and it was agreed that a uniform standard was needed throughout Australia concerning the regulation of trust accounts, although opinions differed as to the appropriate standard to be applied. The Law Council supports uniform legislation dealing with trust accounts as part of the reforms being undertaken by COAG (AGD 2012) and does not believe that uniformity will result in any reduction in standards, nor does it believe that the existing trust account regulatory framework is deficient in establishing a robust set of controls over trust accounts.

Cash transactions

Some practitioners felt that more people were retaining funds in cash than other instruments in the current economic climate. In Australia at present, legal practitioners are required under the provisions of the *Financial Transaction Reports Act 1988* (Cth) to report cash transactions of $10,000 and above; an obligation that is well known in the profession and the community generally. In Queensland, it was reported that annual audits of solicitors' trust accounts indicated that there are usually between five and 10 cash transactions over $10,000 annually. WA practitioners knew of instances of clients holding large sums in cash due to a mistrust of banks. One client, for example, had $1m in cash. The single largest cash deposit received by a practitioner was approximately $70,000 for a conveyance matter. The solicitor who received the cash was advised to go with the client to the bank to deposit the funds.

Most transactions involving legal practitioners, however, were electronic and therefore already within the scope of ADIs, such as banks. It was considered that ADIs would have adequate risk-management practices already in place to be able to identify suspect transactions involving legal practitioners. The only funds that would not go through an ADI into a trust account would be those received by the legal practitioner in cash.

Participants did not consider the use of cash to be necessarily indicative of something untoward. Clients who paid legal fees in cash, especially for small criminal matters, were not uncommon and sole practitioners often accepted cash payments as normal practice. Roundtable participants did, however, consider that cash transactions may pose some risks to legal practitioners. Risks mainly related to the theft of physical currency and dealing with the proceeds of crime.

Risks relating to cash are, however, checked by existing legislative requirements on solicitors to make cash transaction reports. Under the *Financial Transaction Reports Act 1988* (Cth), solicitors must report to AUSTRAC significant cash transactions entered into by or on behalf of the solicitor. A 'significant cash transaction' is a transaction involving the physical transfer of $10,000 or more in cash. It is a criminal offence for a solicitor to engage in multiple non-reportable cash transactions for the purpose of avoiding these reporting requirements.

Changing business climate

Some participants, other than the Law Council, suggested that changes in the nature of legal practice in recent years has increased the risks of becoming involved in illegal behaviour. The changes identified by these participants included the following:

- Legal practice is now much more competitive in business terms. This means that some legal practitioners may be less discerning when deciding whether or not to take on new clients. This allows those seeking illicit services from practitioners to 'shop around' for assistance among a range of practitioners with varying standards. According to the participant, the Solicitors Regulation Authority in the United Kingdom views small practices with financial problems as being at high risk of compromise by money launderers, especially during difficult economic times, and that similar risks would be present in Australia (P Oliver personal communication 5 June 2009). Often, clients seeking illicit services from practitioners would ensure that everything looked legitimate and that generous fees were agreed to.
- In the past, clients were personally known to legal practitioners and this helped to reduce risks of abuse. In recent times and particularly with the advent of online services, face-to-face contact may be reduced and it may be less likely that practitioners know their clients personally. In recent times, when online advertising is used, clients can also be located interstate or overseas that again makes face-to-face contact difficult. It is no longer reasonable to ponder why a client might have travelled a long distance to select a particular practice whereas once this might have led to some questions being asked about the client (C Cawley personal communication 12 June 2009).
- The emergence of combined practice models, such as migration agents working alongside legal practitioners, can raise risks where funds are provided (eg using anonymous remittance services) from overseas sources that cannot be verified or investigated. Clients who move between departments of a large firm may pose additional risks, for example, migration clients also engaging in property transactions.
- Some participants stated that the clients of criminal practices and criminal/mixed practices, may be high risk by definition. There was some disagreement with this statement as others noted that criminal practices and client fees were excluded from AML/CTF regimes overseas (C Slater personal communication 12 June 2009).
- Some participants also suggested that clients who want to be seen to be doing everything right or who are willing to pay more than usual may present a higher risk.

Higher risk practices

One of the statutory industry regulator representatives noted that suburban practitioners between the ages of 40 and 45 years were the subject of the largest number of complaints concerning professional conduct, although these were most often about consumer matters rather than criminal conduct such as fraud.

The high degree of fluidity in small practices was also believed to pose certain risks. The fluidity of small practices, such as partnerships and firms frequently dissolving and reforming, means that historical information about the practice and its clients may not be retained. The frequently changing nature of some practices might also create record-keeping problems that will be of a particular concern if AML/CTF record keeping requirements for legal practitioners were to be implemented. In the past, solicitors tended to retain files indefinitely as the client and their family members were likely to return and it was useful to have records extending back many years. At any rate, professional rules require legal practitioners to maintain client records for a minimum of seven years, or until such time as the practitioner gives them to the client or another person authorised by the client to receive them, or the client instructs the practitioner to deal with them in some other manner (eg see Rule 8 of *The Law Society of New South Wales Professional Conduct and Practice Rules Legal Profession Act 1987*). Small practices with limited resources for record keeping and storage now seek permission from clients to destroy records or return them to the client once a matter has been completed. Clients must give permission to transfer files in an open matter to another practice (C Cawley personal communication 12 June 2009).

Opinions concerning future AML/CTF regulation in Australia

Differing views were expressed by roundtable participants concerning the possible extension of Australia's AML/CTF requirements to legal practitioners. Most of the industry representatives who participated in roundtable discussions expressed concern over the ability of legal practitioners to identify suspicious transactions in view of the lack of clarity concerning the meaning of 'suspicious'. The ability of small-sized firms to identify reportable transactions was also viewed as being problematic. Identification procedures required under the current AML/CTF regime were viewed by some as not posing any great difficulties for the profession, although not aligning well with business practices adopted in the profession. Identifying and reporting suspicious transactions was viewed as posing considerable more difficulty for all legal practitioners than adopting client identification procedures (S Mark personal communication 5 June 2009). Nonetheless, those participating took the view that existing criminal laws and regulatory measures provided an acceptable response to the small risk that legal practitioners might unwittingly become involved in money laundering or financing of terrorism in Australia. These views were, however, those of the individuals who agreed to participate in the roundtables. The results of the AICs survey of a sample of legal practitioners from the Eastern Australian jurisdictions is reported separately (Choo et al. forthcoming).

A number of participants suggested that any suspicious matter reporting obligation for legal practitioners would conflict with existing professional obligations such as LPP and the nature of the relationship between the legal practitioner and the client. The NSW Legal Services Commissioner noted that legal practitioners already have ethical obligations to report the probable commission or concealment of serious offences. All ethical obligations should be respected in any anti-money laundering (AML) obligations introduced for legal practitioners.

A number of participants expressed concern over compliance costs if all of the existing obligations were applied to legal practitioners. Some participants suggested that legal practitioners may accept costs associated with client identification, record-keeping and reporting obligations, provided LPP is protected.

A number of participants also noted that AML measures could be built into general risk management strategies for legal practitioners. The Law Council of Australia has recently released an AML Guide for legal practitioners, which suggests a number of strategies to minimise possible risks of money laundering, such as having policies on cash handling and procedures for a number of specified matters (eg dealing with unexplained changes in the client's instructions). Working with AUSTRAC, the Law Council has also widely circulated AUSTRAC information on practitioners' existing obligations and will publish further AUSTRAC information on money laundering red flags that may assist the profession in identifying and mitigating the risks involved. One participant noted that an effective AML risk management strategy is for a practitioner to ask at least one more question in these types of situations than they would normally ask.

Accountants

Disciplinary statistics

The disciplinary processes of the accounting professional associations (ICAA, CPA Australia and NIA) are not geared towards identifying conduct that may constitute money laundering and accordingly, these Associations were unable to provide statistical information on the extent of money laundering within the profession. All that could be provided was data on the number and outcomes of disciplinary matters dealt with by each Association, which gives some indication of professional misconduct generally—although not specifically with respect to money laundering. Information was similarly not available concerning cases of alleged financing of terrorism in which accountants might have been involved. The ICAAs Professional Conduct Team investigated 259 formal complaints against members in 2007–08 and 27 members appeared before the Professional Conduct Tribunal. The allegations investigated by the Professional Conduct Team involved failing to meet standards of professional care or skill, insolvency,

criminal convictions, adverse findings by a court, statutory, regulatory or professional body, breach of the Charter, bylaws or professional standards and conduct bringing discredit on the organisation, member, or on the profession.

The Tribunal imposed the following sanctions:

- three members were excluded from membership;
- two members had their membership cancelled for up to five years;
- two members had their Certificate of Public Practice cancelled and/or declared ineligible to hold a Certificate of Public Practice;
- three members were fined;
- nine members received a reprimand and six members received severe reprimands;
- two members were subjected to an additional quality review of their practice;
- one member was required to attend specified training and development; and
- one member did not receive a sanction (ICA 2008).

CPA Australia investigated 163 externally initiated complaints in 2008, as well as additional matters carried over from previous years. A total of 696 complaints were investigated by CPA Australia between 2005 and 2008 (CPA Australia, ICAA, NIA personal communication 4 June 2009).

The NIA received 42 complaints against members in 2008, of which 11 went to the NIA's Disciplinary Tribunal. The Disciplinary Tribunal forfeited the memberships of five of the NIA's members from these matters. The 42 complaints included 34 professional conduct issues, three Quality Review Audit issues and three failures to obtain a public practice certificate. One matter was referred to the NIA from a self-managed superannuation funds auditor at the ATO and another from disciplinary action taken from another body (CPA Australia, ICAA, NIA personal communication 4 June 2009).

Anecdotal case studies

On 18 May 2004, a CPA pleaded guilty to a structuring offence by conducting transactions so as to avoid reporting requirements (under s 31 of the *Financial Transaction Reports Act 1988 (Cth))* and was given a sentence of one month's imprisonment, fully suspended immediately with a $2,000 recognisance to be of good behaviour for two years. The Queensland Disciplinary Committee of CPA Australia then investigated the matter and on 20 December 2006 imposed a penalty of a severe reprimand and publication of his name and required payment of $324 towards CPA Australia's costs (CPA Australia 2006). This is the only example of a CPA Australia member's involvement in a money laundering matter.

In another case, a Sydney accountant, her husband and 10 clients were charged in February 2009 with offences relating to tax evasion and money laundering involving $5.2m. The accountant was charged with conspiring to defraud the Commonwealth, conspiring to deal with instruments of crime and obtaining financial advantage by deception. The charges stemmed from allegations that the accountant had designed, facilitated and implemented tax evasion schemes for Australian clients through Vanuatu. She was alleged to have facilitated her clients' receipt of tax deductions for payments made to businesses in Vanuatu for services that were not provided ($10m fraud scheme dates back to 1995: AFP. *ABC News* 10 February 2009. http://www.abc.net.au/news/2009-02-10/10m-fraud-scheme-dates-back-to-1995-afp/290088). The accountant's clients and husband were charged with money laundering, defrauding the Commonwealth and obtaining financial advantage by deception (Twelve charged over $10m tax evasion, *News.com.au* 10 February 2009. http://www.news.com.au/breaking-news/twelve-charged-over-10m-tax-evasion/story-e6frfkp9-1111118805732).

In *R v AJLH* [District Court of New South Wales 28/11/1001]; Rv GMJ [District Court of New South Wales 28/11/1002], an accountant pleaded guilty to an offence of obtaining financial gain by deception against the Commissioner of Taxation in 2009. Another accountant pleaded guilty to this charge, a charge of defrauding the Commonwealth and a

charge of money laundering under s 400.4(1) of the Criminal Code.

The defendants were involved in a personal and company tax avoidance scheme promoted by a senior partner in an accounting firm in Vanuatu, that involved a Sydney accounting firm. The participants in the scheme were clients of the company that operated businesses in Australia. The company prepared the financial reports and tax statements for the ATO each year.

The companies sent funds to bank accounts in New Zealand held by companies owned by the Vanuatu company with the promoter as signatory on the accounts. The funds were usually transferred from one company account to another in New Zealand and back to the scheme participant's personal account for transfer back to their business' account as a shareholder's loan repayment, or retained in the participant's personal account. Each participant paid the Vanuatu company a fee for the transfers and paid it to open and maintain a nominee company in Vanuatu. The participants received false invoices for services rendered and the transfers were written off as deductions in the participant business' tax return. The accounting firm then prepared financial statements including the false expenses, incorporated them into the participants' tax return, had the participant authorise the return and then lodged them with the ATO.

The scheme also allowed participants to reduce their personal income tax by disguising the transfer back to their Australian account as a loan from a foreign lender. The accounting firm recorded transfers made back to the business, where participants did not retain the money in their personal accounts, as shareholder loan repayments that are not considered income. As with the business tax returns, the accountant submitted personal returns to the scheme's participants for review before lodging them with the ATO.

The accounting firm ceased to exist in 2006. The ICAA has not commenced any disciplinary action in line with its policy to await the outcome of legal proceedings (CPA Australia, ICAA, NIA personal communication 4 June 2009).

Another accountant based in Vanuatu was charged with tax offences in August 2008. He was accused of promoting a tax avoidance scheme in which 60 Australian companies transferred their assets through a network of firms in both Australia and Vanuatu but he was not charged with money laundering. It must also be noted that the accountant was based in Vanuatu and not Australia (Wilson 2008).

These cases, particularly those involving the accounting firm, illustrate the ability of accountants to participate in complex schemes with the intention of hiding funds or their origin. The case highlights also that facilitating or making complex arrangements in order to help clients avoid paying tax fits the legal need not necessarily remain confined to tax offences and can constitute money laundering offences.

