

**GIR** INSIGHT

**ASIA-PACIFIC**  
INVESTIGATIONS REVIEW  
2020



# **ASIA-PACIFIC** INVESTIGATIONS REVIEW 2020

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# Preface

Welcome to the *Asia-Pacific Investigations Review 2020*, a *Global Investigations Review* special report. *Global Investigations Review* is the online home for all those who specialise in investigating and resolving suspected corporate wrongdoing, telling them all they need to know about everything that matters.

Throughout the year, the *GIR* editorial team delivers daily news, surveys and features; organises the liveliest events ('GIR Live'); and provides our readers with innovative tools and know-how products. In addition, assisted by external contributors, we curate a range of comprehensive regional reviews – online and in print – that go deeper into developments than our journalistic output is able.

The *Asia-Pacific Investigations Review 2020*, which you are reading, is part of that series. It contains insight and thought leadership from 37 pre-eminent practitioners from the region. Across 16 chapters, spanning around 200 pages, it provides an invaluable retrospective and primer. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, these contributors capture and interpret the most substantial recent international investigations developments of the past year, with footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular topic. This edition covers Australia, Cambodia, China, Hong Kong, India, Indonesia, Laos, Myanmar, Singapore, Thailand and Vietnam in jurisdictional overviews. It also looks at the impact of AI, data privacy, forensic accounting and law enforcement in multi-jurisdictional investigations.

If you have any suggestions for future editions, or want to take part in this annual project, we would love to hear from you.

Please write to [insight@globalinvestigationsreview.com](mailto:insight@globalinvestigationsreview.com).

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*August 2019*

# Australia: An Increasingly Global Approach

Dennis Miralis and Phillip Gibson

Nyman Gibson Miralis

Traditionally, Australian government investigations were focused on individuals and corporations operating within Australia's geographical borders. Globalisation, however, has led to Australian government agencies being increasingly involved in cross-border investigations, often working collaboratively with their international counterparts in parallel investigations. One of the main drivers behind this change has been the internationalisation of commerce and the subsequent increase in 'borderless crimes' such as money laundering, tax evasion, e-commerce fraud, corruption, bribery, cybercrime and terrorism financing.

This chapter surveys the major Australian government agencies involved in such investigations, with a particular focus on their increasing need to adopt a global approach to adequately protect Australians from criminal threats, both local and international.

## The 2017 Australian Foreign Policy White Papers

The 2017 Australian Foreign Policy White Paper was released on 23 November 2017 and is considered to convey Australia's current position on international engagement. The White Paper also presents a strategic framework for maximising Australia's international influence and securing the nation's future foreign interests. The Australian government has long recognised the increasing extraterritorial dimension of criminal law. The rise of globalisation and technology has resulted in crime transcending Australia's jurisdictional borders, and has had a significant impact on the way criminal syndicates and enterprises operate. Indeed, the White Paper notes that 70 per cent of Australia's serious criminal threats have an international dimension.

In acknowledging that organised crime does not remain static, the methods in which law enforcement agencies operate both domestically and internationally is forced to continuously adapt. To this end, the Australian government's ability to combat transnational crime rests on increased collaboration between domestic agencies as well as effective cooperation between international government partners. Australia aims to increase bilateral and regional law and justice, diplomatic engagement, and border protection to assist in the prevention, investigation and prosecution of transnational organised crime. Vital to this objective is the express ambition to increase cooperation with regional states, including China, Indonesia, Malaysia,

the Philippines, Thailand and Vietnam. Specific examples of such cooperation include the Pacific Police Development Program and the Jakarta Centre for Law Enforcement Cooperation. Australia intends to continue its leadership in promoting global standards in combating money laundering, terrorism financing and corruption. In the advancement of this agenda, Australia's continued involvement in the United Nations Convention against Corruption and Office on Drugs and Crime is considered vital.

### **Australia's National Strategy to Fight Transnational, Serious and Organised Crime**

On 13 December 2018, The Minister for Home Affairs announced the launch of the National Strategy to Fight Transnational, Serious and Organised Crime (TSOC), an agreement signed by the Council of Australian Governments on 12 December 2018. Building on the insights of the 2017 Australian Foreign Policy White Paper, the National Strategy to fight TSOC is a collaborative government response to the damage caused to Australian citizens by transnational crime typologies such as the trade of illicit drugs, money laundering, cybercrime and child sexual exploitation.

Such examples of serious criminal typologies are generally perpetrated by sophisticated and well-resourced criminal groups. The Australian government has responded by increasing development of existing law enforcement capabilities onshore and abroad. In addition to development of existing Australian law enforcement agencies, the National TSOC strategy promotes an increased level of inter-agency collaboration.

The initiative represents an integrated and formalised national framework to combat TSOC and guide commonwealth and state governments.

