



CDPP

Australia's Federal Prosecution Service



Parliamentary Joint Committee on Law Enforcement: Inquiry into the capability of law enforcement to respond to money laundering and financial crime

Submission by the Commonwealth Director of Public Prosecutions

August 2024

Introduction

1. The Office of the Director of Public Prosecutions (the **CDPP**) welcomes the opportunity to provide a submission to assist the Inquiry into the capability of law enforcement to respond to money laundering and financial crime (the **Inquiry**).
2. This submission refers to the role of the CDPP, the relevant legislative background and offences, and prosecution trends and issues. Based on the CDPP's experience prosecuting money laundering and financial crime, this submission focuses on items a) – e) of the Inquiry's Terms of Reference.
3. The CDPP has had regard to the recently released [Money Laundering in Australia National Risk Assessment](#). A number of the issues identified in that report are reflected in the CDPP's prosecution experience, in particular the layers of anonymity that facilitate money laundering and financial crime.
4. The CDPP has also considered the Attorney-General's Department's [proposed reforms to Australia's anti-money laundering and counter-terrorism financing regime](#).
5. In summary, in the CDPP's experience the prosecution of money laundering and financial crime is increasingly large-scale and complex, for reasons that include:
 - 5.1. the enabling nature of technology, for example online transactions, encrypted communications, virtual private networks and/or cryptocurrency;
 - 5.2. the location of the offending – when offending is wholly or partly off-shore, for example transnational frauds and money laundering syndicates;
 - 5.3. the use of illegitimate or hijacked identities, financial information and legal structures to facilitate, disguise and control the movement of funds;
 - 5.4. the large amounts of money and number of transactions within Australia and off-shore including the use of complex informal value transfer systems; and
 - 5.5. the high volume of evidentiary or disclosable data, for example from electronic devices seized.
6. While the prosecution of money laundering and financial crime is challenging, it is important to note that reforms to modernise Australia's money laundering offences commenced on 17 February 2021. Those reforms have significantly assisted the prosecution of money laundering offences. The reforms included new offences where the value was \$10 million or more, the creation of proceeds of "general crime" offences and a deeming provision for causing another person to deal with money or other property.¹ As indicated in the summary tables below, these offence provisions have already been used a significant number of times, which indicates there is offending of this type.

Role of the CDPP

7. The CDPP is an independent prosecution service established by the Commonwealth Parliament to prosecute offences against Commonwealth law. The CDPP aims to provide an effective, ethical, high

¹ *Crimes Legislation Amendment (Economic Disruption) Act 2021* (Cth). See also Explanatory memorandum, *Crimes Legislation Amendment (Economic Disruption) Bill 2020* (Cth) at [1]-[3].

quality and independent criminal prosecution service for Australia in accordance with the Prosecution Policy of the Commonwealth (the **Prosecution Policy**).

