



Asset Recovery: Civil and Criminal Forfeiture, Asset Management, Cases and Best Practices

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Asset Recovery per Global Principles

Principle 4: Have Effective Powers to Freeze, Seize and Confiscate Assets

Asset Recovery per Global Principles

- *In order to be able to successfully conduct criminal investigations and to ensure that the assets that gave rise to or are the product of tax crime are adequately secured throughout the investigations, it is important that the investigation agencies can freeze / seize such assets for the duration of the investigation and the criminal procedure.*
- *In the investigation of tax offences, being able to interrupt the movement of financial assets can be essential in identifying or preventing an offence. In addition, agencies should have the authority to confiscate assets that gave rise to or are the product of tax crimes.*
- *This is particularly relevant in fighting tax crimes, as financial assets are easily removed from one jurisdiction to another and cause financial damage for governments*

Asset Recovery per Global Principles

- *Freezing / seizing and confiscation of assets are necessary in order to prevent the proceeds of a crime from being disposed of or being enjoyed by a suspect, or to preserve physical evidence of a crime.*
- *In some jurisdictions, the confiscation / forfeiture may be a sanction on its own, or also a way to ensure pecuniary fines are paid.*
- *Freezing, seizing and confiscation disrupts criminal activity by inhibiting access to assets that would have been beneficial to the individual or organisation committing the crime or can prevent the criminal assets from being employed to commit further crimes.*
- *The freezing / seizing and confiscating of criminal assets is also a deterrent measure as it can reduce the profitability of committing tax crimes*



Summary of topics covered

- Asset Recovery Basics
- Civil forfeiture
- Criminal forfeiture
- Challenges around Asset Management Preservation and Enforcement
- Case studies

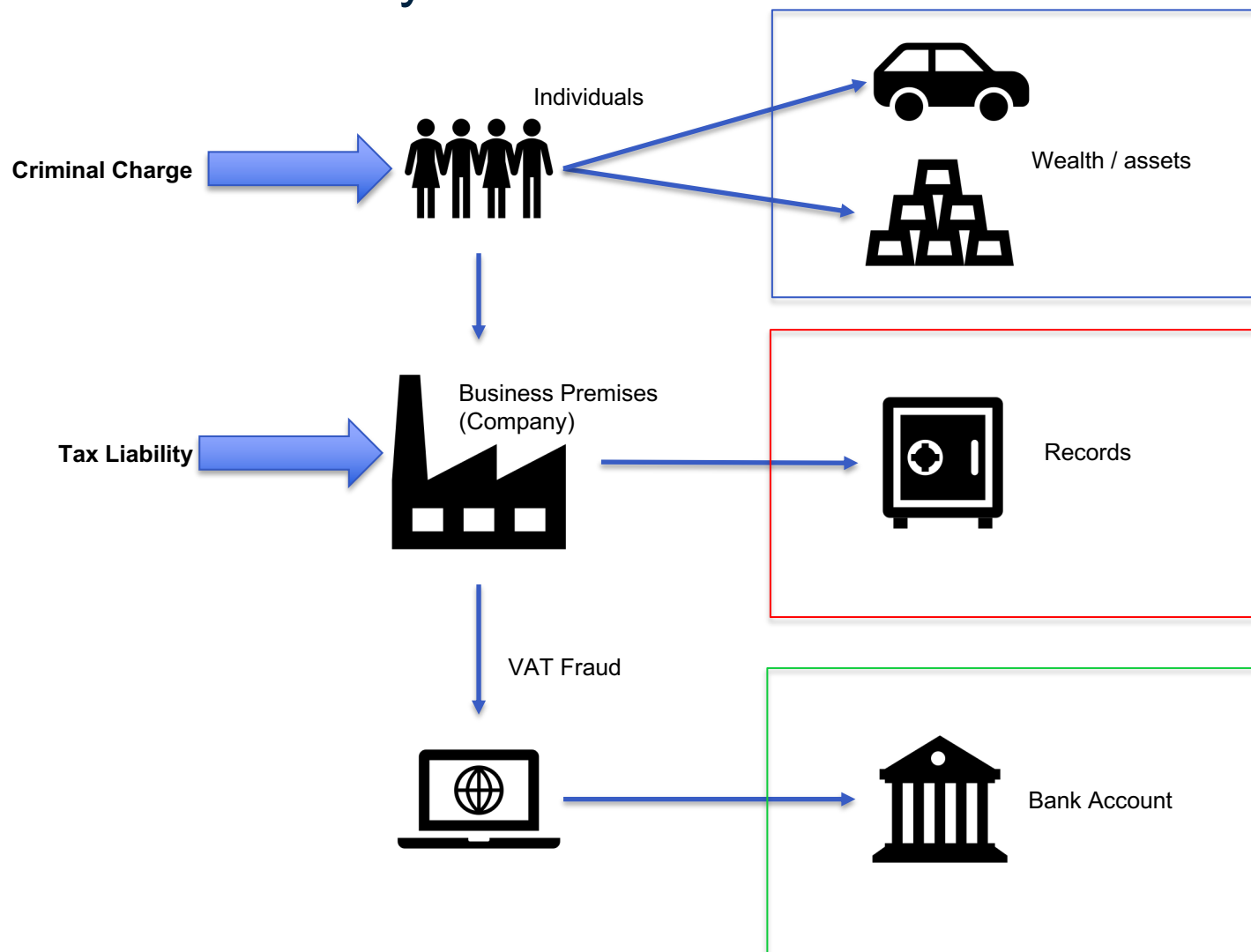


Asset Recovery Basics

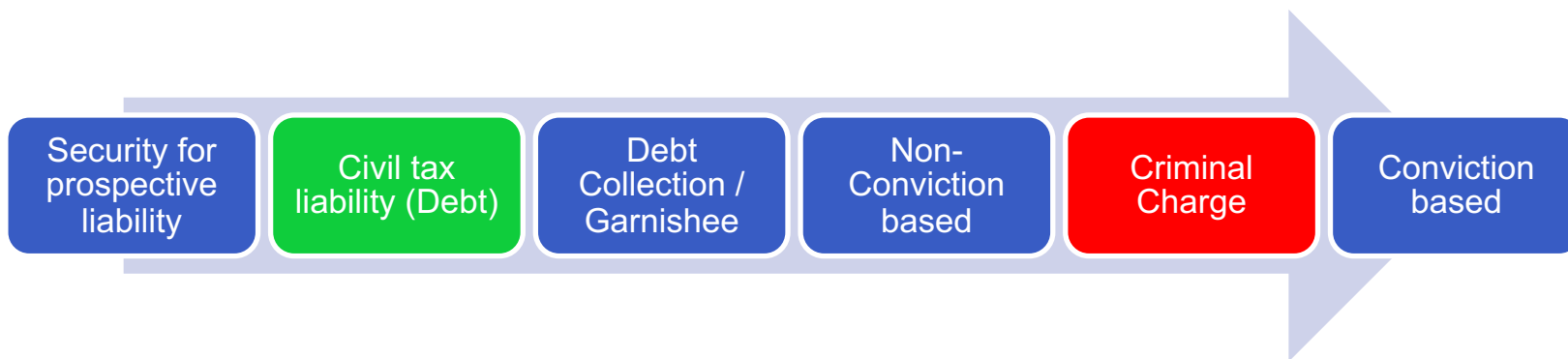
Generally involves the following steps:

1. Substantiation of unlawful conduct and property identification (Investigation)
2. Restraint of property
3. Confiscation of property
4. Disposal of confiscated property

Asset Recovery Basics



Asset Recovery Basics



As time goes on, generally assets dissipate and the eventual amount collected will decline. The challenge is how you proactively improve asset recovery options.



Asset Recovery Basics

Compare outcomes of ...

- Debt recovery vs
- Security for payment (or proactive approach) vs
- Civil forfeiture vs
- Criminal forfeiture

Prevention, Deterrence and Recovery

Principles

Should pay attention to:

- Having the necessary governance framework to ensure criminal law enforcement agencies operate transparently, and are adequately supervised in connection with the handling of assets to ensure integrity;
- Having the necessary investigative, legal and operational expertise;
- Putting in place a clear organisational structure to manage asset cases. Given that these cases can require specialised investigative and legal expertise which may be located across different agencies, it can be efficient to put in place a specialised multi-agency unit with trained practitioners and adequate resources focussing on asset recovery;
- Ensuring that the rights of suspects are protected during an asset recovery process;
- Having a process to safely manage the assets; and
- Efficiently using international co-operation, given that asset recovery cases can be complex and involve criminal assets located in foreign jurisdictions.



