Money Laundering in Australian Casinos

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Introduction

Money laundering is a process that seeks to disguise profits from illegal activity, without compromising criminals who benefit from these proceedings. The value of money laundering worldwide is estimated to be two to five per cent of global GDP.[1] An Australian study conducted in 1995 estimated that AU$1-4.5 billion was laundered worldwide from the proceeds of Australian crime. An estimated AU$7.7 billion was brought into Australia from overseas for laundering.[2]

Money laundering is undertaken:

- to reduce the likelihood of prosecution for a criminal offence by reducing the evidentiary basis for establishing the commission of a crime;
- to make it appear that property has a legitimate source and is not forfeitable in the event of conviction for an offence.

Historically, licensed gambling operations have been identified as a potential mechanism for money laundering to occur. In Australia, the introduction of casino regulations sought to prevent money laundering and criminal activity in the casinos. This paper examines the mechanisms and procedures in place in Australia to deter and detect money laundering in the nation's casinos. In particular, it examines the ambiguities and problems raised by the recent media claims of money laundering at Star City Casino in New South Wales. It also briefly considers some implications of globalisation, and the advent of new forms of online gambling, for gambling regulators in relation to money laundering.

There are two main sources of money laundering which may be discerned in relation to Australian casinos. These are:

- the laundering of the proceeds of terrestrial crime within Australia;

[1] Michel Camdessus, Managing Director International Monetary Fund, 'Money Laundering: the Importance of International Countermeasures', address to the Plenary Meeting of the Financial Action Task Force on Money Laundering, Paris, Feb. 10 1998, p.1.

- the laundering of the proceeds of overseas crime, which are imported into Australia by legal or illegal methods.

This paper will concentrate entirely on the former, due to restraints of time and the currently topical nature of the subject matter. However, the latter should be considered to be highly complex and significant issue, which is likely to emerge as a major concern for crime agencies and casino regulators in the future.

The paper is based on a small project being conducted by the AIGR as part of a global research program into money laundering in casinos, funded by the United Nations Office of Drug Control and Crime Prevention, Money Laundering Programme.

Australian anti-money laundering measures

Australia is a member of the Financial Action Task Force (FATF) and as such uses FATF's '40 Recommendations' as the standard by which to measure anti-money laundering efforts.[3] Australia has developed an anti-money-laundering strategy with four main facets: (1) making money laundering a criminal offence; (2) establishing a system to trace cash and, later, other forms of transfer of value; (3) providing a means to deal with proceeds of crime; and (4) allowing for mutual legal assistance with other countries.[4]

Two international conventions provide the basis for the global definition of money laundering. The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, defines money laundering as:

- the conversion or transfer of property, knowing that such property is derived from any indictable offence or offences, for the purposes of concealing the illicit origin of the property or of assisting any person, who is involved in the commission of such an offence or offences to evade the legal consequences of his or her actions or

[2] John Walker 1995 'Estimates of the Extent of Money Laundering In and Throughout Australia', Austrac, http://www.austrac.gov.au/publications/moneylaundestimates/index.html.
[3] Financial Action Task Force on Money Laundering, 'The Forty Recommendations', http://www.oecd.org/fatf/pdf/40rec-en.pdf.
[4] Adopted in the Commonwealth *Proceeds of Crime Act 1987*, *Financial Transactions Reports Act 1988* and *Mutual Assistance in Criminal Matters Act 1987*. See AUSTRAC 2000, *An Overview of Australia's Anti-Money Laundering Strategy*, May.

- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an indictable offence or offences or from an act of participation in such an offence or offences.[5]

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime similarly defines money laundering, in part, as: "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of property known to be derived from an indictable offence".[6]

Australia, in ratifying both these conventions, was thus obliged to criminalise money laundering to fulfil international obligations. This obligation was satisfied with the passing of the Commonwealth *Proceeds of Crimes Act 1987* (POC Act). The POC Act included two money laundering offences, section 81 (money laundering) and section 82 (possession etc of property suspected of being proceeds of crime).[7] These sections provide powers to freeze assets and confiscate them following a conviction. Section 81 imposes a maximum penalty of a $200,000 fine or 20 years imprisonment (or both) for a person, and a $600,000 fine for a body corporate. Parallel proceeds of crime legislation have been passed in New South Wales, Victoria and Queensland.[8]

