Money Laundering

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Money Laundering in the 21st Century: Risks and countermeasures
edited by Adam Graycar and Peter Grabosky

Money Laundering in the 21st Century: Risks and Countermeasures

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Glossary

ACS	**Australian Customs Service**
AFP	**Australian Federal Police**
AIC	**Australian Institute of Criminology**
ASC	**Australian Securities Commission**
ATO	**Australian Taxation Office**
AUSTRAC	**Australian Transaction Reports and Analysis Centre**
BITS (Australia)	**Bank Interchange and Transfer System**
CTIF (Belgium)	**Celule de Traitement des Informations Financiers**
E-cash	**electronic money**
EDI	**electronic data exchange**
FATF	**Financial Action Task Force**
FinCEN (US)	**Financial Crimes Enforcement Network**
NCA (Australia)	**National Crime Authority**
NCIS (UK)	**National Criminal Intelligence Service**
OSCA (Australia)	**Office of Strategic Crime Assessments**
RBA	**Reserve Bank of Australia**
SCOCCI (Australia)	**Standing Committee on Organised Crime and Criminal Intelligence**
SVC	**stored value card**
TRACFIN (France)	**Traitement du Renseignement et Action Contre Les Circuits Financiers Clandestins**

Foreword

PETER GRABOSKY AND ADAM GRAYCAR

The term "money laundering" is used to describe the process by which the proceeds of crime ("dirty money") are put through a series of transactions which disguise their illicit origins, and make them appear to have come from a legitimate source ("clean money").

Money laundering is of great concern to law enforcement agencies, and for very good reason. The complex criminal activity which generates "dirty money", whether drug trafficking, arms smuggling, corruption, or other offences, are often extremely difficult to detect. Accordingly, finding and following the "money trail" has been a basic strategy to combat sophisticated crime. Success in money laundering means that detection of the predicate offence, and the identification of the offender, become that much more difficult.

A common strategy for concealing the proceeds of crime entails their investment in and commingling with the assets of legitimate business. Not only can legitimate business provide a convenient cloak or cover for further criminal activity, but the enterprise itself can be exploited and its assets stripped for personal gain, at the expense of investors and creditors. Australia's reputation for commercial honesty could be tarnished by criminal infiltration of legitimate business, with attending consequence for our overall economic well-being.

At the extreme, smaller economies can be seriously distorted by the infiltration of criminal assets, to the extent that the political stability of a smaller state may be threatened.

Australia has emerged as a world leader in systems for the prevention and control of money laundering. The Australian Transaction Reports and Analysis Centre (AUSTRAC) exemplifies international best practice in the monitoring of financial transactions for law enforcement purposes. Australia has chaired the Financial Action Task Force (FATF), the international organisation created in order to facilitate cooperation.

In September 1995, John Walker prepared some estimates for AUSTRAC on the extent of money laundering in Australia—the first attempt, to our knowledge to make such estimates. The Directors of the Australian Institute of Criminology (AIC), the Office of Strategic Crime Assessments (OSCA), and AUSTRAC decided to explore the issue further, and hence the conference on money laundering held in Canberra in February 1996, sponsored collaboratively by the three organisations.

Despite Australia's achievements to date in the battle against sophisticated crime, formidable challenges remain. Few of us need reminding that we live in an era of dramatic technological change. While the information revolution will create new opportunities for many of us, it will also create opportunities for the criminal. The technology of money laundering has evolved dramatically from the labour

intensive "smurfing"[1] of two decades ago. The revolution in information technology which we are currently experiencing is having profound implications for the concealment of criminal assets. The future is even more daunting, given our rapid move to a cashless society. The objectives of the conference at which these papers were originally presented were to anticipate the risks which these technological developments pose, and to encourage creative thinking about the interdiction of money laundering in the 21st century, were.

Given that money laundering is a significant matter of public policy, the conference sought to

- identify concepts defining and describing money laundering;
- get some sense of the extent of money laundering;
- identify initiatives to counter money laundering;
- evaluate responses to these initiatives;
- explore suitable strategies;

or, to put it more simply, what's the problem; how big is it; what works; what doesn't; and where to from here?

A number of important issues are raised in the chapters which follow. Given the sheer volume of transactions occurring, it would appear that a significant challenge lies in the design of automated systems for the detection of suspect money movements. Traditional investigations are extremely resource intensive. Emerging technologies of artificial intelligence and neural networking may well hold the key to the future.

The deregulation of financial systems around the world has introduced an unprecedented competitiveness in the banking industry. This in turn has introduced a degree of occupational insecurity for bank executives and employees alike. The extent to which this might enhance the risk of corruption in furtherance of money laundering remains to be seen.

One challenge which money launderers have sought to explore is to bypass conventional banking systems (and transaction reporting) altogether. "Underground" banking systems, based on trust rather than technology, currently exist within certain ethnic communities. The advent of "cyber banking", stored value cards, and encryption technology could provide a combination of trust and technology which could enable the anonymous and untraceable movement of funds around the world.

Recent years have seen law enforcement agencies in Canada and the United States employ more aggressive investigative methods to combat money laundering, including covert facilitation or "sting" type operations. These entail law enforcement agencies covertly setting up a cash dealership, and offering to launder proceeds of crime. Employed with great success to date by the Royal Canadian Mounted Police and the US Customs Service, they would seem likely to be accorded greater use in future. The use of such tactics by Australian law enforcement agencies poses significant problems of accountability, as well as raising significant ethical and legal questions; the 1995 decision of the High Court of Australia (*Ridgeway v. R* (1995) 129 ALR 41) is illustrative.

Given the globalisation of finance, the challenge of international cooperation has become increasingly important. The development of the Financial Action Task Force represents a significant achievement on the part of the industrialised world. There remain, nevertheless smaller, more peripheral nations which may serve as money laundering havens. Not all states regard money laundering with the same concern as do the United States and Australia. Some of these may well be "broken" states where sovereignty is contested; in others, political corruption may result in leadership having been

[1] "Smurfing" is a labour intensive method of converting cash to other forms of negotiable instrument.

"bought off" and regulation effectively neutralised. Precisely how much pressure can be exerted upon a state without encroaching upon its sovereignty is a matter of some interest. One may well ask at what point do exhortations to assist in combating money laundering constitute interference in the internal affairs of a recalcitrant state?

The fundamental challenge facing law enforcement authorities and commercial interests alike is to develop systems for the prevention and control of money laundering, without unduly restraining commercial activity: how to "harden the target" without having a chilling effect on enterprise. A similar balancing act will be necessary in order to achieve a compromise between the competing values of financial privacy and traceability.

Australia's governmental configuration poses particular challenges for coordination between domestic institutions. In addition to law enforcement agencies in each state and territory, a number of Commonwealth agencies are concerned with the issues canvassed in these papers. In addition to the challenge of cooperation between agencies of government, there exists the challenge of securing cooperation by non-governmental institutions, including financial institutions, other cash dealers, and professional advisers in the private sector who may be in a position to assist in the detection of money laundering. Whether legal obligation or moral suasion are sufficient to win cooperation, or whether the use of incentives or inducements may at times be appropriate is worthy of some consideration.

Such strategies should always be approached with caution, however. For example, the payment of bounties to junior bank employees may kindle the wrong motives; organisational incentives for interagency cooperation may produce overzealous conduct or other perverse consequences.

Upon conclusion of a conference such as that summarised in this volume, one might ask what additional research would best assist in the prevention and control of money laundering. Although it would be nice to obtain a useful and reliable picture of the magnitude of money laundering in Australia and internationally, this seems an elusive goal. The precise magnitude of money laundering, like fraud or white collar crime in general, is unknowable, given that their most sophisticated forms are undetected.

Rather, it would seem that the most productive investment of research resources lies in identifying methods and technologies of money laundering as they emerge, and in quickly designing countermeasures for their prevention and control. Beyond this, it will also be highly desirable to envisage potential methods and technologies of money laundering *before* they emerge, so that government agencies and commercial interests can begin to mobilise their resources appropriately. The pages which follow are a first step in that direction.

Canberra
March 1996

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Money Laundering: Risks and Counter-Measures

MICHAEL LEVI

This paper starts with a discussion of some objectives and problems of measurement. I then summarise very briefly how the UK system works, and finally, I present some of what I regard as key current and future problems and how they might be addressed.

It is an important thing to clarify one's objectives when one contemplates major strategic initiatives such as developing money-laundering regulations, which have major implications for the public's freedom from surveillance by the state as well as for banking costs. What are the strategic objectives, and are they universal or merely national ones?

I want to distinguish between (a) ultimate—or "final"—objectives, and (b) intermediate goals along the way, which are crucial to the achievement of final ones. But the relationship between means and ends is not always as obvious as it seems. For example, if one's final objective is the reduction of narcotics consumption, the arrest of offenders for "drugs trafficking" (which is a highly varied concept) is helpful only if (taken as a whole rather than just looking at any one arrest), it produces real incapacitation or general deterrence. On the other hand, if one's final or intermediate objective is retributive, punishing people who have behaved badly/transgressed the laws irrespective of any effect this may have on crime levels, then arrest is inherently a good thing and you don't need to worry whether it leads to a reduction in the availability or consumption of drugs. In the particular case of money-laundering, I suggest that the "final objectives" are:

- the reduction of crime— though countries vary enormously in precisely which offences they want to see reduced— and
- in the case of AUSTRAC, though in very few other countries (at least officially), the increased revenue from tax collection which otherwise might have been evaded, both on legal-source and illegal-source activities.

