



Pacific Judicial  
Integrity Program

# Advanced Managing and Reporting on Fraud and Corruption Cases Online Course

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**FEDERAL COURT  
OF AUSTRALIA**



Papua New Guinea  
**Centre for Judicial Excellence**



Pacific Judicial  
Integrity Program

# Session 3: Money laundering offences and confiscation regimes

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# Money laundering

- Definition
- Purpose
- Stages
- International standards and domestic regulatory regimes
- Money laundering offences
- Case Examples

# Definition

- 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 the term laundering (washing the dirty money).



# Purpose of money laundering



- Crimes like fraud, bribery and corruption are committed for a benefit. Criminals obtain the illegal proceeds and then try to find a way of spending it without attracting the eyes of law enforcement.
- Money laundering hides the origins of the proceeds of crime so that criminals can spend the money without arousing suspicion.



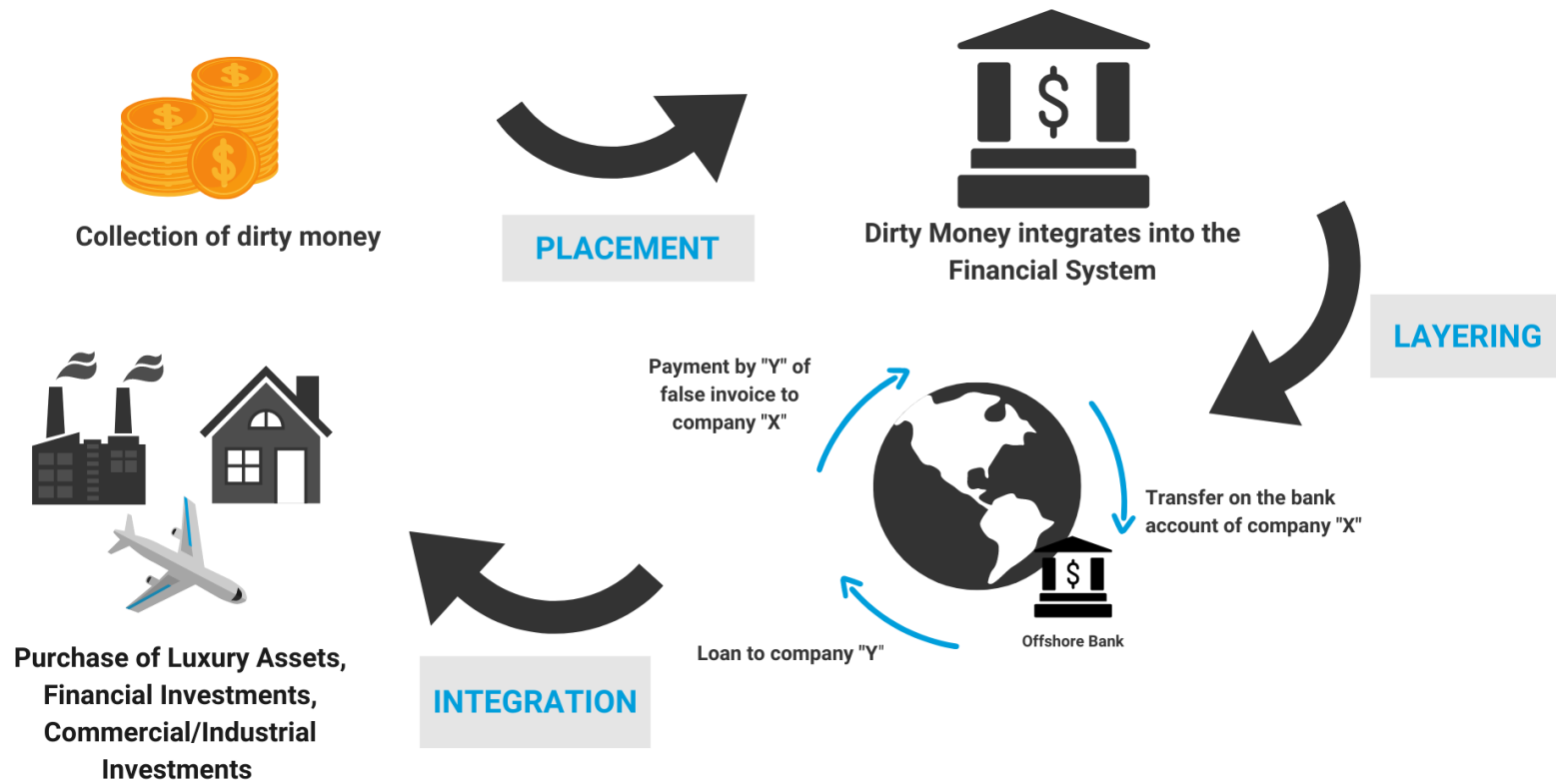
# Stages

- **Placement** – introducing illegally obtained funds into the financial system
  - cash deposits
  - structuring – splitting a large financial transaction into a series of smaller transactions
- **Layering** – moving, dispersing and disguising funds to distance the true owner and source of the illegal money
  - gambling using intermediaries
  - complex transactions using multiple bank accounts, shell companies, trusts, offshore entities
- **Integration** – layered funds are used to purchase legitimate assets (high value luxury goods) or invested into legitimate businesses

# Stages



## Money Laundering Cycle



# Regulation of money laundering



- International standards:
- Financial Action Task Force – global financial crime watchdog and standard setter for members.
  - Asia/Pacific Group on Money Laundering
- Domestic – Legislation and enforcement taskforces
  - Anti-Money laundering and Counter Terrorism Financing Act 2006 (Cth) (**AML/CTF Act**)