Tax Audit Response

- Australia continues to make good use of its tax system to effectively make large recoveries relating to the proceeds of crime.
- The ATO applies its audit/assessment procedures to focus on the following areas in relation to tax crime, including:
 - serious financial crime
 - offshore tax evasion
 - illegal phoenixing, and
 - taxing unexplained wealth of individuals and entities involved in serious and organised crime.



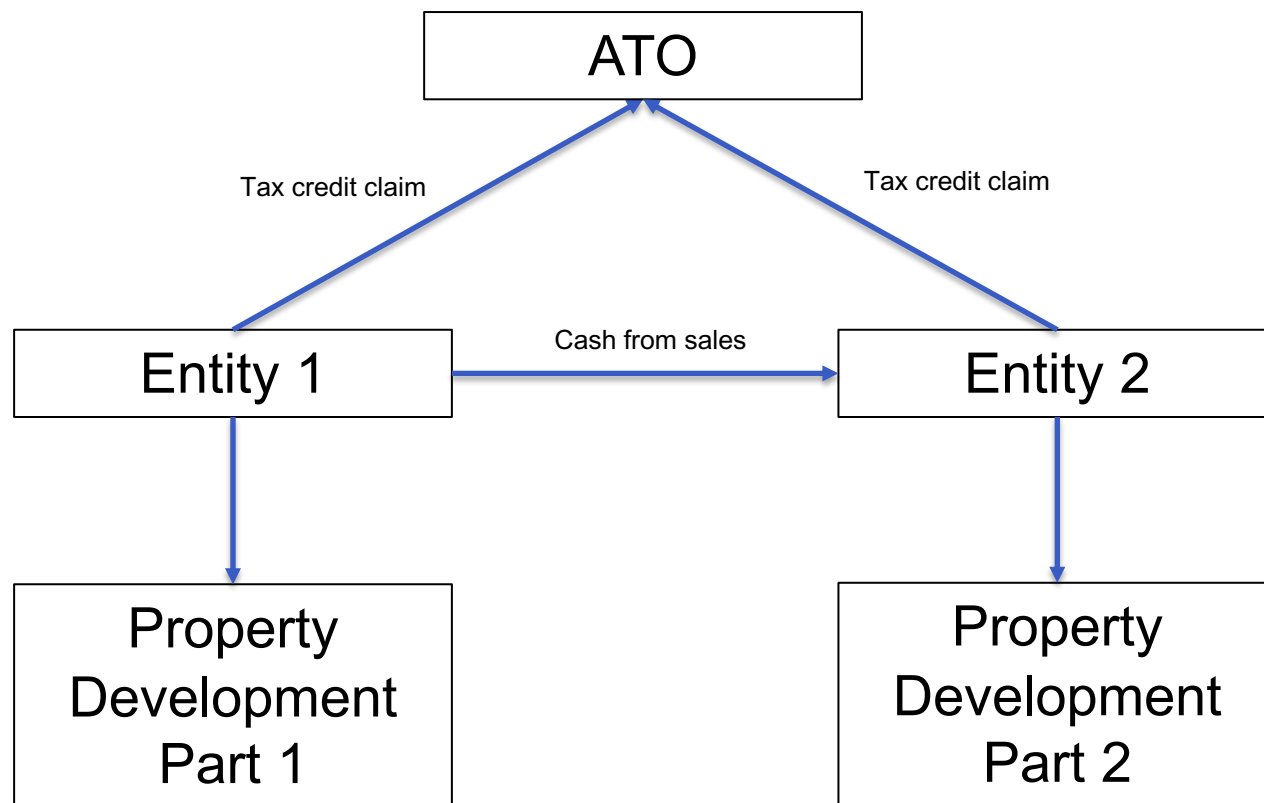
Tax Audit Response

- Internal Processes and Options for Staff
 - Profiling and Information collection (in one place)
 - Bank records and streamlined 3P information sources
 - Insurance data and other information that may indicate assets exist
 - Tax records are a critical source for others

Asset Recovery – Garnishee / Freezing order

- We can issue a garnishee notice to a person or business that holds money for the target, or may hold money for the target in the future. This requires them to pay the money directly to us to reduce debt.
- For individuals, we may issue a garnishee notice to:
 - employer or contractor
 - banks, financial institutions and building societies
 - people who owe money to the target from the sale of real estate such as purchasers, real estate agents and solicitors.
- Freezing order is a civil court order that can be granted if there is a liability to pay an amount to the tax authority and legitimate concerns around payment.

Asset Recovery – Case Study



1. Entity 1 claims GST credits during early stages of property development (e.g. construction costs).
2. Entity begins reporting sales, leading to net debt to ATO.
3. Entity 1 is put into liquidation with ATO debt written off. All cash from sales has been sent to second entity
4. Cycle commences again.
5. (In alternative) When GST at settlement measures commence, Entity 2 does not lodge at all.
6. Obtain freezing orders / garnishee



Asset Recovery – Improving the outcome

- Personal responsibility
- Proactive and early identification
- Bring forward payment, focus on registration and payment structures within tax regimes as well
- Seek security
- Co-operate between different agencies
- Financial transaction tracking
- Identification – local registers and domestic cross agency co-operation (e.g. titles offices), AUSTRAC and similar programs



Asset Recovery – Improving the outcome

- Collectability important – fund country development
- Effectiveness measures
- Pay attention to agency and legal structures, accountability
- Taskforce approach because of complementary capabilities needed – accounting, legal, investigative
- Information gathering for civil versus criminal – how to get information and how it can be used.
- Cross border issues and considerations
- Managing media and publicity, versus need for covert response at times



Asset Recovery

Break out 1

Scenario

A company carries on a construction business in your jurisdiction. It claims tax credits for construction supplies obtained, reports sales with a loss overall. It purports to have 100 staff that have wages paid. You receive a tip off that there is possible tax fraud.

In your groups, consider what information you would need, and how could it be obtained:

- to understand who is the controlling mind
- to understand what assets exist
- to understand where there may be tax or revenue fraud

Consider steps that could be taken to improve asset recovery.



CRIMINAL ASSETS CONFISCATION **TASKFORCE**



Session Objectives

- ❑ Overview of the *Proceeds of Crime Act 2002* (Cth) (POCA02)
- ❑ Op Bordelon case study – criminal and proceeds of crime investigations





The *Proceeds of Crime Act 2002* (Cth) applies to the whole of Australia ('POCA02').

The POCA02 is designed to reach criminals who profit from, but distance themselves from, the criminal act by not requiring a conviction in all cases – applies to assets under a suspect's control.



Criminal Assets Confiscation Taskforce ('CACT')





Principle objectives of POCA02 (s 5)

1. Deprive persons of proceeds of offences, instruments of offences, and literary proceeds derived from commercial exploitation of their notoriety;
2. Deprive persons of unexplained wealth amounts;
3. To punish and deter persons from breaching laws;

Principle objectives of POCA02 (s 5)

4. To prevent reinvestment of proceeds, etc in further criminal activities;
5. Undermine the profitability of criminal enterprises;
6. Provide tools to enable law enforcement to effectively trace proceeds, etc; and
7. Gives effect to Australia's international obligations under various international agreements relating to proceeds of crime.



What is “proceeds of crime”?

