



Pacific Judicial  
Integrity Program

# Advanced Judicial Officers' Fraud and Corruption Online Course

Justice Michael Wigney

*Topic:2: Money Laundering*

*"Follow the Money"*



**FEDERAL COURT  
OF AUSTRALIA**



Papua New Guinea  
**Centre for Judicial Excellence**

# Money laundering

- Background
- Regulatory regimes
- Offences
- Issues – Proof and Sentencing

# Background

In lay terms:

- Money laundering is the process of making illegally gained proceeds appear legal
- Criminals try to disguise the origins of their illegal profits by turning “dirty” money into “clean” funds – hence “laundering”



# Offence provisions (Aus)

- Often capture a wide range of conduct
- Not limited to dealing with money
- Not limited to proceeds of crime
- Also covers the “instruments of crime”

# Why launder?

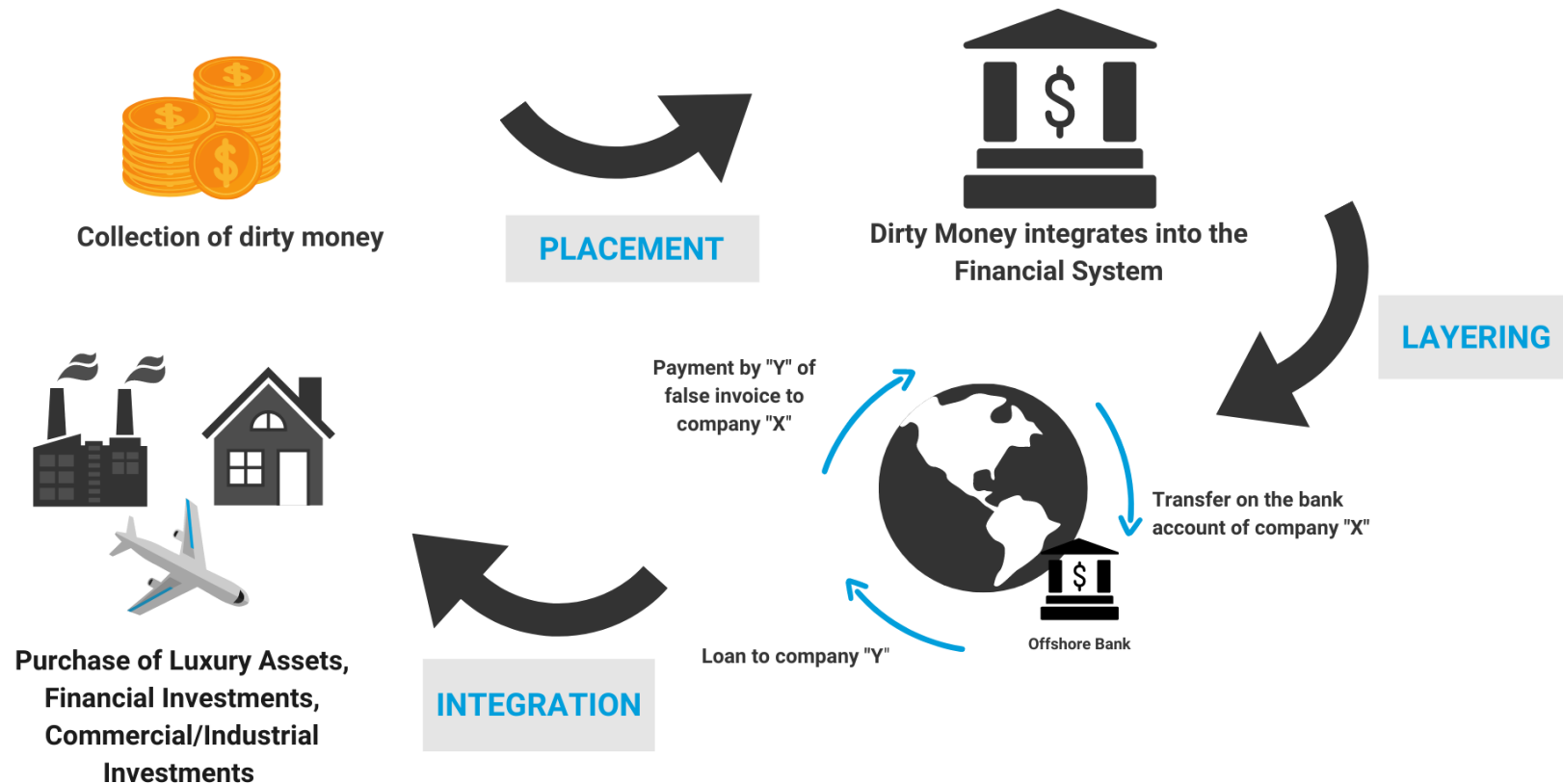
- Possession of large quantities of cash may have evidentiary value in relation to establishing the commission of a substantive offence
- Conversion: giving the appearance of a legitimate source means money can be spent without raising suspicions