Key partnerships and initiatives include:

- international engagement: cooperation with a range of international partners to disrupt crime at its source overseas;
- government engagement: building partnerships across governments, domestically and internationally, to enhance collaborative relationships across intelligence, law enforcement, border management, justice, legal, education, health and social policy agencies, to ensure a multi-faceted response to the threat;
- private sector, civil society and academic engagement: this will help to build a strong understanding of the threat environment, raise awareness, promote vigilance and reinforce the fight against TSOC; and
- community engagement: increasing resilience of communities and protecting vulnerable individuals.

The Commonwealth TSOC Coordinator, Deputy Commissioner Karl Kent OAM, has been tasked with the implementation of the Strategy.



## The Australian Federal Police

The Australian Federal Police (AFP) is Australia's national law enforcement policing body, tasked with enforcing the Commonwealth criminal law, which includes the offences of foreign bribery, cybercrime, tax evasion, terrorism financing and money laundering.

In 2017, the AFP published its International Engagement 2020 and Beyond report. International engagement means activity that is undertaken with foreign governments and foreign law enforcement partners to protect a country's national interests.

The AFP states that the purpose of its international engagement is 'to take the fight against crime offshore, and to protect Australians and Australia's national interests by working in partnership with state, territory and foreign law enforcement agencies to detect, deter, prevent and disrupt crime at its point of origin or transit'. This represents a significant shift in the AFP's approach.

According to the report, the following statistics reflect the need for the AFP to engage with international law enforcement agencies:

- around 70 per cent of Australia's serious criminal targets live or have links to overseas;
- fraud is said to cost Australia more than A\$6 billion each year;
- cybercrime costs more than A\$2 billion annually, and with changing technologies and automation this will only increase;
- the global cost of crime is about A\$3 trillion and this will continue to grow; and
- there has been a 120 per cent increase in terrorism incidents globally since 2010.

In accordance with this new approach, the AFP works with global law enforcement and intelligence partners such as Interpol and Five Eyes, as well as global non-law enforcement such as the UN and foreign governments, to further their investigations where Australian interests are affected.

### The AFP: its global investigative footprint and internationalist policy

Additionally, the AFP has strategically placed liaison officers, police advisers and missions in five regions across the globe, each with a regional manager. The regional managers are responsible for overseeing and providing strategic leadership and guidance for senior liaison officers and advisers and implementing region-wide law enforcement areas of emphasis and responsibility. The posts within each region have responsibility for a number of countries within that region.

According to the AFP, the international operations portfolio assists the AFP in the disruption of crime offshore through:

- disruption of transnational serious and organised crime (including terrorism);
- security and stabilisation missions to achieve regional stability and contribute to global order;
- international engagement and liaison; and
- capability development missions and activities.

The AFP now has over 300 personnel located in more than 52 locations throughout the regional areas of Asia, South East Asia, the Americas, Europe, the Middle East and Africa, and the Pacific catchment.

The AFP describes its increasing internationalist approach to investigations by referencing the following three principles:

- collaboration: brokering collaboration with international law enforcement agencies to drive investigations and support bilateral or multilateral cooperation;
- intelligence gathering: collecting and exchanging criminal intelligence in support of international law enforcement efforts; and
- capacity building: enhancing the capacity and the capability of international law enforcement agencies to combat transnational crime.

Conforming with this approach, in 2015 the AFP and FBI signed a memorandum of understanding (MoU) that focuses on the collaboration between the two agencies in addressing terrorism, illicit drugs, money laundering, illegal firearms trafficking, identity crime, cybercrime and transnational economic crime.

The MoU – called ‘Combating Transnational Crime, Combating Terrorism and Developing Law Enforcement Cooperation’ – consolidates the AFP and FBI cooperation in the exchange of information, resources, and technical and forensic capabilities.

The AFP has signed similar memoranda with many other countries, and additionally relies on Europol and Interpol for assistance with its investigations.

### **AUSTRAC and the Asia-Pacific Group on Money Laundering**

AUSTRAC is Australia’s anti-money laundering and counter-terrorism financing regulator, and Australia’s specialist financial intelligence unit (FIU) responsible for identifying threats and criminal abuses in the financial system. AUSTRAC’s powers are set out in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) and the Financial Transactions Reports Act 1988 (Cth).

As AUSTRAC primarily receives and analyses financial information, the resulting financial intelligence is disseminated to revenue, law enforcement, national security, human services, regulatory and other partner agencies in Australia and overseas.

By identifying potential money laundering and terrorism money laundering cases, AUSTRAC plays a vital role in helping partner agencies to detect money laundering and terrorism-financing activity, investigation of financial crimes (including tax evasion) and securing prosecutions. This supports national priorities to protect Australia’s security, apprehend criminals, protect the integrity of Australia’s financial markets and maximise revenue collection.

