



# ASIA-PACIFIC INVESTIGATIONS REVIEW 2023

As well as daily news, GIR curates a range of comprehensive regional reviews. This volume contains insight and thought leadership from 17 pre-eminent practitioners in the Asia-Pacific region. Inside you will find articles on Australia, China and Singapore; on the main types of cryptocurrency fraud and how to trace cryptocurrency; and on how to 'do' a multi-jurisdictional internal investigations with all of challenges and contradictory requests from various agencies that those can entail.

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# Preface

Welcome to the *Asia-Pacific Investigations Review 2023*, one of Global Investigations Review's annual yearbook-style reports. Global Investigations Review (for any newcomers) is the online home for all those who specialise in investigating and resolving suspected corporate wrongdoing. We tell them all they need to know about everything that matters, in their chosen professional niche.

Throughout the year, the GIR editorial team delivers daily news, surveys and features; organises the liveliest events (GIR Live); and maintains innovative research tools and know-how products to make working life more efficient.

In addition, with the aid of external contributors, we curate a range of regional reviews that go deeper into local developments than the exigencies of journalism allow.

The *Asia-Pacific Investigations Review* is one such publication. It contains insight and thought leadership from 17 pre-eminent practitioners from across the region. Across some 130-plus pages, you will find this particular volume to be part retrospective, part primer, part crystal ball – and 100 per cent useful. As you would expect from GIR, all contributors are vetted for their standing and knowledge before being invited to take part.

Together they address a variety of subjects pertinent to internal investigations undertaken in the region, complete with footnotes and relevant statistics. This edition in particular focuses on Australia, Singapore and China, and has overviews on cryptocurrencies, on the challenge of dealing with more than one national enforcement agency, and on how to work smarter in the post-covid world.

As so often with our annual reviews, a close read yields many gems. On this occasion, for this reader, they included that:

- Vietnam is on an anti-corruption drive;
- Singapore requires you to report if property may be 'connected' to crime even where the property (or the crime) are unconnected with Singapore;
- LinkedIn is one of the apps sophisticated fraudsters now use to find and groom their victims; and
- There are 18,000 cryptocurrencies currently in existence.

And much, much more. I also commend the Herbert Smith article on the challenges of multi-jurisdictional internal investigations. It is one of the most lucid explanations of the key points GIR has ever published. I was also impressed, later in the book, by the splendid explanation of the various Chinese laws conditioning data-transfer.

As ever, 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 contact us on [insight@globalarbitrationreview.com](mailto:insight@globalarbitrationreview.com).

**David Samuels**

**Publisher, Global Investigations Review**

September 2022

# Part 3

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## Country articles

# Australia: An Increasingly Global Approach

[Dennis Miralis](#), [Phillip Gibson](#) and [Jasmina Ceic](#)

[Nyman Gibson Miralis](#)

## In summary

This article considers the major Australian government investigative, law enforcement and regulatory agencies involved in domestic and transnational 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 article examines the new internationalised mindset of Australian law enforcement, the effects of globalisation and the increased level of international collaboration between government agencies, as well as the tools and techniques utilised by such agencies to address the increasingly complex and 'borderless' nature of investigations.

## Discussion points

- Background to the internationalisation of Australia's approach to the investigation of crime
- The Australian government's role in driving international coordination in the Asia-Pacific region and globally

## Referenced in this article

- National Strategy to Fight Transnational, Serious and Organised Crime
- The Australian Federal Police, including its international work
- Other examples of inter-agency collaboration, including the Commonwealth Director of Public Prosecutions Organised Crime and Counter-Terrorism Practice Group, the Serious Financial Crime Taskforce, the Pacific Transnational Crime Network and the United Nations Office on Drugs and Crime Regional Programme for Southeast Asia and the Pacific
- The Mutual Assistance in Criminal Matters Act and Extradition Act
- The Australian Sanctions Office



## Introduction

In the past, Australian government investigations were primarily focused on individuals and corporations operating within Australia's borders. Globalisation, however, has led (and continues to lead) to Australian government agencies' increasing involvement in cross-border investigations, often working collaboratively with their international counterparts in parallel investigations. One of the main drivers of 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 article surveys the major Australian government agencies involved in such investigations, their capabilities and involvement in transnational investigations, and recent examples of the execution of such investigative capacities. The article takes a particular focus on the increasing need to adopt a global approach to adequately protect Australians from criminal threats, both local and international.