  - Financial Transaction Reports Act 1998 (Cth) (**FTR Act**)
  - Pt 10.2 Criminal Code Act 1995 (Cth) – Commonwealth money laundering offences
  - Proceeds of Crime Act 2002 (Cth) (**POC Act**)– Commonwealth confiscation regime

# International: Financial Action Task Force

- Financial Action Task Force (FATF) – has 40 members
- FATF tackles money laundering, terrorist and proliferation financing by conducting research, setting standards (recommendations), monitoring the implementation of those standards and holding countries accountable if they do not comply with FATF standards.



# International: Asia/Pacific Group on Money Laundering (APG)



- APG is an Associate Member of the FATF
- 42 member jurisdictions including Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu and Australia
- Purpose – to ensure members adopt, implement and enforce international anti money laundering standards as recommended by FATF recommendations.
- Monitoring of APG member compliance conducted by way of a mutual peer review system to determine level of compliance with AML/ CTF standards.

## Domestic: AML / CTF Act



- Imposes obligations on financial institutions and other financial services, gambling services.
- Required to report and meet obligations (AML/CTF program)
- Transaction reports you might have to make to AUSTRAC – transfers of AUD\$10,000 or more, international funds transfer reports, cross border movement reports, suspicious matter reports.

# Domestic: AML / CTF Act



- In June 2024 Justice Lee of Federal Court handed down a \$67 million dollar penalty against Casino (SkyCity Adelaide Pty Ltd) for failing to meet obligations under AML/CTF Act over many years and allowed high risk customers to move millions of dollars through the casino, in ways that made source and ownership of funds unclear.



# Domestic: FTR Act



Imposes obligations on solicitors and “cash dealers”. Obligations under this Act, largely replaced by AML/CTF Act, some businesses and professions have obligations under this Act.