AUSTRAC recognises that the transnational nature of money laundering and terrorism financing requires a coordinated global response and therefore engages in a two-way exchange of information and intelligence with other FIUs all over the world. The information shared relates to financial transactions, financial intelligence, anti-money laundering and counter-terrorism financing and general anti-money laundering and counter-terrorism financing issues and statistics. The benefits of exchanging information by these means is that it assists international counterparts with their anti-money laundering and counter-terrorism financing regulation, while also helping law enforcement agencies track the international movements of proceeds of crime.

Memoranda of understanding (MoU) are presently in place between AUSTRAC and 93 equivalent national FIUs. This includes successful agreements signed with prominent regional partners such as the China Anti-Money Laundering Monitoring and Analysis Centre (CAMLMAC) on 2 November 2016 and the United States counterpart, Financial Crimes Enforcement Network (FinCEN) on 27 September 2018.

AUSTRAC also works in conjunction with the following.

- The Financial Action Task Force (FATF) – an intergovernmental body focused on fighting money laundering, terrorism financing and other related threats to the integrity of the international financial system.
- The Egmont Group of Financial Intelligence Units – made up of international FIUs and provides a global network for enhancing cooperation among FIUs, especially in the areas of information exchange, training and sharing of knowledge and expertise. Beyond AUSTRAC, notable APAC members include:
  - Hong Kong SAR, China Joint Financial Intelligence Unit (JFIU);
  - Indonesian Financial Transaction Reports and Analysis Centre (PPATK); and
  - Anti-Money Laundering Office Thailand (AMLO);
- The Asia/Pacific Group on Money Laundering (APG) – the FATF-style regional body for the Asia-Pacific region.

The most basic requirement for the dissemination of information to international partners is for the CEO of AUSTRAC to be satisfied, in accordance with section 132 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), that:

- the foreign government requesting the information has provided requisite undertakings as set out in section 132(1)(a) of the Act; and
- it is appropriate to release the information in all the circumstances.

The APG consists of 41 member jurisdictions, 11 of which are also permanent members of the FATF. These core members are Australia, China, Hong Kong, the United States, Canada, Japan, Korea, Singapore, Malaysia, India and New Zealand. All members of the APG commit to implementing the international standards against money laundering set out in the recommendations of the FATF.

Australia is a permanent APG co-chair. The chair position is currently held by Deputy Commissioner for National Security, Leanne Close of the Australian Federal Police. The current rotating chair is Bangladesh, whose chair is held by Abu Hena Mohammad Razeen Hassan, head of the Bangladesh Financial Intelligence Unit. The secretariat offices of the APG are located in Sydney, Australia.

Commonly, AUSTRAC will liaise with international law enforcement bodies and agencies regarding the traceability of proceeds of crime. AUSTRAC also provides extensive technical assistance and training programmes throughout the APAC region to strengthen the effectiveness of counterpart FIUs. Formal training programmes focused on capability building have been administered in Thailand, Nepal, Indonesia, Bangladesh, Cambodia, the Philippines and Papua New Guinea.

Of particular concern to international law enforcement is the proliferation of Bitcoin and other cryptocurrency transactions, which are widely considered to be used for illegal purposes. The anonymity that exists in the cryptocurrency realm is what makes it difficult for law enforcement agencies to identify and track users.

In responding to this problem, the Australian government recently passed the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017. The amendments took effect on 3 April 2018. Australia's legislative amendments follow comparable recent regulatory action on the part of the Hong Kong Regulatory Authority, Bank of Negara Malaysia and the Monetary Authority of Singapore.

Under the legislative amendments, AUSTRAC now monitors all digital currency exchanges within Australia's borders with the aim of ensuring that the transactions are not being used for money laundering or terrorism-related activities. AUSTRAC will do this by requiring all digital currency exchange providers operating in Australia to register with AUSTRAC and meet the Australian government's AML/CTF obligations. Digital currency exchange providers will have to collect information to establish a customer's identity, monitor transactional activity, and report to AUSTRAC transactions or activity that is suspicious or involves amounts of cash over A\$10,000. As a result of the legislative amendments, digital currencies are treated in the same way as physical cash in a bank with regard to money laundering and activities suspected to be linked to terrorism financing.

Any company caught operating an unregistered digital exchange will be held criminally liable. The penalties start at a two-year jail term or a fine of A\$105,000 for failure to register, and range up to seven years in jail, and a A\$2.1 million fine for corporations or a A\$420,000 fine for individuals, for more serious offences. The introduction of these new regulations will enhance the abilities of the Australian government to more comprehensively investigate emerging crimes such as money laundering through the use of cryptocurrency, as well as cybercrime, on an international scale.