## National Strategy to Fight Transnational, Serious and Organised Crime

In 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. 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 activities are generally perpetrated by sophisticated and well-resourced criminal groups. The Australian government has responded by further development of existing law enforcement capabilities onshore and abroad. In addition to the 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.

The Australian Federal Police (AFP) states that key partnerships and initiatives include: international engagement (ie, cooperation with a range of international partners to disrupt crime at its source overseas); government engagement (ie, 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 multifaceted response to the threat posed by TSOC); private sector, civil society and academic engagement (ie, to help to build a strong understanding of the threats and environment, and raise awareness, promote vigilance and emphasise the importance of combating TSOC); and community engagement (ie, increasing the resilience of communities and protecting vulnerable individuals against TSOC).

## The Australian Federal Police

The 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.

The AFP states, in its report *International Engagement: 2020 and Beyond*, 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, which was previously focused on detecting, deterring, preventing and disrupting onshore criminal activities.

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 overseas or have links to overseas jurisdictions; fraud is said to cost Australia more than AU\$6 billion each year; cybercrime costs more than AU\$2 billion annually, and with changing technologies and automation this will only increase; the global cost of crime is about AU\$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 evolving approach, the AFP works with global law enforcement and intelligence partners such as Interpol and the Five Eyes intelligence alliance, as well as global non-law enforcement such as the United Nations and foreign governments, to further investigations where Australian interests are affected.

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

Additionally, the AFP's International Operations has strategically placed liaison officers, police advisers and missions in five regions across the globe, each with a regional manager. These regions are: the Americas; Asia; Europe, Africa and the Middle East; the Pacific and External Territories; and South East Asia.





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 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.*

Confirming 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', formalises the AFP and Federal Bureau of Investigation (FBI) cooperation in the exchange of information, resources, and technical and forensic capabilities.

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

The AFP's international collaborations and operations came to the fore when, in June 2021, it was announced that the covert Operation Ironside had resulted in the over 200 arrests and the laying of over 500 criminal charges, mostly related to transnational and serious organised crime. Operation Ironside focused on the encrypted messaging app 'ANoM', and involved collaboration with the FBI, as well as over a dozen other countries' law enforcement agencies, including New Zealand and member states of Europol. It was initially reported that over 800 arrests were carried out as part of the global cooperation in this operation (known internationally as Operation Trojan Shield).



In December 2021, Phase 2 of Operation Ironside was launched, which involved a protracted offence targeting up to 160 targets around Australia including outlaw motorcycle gangs, Italian organised crime, illicit drug distributors and trusted insiders. Likely to last for months, phase 2 focuses on making arrests and disrupting criminals' business operations. Specifically, data retrieved from the AnoM platform has led to the AFP gaining significant insight into the 'Ndrangheta, their profits, their links to motorcycle gangs, and mapping the familial relationships involved. Aided by new powers under the Surveillance Legislation Amendment (Identify and Disrupt) Act 2021, which created three new types of warrants to be applied by the AFP or the ACIC during investigations involving online activity (data disruption warrants, network activity warrants, and account takeover warrants), in June 2022 the AFP announced that a particular focus on Italian organised crime has already identified 51 Italian organised crime clans in Australia and a number of 'Ndrangheta have been charged.

## **The Australian Sanctions Office (ASO) in the Department of Foreign Affairs and Trade (DFAT)**

Nestled within DFAT's Regulatory Legal Division in the Security, Legal and Consular Group, the ASO is Australia's sanctions regulator. The ASO provides guidance to regulated entities including government agencies, individuals, businesses and other organisations on Australian sanctions law. It also provides proactive educational services, including conducting outreach, training seminars, and publishing online information. The ASO also publishes the DFAT Consolidated List of sanctioned persons and entities, promoting compliance and helping prevent breaches of the law.

The ASO also processes applications for, and issues, sanctions permits, for individuals and entities needing to undertake activities that would otherwise be illegal under Australian sanctions laws and regulations.

The ASO works in partnership with other government agencies to monitor compliance with sanctions legislation, including AUSTRAC, the Department of Defence, Department of Home Affairs, the ABF, and the AFP, and to respond to possible breaches.

There are two types of sanctions implemented by the Australian government:

- United Nations Security Council (UNSC) sanctions, which Australia must impose as a member of the United Nations; and
- Australian autonomous sanctions, which are imposed as a matter of Australian foreign policy.