## Domestic: Money laundering offences

- Part 10.2 Division 400 of the Criminal Code
- There is no specific offence of money laundering – there are a series of money laundering offences
- Cover money obtained illegally (**proceeds of crime**) or money to be used for illegal purposes or in a manner that is illegal (**instruments of crime**)
- The money laundering offences are broad covering money obtained illegally (drug trafficking, fraud, corruption) or to be used illegally (purposes of terrorism or to defraud the tax office)

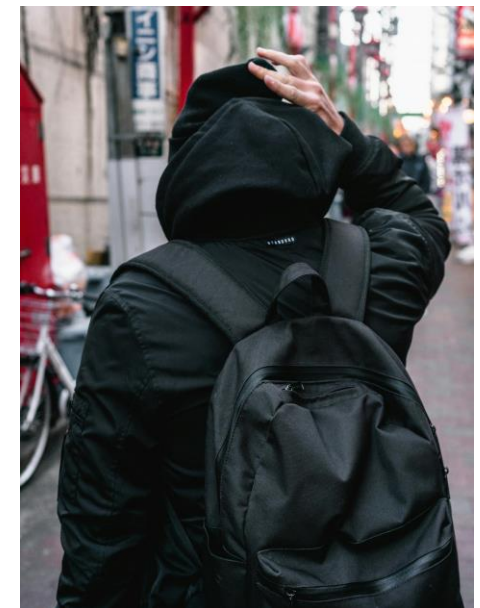


## Domestic: Money Laundering offences Cont'd

- The Criminal Code creates a series of money laundering offences that decrease in seriousness according to:
  - the value of the property or money involved; and
  - the accused's state of mind (believed, been reckless or been negligent)
- Sentences range from 6 months to life imprisonment. Monetary penalties may be imposed on a person or a company.

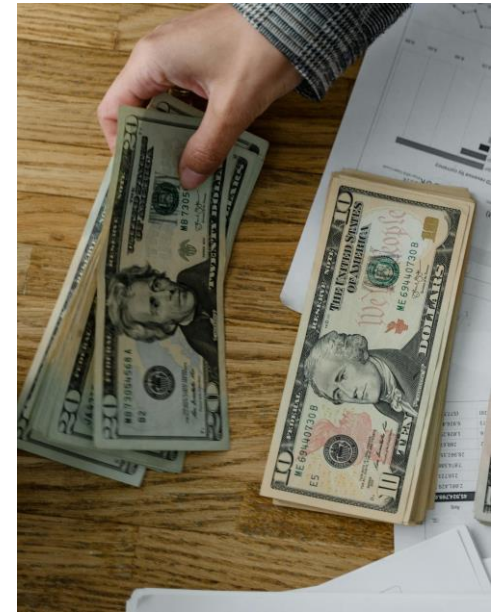
## Case Examples

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 AUD\$500,100. M was subsequently arrested after giving another backpack containing the cash 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.



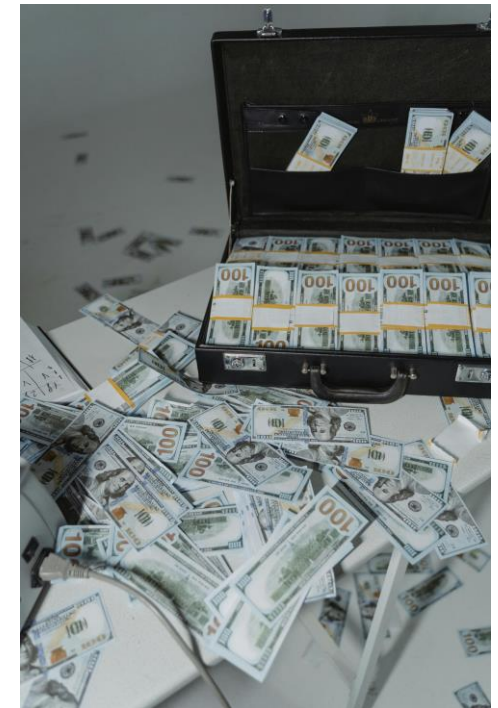
## Case Examples

The Accused (A) operated a money exchange business. Z arrived in Australia from Romania and picked up AUD\$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 AUD\$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.