## The Australian Criminal Intelligence Commission

The Australian Criminal Intelligence Commission (ACIC) is Australia's national criminal intelligence agency with 'specialist investigative capabilities'. The ACIC is the only agency in Australia that is exclusively focused on combating serious and organised crime.

The ACIC's remit for 'specialist investigative capabilities' involves:

- collecting criminal intelligence from partner agencies and combining it to create a comprehensive national database;
- utilising coercive powers (similar to a Royal Commission) to obtain information where traditional law enforcement methods have not been effective;
- acquiring strategic intelligence products to support in decision-making, strategic targeting and policy development; and
- implementing a national target management framework to guide law enforcement in establishing and sharing organised crime priorities and targets. This is particularly useful for dealing with multi-jurisdictional serious and organised crime investigations.

In 2017, the ACIC released its Organised Crime in Australia 2017 Report. The report consistently reiterates that organised crime in Australia is 'transnational in nature, technology enabled and increasingly functions as a business: employing professionals and outsourcing key activities such as money laundering'.

Indeed, the National Organised Crime Response Plan 2015–2018 recognises that the threat of serious and organised crime is becoming increasingly transnational in nature. Accordingly, the ACIC frequently collaborates with international governments and law enforcement agencies to provide a coordinated response to the threat of transnational crime.

A recent example was the Vestigo Task Force (Vestigo), which was authorised in November 2016 to address transnational serious organised crime activities impacting adversely on the national interests of Australia and the countries of overseas partners. The task force was supported by commonwealth, state and territory partners, along with a number of international partners, including the Five Eyes Law Enforcement Group. Vestigo provided a framework for the ACIC to enhance its international engagement and collaboration in response to the threat posed by high-risk serious and organised crime entities based overseas.

### **The Australian Security and Investments Commission**

The Australian Security and Investments Commission (ASIC) exercises its powers under the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) to regulate many aspects of Australia's corporate, market and financial sectors. ASIC possesses the discretion to investigate potential breaches of law committed by the financial entities within its oversight. However, before initiating a formal investigation, ASIC must first undertake a consideration of multiple factors. If a matter falls within ASIC's regulatory responsibility, it will be assessed to determine whether a formal investigation should be held. This includes consideration of the harm suffered by consumers, potential benefits of pursuing the misconduct in contrast with the expense, level of misconduct available on the evidence and any alternative courses of action such as surveillance.

While primarily responsible for regulating Australia's corporate, market and financial sectors, the nature of the modern global economy requires ASIC to work internationally with foreign agencies, as many Australian financial market participants undertake cross-border transactions.

ASIC and other international regulators cooperate by sharing information to assist each other with the supervision of markets and enforcement of regulation. This is done in accordance with the memoranda of understanding ASIC has with other regulators, the International Organization of Securities Commission's Multilateral Memorandum of Understanding and staff secondments with fellow members of the International Organization of Securities Commissions (IOSCO).

ASIC also works closely with a range of international organisations, foreign regulators and law enforcement agencies, and makes and receives international requests in relation to investigations, compliance and surveillance, policy research, delegations, licensing, due diligence, and general referrals.

Furthermore, ASIC participates in a number of important international regulatory forums, including IOSCO and is a signatory to international cooperation agreements, including the IOSCO Multilateral Memorandum of Understanding (MMoU) and numerous bilateral MoUs.

Many international organisations and foreign regulators make requests for assistance under international cooperation agreements, including the IOSCO MMoU and other bilateral MoUs. Where authorised, ASIC uses the Mutual Assistance in Business Regulation Act 1992 to exercise compulsory powers to obtain documents, information or testimony on behalf of foreign regulators.

The MMoU sets an international benchmark for cross-border cooperation. Established in 2002, it has provided securities regulators with the tools for combating cross-border fraud and misconduct that can weaken global markets and undermine investor confidence. The MMoU represents a common understanding among its signatories of how they should consult, cooperate and exchange information for the purpose of regulatory enforcement regarding securities markets. Information requests can be made when authorities are in the process of investigating offences relating to the following activities under the relevant laws and regulations of the jurisdictions in question:

- insider dealing and market manipulation;
- misrepresentation of material information and other fraudulent or manipulative practices relating to securities;
- derivatives, the solicitation and handling of investor funds and customer orders; and
- the registration, issuance, offer or sale of securities and derivatives.