The second AUSTRAC typology outlines an alternate scenario where the accounting firm is immediately involving in receiving, moving and disguising illicit funds generated by an earlier crime. In this scenario, the laundering and the predicate offence are not occurring simultaneously as is the case with the tax avoidance examples.

AUSTRAC typologies

AUSTRAC's typology reports have occasionally included examples of money laundering involving Australian accountancy professionals.

In one case, a Colombia-based organisation was alleged to have imported cocaine into Australia and remitted the funds generated to the United States to be laundered through the black market peso exchange. Those involved are purported to have purchased a debt owed to the syndicate with funds generated in Australia. The syndicate allegedly laundered the proceeds (with the assistance of an accountant/financial advisor) through a foreign exchange company that also remitted the funds overseas (AUSTRAC 2008). The precise role of the accountant/financial advisor was not clear.

Another example involved an accounting practice that allegedly channelled approximately $1m from the sale of amphetamines in Australia. The firm was reported to have received funds in 15 bank accounts, which included trust accounts and accounts of businesses created specifically for that purpose. The accountants involved were alleged to

have then provided the money to an associate who was a frequent gambler. That associate was instructed to pay 95 percent of the funds he had received into a foreign bank account (AUSTRAC 2007).

Opinions of sector representatives

The professional accounting bodies held the view that accountants may be used in money laundering operations, although there is little evidence showing widespread intentional involvement in illegality. The professional bodies also held the view that the criminal nature of money laundering means that law enforcement agencies, such as the police, would uncover and investigate money laundering as they are resourced and empowered to do so.

Disciplinary process

The professional accounting bodies do not have the powers of courts, regulatory bodies, or tribunals and do not perform criminal investigation roles. Most investigations into the conduct of accountants are instigated by the complaints mechanisms of the professional bodies and the organisations may initiate investigations in response to media reports and referrals from regulatory authorities (CPA Australia, ICAA, NIA personal communication 26 August 2009).

The ICAA will generally not instigate an investigation while criminal or regulatory proceedings are underway in order to avoid being in contempt of any court proceedings. By contrast, CPA Australia and NIA may initiate disciplinary proceedings before an outcome from a criminal or civil case has been determined by the courts. The disciplinary matters initiated by CPA Australia and NIA in these circumstances will not be finalised (CPA Australia, ICAA, NIA personal communication 26 August 2009).

The exchange of information between professional bodies and law enforcement bodies is sporadic. CPA Australia, for example, will inform law enforcement agencies of any suspected illegal activity. The organisation does not have formal channels to receive information from law enforcement and often finds out about criminal activities involving members from the media and press releases. CPA Australia will conduct an investigation based on this information once it receives it. The NIA may also recommend to individuals wishing to make a complaint about a member to contact law enforcement agencies or the ATO.

The accounting professional bodies view non-members as a key risk for illicit activity because they are not subject to the professional bodies' codes of ethics or complaints mechanisms. The professional bodies are not able to pinpoint the number of people offering accounting services to the public who are not members of an organisation and therefore not subject to monitoring and disciplinary processes by the professional organisations. One participant estimated that approximately half of the registered tax agents were members of a professional body. The estimate suggested around 12,000 tax agents who were likely to be outside of the accounting professional bodies (P Drum personal communication 12 June 2009). The professional organisations noted that some service providers, such as tax agents, were subject to some regulation for specific services even if they were not members of a professional body.

Voluntary membership also limits the effectiveness of any sanctions that may arise from a disciplinary proceeding. The professional organisations cannot prevent individuals from practising after rescinding membership as they do not issue practising certificates or similar when they enter the profession. Disciplinary actions by a regulator, such as ASIC for auditors, can remove a licence or registration. This will prevent an accountant from offering the specifically licensed service (CPA Australia, ICAA, NIA personal communication 26 August 2009).

The accounting professional organisations stressed that their disciplinary processes are for non-compliance with the organisations' professional requirements and not specifically for identifying criminal activities. The sanctions available do not include the ability to require members to pay civil damages to clients or other parties.

Professional disciplinary mechanisms and examples of money laundering

Most industry representatives had not seen any examples of disciplinary cases of accountants involved in money laundering. Since its establishment in 2002, the AAT had not had any

examples of members being involved in money laundering or fraud in its disciplinary proceedings. Most of AAT's disciplinary proceedings were for client relationship issues. The same was true of CPA Australia, NIA and ICAA, where many complaints involved disagreements with clients in respect of matters such as fees. Some organisations also received complaints about their members from the ATO.

Industry organisations had not received calls for advice from members, or calls to report matters that might have been connected to money laundering. There were no reported examples of members subjected to the disciplinary process who unwittingly engaged in money laundering or facilitating other crimes. CPA Australia has supplied the disciplinary report for a member convicted of a structuring offence (CPA Australia, personal communication 4 June 2009).

The members of professional bodies who have been involved in corporate fraud have personally benefited from that involvement.

Existing ethical standards and money laundering

The professional organisations cited their Code of Ethics for Professional Accountants and other standards issued by the Accounting Professional and Ethical Standards Board as existing means to prevent their members from becoming involved in illicit activities. The professional bodies considered the jointly agreed quality standards to have addressed most of the AML/CTF regulatory areas. The combination of quality standards and ethical codes were presumed to indicate to the practitioner if any accounting work posed higher risks and any members breaching of those standards are subject to the disciplinary mechanisms of each professional body. Participants also identified other methods by which risks of involvement in money laundering are able to be managed:

- Accounting practitioners will outline the risks associated with a client if they hand the work over to another accountant. The process of outlining the risks would ideally identify any risks that client poses of becoming involved in illegitimate activities, although the process of outlining the potential risks associated with clients is constrained to an extent by the possibility of a defamation suit against the originating accountant.
- Members of the professional bodies, including employees in a firm, are able to speak to external ethics advisors at professional organisations and mechanisms exist that allow anyone to make a conduct compliant against a practitioner [CPA Australia notes that all complaints are investigated (CPA Australia, ICAA, NIA personal communication 4 June 2009)].
- Conduct requirements for some areas, such as public accountants who handle funds in trust, extend to auditing obligations for those activities.

Risk areas

Roundtable participants nominated a range of aspects of accountancy practices that might pose risks of money laundering, although the group did not come to a consensus on which areas of practice might constitute higher than average risks. These were:

- Voluntary membership of the professional associations and absence of monitoring mechanisms for those who were not members—some industry representatives identified tax agents and BAS agents as service providers within the broader profession who had a portion of businesses who were not members of a professional organisation. Of particular concern were people offering accounting services who were not members of an organisation and did not have licensing requirements. Bookkeepers fell into this category.
- Setting up companies and business structures are associated with higher risks—participants held the view that reporting suspicious requests to create companies and other business structures, based on the idea of logical purpose, was problematic. Accountants may offer advice on parsimonious structures or other arrangements. Clients, however, often pursue business arrangements that appear illogical for reasons far removed from involvement in illegal activities. The reasons might be as simple as a belief that complex arrangements, or incorporation, are the most beneficial for tax or asset protection or advice from colleagues in their industry or friends. Australian law does not discourage

this. Australian law does not require a reason to establish a company.

- Some representatives viewed trust accounts, or accepting money, as risk areas of practising. Accountants commonly use trust accounts as clearing accounts rather than for holding client funds in trust. Most accountants would have a trust account, although few practising public accountants have the capacity to transfer cash. The industry representatives were not aware of any clients who transact in cash or use alternative remittance services.
- APESB has trust account requirements incorporated into accounting standards codes. These begin with requiring any client funds held indefinitely to be held in a trust account. APESB discussed increasing their trust accounts requirements to include more specific guidelines on client money standards. Practitioners outside of the professional organisation structure are not subject to any requirements for trust account management.
- Clients and transactions involving high-risk jurisdictions are also pose potential money laundering risks to the accounting profession.

Real estate agents

Allegations and cases

AUSTRAC typology

A cannabis crop was found on a property and after the arrest of an individual, was subject to forfeiture under the *Proceeds of Crime Act 2002* (Cth). The offender was alleged to have purchased and registered the block using a false name. The real estate agent and solicitor who had conducted the conveyancing are alleged to have not verified the identity of the purchaser of the property (AUSTRAC 2008).

Mortgage provider allegations

K was an agent for a mortgage provider in Melbourne and was implicated in money laundering for organised drug syndicates in Melbourne through mortgages held by his wife's company. Police alleged that the company, run by K, loaned $100,000 to collaborators, which was used to purchase a racehorse. Police have alleged that no repayments have been made on the mortgages. K has not been charged (Hughes 2007; Hughes & Ferguson 2008) and these allegations remain unproven.

Proceeds of crime proceedings

A joint investigation with police in Western Australia resulted in the seizure of 20 ounces (560 grams) of heroin, $396,000 in cash, gems to the value of $300,000, motor vehicles valued at $55,000 and real estate valued at $800,000 (Walker 2007).

Disciplinary proceedings outcomes

Examples of Victorian real estate agent disciplinary proceedings have included:

- A director of a real estate agency, was charged with 40 offences of fraudulent conversion of trust fund monies and two counts of deficiencies in a real estate trust account. He was sentenced to imprisonment for six months, suspended for 12 months, ordered to complete 125 hours of community service and ordered to pay $75,293 in compensation. The real estate business was closed by Consumer Affairs before he was convicted (Consumer Affairs Victoria 2008).
- The Victorian Civil and Administrative Tribunal found a real estate agent guilty of breaching his fiduciary duty to the vendor of a property he sold in 2005. He had sold the property for less than market value to his flatmate and misidentified the purchaser of the property to the vendor. He was ordered to pay $2,000 into the Victorian Property Fund and was suspended from holding a real estate agent's licence for two years (Consumer Affairs Victoria 2006a). The Victoria Supreme Court dismissed his appeal (Consumer Affairs Victoria 2006b).

The available examples of NSW Office of Fair Trading disciplinary outcomes have predominantly been for licensing breaches. These have included trading without a licence or with an expired licence and lending a licence to another agency. Other matters involved not being a fit and proper person, trust account offences, underestimating the selling price of a property, failing to lodge audit reports,

criminal convictions and failing to lodge statutory declarations (NSW OFT 2009).

The two Victorian disciplinary cases reflect real estate agents fraudulently for personal gain, or the gain of an associate (rather than illustrating the use of real estate) to store, hide, or transfer illicit funds. Similarly, the disciplinary procedures in New South Wales also focus on the fit and proper character requirements and fraud perpetrated by agents for gain, rather than matters that exemplify the use of real estate agents to launder money.

ASIC has brought charges against several property developers on the basis of running a company while disqualified:

- A property developer in Western Australia was an undischarged bankrupt (ASIC 2007a).
- A property developer also operating a private lending business had been convicted of fraud (ASIC 2008c).

MFAA suspended or expelled five members between January 2008 and April 2009 for the following activities (MFAA nd):

- submitting loan applications on behalf of individuals without meeting the applicants, breaching the MFAA's Code of Practice;
- receiving a ban from ASIC from operating in any part of the financial services sector;
- signing documents on behalf of an employer without their consent;
- advising a client that support documents for a loan could be drafted before the loan was submitted to the lender; and
- submitting loan applications without meeting the applicants, including signing 100 point check declarations.

The disciplinary proceedings (focused on license breaches, fraud and failure to meet the fit and proper person tests) can be interpreted in two ways. The first interpretation suggests that disciplinary matters against real estate agents do not support the suggestion that the AUSTRAC typology outlined above is a common occurrence. The alternative interpretation (that existing disciplinary mechanisms are not sufficient to uncover risks of money laundering in the sector) relies on an assumed level of money laundering taking place.

Opinions of sector representatives

Representatives from the real estate industry held mixed views on the possible extension of AML/CTF regulatory obligations to the industry. Some participants considered any additional regulatory requirements would increase the perceived legitimacy of the industry. Others saw using know your customer requirements to identify buyers and sellers as a potential mitigation strategy for risks of non-payment or fraud.

Those that saw some benefit to the profession's inclusion in the AML/CTF system also held the view that education and consultation were vital.

Criminal activity in the real estate industry

Industry representatives were not aware of any examples of money laundering that had involved the real estate industry in Australia and viewed the possibility of organised syndicates doing so as an unlikely possibility. There were some examples of fraud in the industry, although representatives were clear on the distinction between a predicate offence and laundering money using real estate. Fraud that involves real estate encompasses more than a single industry participant. There were two examples of Queensland property valuers implicated in frauds in a 10 year period. The valuers, however, were not prosecuted.

This perspective is at odds with the findings of Walker's (2007) analysis of money laundering in and through Australia in 2004 in which it was found, inter alia, that 'criminals in Australia tend to invest in real estate, gambling and luxury goods' (Walker 2007: vi). Walker (2007) estimated that $651mn, or 23.2 percent of the total proceeds of crime was spent on real estate investment. He concluded that:

> On average, real estate investment appears to be the most frequently cited destination for the proceeds of crime in Australia, according to the collective wisdom of our Australian law enforcement respondents. Roughly a fifth is invested directly into further criminal activities, while gambling and the purchase of luxury goods come next. Only an eighth of the proceeds of crime are invested in legitimate business. This observation gives credence to the FATF's recognition of the real estate sector as being

vulnerable to exploitation by launderers (Walker 2007: 59).

In the Netherlands, an intensive study of the money laundering risks evident in the real estate sector was undertaken by Unger & Ferwerda (2011) who identified 17 characteristics of transactions most likely to be indicative of money laundering. Of 11,895 real estate objects (properties) examined, 150 seemed unusual. Major risks arose in connection with 'objects owned by foreigners, newly established companies and objects with unusual price fluctuations' (Unger & Ferwerda 2011: 151).

In Australia, the Royal Commission into the Building and Construction Industry found examples of fraud and money laundering in the building industry in New South Wales where subcontractors were involved in money laundering to pay their contractors. The participants considered the illiquidity of real estate to make it an unlikely asset to be involved in the financing of terrorism.