Under these Australian laws, enforcement is the responsibility of state and federal police, in collaboration with, and acting on strategic advice from, national crime agencies such as Australian Transactions Reports and Analysis Centre (AUSTRAC) and the National Crime Authority (NCA). Enforcement agencies have to prove the predicate offence as well as the laundering offence - and arguably the intention to conceal the illicit origins of the property. These requirements present considerable evidentiary problems for law enforcement officials, making it difficult to obtain convictions by the courts. Victorian and NSW state legislation, unlike Commonwealth

[5] *Australian Treaty Series 1993* No 4 UNTS art 3(1)(b).
[6] ETS No 141 art 6.
[7] Property is defined broadly so as to include corporeal and incorporeal, moveable or immovable property, legal documents or instruments, evidencing title to or interest in property.
[8] However, there remains some debate about what constitutes 'proceeds of crime'. For example, tax avoidance is not specified in this definition, however it can be argued that non-payment of due taxes is indeed a crime, and any attempt to conceal this fact by conversion or transfer of untaxed income, (for example, by gambling the money, or by transfer to an offshore account), is money laundering.

legislation, allows for the civil burden of proof, (on the balance of probabilities), in relation to the predicate offence. In all cases, however, the money laundering would still need to be proven.

The second legislative pillar of Australia's anti-money laundering strategy are the requirements of the *Financial Transactions Reports Act 1988* (FTR Act), which makes it compulsory for all financial institutions to routinely report defined transactions to the Australian Transaction Reports and Analysis Centre (AUSTRAC).[9] For the purposes of the FTR Act, casinos, bookmakers and other gambling operations are classified as 'cash dealers' along with mainstream financial institutions. Defined transactions that must be reported are significant cash transactions ($10,000 and over), all international transfers and any "suspicious transactions". The Act empowers AUSTRAC to conduct desk audits of the information received in these reports to identify law enforcement concerns. AUSTRAC then provides strategic financial intelligence to crime agencies and task forces.

The Australian Tax Office (ATO) has online access to the AUSTRAC transaction database and is its heaviest user.[10] Tax evasion is equally part of the deterrent objectives of the FTR Act, which has prompted some officials to argue that the definition of money laundering be broadened to include tax evasion. The ATO has wide ranging powers that can be used to investigate money laundering in casinos. For example, under s270 of the *Tax Act*, the ATO can require the casino to provide surveillance tapes, casino records, audit statements, etc.

Australian casinos and money laundering

Australian casinos have not been identified by crime agencies as a major source of money laundering.[11] Indeed, money laundering through Australian casinos is acknowledged to be a very small part of the overall volume of money laundered. However, money laundering is nevertheless seen as a significant regulatory issue

[9] AUSTRAC is recognised as a Financial Intelligence Unit (FIU) that satisfies criteria contained in the OECD Egmont Group definition of FIU.
[10] AUSTRAC, Annual Report 1999-2000, AUSTRAC, Sydney.
[11] The main concerns for Australian crime agencies regarding money laundering include online banking, banking secrecy, alternative remittance schemes, company formation agents (off-shore legal entities), and trade related money laundering.

stemming from casino regulators legislated responsibility to keep casinos free of criminal activity.[12]

Casino regulation in Australia is fragmented, with different structural arrangements and processes in each state and territory jurisdiction. Casinos were introduced in three distinct 'waves' of development in the 1970s, 1980s and 1990s, each with larger and more complex casino facilities and more comprehensive regulatory regimes to control them.[13] Since the first Australian casino, Wrest Point in Hobart, opened in 1973, surveillance has been an important component of Australian casino regulation, with on-site government inspectorates watching over casino operations at all times. At each new period of casino development, state governments adopted progressively more comprehensive surveillance systems and audit trails.

In recent years, however, regulatory access to improved computer systems and pressure to reduce public spending have combined to effect a shift away from casino surveillance towards computerised auditing. This change in regulatory priorities has been part of a general trend in public sector management towards risk management and cost effectiveness. The Northern Territory government has gone further than any other Australian jurisdiction, withdrawing the on-site inspectorate from one casino altogether. The Darwin casino reports on its activities to government regulators located in city premises. Further reduction in resource commitment to on-site surveillance or increased reliance ion the auditing approach is likely to have adverse implications for the detection of suspected money laundering activities in casinos.