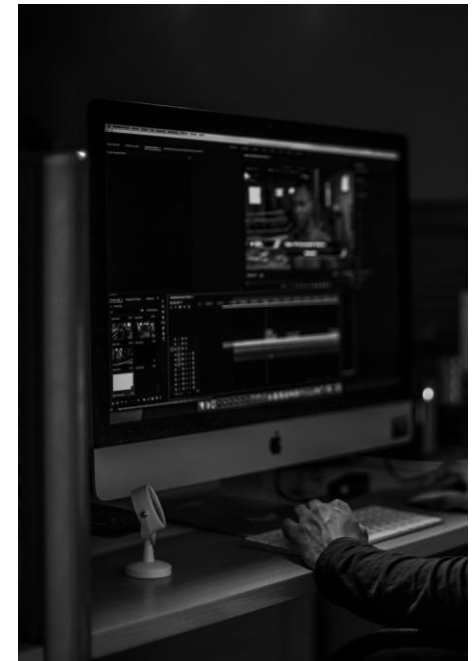
## Case Examples

The Accused each made numerous structured cash deposits of less than AUD\$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)



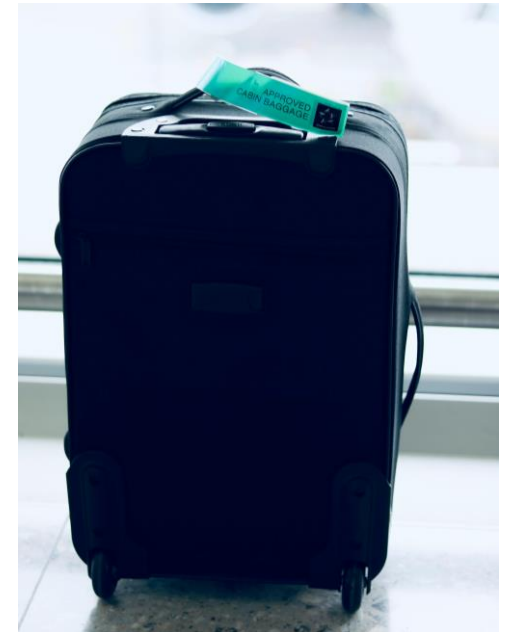
## Case Examples

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.



## Case Examples

The Accused hid cash totalling over AUD\$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.



## Case Examples

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.



## Confiscation Regime

- In Australia, there is legislation that establishes a regime for the confiscation of the proceeds of crime and that allows for the confiscated funds to be used to benefit the community.
  - Restraining orders – prevents an individual from dealing with their tainted assets while proceedings are on foot.
  - Confiscation orders – requires a tainted asset to be forfeited or an amount (representing the benefits received from criminal offending) to be paid to the Commonwealth.

## Examples of criminal assets

- Cash seized
- Bank accounts
- Cryptocurrency
- High end jewellery and other luxury goods
- Cars and boats
- Residential and commercial property
- Rural land
- Assets held in foreign countries

Has your Court restrained or confiscated any criminal property?

What property was involved?



# Proceeds of Crime Act 2002 (Cth)

- Traditionally, the Australian confiscation regime was a conviction-based regime.
  - Restraining orders – followed charge
  - Confiscation orders (forfeiture order or pecuniary penalty order) – followed criminal conviction
- The *POC Act* provided for a conviction-based confiscation regime and created a civil forfeiture regime.
- Under the civil regime:
  - Restraining order – on **suspicion** of a serious offence being committed or property suspected of being the proceeds of crime.
  - Forfeiture orders – for conduct constituting a serious offence and for property **suspected** of being the proceeds indictable offences.

# Proceeds of Crime Act 2002 Ct'd



- Proceedings under the civil regime are separate and distinct from any criminal proceedings for any related offence.
- Restraining property and confiscating criminal assets requires high level of international cooperation. Mutual assistance requests are made to, and received from, foreign countries for evidence and court orders pursuant to your mutual assistance legislation  
(in Australia: *Mutual Assistance in Criminal Matters Act 1987 (Cth)*)

# Your jurisdiction

- Do you know whether your jurisdiction has a confiscation regime?  
Discuss.
- Do you know whether your government is able to make, and receive, requests from other countries for assistance in criminal proceedings?  
Discuss.