Real estate agents rely on other participants in the sale of real property to provide information such as certificates of title, mortgage and contractual documents. Participants indicated that reliance on third parties for information in property sales created certain risks of fraud, although reported instances of fraud in conveyancing transactions are rare (Law Council of Australia personal communication 24 July 2011). The majority view of the industry was that money laundering using real estate requires the complicit involvement of the participants in the transactions in order to take place. The further belief was that extending AML/CTF to real estate would do little to reduce complicit involvement.

Identifying money laundering using existing regulatory systems

The industry representatives viewed the current mechanisms sufficient to identify money laundering. The ability of the industry to identify money laundering would increase with education and particularly with examples of it occurring in the sector.

The participants indicated that existing regulation requires the funds handled by real estate agents to pass through trust accounts and the regulation of these accounts was cited by industry representatives as sufficient to prevent money laundering. The Australian Capital Territory Office of Fair Trading has required real estate agents to audit their trust accounts for the previous 10 years. The audits are completed by accountants, although additional audits are also done at random. Victoria's system for trust account auditing mirrors that of the Australian Capital Territory. Auditing results are reported to Consumer Affairs Victoria who also undertakes random audits. Industry representatives perceived the role of estate agents as fixed in the transaction phases of buying property and bound by the regulatory controls on handling funds in this phase.

The MFAA, mostly comprised of small businesses, introduced a mandatory AML/CTF compliance program for members and considered brokers with an understanding of AML/CTF compliance to be more attractive to mortgage providers. Members of the MFAA do not have a reporting obligation and the organisation noted that there was no mechanism for filing reports should members identify a suspect client.

Applying sanctions

Deregistration is one of the more severe sanctions that can be imposed on real estate agents. There were few examples of this taking place. Serious criminal convictions, punishable with more than three months' imprisonment, result in expulsion from some organisations such as the API. The API expelled a member who was involved in a bribery and corruption case. Most examples of expulsion from the API have been for misconduct and not for fraud.

Members of some industry organisations were expelled more readily than others. The information leading to the MFAA's decision to expel of a member, for example, was often insufficient for a prosecution.

Participants indicated that property valuers were less likely to be the cause of a formal complaint than other participants in the industry. Unprofessional valuers, or those engaging in misconduct, were avoided by other actors in the industry instead of becoming the subject of complaint.

The mortgage and finance industry adopted a similar approach to keeping individuals who engage

in questionable practices out of the industry. A manager or mortgage broker responsible for a high number of loans defaulting will be fired and disaccredited with lenders or insurers, whereas prosecuting the individual involved can be expensive, time consuming and comes with reputation risks. Participants held the view that know your customer requirements may help mortgage brokers to pick up illegitimate customers, brokers, or deals ahead of patterns of defaulting loans.

Industry risks identified by participants

The industry representatives indicated some areas of real estate transactions and the industry may be more vulnerable to untoward behaviour.

- Licensing system problems—Licensing is a barrier to entry into some occupations in the real estate industry and forms the basis for some sanctions for illegal or inappropriate behaviour such as deregistration. Difficulties in the licensing systems for real estate agents may impact on the ability to impose sanctions on real estate agents and other industry participants involved in money laundering.

  The real estate industry representatives considered the licensing standards for real estate agents to vary considerably between Australian states. Participants considered the Victorian licensing system to be more stringent than those of New South Wales or Queensland, signified by the annual publication of the names of those found guilty of malpractice by the Commissioner of Consumer Affairs in Victoria and suggested that the standards of NSW licensing system caused difficulties for mutual recognition between states.

- Property valuing—Participants saw the possibility of property valuers engaging in fraud and some difficulty in detecting frauds, stemming from the subjective nature of performing a valuation for a property. Multiple property valuers are likely to arrive at different prices on a property. The industry representatives suggested that market fluctuations, such as those in early 2009, might make gauging illegitimate decreases in the value of a property very difficult to identify.

  All Queensland real estate contracts recommend seeking a second valuation before finalising a sale. Participants agreed that few people follow this recommendation as it opens the possibility of a different quote that may reduce the financial return on the sale. The practise of adhering to a single, favourable valuation for a property reveals the impact market fluctuations and individual valuers might have on the price of property. The further implication is that transactions or aspects of a sale that look fraudulent (such as two valuations conducted in a short time frame resulting in different prices) are not uncommon and can occur for legitimate reasons.

  Participants agreed that the nature of property sales required the participation of numerous people in order to launder to launder money by seriously overvaluing a property.

- Obtaining financing for properties—The real estate agents reported often asking buyers how a transaction will be financed. Knowing whether the financing is done through a bank, credit union, or through other means, is useful to the vendor. The information allows the real estate agent and vendor to assess the likelihood of the sale falling through and the timeframes involved among other things. Most of the information about financing, however, is revealed when the contracts for the sale are exchanged and the transactions are managed by the legal practitioners involved. Participants from the real estate sector agreed that legal practitioners are the parties best able to verify where the financing for a sale comes from.
- Illegitimate clients have the opportunity to apply for financing from many different lenders if they are unable to secure a loan from one. There is no system for exchanging information or preventing multiple applications if subsequent requests for finance are denied. For each loan, however, mortgage insurance documentation would exist. The mortgage insurers are able to identify multiple applications for financing. This is regulated at the state and territory level.
- The impact of market fluctuations—Movements in the Australian real estate market in 2009 meant that legitimate falls of 20 percent or more in the value of some properties were not uncommon. Falls in value of this size might have indicated something untoward in other times. Outliers in pricing, presumably in an area or for a type of property, are also not uncommon.

The industry representatives expected that the anticipated substantial price falls would also lead to more instances of fraud linked to real estate agents. Participants expected fraud and questionable deals to rise as both agents and clients attempt to supplement their income levels and maintain existing lifestyles. The expectation within the industry was for an increase in predicate offences involving agents and clients but not an increase in money laundering. Conversely, industry representatives also anticipate that any reduction in work volumes would allow agents more time to examine transactions more closely.

- Title transfer, point of sale and conveyancing—The title transfer phase of a sale was where industry representatives saw an opportunity for money laundering as this is where the transaction actually occurs. The separation of real estate agent services and conveyancing services in most states means that real estate agents are not preparing the contracts for the sale. The role of the real estate agent, in most states, is as the initial point of contact and negotiator of the sale. The conveyancers (usually legal practitioners) and the financial institutions manage the actual transaction. The extent of the involvement of an estate agent in the transaction would be handling the deposit that is usually less than 10 percent of the funds. Real estate agents, as noted above, are regulated for handling funds with auditing requirements.

  Almost all of the industry representatives viewed conveyancing as the area best placed to conduct due diligence and to some extent, was already likely to be associated with some identification checks.

  Participants illustrated that moving any customer identification requirements within the industry to conveyancers is not without problems. Individuals are able to conduct their own conveyancing and one participant reported having never had his identity verified when selling a property.

  The existing due diligence requirements of the banking sector mean that the identity and income of the loan applicant have been assessed. Purchases made without financing, however, are not subjected to this scrutiny at a previous point in the real estate transaction.

- Purchasing with cash—Property transactions, including the portion of funds handled by real estate agents, are unlikely to be made with cash. Real estate agents are unlikely to be insured for handling cash in this way. Real estate agents, however, are also unlikely to decline cash transactions if the possibility arises.

  Property auctions are an area where cash is not uncommonly used. Cash payments allow the successful bidder to make a deposit on the day. Other types of clients do not always buy through the banking system. Making purchases with cash is not illegal, as some participants pointed out, nor is it illegal for a business to accept cash. Large cash deposits, or purchases, will be reported to AUSTRAC where the vendor or agents enters these into the banking system, although beneficial owners are not always able to be identified.

- Electronic title transfer, electronic conveyancing, listing—Participants considered the National Electronic Conveyancing System, internet listings and online transactions as sources of heightened risks of money laundering within the industry.

  The electronic conveyancing system is likely to expedite the process of property sales by automating the authentication of property titles, facilitating property checks with local government and revenue authorities and minimising face-to-face contact between those involved in transactions. Arguably, this could make money laundering using real estate transactions more attractive to some criminals. Roundtable participants suggested that a control mechanism at the point of transfer might mitigate these risks.

Dealers in precious metals and precious stones

There have been occasional cases of criminal conduct taking place in connection with the precious metals and stones industry, although reported cases generally involved allegation of fraud for personal gain or tax avoidance rather than money laundering.

Cases

Melbourne lawyer

A solicitor in Melbourne, executed a sizeable fraud purporting to offer an investment scheme with tax incentives to wealthy clients. The funds raised for the venture were deposited into the trust account of the law firm of which he was a partner and were moved into another account.

The solicitor held a second trust account and used this account to siphon the funds from his firm. He had not notified the Law Institute of Victoria of the second account, held at a bank branch. The bank also failed to notify the Law Institute of the existence of the second trust account despite legal obligations to do so at the time.

Investigations into the trust accounts and other files, after the solicitor's murder, revealed that he had collected funds from other clients using false mortgages.

After moving the funds from the firm's account, into his second trust account, he then sent the funds offshore for investment using wire transfers. The bank allowed him to make deposits using third party cheques into the second accounts because it was a trust account. Some of the money was sent to Thailand to purchase sapphires and other funds were reported to have been invested in a sapphire mine in Laos. The solicitor was alleged to have stolen A$42m in total from prospective investors in the tax minimisation investment. The thefts from the firm trust account were discovered after his murder in Cambodia (Conroy 2000; Owen-Brown, Pedersen & Heywood 2000).

DPP (C'th) v G [2001] VSCA 107 (27 July 2001)

The defendant pleaded guilty to conspiring to defraud the Commonwealth in 2000. For a period of 13 years, he performed money laundering services for members of the orthodox Jewish community in Australia evading paying tax in Australia. He collected the funds (mostly in cash) and deposited them in an account opened in the name of a charity. The funds were then remitted to Israel. The funds were reported to have come from the sale of diamonds illegally imported into Australia. He collected funds in cash and the beneficial owner avoided paying sales tax as well as personal income tax on the profits of sales. A Melbourne diamond dealer with charged with tax fraud along with the defendant. The case identified a Sydney diamond dealer, using his services, who was not charged (Barry 2000).

This case outlines a scheme reportedly used to hide proceeds allegedly generated from illegal importation of high-value items and tax avoidance. The case does not point to specific components of the precious metals and stones industry that tie it to illicit transactions as the allegedly implicated diamond trader's occupation (and the type of goods imported) are not crucial to the offences. The other case differs somewhat as the solicitor had engaged in 'parking', a practice outlined below, to move or hide value that presumably was the intention of the suspect outlined in the AUSTRAC typology.

AUSTRAC typology

A money laundering investigation alleged that the primary suspect had purchased silver valued at $180,000. The purchases were made with cash and in amounts less than $10,000. The offender's alleged structuring activities also extended to employing third parties to make purchases on his behalf (AUSTRAC 2008).

Additional typologies for the precious metals and stones industry

- Parking—the practice of parking is using precious stones and valuable pieces of jewellery to store value. Parking value in precious stones is attractive due to their small size, the ease with which individual items can be transported and the ease with which most items can be redeemed for cash. Large cut and polished diamonds, large and rare coloured gemstones, some pieces of jewellery and some rough coloured gemstones, such as opals, are suitable for parking value.
- Parking value in diamonds may also be profitable in itself, although this requires the purchaser to obtain stones at less than wholesale prices. Parking value only, without the goal of making a profit, is stable even if the purchaser pays a normal rate for the items.

- Moving funds overseas—the small size and ease of transport makes moving value across borders using stones very easy. Any pieces with the appropriate certification documents are easily resold and all of the transactions will appear legitimate.
- The following example shows the values that might be involved and the cost of transporting value internationally using a diamond. A diamond worth about US$429,000, certified by the Gemmological Institute of America, is about 13.5mm in diameter and is easily set into a simple piece of jewellery. The jewellery item can be worn out of Australia and the resale value of the piece would probably be 95 percent of the initial outlay.

Crime risk factors for the precious metals and stones industry

- Most high-grade diamonds come with a recognised grading certificate. The grading certificate means that the value of the stone can be easily determined by anyone with a small amount of knowledge. The recognised grading certificate reduces the risk of losing value for anyone parking value, or moving value, using diamonds. The prices of jewellery vary more considerably than those of diamonds and, as such, pose a higher risk of losing value for a purchaser wishing to on sell.
- Individual diamonds can be rendered very difficult to track. Any identifying marks, or distinguishing features such as some cuts, can be easily removed or redone to render the stone anonymous.
- Coloured stones are used less frequently to move value. They are less readily available in Australia than diamonds with the exceptions of opals, pearls and sapphires. The sale prices for coloured gemstones will also fluctuate far more than those for diamonds with a certificate.
- Opals are less appealing than other stones as a means of moving value. Opals are susceptible to cracking and finding an onward buyer can be difficult.
- Pearls are very tightly controlled and wholesalers very selective about the markets receiving pearl products.
- The different grades of sapphires might offer an increased opportunity to hide value. The grades of sapphires, unlike diamonds, are more difficult to recognise. High-grade sapphires can be easily passed off as a lower value item.

Other industry-based risks factors for illicit behaviour include the high degree of liquidity of stones, particularly in some Asian markets, where precious stones are very easily converted to cash. The lack of transparency in the industry can make spotting illicit activities very difficult even for industry participants.

Opinions of sector representatives

Criminal activities within the sector

Industry participants recognised that criminal conduct occurred in the precious metals and stones industry although the participants considered it be usually fraud for personal gain or tax avoidance and not money laundering. Participants suggested that buyers in the 1960s–1980s avoided paying tax in their home countries by depositing money into Australian bank accounts from Bangkok and collecting the funds when they entered Australia. The suggestion was that this practise no longer takes place as buyers ceased coming to Australia frequently.