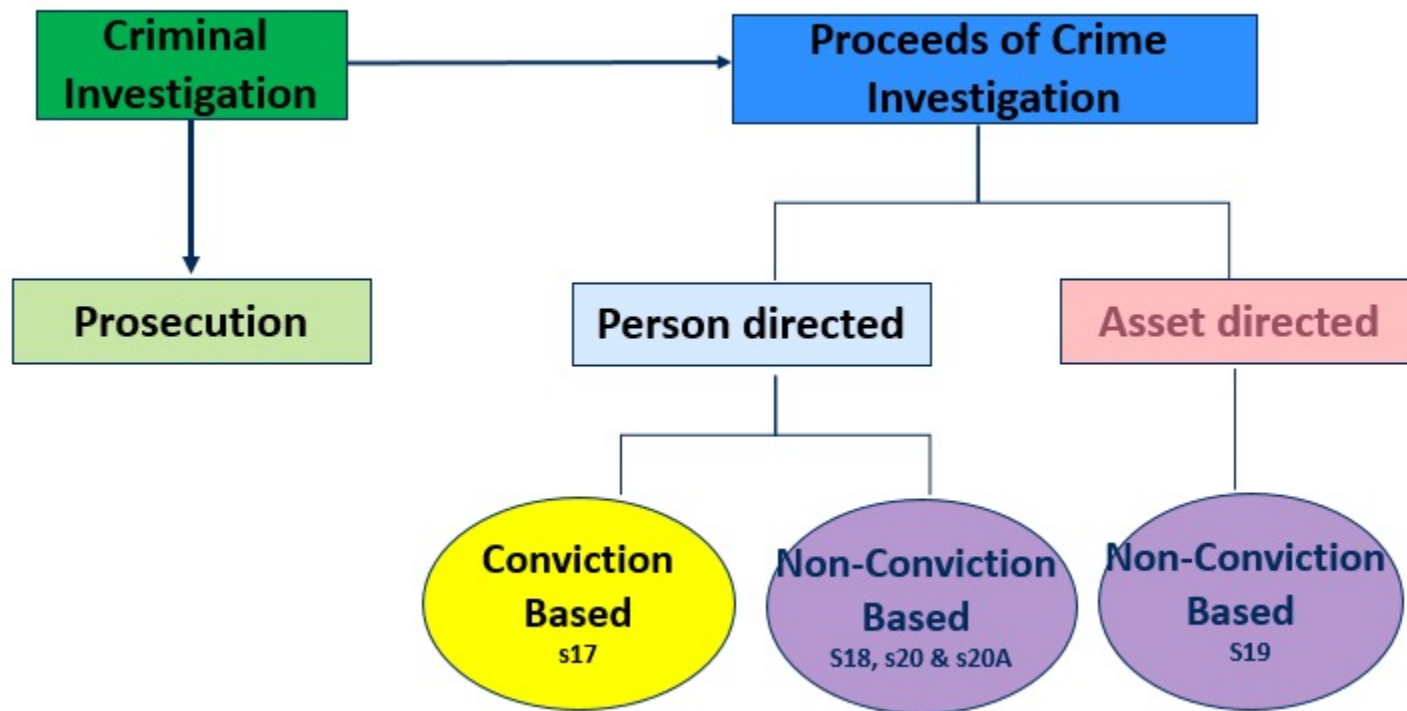
Proceeds = property that is wholly or partly derived, whether directly or indirectly, from the commission of an offence, whether it is situated within or outside Australia.

What is an “instrument of crime”?

Instrument = property used in, or in connection with, the commission of an offence, or intended to be so used, whether it is situated within or outside Australia.



Overview of investigation





Effective Control

- Includes property held for the ultimate benefit of a particular person.
- Includes property given away or gifted to others up to 6 years before we commence action.
- Can take into account family relationships, trusts, business relationships, company directorships and shareholdings.



Procedural matters

All confiscation actions taken under the *Proceeds of Crime Act 2002* are civil proceedings.....

- Standard of proof = Balance of probabilities
- Reverse onus



What do we need to start?

Serious offence = penalty is 3+ years imprisonment and the offending involves:

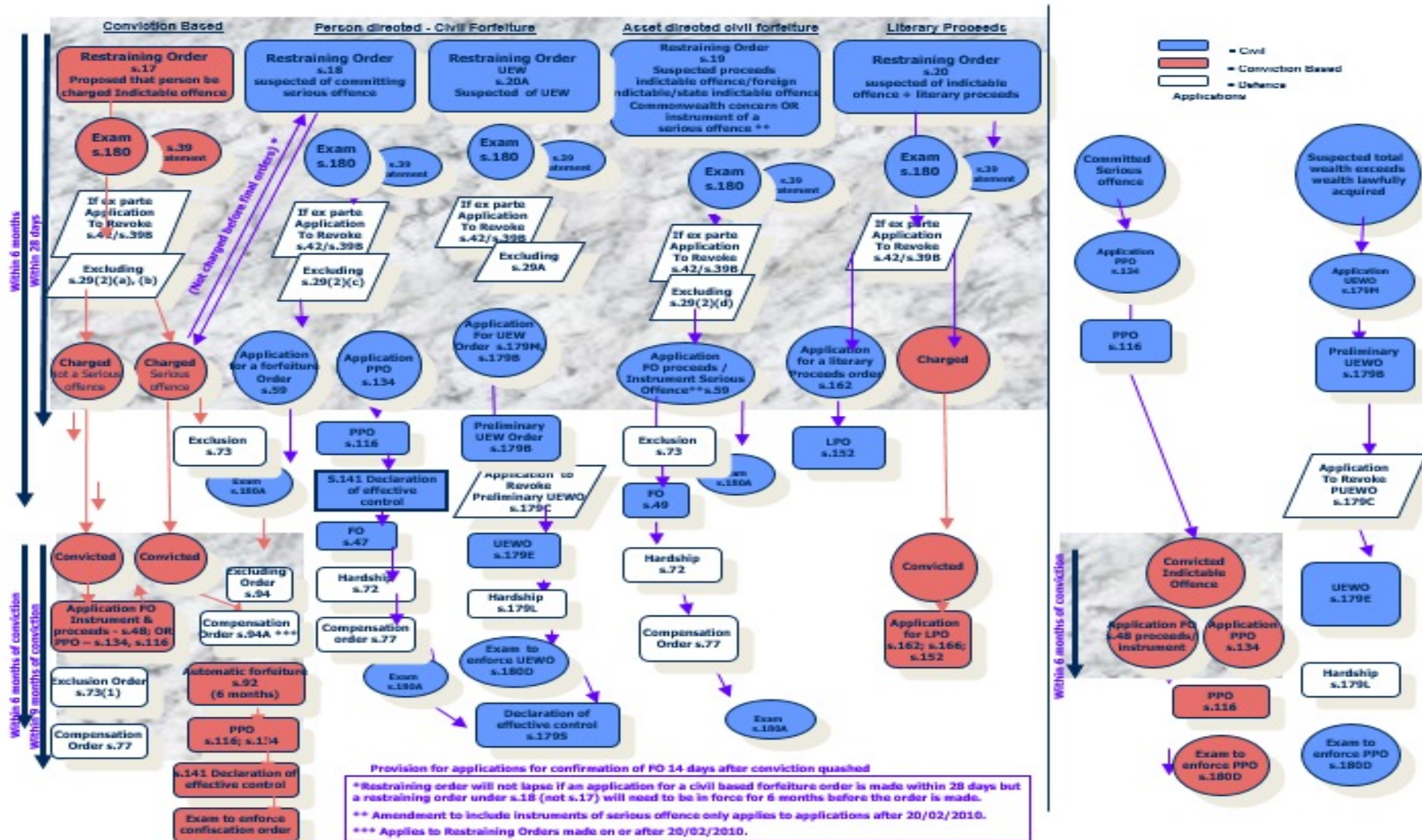
- a narcotic substance, serious drug offences
- money laundering offences
- people smuggling
- causing a loss to a person or the Commonwealth of \$10,000+
- terrorism



Asset Recovery

Discussion

Is there a similar framework in your jurisdiction?