### ASIC Enforcement Review: strengthening penalties for corporate and financial sector misconduct

The ASIC Enforcement Taskforce Review Position Paper 7 identified key problems with the penalties regime as it currently stands in the ASIC Act. One of the key areas of reform sought by ASIC is in the area of disgorgement, which is a restitution claim, meaning that it is designed to prevent an accused person's unjust enrichment by ensuring that the accused must repay any gains he, she or it has made based on illegal activities. This is usually calculated by measuring the plaintiff or claimant's loss and compensating them for that loss based on the defendant's gain. There is a danger that a disgorgement order could punish an offender twice for criminal conduct. For example, an individual found to have committed insider trading may be ordered to disgorge not only the unlawful gains accrued to the injured party directly, but also to disgorge any benefit that has accrued to any third party whose gains could be attributed to the insider trader's conduct. In this type of situation, ASIC, as a government regulator, acts in the public interest in seeking to remedy the harm done to the public at large rather than standing in the shoes of an injured party.

### The Banking Royal Commission

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry was established on 14 December 2017. The Commissioner is the Honourable Kenneth Hayne ACQC (a former High Court Justice). The Commission was established after a number of indiscretions of the 'big four' banks (Commonwealth Bank of Australia, National Australia

Bank, Australia and New Zealand Banking Group, and Westpac) that led to customers feeling frustrated and aggrieved with the banks' perceived rampant profiteering, fee gouging and disregard for the law.

The Final Report of The Commissioner was submitted on 1 February 2019. The report included 76 recommendations relating to the conduct of banks, mortgage brokers, financial advisors and superannuation trustees as well as Australia's financial services regulators. The Commissioner invited ASIC to investigate 11 potential instances of criminal misconduct, with the view of instigating criminal or other legal proceedings as appropriate. The report stressed the need to supervisory bodies such as the Australian Prudential Regulation Authority (APRA) and ASIC to build a supervisory programme focused on building culture that will mitigate the risk of misconduct.

Following the release of the final report, ASIC has announced that it will establish an internal 'Office of Enforcement', creating a separate department for enforcement staff with a specific focus on court-based outcomes.

## The Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (ACCC) is an independent commonwealth statutory authority whose principal role is to enforce the Competition and Consumer Act 2010 (Cth), (C&C Act). Most of the ACCC's enforcement work is conducted under the provisions of the C&C Act.

Similar to many regulators, the ACCC uses a range of compliance tools to prevent breaches of the Act, including business and consumer education, and working closely with stakeholders and other agencies. However, the Act also provides the ACCC with a range of enforcement remedies, including court-based outcomes and court-enforceable undertakings.

In addition to this, the ACCC has increasing international capabilities to assist it with its investigations, including MoUs and treaties with multiple countries for the exchange of information in cross-border investigations, particularly with respect to cartel conduct and consumer scams and frauds. The ACCC has stated its objectives for its international remit in the following terms:

- assist with cross-border investigations and build the necessary international relationships and processes to promote this cooperation;
- enhance the skill set of its staff by building partnerships with international counterpart agencies to share and develop knowledge; and
- assist other countries, particularly in the Asia-Pacific region, to build effective competition and consumer protection systems and appropriate frameworks for economic regulation.

The ACCC is accordingly part of the International Competition Network, the Organisation for Economic Cooperation and Development, the Asia-Pacific Economic Cooperation, the Seoul Competition Forum and the International Consumer Protection and Enforcement Network (ICPEN), which is an informal network established to encourage international cooperation among agencies and the sharing of information about cross-border commercial activities that may affect consumer interests.

The ACCC is also part of a global effort of 34 nations to better combat e-commerce issues faced by consumers, including online scams. This is an initiative launched in the UK by ICPEN to help law enforcement authorities, including the ACCC, gather and share cross-border consumer complaints that can be used to investigate and take action against legitimate and illegitimate businesses engaged in e-commerce, particularly online scammers.

The ACCC also has extensive powers to investigate international cartels and may:

- compel any person or company to provide information about a suspected breach of the law, including providing documents or giving verbal evidence;
- seek search warrants from a magistrate and execute these on company offices and the premises of company officers; or
- notify the AFP, which in certain circumstances collects evidence using phone taps and other surveillance devices.

On 15 August 2014, the ACCC and the Commonwealth Director of Public Prosecutions (CDPP) signed an MoU regarding serious cartel conduct. The ACCC is responsible for investigating cartel conduct, managing the immunity process and referral of serious cartel conduct to the CDPP for consideration for prosecution. The CDPP is responsible for prosecuting offences against commonwealth law, including serious cartel offences, in accordance with the Prosecution Policy of the Commonwealth.

Recent successful prosecutions for cartel conduct and collusion offences under the C&C Act demonstrate an increased appetite on the part of the ACCC to commence criminal proceedings against companies operating in Australia, as well as a trend of increasing financial penalties imposed by the courts in response to this corporate offending typology.