The intermediate objectives of money-laundering reporting systems are:

- the triggering of new investigations into offenders who have not been previously known to the authorities;
- the substantial assistance in investigations into known or suspected offenders (and the definition of "major offenders" can be manipulated);
- the ability to stop money from being transferred out of the jurisdiction; and
- frightening off offenders from committing crimes because they anticipate that they will be unable to do anything with the rewards.

All of these are hard to measure.

I dislike thinking about "crime reduction" in the global sense. It makes more sense pragmatically to examine sub-categories of crime such as fraud by directors, fraud by junior staff, bankruptcy fraud, burglary, theft, prostitution, drugs trafficking both local and international, and so on.

In assessing the scale of laundering (and asset confiscation), we should note a common error in assuming that laundering equals the sum of proceeds of crime. It does not. It equals that part of the proceeds of crime that offenders receive (which will be substantially less than the cost to victims), which they wish to save and/or invest. They may invest overseas— as for example with capital flight from Latin America— or other countries' criminals may wish to invest in Australia: Walker (1995, p. 2) usefully distinguishes these as "internal ML", "incoming ML" and "outgoing ML". Research suggests that in Britain and the US (and, I would hypothesise, in Australia), except for the major drugs cartels and some of the larger fraudsters and tax evaders, much of this money is spent on the fast life, on cars, boats and home improvements, or kept in cash form or in jewellery and other "moveables" which can readily be transported overseas and is not bulky: media such as gold are especially popular, both for licit-source and illicit-source funds. (This will be even more true if money-laundering controls on suspicious transactions spread.) But it is quite legitimate— when considering how much laundering there is— to double-count the movement of the same funds through various accounts and countries. The proceeds of terrorism (such as extortion) may seldom be laundered (unless it is needed to pay for arms) but simply is used to pay "staff costs" in cash: this applies whether we are discussing Northern Ireland or many of the warring factions in Africa, Asia, and even Latin America. It is a mistake to assume that all proceeds of crime enter the official or unofficial banking systems directly (though they may do eventually, depending on what offenders spend their money on).

In short, the savings ratios of offenders may vary depending on personality and on income levels— the marginal utility of savings rises with criminal as with legitimate income, though those of us who are on middling incomes may be surprised at just how much money people can get through when they are dedicated to having a good time. Moreover, fraudsters who are already running or working for companies have a pre-designed legitimate front which may arouse less suspicion (especially if they are making wire transfers which is consistent with the bank mandate, even if those transfers are in fact theft or tax evasion) than people in their twenties or thirties depositing large volumes of cash in personal accounts. Drugs traffickers may have to work harder to establish front companies or use existing genuine businesses to merge their large cash deposits into.

So I am starting on a sceptical note, and that is that the level of laundering equals savings from crime, transfers of payments for criminal purchases, and deposits of savings from crime committed overseas, whether it is being repatriated, invested by overseas criminals, or merely temporarily parked. Currently, though Walker (1995) has made an heroic attempt to derive plausible estimate ranges, we have very little idea about how much the proceeds of so-called victimless crimes (drugs trafficking and vice) constitute, whether in Australia or anywhere else; how much offenders save from crime; and only hazy notions about what they do with their money. The more long-term covert operations that the police do, and the more research that is done interviewing offenders about what they do with the money side of their crimes, the more we will find out about such operations: but current de-briefing of offenders about this by busy police or customs investigators is very modest in the UK, and I would guess that this is so for Australia too. And the UK Serious Fraud Office does very little analysis of money movement in its cases

for future proactive use: its only mission is to prosecute the cases. In general, criminal justice only looks backwards at fixing blame, not forwards in strategic thinking about prevention and crime disruption.

How have regulators and legislators responded to the generic threat of money-laundering? The occupational vice of lawyers is to draft the legislation in accordance with the political advice they have been given, and then to assume that the problems have been resolved. In a sense this is true: their personal problems have been resolved, for that is all that they are expected to do. However, the reality is that a new set of problems are about to begin, and these are the problems of implementation and the regulation of implementation. Inasmuch as there is a globalisation of laundering, a logical accompaniment of this is the theme in the Financial Action Task Force (FATF) and in the European Community Directive (echoed also in the Council of Europe Convention) of the importance of there being a "level playing field". We can start from two positions: one is the diplomatic route, where we start from where we all are now and see how we can best reach a consensus position; the second is to imagine what sort of regulations for financial deposits and transfers we would have in a (relatively) ideal world. Would we, for example, allow anonymous "bearer bonds" to exist at all in an ideal world? What about total confidentiality of the beneficial ownership of corporations and bank accounts? For it is absolutely clear that criminals organise their activities in the interstices of the legitimate society, and will exploit— if they have the necessary skills and connections— any opportunities they are given. The trick of regulation is to minimise the illegitimate exploitation without wrecking the economic dynamism.

The political reality is that at different stages of economic and social development, different countries have different views about the desirability of controlling money-laundering. However, arguments presented elsewhere indicate that some of these reservations about the desirability of control are unfounded. My object here is to discuss how a "regulatory compliance culture" can be created, and how this would be likely to affect money-laundering itself.

The Issues for Regulators

Money-laundering arises from the proceeds of unlawful activities (corruption, drugs, extortion, fraud, terrorism, vice) and from lawful activities (tax evasion, violation of exchange controls on lawful commerce). From a regulatory viewpoint, the core issues are:

- do regulators in different countries communicate adequately with each other?
- do regulators deal adequately with the full range of potential launderers in their own country?
- do compliance officers within financial institutions communicate effectively with, and affect behaviour of, staff in their own institutions?
- do "front line" staff in financial institutions take adequate steps to identify money laundering by customers of their institutions, and either prevent it or communicate it up the line?

In some absolute sense, the answer to all these questions has to be "no". If this were not so, then there would be little domestic laundering in the "best regulated" countries, and we know that there is, though its extent may be debateable. However, in the light of the recent efforts of the UN, FATF, the European Union, and the Council of Europe, we might re-evaluate our views about likely future effectiveness, for we must appreciate that even within the original G7, there are considerable divergences in practice: we are only a little way down the road of controlling money-laundering. And many people— by no means all of them criminals— have serious reservations about what is the point of this whole phenomenon.

All regulation has been moving gradually in the direction of targeting resources to where they are most needed and/or where they can be most productively employed. In the light of BCCI (*see* Passas 1996), we should not need reminding that the highest risk for laundering is posed by a loosely regulated international financial institution which has no desire to regulate its own staff. Clearly, part of the problem was the ambivalent interest of the intelligence agencies, but unfocused responsibility was a key feature: although the post-BCCI procedures for "lead regulation" will reduce the risk of another BCCI occurring, we would be foolhardy to believe that this is certain. Beyond this, we need to examine what areas of commercial and social life produce the least rigorous audit requirements: in doing so, we must appreciate that if they are to integrate their funds, launderers need to "unlaunder" them, but there are many people who are quite happy to sell products and services for tax-free cash. Such cash can be spent on a variety of commodities, including illegal ones such as drugs, but also on private school fees as well as more conventional items. They may also gain social credit from friends and relatives in "potlatch[1] ceremonies", and improve their sex life by donating expensive luxuries to their girlfriends, possibly at the expense of attracting greater attention from the police than is paid to those who lead a quieter and more disciplined life (*see* Gold & Levi 1994; Levi & Osofsky 1995 and some commentary on this in Walker 1995).

What is the nature of "the problem" that regulators are supposed to combat? Although technically, it is a "money-laundering" offence to dispose of one's own proceeds of crime, much detected activity falling under that label is simple depositing of funds for use, much as one keeps a bank account. It is dramatic in the extreme to describe that as "money-laundering": unless deposited with BCCI, or— even more dangerously— in banks which are not fully insured by federal or state authorities, it is merely a safer way of keeping cash. This does not mean that we should not seek to control such conduct and use it as a means of investigating offenders: but it is misleading to bring such banal activity as cash deposits within a label that conjures up images of the international repatriation after disguise of origins of source funds.

This brings me to the topic of the role of the regulatory authorities in relation to money-laundering. Some may think that this concern would have been triggered by BCCI, but to the best of my knowledge, that is not so. BCCI was important prudentially as an issue in regulatory co-ordination, and money-laundering for "the wrong people" may have triggered its demise, but was not really a core issue. As I have emphasised, and as the history of Swiss banking illustrates, laundering that is not combined with fraud and/or lending incompetence raises no serious prudential issues for regulators. In this sense, one may argue that morality is divisible, just as people who may happily invest on the basis of "tips" from "people in the know" (aka insider dealing) may baulk at "real" fraud. Nevertheless, both the Act and the Regulations give a significant apparent role to regulators which they are understandably puzzling over. (This raises further intriguing issues, for example will detected failure to report suspicions lead to disciplinary action or even de-authorisation of individuals from directing banks or of the banks themselves?)

Scandal may affect banking regulators, who may be impelled by negative publicity to carry out money-laundering compliance reviews, lest they be criticised for inactivity: such reviews (and media publicity) impose considerable compliance costs and divert senior management time to damage limitation. In principle, there is no need for criminal legislation on money-laundering. Compliance can be achieved solely by "reputationally-oriented" self-regulation.

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1 A ceremonial festival (among some American Indians of the northern Pacific coast) at which gifts are bestowed on the guests and property destroyed in a competitive show of wealth.