Information Gathering Tools

Search Warrants – S 225

- RGTS Evidential Material or tainted property on premises in next 72hrs
- Issued by Magistrate
- *Evidential material* – evidence of property, benefits of an indictable offence or literary proceeds
- S 228 allows disclosure for criminal purposes

Disclosure of info obtained from these tools – S 266A

- Can disclose to investigators (Cth or State) or a foreign country: to assist prevention, investigation or prosecution of offence with 3yr+ penalty OR proceeds action
- Can disclose to ATO to protect public revenue
- Needs internal approval

DISCLOSURE PENALTIES CAN APPLY

Notices to Financial Institutions – S 213

- Identify accounts (*FI inc Casino and TABs*)
- Issued by AFP Senior Executive
- 14 day compliance
- Up to 6 months statements – POC purposes only

Production Orders - S 202

- Property Tracking Documents (*inc foreign off*)
- 14 day compliance, issued by Magistrate
- Used for gate-keeper body corporates, no LPP

Monitoring Orders - S 219

- RGTS person committing serious offence OR RGTS account being used for money laundering
- Issued by Judge

Examinations - S 180

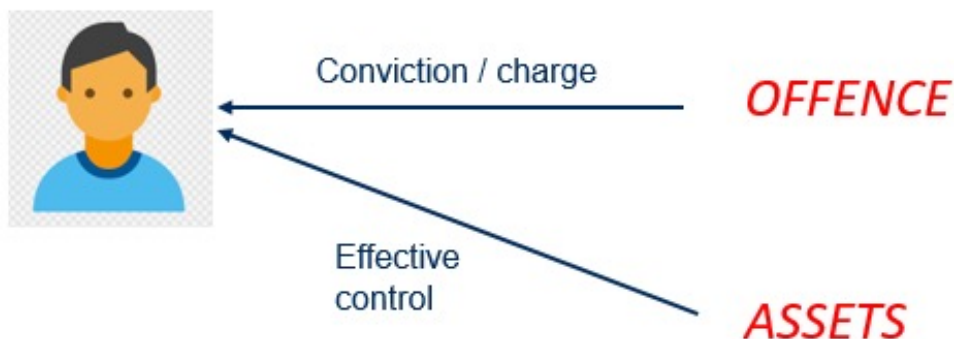
- Restraining Order in place
- Issued by Judge
- For person with knowledge of activity or assets
- Coercive – must answer, offences for not attending/ false information, *etc*

Restraint Options

**Conviction
Based**
s17

S17 – Conviction based, person directed

- person convicted or charged or proposed to be charged with *indictable offence* (court has no discretion if offence is a serious offence (3yr penalty))
- Person has effective control of property, it is proceeds or an instrument



Restraint Options

Non-Conviction Based

S18, s20 & s20A

S18 – Non-conviction based, person directed

- Reasonable grounds to suspect person has committed a serious offence (3yr penalty)
- Person has effective control of property, it is proceeds or an instrument



Reasonable grounds
to suspect

OFFENCE

Effective
control

ASSETS

Pecuniary
Penalty
Order

Restraint Options

Non-Conviction Based

S18, s20 & s20A

S20 – Non-conviction based, person directed – literary proceeds

- Reasonable grounds to suspect person has committed a serious offence (3yr penalty) AND they have derived literary proceeds relating to that offence
- Person has effective control of property, it is proceeds or an instrument



Reasonable grounds
to suspect

**OFFENCE + LITERARY
PROCEEDS**

Effective
control

ASSETS



Restraint Options

Non-Conviction Based

S18, s20 & s20A

S20A – Non-conviction based, person directed – unexplained wealth

- Reasonable grounds to suspect person has committed Cth offence or foreign indictable offence, etc AND person's total wealth exceeds their lawfully acquired wealth
- Person has effective control of property, it is proceeds or an instrument



Reasonable grounds
to suspect

**OFFENCE + TOTAL WEALTH > LAWFUL
WEALTH**

Effective
control

ASSETS

Restraint Options

Non-Conviction Based

S19

S19 – Non-conviction based, asset directed

- Reasonable grounds to suspect property is proceeds of indictable, foreign indictable offence, or an instrument of a serious offence – WHETHER OR NOT the identity of the person who committed the offence is known.



OFFENCE



Reasonable grounds
to suspect

ASSETS



Common Defences/Issues

The main 5 defences/excuses used by persons of interest in proceeds of crime and money laundering investigations include:

- ✓ Gambling
- ✓ Inheritance
- ✓ Gifts or loans from friends
- ✓ Accumulated savings or a cash hoard
- ✓ Sale of an asset



Management of Restrained Property

- Restrained property cannot be used to pay legal expenses
- Australian Financial Security Authority (AFSA) is our Official Trustee
- Under the Act AFSA manages all restrained property, when forfeiture order obtained has power to sell, etc
- AFP considers the kind of asset before deciding to restrain it – issues with:
 - Luxury cars
 - Ongoing businesses
 - Heavily indebted property



Use of Forfeited Funds

- Funds go to the Commonwealth Confiscated Assets Account
- Generally the relevant government Minister is the only one who can approve withdrawals from the account
- The Act (s 297) dictates what that money can be used for:
 - Equitable sharing with States
 - prescribed programs: law enforcement, crime prevention, treatment of drug addiction, drug use diversionary measures
 - Foreign orders
 - Legal Aid Commission expenses
 - Expenses relating to conduct of examinations



Asset Recovery

Break out 2

You now have more information about the company carrying on construction business in your jurisdiction. You have found out that the company is nominally owned by an accountant, but the beneficial owner is a member of an outlaw motorcycle club. A number of the employees are individuals that have left the country or are on short term visa and are unwilling to talk to authorities. Worker entitlements are actually being paid to associates of the club. The construction company has a range of equipment (under leases) and rents an office. Its bank account has a minimal balance with amounts that are paid in, paid out immediately.

Consider in your groups what the asset recovery options would be for this scenario? Consider the pros and cons of different methods.

Operation Bordelon

George ALEX



Shooting trip Royal commission figure

Alex linked to IS duo, says ABC program

Georgina Mitchell,
Marian Wilkinson,
Mario Christodoulou

Sydney construction industry figure George Alex went on a shooting party with Australia's two most infamous Islamic State recruits just weeks before they left to fight in Syria and Iraq, the ABC's *Four Corners* will reveal on Monday.

Mr Alex, who is under investigation by the Royal Commission into Union Governance and Corruption, went on a "shooting party" with Khaled Sharrouf and Mohamed Elomar, both members of the so-called Islamic State, last November at a property in the Blue Mountains.

According to the program, Mr Alex took the two men to a property near Lithgow less than a month before Sharrouf flew out of Australia on his brother's passport.

Speaking through his lawyer, Mr Alex said his late business partner Joe Antoun, who was allegedly murdered by members of the Brothers 4 Life gang, organised the trip, during which they did "very little shooting but had a big BBQ".

"Mr Alex was suffering from de-

pression and Joe thought an overnighter was in order" as a pick-me-up, the lawyer said.

Despite this assertion, police found large amounts of spent ammunition on the ground when they were called to the property at Glen Davis after reports of "excessive gunfire". Police said they also found Sharrouf pointing a gun straight ahead of him.

Sharrouf, who had no gun licence, refused to be interviewed and was given a notice to appear in Lithgow Court in December. By then he had left the country despite being on counter-terrorism watch lists around the world.

Mr Alex is under investigation by the union royal commission over his role in the construction business, and dealings with the Construction, Forestry, Mining and Energy Union. He is also expected to be targeted by a new police taskforce to investigate suspected ties between organised crime and union officials.

In August, Fairfax Media reported Sharrouf collected debts for Mr Alex and Joe Antoun in return for financial support, which included

arranging a home for him and his family.

Sharrouf's mother-in-law, Karen Nettleton, told the royal commission she thought he worked as a bodyguard and debt collector for Mr Alex. But Mr Alex denied this on *Four Corners*, saying he had never employed Sharrouf or Elomar and knew the pair through boxing.

Mr Alex's former girlfriend met Sharrouf at the airport the day he left for Syria, following Elomar, who left several days before.

Sharrouf went on to infamously photograph his seven-year-old son holding a severed head.

A spokesman for Immigration Minister Scott Morrison said rigorous new arrangements were being rolled out to tighten airport procedures and monitor national security watch lists.

'Mr Alex was suffering from depression and Joe thought an overnighter was in order.'

George Alex's lawyer

NSW CFMEU hires former drug dealer

David Mario-Guzman
Workplace correspondent

Construction, Forestry, Maritime, Mining and Energy Union state secretary Darren Greenfield has hired a convicted drug dealer as the union's new organiser in NSW, with rights to enter building sites.