## The Department of Home Affairs

The Department of Home Affairs (the Department) was established on 20 December 2017. The creation of the Department was in response to a governmental review of Australia's intelligence operations. The Department incorporated the former Department of Immigration and Border Protection. It also subsumed, from the Attorney-General's Department, critical areas of national security, emergency management and criminal justice functions. Critically, the Department also assumed responsibilities of key Australian agencies, including ASIO, the Australian Federal Police, the Australian Border Force, the Australian Criminal Intelligence Commission and AUSTRAC.

The Department of Home Affairs' primary function is to provide coordinated strategic and policy leadership for Australia's national security policy and operations. This includes coordinating Australia's counterterrorism policies with overseas agencies and coordinating with overseas agencies in relation to potential cybercrime and cyberthreats. The Department also has a portfolio that focuses on immigration and migration policies, including border security, entry, stay and departure arrangements for non-citizens, and customs and border control (apart from quarantine and inspection).



## The Australian Tax Office

The Australian Tax Office (ATO) is an Australian government statutory agency and the principal revenue collection body for the Australian government. The ATO is responsible for administering the Australian federal taxation system, superannuation legislation and other associated matters. It conducts its own investigations and also works closely with partner agencies both domestically and abroad. When the ATO decides to bring a criminal prosecution, it is generally the CDPP that conducts the proceedings.

According to the ATO, revenue collection agencies around the world are increasingly sharing intelligence and expertise in financial investigations to fight tax evasion and organised tax crime. Australia's network of more than 100 information-sharing agreements enabled the ATO to raise assessments valued around A\$530 million in the 2017–18 financial year.

Income concealed offshore, poor transparency of offshore activities and practical difficulties associated with obtaining information about a taxpayer's offshore activities all present risks for the international tax system.

To address these, the ATO states that it works with governments and organisations around the world to fight tax evasion and crime on a global scale through accessing information and resources from private and government sources, participating in information sharing, intelligence gathering, analytics, investigations and audits with international tax administrations, using Australia's bilateral tax treaties and the multilateral convention on mutual administrative assistance in tax matters, working with domestic partner agencies through the Serious Financial Crime Taskforce, entering into information exchange agreements and obtaining information from countries previously regarded as secrecy jurisdictions, as well as working with AUSTRAC, which possesses an enhanced capability to detect, monitor and report international transactions.

Additionally, the ATO collaborates with international revenue agencies bilaterally, and through groups and forums such as:

- The Organisation for Economic Co-operation and Development (OECD), which brings together more than 30 governments from across the globe and where the ATO participates in the Taskforce on Tax Crimes and Other Crimes, including money laundering and bribery, by sharing experiences and examining specific tax and crime risks.
- The Global Forum was originally established in 2001 by OECD and non-OECD countries to tackle the use of secrecy jurisdictions. The forum's primary focus is to exchange information and to develop the international standard of transparency. The forum now includes 122 members, making it the largest tax group in the world.
- The Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) network brings together 30 of the world's national tax administrations to find ways to more effectively deal with tax avoidance. The JITSIC network offers a platform that enables its members to actively collaborate within the legal framework of effective bilateral and multilateral conventions and tax information exchange agreements – sharing their experience, resources and expertise to tackle risks and issues that affect member nations.

The ATO also works with other government agencies, Australian law enforcement, industry and overseas counterparts to share data, intelligence and expertise in the fight against tax crime. Some organisations (such as banks, employers, health insurers and other government agencies) have a legal obligation to report information to be used for taxation purposes. This is known as legislated tax collection.

The ATO exchanges information with its international treaty partners to ensure correct reporting of income earned overseas by Australian residents and income earned in Australia by foreign residents and also works with governments and organisations around the world to fight tax evasion on a global scale. Australia has a network of international treaties and information exchange agreements with over 100 jurisdictions.

### **Further examples of inter-agency collaboration in the APAC Region**

The above Australian law enforcement, investigative and prosecution agencies collaborate under formal partnerships and specialised taskforces as well as on an informal basis.

Similarly, these agencies operate collaboratively with APAC partners to investigate and prosecute transnational crime adverse to our national interests.

### **Organised Crime and Counter-Terrorism Practice Group**

The Organised Crime and Counter-Terrorism Practice Group (the Practice Group) of the CDPP is responsible for Commonwealth prosecutions for activity of terrorism, nationally security and significant organised crime offending. Such criminal typologies often involve prosecutions which are comparatively complex and resource intensive. Cases referred to the practice group involve activity that often takes place wholly or partly outside the geographical boundaries of Australia, requiring international cooperation to secure foreign evidence to enable prosecution of international organised crime and terrorism.

The Practice Group works with numerous partner agencies to exchange evidence to facilitate prosecutions. There is a focus on electronic evidence, which is easier to manage, enabling more efficient searching and collating of relevant evidence.

Key domestic partner agencies include the following:

- the Australian Federal Police;
- the Australian Security Intelligence Organisation;
- the Australian Border Force;
- the Australian Criminal Intelligence Commission; and
- the state and territory police.