However, this tends to be problematic for marginal institutions— if membership of an association is not compulsory— and for unregulated firms, of which— in many countries— bureaux de change are an example.

Thinking more broadly, it is important to appreciate what proportion of the "criminal market" one is aiming to cover. Major UK Serious Fraud Office and Australian NCA cases demonstrate the ease with which large corporate fronts can transfer vast funds overseas without arousing any suspicion or, if there was suspicion, any reports to the National Criminal Intelligence Service (NCIS). Recent research funded by the British Bankers Association and Price Waterhouse (Gold & Levi 1994) reveals that the area of reporting inter-company transactions has been an almost complete black hole in the system of money-laundering detection, though emerging responses to the Criminal Justice Act 1993 and the Money-Laundering Regulations 1993 suggest that this will be less so in the future: some banks are taking their responsibilities extremely seriously, and have spent large sums of money in enhanced regulation. Whether this money would have been spent without criminal sanctions is questionable.

Shady business operations may be involved in drugs or in terrorism, rather than fraud. The present legal regime in the UK has politically understandable variations in reporting regulations: it is a crime not to pass on suspicions of drugs-trafficking laundering to the National Criminal Intelligence Service, but bankers are merely released from civil or criminal liability for breach of confidentiality if the suspicion relates to fraud (though there may be some residual liability for constructive trust, if the money comes from fraud.) This is similar to the problems experienced by Australian bankers under their legislation. Thus, to cope with the provision, banks have to establish regular reviews of bank transactions, applying agreed criteria to decide whether or not there is "reasonable cause" to suspect the source of the moneys to be terrorism. It is very difficult to do this on a systematic basis. Drugs funds may be expected to be laundered more evenly throughout the country than terrorist funds, but the objective reasonableness test clearly places greater burdens on bank staff who can no longer plead the "thoughtless idiot" line of defence.

Not too much should be expected from money-laundering controls unless they can have some regulatory impact upon the underground banking "sector" and on the sort of moral neutrality evinced by those who participated in the "movement" of moneys for Robert Maxwell. Under the new legislation, would those banks that acted for Maxwell have been expected to look more closely at the beneficial ownership of the payees? And what would their liabilities have been if they had failed to do so? What is the real risk from regulators in terms of de-authorisation from banking if a bank fails to act upon such conduct by its customers? The point is that without some graduated sanctions including fines and suspension from certain business— as we see in the context of disciplinary action by regulators for financial services misconduct— the threat of complete closure of a bank is too great.

The British Criminal Justice Act 1993

The Act makes it a crime for financial institutions to fail to report matters that they "know or suspect" constitute drugs money-laundering, though how this can be proven remains unclear. It remains voluntary to report suspicions of other crimes, such as fraud, so theoretically, it could constitute a defence to argue that the banker suspected tax evasion but thought that the trafficker was "not a druggie type" (provided that the state of knowledge and assistance was not such as to constitute conspiring with the account-holder to commit crime. As noted earlier,

this differential crime-based liability also constitutes a significant problem in relation to terrorist finance.) This emphasises the significance of training.

But how can we identify suspicious transactions? How, for example, are bankers to treat market traders and other substantial cash depositors from the Indian sub-continent? This, after all, is a major drug exporting as well as arms trafficking region. Market traders are often viewed as being unlikely to declare all their income to the revenue, and it is very difficult to verify the genuineness of the levels of trade that correspond to their currency deposits. They often send money back home to support their families in India and Pakistan. At one level, this is unimportant: non-offenders are unlikely to know that their civil liberties have been invaded, and they suffer no direct harm.

It was clear from our analysis that the overwhelming number of disclosures centred around personal accounts, and that even when business accounts were involved, there was usually some personal account also involved in the transactions reported. In other words, the "visibly" suspicious tended to be relatively unsophisticated transactions involving known individuals. A fair summary is that the typical disclosure involves a large total of cash deposited within a short period which is then usually transferred rapidly. The suspicion is usually aroused by the sheer size of the transaction(s) in relation to the known (or believed) financial circumstances of the customer. It would be a mistake to impute to counter staff or senior management a substantial amount of actual knowledge of their customers' affairs: unless the customer has volunteered a reason for the "unusual transaction" or has been specifically questioned about it, suspicions are triggered by the way that the transaction looks on paper or by the perceived demeanour of the customer.

I would recommend the adoption of the distinction favoured by Interpol (1993) between unusual and suspicious transactions, though I prefer "suspected" to "suspicious", the latter being too objective a term. A suspicious transaction or series of them is conduct which "because of the circumstances, have reached a level of suspicion sufficient to identify a criminal offence (for example "subject is suspected of money laundering and drug trafficking or other stated offence"). An unusual transaction on the other hand is one of several financial transactions of an unusual nature but where a criminal offence has yet to be determined." By this criterion, most disclosures are of unusual rather than suspicious transactions.

One of the greatest strengths of the current operation of the disclosure system is the nature of the working relationship between law enforcement and financial institutions. This special relationship is perceived to be unique to the United Kingdom and all parties are anxious that this relationship is maintained, indeed developed: this relationship is responsible for the escalation in suspicious transaction reports to 15 000 in 1994 (compared to 270 in Australia), and it is anticipated that there will be more. Thus, with a few exceptions, police and Customs officers are just as anxious as bankers for the legislature not to impose further requirements upon financial institutions. In practice, bankers who fall short of active conspiracy are very seldom charged— though there is no occupational breakdown, we have been told that few bankers are among them, but there have been only 65 prosecutions and 27 convictions of anyone for s.24 money-laundering offences between 1986 and the end of 1992— so the threat is more symbolic than real, though bankers are understandably less sanguine about this than are politicians. I have only been given the details of one prosecution of a non-conspiring banker: by contrast, we came across several instances of very questionable banking conduct which has never resulted in a report, even to the Bank of England, let alone a prosecution for failing to report suspicion.

Let us take as an example one case where internal regulation might be described as poor. Subsequent to the issue

of the first set of guidelines by the Joint Money-Laundering Committee in 1990, a man turned up at a branch of a minor bank and opened up a new account depositing several thousands of pounds sterling in cash. The money holdall also held an apparently loaded revolver which accidentally dropped out of it. The cashier unsurprisingly formed a suspicion and reported this event to the manager. For whatever reason, despite what one presumes to have been his own training about money-laundering, he did not disclose it to his head office or to the National Criminal Intelligence Service (NCIS). The customer was subsequently arrested for drug trafficking. When the bank was approached about the customer's financial arrangements, the manager was very open in admitting the circumstances described above. The investigating officers were convinced that as there was no attempt to conceal the facts, the lack of disclosure had to be put down to naivety or ignorance. This interpretation was a generous one: was there not a possibility that he needed that deposit to improve his branch figures? When I asked whether this occurrence had been reported to the Bank of England, the response indicated that there was no desire to disturb the cosy relationship between the police and that retail bank, or indeed the banks in general, which is perceived to be "at risk" from "aggressive policing". Whether the prosecution of such negligence would really alienate the banking community or rather would satisfy those bankers who believe that the guidelines should be enforced is moot: some question the point of (costly) virtue if vice or negligence go unpunished. Suffice it to observe that the obligations imposed under the Criminal Justice Act 1993 ought to clarify managers' minds under such circumstances in the future. Though what liability is there if someone other than a designated "appropriate person" has suspicion transferred to him but then discounts it (or says that he has discounted it)?

Let me mention a further example, to illustrate the weaknesses in the current approach to money-laundering viewed as an international system. No-one is lawfully permitted to take out of Nigeria more than US$5000 in cash without a very good reason. Yet during 1992 and 1993, Nigerian money-changers were permitted to import and deposit £20-30 million a month in cash at the London branch of a small private bank, the Banque Française de l'Orient (which is part of the Banque Indosuez group), for exchange into whatever currency they wished and for onward transmission to whatever bank they wished, without arousing any significant UK crime investigation or banking regulatory interest. The Bank of England took the view that the bank was regulated by the Bank of France; the Bank of France considered that this was legitimate money-changing business; and the Banque Française de l'Orient itself (and its parent) were delighted that they had found a lucrative source of business which turned around a poor-performing bank with expensive overheads into a serious money-maker. As regards the "know your customer" principle, they knew their customer—which was a Nigerian money-changer with considerable trade financing business— and (whether or not they ought to have suspected) they claimed that they did not suspect that any of the money was drugs money. The Bank of England did not keep a tally of how much cash the French bank (or, indeed, any bank) took in: the returns to the Bank of England were of "foreign currency bought and sold", so for practical purposes, what was happening was foreign currency arbitrage, and so on. One courier was stopped at Heathrow with US$2.5 million in cash, en route from Switzerland to Lagos, and was let go when the money-changing firm asserted that he was just transporting money for them as part of their normal business. Because of their concern about money-laundering regulations (and reputational risks), some major banks refused to take the Nigerian money, but the French bank apparently saw nothing wrong with it. (It is not known whether the French bank was aware that the others had refused

the business.) Despite the fact that "UK plc" did not appear to gain anything from enhancing the profits of the French bank, the Bank of England did not intervene. It was only when the haemorrhaging of 5 billion French francs a year from the Nigerian Central Bank impelled them to stop the trade in African francs that the system stopped. Yet it is hard to believe that these transactions were not benefiting the international narcotics trade. It is this kind of example that leads many to conclude that the system of suspicious transaction reporting is only scratching at the surface of money-laundering.