The specific examples of criminal activity discussed by the industry representatives focused on activities related to retailing precious metals and stones. The examples included an auction house in Western Australia where all of the items for an auction were stolen in the day of the event (including everything in the safe) and a pawnbroker in Queensland behaving dishonestly. The exception was the case referred to above although industry representatives pointed out that he was not a gemstone trader.

The other forms of criminal activity within the sector discussed by participants focused on smuggling activities. The presence of some items that could not have been sourced legally in Australia suggested to industry representatives that the items were smuggled into Australia. Industry representatives believed these items to have been sourced from India and South America but stressed that establishing evidence of criminal activities within

the industry would be difficult as all the information available within the industry is anecdotal.

There are examples of large volumes of diamonds being smuggled such as one case, in 1972, when $250,000 worth of diamonds left Australia. Industry representatives suggested that although cases of theft such as this give the impression that money is easily laundered in the industry, it would be difficult for an industry participant to move into criminal activities once well-known and established in the industry.

Participants believed that the incentives to undertake criminal activities dropped with the introduction of the GST, as the 33 percent wholesale tax (payable prior to the GST) provided a degree of motivation to engage in illicit activities.

Sector specific risks identified by industry representatives

Industry representatives highlighted that the principal vulnerability of the precious metals and stones industry was the high value of the goods involved and the ease with which they could be transported. Coloured stones, diamonds and precious metals are not synonymous in value and participants outlined different risks associated with each. The prices of jewellery items were considered to vary more considerably than those of diamonds, which might make jewellery more susceptible to risks of losing value for a purchaser wishing to on-sell.

Most coloured gemstones are far less valuable than diamonds. Transactions of more than $10,000 would involve a large volume of most coloured gemstones but might constitute a single diamond sale. Participants stated that items worth $10,000 or more constituted around 95 percent of all overseas transactions made by those participating in the diamond business. The lesser value of coloured gemstones was considered to make them more transportable, presumably because of the decreased risk and participants reported that individuals rarely transported diamonds, because of their very high values, unless the individual is smuggling them.

Industry representatives highlighted that very high-value items are very recognisable and easily tracked, reducing the ability to use these items to engage in illicit transactions, although this is not necessarily the case with all stones. Identifying marks, or distinguishing features such as some cuts, can be easily removed or redone to render the stone anonymous. Most high-grade diamonds come with a recognised grading certificate that allows those with a small amount of knowledge to determine the value of the stone. The recognised grading certificate was considered to reduce the risk of losing value for anyone parking value, or moving value, by purchasing or selling diamonds.

Participants suggested that coloured stones would be less attractive than diamonds to those aiming to store or move funds as they are less readily available in Australia than diamonds, with the exceptions of opals, pearls and sapphires. The sale prices for coloured gemstones were argued to have greater fluctuations than those for diamonds, with a certificate also serving to reduce the appeal of coloured stones to hold or move value. The features of some coloured stones were considered by some participants to further reduce their appeal in this respect. The susceptibility of opals to cracking and the difficulties of finding an onward buyer, and the tightly controlled markets for pearls, were the specific examples given.

The different grades of sapphires were suggested to offer an increased opportunity to hide value. The grades of sapphires, unlike diamonds, are more difficult to identify that might allow high-grade sapphires to be passed off as a lower value item.

Source countries and business practises

Industry participants highlighted some common business practises within the sector and features of the sector that may increase the risks of illicit transactions or difficulties associated with identifying them.

- The industry sources products from other countries that operate under different cultural practises for business transactions. The examples given by participants included transacting in Indonesia, which may mean working within a culture of facilitation payments to get things done, and the likelihood that suppliers in some countries will not have formal identification documents that encourages the industry to rely on trust to an extent.
- The precious metals and stones industry has a culture of anonymity. Anonymity becomes an issue because of social norms. The example

given by the industry participants is that of a customer purchasing a gift for a mistress where social convention might require an anonymous transaction. The culture of anonymity is also driven by the security concerns associated with purchasing high-value items. Participants suggested that the lack of transparency in the industry can make spotting illicit activities very difficult even for those in the industry.

- Stones have a high degree of liquidity, particularly in some Asian markets where precious stones are very easily converted to cash.

Industry representatives suggested that the close relationships between industry participants may offer some insulation against criminal activities. The close relations make following transactions very easy unless a buyer specifically deals directly and privately with a supplier who chooses to keep the identity of that buyer secret. The closeness of the industry also produces a wariness of unknown participants that are also not known to colleagues.

Deregulation of related activities

The industry representatives viewed the deregulation of some aspects of the industry as a risk for criminal activities. The example cited was the deregulation of auctioneers by Australian states and territories. Valuers and auctioneers who are not members of an industry body are completely unregulated and unsupervised. Approximately one-third of valuers in Australia are not members of the National Council of Jewellery Valuers.

There is a divergence in the amount of regulation required by different states and territories and the Australian Government. The industry representatives believe the pawnbroker industry in New South Wales to be unregulated and subject to random checks only. Queensland was cited as a state conducting regular monitoring.

Representatives cited the example of an auction business going into receivership as an outcome of deregulation of auctioneers. The business did not have a trust account and as a result no one was paid after it became insolvent.

Transactions and payment methods

Industry representatives stated that approximately 50–60 percent of all transactions within the precious metals and stones industry were completed using cash cheques, as the transactions were for small amounts and larger transactions were usually done with credit cards. Cash was also considered the standard method of payment when purchasing stones, with participants indicating that buyers will normally take $15,000–20,000 to Asia on buying trips; however, they stated that the volume of coloured gem and opal buyers that use cash entering Australia had substantially fallen.

The industry saw internet sales and companies only advertising on the internet as a substantial risk as the vendors are unknown. Internet sales were believed to account for a high volume of gem sales and although the amount of money exchanged in each sale was considered to be small, this avenue was argued to offer the potential to move large sums of value.

Internet diamond sales mark a key change in the industry that participants argued would heighten the risks of illicit activities occurring. The industry in the past was closed and trading was conducted only between wholesalers and retailers. Internet sales have made wholesale diamonds available more widely.

Tracing precious stones

The Kimberley Process was established to cut the flow of 'blood diamonds' and industry representatives believe its introduction reduced the percentage of illicit diamonds from 4.5 percent to one percent. The requirements of the Kimberley Process may also help to trace diamonds. The tracking aspects make selling stolen or uncertified diamonds difficult as fewer people are happy to deal with these stones although some still circumvent any system. The coloured gemstone industry is considering adopting a fair trade system replicating the Kimberley Process.

Gold, of all of the products in industry, was argued to be the only one that could be easily used for money laundering. Tracing gold, once it has been smelted, is much more difficult than tracing stones although the mine of origin can possibly be deducted.

Trust and company service providers

Cases

Sarin Gas Attack

The organisation responsible for sarin gas attacks in Tokyo in 1995, established two companies in Australia. One was used to import electrical equipment into Australia. The organisation established another company and used it to purchase chemicals. Members of the group used the first company to purchase a station in Western Australia to conduct tests in Australia. The property was sold after the subway attacks and the new owners notified the police after finding the chemicals. The police found sarin residue on the sheep station (House of Representatives 2008a).

Typologies

An offender allegedly used stolen and fraudulent identities to open accounts and other instruments to move the funds generated by goods and services tax fraud. The offender registered companies and obtained the services of virtual and serviced offices, and moved money between his companies by falsifying trade documents. He also allegedly used international accounting firms to perpetrate the fraud (APG 2008).

The AUSTRAC typology illustrates the potential use of companies to move illicit funds with trade-based money laundering mechanisms. The offender might not have been able to create the companies used if required to demonstrate a legitimate purpose for establishing those entities. The typology does not clarify if an application of existing AML/CTF legislation would have prevented or flagged those companies to anyone involved in providing services to the offender, although it is likely that the bank would have reported the transaction as being suspicious. The scenario also does not indicate whether the offender used a service provider to create the companies of if he did so himself.

The sarin gas matter illustrates the group's use of a company to disguise its importation and purchasing activities. This example, like the AUSTRAC typology, does not point to a clear means of preventing the companies from purchasing the components of explosives, although adequate customer identification might have resulted in identifying the group's members at the point of company creation if they used a service provider.

Disciplinary proceedings outcomes

The following examples are of matters involving company secretaries pursued by ASIC:

A woman pleaded guilty to offences of obtaining financial advantage by deception and making false information available to company auditors, an offence under the Corporations Act. ASIC commenced an investigation into the company after allegations were made that the company mislead auditors, creditors, officers and shareholders about the financial performance of the company (ASIC 2008d).

A company director pleaded guilty to charges of making misleading statements (an offence under the *Crimes Act 1900* (NSW)) and of failing to discharge his duties as an officer of a company (an offence under the Corporations Act). He was charged after an ASIC investigation (ASIC 2007b).

The ITSA Bankruptcy Regulation Branch received 378 complaints in 2007–08. The complaints concerned:

- decisions about claiming or disposing of assets (24%);
- lack of information or responsiveness when information is sought (16%);
- fees and costs (13%);
- delays in the administration or lack of action (8%);
- inappropriate conduct or conflict of interest (8%); and
- income and contribution liability assessments (5%).

Of the 378 complaints made, the Branch found that 41 were justified (ITSA 2008).

In 2008, the Branch's inspection program found errors of inadequate communication, inadequate investigation of possible assets or income, incorrect meeting procedures, failing to maintain proper financial records, not dealing properly with creditors'

claims, incorrectly calculating or realising interest charges, delays, insufficient record keeping and overcharging (ITSA 2008).

The disciplinary proceedings for occupations providing trust and company services, like those of the other industries considered in the scope of this report, focus on licensing breaches, frauds and failures to meet fit and proper person standards, rather than indicating involvement in money laundering.

Opinions of sector representatives

The views of trust and company service provider participants on the risks of illicit transactions taking place and their perceptions of prevention strategies were tied to their specific business sectors.

Insolvency practitioners

Insolvency practitioners suggested that misconduct within their sector was more likely to be ineptitude than intentional fraud and pointed to the absence of any reported examples of involvement in money laundering. Representatives from the insolvency profession argued that the tight regulation and oversight by ASIC would render the profession unattractive to those wishing to launder money. Participants considered tax evasion to be a more prevalent issue for members of the Tax Institute of Australia and for self-managed superannuation funds where people may gain more favourable tax provisions by lying about their age.

Business incorporators

Members of the Committee of Business Incorporators Australia (CBIA) reported conducting most of their business over the phone or internet. CBIA members outlined that the process involves collecting a lot of personal data about their clients such as place of birth and address and business address details to satisfy ASIC requirements. It also involves creating industry representatives from the business incorporators sector and reported that businesses providing this service would predominantly deal with clients after they have already have had contact with other gatekeepers such as accountants and legal practitioners.

The CBIA views any exclusion of ASIC from proposed customer identification requirements as one that will create inconsistencies in any identification and verification system. ASIC's intention to make online incorporation available to the public in 2011 will amplify the problem. The CBIA does not see incorporation as a money laundering activity in itself and requires another activity such as opening a bank account (J White personal communication 29 May 2009).

Some of the general risks identified by industry participants included:

- the disparate legislation and regulation between jurisdictions that may lead to problems of mutual recognition and duplication. Industry representatives suggested that one solution to this problem would be for ASIC to assume responsibility for overseeing business establishment instead of leaving this to states and territories;
- there are risks arising from the ability of a single auditor to make a decision about a client's accounts and level of compliance; and
- businesses with high cash inputs may be more likely to accept less than legitimate business offers in times of financial constraint due to a lack of other opportunities. Those monitoring their finances might be less inclined to report discrepancies in that environment.

Conclusion

This report provides an industry perspective of the risks of money laundering and financing of terrorism that are considered to exist in Australia in the professional business groups identified by FATF as DNFBPs and considered by FATF as gatekeepers to financial services (FATF 2012).

The preliminary assessment combined a review of public source information and roundtable consultations held with various professional associations and regulators of the businesses in question; namely, legal practitioners, accountants, real estate agents, dealers in precious metals and stones, and trust and company service providers. The outcomes of the review and roundtables were presented against industry demographic information and income sources for each DNFBP where it was available publicly. For legal practitioners and accountants particularly, this information is salient as industry participants identified heightened risks of illicit behaviour linked to specific sections of the practitioner community and to specific transaction types.

The assessment of the DNFBPs in Australia was supplemented by an overview of the extent of regulation of DNFBPs in some countries in the European Union, North America and Asia.

With the resources available, it was not possible to collect all statistical data concerning criminal convictions and professional disciplinary proceedings from all Australian jurisdictions involving members of each professional group, although information from some of the largest jurisdictions and professions was examined. Convictions information, specifically for offences such as fraud, might have revealed additional risks and vulnerabilities to money laundering in DNFBPs where those convictions demonstrated anonymous or disguised movements of the funds by professionals. Conversely, it may have also revealed the capacity of the existing criminal and regulatory frameworks to identify examples of anonymous or disguised movements of funds. On the basis of the information examined, however, few instances of intentional money laundering were identified.

Professionals tend to be both represented and regulated by professional bodies made up of the professionals themselves, often with lay representatives involved pursuant to legislative regulatory procedures. Professional bodies often have a role in ensuring that unqualified people do not practice in the profession (Smith 2002). The exclusive nature of the professions has been challenged by a number of developments, including the rise of competition policy (in Australia the professions became subject to the *Trade Practices Act 1974* (Cth) in 1996), the rise of multi-disciplinary practices, the increasing use of associate professionals and the use of information technology

(Smith 2002). The rise of associate professions, such as conveyancing services, is also important. A much larger group can now perform what was once a solely professional task.