Both UNSC sanctions and Australian sanctions impose sanction 'regimes', which are usually described by reference to a country or group. In early 2022, the Australian government imposed an autonomous sanctions regime focusing on a range of individuals, companies, organisations and officials supporting Russia's invasion of Ukraine. The sanctions measures imposed in a sanctions regime focus usually on:

- restrictions on trade in goods and services;
- restrictions on engaging in commercial activities;
- targeted financial sanctions (including assets freezes) on designated persons and entities; and
- travel bans on certain persons.

A recent example of enforcement of Australian sanctions laws is the case of Chan Han Choi, who in 2021 pleaded guilty to conduct contravening the UN Charter Act and the Sanctions Act by providing brokering services for the sale of arms and related material, tactical inertial measurement units and refined petroleum products to North Korea in 2017. Satisfied that Choi's conduct was deliberate and motivated by a desire to undermine the sanctions imposed on North Korea, the Supreme Court of NSW sentenced him to three years and six months' imprisonment.

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

AUSTRAC is Australia's anti-money laundering (AML) and counter-terrorism financing (CTF) regulator, and the 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).

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

By identifying potential money laundering and terrorist financing cases, AUSTRAC plays a vital role in helping partner agencies to detect money laundering and terrorist financing activity, investigation of financial crimes (including tax evasion) and securing prosecutions. This supports the protection of Australia's security, the apprehension of criminals and the protection of the integrity of Australia's financial markets.



As a result of the transnational nature of money laundering and terrorism financing, AUSTRAC is an active participant in the coordinated global response to these phenomena 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 and AML/CTF. These methods of cooperation assist international counterparts with their AML/CTF regulation and also help law enforcement agencies track the international movements of proceeds of crime.

MOUs are presently in place between AUSTRAC and 95 equivalent national FIUs, as well as three other-classified instruments of exchange. This includes successful agreements signed with prominent regional partners, such as the China Anti-Money Laundering Monitoring and Analysis Centre on 2 November 2016 and the United States counterpart, Financial Crimes Enforcement Network on 27 September 2018.

More recently, in 2022, AUSTRAC responded to the ASO's imposition of Russian sanctions by establishing a dedicated intelligence team to monitor and triage financial reporting about Russian sanctions, including suspicious matter reporting and international funds transfer reporting. This reporting is being used to produce actionable financial intelligence to assist the ASO and the AFP in detecting sanctions evasions. AUSTRAC is also part of international efforts to coordinate effective financial intelligence sharing to combat sanctions evasion, and is part of the Russia-Related Illicit Finance and Sanctions (RRIFS) FIU Working Group, a coordinated effort to track the movement of funds around the world and to identify opportunities to jointly target individuals and entities subject to sanctions, paying close attention to the abuse of shell companies and other corporate structures, and the use of third countries, to distance sanctioned persons and entities from their assets.

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 127 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 127(1)(a) of the Act; and it is appropriate to release the information in all the circumstances.*

AUSTRAC also works in conjunction with the following:

- The Financial Action Task Force (FATF) – an intergovernmental body focused on combating money laundering, terrorism financing and other related threats to the integrity of the international financial system. In May 2020,



- the FATF released the 'COVID-19 related Money Laundering and Terrorism Financing: Risks and Policy Responses' report, detailing the emerging threats of covid-19 crime typologies and best practices and policy responses for governments addressing vulnerabilities arising from the global pandemic. Additionally, in July 2021, FATF released a report titled 'Opportunities and Challenges of New Technologies for AML/CTF', considering the implications of developments in areas such as artificial intelligence and application programming interfaces.
- The Egmont Group of Financial Intelligence Units – made up of FIUs and providing a global network for enhancing cooperation among FIUs, especially in the areas of information exchange, training and the sharing of knowledge and expertise. Beyond AUSTRAC, notable Asia-Pacific (APAC) members include:
    - Hong Kong SAR, China Joint Financial Intelligence Unit;
    - Indonesian Financial Transaction Reports and Analysis Centre (PPATK); and
    - Anti-Money Laundering Office Thailand.
  - The Asia/Pacific Group on Money Laundering (APG) – the FATF-style regional body for the Asia-Pacific region.

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. The APG mutual evaluations or 'peer review' process involves site visits conducted by rotating teams consisting of APG legal, financial, and law enforcement experts. These teams attend upon the jurisdiction of fellow APG members for the purpose of testing their levels of technical compliance with AML standards, as set by the FATF, as well as AMF/CTF effectiveness. Twenty-five reports were generated by the third round of the APG mutual evaluations process, between 2015 and 2019.