How does this match against the way that anti-laundering provisions have developed? In general, criminal justice only looks backwards at fixing blame, not forwards in strategic thinking. That is why I am glad that Australia has the foresight to bring in organisations like OSCA to ensure that there is some strategic thinking. At one level, there is harmony. The system, especially in the European Union, relies on self-regulation by the banking industry, backed up by the threat of gaol for failing to report suspicions of drugs money-laundering and/or for failing to have proper systems for identifying customers or dealing with suspicions internally. Such liability attaches to "the appropriate person", a task similar to the American "Corporate Vice President responsible for going to gaol" under the Foreign Corrupt Practices Act. However, the dilemma for banking regulators is that although the bank's auditors have to report annually on how satisfactory the bank's anti-laundering systems are, the Bank of England is hardly likely to de-authorise an institution simply because it makes few reports. And the system can be easily overwhelmed by a mass of reports of suspicions, because except for cases that look on their face to be gross, the police and customs do not have the resources to do more than check their databases to see if the subject of the report is known to them already. Thus, it would not be surprising if the number of new cases generated by the system is modest, and that is precisely what we found in our research in Britain. What we found, inter alia, was that about 1 in 200 of the reports per year lead directly to the triggering off of new prosecutions or substantial assistance to existing ones. The system probably has the capacity to do better, but this would take new resources which police and customs are unwilling to make available from existing staffing. This is one of the attractions in some quarters of bringing MI5 and other intelligence agencies onside.

One problem facing those who wish to enhance the "hit rate" for money-laundering reports is that accountants of small to medium companies— those (Maxwell or, allegedly, BHP notwithstanding) which presumably are most likely to be used as laundering vehicles— tend to be general practitioners and therefore unfamiliar with the trading circumstances applicable to individual areas of commerce. Some retail sectors (such as art and antiques, used cars, jewellery, and clothing) have enormous possible gross profit ranges: even a specialist firm would have difficulty in determining whether the accounts presented for such trades are realistic. When reviewing restaurants, arcades, casinos, and "adult entertainment", the accountant enters a realm which must surely lend itself to financial magicianship of the highest order. What is the expected turnover and gross profit of a "hostess" bar where drinks may be sold at ten times their wholesale value? This is relevant because unless customs or revenue inspectors or the police are conducting a surveillance operation— which is resource-intensive and costly— the launderer is producing a higher than normal level of business. But it is seldom obvious what the level of trade ought to be, and thus launderers can bribe business people or take over their businesses as "silent partners" and merge the cash into the ordinary trading patterns. Anti-laundering measures must therefore look for higher rather than lower than normal trading.

I was told of the suspected operation of a major drug trafficker in a mid-sized English town. The suspect controlled a large number of slum properties. These

were largely occupied by low paid and "down and outs" who would claim that they were paying high rents (that is most of their benefits), when it was fairly clear that such rents were unrealistic. The owner was believed to be declaring excessive returns but it was impossible— at least without expensive surveillance— to disprove his accounts, as his tenants were an ever shifting but loyal group. The net result is that someone who is in fact a drug trafficker is an apparently model citizen who is promptly paying his mortgage loans and building up an exemplary reputation with financial institutions as a property developer with accumulating assets. This would be an example of "depositing" by intermingling, followed by immediate "integration" without the need for "layering": in my view, this is a not untypical illustration of the use of the property sector for money laundering.

Although most of the transactions took place in The Netherlands, a large recent case involving the wholesale supply of Ecstasy tablets from Holland to the UK netted the leaders some A$50 million profit, over a third having been spent on production, personnel, transport, and communications. The organisation employed someone to exchange the funds, mainly sterling. Using a false name and false identity papers, he would periodically visit an affiliate of a prominent Dutch bank to negotiate about the exchange rate. The bank accepted this man as a very respectable businessman who worked a lot with large amounts of cash. The organisation used a foreign expert in corporate legal entities in tax havens and, with the help of auditors and lawyers, he set up limited companies in England, Jersey, the Isle of Man, Gibraltar, Ireland, Hong Kong, Panama, and Delaware, USA, few of which were registered with their local Chamber of Commerce or tax office. The local registrants acted as nominee owners. Although the shell companies were not allowed to do business in the countries where they were incorporated— at least not without paying administration fees and taxes— they could open bank accounts, and much of the money was distributed around in this way. The investigation indicated that the local representatives were not aware of the source of this money. Much property was purchased in The Netherlands and then rebuilt for cash to luxurious standards. Indeed, some of the cash was sent from the overseas companies to Dutch public notaries who were involved in the purchasing of the real estate. A Dutch administration and tax consultancy office looked after the businesses as a whole, and administered the artificial schemes. Every month, a Dutch firm delivered batches of goods to her foreign enterprise subsidiary for exorbitant prices, resulting in a rising business debt and enormous stocks at the subsidiary. The manager of the subsidiary was induced to take a loan from a foreign investment company (established by the traffickers) for repayment of the business debt. In this way, the drugs money was channelled back and used as trading capital in legal activities. The Dutch administrators apparently never appreciated that the capital deficiency and vast loans which were not underwritten or covered by any official loan agreement was either unusual or suspicious. When arrested, the organisers had begun to set up artificial trading firms to exchange the money. No suspicious transaction reports were filed in the UK or The Netherlands.

On a different tack, taking the current and past NCA workload of corporate cases, how many of the transactions appeared in the AUSTRAC reports and were treated as significant indicators of crime? And just what would anyone have done if Noriega had transferred huge funds into Australia when he was still President of Panama?

Looking over the horizon a little further, what are offenders likely to want to do with their money in the future? Well, one possible response to tougher measures is that they will simply spend the proceeds of crime faster than in the past. Their pensions may not be as great as they want, but they could just have a good time, lots of holidays, and so on. Peter Grabosky (1995) has recently pointed out the unintended consequences of a lot of

criminal justice policies, and one net effect of anti-laundering measures may be to reduce offenders' savings ratios and increase their local popularity. That would mean less investment, with consequent reduction in the menace of "organised crime taking over commerce". Frankly, most offenders need no such encouragement at the moment anyway. But we would not necessarily identify that as an effect, since the increased volumes of expenditure— assuming it was recorded!— would probably not be noticeable overall.

Another thing they might do is to develop a greater interest in cybercash. This partly depends on what, if any, limits are set: customer identification requirements would probably destroy the system by making it unwieldy, but could be circumvented by "smurfing". But it also depends on trust elements. Not only ordinary citizens but also criminals may fear interception and diversion of Internet transfers by computer hackers. By comparison, traditional methods of Hawala or Hundi banking offer the reassurance of social and family networks whose members can be kidnapped, for example, should they misbehave, but equally importantly, they offer trust and flexibility. As Chinese and other ethnic groups spread across the world, we may expect better global coverage.

What else they do depends on what their objectives are. There are three step-objectives that criminals have:

- to commit the crime and get away with the proceeds without getting caught on the spot;
- to avoid arrest or conviction later;
- to retain the funds for later use, by avoiding the tracing of proceeds.

If they are going to spend the money very soon, or are going to save it in a wall safe, and so on, there is no problem. If their objectives are to transfer funds abroad, they can use transfer pricing through beneficial ownership of several corporations, whether the transactions are real or fictitious. Generally, little supervision occurs over the purchase of businesses other than investment services and banking.

Some executives— we cannot know how many— would be more than happy to sell their businesses for cash which they might not declare to the Tax Office or to their ex-wives in divorce settlements: they would also sell their homes to offenders for part-cash, with nominee registration of ownership. If AUSTRAC is monitoring wire transfers to and from tax haven countries (which may be puzzling but hard to investigate thoroughly), the offenders can always fly the cash out and deposit it in cash there, though they increase the risk of interception and cash confiscation. But in this shrinking world, dominated by FATF instructions, there are fewer and fewer countries with no regulations and serious banking secrecy, especially where drugs are reportedly involved.

Another important factor is informational asymmetries among offenders. Many criminals are never going to be smart enough to think up sophisticated schemes themselves, though with the imprisonment of some white-collar criminals and, who knows, sophisticated launderers caught out in the fall-out from the New South Wales police corruption scandal, they may be able to learn or intimidate the white-collar criminals into passing on some secrets. Or they might be able to find some lawyers or tax-planning accountants who can help them with their schemes, especially if times get rough in the professions and they have to accept marginal business and dodgy clients that they would fight shy of when times were prosperous. Also, with more "downsizing" and "de-layering" in the financial services sector, and increased insecurity among bank employees, it may be easier to find a banker willing to be corrupted than in the old days. The rise in internal fraud among bank staff in the UK and US (and, I would assume, Australia) is an indicator of increased susceptibility to corrupt offers and reduced leverage by employers. Moreover, with casinos opening up all over Australia and even in New Zealand, there are more chances of bank employees and

other professionals getting heavily into debt, with criminals being ever-willing to be generous with their advice to the needy, or strong arms should they be uncooperative. So professionals can "park" money in their clients' accounts (provided they do not gamble it away), though it remains easier if the money comes in the form of electronic transfer rather than cash, since banks may baulk even at lawyers depositing large amounts of cash: this favours the fraudster or the drugs trafficker using front companies. There is also a premium on professionals as investment intermediaries, matching up criminals with cash alongside their clients in need of investment funds.