Generally, the publicly available evidence of the risks of money laundering taking place in Australia in the professional groups examined was extremely limited. There were few actual examples from industries that in Australia at present comprise many thousands of members. It has not been possible to assess the level of risk among those professionals who operate outside current legislative and professional regulatory controls and it is among these groups that levels of risk may be higher. Further exploratory research using qualitative research methods would be needed to provide a risk assessment relating to these individuals.

On the basis of the evidence available, however, the following conclusions may be drawn.

Legal practitioners

Overall risks

The current FATF Recommendations (FATF 2012) seek to make the use of professional services unattractive to those seeking to engage in ML/TF. Any future legislation that may extend the AML/CTF regulatory requirements in Australia to specified services provided by certain business and professional groups, would be in addition to the existing professional regulatory regime applicable to some registered practitioners such as legal practitioners, as well as the ordinary provisions of federal and state or territory criminal laws concerning money laundering and financial crime. Although the Australian material assessed for this report identified some instances in which legal practitioners had acted illegally for personal gain, no instances were reported of legal practitioners unwittingly being involved in money laundering. Of course, such conduct would be difficult to identify and might only become apparent as part of separate investigations into money laundering by the clients of legal practitioners. While the report does assess the extent of evidence of deliberate involvement, it should be recognised that criminal offences are already in place to combat such situations. There are also existing various reporting obligations on solicitors to report cash transactions to AUSTRAC.

Arguably, future legislative reforms would assist in identifying some instances of unwitting involvement of legal practitioners in money laundering, although such cases could also be uncovered using existing criminal law investigatory and professional disciplinary regulatory powers. The conclusion from the current research using publicly-available information appears to be that either money laundering within the legal profession is exceedingly rare or non-existent, or that instances of money laundering have not been detected to date using existing laws and procedures. It may also be the case that some practitioners have been unwittingly implicated in money laundering by their clients.

Money laundering convictions, allegations and charges

Research conducted by the AIC has found that in Australia to the date of writing, no legal practitioners have been convicted of money laundering offences under federal, state or territory legislation. The allegations proved against Paul Gregory represent the only instance of a legal practitioner conspiring with a client to hide that client's assets, although that case related to tax evasion rather than money laundering. It does, however, indicate the ability of the existing system to reveal the involvement of legal practitioners in complex schemes to hide assets.

The AUSTRAC typology involving a solicitor presented above does not clearly identify the role of the Australian-based offender's occupation as a solicitor in the structuring transactions. The information available, however, does not clearly demonstrate that the Australian-based solicitor's actions extended beyond structuring offences. The typology, if substantiated by actual case material, may constitute direct evidence of money laundering by a legal practitioner, although the details of the case might also indicate that the offender's occupation was incidental to the structuring offences.

Regulation and other legal instruments

Legal practitioners (with the NSW model considered in detail) are arguably subject to the most stringent regulation and scrutiny of the DNFBPs considered in this report.

All legal practitioners operating a private practice, including notaries, are subject to licensing requirements and ongoing accreditation. Legal practitioners are subject to statutory requirements and professional conduct rules that govern aspects of legal practise. Most states and territories have statutorily established independent supervisory bodies for legal practitioners that are agencies of the state or territory government as well as the Law Society and Bar Association performing supervisory functions.

The NSW model of regulation mirrors many aspects of AML/CTF regulation, although the two regulatory systems have different aims. Trust funds for legal practitioners (predominantly solicitors, as barristers are not permitted to hold a trust account in New South Wales) are subject to statutory regulation. A number of aspects are similar to those in the current AML/CTF regulation or could serve similar functions to track the movement of funds. The NSW model:

- Prohibits holding funds under a false name and requires records of names and addresses for funds held in trust.
- Prohibits moving funds in transactions that cannot be traced electronically—for example, any trust money received as cash must be deposited into a general trust account, any transit money taken as cash must also be deposited into a general trust account before following the payout instructions for the money and any controlled money received as cash must also be paid into a controlled money account.
- Has annual auditing requirements for trust accounts and allows additional audits by the Law Society as well as power to conduct investigations and appoint external supervisors, managers and receivers.
- Requires trust accounts to held at approved ADIs only.
- Imposes a positive obligation on regulators who suspect on reasonable grounds, after investigation or otherwise, that a person has committed an offence against any Act or law, to report the suspected offence to any relevant law enforcement or prosecution authority and make available to the authority the information and documents relevant to the suspected offence in its possession or under its control.
- Requires ADIs holding trust accounts to report any irregularities in the accounts.

Disciplinary proceedings and prosecutions

The disciplinary cases from New South Wales, Western Australia and Queensland did not reveal any direct evidence of money laundering with the unwitting or complicit assistance of a legal practitioner. The majority of the disciplinary proceedings brought against legal practitioners in New South Wales were for consumer matters. Matters that resulted in criminal proceedings in New South Wales, as well as disciplinary outcomes, centre on the misappropriation of trust funds and other frauds motivated by personal gain.

Some industry participants reiterated in subsequent feedback on this report that criminal cases of legal practitioners committing fraud did not constitute direct evidence of money laundering in the profession because they do not show evidence of legal practitioners unwittingly or complicity assisting clients to launder funds. The common theme across these cases is one of the practitioner knowingly obtaining client funds for illicit personal gain (C Slater personal communication 12 June 2009; Law Council of Australia personal communication 29 May 2009). The disciplinary cases outlined for New South Wales were included to consider whether the existing framework might be able to reveal money laundering activities should they involve legal practitioners.

It is not surprising that the NSW disciplinary cases did not reveal any specific money laundering cases, as the system is not looking for money laundering activities. The existing regulatory system in New South Wales is geared to detect fraud offences and not money laundering (S Mark personal communication 5 June 2009). The NSW cases suggest, however, that the existing regulatory requirements, for trust accounts particularly, are

sufficient to identify the illicit movements of funds. In *Law Society of NSW v G* [2007] NSWADT 38, the practitioner's misappropriation was revealed by his employer and not as a result of a complaint made by the owner of the funds involved. The case tentatively suggests that the system is able to identify the illicit movements of funds without the beneficial owner of the funds making a complaint.

The prosecution and disciplinary actions for fraud offences may also indicate that the oversight of the profession may be sufficient to reveal the involvement of legal practitioners in activities aimed at disguising or hiding assets. The case arising from the Wickenby investigation further indicates the ability of the existing system to reveal the involvement of legal practitioners in complex schemes to hide assets. This was the only example of a legal practitioner who conspired with a client to hide that client's assets. The vast majority of cases discussed in this report involve legal practitioners who have committed fraud offences for their own gains.

The single AUSTRAC typology involving a legal practitioner did not clearly identify the role of the Australian offender's occupation as a solicitor in the structuring transactions. The solicitor in Hong Kong established companies to hide the funds and remit these back to Australia, so the hiding of funds hinged on his ability to create company structures. The information available, however, does not clearly show the Australian solicitor's actions extended beyond structuring offences. The typology, if proven, may constitute direct evidence of money laundering by a legal practitioner although the details of the case might also indicate that the offender's occupation was incidental to the structuring offences.

Summary of industry views

Almost all of the representatives from the legal sector who participated in the roundtable stated that they were unaware of legal practitioners being involved in laundering money for their own gain or on behalf of their clients. The sector's professional associations had rarely seen evidence of practitioners being involved in criminal activities and had almost never seen cases of money laundering. When legal practitioners were involved in criminal matters, these invariably involved fraud without money laundering being charged.

In response to a question about possible areas of risk, some roundtable participants identified certain professional activities as potentially involving higher risks of money laundering. However, not all of the participants agreed that all of these activities would entail higher levels of risk and no participants were able to identify actual examples of money laundering having occurred in connection with these activities. The types of legal work identified as potentially carrying higher risks included:

- transactions involving trust accounts;
- cash transactions;
- high-volume work, such as small criminal matters with a quick turnover;
- creating complex business arrangements and structures, and giving advice on these types of structures; and
- matters finalised over long periods of time, such as where the beneficiaries of an estate were unaware of the funds available.

In relation to the future legislative reforms, a number of participants stated that any suspicious matter reporting obligation for legal practitioners would conflict with existing professional obligations such as LPP and the nature of the relationship between the legal practitioner and the client. One participant noted that legal practitioners already have ethical obligations to report the probable commission or concealment of serious offences. It was argued by participants that existing professional ethical obligations should be respected in any legislative reforms introduced. Many participants also expressed their concerns regarding the compliance costs for legal practitioners if further regulation were implemented. These concerns are reflected in the AIC's *Perceptions of Money Laundering and Financing of Terrorism in the Australian Legal Profession* Report (Choo et al. forthcoming).

Although roundtable participants from the legal profession expressed strong reservations about further regulation of the sector, the profession has actively sought to ensure that its members are fully informed on money-laundering risks and issues.

The legal practitioners involved in this exercise did

not discuss conveyancing. The role of conveyancing in the legal profession as perceived by real estate industry representatives is discussed in connection with real estate transactions.

Accountants

The accounting profession, unlike legal practitioners, is composed of varied service providers and also unlike legal practitioners, is not regulated as a single profession. Tax agents, BAS agents and accountants providing financial advice have statutory registration requirements, as do auditors, liquidators and insolvency practitioners. The latter three types of services have been considered as trust and company service providers in this report.

Regulation and other instruments

Accountants who provide services that are encompassed by the AML/CTF Act (predominantly those holding AFSL) have existing AML/CTF obligations. The new requirements for tax agents and BAS agents do not include aspects that mirror AML/CTF obligations, such as specific customer identification or verification requirements or reporting mechanisms for suspicious activities.

Members of the key accounting professional organisations are subject to additional professional requirements and disciplinary mechanisms that mirror those of legal practitioners to an extent. Membership to the professional organisations, however, is voluntary. Voluntary membership and the service-based approach to regulation allows some accountants to provide services without any specific regulation. Some of the services that a non-member accountant might offer without supervision of either nature include providing advice or creating business structures and bookkeeping.

The transactions identified by some industry professionals as those with the greatest vulnerability to money laundering involve the receipt of funds into a trust account. The current standards for trust accounts (for members of the key professional bodies) have extensive audit requirements but do not contain many obligations that mirror the regulations aimed at preventing money laundering or to assist in identifying it. These standards do not have specific identification requirements for clients involved in trust fund transactions. The means of disbursing funds are not limited to electronic transactions as the regulation of legal practitioners' trust accounts are. There are no reporting requirements for any practitioners that identify an irregularity in a trust account ledger, nor is the ADI holding the account bound to make a report. The auditor of a trust account, however, must make a report of any irregularities.

The second area of concern for accountants is their involvement in setting up company and business structures. There are no conduct guidelines from the professional organisations governing this area with specific guidelines for these services. The ABS (2003b) income information does not give an indication of the frequency with which accountants provides these services, although business tax services generated the largest proportion of income for firms with less than 20 principles.

The professional ethics and standards for both CPA Australia and ICAA contain an AML guidance note. The ICAA module suggests client identification procedures, screening funds passing through trust accounts and avoiding cash transactions. The guideline suggests discussing any suspect transactions with the ICAA for advice on reporting these to a law enforcement authority. The guideline is modelled on the previous AML/CTF regime and is not binding. It does indicate, however, that members might be subject to disciplinary action if they fail to comply. The guidelines for ICAA and CPA Australia do not extend beyond members of those organisations.

Disciplinary proceedings and prosecutions

The accounting profession has had examples of complicit involvement in money laundering. One accountant has been convicted of a structuring offence, although the details of the structuring activities and the means of discovery are not publicly available.

The AUSTRAC typology involving an accounting firm receiving and paying out the proceeds of crime offers some support to the industry's

perception of trust funds and corporate structures as key risk areas.

The pending cases involving the Sydney accountant and the other prosecutions referred to above indicate that the profession's view that matters involving company structures are a potential high-risk area has some basis. The information available on each case, however, suggests that the accountants involved were allegedly using these mechanisms to allow clients to avoid tax obligations.

The disciplinary procedures of the accounting organisations have focused on consumer matters rather than criminal activities. The organisations will respond to criminal and regulatory matters involving members. ICA does not do so until the matter has been finalised. CPA Australia is able to do so, although will usually also await an outcome. The professional organisations have indicated that this is, in part, to avoid prejudicing the outcome of criminal or regulatory matters. The professional bodies do not have the powers of law enforcement and regulatory agencies such as to compel documents for an investigation.

The professional bodies are unlikely to uncover complicit money laundering unless it has the subject of a complaint by an external party. The professional bodies will, however, respond to money laundering activities identified by law enforcement or regulatory agencies.

Real estate industry

Real estate agents

The NSW model of regulating real estate agents has licensing and registration requirements that mean all providers are known to the NSW OFT. One of the more common reasons for disciplinary action against real estate agents was a violation of the licensing requirements or restrictions.

The NSW model of regulation has record keeping and trust account auditing requirements for real estate agents. The trust account auditing and record keeping obligations are extensive enough to allow the NSW OFT to track any funds an agent receives. The disciplinary proceedings in New South Wales illustrate that this system is an effective means of tracking trust account deposits and proceedings have been initiated for discrepancies and auditing failures.

The auditing requirements do not, however, guarantee that the buyer of a sizeable asset has been identified. The key vulnerability in the NSW regulatory model for real estate agents is the absence of any formal identification requirements for buyers or sellers. The conveyancing process of a real estate transaction might identify the buyer and seller, but there is no evidence of specific identification procedures in legislation or regulation governing conveyancing.

Buyers obtaining financing, however, will be identified by the bank providing the loan. Buyers obtaining finance through a mortgage broker are also going to be identified for the bank by the broker acting as an agent prior to being identified by the lender. The MFAA's disciplinary outcomes, which include cases of falsifying identification checks as a broker, illustrate that the MFAA is able to identify deficiencies in the process.

Real estate transactions where the buyer does not engage an external provider to perform the conveyancing, and does not seek financing, may not be formally identified at any stage in the process. The existing system is theoretically vulnerable to holding assets in a false name. The typology from AUSTRAC illustrates the possibility of doing so, although in this case the conveyancing was alleged to have been done by a third party.