Australia is a permanent APG co-chair. The current joint co-chair is occupied by Malaysia. 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. Notably, AUSTRAC has officers located in Jakarta, Kuala Lumpur, Guangzhou, London and Washington, DC.

Of particular concern to international law enforcement is the proliferation of Bitcoin and other cryptocurrency transactions, which are considered to be used in many instances 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.

Under the amendments to the Anti-Money Laundering and Counter-Terrorism Financing Act, which came into effect in 2018, 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 does 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 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 AU\$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 AU\$111,000 for failure to register, and range up to seven years in jail; and, for more serious offences, a AU\$2.22 million fine for corporations or a AU\$444,000 fine for individuals. The use of this legislative framework enhances the ability 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', working with domestic and international partner agencies, involves:

- collecting, correlating, analysing and disseminating criminal intelligence and combining it to create a comprehensive national database;



- using coercive powers (similar to a Royal Commission) to obtain information where traditional law enforcement methods have not been effective;
- providing strategic intelligence assessments and advice; 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.

## 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. 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 and operations.

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 MOUs ASIC has with other regulators (including multilateral MOUs) and staff secondments with fellow members of the International Organization of Securities Commissions (IOSCO).

ASIC is actively engaged with international partners – including international organisations, foreign regulators and law enforcement agencies – in fulfilling its mandate. This involves cooperation in investigations, compliance and surveillance as well as more generalised interaction on policy research and delegations.

Furthermore, ASIC participates in various international regulatory forums, including IOSCO, and is a signatory to international cooperation agreements, including multilateral and bilateral MOUs.

Many international organisations and foreign regulators make requests for assistance under international cooperation agreements, including MOUs. In some instances, ASIC uses the Mutual Assistance in Business Regulation Act



1992 (Cth), which empowers ASIC to compulsorily obtain documents, information or testimonies on behalf of foreign regulators.

The multilateral MOUs to which ASIC is a signatory include the IOSCO Multilateral Memorandum of Understanding (MMOU), the IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, and the IOSCO Administrative Arrangement.

Established in 2002, the MMOU sets out how signatory regulators from around the world should consult, cooperate and exchange information for the purpose of regulatory enforcement regarding securities markets. Under the MMOU, information requests can be made when regulatory authorities are in the process of investigating offences relating to activities under the relevant laws and regulations of the jurisdictions in question, including the following:

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

ASIC's 'why not litigate' approach – developed in the aftermath of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the final report of which was submitted in 2019) – has continued to result in a proactive approach to the initiation of court proceedings, including in respect of investigations with international elements such as foreign exchange providers and the provision of travel insurance. Some examples are as follows:

- In December 2020, ASIC launched Federal Court litigation, seeking civil penalties, against Union Standard International Group and its former authorised corporate representatives regarding the provision of foreign exchange products to persons in China, in circumstances where those persons were placed at risk of contravening Chinese domestic law. ASIC's allegations include that the company failed to provide financial services efficiently, honestly and fairly.
- In June 2022, Allianz Australia Insurance Limited and AWP Australia Pty Ltd pleaded guilty to a total of seven criminal charges brought by ASIC for allegedly making false or misleading statements in relation to the sale of domestic and international travel insurance. The civil action against the companies resulted in an order from the Federal Court for the companies to pay AU\$1.5 million in penalties.





- In March 2021, ASIC banned five persons associated with Forex Capital Trading Pty Ltd, a foreign exchange provider, from providing financial services (for varying lengths of time) on the basis of numerous breaches of the Corporations Act. Separately, in June 2021, the Federal Court ordered the company to pay an AU\$20 million civil penalty for breaches of the Corporations Act.

## 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, although its role also encompasses other legislation.

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 as well as consumer scams and frauds. In addition to treaties and MOUs of specific relevance to its mandate, the ACCC's work is also engaged by the portions of Australia's free trade agreements that relate to competition law. The ACCC has articulated the aims of its international activities in the following terms:

*Effective enforcement of Australia's competition, consumer protection and product safety laws in a global economy requires cooperation with similar agencies across the world.*

*We work closely with our global counterparts on international cartel, merger, competition enforcement, consumer protection and product safety matters that affect Australian consumers.*

*We also work with regulators in other jurisdictions to enhance our approach to economic regulation in Australia.*



The ACCC is accordingly a participant in the International Competition Network (and is currently co-chair of the ICN Framework on Competition Agency Procedures), the Organisation for Economic Co-operation and Development (OECD), the Asia-Pacific Economic Cooperation (APEC), the ASEAN-Australia and New Zealand Free Trade Area, the Seoul Competition Forum, the East Asia Top Level Officials' Meeting on Competition Policy and the International Consumer Protection and Enforcement Network (ICPEN), which is an informal network of government consumer protection authorities established to encourage international cooperation and the sharing of information about cross-border commercial activities that may affect consumer interests.