8. The Prosecution Policy requires that for a prosecution to commence or continue there must be a reasonable prospect of conviction, and the prosecution must be in the public interest.
9. In order to obtain a conviction for an offence, the CDPP must establish beyond reasonable doubt each physical element and its corresponding fault element. By way of example, the elements for a money laundering offence contrary to s 400.3(1) of the *Criminal Code* (Cth) are as follows:
 1. Defendant deals with money or other property [receives, possesses, conceals or disposes of / imports or exports into or out of Australia / engages in a banking transaction relating to] (conduct)
Fault: Intention (s 5.6(1) *Criminal Code* (Cth))
 2. The money or property is proceeds of indictable crime (circumstance)
Fault: Defendant believes the money or other property is proceeds of indictable crime (s 400.3(1)(b)(i) *Criminal Code* (Cth))
 3. At the time of the dealing the value of the money and other property is \$1 million or more (circumstance)
Fault: Absolute liability (s 400.3(4) *Criminal Code* (Cth))
10. This element analysis illustrates that a critical issue in prosecuting money laundering offences (and other financial crimes) is proving, based on admissible evidence, the specific conduct engaged in by a defendant and their state of mind at the time.
11. The CDPP receives briefs of evidence from Commonwealth, State and Territory investigative agencies for assessment as to whether a prosecution should commence or continue. The CDPP is not an investigative agency, however the CDPP can provide advice to agencies during their investigations prior to a brief of evidence being referred (**pre-brief advice**). Pre-brief advice can be an important tool in the scoping and focus of an investigation, identifying potential offences and identifying legal issues, particularly in more complex or significant matters. The CDPP is regularly called on to provide pre-brief advice in serious money laundering and financial crime investigations.
12. The CDPP has four national practice groups – Serious Financial and Corporate Crime; Fraud and Specialist Agencies; Organised Crime and National Security; and Human Exploitation and Border Protection. The prosecution of financial crimes is overseen by the Serious Financial and Corporate Crime and Fraud and Specialist Agencies practice groups. The prosecution of money laundering may be overseen by any one of our practice groups.
13. Money laundering and financial crime is also referred to state and territory prosecution services. The CDPP will only take or maintain carriage of a money laundering or financial crime prosecution if there is a sufficient Commonwealth nexus, otherwise it will be a matter for the relevant state or territory prosecution service.
14. The CDPP does not have primary responsibility for confiscation and recovery of proceeds of crime, however remains a “proceeds of crime authority” under the *Proceeds of Crime Act 2002* (Cth). In 2012, the Commissioner of the Australian Federal Police (the **AFP**) was included as a proceeds of crime authority and, since that time, the AFP-led Criminal Assets Confiscation Taskforce has led the primary Commonwealth response to restrain and confiscate the proceeds, instruments and benefits of crime on behalf of the Commissioner of the AFP. Where appropriate, as part of a sentencing hearing the CDPP may also seek or facilitate forfeiture or pecuniary penalty orders.

Legislative Background and Offences

Money laundering offences

15. Commonwealth money laundering offences (also referred to as proceeds and instruments of crime offences) are contained in Division 400 of the *Criminal Code* (Cth), commencing on 1 January 2003.
16. The offences in s 400.2B – s 400.8 are graded in their seriousness based on the mental element required to establish the offence (belief, recklessness and negligence) and the value of the money or property that is the subject of the conduct.²
17. There is an additional offence in s 400.9 relating to money or property that is reasonably suspected of being proceeds of crime, also graded in seriousness based on value. This offence does not require proof that a defendant had a state of mind about the origin of the money or property they were dealing with, only that it is reasonable to suspect that the money is proceeds of indictable crime.
18. There are also similar state and territory money laundering offences.
19. As noted, on 17 February 2021 new offences were added to Division 400 where the value of the dealing was \$10 million or more and for dealing in proceeds of “general crime” where the particular type of crime cannot be identified.
20. The new “general crime” offence is important because in some cases there will be a range of indicia to prove the money was proceeds of crime but insufficient evidence to establish the type (eg to prove that it was proceeds of fraud as opposed to drug trafficking). An example of the elements for a “general crime” offence contrary to s 400.3(1A) *Criminal Code* (Cth) is as follows:
 1. Defendant engages in conduct in relation to money or other property (conduct)
Fault: Intention (s 5.6(1) *Criminal Code* (Cth))
 2. The money or property is proceeds of general crime (circumstance)
Fault: Defendant believes the money or other property is proceeds of general crime (s 400.3(1A)(b) *Criminal Code* (Cth))
 3. The conduct concealed or disguised any or all of the following [the nature/value/source/location/disposition/movement/rights in respect of/identity of any person who has rights in respect of or effective control of the money or property] (result)
Fault: Recklessness (s 5.6(2) *Criminal Code* (Cth))
 4. When the conduct occurs, the value of the money and other property is \$1 million or more (circumstance)
Fault: Absolute liability (s 400.3(4) *Criminal Code* (Cth))
21. A series of indicia that money or property is proceeds of “general crime” is set out in the Explanatory Memorandum of the legislation which introduced the reforms.³
22. An example of the type of conduct that previously was prosecuted under the s 400.9 offence but which now could be considered for prosecution under a more serious “general crime” offence is [Shi v R \[2014\]](#)

² Revised Explanatory Memorandum, *Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002* (Cth) at p 1.

³ Explanatory Memorandum, *Crimes Legislation Amendment (Economic Disruption) Act 2021* (Cth) at [47]-[48].

