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Charges and offences of money laundering

Australian legislation

Australia's approach to criminalising money laundering differs from that of many other countries. Division 400 of the *Criminal Code Act 1995* (Cth) (the Criminal Code) contains the principal criminal offences of money laundering in Australia. Division 400 was inserted into the Criminal Code by the *Proceeds of Crime Act 2002* (Cth) in January 2003. There are currently 19 different offences of money laundering available under the Criminal Code, and these can be classified into two types: those linked to the proceeds of crime (funds generated by an illegal activity) and those linked to the instruments of crime (funds used to conduct an illegal activity).

Possessing the proceeds or instruments of crime is a single offence under the Criminal Code. Persons receiving, possessing, concealing, importing into Australia, exporting from Australia, or disposing of the proceeds of crime may be guilty of this offence. Possessing the proceeds of crime attracts a maximum custodial sentence of two years. The remaining 18 offences of money laundering are those of dealing with the proceeds or instruments of crime. 'Dealing with' the proceeds of crime includes all the actions considered as possession of the proceeds of crime as well as engaging in banking transactions using the illicit funds. These 18 offences are distinguished by the value of the property involved and the intent of the offender. The punishments' severity increases with the value and with the offender's knowledge of the source of the funds. The Criminal Code classifies offences according to the value of the funds involved into bands of $1,000,000 or more; $100,000 to $999,999; $50,000 to $99,999; $10,000 to $49,999; $1,000 to $9,999; and funds of any value.

There are three offences within each band, determined by the offender's knowledge of the funds' source or intended use:

- Knowledge: the defendant is aware or believes that money or property is the proceeds of crime or will be used to commit an offence.
- Recklessness: the defendant is aware of a substantial risk that money or property is the proceeds of crime or will be used to commit an offence.
- Negligence: the defendant has failed to exercise a reasonable standard of care to ensure that money or property is not the proceeds of crime.

Prosecutions in Australia

Between January 2003, when the Criminal Code was amended, and January 2008, the Commonwealth Director of Public Prosecutions dealt with 77 charges of offences of money laundering in Australia, a substantial increase over the preceding period in prosecutions for money laundering (Commonwealth Director of Public Prosecutions n.d.). Of these, 54 (70%) were in the 18 months immediately prior to January 2008. The type of charges dealt with has also changed over the five-year period. The initial charges for offences of money laundering under the Criminal Code, dealt with in the 2003–05 period, were for summary offences (Commonwealth Director of Public Prosecutions 2004; Commonwealth Director of Public Prosecutions 2005; Commonwealth Director of Public Prosecutions 2006). Almost all of the later charges were for indictable offences. A total of 35 individuals were convicted of 46 money-laundering offences out of the 77 charges dealt with under Division 400 from January 2003 to January 2008.

Almost all of the convictions for money laundering (40 out of 46) resulted in a custodial sentence, reflecting a concentration of convictions for offences carrying the larger maximum sentences of incarceration. The offenders avoiding imprisonment were convicted for possessing, not dealing with, the proceeds of crime or else dealing with less than $10,000. Fines or other penalties were not given as secondary sentences for any convictions for dealing with more than $50,000. All of the 16 convictions for offences dealing with more than $50,000 within the reported period attracted custodial sentences only (Commonwealth Director of Public Prosecutions n.d.).

International trends

Australia's approach to criminalising money laundering is more complex than those of the United States, the United Kingdom and Hong Kong. The United States and United Kingdom each have three separate offences of money laundering (in contrast to Australia's 19), and Hong Kong has two offences. Australia is alone in differentiating between offences based on the value of the funds involved and the degree of knowledge of the offender.

The United States' three core offences focus on (a) conducting a transaction using the proceeds of crime with the intent to

disguise its origins, avoid a transaction report or commit another offence; (b) transporting the proceeds of crime into, out of, or through the United States with the intent to disguise its origins; and (c) conducting transactions with funds represented as the proceeds of crime.

The United States also criminalises conducting transactions in illicit funds to the value of US$10,000 or more, using a statute commonly known as the 'spending statute'.

The United Kingdom's three core criminal offences of money laundering differ from those of the United States and those of Australia. The United Kingdom offences are (a) concealing, disguising, converting, or transferring criminal property or removing it from the United Kingdom; (b) entering into or becoming involved in an arrangement known, or suspected, to facilitate the acquisition, retention, use or control of criminal property by another person; and (c) acquiring, using or possessing criminal property.

Hong Kong's two criminal offences of money laundering are far simpler than those of Australia, the United States and the United Kingdom. Each of the principal drug-trafficking and organised-crime ordinances contains a single offence of money laundering. The Hong Kong ordinances criminalise knowingly dealing with the proceeds of crime or having reasonable grounds to suspect the origins of the property.

Case study: three money-laundering convictions in Australia

Defendant A conducted 335 remittance transactions, each valued at less than $10,000, to China and Hong Kong. The total value of the transactions was $3,088,311. Defendant A received a fee for each transaction conducted and collected approximately $30,000 for these activities. The funds were provided to Defendant A by his employer. The court found that Defendant A believed that the funds were remitted overseas in order to avoid paying tax in Australia and were not the proceeds of crime. Defendant A was sentenced to five and a half years' imprisonment in 2007. Defendant B, employed in the same business, conducted 59 remittance transactions of less than $10,000 to Hong Kong. The total value of Defendant B's transactions came to $556,400. Defendant B collected less than $3,000 in fees for his role. Unlike Defendant A, the court found that Defendant B was aware that the funds were the result of illegal abalone fishing. Defendant B was sentenced to five years' imprisonment. Both Defendant A and Defendant B were acting on the directions of Defendant C, and neither had an interest in the money they were moving. Defendant C was convicted of laundering more than $3 million and was sentenced to sixteen and a half years' imprisonment in March 2008 (ACC 2008; *R v Huang, R v Siu* [2007] NSWCCA 259).

The maximum custodial sentences available in Australia exceed those of the United States, the United Kingdom and Hong Kong. The offences of money laundering in the United States carry a maximum custodial sentence of 20 years; spending the proceeds of crime, 10 years. Summary convictions in the United Kingdom carry a maximum custodial penalty of six months, and convictions on indictment carry a maximum penalty of 14 years' imprisonment. The maximum custodial sentence available in Hong Kong is 14 years imprisonment for convictions on indictment and three years for a summary offence.

Australia's volume of convictions for money laundering is low compared with those of the United Kingdom and Hong Kong. From February 2003 to December 2005, a total of 2,090 money-laundering cases proceeded in the United Kingdom, resulting in 910 convictions and 492 custodial sentences (United Kingdom Home Office n.d., cited in Harvey 2008). Hong Kong made 49 such convictions in 2004. By 2007, the total number of convictions in Hong Kong increased to 179; the total number of convictions in the period 2004 to 2007 was 404 (Joint Financial Intelligence Unit 2008). In Hong Kong and the United Kingdom, as in Australia, the number of convictions has increased each year since the introduction of the current criminal provisions.

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All URLs were correct as at 22 December 2008.

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