The Fair Work Commission ruled on Tuesday that CFMEU organiser Simon Pasquale Gutierrez was a fit and proper person to enter workplaces as he had "changed his life for the better" after serving seven months in prison for dealing drugs.

Court records indicate the 23-year-old Illawarra man was charged in 2014 for supplying prohibited drugs other than cannabis on an "ongoing basis" and in a commercial quantity.

He was sentenced to 18 months' jail with seven months non-parole in February 2015 and had to pay more than \$18,000 from his drug proceeds as well as money from the sale of his BMW E60.

The CFMEU argued Mr Gutierrez's drug dealing was a "lapse of judgment" and should have little impact on the commission's assessment of his character.

Mr Gutierrez, who had pleaded guilty to the charges at an early stage and participated in a substance abuse

program, said he was "truly remorseful for his actions".

After his release from prison, he said that he had returned home to live with his mother, completed an apprenticeship and purchased an apartment in early 2017.

He said he was "trying every day to better himself for the future and that working for the CFMEU has given him the opportunity to change his life for the better".

Fair Work Commissioner Tony Saunders rejected the CFMEU's argument that drug convictions should not impact his decision on whether the organiser was "fit and proper" person to hold a right of entry permit.

"As a permit holder, Mr Gutierrez will have important rights and obligations under the Act he will need to use his judgment on a regular basis in exercising those rights and complying with those obligations.

"In my view, Mr Gutierrez's February 2015 convictions demonstrate a lack of sound judgment."

But he found the convictions were moderated because drug dealing was "a less serious offence" than those listed for refusing a permit, including fraud, dishonesty, property damage and violence against a person.

"Ultimately, the assessment to be made is not a punitive one aimed at continuing to punish Mr Gutierrez for his past wrongdoing," he said.

"I accept Mr Gutierrez's evidence that he has changed his life for the better and that his financial responsibilities are strong motivators for him to keep stable employment and comply with his obligations under [the Fair Work Act]."

Mr Greenfield took over the CFMEU state branch earlier this year when former secretary Brian Parker retired.

He previously faced the Trade Union Royal Commission in 2014 over allegations he received cash payments from underworld figure George Alex in return for "showing favour" to businesses associated with him.

Mr Greenfield denied taking payments from Mr Alex and said that he had pursued him for workers' entitlements.

Mr Greenfield was never charged with any wrongdoing.

Commissioner Saunders' decision came on the same day he granted a right of entry permit to another CFMEU NSW organiser Jesse Strand, despite his assault conviction.

The commissioner said Mr Strand had made "positive changes to his life" since punching two men on a night out drinking, in response to one of them spitting at his friend's sister in 2014.

Offences

Conspiracy to defraud s135.4(3) of the *Criminal Code* (Cth)

(3) A person commits an offence if:

- (a) the person conspires with another person with the intention of dishonestly causing a loss to a third person; and
- (b) the third person is a Commonwealth entity.

Penalty: Imprisonment for 10 years.

Dealing in proceeds of crime in excess \$1 million s400.3(1) of the *Criminal Code* (Cth)

(1) A person commits an offence if:

- (a) the person deals with money or other property; and
- (b) either:
 - (i) the money or property is, and the person believes it to be, proceeds of indictable crime; or
 - (ii) the person intends that the money or property will become an instrument of crime; and
- (c) at the time of the dealing, the value of the money and other property is \$1,000,000 or more.

Penalty: Imprisonment for 25 years, or 1500 penalty units, or both.

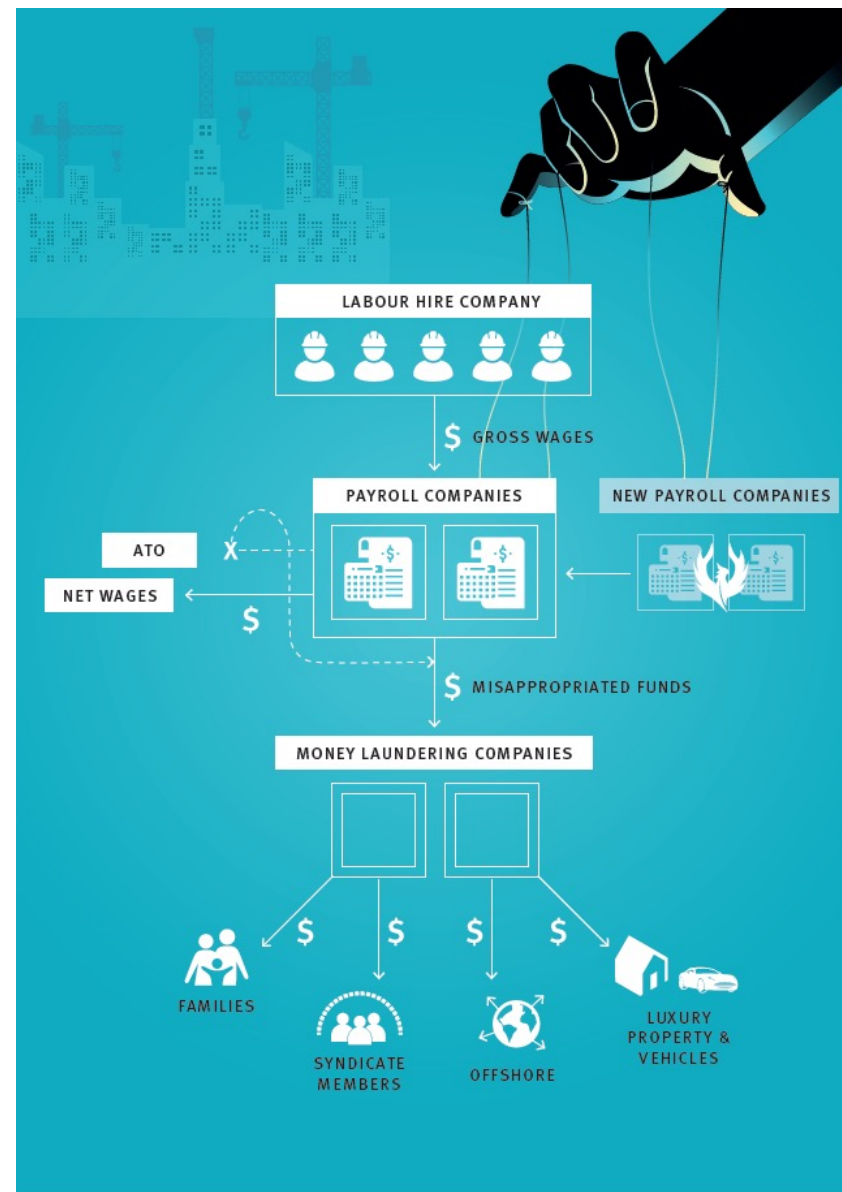


The Labour Hire Industry



The Investigation

- G.ALEX controlled the Tier One labour hire companies.
- The syndicate installed 'straw directors' in the Tier Two payroll companies.
- Proceeds of crime (PAYGW) remitted to Money Laundering companies.
- Approximately \$20 million in PAYGW and GST over 2018-2019, 2019-2020 FYs.





Gathering Evidence



Australian Government

Australian Taxation Office



The Money Laundering

- Proceeds of crime from the Tax Fraud was sent to:
 - G.ALEX family members;
 - The purchase of a penthouse apartment in the Gold Coast;
 - Range Rover vehicles;
 - Outlaw Motorcycle Gangs;
 - Organised crime families;
 - Privately held companies; and
 - Offshore Singapore entities.



Singapore



(SGP)
Permaform
Int
Licensing
Pte



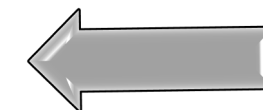
(AUS)
Proceeds of
Crime



(SGP)
Stanton
Oxford Pte



(AUS)
Adelphi
Finance



Resolution

Multiple arrests of alleged syndicate

From Page 1

money. The alleged principal, Mr Alex, 49, and his son were arrested at a leased waterfront home in Surfers Paradise. Also arrested close by was Mr Locciano, 50, while his wife Ms Rostron, was arrested at their five-bedroom home in Thompson Street, Earlowood.

The couple rent the house from 22-year-old Arthur Alex, who bought it two years ago for \$2.25 million.