# Stages

- **Placement** – introducing illegally obtained funds into the financial system
  - E.g. “structured” cash transactions
- **Layering**- moving, dispersing and disguising funds to conceal origins
  - Often complex transaction using multiple accounts, companies, trusts, offshore entities
- **Integration** – investing the now distanced funds in a legitimate business, or purchasing high value assets or luxury goods

# Money Laundering Cycle





# Regulation

# AUSTRAC



- Australia's anti-money laundering and counter-terrorism financing (AML / CTF) regulator
  - Financial intelligence unit
- Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML / CTF Act)
- Financial Transaction Reports Act 1988 (Cth)
- Proceeds of Crime Act 2002 (Cth)
- Criminal Code Pt 10.2 – Offences

# AML / CTF Act

## Reporting Obligations:

- Financial institutions and providers of other financial services
- Providers of gambling services – e.g. casinos, betting services
- Suspicious transactions
- “Threshold” transactions – cash transactions of A\$10, 000 or more
- International funds transfers

# AML / CTF Act

- Some of the most common prosecutions for money laundering involve “structured transactions”
- Structuring transactions to avoid a bank’s reporting obligations
- E.g. multiple deposits of \$9,000

# Proceeds of Crime Act

- Establishes a scheme to enable the confiscation of the proceeds of crime





# Offences

# Offences

- Money laundering offences
  - Contained in Part 10.2 Division 400 of the Criminal Code
- Cascading series of money laundering offences depending on:
  - Amount of money or value of property involved
  - The accused's mental element
- The most serious offences carry a penalty of imprisonment for life

# Offences

- In general and simplified terms, the offences involve **three elements**:
  - (1) engage in certain **conduct**:
    - Deal with money or property
    - Engage in conduct in relation to money or property
  - (2) in certain **circumstances**:
    - The money is the proceeds of crime
    - It is reasonable to suspect that the money or property is the proceeds of crime
    - The conduct concealed or disguised the nature, value, source etc. of the money or property
    - At the time, the money or property was of a certain value
  - (3) The **fault element** (or mental element)

# The conduct element

- “deals with money or property” is defined in very broad terms and includes:
  - “receives, possesses, conceals, disposes of”
  - importing or exporting money
  - engaging in a banking transaction

# The circumstance element



- “proceeds of crime” defined broadly
- wholly or partly derived or realised, directly or indirectly by any person from the commission of an offence
- may be difficult for prosecutor to prove that the money or property “is” the proceeds of crime in the absence of direct evidence
- might involve inferences from circumstantial evidence and this is where there are likely to be issues at the trial
- “reasonable to suspect” is:
  - not concerned with the accused’s knowledge or belief
  - an objective element
  - does not have to be reasonable to suspect at the time of the accused’s dealing
  - to be inferred from all the surrounding circumstances