International agencies involved in recent engagements include the Federal Bureau of Investigation, the United Nations Office on Drugs and Crime, United Nations Counter-Terrorism Committee, as well as South-Asian judges, prosecutors and police officers.

## The Serious Financial Crime Taskforce

Set up on 1 July 2015 and operating under the AFP run Fraud and Anti-Corruption Centre, the Serious Financial Crime Taskforce (SFCT) is a domestic multi-agency taskforce specifically formulated to combine the investigative powers, operational intelligence and capabilities of Australia's largest law enforcement bodies.

The SFCT was established to bring together the knowledge, resources and experiences of federal law enforcement and regulatory agencies to identify and address serious and complex financial crimes. The SFCT targets activities that occur both within Australia and in foreign jurisdictions. It works closely with international partner agencies, both law enforcement and regulators, governments and organisations across the globe, including countries that are subject to Australia's bilateral tax treaties and tax exchange agreements. The main operational focus of the task force is abusive use of secrecy jurisdictions, trust fraud and international tax evasion fraud.

As of 31 March 2019, the SFCT led investigations leading to eight convictions, \$813 million in raised tax liabilities and recouping \$298 million in proceeds of crime. Twenty-two further investigations, both criminal and civil, are presently being progressed by the SFCT.

The SFCT includes the following:

- the Australia Federal Police;
- the Australian Tax Office;
- the Australian Criminal Intelligence Commission;
- the Attorney-General's Department;
- AUSTRAC;
- ASIC;
- CDPP; and
- the Australian Border Force.

## Pacific Transnational Crime Network

The Pacific Transnational Crime Network (PTCN) represents an international police services-led criminal intelligence and investigation capability which operates under the governance of the Pacific Islands Chiefs of Police (PICP) network. Developed in 2002 to combat transnational crime in the Pacific, the PTCN presently consists of 25 domestic and foreign law enforcement bodies from 17 Pacific Island countries.

Prominent members include the following:

- Australia (Australian Federal Police);
- New Zealand (New Zealand Police);
- Fiji (Fiji Police Force);
- Samoa (Samoa Police Service);
- Tonga (Tonga Police); and
- Solomon Islands (Royal Solomon Islands Police Force).

The express purpose of the PTCN and the PICP is to build policing leadership in the Pacific region and collectively navigate regional policing challenges through discovery, knowledge, influence and partnerships.

The PTCN operates under three governing documents that dictate the strategic role of the network as well as the roles and responsibilities of each member. The documents are:

- a memorandum of agreement between the Chair of Pacific Island Chief of Police & Chair PTCN Executive Leadership Team supporting the continuation of the PTCN;
- an exchange of letters between the Chair of PTCN Executive Leadership Team & AFP regarding funding arrangements; and
- the MoU between the Chair of the PTCN Executive Leadership Team and the government of Samoa to house the Pacific Transnational Crime Coordination Centre.

### The United Nations Office on Drugs and Crime in the APAC region

The United Nations Office on Drugs and Crime (UNODC) operates a regional programme in South-East Asia that provides strategic oversight for member states to combat transnational organised crime and illicit trafficking in the region by way of the following:

- giving clear focus to supporting member states and regional partners in achieving priority crime and drug outcomes in the region; and
- increasing the responsiveness, efficiency and effectiveness of UNODC's support to the region.

The UNODC South-East Asia regional programme is constituted to address transnational organised crime and illicit trafficking, corruption and terrorism threats in the region.

### The Mutual Assistance in Criminal Matters Act

In addition to informal agreements and MoUs between Australian government agencies and their international counterparts, the Australian government can also rely on the Mutual Assistance in Criminal Matters Act 1987 (Cth) (the Mutual Assistance Act), which provides formal mechanisms for the provision of and receiving of international assistance in criminal matters. Bilateral treaties governing the means by which mutual assistance can be provided are legislated by way of Regulations under the Mutual Assistance Act.

The Mutual Assistance Act provides an express diplomatic channel by which foreign law enforcement agencies may request the assistance of the Australian government and Australian law enforcement agencies. Bilateral treaties are presently in place governing mutual assistance between Australia and the following APAC jurisdictions: Canada, China, Hong Kong, India, Indonesia, Republic of Korea, Malaysia; Philippines and Thailand.

Australian investigative, prosecution and law enforcement bodies collaborate with APAC partners both formally and informally in relation to transnational investigations. Requests for assistance include the exercise of powers of search and seizure and the taking of evidence in the form of oral evidence or written statements. All assistance provided must be in accordance with domestic laws, and contracting member states have the ability to refuse requests for assistance.