As well as arrests, Operation Bordelon has frozen 65 bank accounts, two of them offshore, restrained 12 properties and seized 17 motor vehicles including three Range Rovers and a Porsche.

Police have alleged the syndicate used construction labour-hire companies and associated payroll operators to defraud the ATO by failing to remit pay-as-you-go tax payments and GST.

Mr Alex has remained an undischarged bankrupt since 2011 after his failure to provide information to his bankruptcy trustee. Evidence was given in 2015 at the Royal Commission into Trade Union Governance and Corruption that despite being bankrupt, Mr Alex controlled a number of labour-hire companies which were paying money to the Construction, Forestry, Maritime, Mining and Energy Union for favourable construction deals.

Ms Hall, a make-up artist, was wearing a white puffer jacket and grey tracksuit when she was taken away from her Greyness home in the early hours yesterday. Her \$300,000 Range Rover was seized.

Her husband Michael is serving a 80-year sentence for conspiring to import more than 1.7 tonnes of MDMA, the kilogram of cocaine and 15kg of methamphetamine. Money allegedly laundered



Clockwise from top: Caitlin Hall with Mick Ibrahim; George Alex was arrested on the Gold Coast; officers prepare to enter 24 Thompson Street in Earlowood, where Cheryl Rostron was arrested. Photos: Kate Geraghty

AFP nabs underworld associate and Ibrahim wife in fraud raid

Continued from Page 1

proceeds of crime. His 22-year-old son, Arthur, was arrested alongside him at the Surfers Paradise home, listed as renting for \$1600 a week.

Caitlin Hall, wife of drug kingpin Michael Ibrahim, was also arrested at her home at Grey-stanes in western Sydney on Tuesday as part of the operation, involving the AFP, ATO and the Australian Securities & Investments Commission.

Ibrahim was in May sentenced to 30 years' imprisonment for trying to import almost 1.8 tonnes of MDMA, 136kg of cocaine and 15kg of ice.

The AFP declined to comment on whether the raids were linked to previous investigations into Ibrahim.

A spokeswoman said the raids were "part of an ongoing organised crime investigation".

The trade union royal commission's final report in 2015 said there was a "substantial body of documentary evidence" to show George Alex and associate Joseph Antoun made regular \$2500 payments to Construction Forestry Maritime Mining and Energy Union organiser Darren Greenfield in 2013 and possibly earlier.

In return, Mr Alex, Antoun and businesses associated with them were alleged to have received special treatment from the CFMEU.

Businesses of Mr Alex and Mr Antoun were not treated as aggressively as they otherwise would have been when they owed workers money.

Antoun was shot dead by a hit-

man in front of his partner at their home in Strathfield in Sydney's west in December 2013.

The commission heard evidence that Mr Alex engaged in an elaborate "phoenixing" operation as the apparent principal behind labour hire companies supplying casual labour to building contractors.

Phoenixing involves companies going into liquidation with unpaid worker entitlements and liabilities to parties such as the ATO, then being succeeded by a new company and the process repeating.

In his evidence at the commission, Mr Alex said terrorists Khaleel Sharrouf and Mohamed Elomar regularly attended boxing training at his house, but he denied they were around for "muscle".

Commissioner Dwyer Heydon found Mr Alex's evidence about Elomar and Sharrouf being present for boxing "not credible", and that the two men were among a group that "formed a protective and somewhat intimidating protective circle around (Mr Alex)".

Mr Heydon referred Mr Alex, an undischarged bankrupt, to NSW police and the NSW DPP for possible offences under the Crimes Act.

"In the witness box, (Mr Alex) swung between charm, affability, anger, wild exaggeration and threats of violence," he said.

"One thing was constant: he was almost always unbelievable. He conveyed an impression of being a phoney. If not a crook, he was an associate of crooks."

Tuesday's raids are understood to be unrelated to the commission.



RICHARD DOBSON

Clockwise from main: George Alex is taken into custody at Surfers Paradise; Caitlin Hall at Surry Hills Police Centre; Hall with Michael Ibrahim

Asset Recovery

Break out 3

After working with your colleagues, you now know financial tracing of the funds from the fraud has been used to purchase cars, home and overseas travel for members of the club. There have been allegations that the club has engaged in threats against legitimate employees to ensure they do not talk to authorities. The club is engaged in illicit activities as well and the proceeds from these activities have been routed through the construction company bank account.

Consider in your groups how you could complete resolution of this case to ensure effective asset recovery? Consider what evidence you would require and could obtain through different methods.



Asset Recovery - Financial transaction tracking

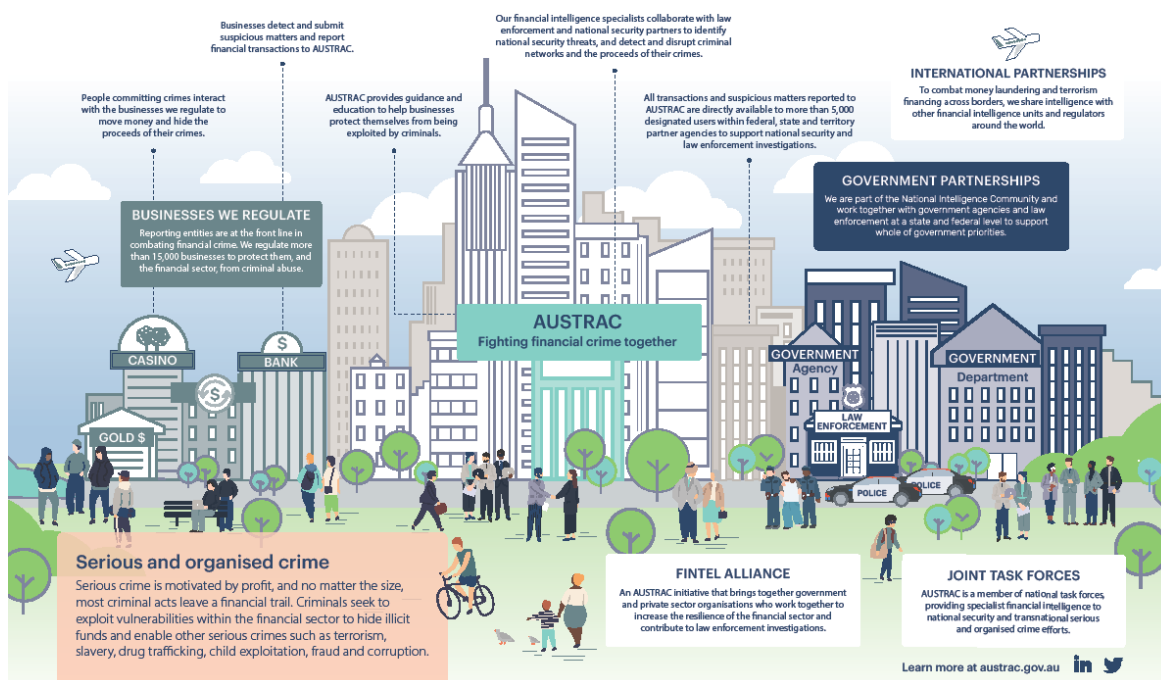
AUSTRAC

1. Regulation / governance / reporting
2. Intelligence
3. Investigation / Co-operation
4. FINTEL alliance (bring private partners into process)

Asset Recovery - Financial transaction tracking

How we work with industry and partners

AUSTRAC detects, disrupts and deters criminal abuse of the financial system to protect the community from serious and organised crime.



Link:

https://www.austrac.gov.au/sites/default/files/2020-05/AUSTRAC%20Infographic_how%20we%20work%20with%20industry%20and%20partners_New.pdf

Asset Recovery – Money Laundering

- Principle 7: Make Tax Crimes a Predicate Offence for Money Laundering

Money Laundering

- Money laundering involves hiding, disguising or legitimising the true origin and ownership of money used in or derived from committing crimes. It is an extremely diverse activity that is carried out at various levels of sophistication and plays an important role in organised crime.

Money laundering methods

- Money launderers often use the banking system and money transfer services. However they are imaginative and are constantly creating new schemes to circumvent the counter measures designed to detect them.
- Money laundering schemes may include moving money to create complex money trails, making it difficult to identify the original source and breaking up large amounts of cash and depositing the smaller sums in different bank accounts in an effort to place money in the financial system without arousing suspicion.