[NSWCCA 276](#). A recent “general crime” prosecution which reflects this change in approach is [Nguyen v R \[2023\] NSWCCA 240](#).

Financial crime offences

23. The CDPP prosecutes a broad range of financial crime offences, including:

- 23.1. fraud and related conduct involving Commonwealth entities under Part 7.3 of the *Criminal Code* (Cth);
- 23.2. dishonesty and related conduct involving corporations or financial products/services under s 184 and Part 7.10 of the *Corporations Act 2001* (Cth);
- 23.3. offences relating to bankruptcy under the *Bankruptcy Act 1966* (Cth); and
- 23.4. state and territory based fraud and related offences where there is a Commonwealth nexus.

Related offences

24. The CDPP also prosecutes a number of offences that are related to money laundering and financial crime, including:

- 24.1. conduct which avoids providing information, or provides false information, in relation to financial reporting and regulatory requirements, under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML&CTF Act**);
- 24.2. identity fraud offences under Division 372 of the *Criminal Code* (Cth); and
- 24.3. financial information offences under Part 10.8 of the *Criminal Code* (Cth).

25. These offences typically have a lower maximum penalty than fraud or more serious money laundering offences. They nevertheless can provide an important tool to reflect the extent of an alleged offender’s criminality, take into account conduct that has impacted on particular victims and provide sufficient scope for sentence if a defendant is convicted.

Prosecution trends and issues

Overview

- 26. This section focusses on the CDPP’s experience prosecuting money laundering offences under Division 400 of the *Criminal Code* (Cth) and the AML&CTF Act, identity fraud and financial information offences.
- 27. Many of the trends and issues discussed, however, apply equally to the wide array of other financial crimes (including state and territory offences) prosecuted by the CDPP.

Prosecution statistics

- 28. The following trends have been identified from the CDPP’s prosecution statistics over the previous five financial years:
 - 28.1. There was a substantial increase in money laundering charges commenced in the three financial years 2020-2021, 2021-2022 and 2022-2023. Based on the CDPP’s experience it is likely that the primary reasons for this increase include the commencement of organised

crime prosecutions arising from Operation Ironside as well as fraud prosecutions relating to the Australian Government's disaster and pandemic payment schemes in this period.

Table: Division 400 money laundering charges commenced 2019/2020 – 2023/2024

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
Division 400 offences	125	317	290	346	178

- 28.2. There was also an increase in prosecutions of the new “general crime” money laundering offences as well as offences where the value was \$10 million or more. As noted above, these offences are only available for conduct that occurred on or after 17 February 2021. Because the investigation and referral of money laundering investigations can take some time given the complexity of the methodology and the types of evidence, it is expected that the use of these new offences will continue to grow. Operation Ironside also contributed to the increase in “general crime” charges commenced in 2021-2022 and 2022-2023.

Table: New money laundering offence charges commenced 2019/2020 – 2023/2024

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
General crime offences	-	13	40	63	18
Offences \$10m or more	-	0	8	20	13

- 28.3. Charges related to money laundering (identity fraud, financial information crime and AML&CTF Act offences) continue to be the subject of prosecutions by the CDPP. It is important to note however that the criminality reflected in these types of offences may also be sufficiently reflected in more serious money laundering offences.

Table: Money laundering related charges commenced 2019/2020 – 2023/2024

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
AML&CTF Act offences	4	6	21	17	7
Identity fraud offences	20	30	23	22	15
Financial information offences	1	6	1	7	9

- 28.4. The CDPP has maintained a high conviction rate for money laundering and related offences. Most convictions followed guilty pleas. These results are consistent with the CDPP's generally high rate of guilty pleas and conviction rates across other offence types.

Table: Conviction rates 2019/2020 – 2023/2024

	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
Proportion of guilty pleas in conviction rate⁴	93.54%	89.77%	96.47%	94.44%	92.62%
Conviction rate⁵	95.92%	100.00%	100.00%	99.09%	98.39%
Contested matters conviction rate – indictable⁶	57.15%	100%	-	83.33%	100%
Contested matters conviction rate – summary	100%	100%	-	-	33.33%

Scale and forms of money laundering and financial crime in Australia, including their effect on the community and the economy, the types of criminal activities they fund, the methods employed by serious and organised crime, and emerging trends and threats

29. The CDPP has perceived a shift in the type of conduct engaged in as part of money laundering and financial crimes, away from the physical handling of money towards online or electronic activity.