It is important to note that the potential for money laundering activity varies between Australian casinos. Economies of scale are important, with regulators of larger casinos often giving greater weight to surveillance as an essential regulatory tool against money laundering.[14] Substantial money laundering is not likely to occur

[12] See for example the objectives of the New South Wales Casino Control Authority (CCA) specified in Section 140 of the New South Wales *Casino Control Act 1992*.
[13] Jan McMillen 1996 'Perspectives on Australian gambling policy: changes and challenges', in *Towards 2000: The Future of Gambling*, proceedings of the 7th National Association for Gambling Studies Conference; Productivity Commission 1999, *Australia's Gambling Industries*, Report No. 10, AusInfo, Canberra, Vol. 2:22.1-22.7.
[14] When considered purely on the basis of size of casino gambling turnover, the only Australian casinos considered to be viable sites for substantial money laundering activity are Burswood (Perth), Crown (Melbourne), Jupiters (Gold Coast), Star City (Sydney) and Treasury (Brisbane).

undetected in a small casino where the spending of large amounts of cash would be obvious to casino staff and government inspectors. Small casinos also tend not to attract high-rollers and are reluctant to accept large bets.

Casino operations in Australia were integrated into Australia's anti-money laundering strategy following the classification of casinos as 'cash dealers' under the FTR Act. The various jurisdictions' regulatory regimes are linked to the anti-money laundering strategy through the cooperative arrangements whereby relevant crime and law enforcement agencies make use of casino surveillance facilities. Casino regulators are thus not direct participants in the Australian anti-money laundering strategy. Casino regulators are not classified as crime agencies under the FTR Act and do not receive details of financial transaction reporting from AUSTRAC.

Suspected money laundering in casinos is detected in two main ways:

- through surveillance on-site;
- through financial intelligence gathered by AUSTRAC.

In the instance of detection of suspected money laundering activity by on-site surveillance, the activity is reported to the appropriate law enforcement, depending on customary arrangements in each jurisdiction. In NSW, the Director of Casino Surveillance (DCS) reports suspected money laundering to the NSW police and also to the NSW Casino Control Authority (CCA). Information reported to police is likely to be shared with crime agencies through the task force mechanism.

In the instance of detection of suspected money laundering through financial intelligence, the initial information comes from casino operators identifying and reporting significant and suspicious transactions by casino patrons to AUSTRAC. Information regarding the suspected money laundering activity is then shared with crime agencies and law enforcement bodies through the task force mechanism. Investigation of suspected money laundering may be initiated at this point in the process. Casino regulators cooperate with the enforcement agencies in money laundering investigations but do not become directly involved. Police also place high

value on casino surveillance for the opportunity it provides to gather criminal intelligence.

Star City and the high roller: a money laundering case study?

Despite the interstate variations and changing strategies, over the years Australia has established an international reputation for effective casino regulation, avoiding many of the scandals and regulatory failures that have occurred in overseas casinos. Yet occasional media reports have continued to claim that some Australian casinos were the focus of money laundering, loan sharking and other criminal activities. Most recently, an edition of the ABC-TV current affairs program *Four Corners* reported cases of money laundering involving Sydney's Star City Casino. One patron, currently serving a prison sentence for heroin trafficking, had allegedly recorded a gambling turnover of over AU$94 million in six months play in the Star City's Endeavour Room for premium players.

The patron, who owned a modest food shop in a Sydney suburb, was under surveillance by police at the time of this high level gambling activity. Clearly, the volume of funds gambled by this individual were well in excess of what could be earned from his legitimate business activity and were believed to be derived from illegal activity. This individual's gambling at Star City could therefore be construed as suspected money laundering. The NSW Police Commissioner subsequently banned this person from the Star City Casino, as one of approximately forty-five individuals with known criminal connections who were banned simultaneously. However, the gambler was reported to have simply transferred his gambling interstate to casinos in Queensland and Victoria.

In an interview carried in the *Four Corners* programme, opinions were expressed by the Chairperson of the NSW Casino Control Authority stating regret that revenue from gambling was being lost to other states through the Police Commissioner's decision to institute casino bans. These comments resulted in the Premier's immediate request that the Chairperson resign.[15] Some commentators speculated that this was a case of dismissal for 'telling the truth', arguing that one rationale for establishment of

[15] ABC-TV 2000, "Winner Takes All", *Four Corners*, 24th April; ABC-TV 2000, *Stateline*, 28th April.

the Sydney casino was to capture the illegal gambling market and thus generate tax revenue. Others speculated that the Police Commissioner had merely exported a crime problem and that removing such individuals from the casino hampered serious crime agency intelligence activity.

The Star City case, however, highlights several contradictory aspects of anti-money laundering strategy particularly in relation to the regulation and operation of Australian casinos. I will briefly highlight several of these issues without pretending that this list is exhaustive.