Asset Recovery – Money Laundering

Money laundering offences are set out in Part 10.2 of the Criminal Code and encompass a wide range of criminal activity.

- **Sections 400.3 to 400.8 of Criminal Code:** Dealing with money or property that is the proceeds of crime or intended to become an instrument of crime;
- **Section of the 400.9 Criminal Code:** Dealing with property reasonably suspected of being proceeds of crime.



Asset Recovery – Money Laundering

- Professional money laundering (PML) is a subset of third-party money laundering. The main characteristic that makes PML unique is the provision of services in exchange for a commission, fee or other type of profit
- PMLs can belong to three categories: (i) individuals, (ii) organisations or (iii) networks
- Advertising and marketing of services can be done in numerous ways. Often, this involves the PMLs actively marketing their services by ‘word-of-mouth’ (through an informal criminal network). Criminal links and trust developed through previous criminal engagement also strengthens bonds and can encourage further co-operation. Authorities have also identified the use of posted advertisements for PML services via the Dark Web

Asset Recovery – Money Laundering

- The Egmont Group is a united body of **166 Financial Intelligence Units (FIUs)**. The Egmont Group provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing (ML/TF). This is especially relevant as FIUs are uniquely positioned to cooperate and support national and international efforts to counter terrorist financing and are the trusted gateway for sharing financial information domestically and internationally in accordance with global Anti Money Laundering and Counter Financing of Terrorism (AML/CFT) standards.
- <https://egmontgroup.org/en>



Asset Recovery – Money Laundering

PUBLIC BULLETIN: MONEY LAUNDERING OF SERIOUS TAX CRIMES

A recent OECD study on international tax fraud show how sophisticated tax fraud schemes can be. Tax fraud is a crime that generates significant amounts of illicit proceeds and tax fraudsters have devised increasingly complex, transnational schemes that enables them to launder significant amounts of illicit proceeds. Serious tax crimes have significant corrosive effects on the ability of governments to use public finances for the benefit of society. They jeopardise fair economic competition, confidence in state institutions, and deprive public finances of billions every year. Tax crimes can also be connected to other financial crimes, such as corruption. Therefore, combatting serious tax crimes is of prime interest to society as a whole and a key issue, not only for tax authorities, but also for FIUs and, more broadly, law enforcement agencies (LEA) and the judicial system.

Asset Recovery – Money Laundering

BEST PRACTICES: TOOLKIT

- Facilitate effective cooperation between FIUs and tax authorities at the national level (e.g)
 - Improve the relationship between tax authorities and the FIU at national level:
 - Establish formal or informal agreement(s) between the FIU and tax authorities (e.g. MOU).
 - Promote public-public and public-private agreements at the national level.
 - Facilitate the presence of a liaison officer or secondments both in the FIU and in the tax authority.
 - Indirect access to tax administration's data without restriction is an important first step.
 - Direct access to tax data is more beneficial to all parties.
 - The secondment of tax officers to the FIU or employment of officers with a background in tax-related matters at the FIU.
 - Arrangement of regular meetings between the FIU and the tax authorities.
 - Provision of technical training for FIU officials in tax affairs from tax practitioners and/other professionals working in related areas.
- Establish national strategies to enhance the fight against ML of serious tax crimes
- International cooperation between FIUs is essential to fight ML of serious tax crimes



Asset Recovery – Money Laundering

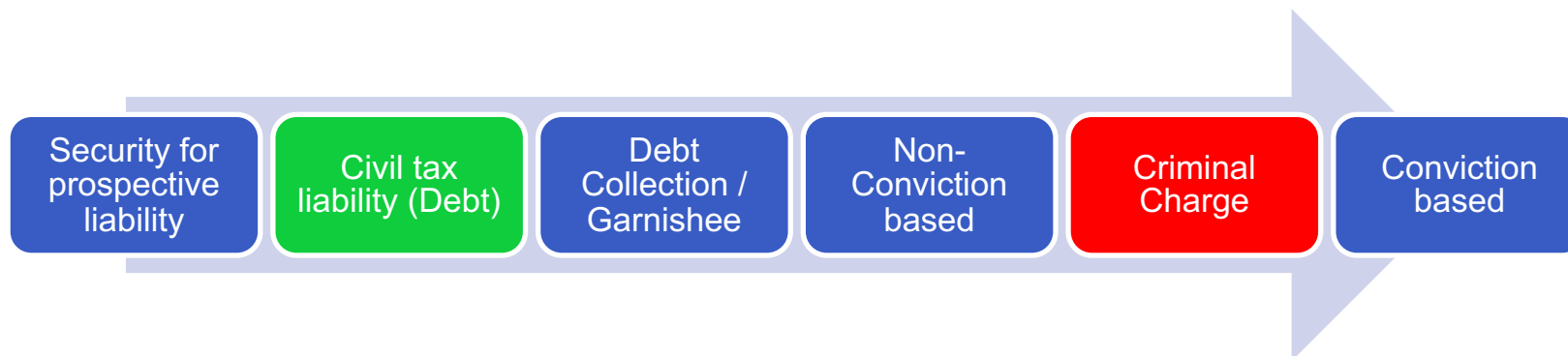
At some point in the structure, the client may be a victim of their own activities – they can't explain source of funds if the source of funds are hidden.

Money Laundering may be a primary issue or a pathway to recovery.

Asset Recovery

Break out 4

In your groups compare and contrast the different methods we have discussed.



Where does your agency/work fit into this process? How is the work you do, linked to other steps in the process?



J5 - Joint Chiefs of Global Tax Enforcement - Tackling Tax Crime Together

Andrew Smailes – Australian Taxation Office



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Discussion points

- The global scale of tax evasion crime
- J5 – Why Was It Established?
- J5 Priorities and Action Groups
- Current J5 Activity
- What the J5 will achieve?
- Potential future collaboration



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Tax crime is a global problem that needs a global solution.

The J5 was formed to lead the fight against international tax crime and money laundering, including tackling crypto-currency threats; targeting those who enable global tax evasion.

<https://tv.ato.gov.au/ato-tv/media?v=bd1bdiunhsxxm4>

Video – 2mins



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Discussion

- What bi-lateral or multi-lateral groups is your agency a part of?



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The ATO is focused on strengthening or relationships with tax agencies from many other countries through a number of OECD led initiatives including:

- OECD's Forum for Tax Administration
- OECD's Forum on Tax Crime
- OECD Taskforce on Tax Crime
- Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC)
- Joint Chiefs of Global Tax Enforcement (J5)



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- J5 Established in June 2018
- J5 is a commitment by Australia to improve international cooperation in fighting tax crimes, and was formed in response to the OECD's call to action for countries to do more to tackle the enablers of tax crime
- J5 comprises five countries that face common threats to their tax systems:
 - Her Majesty's Revenue & Customs (HMRC)
 - Internal Revenue Service Criminal Investigation (IRS-CI)
 - the Dutch Fiscal Information and Investigation Service (FIOD)
 - Canada Revenue Agency (CRA)
 - Australian Taxation Office (ATO)

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- Formed in July 2018 following a call to action from the Organisation for Economic Co-operation and Development (OECD) for countries to do more to tackle the enablers of tax crime.
- Since 2018, the J5 has made a concerted effort to join forces to tackle international tax crime. It's able to gather information, share intelligence at speed, conduct joint operations and build the capacity of tax enforcement officials.
- We may represent different countries, but we all share the same goal – our focus is on tackling tax and other financial crimes involving professional facilitators and enablers, cybercrime and cryptocurrency. We're also focused on building capability around data platforms that will help the work of each country now and into the future.