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

- compel the provision of information about a suspected breach of competition 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 has other criminal investigative and surveillance powers at its disposal.

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.

The past year has seen a continuation of the ACCC and CDPP's appetite for pursuing prosecutions of cartel conduct and other breaches of the C&C Act, which often include international aspects. For example, in June 2022 Vina Money Transfer Pty Ltd, a money remittance business operating in NSW and Victoria, was fined the sum of AU\$1 million for giving effect to a cartel provision contrary to s44ZZRG(1) the C&C Act, with four individual offenders receiving prison sentences.

In February 2021, Norwegian shipping company Wallenius Wilhelmsen Ocean AS was convicted and sentenced to a AU\$24 million fine in relation to cartel conduct. Additionally, in April 2021, the Full Federal Court dismissed an appeal by Volkswagen Aktiengesellschaft against a AU\$125 million civil penalty for engaging in deceptive conduct relating to the exhaust emissions of certain Volkswagen-branded motor vehicles that were imported into Australia, contrary to the C&C Act.



## The Department of Home Affairs

Established in 2017, the Department of Home Affairs (the Department)'s 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 Department incorporates the former Department of Immigration and Border Protection and its responsibilities also include the Australian Security Intelligence Organisation (ASIO), the Australian Federal Police, the Australian Border Force, the Australian Criminal Intelligence Commission and AUSTRAC.

## The Australian Taxation Office

The Australian Taxation Office (ATO) is a 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 criminal charges, it is generally the CDPP that conducts the prosecution.

According to the ATO, revenue collection agencies around the world are increasingly sharing intelligence and expertise in financial investigations to combat tax evasion and organised tax crime. Australia has a network of more than 100 information-sharing agreements with revenue collection agencies from other countries. The ATO has stated that these agreements enabled it to raise assessments valued around AU\$549 million in the 2017–2018 financial year.

To address issues presented by income and activities concealed offshore as well as difficulties associated with obtaining information on these matters, the ATO states that it works with governments and organisations around the world to fight tax evasion and crime globally. The ATO's reported cooperative strategies for fighting international tax crime include: 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; and working with the international Joint Chiefs of Global Tax Enforcement (J5) in relation to



information and intelligence gathering and sharing as well as conducting joint operations targeted at criminal activity.

Additionally, the ATO collaborates with international revenue agencies bilaterally, and through groups and forums. For example:

- The OECD, a network that includes more than 30 governments from across the globe, has various taskforces in which the ATO participates, including the Joint Taskforce on Sharing Intelligence and Collaboration (JITSIC) and the Taskforce on Tax Crimes and Other Crimes:
  - the JITSIC is a platform involving 42 national tax administration agencies that seeks to provide its membership with an avenue to collaborate through information sharing and intelligence within the legal framework of effective bilateral and multilateral conventions and tax information exchange agreements; and
  - the Taskforce on Tax Crimes and Other Crimes focuses on the identification, auditing, investigation and disruption of tax and other serious criminal crime typologies, including money laundering and bribery.
- The Global Forum on Transparency and Exchange of Information for Tax Purposes' original focus was to address the use of banking secrecy jurisdictions. The forum, which with 162 members is the largest tax group in the world, is principally directed at information exchange and the development of transparency standards around the world in relation to tax.

The ATO exchanges information with its international treaty partners to ensure correct reporting of income earned overseas by Australian residents as well as 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. These include income tax treaties, tax information exchange agreements, estate gift tax treaties, agreements concerning East Timor (relating to resources), the Convention on Mutual Assistance in Tax Matters, the US Foreign Account Tax Compliance Act Intergovernmental Agreement with the United States and various other multilateral tax agreements.

## **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 Australia's national interests.

A number of these partnerships and taskforces are detailed below.