- A clear weakness in the system is the reporting of 'suspicious transactions' by casino operators and staff. Compared with banks and other financial institutions, AUSTRAC reports that the number of suspicious transactions reported by casinos is low. There is a fine balance for casino operators between the public and private interest. Commercial casinos understandably aim to maximise their profits by attracting regular patronage from high-spending gamblers. Often these valued customers also establish relationships with casino hospitality staff, and dealers, in what is a service industry where the clients wishes are paramount, so that what might otherwise appear to be 'suspect' behaviour becomes accepted as 'normal'. In such circumstances, questions also must be asked about the willingness of casino management to respond to staff concerns about a patron's spending. This highlights the professional difficulties arising for casino staff who must satisfy their employer, the client and the requirements of the FTR Act (in that order!). Not surprisingly, lowering scrutiny of patron transactions is the simplest option for employees in this situation, whilst staff training may also be an issue in this regard.

- The casino regulator's role in relation to anti-money laundering strategies appears to be contradictory. The NSW Casino Control Authority (CCA) accepts the conventional Australian view that anti-money laundering strategies are a function of crime agencies and police. However, as in many other states, legislation charges the CCA with keeping the casino free of criminal activity and with

protecting the public interest.[16] Even if a narrow interpretation is made of the former regulatory objective, insofar as it refers to general crimes occurring on the casino site rather than the laundering of money obtained elsewhere, it can be argued that the public interest requires the CCA to also ensure that the state's casino is not used for money laundering purposes.

- The lack of clarity about the casino regulator's role is further complicated in NSW by the unique regulatory system operating in the state. Casino surveillance is the responsibility of the Director of Casino Surveillance (DCS), who supervises casino inspectors employed by the Department of Gaming and Racing (DGR). Thus the DCS has dual responsibility to both the CCA and DGR, a situation which has been criticised in two independent inquiries (IPART 1998; Audit Office 1998).[17] Despite its specialist function in casino surveillance, the DCS has no direct input into the reporting of suspected cases of money laundering. Moreover, as part of a general cut-backs in public sector spending, casino inspectorate staff levels were drastically reduced in the 1999 state budget. The Star City case prompted questions about the resources and role of DCS in casino surveillance.

- Different opinions emerged over the most appropriate response to suspicious transactions by casino patrons. One view (common in Australia) is that the transactions should not be stopped, that there is criminal intelligence value in allowing the patron to proceed so that financial activities can be tracked and evidence gathered. The alternative view is to ban the patron from the casino. This highlights a broader and very significant issue regarding anti-money laundering strategy and casinos. The question is whether the true value of the legislated anti-money laundering strategy, in combination with casino surveillance as part of casino regulatory regimes, lies in the gathering of criminal intelligence rather than potential prosecution of individuals for money laundering offences.

- The variation between anti-laundering regimes in different states has revived earlier criticisms that Australian gambling regulation is fragmented and at times

[16] New South Wales *Casino Control Act 1992.*

inconsistent. The lack of a consistent national approach by casino regulators and operators to suspicious transactions means that a person banned in one state is often gladly accepted in another casino, thus 'exporting' the problem elsewhere.

The Star City money laundering case threatens to seriously erode public confidence in Australia's casino regulations. Ironically, the regulatory system in place at Star City casino is arguably the most comprehensive in the nation. This certainly was the intention of policy makers at the time of legalisation. The NSW government has indicated it will review and amend legislation to address any shortcomings in the current system. The CCA has also extended its three-yearly review of the casino licence, appointing an independent investigator to specifically examine reports of money laundering. Two obvious reforms would be to improve information sharing between states and to establish reciprocity agreements preventing patrons banned from one casino for criminal or suspicious activities from simply moving to another venue.

At a general level, it appears that there are many weaknesses in the anti-money laundering strategy as it relates to casino regulation arising from different aspects of the overall structure and process. At the level of the anti-money laundering legislation:

- there are evidentiary difficulties under the POC Act in relation to prosecuting money laundering offences, particularly the requirement to also prove the predicate offence from which proceeds being laundered were derived;
- there is a question as to whether gambling with untaxed income (tax evasion) should be regarded as money laundering under the definitions contained in the POC Act;
- there are compliance problems in terms of maintaining an appropriate level of scrutiny leading to reporting of 'suspicious' transactions in casinos under the FTR Act.