Cybercash is doubtless another prospect, though I doubt if in the short or medium term, it will become all that popular as a proportion of funds laundered. It is, after all, merely an electronic form of the traditional Hundi or Hawala or "chop" banking practised in South East Asia as a way of evading exchange control, developing trust networks, and so on. In the final analysis, although it may be true that, as one fraudster said to me when I asked him what the Code of the Underworld was "Do your friends first: they're easier", most laundering networks operate on the basis of trust and reciprocation. In this sense, they are more socially advanced than nation-states!

There are a series of quite big issues that remain:

- How do we generate the kind of resources necessary to follow through reports that are made? (that is how can we tell whether our suspected positives are false or true?)
- Is there any way— for example, neural networking— in which we can generate a "reasonable" number of plausible suspicions from inter-company funds transfers (that is how can we generate true positives from current negatives?)
- Are there any major areas that we should try to regulate that are not currently regulated (for example solicitors' clients accounts, car dealers, casinos), and how likely is it that very large sums could be laundered through those media?
- How can we regulate the underground banking system or at least monitor its impact?

All of these have a cost, whether to the public or the private sector. One estimate for the cost to Australia was A$30 per account. The fact is that suspicion-based techniques are going against the techno-
logical stream of banking, which has less and less human observation outside of over-the-counter deposits: hence the attractiveness of using neural networks and knowledge-based systems to develop suspicions electronically. Citibank deals with roughly US$100 trillion a day. How many bankers have any idea what their customers do, particularly those commer-
cial customers who do not need to borrow money, because they are merging the cash from crime into their businesses. The anti-laundering agencies should be looking at businesses that do not borrow from their banks, as well as at executives who are drawing large sums out in cash because they are stealing it from the company.

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2

Money Laundering: The State of Play

GRAHAM PINNER

The purpose of this paper is to put together a number of issues that I believe are significant in relation to the present state of play in the money laundering arena. In the first place I should state that the work that is being done by not only Australian law enforcement but international law enforcement, governments and regulators is directed at anti-money laundering measures as opposed to money laundering. In other words, we are trying to stop the dirty money from being turned into "clean" money.

Financial Action Task Force Achievements

The first substantive point I want to make is that, much has been achieved through the 1990s by Governments, regulators and law enforcement in conjunction with financial institutions, other financial dealers and their industry bodies. As an example, the twenty-six members of the Financial Action Task Force (FATF)[1] have largely implemented the "40 Recommendations" of the Task Force and the mutual evaluation program (a joint audit of each countriy's implementation of the measures) is almost complete. To illustrate the pace of that progress, Australia was originally examined in September 1991 being, I believe, the third country examined as part of that process and it is about to be re-examined in May 1996 to check upon the progress that has been made since that time and to ensure that we are still in compliance.

It is worth saying that there might have been some scepticism amongst the law enforcement community within Australia and elsewhere about some countries, for example, Switzerland cooperating internationally in opening up its banking system for law enforcement investigations for the purposes of following dirty money. Switzerland is a member of the Financial Action Task Force and like all member countries has implemented the FATF measures. It was recently announced that Swiss criminal authorities will be sharing with US authorities US$150 million seized in accounts in the Union Bank of Switzerland which were the proceeds of the importation and sale of cocaine and marijuana in the US (*see The Money Laundering Bulletin,* No. 17, August 1995, p. 3).

In this region it was recently reported that Hong Kong, which had led the way in introducing effective money laundering has secured its first ever conviction against two men who had helped drugs boss Law Kin-man launder proceeds from massive heroin smuggling operations. The two men were each sentenced to twelve years imprisonment. According to a report on the case in the *South China Morning Post,* Law had used casinos, jewellery and

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1 The FATF is the G7 inspired anti money laundering group made up of the members of the OECD, Singapore, Hong Kong who aim to make the International financial systems hostile to money laundering.

underground banks as some of the means of laundering his money (*see The Money Laundering Bulletin*, No. 21, December 1995, p. 1). It is interesting to know that Law Kin-man was also associated with one of the major money laundering prosecutions in Australia when his wife was charged and convicted of money laundering and assets were forfeited to the Commonwealth.

However, having said that a lot has been achieved, there are some still considerable concerns. There are many countries that appear to be willing facilitators of money laundering. There are also concerns about countries not covered by the FATF recommendations and about newly emerging economies such as some of the former Soviet Union (FSU) countries and other members of the former Eastern Bloc. Much remains to be done in this regard.

Bringing the Rest of the World on Board

The use of the international financial system by organised crime poses a major threat to all economies and nothing makes this so clear as the recent address by President Clinton of the United States to the United Nations on its 50th Anniversary. One of the major themes of the President's address was the fight against international organised crime. He said:

> *To stem the flow of narcotics and stop the spread of organised crime, we are cooperating with many nations, sharing information, providing military support, initiating anti corruption efforts: and results are coming. With Colombian authorities we have cracked down on the Cartels that control the world's cocaine market. Two years ago, they lived as billionaires, beyond the law; now many are living as prisoners behind bars.*

The President then went on to outline five steps that the US would be taking. The first of these is particularly relevant to the theme of this paper:

> *First, the steps we will take: Yesterday, I directed our government to identify and put on notice nations that tolerate money laundering. Criminal enterprises are moving vast sums of ill-gotten gains through the international financial system with absolute impunity. We must not allow them to wash the blood off profits from the sale of drugs from terror or organised crimes. Nations should bring their banks and financial systems into conformity with the international anti-money laundering standards. We will work with them to do so. And if they refuse, we will consider appropriate sanctions* (President Clinton, address to the UN General Assembly, 22 October 1995).

Only a few weeks before at the Commonwealth Finance Ministers'meeting in Jamaica the British Chancellor of the Exchequer, Kenneth Clarke, had used a more persuasive approach when he urged third world countries profiting from money laundering to take action to stem the flow of dirty money moving around the globe— for their own good. He said that there were those that argue that only large industrialised countries needed to act against the launderers. He said:

> *They see conflict between the introduction of effective anti-money laundering measures and development based on structural reform and economic liberalisation.*

He went on to tell the meeting that:

> *They say that action will hamper investment and slow down the development of their financial services sector, they say that anti-money laundering provisions will place them at a competitive disadvantage and with their potential rivals flourishing at their expense.*
>
> *But honest investors do not want to put their money in financial centres propped up by dirty money, which could flee the country at the drop of a hat.*
>
> *Serious investors wanted their money to be safe and secure in prudent and well*

regulated institutions. Effective action against the money launderers will not put developing economies at a competitive disadvantage. On the contrary, it will make it easier for them to attract money from honest long-term investors with a genuine interest in the well-being of the economy.

The FATF, Commonwealth Secretariat and other bodies have continued to push the anti-money laundering message in those countries they are able to influence and the US has threatened those who do not take heed. Nevertheless, in January the Republic of Seychelles announced a new law which it is believed will open the doors to money laundering by virtually guaranteeing immunity from prosecution for financial investors who bring in US$10 million or more to the island state (*see The Money Laundering Bulletin*, No. 22, January 1996). It will be interesting to see what the overall international response will be to this challenge which cannot go unanswered. I understand that the FATF has already asked its member countries to monitor all financial transactions to and from the Seychelles with a view to further action.

Asia Pacific Region

Although a great deal of work has been done, a lot more remains to be done. Not every country in the Asia/Pacific region for example has FATF type legislation. However, quite a lot is happening to address this issue. A number of countries in the region are looking at legislation and a number of jurisdictions are receiving assistance from the FATF Asia Secretariat in addressing anti-money laundering issues. For example, Thailand is presently looking at a range of measures and I am aware that draft legislation is in the pipeline in Taiwan.

On the other hand, there are continuing problems in the region. It has been reported that up to two-thirds of banks in Cambodia are involved in laundering money. The former Deputy Governor of the Bank of Cambodia, Ms Tioulong Saumura, had gone public warning about the scale of money laundering, saying that Cambodia risked becoming a paradise for money laundering and that the practice was spreading like a cancer in the country. It was also reported that Hong Kong based Triads had joined with local gangs to set up cash oriented businesses in the country's legitimate business sector to launder illegal funds. (There is no requirement in Cambodia for the reporting of large cash transactions.) (*see The Money Laundering Bulletin*, No. 17, August 1995, p. 4). Unfortunately, Ms Saumura recently resigned as Deputy Governor of the Bank of Cambodia and is no longer involved in the Anti-Money Laundering Task Force which she was the driving force behind (*see The Money Laundering Bulletin*, No. 20, November 1995, p. 6).

From an Australian standpoint, the lack of money laundering controls in the region pose considerable problems. In many cases the money laundered from Australia will pass through the banking systems within the region. In the report of the National Crime Authority into Money Laundering they noted that it seemed to be a feature of Australian criminal activities that funds were moved offshore and in many cases returned as part of a laundering cycle (National Crime Authority 1991). Recent major operations conducted by the National Crime Authority joint task forces has indicated that the trend of movement of funds offshore continues. There are a number of major drug joint operations that were brought to fruition shortly before Christmas last year which are either continuing or yet to go before the courts which indicates that large amounts of money are moving through to the Asia region, in particular Hong Kong. It is to be noted that the recent report lodged by Hong Kong to the FATF indicates that money laundering of drug profits from Australia, Canada, and the US continues to

be a major problem for Hong Kong authorities. I am very pleased to say that there is close cooperation between Australian law enforcement agencies and the Hong Kong authorities.