30. Features of this type of offending include some or all of the following:

- 30.1. False identity information, particularly in electronic form.
- 30.2. Online creation and control of legal structures such as corporations.
- 30.3. Online opening of bank accounts.
- 30.4. Electronic fund transfers within Australia and off-shore.
- 30.5. Money converted into cryptocurrency and moved via crypto-exchanges, or money transferred through informal value transfer systems.
- 30.6. Encrypted communications.
- 30.7. Virtual private networks.

31. The layering of these methodologies can increase the anonymity of those engaging in money laundering and financial crime. As noted above, admissible evidence that a particular person engaged

⁴ As a percentage of the total number of relevant matters resulting in a conviction – calculated by dividing the total number of matters where there was a guilty plea by the total number of matters where there was a conviction.

⁵ Including both pleas and contested matters.

⁶ As the number of contested matters is a smaller sub-set, the conviction rates may vary substantially each year depending on the particular circumstances of the matters. In some years, there may also be no finalised contested matters.

in specific conduct is critical to prove these offences. It will often be the case that circumstantial, rather than direct, evidence is relied on to prove that an individual used these methodologies.

32. The use of technology to facilitate money laundering and financial crime can also lead to large amounts of evidentiary and disclosable data being obtained as part of an investigation. For example, as a result of a search warrant police may seize multiple electronic devices containing vast amounts of data. The investigative agency must then review the data to ensure that relevant evidence and disclosable material is identified and made available to the prosecution and defendant. These types of matters can increase the resourcing burden on the investigative agency and the CDPP. If relevant material is not identified and disclosed it can impact on the strength of the prosecution case and lead to challenges by a defendant.

Australia’s anti-money laundering and counter-terrorism financing (AML/CTF) legislation as well as comparison with other jurisdictions and the international standards set by the Financial Action Task Force

33. In the CDPP’s experience, the existing AML&CTF Act offences provide an important complement to the more serious money laundering offences in Division 400 *Criminal Code* (Cth).
34. One way in which this can occur is where there is an identifiable breach of an AML&CTF Act offence which is relied on as the underlying predicate offence for a more serious money laundering charge. A prosecution on this basis may occur where there is limited other evidence as to the origin or destination of the money dealt with. Examples of this type of matter are [Fung v R \[2018\] NSWCCA 216](#) and [Cai v R \[2023\] NSWCCA 270](#).
35. The introduction of the new “general crime” offences has provided another option to reflect more serious criminality without relying on an AML&CTF Act offence as an underlying predicate offence.

Proposed ‘tranche two’ reforms to extend the existing AML/CTF legislation to services provided by lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones and implications for law enforcement

36. The CDPP notes that proposed reforms to Australia’s AML&CTF regime are in progress. The increased reporting obligations on various entities are expected to assist in the identification, investigation and prosecution of money laundering and related offences.

Whether existing criminal offences and law enforcement powers and capabilities are appropriate to counter money laundering, including challenges and opportunities for law enforcement, such as those relating to emerging technologies

37. In the CDPP’s experience, the existing money laundering and financial crime offences are appropriate. They provide sufficient scope to reflect the criminality and are not affected by any fundamental deficiencies in their structure or elements.
38. The 2021 money laundering reforms have significantly contributed to this position, in a number of ways:
 - 38.1. The new “general crime” offences reflect the position that in some cases it will not be possible to prove the type of offence from which money is derived however it is clearly proceeds of serious crime having regard to other indicia.
 - 38.2. The new offences relating to \$10 million or more are appropriate to reflect the very large scale of some money laundering operations and the conduct of those higher up in criminal organisations who have oversight over more of the total funds.

