



## Dealing in Proceeds of Crime: What you need to know about Division 400 of the Criminal Code (Cth)

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Australia has some of the toughest money-laundering laws in the world. Division 400 of the Criminal Code (Cth) sets out a range of offences aimed at stopping organised crime, financial crime, and suspicious money movements. These laws apply to everyday situations as well as serious criminal activity, and the penalties can be very serious.

This article breaks down what you need to know about this offence. Be aware that State legislation also contains similar criminal offences but the focus of this article is on Federal Crime.

### What Does “Dealing” With Money or Property Mean?

Under the Criminal Code, “dealing” is defined very broadly. A person is considered to be dealing with money or property if they:

- Receive or hold it
- Pass it on or dispose of it
- Move it into or out of Australia
- Use it in any banking or financial transaction

“Money or property” also includes things like prepaid cards, financial instruments, vouchers, and anything that represents money—even if it does not have much value on its own. The offence can be characterised as either an instrument of crime or proceeds of crime.

# What is the difference between proceeds of crime and an instrument of crime?

This distinction is essential to understanding the nature of any charge under Division 400.

- **Proceeds of crime** refers to money or property that comes directly or indirectly from a criminal offence.
- **An instrument of crime** refers to money or property that is used to commit an offence, or that is intended to be used in a future offence.

The category your matter falls into will affect how the charge is framed and what the prosecution needs to prove.

## How Division 400 Offences Work

The offences in sections 400.3 to 400.8 are arranged into a tiered system, based on:

- How much money is involved starting from any amount, up to \$1 million or more; and
- Your state of mind, which can be charged as either intention, recklessness or negligence.

As you would expect, the higher the monetary value the heavier the penalty.

## What is the maximum penalty?

The maximum penalty under Division 400 is 25 years imprisonment. This applies to the most serious offences, typically where the amount involved is \$1 million or more and the prosecution can establish that the person acted intentionally.

## What is the difference between intention, recklessness, and negligence?

The maximum penalty applicable will also be determined by how the offence is charged, whether there is evidence to establish the person was intentional, reckless or negligent when they 'dealt' with proceeds or an instrument of crime. The key difference between these three are that:

- **Intention** – means that you believe the money or property is or will be used in future crime.
- **Reckless** – you are aware that there is a real risk the money is connected to crime and you go ahead anyway.
- **Negligence** – where a reasonable person would have realised the money was linked to a crime or could be.

## Does the Prosecution Need to Prove the Original Crime?

Under Division 400, the prosecution does not need to prove exactly which crime produced the money. They only need to show it came from (or was going to be used in) a type of indictable offence, such as drug trafficking.

# Does the prosecution need to prove I knew the value of the money?

No, and this is one of the most important things to understand about these offences. You can be found guilty even if you genuinely believed the amount involved was much lower than it actually was. The prosecution does not need to prove that you knew the true value.

## Why These Offences Matter

Division 400 is designed to:

- Disrupt organised and serious crime
- Capture sophisticated and everyday money-movement methods
- Respond to cross-border financial activity
- Give prosecutors flexible tools to address suspicious transactions

Because of the complexity and the severe penalties, anyone involved in large transactions, international transfers, or handling money on behalf of others should be aware of these laws.

## Charged With a Proceeds of Crime Offence? Talk to our Criminal Defence Lawyers Today!

Money-laundering offences are complex and high stakes. Early legal advice can make a significant difference to the outcome.

At Gilshenan &Luton, our criminal defence lawyers regularly represent clients in proceeds-of-crime matters and work hard to achieve the best possible outcome.

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