We must recognise that the Asia region is one of the fastest growing regions in the world and that they have sophisticated banking systems and in many cases do not yet have in place anti-money laundering measures. Criminals will try and exploit the gaps in this market. In addition, the Asia region is known for its underground banking systems and criminals will also try to exploit those systems. A great deal of effort will be needed not only to increase the regulatory role over the legitimate banking system but to also have law enforcement bring to book the underground bankers and other facilitators of money movements which are designed to escape that net.

Money Trail Investigation— Some New Approaches

In that regard, I want to point to a number of recent major investigations undertaken by National Crime Authority task forces. The first case concerns charges brought against two Manager's of the MidMed Bank of Malta. They were convicted of conducting cash transactions in a manner to avoid the reporting requirements of the *Financial Transaction Reports Act 1988* (Cwlth). The case involved depositing monies in amounts of less than A$10 000 through the MidMed Banks'accounts with one of the major Australian banks. The monies came from multi-million dollar cannabis dealings as well as other sources. In addition to fines being imposed upon the bank managers and another being committed to trial on money laundering charges (*The Australian*, 4 November 1995, p. 4; *Sydney Morning Herald*, 20 October 1995, p. 5), the Reserve Bank of Australia has suspended MidMed's restricted licence.

The case followed an eighteen-month investigation by the National Crime Authority involving the Australian Taxation Office, the Reserve Bank, and AUSTRAC. The case also shows the difficulty in these kinds of operations of determining which money was sourced from drugs and which money may be from tax evasion or from other sources. The point that I want to make here is that it is not always easy to tell whether money comes from criminal sources or represents evaded revenue and long and difficult investigations may be needed to determine the source. The wider the legislation can be to assist law enforcement and revenue authorities, in my view, the better.

The next case that I want to refer to involves another joint Task Force coordinated by the National Crime Authority. In that case, investigators seized A$600 000 in cash from the officers of a finance company, Wall Street. A senior official of the company was arrested and charged with tax evasion and money laundering offences. It is alleged that the company operated an underground banking service purporting to act as a foreign exchange dealer catering for tourists and business clients. It is alleged that the company imported money reported as being sent from the company's Hong Kong offices overstating the amount of money imported in reports made to AUSTRAC and that undeclared cash from Australian sources was later exported (*Sunday Telegraph*, 22 October 1995).

Before I go on to make a couple of points in relation to these Australian cases, I want to refer to a very recent Canadian case reported in the Canadian press. On 24 January 1996 the Royal Canadian Mounted Police announced that they had closed down a front currency exchange business conducted in Vancouver, British Colombia. All of the staff of the exchange business were undercover police. At the end of the operation the Police seized C$2.5 million in currency as well as quite significant amounts of drugs. Drugs and money crossed the US/Canadian border and money was deposited into the undercover

business. Ninety suspects face 1100 charges in Canada and the US for money laundering, tax evasion and other offences.

According to the report there were a mixed bag of people involved. Some were hardened criminals who had shown extreme cruelty and some were yuppie business men. In the course of the operation a number of the suspects died violently. Some of the business people involved were very successful. A number of them were engaged in the securities industry (*The Province*, 25 January 1996, p. 1). According to a second report the front exchange handled in excess of C$40 million in criminal monies. Of that amount, C$8 million was tracked to profits from the smuggling of tobacco and liquor from the US and provinces in eastern Canada. The remaining money was proceeds of drug trafficking (*Vancouver Sun*, B3, 26 January 1996, p. 1).

Establishing the Money Trail through "Fringe" Financial Dealers

The first point I want to make from these three cases is how successful operations can be when they are aimed at establishing the money trail to the criminals, through the facilitators even where the facilitator is a "fringe" financial organisation. In the Australian cases the facilitators themselves were attacked. In the Canadian case police posed as the facilitators. In relation to all three cases we would expect that other operations might be instigated as the documentation seized by law enforcement is analysed and subsequent investigations taken.

Money Laundering/Tax Evasion

Another point I want to make is that the monies going through these facilitators will be a mixture of criminal monies including drug trafficking as well as tax evasion and other forms of revenue evasion. In a number of jurisdictions the reporting of suspect transactions and other transactions is limited to criminal activities and does not cover tax evasion. Although that is obviously a matter for the individual jurisdictions, it seems to me that it is unreasonable to expect legitimate financial institutions to be able to distinguish between unusual transactions involving either tax evasion or drug trafficking. From the banks' standpoint they simply see an amount of money which is unusual which forms the basis for suspicion. They are probably more often than not able to determine whether the source of the funds is from drugs, some other criminal activity or tax evasion.

I am pleased to say that what I regard as an artificial distinction is being recognised as too difficult for financial institutions to assist law enforcement in the detection of criminal activity. If it is difficult enough for the investigators who have seized the records from the kinds of facilitators that I have described above to determine exactly what money represents what, it is almost an impossibility for bank and other staff to make that kind of distinction. In the recent speech given by the British Chancellor of the Exchequer, referred to earlier, Mr Kenneth Clarke told the Commonwealth Finance Ministers that it is quite artificial to draw a distinction between drug related crimes and other crimes. He said that this applies as much to fiscal crimes as other crimes. He said that the victim was irrelevant and that tax crimes make the law abiding suffer (*see The Money Laundering Bulletin*, No. 20, November 1995, p. 3).

According to *The Money Laundering Bulletin* these comments represent the first admission to be made by UK Treasury that the proceeds of tax crimes and other fiscal offences may be treated the same way as money received from the sale of drugs. *The Money Laundering Bulletin* notes that the reporting of tax evasion is not specifically covered under the UK legislative regime except where there is a

suspicion that someone exactly committed a specific taxation offence under the UK taxation

laws (*see The Money Laundering Bulletin*, No. 20, November 1995, p. 3). The point is that it is very difficult for the bankers to be able to draw this distinction. That was recognised by Professor Michael Levi in his recent book (Levi 1991, p. 67).

Controlled Deliveries and Sting Operations

The next point I want to make about the three cases I outlined above and in particular the very recent Canadian case is that it would not be possible under Australian law to conduct those kinds of operations in the way that the Royal Canadian Mounted Police did. Although controlled deliveries of drugs and other things is a well recognised international law enforcement practice and is covered by international agreements, the High Court takes the view that without some legislative authority Australian law enforcement agencies cannot be involved in such practice.

In the case of *Ridgeway v. R* 129 ALR 41 delivered by the High Court on 19 April 1995 the majority found that in relation to a controlled heroin delivery that, per Mason C J, Dean and Dawson J J:

> *The illegality of the police conduct was grave and calculated, created an actual element of the charged offence; the involved police had not been prosecuted; there was an absence of any real indication of official disapproval or retribution; the objective of the criminal conduct would be achieved if the evidence were admitted. These factors made the case an extreme one. The legitimate public interest in the conviction and punishment of the appellant was reduced by the fact that the appellant's possession constituted any one of a variety of offences against the law of South Australia of which illegal importation was not an element but for which he remained liable to be prosecuted.*

Per Brennan J:

> *The importation was a grave offence and to admit evidence of the offence it would be an encouragement to the Australian Federal Police to continue to flaunt the parliament's unqualified prohibition against the importation of heroin.*

Likewise it would be expected that if that Australian law enforcement were involved in a process of money laundering of criminals' money without some form of parliamentary approval of that process that they would be involved in unlawful activity and expose themselves to criminal liability as well as running the risk of any illegally obtained evidence being inadmissible in any prosecution against their targets. Until there is some kind of legislative response to the *Ridgeway* case that includes operations not only in relation to controlled drug operations, but in relation to money laundering then in Australia the type of case conducted by the Canadians could be only done, I would suggest, at the peril of Australian law enforcement officials. There is at the moment a Bill addressing the specific *Ridgeway* controlled drug importation operations to give such parliamentary approval, but the proposed legislation does not encompass either the kind of sting operation referred to above, or a controlled money laundering operation. If Australian law enforcement officers are going to be involved in controlled deliveries of money which constitute money laundering, further legislation will be necessary.

Resource Intensive Investigations

One of the other points that needs to be made about these operations whether they be controlled deliveries or stings or indeed investigations following a more conventional trail, is that they are very resource intensive. A great deal of resources are required to conduct surveillance to look into financial transactions and to follow the transactions through to the Mr Bigs in order to seize their assets. At the

end of the day, although assets may then pass into an Assets Forfeiture Fund for the benefit of law enforcement and drug rehabilitation programs, there is no actual pay-off for the operational agency in terms of the overall cost of such an operation— a cost which can be very high. Some thought needs to be given to this issue.

Estimates of the Size of the Money Laundering Problem

When the Financial Action Task Force was originally set up in 1989 the underlying figures which had been provided by the United Nations estimate of the size of money laundering of drugs throughout the world was US$300 billion per year. Since that time there are all sorts of reports which claim to provide estimates of the extent of money laundering. These vary greatly. Recently an AUSTRAC commissioned report on the extent of money laundering in Australia estimated the figure at around A$3.5 billion per year. The report prepared by John Walker sets out the methodology which he follows in some detail (Walker 1995). John Walker provides a number of estimates based on particular information provided to him and concludes that perhaps the most likely figure is around A$3.5 billion per year for Australia. His report does not purport to be either exact or by any means the only methodology that could be employed to determine such an estimate. However, it has received considerable praise from many external sources for both the work and its ground breaking nature. At this stage, a number of other FATF countries are making similar estimates of the size of money laundering in their own jurisdictions employing various methodologies.

