



Law Council
OF AUSTRALIA

National Legal Profession Anti-Money Laundering & Counter-Terrorism Financing Guidance

Guidance Note No 1 – Why Should I Care About Money Laundering and Terrorism Financing?

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Guidance Note 1

Why Should I Care About Money Laundering and Terrorism Financing?

Money laundering is a dynamic process that involves:

- **Placement**, moving the funds from direct association with the crime;
- **Layering**, disguising the trail to foil pursuit; and
- **Integration**, making the money available to the criminal once again, with its occupational and geographic origins hidden from view.

Money laundering and terrorism financing are based on deception. Criminals launder money to hide payments and investments, disguise their identities to avoid detection by law enforcement to attempt to evade international sanctions and taxation laws. This includes using unlawfully obtained monies to enter into apparently legitimate investments and businesses, disguising ownership by separating legal title from beneficial ownership and using networks of companies in different jurisdictions to frustrate investigations.

The legal profession is a target group for criminals seeking to effect such deception. There are clear instances where law firms have failed to enquire sufficiently into the source of client funds or failed to understand who stands behind the ostensible client and have been vulnerable to unwitting involvement in money laundering and terrorism financing.

Intelligence sources also show a persistent connection between money laundering and organised crime.¹ When considering the connection between organised crime and lawyers, we might think of the consigliere in *The Godfather*, or the hit TV series, *Better Call Saul*. Money laundering might bring the series, *Ozark*, to mind. Some of the methods and scenarios in these fictional programs are terrifying. They show ordinary people coming under the control of violent cartels and echoing, in fact, some of what we know about financial crime and organised crime based on publicly available intelligence reports.

'Ordinary' legal practitioners in jurisdictions as familiar and close to home as the United Kingdom and New Zealand have served time in prison after being drawn into laundering the proceeds of crime for drug traffickers and other serious criminals,² including for failures to detect and act on 'red flags', and failing to ask the questions courts have deemed ought to have been asked.³

The Australian Federal Police told a Senate Committee Inquiry in August 2021 that money laundering to support criminal ventures continues to grow in both size and complexity, as criminals find ways to exploit vulnerabilities.⁴

The Australian Criminal Intelligence Commission reports that serious and organised crime groups are increasingly turning to the professions to exploit specialist knowledge and skills in order to launder profits within complex and globalised financial systems.⁵



Experts now believe that the expansion of organised crime into scams, including identity theft, hacking and phishing, is a game-changer in terms of the scale of illicit funds and impact on individuals. This has caused so far up to \$3.1 billion in losses⁶ and wreaked havoc on individual lives. Money laundering stands behind both the financing of most crime and dealing with its resulting proceeds. Examples include:

- the use of cheque, social security and other types of fraud to finance drug importations;
- the rebirthing of stolen motor vehicles to finance drug distribution;
- the redirection of hard drug trafficking profits into the purchase and sale of softer drugs such as anabolic steroids and other performance enhancement drugs that pose a reduced enforcement risk;
- the redirection of criminal profits into the acquisition of both complex and basic commercial enterprises to legitimise wealth;
- the use of internet scams to finance drug trafficking;
- the infiltration of legitimate service industries by criminal groups to hide wealth; and
- the targeting of Australian business interests by overseas criminal groups to create wealth ostensibly out of the reach of their local law enforcement agencies.

Such operations can involve the corruption of local businesses and professionals, particularly where the activity requires establishment of 'front' enterprises or acquisition of Australian assets, such as real estate.

The harms that are connected to money laundering and terrorism financing are experienced daily. Child exploitation and human trafficking are linked to organised crime, and they need funding to be able to continue. Unwitting involvement in money laundering not only enables criminals to profit by rewarding themselves in the legitimate economy, but also allows reinvestment in criminal activities that perpetuate suffering.

It is salutary to remember that a money laundering offence in Australia may be committed just by receiving, possessing, concealing or disposing of the proceeds of crime (with the requisite degree of knowledge). It is not necessary to have laundered money from beginning to end; a dealing, with the relevant degree of knowledge, is enough.

Unwitting engagement in money laundering or terrorism financing may well involve a breach of your professional obligations. It can also lead to a loss of public confidence in the profession and in the administration of justice.

So why should legal practitioners care about money laundering and terrorism financing? Certainly to avoid prosecution and reputational harm to themselves and to the profession. Quite apart from these though, money laundering and terrorism financing are associated with devastating crimes that can destroy individual lives.

See also Guidance Notes 2, 3, 4, 5 and 11:

*Guidance Note No 2 – What Does the Criminal Law Currently
Provide, and What Are My Cash Reporting Obligations?*

Guidance Note No 3 – What Are My Professional Obligations?



References

1. There also appear to be increasing connections between terrorist groups and organised crime globally in particular through trade in illicit drugs. See United Nations Office of Drugs and Crime (2022) *World Drug Report: Booklet 2 – Global Overview of Drug Demand and Drug Supply*, p 64.
2. For example, *R v Daniels & Simpson* [2020] NZHC 275 [25 February 2020] (Sentencing notes); *Re Shadab Khan* Solicitors Disciplinary Tribunal Case No 10727/2011 (solicitor convicted 30 September 2009, sentenced 23 October 2009 by HHJ Cahill QC, Leeds Crown Court, UK). For further examples see Katie Benson (2021) *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control*, Routledge.
3. For example, *R v Griffiths* [2007] 1 Cr App R (S) 95; [2006] EWCA Crim 2155. In jurisdictions where legal practitioners are required to make suspicious matter reports, significant penalties have also been imposed where practitioners have failed to lodge such reports. While Australian legal practitioners are not subject to a suspicious matter reporting requirement, these Guidance Notes aim to encourage the adoption of strengthened preventative measures within a risk management framework to help avoid unwitting involvement in financial crime.
4. Australian Federal Police Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into the Adequacy and Efficacy of Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime (**AML/CTF Senate Inquiry**) (August 2021).
5. Australian Criminal Intelligence Commission, Submission to the AML/CTF Senate Inquiry (August 2021).
6. This is based on combined losses reported to Scamwatch, ReportCyber, the Australian Financial Crimes Exchange, IDCare, the Australian Securities and Investments Commission and other government agencies: ACCC (April 2023) *Targeting Scams – Report of the ACCC on Scams Activity 2022*, p iii.

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