# The fault element

- the accused believes the money or property is the proceeds of crime – the most serious offence
- the accused is **reckless** as to the fact that the money or property is the proceeds of crime
- the accused is **negligent** as to the fact that the money or property is the proceeds of crime
- where the circumstance is that it is reasonable to suspect that the money or property is the proceeds of crime – **there is NO mental element** (absolute liability)
- where the circumstance is that the conduct concealed or disguised the nature or value of the money / property – the mental element is that the accused **intended** that the conduct concealed or disguised

# “Instrument of crime”

- The Criminal Code also creates offences of dealing with money or property:
  - That the accused intends will become an instrument of crime; or
  - Where there is a risk that the money or property will become an instrument of crime and the accused is reckless or negligent
- Instrument of crime: used in the commission of, or to facilitate the commission of an offence



# Issues

# Proof of the offence

- Was the money / property the proceeds of crime?
- Did the accused believe the money / property was the proceeds of crime?
- Was the accused reckless or negligent as to the fact that the money/property was the proceeds of crime?
- Is it reasonable to suspect that the money / property was the proceeds of crime?
- Might require inferences from the surrounding facts

# Sentencing

- Wide range of criminality and therefore a wide range of possible sentences
- It might also be necessary to consider:
  - The amount of money involved
  - Whether the accused believed the money/property was the proceeds of crime or was reckless or negligent
  - Nature of the dealings
  - Period of time during which the conduct occurred
  - Degree of planning and deceit
  - Extent of loss



# Examples



The Accused (A) acquired a mobile telephone in a false name. He subsequently received a telephone call from M, with whom he had no previous contact. A subsequently met with M who gave him a backpack containing A\$500,100. M was subsequently arrested after giving another backpack containing \$509,000 to another person. A was convicted of dealing (receiving) money which was reasonably suspected of being the proceeds of crime. A convicted: 10 months imprisonment, released on recognizance after 6 months: *Singh v the Queen* [2016] VSCA 163.

The Accused (A) operated a money exchange business. Z arrived in Australia from Romania and picked up A\$2 million from an apartment. Z delivered that money in batches to A over a 10 day period. A then arranged for H to deposit the money into various bank accounts in sums of less than A\$10,000 over several months. Convicted of conspiracy and sentenced to 7 years imprisonment with a non-parole period of 5 years and 5 months: *R v Ansari* [2007] NSWCCA 204.



The Accused each made numerous structured cash deposits of less than A\$10, 000 over a period of time to avoid the AML / CTF reporting requirements. Convicted and sentenced to between 2 years and 3 months to 6 years imprisonment: *Betka v R* [2020] NSWCCA 191. See also *R v Huang; R v Siu* [2007] 174 A Crim R 370 (another structuring case)

The Accused (A) engaged in an unlawful internet-based activity called “muling.” A contacted a company online which transferred money to his bank accounts. A withdrew the money, kept a commission of 5% and sent the balance to an address in Singapore. Convicted, sentenced to 15 months imprisonment to be released after 5 months: *R v Columbus* [2007] QCA 396.



The Accused hid cash totalling over A\$1 million in his own checked luggage and in the checked-in luggage of his father and two associates for an overseas flight. Convicted and sentenced to imprisonment for 4 years and 9 months with a non-parole period of 3 years and 6 months: *Islam v R* [2016] NSWCCA 233.



The Accused open bank accounts in various business names on the instructions of “scammers”. Funds obtained by scams perpetrated by others were deposited in those accounts and A transferred those funds to overseas accounts and made cash withdrawals on instructions of the scammers. Convicted and sentenced to imprisonment for 3 years, released on recognizance: *R v Eckl* [2023] QSC 178.

# Asia Pacific Group on Money Laundering



- 42 member jurisdictions including: Nauru, Samoa, Solomon Islands, Vanuatu, Australia, Fiji, Marshall Islands, Palau, Tonga
- Objectives: ensure that members effectively implement the international standards against money laundering
- Mutual evaluations: peer review system to determine level of compliance with international AML / CTF standards
- Reports available on website: <https://apgml.org/>