Real estate agents held the view that conveyancing was where identification would take place. This is where the actual transaction takes place. Buyers, however, are able to do their own conveyancing meaning the transaction is not overseen by another party that might identify the buyer.

There are no clear examples of real estate agents facilitating money laundering either unwittingly or knowingly. There is some evidence to suggest that the investigation and disciplinary mechanisms for real estate agents may be able to identify cases involving money laundering and other criminal behaviour. The existing investigation and disciplinary powers of the NSW OFT extend beyond responding to consumer complaints. The NSW OFT is also the

recipient of trust account external audits. These two aspects suggest that an irregularity in a trust account, once identified by an auditor, may be investigated by the NSW OFT even in matters outside of potential consumer fraud committed by the agent against a client.

The disciplinary cases from Victoria demonstrated that the Victorian investigation system is able to identify irregular movements of monies through a trust account. In one case, the Victorian system identified irregular movements that were not necessarily the subject of an immediate consumer fraud. The suggestion is that the system is able to identify agents moving money and identify those knowingly laundering money. The other disciplinary case from Victoria is interesting as the agent's misidentification of the buyer to the seller was found to be a breach of his fiduciary duty to the seller. While the case was about the below market sale price, it perhaps demonstrates that the Victorian Consumer Affairs Tribunal's willingness to consider identification issues as part of the duty of the agent in disciplinary matters.

Property valuers

Transferring value between individuals using real estate, such as by overpaying or underpaying for a property, is possible. The role of valuers in transactions of this nature is unclear as there is no requirement for buyers or sellers to have a property valued. The valuation performed by a lender involved in any such transaction would be a significant hurdle should the buyer require finance. Any intentionally fraudulent activities involving a property valuation are difficult to uncover in the current system predominantly because of the inexact nature of the valuation process.

Mortgage brokers

Mortgage brokers in some states have registration requirements identifying all participants in the industry. The regulation for mortgage brokers has two levels. Brokers have record-keeping requirements and are subject to the investigation powers of the state Departments of Fair Trading. Brokers, as agents of lending institutions with AML/CTF obligations, are bound by the identification requirements required by the institutions receiving the loan applications. The industry body, MFAA, offers training for brokers on the requirements held by lending institutions.

The allegations made in one case illustrate a means of using mortgages to hide value. The accused, however, was alleged to have held the mortgages rather than acting as a broker. There are no direct examples of mortgage brokers involved in money laundering.

The MFAA has conducted disciplinary proceedings against brokers violating identification requirements through acts such as falsifying documents. This suggests that the MFAA is capable of enforcing the obligations intended to prevent unwitting involvement. The MFAA does not have direct dealings with borrowers, although it is able to follow up information about violations of any obligations held by brokers that it receives from third parties in some circumstances (C Duffy personal communication 23 June 2009).

Dealers in precious metals and stones

Regulation and other instruments

Wholesale and retail precious metals and stones transactions are more vulnerable to money laundering activities than transactions going through pawnbrokers or secondhand dealers.

The legislation and regulation governing pawnbrokers and secondhand dealers, including antiques, varies between states and territories. The model presented for New South Wales, identified by industry participants as one of the least regulated states, has some features that reduce the vulnerability of this aspect of the industry to money laundering.

The New South Wales model:

- allows all industry participants to be identified and prohibits operating without a licence;
- has set identification procedures for transactions that resemble the minimum identification requirements that might be employed by AML/CTF reporting entities;

- requires businesses to retain records of all transactions and requires larger businesses to submit a report of all transactions to the NSW Police Force; and
- lacks auditing requirements but allows representatives from the Department of Fair Trading and the police to search premises and to obtain documents.

The requirements are targeted at hindering the movements of stolen goods rather than preventing money laundering. Despite this, the identification, record keeping and investigations aspects are likely to reduce the vulnerability of the industry to both complicit and unwitting money laundering.

Retailers, valuers and wholesalers of precious stones, by contrast, are completely unregulated. Membership to the various industry associations is voluntary and there is no external register of industry participants from these sectors. The vulnerability of retailers, valuers and wholesalers to money laundering initially appears similar as they are all unregulated. The likely threat of involvement in money laundering activities by each aspect of the industry is quite variable.

Risk factors within the industry

The views of the precious metals and stones industry suggest that the transactions posing the greater likelihood of laundering money are those involving very high-value stones. There are product and industry characteristics that increase the vulnerability of these parts of the industry to money laundering beyond a lack of regulation.

Very high-value stones offer an attractive means of holding value and transporting value across international borders. The extreme level of liquidity of precious stones internationally is an attractive quality and heightened vulnerability. Diamonds are also far more attractive than coloured gemstones, not only because of their value but also because of a greater degree of certainty about market prices.

Jewellery pieces have the greatest risks of losing value and are the least attractive. The implication from the views of industry is that the likelihood of involvement by retail jewellery businesses is very low.

The gemstone industry lacks transparency and is one where large cash transactions are not uncommon. Some industry participants saw the closed aspect of the industry as a factor insulating the industry against illicit activities. It is difficult to gauge, based on the evidence available, if the reputation risks and distrust of outsiders of industry participants is enough to prevent any complicit or unwitting money laundering.

The lack of transparency does mean, however, that it would be extremely difficult to identify either complicit or unwitting involvement in an industry where very large amounts of value can be moved very easily, completely undetected by external parties and very easily turned back into cash.

Trust and company service providers

Trust and company service providers are a diverse industry with very large variations in the extent of regulation applied to their services. There is no direct evidence suggesting that service providers in any area of the industry have engaged in unwitting or complicit money laundering activities. The range of regulatory approaches taken to the different components, however, also suggest the regulatory and other bodies have differing capacities to uncover any such activity.

Company formation agents

Company formation agents are not required to register with ASIC and as such, there is no central body listing all of the service providers. Service providers are bound by the Corporations Act to take reasonable steps ensure that the information they provide to ASIC is correct, although there is no means of verifying identity information. Company formation agents are not regulated by other instruments, although their potential to engage in money laundering activities is limited to forming companies where the beneficial owners or identities of officers have been disguised.

The case involving the company implicated in the Sarin Gas attacks concerned beneficial owners of a sheep station. The investigation showed how a company can be used to transfer funds into and out of Australia while obscuring the beneficial owners. Unfortunately, there is no indication of whether a

company formation agent was involved and whether reasonable steps were taken to provide correct information to ASIC. The company could have been established by the individual involved in the case.

AISC has not released any information on any actions taken against formation agents. Similarly, however, there is no evidence to suggest that the investigative powers of ASIC are insufficient to identify a company formation agent submitting false documents to create companies.

Company secretaries

Providers of company secretary services cannot provide services to a company without being registered as an officer of the company. Company secretaries are bound by extensive requirements in the Corporations Act and subject to the investigative and disciplinary actions of ASIC. As with formation agents, there are no specific examples of ASIC banning or otherwise sanctioning company secretaries for money laundering. There is also no evidence suggesting that ASIC would be unable to adequately identify examples of money laundering by company secretaries.

ASIC has brought charges and implemented banning orders, against company secretaries in matters such as making false or misleading statements and fraud. Some of these cases examples of matters where ASIC has pursued company secretaries after companies have wound up or other officers have been prosecuted.

Auditors, liquidators, and insolvency practitioners

The regulatory framework of liquidators and auditors is not dissimilar to that of other service providers regulated by ASIC. As with the other service providers, there is no direct evidence of involvement in money laundering, nor is there any evidence to suggest that ASIC's powers are insufficient to detect involvement.

The situation for bankruptcy trustees, regulated by ITSA rather than ASIC, is also not dissimilar. ITSA has professional conduct requirements and investigation and sanction powers. There are no reported examples of bankruptcy trustees engaging in unwitting or complicit money laundering. The information that ITSA has released about its inspection and complaints outcomes indicate its capacity to identify examples of practitioners hiding assets or failing to adequately investigate assets or income.

As with ASIC, there is also little evidence to suggest ITSA's powers are insufficient to identify any cases of money laundering involvement if necessary.

Public (corporate) trustees

The current levels of regulation in New South Wales require trustee companies to supply financial statements to the NSW Attorney-General. The lack of public information on the examination procedures for these financial statements and the absence of any specific cases of money laundering makes drawing a conclusion about the ability of the current regulation to identify money laundering difficult. Corporate trustee companies can be compelled to produce an account of the property and assets held in the trust. The Supreme Court can also appoint an auditor to examine the accounts of a corporate trustee company allowing the Court the ability to examine the accounts in suspicious circumstances.

Corporate trustee companies, like mortgage brokers, are likely to be regulated federally by the end of 2009. The approach taken to regulating trustee companies is likely to change with a federal system.

Providers of registered addresses, office space and locked bags and post office boxes

Businesses providing registered addresses, leasing office space, or supplying locked bags and post office boxes are completely unregulated. Some companies, such as Australia Post and Servcorp, require some identification and business documents in the application for a service. These requirements are company policies rather than statutory obligations.

The AUSTRAC typology demonstrates the capacity to move value using company structures. In this case, the offender allegedly engaged office space providers, as a part of laundering money through several companies via a value transfer mechanism. The office providers do not appear crucial to the scheme.

There are no typologies available documenting the crucial involvement of any of these services to launder the proceeds of another offence. The lack of regulation and monitoring of these industries, however, suggests that uncovering examples of money laundering is unlikely.

Further considerations

The vulnerabilities and risks that the data reported from this project suggest were attached to each of the DNFBPs in Australia reflect the broad spectrum of businesses and business sectors encompassed in FATF's definition. The risk-based system of AML/CTF regulation adopted in Australia directs regulated businesses to identify the risks to their businesses and to implement a response proportionate to those risks. The potential expansion of AML/CTF regulation to DNFBPs would see different responses and regulatory burdens from businesses within each of the industries included.

The experience of other countries indicate that extending AML/CTF regulation to DNFBPs is not a panacea to all of the risks of illicit transactions taking place using those businesses. The United Kingdom extended its AML/CTF requirements to legal practitioners in line with the requirements of the European Union's Third Money Laundering Directive in 2007. In 2010, the Solicitors Regulation Authority participated in an investigation into the alleged acquisition of a legal firm for the explicit purpose of committing offences such as mortgage fraud and money laundering (Peel 2010). The example suggests that implementing the best practice approach to AML/CTF regulation will not eradicate all risks.

Directions for future research

The authors of this report sought to determine the vulnerabilities of the industries in Australia classified as DNFBPs to ML/TF and to assess the threats of either crime taking place. The report was the result of the first risk assessment of this type and the preliminary findings offer opportunities to extend the work conducted. The limitations of the existing report, such as the AIC's position outside of the intelligence community limiting the data collection to publicly available information and the resource constraints of the project, offer opportunities to expand on the work undertaken.

Future research to document the AML/CTF risks could be directed toward the following areas:

- A comprehensive overview of the current regulation applicable to all aspects of each of the DNFBPs for each state and territory would reveal a picture of state-based vulnerabilities for each industry. Some industries, such as mortgage brokers and corporate trustee companies, will undergo substantial regulatory changes with the implementation of the COAG agreement to federal regulation. The vulnerability of these industries to ML/TF will need to be reassessed in light of those changes.
- Investigation and case information for offences of defrauding the Commonwealth could provide information about the potential for legal and accounting professionals to hide wealth. Participants from the legal, accounting, and precious metals and stones industries discussed the presence of tax evasion in the industries. The legal and accounting industries, particularly, noted the mechanisms associated with tax crimes, such as trust funds and complex business arrangements, are also those potentially associated with laundering money. Tax investigations and cases may reveal typologies for hiding wealth relevant to money laundering, as well as cases that might also be considered as direct involvement in money laundering.
- The current risk assessment has relied solely on documenting regulatory controls, rather than examining the way in which these are implemented by different agencies across different states and territories. Future risk assessment research would benefit from consulting the data kept by regulatory bodies and speaking with regulators in each business group.
- Investigators from consumer protection agencies, some state police and ASIC could inform an assessment of the effectiveness of the regulation of some industries considered in this report. Assessing the way investigative powers are used, such as the ability to command documents or conduct and receive audits, would enhance the current assessment of cases and statistics.

Appendix A

Case studies: Legal practitioners

Scope—Lawyers when they are involved in the management of assets and the creation, operation or management of legal persons

Australia: Solicitor involved in structuring

An Australian-based solicitor structured funds to an offshore account in Hong Kong. At times, it is believed, he actually carried cash to Hong Kong. His colleague, a Hong Kong-based solicitor, arranged for the creation of offshore companies in the British Virgin Islands and bank accounts in Hong Kong to receive structured funds from Australia. These funds were then transferred to other countries by the Hong Kong-based solicitor to hide from authorities or returned to Australia in order to appear legitimate (AUSTRAC 2007).

Australia: Legal practitioner involved in tax evasion

A legal practitioner was found guilty of conspiring to dishonestly cause a risk of loss to the Commonwealth in 2010. He outlined a mechanism to enable a client who had been convicted of tax evasion and a bankruptcy offence, to evade paying tax to the Australian Government by claiming income as payment for legal fees. The court found that he had received a fee of $22,000 for his role in the scheme. In March 2003, he was found to have sent an email to the Swiss-based accounting firm that the court held was a calculated deception to enable his client to evade his tax. He consented to a pecuniary penalty order for the fee he received and $1,000 in legal fees, and was sentenced to two years' imprisonment to be released on recognisance after serving 12 months (*R v G* 2010 [VSC 121]; see also ACC 2011: 41).