As disclosed in the CDPP's Annual Report for 1 July 2017 – 30 June 2018, the CDPP was responsible for drafting 63 separate assistance requests to 25 separate foreign governments over the 2017–18 reporting period.

The Mutual Assistance framework does not represent an exhaustive regime for inter-governmental requests for assistance and cooperation. To this end, the Mutual Assistance Act does not 'cover the field' by which the Australian government can assist the government of a foreign government and the law enforcement agencies operating under its jurisdiction.

Countries that are not signatories to mutual assistance treaties may also request assistance that is assessed on a case-by-case basis by the receiving government or law enforcement agency.

Australia and a number of separate APAC governments are also ratified members to multi-lateral conventions, including the following:

- the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;
- the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters;
- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and
- the United Nations Convention against Transnational Organised Crime.

## The Extradition Act

The Extradition Act 1988 (Cth) (Extradition Act) provides Australia's legislative basis for extradition. Extradition involves a person in a foreign jurisdiction being lawfully transferred to the jurisdiction of a requesting state to serve a sentence or face prosecution. The Extradition Act stipulates the thresholds and standards that must be met before the Australian government can make or accept a request for extradition. It sets out a number of mandatory requirements that must be met before Australia can make or accept an extradition request.

Comparable to the mutual assistance regime, the Extradition Act is the legislative basis under which numerous bilateral treaties are enacted into Australian domestic law.

Australia has bilateral extradition relationships with the following APAC jurisdictions: Hong Kong, India, Indonesia, Korea, Malaysia, the United States and Vietnam.

As disclosed in the CDPP's Annual Report for 1 July 2017 – 30 June 2018, the CDPP were responsible for drafting 14 separate outgoing extradition requests to the Attorney-General's department over the 2017–18 reporting period.

## Conclusion

Government investigations in Australia are becoming more complex and international in response to increased globalisation. Australian government agencies and regulators have therefore sought to respond by forming formal and informal collaborations with their international counterparts to enable them to conduct investigations across the globe.



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**Dennis Miralis**  
Nyman Gibson Miralis

Dennis Miralis is a leading Australian defence lawyer who acts and advises in complex domestic and international criminal law matters in the following areas: white-collar and corporate crime; money laundering; serious fraud; cybercrime; international asset forfeiture; international proceeds of crime law; bribery and corruption law; transnational crime law; extradition law; mutual assistance in criminal law matters; anti-terrorism law; national security law; criminal intelligence law; and encryption law.

He appears in all courts throughout Australia and regularly travels outside of Australia for complex international and transnational criminal law matters.



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**Phillip Gibson**  
Nyman Gibson Miralis

Phillip Gibson is one of Australia's leading criminal defence lawyers, with over 30 years of experience in all areas of criminal law.

Phillip manages and advises on the most complex criminal cases. In the areas of traditional crime Phillip has acted in many serious drug matters and high-profile murder trials. Phillip has vast experience in transnational cases across multiple jurisdictions often involving: assets forfeiture; money laundering and proceeds of crime; cybercrime; extradition; mutual assistance; white-collar crime; Royal Commissions; bribery and corruption; Interpol notices; international and national security law; and ICAC and Crime Commissions matters.

## Nyman Gibson Miralis

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Nyman Gibson Miralis is an international award-winning criminal defence law firm based in Sydney, Australia. For over 50 years it has been leading the market in all aspects of general, complex and international crime, and is widely recognised for its involvement in some of Australia's most significant criminal cases.

Our international law practice focuses on white-collar and corporate crime, transnational financial crime, bribery and corruption, international money laundering, cybercrime, international asset freezing or forfeiture, extradition and mutual assistance law.

Nyman Gibson Miralis strategically advises and appears in matters where transnational cross-border investigations and prosecutions are being conducted in parallel jurisdictions, involving some of the largest law enforcement agencies and financial regulators worldwide.

Working with international partners, we have advised and acted in investigations involving the USA, Canada, the UK, the EU, China, Hong Kong, Singapore, Taiwan, Macao, Vietnam, Cambodia, Russia, Mexico, South Korea, British Virgin Islands, New Zealand and South Africa.

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The *Asia-Pacific Investigations Review 2020* contains insight and thought leadership from 37 pre-eminent practitioners from the region. Across 16 chapters, spanning around 200 pages, it provides an invaluable retrospective and primer.

Together, these contributors capture and interpret the most substantial recent international investigations developments of the past year, with footnotes and relevant statistics. Other articles provide valuable background so that you can get up to speed quickly on the essentials of a particular topic. This edition covers Australia, Cambodia, China, Hong Kong, India, Indonesia, Laos, Myanmar, Singapore, Thailand and Vietnam in jurisdictional overviews. It also looks at the impact of AI, data privacy, forensic accounting and law enforcement in multi-jurisdictional investigations.