Increasing Sophistication of Money Laundering Methodologies

One of the factors that has become quite apparent is the fact that money laundering has now moved from the more simple placement of cash into financial institutions in two major respects. First, there has been a movement away from the traditional banking system, to a degree, to use the other avenues of cash placement such as gold bullion dealers in Australia, and other fringe financial organisations as indicated in the examples above. Second, the other factor that is occurring is that there is an increase in the sophistication in the layering of transactions (that is the adding of all sorts of complex financial transactions on top of the original placement transaction) and in the integration of those funds into the legitimate economy. That means that the effort required from law enforcement to deal with the more sophisticated approach by organised crime has increased accordingly.

In Australia, we have seen that the National Crime Authority and the Australian Federal Police, State Crime Commissions and State Police have responded to the challenge. A National Crime Authority Money Laundering Task Force has been set up to look at the output of AUSTRAC's automated targeting system, ScreenIT, as well as financial institution generated suspect transaction reports. This is already proving extremely successful. However, it is likely that the criminals will continue to move into more sophisticated financial transactions that are not the bread and butter of most investigators and it will be necessary that the skills of the investigators continue to be enhanced to keep up with not only the criminals but the highly paid professional advisers which they employ.

The law enforcement community will continue to require the support and cooperation of financial institutions and other financial dealers to assist in the detection of these activities.

For its part, AUSTRAC has increased its emphasis on furthering its computer based watching brief on unusual transactions and signalled to incorporate its software into banking systems (AUSTRAC 1995). In adopting this

approach AUSTRAC acknowledges that much of the initial watching brief by the banks in reporting suspect transactions had been based on human observation. AUSTRAC has recognised that human intervention in banking transactions is diminishing as the use of technology is increasing and that there is potential to utilise the latest technology to assist humans to make judgments about the nature of unusual transactions.

AUSTRAC is continuing to work closely with banks and other financial dealers to integrate AUSTRAC software into the financial dealer systems. A system called COMPASS (Compliance Assistance) has been developed which will reduce information for the financial dealers to consider which might then result in suspect transactions being lodged, having a regard to the range of information that the financial dealer also has in relation to the particular transaction.

We believe that human suspect reporting systems will have less viability in the longer term and that if we are going to keep up with the criminals, increased investment into technology is required.

Globalisation of Financial Markets and Sophistication of Money Laundering Methodologies

In relation to the use of professional advisers to layer and integrate transactions, we have seen in Australia, as early as the *Snapper Cornwell* case, very sophisticated transactions used to launder criminal monies. Since that time, increasingly sophisticated means have been used to hide the money trail presenting a very daunting task for investigators (National Crime Authority 1991, pp. 191-7). The bad news is that the types of transactions will become increasingly more sophisticated. For example, in a recent paper, Professor Romeo Ciminello, Professor of Business Finance, University of Trieste warned of the use of financial derivatives to launder drug monies. He said:

> *For decades, organised crime in Italy and other countries has been committing the most varied kinds of crimes against society. Of particular concern to government is economic crime, which is a threat to world economic equilibrium.*
>
> *More recently a new kind of danger has appeared, with criminal organisations the world over using illicit (or completely lawful) financial activities to hide the illicit origin of income realised illegally (laundering) or to make further profits, or for both purposes at once.*
>
> *It seems increasingly probable that the use of telematics markets and the new financial instruments makes money laundering easier, allowing capital to be transferred from one country to another and one account to another in a matter of moments, without any physical movement and virtually anonymously. The same capital can in this way be passed thousands of times through tax havens, in some cases on economic grounds, and finally deposited in its own accounts once it is perfectly clean and backed by a completely lawful activity* (Ciminello 1995).

So not only do we have the globalisation of international financial markets but we have very sophisticated types of financial transactions both of which criminal groups can exploit.

Globalisation of Crime

We have seen within the examples that I have given above, both in Australia and in Canada and elsewhere in the world, that organised crime is becoming increasingly international.

Criminals will try to exploit the globalisation of the international financial system and the fact that these systems operate across multiple jurisdictions. This strategy by the criminals makes it difficult and costly for law enforcement to follow their transactions.

It has been suggested that the world's organised crime groups have in some

cases, made strategic alliances and are moving towards further strategic alliances so that we end up with almost a criminal United Nations (Sterling, 1994, p. 87). I do not know whether that is correct or not but it is clear that organised criminal groups have continued to expand notwithstanding recent successes by law enforcement against the Sicilian Mafia in Italy and the Medellin and Cali Cartels in Colombia. As such groups have continued to grow and their empires have become increasingly more sophisticated so has the importance of laundering money become more important.

One of the other emerging concerns for most of the FATF countries is the acquisition of banks by criminal organisations for the purposes of moving their monies. It has been suggested that more than 50 per cent of all newly created banks in Russia have been acquired by the so called *"Russian Mafia"* (*see* Schneider & Zarate 1994, p. 167). The international community is very concerned about the situation with the Russian banks. The UK and the US financial authorities are endeavouring to utilise their new authority under the Basle Committee to limit the proposed expansion of activities of a growing number of Russian banks that want to operate in London and New York. The financial supervisory agencies, particularly the Bank of England and the US Federal Reserve are worried about the instability of the Russian banking system, the immaturity of the Central Bank and banking supervision, the haphazard financial accounts of Russian banks, their typically weak capital bases and the alleged links of some with criminal organisations and the potential vulnerability of the banks to criminal activities (*International Law Enforcement Reporter*, vol. 11, p. 427).

In discussions with our international colleagues of other financial intelligence units (FIUs) like AUSTRAC, they tell us that although they are seeing very unusual financial transactions coming from the former Soviet Union (FSU) and the Eastern Bloc in many cases which are obviously criminally related, they have found a great deal of difficulty in trying to check information in the country of origin, particularly Russia. There appears to be a proliferation of law enforcement agencies with very vague delineation of responsibilities so that the law enforcement agencies do not know with whom they should be in contact and there appears to be no shared central intelligence repository against which information can be checked.

International Cooperation between Financial Intelligence Units

Having outlined some of the bad news I want to say something about the good news on the money laundering front. I believe that international cooperation between law enforcement is the key to dealing with these international criminal organisations. We have seen in recent times very good cooperation between the National Crime Authority and its task force members and Hong Kong law enforcement in relation to a number of matters. Indeed the National Crime Authority coordinated task forces are themselves very good examples of cooperation between law enforcement domestically and internationally. The Australian Federal Police's international liaison network, run through International Division, and those of Australian Customs Services liaison network are also a very important part of Australia's international cooperative effort.

In addition to traditional law enforcement cooperation we are now entering into a new phase, with a growth of financial intelligence units and cooperation between organisations like AUSTRAC.

There are presently some seventeen countries with autonomous anti-money laundering financial intelligence units with another nine countries having the responsibility for these functions placed within other organisations, for example, in

Canada within the Royal Canadian Mounted Police. In addition, at least nine countries are presently in the process of formulating autonomous units:

Aruba	Ireland
Chile	Panama
Czech Republic	Poland
Ecuador	Switzerland
Honduras	

The FIUs met in June last year and will probably be meeting every six months to discuss anti-money laundering measures, training of analysts to undertake the more specialised work of these agencies and money laundering methodologies and counter strategies. One of the most important strategies is the implementation of the FATF recommendation to enable the free exchange of financial information between countries.

I am very pleased to say that last week an agreement was finalised to allow for the exchange of financial transaction information between the US (FinCEN—Financial Crimes Enforcement Network) and Australia (AUSTRAC). This adds to the agreement that is already in place between France (TRACFIN—Traitement du Renseignement et Action Contre Les Circuits Financiers Clandestins) and Australia and in addition, Australia has held discussions with Belgium (CTIF—Cellule de Traitement des Informations Financiers); and preliminary discussions with Italy (Guardia di Finaza); the UK (National Criminal Intelligence Service); and our colleagues across the Tasman, New Zealand (New Zealand Police). I believe that these agreements will prove to be a very important law enforcement tool. For example we have recently made a request for information in relation to certain transactions from our counterparts in France.

In conclusion, although money laundering is a fairly recent issue, organised crime has been with us for a very long time. Although the number and size of international organisations seems to be increasing it must be recognised that in the early days of work against organised crime in the US that the early successes came through the use of financial investigations. It was financial investigators and the use of taxation powers in the US that resulted in Al Capone being brought to justice. We need to exploit the weakness that criminal organisations have in needing to have access to the financial system in order to deal with their profits. Money laundering is a worldwide problem and we need international law enforcement cooperation, regulatory cooperation and the expansion to other countries of the very good cooperation being received from financial institutions in countries like Australia, in order to make money laundering a key area of vulnerability for organised crime.

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3

Implications for Law Enforcement of the Move to a Cashless Society

GLENN WAHLERT

> *Driven by computer chip technology, possible alternatives to conventional currency are now emerging . . . They raise important issues . . . including the integrity of the issuer, the security and efficiency of the technology, [and] their scope for laundering money* (Bernie Fraser, Governor of the Reserve Bank of Australia).

The emerging technologies associated with stored value and smart cards, digital cash and electronic commerce will clearly pose an unprecedented challenge to regulators generally, and law enforcement specifically, over the next decade.

The powerfully beneficial technologies of telecommunications and computing, which have become the indispensable infrastructure for international commerce, also support the trans-national activities of a variety of criminal enterprises. Around the world organised crime is making use of its vast financial resources and a sophisticated command of technology to move huge amounts of money across continents in seconds.