Fiji: Legal practitioner used to establish an offshore shell company

A case was reported by a solicitor in Fiji where a shelf company in Hong Kong purchased 75 percent of shares in a local company. The company wired funds from Australia as deposits to the solicitor's trust account without conducting any due diligence. The local shareholders were flown to Australia to secure the arrangement and all shares purchased were transferred to the remaining local shareholder. A total of FJ$1.5m was sent to the solicitor's account. Investigations by foreign law enforcement authorities revealed the Hong Kong Company to be non-existent. Furthermore, the company had been

subject to investigations by other international law enforcement authorities relating to lottery fraud. Investigations are continuing (APG 2008).

Vanuatu: Legal practitioner used to deposit funds

The Vanuatu FIU assisted another foreign jurisdiction where funds from a fraud in that country were transferred to a Vanuatu bank account. Enquiries revealed that the bank accounts were opened using a local lawyer as a service provider and the proceeds of the fraudulent activity were deposited with the Vanuatu banking institution masked as 'business sales'. The offender via his local service provider advised the bank that the funds would be used to pay business-related expenditure, but instead they were withdrawn in small amounts in several European countries using an international debit card (APG 2008).

United Kingdom: Solicitor advising drug dealer

A 43 year old English solicitor in sole practice, became friends with and then represented a man who was later convicted of large-scale drug crime. The man had passed him £70,000 in cash between April and May 1997; £10,000 was for legal costs, £50,000 was for an investment in his practice and £10,000 was for another company established by him to promote his practice. In March 1998, the drug dealer was arrested in possession of £5m of cocaine. The solicitor was instructed to act for him. In September 1998, he was accused of a much wider drug conspiracy. At this point, the solicitor became suspicious. He consulted Law Society literature and reached the conclusion that he was within the law. He took no advice from the Law Society or from another legal adviser. In April/May 1999, the drug dealer was convicted. The solicitor took advice about his interpretation of the legislation and was reassured by another solicitor that he was correct. He was arrested in October 1999. When interviewed he was not entirely frank, although he later said this was a result of having no proper advice. He pleaded guilty to two counts under s 52 of the *Drug Trafficking Act 1994* and was sentenced to six months' imprisonment. The Court of Appeal dismissed his application for leave to appeal that sentence (*R v D* [2003] 1 Cr App R (S) 88).

United Kingdom: Conveyancing solicitor

A UK solicitor undertook the conveyance of property to a long-time friend and business associate from a convicted criminal, at a significant undervalue and was subsequently convicted for failing to disclose to authorities that he knew or suspected money laundering was taking place. The original sentence was to 15 months imprisonment that in 2006 was reduced to six months on appeal on the grounds that the offence represented a lapse in judgement rather than a desire to benefit from criminal activity. The conviction brought an end to his professional life (*R v G&P [2006] EWCA Crim 2155)*.

United Kingdom: Bowman v Fels

The UK Court of Appeal judgment arose out of a property dispute between ex-cohabiters. Prior to a county court hearing, Bs legal advisors suspected F had included the costs of some work he had carried out on the property in question in his business and VAT lodgements. Bs legal advisors filed a report of their suspicions to the National Criminal Intelligence Service (NCIS— now the NCA). Bs legal advisor believed the POCA 2002 UK prevented disclosing to either the client, or to the defendant's legal team, that a report had been filed. The solicitor sort to adjourn the property dispute proceedings out of concerns that 'appropriate consent' regarding the matter would not be forthcoming by the hearing date. There was concern over whether the report would affect the court proceedings. The appeal questioned whether a lawyer acting for a client in legal proceedings must disclose suspicions of money laundering immediately in order to avoid being guilty of the criminal offence of being concerned in an arrangement that he knows or suspects facilitates criminal activity. The question was whether the offence applied to a legal advisor who came to suspect the other party had engaged in money laundering. The secondary question was whether POCA 2002 UK was intended to override the issues underlying LPP. The case concluded that the offence in POCA 2002 UK s 328 was not

intended to cover ordinary conduct of litigation and the legislator would not have thought those activities to constitute 'being concerned in an arrangement' that facilitates money laundering. The case confirmed that the POCA 2002 UK was not intended to override LPP in relation to money laundering. When deciding whether to make a disclosure to SOCA, lawyers need to consider whether the information on which the suspicion is based on is subject to LPP (*B v F* [2005] EWCA Civ 226).

United Kingdom: Solicitor laundering proceeds of drug trafficking

In March 2011, a solicitor in Wales was convicted at Cardiff Crown Court of money laundering and perverting the course of justice in connection with the purchase of properties on behalf of a convicted drug trafficker. The solicitor was sentenced to four years and eight months' imprisonment. The solicitor acted on behalf of his friend to fraudulently secure mortgage advances and to launder the proceeds of drug trafficking by buying property. Fraudulent mortgage transactions worth more than £650,000 were involved over an 18 month period that were in direct contravention of regulations that clearly stated that a solicitor cannot act for a buyer and provide funds at the same time. In October 2009, police undertook a search of the solicitor's home leading to the restraint of all his assets, including his black Lamborghini Gallardo worth more than £80,000. In February 2011, the solicitor applied to the court for permission to sell the car but further investigations revealed that it had already been sold in defiance of the court order. The solicitor was again arrested and further charged in relation to this offence (Wales Online 2011).

United Kingdom: Solicitor laundering proceeds of drug trafficking

In the United Kingdom, a partner in a law firm allegedly used the firm's account to transfer proceeds of drug trafficking. According to court documents, '[t]he way in which the accused M dealt with these receipts was complex. They were transferred to the firm's client account in the names of six different clients, not all of whom appeared to have been under the direct control of W. Individual disbursements were then made in respect of what purported to be ordinary solicitor and client transactions, but were a cover for transfers of a very different kind, for example, for the purchase of a yacht or an expensive car. Over £4.5m was transferred from B to a company . Sums in excess of £1.5m were transferred from different clients' ledgers to W. These transfers were all for the benefit of W and formed the subject of the third offence of which M was convicted' (*R v A and others* [2009] EWCA Crim 8 (20 Jan 2009)). The accused was found guilty by a jury at Birmingham Crown Court on 19 March 2003 of three offences of assisting another person to retain the benefits of criminal conduct contrary to s 93A(1)(a) of *Criminal Justice Act 1988* as amended. The trial judge found that the true nature of the receipt of the relevant funds by the accused person was such as to amount to an obtaining of them within the meaning of s 71(4) of *Criminal Justice Act 1988*. A confiscation order of £410,077.20 was made against the accused person on 20 April 2004. A subsequent appeal against the confiscation order was dismissed by the Court of Appeal on 20 January 2009.

Canada: Use of lawyer's trust accounts

An individual used a law firm to purchase property through the law firm's trust account using bank drafts purchased overseas from the proceeds of criminal activity. The same law firm was used to set up family trust accounts and various companies (APG 2008).

Canada: Lawyers used to establish offshore companies

A lawyer was employed by an international drug importer to launder the proceeds of his criminal activity. The lawyer established a web of offshore companies in a country with weak corporate regulations on behalf of his client. These companies were then used to hide the movement of the proceeds of crime case. He also cooperated with several other lawyers for the use of their trust accounts to receive cash and transfer funds (APG 2008).

Canada: Use of lawyer's trust accounts

On the instruction of his drug-trafficking client, a lawyer deposited money into his trust account and then used this money to make regular mortgage payments from this account for properties owned by the trafficker. The lawyer admitted that he accepted deposits and administered payments, but claimed no knowledge of the origin of the funds (APG 2008).

Canada: Collusion between lawyer and mortgage broker to avoid STRs

A common law couple used a variety of methods to launder revenue from cocaine trafficking, including depositing money in financial institutions, buying real estate and purchasing vehicles. The financial institution staff facilitated numerous transactions and even advised the couple's nominees how to conduct transactions in a way that would ostensibly reduce any suspicion. A mortgage broker and a lawyer helped with the purchase and financing of real property, and an accountant provided advice on investing funds in order to raise as little suspicion as possible. A car was also purchased with cash at a dealership (APG 2008).

Canada: Lawyers used as professional launderers

A drug trafficker, who headed an organisation importing narcotics into Canada from Country A, employed a lawyer to launder the proceeds of his operation. To do so, the lawyer established a web of offshore corporate entities incorporated in Country B, where scrutiny of ownership, records and finances was not stringent. A local management company in Country C administered these companies. These entities were used to camouflage the movement of illicit funds, the acquisition of assets and the financing of criminal activities. The main trafficker in this case held 100 percent of the bearer share capital of these offshore entities. In Canada, a distinct group of persons and companies without any apparent association to the main trafficker transferred large amounts of money to Country C. There, the funds were deposited in, or transited through, the trafficker's offshore companies. This same group also transferred large amounts of money to a person in Country D, who was later found to be responsible for drug shipments destined for Canada. Several other lawyers and their trust accounts were used to receive cash and transfer funds, ostensibly for the benefit of commercial clients in Canada. When law enforcement agencies approached them during the investigation, many of these lawyers cited 'privilege' in their refusal to cooperate. Concurrently, the main lawyer in this case established a separate similar network that included other lawyers' trust accounts, to purchase assets and place funds in vehicles and instruments designed to mask the beneficial owner's identity. In 2005, this lawyer and three other accomplices pleaded guilty to money laundering and to possession of proceeds of crime in Canada and received a combined fine in lieu of forfeiture that totalled approximately $2.7m (APG 2008).

Japan: Lawyer and false loans and contracts

A lawyer, who received a consultation from criminals to avoid confiscation of crime proceeds, advised criminals to counterfeit a loan contract to pretend that criminals borrowed money from their acquaintance, and made an illegal procedure for attachment of property (abovementioned crime proceeds) at Court (APG 2008).

Singapore: Former lawyer laundering proceeds of embezzlement

A former lawyer in Singapore allegedly embezzled S$12m from clients' account of his law firm. The individual then bought S$2m worth of jewellery and precious stones from a high-end jewellery store before leaving the country. He reportedly transferred S$1.8m to the jeweller's bank account and paid the remaining S$270,000 using a cash cheque from the clients' account of his law firm (Lum 2007).

United States: Attorney's trust account used

A chiropractor was convicted of bankruptcy fraud and money laundering for allegedly channelling US$205,000 via an attorney's trust account into

the bank accounts of two shell corporations that had been established using the names of straw men. In June 2008, the defendant was convicted on one count of making false declarations under penalty of perjury in a bankruptcy case, one count of fraudulently concealing property in a bankruptcy case and 26 counts of money laundering (FBI 2008f).

United States: Lawyer assisting laundering

In the case *United States v F,* the defendant agreed to assist in the laundering of illicit funds by transferring them through his client account to a fictitious corporation in the Cayman Islands. The offender advised the proprietor of the funds that the Internal Revenue Service could not reach the Cayman Islands corporation due to there being no relevant tax treaty between the United States and the island. The defendant also suggested that a corporation with an associated bank account be established in Liechtenstein as an additional destination for illicit funds to be transferred to via his client account. The defendant later unknowingly confessed to undercover agents that due to his lawyer–client privilege, he believed that would not be forced to answer to the queries of law enforcement services nor the criminal justice system regarding his client account (Bell 2002).

United States: Attorneys' conspiracy

In July 2007, two attorneys pleaded guilty to conspiracy to commit money laundering and conspiracy to obstruct justice respectively. Two months later, both defendants were sentenced by US District Court to (a) 41 months' imprisonment, followed by two years of supervised release and (b) five months imprisonment and five months home confinement, followed by two years' supervised release respectively. In addition, both defendants were ordered to pay a fine of US$75,000 and US$30,000 respectively (FBI 2007b).

United States: Lawyer involved in smurfing

In *United States v G*(148 F 3d. 784 (7th Cir. 1998)), the defendant, a lawyer, agreed that he would launder $50,000 to $75,000 for a fee of 10 percent. An undercover agent met him in his office and gave him approximately $75,000 plus a fee of $7,000. Later that day, he gave about half of that amount to someone to 'smurf' into accounts of less than $10,000. The smurfer and others purchased seven money orders from currency exchanges and he subsequently delivered $75,000 worth of negotiable instruments to the undercover agent (Kennedy 2004).

Case studies: Accountants

Scope: Accountants when they are involved in the management of assets and the creation, operation or management of legal persons

Australia: Accountant charged over $10m tax evasion

Twelve people were charged after an investigation into a $10m offshore tax evasion and money laundering scheme. A total of 153 charges were laid against a Sydney accountant, her husband and 10 of her clients, as part of the ATO 's Operation Wickenby. The AFP seized documents after raiding business and residential premises in Sydney between May and December 2007. The Vanuatu Police Force executed search warrants on associated business premises in Port Vila on April 28, 2008. The AFP alleged a 62 year old Warriewood woman 'devised, promoted, facilitated and implemented tax evasion schemes on behalf of Australian-based clients'. Police alleged the 12 people laundered about $5.2m. The investigation was one of 10 being conducted by the AFP as part of Operation Wickenby, targeting tax avoidance and evasion linked to tax havens. The 62 year old Warriewood woman was charged with six counts of conspiring to defraud the Commonwealth, 23 counts of conspiring to obtain a financial advantage by deception and five counts of conspiring to deal in money with intent that the money would become an instrument of crime. She faced a maximum penalty of 20 years in jail. The other 11 people were charged with money laundering, obtaining a financial advantage by deception and defrauding the commonwealth. All 12 people were due to appear at Sydney's Downing Centre Local Court on 10

February 2009. A total of 33 people were charged as a result of Operation Wickenby (Twelve charged over $10m tax evasion. *News.com.au* 10 February 2009. http://www.news.com.au/breaking-news/twelve-charged-over-10m-tax-evasion/story-e6frfkp9-1111118805732).