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

The Organised Crime and Counter-Terrorism Practice Group (Practice Group) of the CDPP is responsible for Commonwealth prosecutions of terrorism, national security, and significant organised crime offending. Such criminal typologies often involve prosecutions that are comparatively complex and resource-intensive. The CDPP has reported that '[t]he work of the [Practice Group] is increasingly of an international nature, reflecting the globalisation of more serious criminal activity'. Cases referred to the Practice Group involve activity that often takes place wholly or partly outside the geographical boundaries of Australia, requiring international cooperation (assisted by the Commonwealth Attorney-General's Department) 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 AFP;
- the ASIO;
- the Australian Border Force;
- the ACIC; and
- state and territory police.

International agencies involved in recent engagements include the FBI, the United States Department of Justice, 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

Created in 2015 and led by the ATO, 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 in targeting complex financial crime.

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 current operational focus of the task force is: cybercrime affecting tax and superannuation; offshore tax evasion; illegal phoenix activity; and serious financial crime relating to the Australian government's Coronavirus Economic Response Package.

The SFCT includes the following agencies:

- the AFP;
- the ATO;
- the ACIC;
- the Attorney-General's Department;
- AUSTRAC;
- ASIC;
- CDPP; and
- the Australian Border Force.

## Pacific Transnational Crime Network

The Pacific Transnational Crime Network (PTCN) represents a regional international police services-led criminal intelligence and investigation capability. Developed in 2002 to combat transnational crime in the Pacific, the PTCN consists of over two-dozen domestic and foreign law enforcement bodies from nations in the region, particularly Pacific Island countries.

Prominent members include the following:

- Australia (AFP);
- 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 is to build policing leadership in the Pacific region and collectively navigate regional policing challenges through discovery, knowledge, influence and partnerships.

## **The United Nations Office on Drugs and Crime for Southeast Asia and the Pacific**

The United Nations Office on Drugs and Crime (UNODC) operates a regional programme in Southeast Asia that provides strategic oversight for member states to combat transnational organised crime and illicit trafficking in the region. UNDOC describes the focus of the regional programme to be:

- 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; terrorism threats; criminal justice; and drug and health, and alternative development 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 and receipt 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 channel through which foreign law enforcement agencies may request the assistance of the Australian government and Australian law enforcement agencies with respect to the conduct of criminal investigations. Bilateral treaties are presently in place governing mutual assistance between Australia and the following APAC jurisdictions: China, Hong Kong, India, Indonesia, South Korea, Malaysia, the



Philippines, Thailand and Vietnam. Various multilateral treaties also form the basis of Regulations to the Mutual Assistance Act, including on the topics of cybercrime, money laundering, corruption and transnational organised crime.

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 state parties to mutual assistance treaties have the ability to refuse requests for assistance.

As disclosed in the CDDP's Annual Report for 2019–2020, the CDDP was responsible for drafting 52 separate assistance requests to 22 separate foreign governments over the 2019–2020 reporting period.

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

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 multilateral conventions, including the following:

- the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;
- the 1970 Convention 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 criminal prosecution. The Extradition Act stipulates the criteria 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: Cambodia, Fiji, Hong Kong, India, Indonesia, Japan, Kiribati, South Korea, Malaysia, Nauru, Papua New Guinea, Samoa, the Solomon Islands, the United States and Vietnam, as well as others coming under the London Scheme for Commonwealth Countries. As with mutual legal assistance law, Australia is also party to numerous multilateral conventions that provide a legal basis for extradition.

As disclosed in the CDPP's Annual Report for 2019–2020, four people were surrendered to Australia during the 2019–2020 period and a further 13 extradition requests remain outstanding.

## Conclusion

Law enforcement and regulatory investigations in Australia are becoming more complex and internationalised in response to ever-increasing globalisation. Australian government agencies and regulators have sought to respond by forming formal and informal collaborations with their international counterparts to enable them to conduct investigations across the globe, as well as putting a greater amount of domestic resources towards international investigations.

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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.



**Phillip Gibson**

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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 Commission matters.



**Jasmina Ceic**

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Jasmina Ceic is an experienced white-collar defence lawyer who advises and represents both national and international clients in complex cross-border investigations, with a specialist focus on large-scale tax fraud investigations, money laundering investigations, cybercrime and extradition.



## 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 United States, Canada, the United Kingdom, the European Union, China, Hong Kong, Singapore, Taiwan, Macao, Vietnam, Cambodia, Russia, Mexico, South Korea, British Virgin Islands, New Zealand and South Africa.

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