In terms of the anti-money laundering process in casinos issues include:

[17] Independent Pricing and Regulatory Tribunal of NSW (IPART) 1998 *Report to Government: Inquiry into Gaming in NSW*, November; New South Wales Audit Office 1998, *Performance Audit Report, Casino Surveillance*, NSW Audit Office.

- increased resource pressure in crime agencies and other regulatory bodies;
- the considerable investment of time (and resources) needed for effective surveillance to follow the money trail;
- the discretionary interpretation and reporting of 'suspicious' transactions in casinos;
- the 'trade-off' between criminal intelligence and casino regulation in allowing known criminals to frequent and/or undertake suspected money laundering activity in Australian casinos
- a lack of clarity regarding the place of casino regulators within the anti-money laundering strategy as it relates to suspected money laundering in Australian casinos.

Emerging issues

With the rapid globalisation of the gambling industry during the 1990s, international money laundering has become a growing concern for gambling regulators and crime agencies alike. The expanding and highly competitive market for junket and premium players, particularly from Asia, and the rapid emergence of online gambling have accelerated the rate of international financial transactions, increasing the potential for Australian gambling operations to become the focus for money laundering. The Asian Pacific region generates proceeds from crimes including trafficking in human beings, illegal narcotics, illegal gambling, organised crime and large-scale fraud and corruption.[18]

Large amounts of money are remitted to Australian casinos from overseas financial institutions. Some of this is suspected to be proceeds of illicit activities. Crime agencies argue that it is relatively simple to launder money using a series of financial institutions and a foreign casino. They argue that some overseas visitors to Australian casinos are able to exploit preferential tax rates and playing arrangements. Competition between the various states for the lucrative casino market enhances the bargaining position of international players with large sums to gamble. Alternative remittance schemes (southern Asian hawala/hundi systems and Chinese East Asian

[18] FATF 2000, *Report on Money Laundering Typologies 1999-2000*, OECD, Paris.

systems) evade foreign currency controls, virtually eliminating the audit trail of suspected money laundering activity altogether. The extent to which Australian casinos play a role in the processing or funds derived from such activities overseas is an area that is likely to require increased attention in the future.

There are indications that the problems have been recognised in some quarters and steps are being taken to address the issues. Australia and other Asia Pacific members of the United Nations Financial Action Task Force (FATF) are leading efforts to extend the money laundering regime to as many jurisdictions in the Asian Pacific region as possible.[19] In the last two years, several countries in the region have moved towards establishing an anti-money laundering framework and have formed a regional anti-money laundering grouping the Asia/Pacific Group on Money Laundering (APG).[20]

Another area of emerging concern stems from technological advancement and the burgeoning online economy. In submissions to the Senate Select Committee's inquiry into online gambling, the National Crime Authority (NCA) stressed that online technology had escalated and magnified problems associated with financial fraud and suspect transactions. In Australia, current legislation does not deal with the issue of online transactions adequately. In the words of the NCA, it is “a legislative mess”. A representative of the NCA gave the Senate Select Committee several examples of how money laundering can occur through online gambling operations.[21]

The Senate Select Committee on online gambling also recommended that state gambling authorities work with the NCA, AUSTRAC, the National Office of Information Economy (NOIE), the National Electronic Authentication Council

[19] Asia Pacific nations that are members of the Financial Action Task Force on Money Laundering (FATF) are Australia, Hong Kong China, Japan, New Zealand and Singapore.

[20] Established in 1997, membership of the APG is open to any jurisdiction within the Aisa Pacific region which: recognises the need for action to be taken to combat money laundering; recognises the benefits to be obtained by sharing knowledge and experience; and has taken or is considering taking steps to develop, pass and implement anti-money laundering legislation and other measures based on accepted international standards. Membership of the APG, as at June 2000, is Australia, Bangladesh, Chinese Taipei, Fiji, Hong Kong China, India, Indonesia, Japan, Malaysia, New Zealand, Pakistan, People’s Republic of China, Republic of Korea, Republic of the Philippines, Samoa, Singapore, Sri Lanka, Thailand, United States of America and Vanuatu.

[21] Senate Select Committee on Information Technologies 2000, *Netbets: A review of online gambling in Australia*, Commonwealth of Australia, Canberra.

(NEAC) and international agencies to prevent money laundering through online gambling. With the recent proliferation of online gambling licences in several states, it is imperative that Australian gambling regulation is quickly integrated into international strategies on money laundering. This is an emerging global problem that requires global solutions.