Australia: Involvement in drug trafficking

Australian law enforcement authorities launched an investigation into allegations of a Colombian-based syndicate's involvement in the importation of cocaine to Australia. Proceeds generated by the sale of the drugs were reportedly repatriated to the United States and then laundered through the black market peso exchange. Investigations in the United States and Australia revealed that the offenders had purchased debt owed to the Colombian-based syndicate in exchange for cash that they received in Australia. The syndicate enlisted the services of an accountant/financial advisor to assist in the laundering of the proceeds that was facilitated via a foreign exchange company that remitted funds to multiple overseas accounts. Upon the foreign exchange company and the syndicate deciding on a rate for the exchange of Australian dollars into US dollars, a syndicate member immediately commenced depositing funds into multiple accounts held by the foreign exchange company throughout the city. The syndicate gave the foreign exchange company instructions that upon their deposit in accounts, the illicit funds were to be immediately remitted to overseas bank accounts. Aside from these funds, the syndicate also held approximately A$800,000 cash in a safe deposit box at a bank (AUSTRAC 2008).

Australia: Accounting firms facilitating fraud

Mr A was involved in a multi-million dollar tax fraud lodging fraudulent GST claims. He used stolen and false identities and forged documentation to open and operate bank accounts, obtain credit cards, register companies and open serviced and virtual offices. Following the GST fraud, Mr A's company's received the proceeds of the fraud and subsequently transferred the funds into other company accounts and various stolen identity accounts. These funds were moved constantly to have the appearance of being legitimate. Mr A also falsified trade documents to launder money between the companies controlled by him. Mr A also employed international accounting firms using stolen identities and provided forged documentation to help undertake the fraud. He used these gatekeepers to help distance himself from the underlying fraud. Once the proceeds had been layered, Mr A then withdrew or spent funds via automatic teller machines, business cheques, credit cards, cash cheques, electronic debit system, direct transfers to other parties and cash withdrawals. The cash withdrawals were varied in amounts and were both structured and non-structured (APG 2008).

Australia: Use of legal arrangements for real estate

Accountants and lawyers helped to organise several loans and set up the various legal arrangements needed for the purchase of real estate. Non-trading real estate companies were set up and then used to purchase real estate on behalf of the client. To further insulate the client from the laundering scheme, the accountants and lawyers actively participated in the management of these companies (APG 2008).

Australia: Firm facilitating structuring

This case involved the production of large quantities of amphetamines in several states of Australia. The suspects laundered most of the proceeds of the manufacture of the amphetamine with the assistance of Australian entities. The Australian-based entities deposited cash supplied to them by the wife of the main suspect (usually in structured amounts under the A$10,000 reporting threshold) into their own accounts. The funds were drawn from the accounts using cheques payable to the suspect's wife or a company or business over which she and her husband had control. The Australian-based entities were also instructed to send some of the money to overseas accounts by international wire transfer. Money was often moved through different accounts, before being wire transferred offshore.

The case involved approximately A$5m. Over A$1m was also laundered by the group through an

accountancy firm. The firm was initially approached on the basis that one of the suspects had substantial funds overseas that he wished to repatriate to Australia. At the time, the person was a bankrupt and money could not be held in his own name. Advice was sought from the accountants to devise a structure to enable the repatriation of the funds and acquisition of real estate. The accountants were given A$20,000 to be used as a deposit on a real estate purchase. The accountants were aware of reporting thresholds and deposited the money into bank accounts in amounts less than the A$10,000 reporting threshold. The accountants recommended a number of money laundering schemes to the principals of the drug ring. Their standard approach was to launder the money into a number of bank accounts in amounts less than the reporting threshold of A$10,000 and to then draw cheques on those accounts. The accountants used 15 different bank accounts to receive the cash. These included personal accounts, the bank accounts of others, unwitting family members, the accountants' business accounts (including trust accounts) and the bank accounts of corporate entities established for the purpose.

Two other methods used to launder the funds were use of bookmakers and gamblers. In the case of the bookmakers, the method was to attend race days with substantial amounts of cash. The person would seek out a bookmaker he knew, express his discomfort at carrying such a large amount in cash and ask them to hold his cash for him until he either used it for bets or collected it at the end of the day. He would then leave it with the bookmaker and deliberately not collect it at the end of the day. Early the following week, he would contact the bookmaker and ask him to post him a cheque for the money.

The accountants had a business association with a wealthy businessman who was a frequent gambler at Australian casinos. The accountants approached the businessman and offered to provide cash at short notice to him or his associates for gambling at casinos. The accountants offered to accept 95 percent of the value of the cash they provided on the basis that the gambler later repaid the money by depositing money into a foreign bank account that had been set up for the purpose (APG 2008).

United States: CPA transferring drug funds

In January 2006, a certified practising accountant was convicted of drug trafficking and money laundering charges. It was alleged that the defendant made wire transfers totalling over US$100,000 of drug distribution proceeds between New Hampshire and Arizona (the end points of the drug operation) during 2004. In December 2007, the defendant was sentenced to 30 months' imprisonment followed by a three year period of supervised release during which the defendant's behaviour will be monitored by the Department of Probation in the United States. (US DoJ 2007a).

Case studies: Real estate sector

Scope: Real estate agents and property developers when buying and selling real property

Australia: Property purchase in false name

A drug offender was arrested for growing a large crop of cannabis on a property. Upon investigating the offence, it was established that the property had been purchased under a false name. Enquiries revealed that the registered owner had the same first name as the offender, however, their surnames were different. In addition, the registered owner had the same year and month of birth as the offender but the days differed. The fraud was able to occur as at the time of signing the contract the real estate agent failed to ascertain proof of identification (AUSTRAC 2008).

Australia: Corporate property purchase

A cult that conducted sarin gas attacks in the Tokyo subways in March 1995 had some of its members based in Western Australia. They purchased a 500,000 acre sheep farm 375 miles north-west of Perth and they formed two companies. In June 1993, one company was used to import electrical

equipment including transformers, static converters, generators and cable, to Australia. The purpose was to set up a false company where they would eventually undertake testing in Australia. They used the front company to purchase the property for approximately $400,000 that required them to make transfers over the sum of A$10,000 (APHR 2008).

Australia: Mortgage provider

In October 2008, a mortgage provider in Melbourne severed links with one of its agents after it became known the agent was closely associated with one of Melbourne's most infamous organised crime figures. Exactly what was behind the fact that the connection had already been known for a year or so was not made clear. What was made clear was that laundering illicit gains from narcotics was the ultimate intention. Victoria Police's Purana gangland taskforce alleged in an affidavit lodged in the Victorian Supreme Court in October 2007 that the agent was involved in a 'large-scale money laundering operation' intended to hide drug trafficking profits (Hughes & Ferguson 2008).

Hong Kong: Drug trafficker investing in real estate

Hong Kong Narcotics Division, Security Bureau reported the case of a drug trafficker, Mr Z, who had made several investments in real estate and was planning to buy a hotel. An assessment of his financial situation did not reveal any legal source of income. He was subsequently arrested and charged with an offence of money laundering. Further investigation substantiated the charge that part of the invested funds were proceeds of his own drug trafficking. The purchase of a hotel has an added advantage for money laundering as hotel business is a cash intensive business (Hong Kong Narcotics Division 2007).

United Kingdom: Real estate agents involved in financing of terrorism

Mr A admitted to writing information on how to establish an extremist cell and a training course on the manufacture of explosives. He was charged with providing material support to a terrorist organisation with the aim of overthrowing the Libyan Government and replacing it with a fundamentalist Islamic state. The US Treasury alleged that five British residents of Libyan origin had links with the Libyan Islamic Fighting Group, as well as three real estate companies operated by one of the men and an aid agency (Agence France Presse 2007).

United States: Use of shell companies for mortgage fraud

In a case involving a former branch manager and his wife, it was alleged that the defendants obtained mortgage and other loans from numerous banks and a finance company, where one of the defendants was the branch manager. His wife, the other defendant, allegedly laundered the loan proceeds through a series of shell companies. On 24 October 2006, both defendants were sentenced to nine years imprisonment, followed by five years of supervised release and ordered not to be employed in any mortgage-related business. They were also ordered to pay restitution of US$416,652 (US DoJ 2006).

United States: Mortgage fraud

In October 2008, the US Department of State announced a more than 14 year federal prison sentence for a former Georgia real estate agent for mortgage fraud. He was 'ordered to pay US$11,194,300 in restitution on charges of conspiracy, bank fraud, wire fraud and money laundering related to a multi-million dollar mortgage fraud scheme' (Nahmias 2008: np). He orchestrated a convoluted scheme with very overpriced properties where all parties except the mortgage providers were complicit. Eleven others in related cases were also given prison sentences, including a closing attorney and a loan broker (Nahmias 2008).

Case studies: Trust and company service providers and insolvency practitioners

Scope:

- Trust and company service providers: Including post office boxes and locked bags providers,

company formation agents, office space providers, secretary service providers and businesses that provide a registered address to third parties

- Public trustees
- Insolvency practitioners when performing their duties in insolvency matters and when buying or selling precious metals and stones

Australia: Safety deposit box

A Colombian-based drug syndicate that imported cocaine into Australia used a safe deposit box to store approximately A$800,000 of laundered cash proceeds. Prior to being deposited into the safety deposit box, these funds had been transferred from Australia to multiple overseas bank accounts via a foreign exchange company (AUSTRAC 2008).

United States: Use of shell companies in health care fraud

In the case involving a US$6.4m health care fraud and money laundering scheme, one of 12 defendants allegedly 'laundered a substantial portion of the health care fraud proceeds through a series of shell corporations set up for the sole purpose of concealing the illicit monies'. On 7 December 2007, the defendant was sentenced by US District Court to 78 months' imprisonment on charges of money laundering conspiracy and of making false statements to a Federal Grand Jury (US DoJ 2008a).

United States: Use of shell companies in visa fraud

In a case involving two individuals from Houston, it was alleged that both defendants

> created more than one hundred shell companies to facilitate employment based visa fraud on behalf of aliens from various countries throughout the world, including countries now designated as Special Interest Countries (US DoJ 2008b: np).

Falsified documents were then reportedly submitted as support documents in hundreds of fraudulent visa petitions and applications. On 6 February 2008, one of the defendants was sentenced to 18 months imprisonment, two years of supervised release and 100 hours of community service on charges of visa fraud. The defendant was also ordered to pay to the United States US$50,000 as proceeds gained from the illegal activity. The other defendant is currently a fugitive and is believed to reside in the United Kingdom (US DoJ 2008b).

Case studies: Dealers in precious metals and stones

Scope: Dealers in precious metals and stones including jewellers, auctioneers, pawnbrokers, secondhand dealers and antique-dealers when buying and selling precious metals and stones.

Australia: Structured silver purchases

An investigation into money laundering offences revealed the case of an individual who purchased approximately A$180,000 worth of silver using cash amounts of under A$10,000. The individual also enlisted five other people to purchase silver in similarly structured amounts on his behalf (AUSTRAC 2008).

United States: New York jeweller

In June 2003, 11 individuals were arrested at various jewellery stores in Manhattan's diamond district for allegedly participating in an international money laundering scheme. Intelligence indicated that Colombian drug organisations were instructing their US employees to purchase precious stones in New York with drug proceeds, then smuggle these items to Colombia, where they were resold to refiners for 'clean' pesos that the traffickers could use risk free. Based on this information, ICE agents launched an investigation in 1999 into several New York jewellers alleged to be involved in the money laundering scheme. According to the charges, the New York jewellers were approached by undercover agents posing as drug dealers who informed the jewellers that they were looking to buy gold and diamonds with their illicit funds in order to smuggle these precious metals to Colombia and resell them to refiners in exchange for 'clean' cash. According to the charges, the jewellers willingly accepted some US$1m in drug funds from undercover agents. They also offered to smelt the gold into small objects,

such as belt buckles, screws and wrenches, in order to facilitate the smuggling of these goods to Colombia (DHS 2003).

United States: Diamond smuggling

In a recent case in the United States, a US County Sheriff's deputy and two co-defendants allegedly transported diamonds from New Jersey to South Florida that were represented to be the drug proceeds of a Colombian drug trafficker, in violation of Title 18, United States Code, s 1951 (FBI 2008g).

United States: Jewellery stores

In December 2007, an individual was sentenced to six years' imprisonment, ordered to pay a personal money judgment of US$1,610,400 and had his condominium forfeited for allegedly laundering drug proceeds and undercover sting money at various jewellery stores including two jewellery stores owned and/or operated by the defendant. The defendant was also found guilty of failing to notify the Internal Revenue Service of cash received by his jewellery businesses. In August 2007, his two jewellery businesses were reportedly sentenced to five years' probation, ordered to pay fines totalling US$350,000 respectively and approximately US$6m in inventory and all funds held in the companies' bank accounts were forfeited (US DoJ 2007b).

Canada: Use of diamonds as monetary instruments

A money laundering investigation was initiated after the seizure of US$600,000 at an airport during a random search. Subsequent investigation revealed that the subject was operating two money service businesses with jewellery workshops in the back. A search of the money service businesses revealed thousands of high-quality diamonds. Information obtained following the seizure revealed a complex international money laundering network involving foreign diamond suppliers. Total payments of US$7.4m were made to two diamond suppliers, one located in Europe and the other in the Middle East. The seized diamonds were being used as monetary instruments to move currency across international borders (APG 2008).

Singapore: Jewellery purchases

A former lawyer in Singapore allegedly embezzled S$12m from accounts of clients of his law firm. The individual then bought S$2m worth of jewellery and precious stones from a high-end jewellery store before leaving the country. He reportedly transferred S$1.8m to the jeweller's bank account and paid the remaining S$270,000 using a cash cheque from the clients' account of his law firm (Lum 2007).

Middle East: Diamond supplier

A group was revealed to be involved in money laundering activities and marijuana trafficking. The group was also laundering criminal proceeds from other criminal organisations. A link was established between the group and a diamond supplier in the Middle East. Between July and December 2002, a total of $1.2m was transferred by wire to the diamond supplier. The diamonds were then sent to the group's contact overseas (APG 2008).

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