- 38.3. The related deeming provisions where a person causes another to deal with money similarly reflect the fact those higher up in a criminal organisation may not be involved in dealing with money or other direct conduct while still maintaining overall control of the scheme.
 - 38.4. There was also a specific but important change to allow for money used by law enforcement in controlled operations (for example money provided by an undercover operative) to form the basis of money laundering charges.
39. It is important to note however that although the CDPP has utilised these reforms, because they only commenced in 2021 they have not yet been substantially tested in any contested matters. The CDPP is aware of a number of matters listed for trial which may provide further opportunities to consider the effectiveness of the 2021 reforms.
40. In relation to further law reform, as noted above an increasing challenge in the prosecution of money laundering and financial crime is the layering of anonymity, facilitated by emerging technology. These issues are likely to increase with the use of more sophisticated technology, such as artificial intelligence software. There have been a number of media reports internationally on the use of artificial intelligence to impersonate an individual's voice to facilitate criminal activity (referred to in the context of false videos and images as "deepfakes").
41. It is important to note that the use of online technology to facilitate money laundering and financial crime can often be reflected in existing offences, for example as part of money laundering or cybercrime offences, or related identity fraud or financial information offences. There are also a range of computer and communication offences in the *Criminal Code* (Cth). As part of responding to increasing technology-based money laundering and financial crimes, however, there may be scope for new offences targeting the following conduct:
- 41.1. The creation and/or control of a bank account to facilitate a criminal offence.
 - 41.2. The creation and/or control of a corporation (or other legal structure) to facilitate a criminal offence.
 - 41.3. The creation, possession, modification and/or use of artificial intelligence to facilitate a criminal offence.
42. As part of such law reform, an issue will be whether it is necessary to prove the facilitation of a specific type of criminal offence or whether an equivalent "general crime" offence similar to the 2021 money laundering reforms would be sufficient. This question could also be applied to existing facilitation offences such as identity fraud.
43. The maximum penalties for existing and new facilitation offences should also be considered. They are currently lower than money laundering and financial crimes. Given the impact facilitation offences such as identity fraud can have on victims, their contribution to more serious offending and the wider community concern about such conduct, increased maximum penalties may be appropriate.
44. The CDPP is also supportive of increased maximum penalties for financial crimes generally, to reflect the seriousness of that conduct and increase consistency with the current maximum penalties for money laundering under Division 400 and corporate and financial product/service offences under the *Corporations Act 2001* (Cth).

The effectiveness of collaboration, coordination and information sharing between Commonwealth agencies, including law enforcement, and with authorities in other jurisdictions and the private sector

45. As a prosecution agency, the CDPP does not have primary responsibility for collaboration, coordination and information sharing at the investigative stage.

46. In the CDPP's experience, however, these issues can impact on a prosecution in a number of ways, for example:
- 46.1. Where information is obtained by one agency for a particular purpose, there can be limits on the extent to which that information is provided to another agency or used for a different purpose. There may be exceptions contained in specific legislation. There is also a more general exception for information sharing relating to government fraud or misconduct in s 86E *Crimes Act 1914* (Cth) although this does not extend to other types of money laundering or financial crime. There are also provisions contained in the *Crimes Act 1914* (Cth) which allow for evidentiary material obtained as a result of a search warrant to be shared for purposes that include investigating or prosecuting an offence. If information is not properly shared between agencies based on an identifiable power or authority to do so, it may lead to challenges to the admissible evidence in a prosecution.
 - 46.2. Where information is obtained from large amounts of data, for example from seized electronic devices or a company server, or otherwise provided by private sector entities, the review of such material may be resource-intensive. If the disclosure process is protracted or incomplete, it can lead to delays and/or challenges in the prosecution.
 - 46.3. Where information is obtained from overseas authorities or private-sector entities, there can be further disclosure issues, for example as to the rationale or completeness of what has been provided, the availability of an individual witness (who may be outside Australian jurisdiction) to explain the information, and third-party sensitivities such as public interest immunity, commercial confidentiality or legal professional privilege impacting on the use of the information.
47. While these are general issues that can impact all offence types, they more frequently arise in money laundering and financial crime prosecutions because of the shift towards technology-facilitated offending and more frequent international connections.
48. While essential to effective law enforcement, it is important to recognise that collaboration, coordination and information sharing can create risks for a prosecution if not managed carefully. Early engagement between partner agencies, including pre-brief engagement with the CDPP, can assist.

Conclusion

49. The CDPP would be pleased to provide further information to the Inquiry if required.