<https://tv.ato.gov.au/ato-tv/media?v=bd1bdiunhsxowx>

Video = 4min

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Mission:

Committed to combatting transnational tax crime and money laundering through increased enforcement collaboration

**Action Group 1:
Cyber / Crypto-Currency
Chair: US**

**Action Group 2:
Professional Enablers
Chair: AUS**

**Action Group 3:
Platforms, Data and Tools
Chair: NL**

**Action Group 4:
Media & Communications
Chair: US**

**J5 Coordination Group
Lead: AUS**



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Since its commencement the J5 has:

- identified dozens of tax evasion investigations, looking at international enablers with links to multiple J5 jurisdictions
- taken real action against cryptocurrency tax avoiders and emerging threats within the dark web, blockchain technologies and virtual currencies
- disrupted enabler of tax crime networks effecting J5 jurisdictions
- undertaken hundreds of data exchanges between J5 partner agencies, with new data exploitation technologies developed and new leads identified and shared
- developed platforms that enable each country to share information in a more organised manner



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Coordinated Law Enforcement Action Examples

- In early 2020 J5 countries participated in a globally coordinated day of action to put a stop to the suspected facilitation of offshore tax evasion.
- The action was part of a series of investigations in multiple countries into an international financial institution located in Central America, whose products and services are believed to be facilitating money laundering and tax evasion for customers across the globe.



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Coordinated Law Enforcement Action Examples

Operation Atlantis: The world's largest tax evasion probe

Video

11 Minutes



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JOINT CHIEFS OF GLOBAL TAX ENFORCEMENT

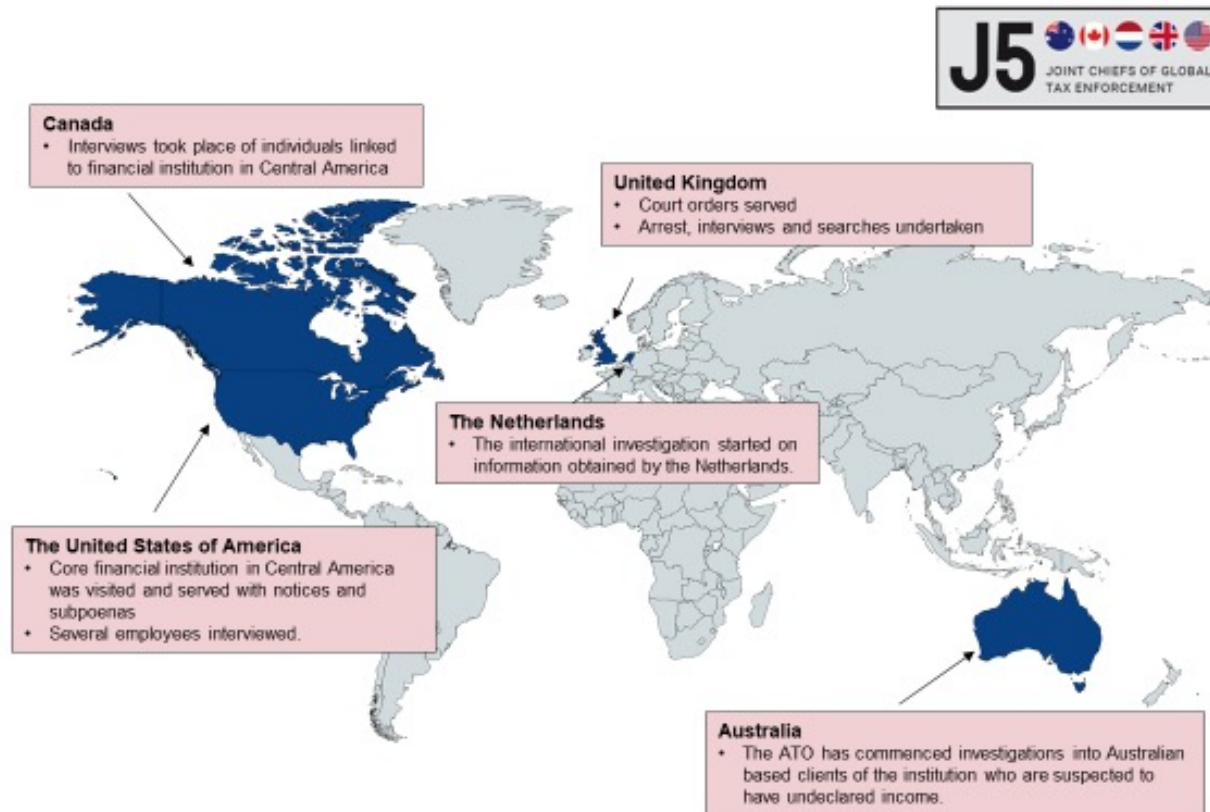
Sky Global executive and associate indicted for providing encrypted communication devices to help international drug traffickers avoid law enforcement

March 13, 2021

SAN DIEGO – A federal grand jury today returned an indictment against the Chief Executive Officer and an associate of the Canada-based firm Sky Global on charges that they knowingly and intentionally participated in a criminal enterprise that facilitated the transnational importation and distribution of narcotics through the sale and service of encrypted communications devices.

Jean-Francois Eap, Sky Global's Chief Executive Officer, and Thomas Herdman, a former high-level distributor of Sky Global devices, are charged with a conspiracy to violate the federal Racketeer Influenced and Corrupt Organizations Act (RICO). Warrants were issued for their arrests today.

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- FIOD hosted the first J5 “Challenge” in Utrecht in 2018 and brought together leading data scientists, technology experts and investigators from all J5 countries in a coordinated push to track down those who make a living out of facilitating and enabling international tax crime.
- In 2019, the U.S. hosted a second “Challenge” in Los Angeles and brought together investigators, cryptocurrency experts and data scientists in a coordinated push to track down individuals perpetrating tax crimes around the world.
- “Challenge” events held which have identified a number of leads including arrests in the Netherlands and USA.
- In 2020, Australia hosted after the J5 group executed a globally coordinated day of action against an international financial institution suspected of facilitating money laundering and tax evasion.



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JOINT CHIEFS OF GLOBAL TAX ENFORCEMENT

J5 countries host 'Challenge' aimed at FINtech companies

March 25, 2021

LOS ANGELES – The Joint Chiefs of Global Tax Enforcement (J5) brought together investigators, cryptocurrency experts and data scientists in a coordinated push to track down individuals and organizations perpetrating tax crimes around the world this week.

The event, known as 'The Challenge,' includes experts from each country with the mission of optimizing data from a variety of open and investigative sources available to each country, including offshore account information. Using various analytical tools, members of each country were put into teams and tasked with generating leads and finding tax offenders using cryptocurrency based on the new data available to them through The Challenge. Working within existing treaties, real data sets from each country were brought to the challenge to make connections where current individual efforts would take years to make those same connections.

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- J5 countries participate in OECD capability building activity via provision of instructors to the OECD Tax Crime Academy
- The United States and the World Bank hosted cyber training in Washington, DC in 2019 bringing together more than 120 international and domestic law enforcement partners from approximately 20 countries to address emerging areas associated with cybercrime, virtual currency, blockchain and the dark web
- Australia and The Netherlands are working with the World Bank to develop capability in the Asia-Pacific and Africa
- Development of public private partnerships through existing forums such as JIMLIT (UK) and Fintel Alliance (Australia)
- J5 countries have participated in the development of FCINet with a pilot testing between the US, UK and Australia.

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- Enhanced sharing and analysis of information within existing laws and regulations
- Improved international knowledge regarding the enablers of transnational tax crime, and use this knowledge to take effective action to disrupt these criminal attacks on global financial systems
- Leveraged data, information and technology systems to detect and deal with transnational tax crime and money laundering, and identify where these capabilities can be further enhanced
- Enhanced community understanding of the methods, weaknesses and risks from transnational tax crime



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Compared to JITSIC

- J5 has a narrower focus as it was formed in response to the OECDs specific request for countries to do more to tackle the enablers of tax crime
- The J5 is primarily an operational group conducting impactful joint operations across a small number of jurisdictions that face similar threats
- J5 will work with other countries and organisations wherever it is important and appropriate to do so to achieve operational objectives



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- The J5 is actively considering potential cross-overs with JITSIC including:
 - Data Leaks Group
 - EOI group
 - ATP database
 - Enablers



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What are some other potential areas where we could work together or share information?



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“The effectiveness and success of the J5 is underpinned by a strong understanding of the common risks and threats we face. By working together to identify and understand these issues, we are able to shape and strengthen our operational, tactical and strategic response to focus on those areas that cause the most impact. We’re tackling tax crime together”

Will Day Australian Taxation Office (ATO) Deputy Commissioner
and Australia’s J5 Chief