One concern of the international law enforcement community, is that the convergence of technology, such as the linkage of computers by data transmission and the development of powerful encryption devices, may create new opportunities for criminal groups. To quote a paragraph from a recent study by the International Institute for Strategic Studies at Oxford University:

> *As modern society becomes more dependent on sophisticated communications and information systems, the possibility that these systems will be compromised or disrupted becomes more salient. Transnational criminal organisations can develop the capability to inflict damage [on these systems] relatively easily* (The International Institute for Strategic Studies 1995).

The convergence of communications and information systems is enabling a rapid move to electronic commerce and the empowerment of the individual to have an unprecedented level of control over his or her own money. In many ways this is a positive development, but it does not come without its risks.

Cyberpayments[1] are emerging as an innovative mechanism for conducting financial transactions. These types of transactions, occurring either through the Internet or use of so-called "smart cards", provide a convenient, immediate, relatively secure and anonymous method of transferring financial value.

Cyberpayment systems, albeit in a "first generation" form, currently exist in a

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1 Cyberpayments: Financial payments and transfers of monetary value conducted either over the Internet and/or through the use of so-called "smart cards".

surprising number of countries (*see* Table 1). With an ever-growing number of people who have access to the Internet, and the ever-increasing number of large banks forging relations with cyberpayments companies, the use of electronic payments is expected to continue to proliferate significantly both domestically and internationally.

Table 1
Countries with Cyberpayment Systems

Europe	North and South America	Asia
England	United States	Hong Kong
Scotland	Canada	China
Denmark	Colombia	Japan
France	Argentina	Singapore
Portugal	Brazil	Taiwan
Belgium	Mexico	Indonesia
Spain		Macao
Finland	**Africa**	Phillippines
Netherlands	Zambia	Sri Lanka
Russia	South Africa	India
Bulgaria		
Germany	**Australia**	

It is not the intention of this paper to show law enforcement as either alarmists or techno-Luddites, but rather to:

- convey a broad overview of some of law enforcements', and other regulators', concerns regarding these unique technologies; and
- examine some of the emerging primary regulatory issues which will directly impact on law enforcement efforts.

Law Enforcement Concerns

Electronic money (or E-cash, DigiCash, CyberCash, and so on) can be used over networks, such as the Internet. Indeed, this is an important driving force behind developments in the technology. Real time E-cash closely emulates paper money, provides person to person payments, may have no audit trail and no interchange.

Essentially E-cash is software which can be programmed to perform specific functions, such as being earmarked for special purposes with conditions on where it can be spent. It can also be transmitted in digital form along computer networks or held in smart cards. In many ways E-cash is more suited to the world of electronic commerce than conventional cash— it is "the ultimate— and inevitable— medium of exchange for an increasingly wired world."

Electronic currencies are not the product of some futurist's imagination; they are very much here and now. The concept of E-cash is best exemplified by the joint National Westminster Bank (NatWest), Midland Bank and British Telecom venture known simply as Mondex. The Mondex electronic money approach closely parallels cash and aims to become a new type of money. Besides Mondex, there are several other companies developing their own form of E-cash.

All these systems are in their infancy, however, and there are no guarantees that they will meet with market acceptance. Nevertheless, a number of E-cash vendors are confident that their products will eventually displace cash as the principal method of payment. For example, Mondex expects E-cash "to account for about a quarter of transactions that take place in society" within ten years. DigiCash, sees electronic money being "pervasive" by 2005, with a number of respected bankers predicting that it will "take off fairly dramatically" within the next five years.

If the amount of interest shown by some large corporations in cyberpayments is anything to go by, digital cash is on its way. In smart card form it is already ubiquitous.

The specific concerns of law enforcement regarding electronic cash can be categorised under the following headings:

- the transportation of illicit funds,
- an inability to trace money flows,
- counterfeiting, and
- non-bank entities as issuers.

Movement of Funds

The physical transportation of cash is often the beginning of the money laundering process. To avoid regulatory and control efforts, particularly in Financial Action Task Force (FATF) member states, money launderers are increasingly simply transporting their funds to a foreign country that has no currency controls and preferably has bank secrecy laws. Once in one of these offshore tax havens, the money can be deposited in a bank or other financial institution and then moved at will.

One of the biggest advantages to criminals from the growth of E-money, will be the simplicity and convenience of transferring value. Once money is converted into a digital form, it can flow in and out of countries at lightning speed using smart card technology, computer networks and, theoretically, other communications devices. Digital cash is ideally suited for international money transfers and, aided by computer software, could be routed and re-routed to several destinations internationally within seconds.

A particular law enforcement concern regarding the enhanced ability to move funds, is the peer-to-peer payment facility being offered by some schemes. At least one card vendor, and several E-cash schemes, plan to offer consumers the ability to anonymously transfer purchasing power from one electronic purse to another; such payment transactions would eliminate the need for clearing procedures and may provide no audit trail, providing opportunities for criminal abuse.

Our concern here is that some of these payment methods are "too close to cash for comfort." While many of the above characteristics are shared with cash, the risks could be magnified when the medium is a single card rather than a wallet full of notes.

Traceability

Another concern relates to the ability of financial transactions and monetary value transfers to "escape" from the regulated banking industry where we, and other regulators, have some level of visibility. E-money may be easily sent in and out of a country undetected, facilitating money laundering on a grand scale and weakening a national government's ability to monitor transactions and tax. A number of the electronic money schemes either under development or currently being trialed operate in an environment "where identities are concealed, national borders do not exist and transactions are instantaneous and potentially untraceable."

Imagine a scenario where E-cash is ubiquitous, having largely replaced conventional currency for small value transactions, and is seen as a major competitor for larger value transactions along with credit and debit card purchases. Using advanced smart cards, or computer networks, there would be little need for the funds to re-enter the banking network: they could conceivably move from consumer to consumer, consumer to point of sale, or point of sale to point of sale, just as cash does now.

Criminals could even demand payment in electronic form using electronic purses or the next generation of the electronic purse, the "wallet PC". For example, if drug dealers were able to obtain payment at street level in E-cash, they would have no need for a domestic bank—their funds could be automatically and anonymously deposited in an offshore account without any reference to an Australian bank or clearing house. Alternatively, their E-cash could be simply retained on the card and physically transported out of the country.

Additionally, should the Reserve Bank lose control of even a portion of the money supply through pervasive electronic cash systems, then this could place Australia's current transaction reporting regime in

jeopardy. The Financial Transaction Reports Act relies on the ability of the banks to identify suspicious transactions as well as those over certain predetermined limits.

A report commissioned by Visa International on a number of electronic purse systems, concluded that electronic money, when combined with smart card technology

> *could be used to smuggle currency in and out of countries in violation of those [country's] laws. It can also be used to transact normal business without the knowledge of the authorities, which could make it very useful to the "underground economy"* (Mondex in Comparative Perspective 1994, p. 15).

In some ways this situation is an acknowledgment that "banking is essential to the modern economy, but banks are not."

An example of the challenge facing regulators in attempting to maintain some degree of oversight of financial transactions, is the operation of the World Trade Clearinghouse Ltd's offer of a gold-backed cybercurrency with cash-like anonymity and "protection from bureaucratic snoops, nasty ex-spouses, and lawsuit-hungry lawyers." Similarly, the Internet Online Offshore Casino, run out of the Turks and Caicos Islands in the Bahamas, promises to accept all manner of E-money and pay interest on balances they leave in an offshore bank the company recently bought.

Counterfeiting

Besides the possibilities of E-cash presenting opportunities for money laundering, some forms of electronic money may prove susceptible to reverse engineering and counterfeiting. If computer hackers or other criminals were to break into E-cash systems they could instantaneously filch the electronic wealth of numerous innocent consumers. Should they also crack the encryption devices guarding such systems, as recently occurred in France, the successful hacker may be able to literally "print" his own money.

The vulnerabilities of these systems to compromise, interception or electronic counterfeiting depends to a large extent on the integrity of the encryption algorithms used, and these are yet to be tested in the market place. Certainly there is some suspicion and, perhaps, healthy scepticism among information technologists to the various advertising promises of total and absolute security.

Another issue to consider, and this is accepted as a potential problem by Wells Fargo in their Mondex trial, is that if these systems are "cracked", forgery may prove extremely hard to detect. It is not as simple as holding up a fifty-dollar note to the light: there are no metallic strips, no holograms, no note texture to feel. If you hold the encryption keys, or copies, you own the mint. A recent report by the Economic Crime Branch of the Royal Canadian Mounted Police, confirms this assessment. In an article entitled "The Future Threat of Credit Card Crime", the author states:

> *In a technological society, these types of crimes are less likely to be detected when one considers the ease at which information, and in particular data, can be transmitted across international boundaries* (Duncan 1995).

From a law enforcement perspective, we will have to assume that digital money will be the subject of sustained attack from all kinds of people.

Unregulated Institutions as Issuers

Both Visa and MasterCard's plans for their electronic purses will maintain the integrity of the Australian Transactions Reports and Analysis Centre (AUSTRAC) reporting regime by ensuring the centrality of the banks in the transaction loop. However, organisations other than banks might also want to issue electronic purses.

A number of the so-called loyalty cards, for example, might look at expanding the functionality of their cards in the future to incorporate "purse", or even "wallet" technology. This is not an unrealistic scenario. Worldwide, telecommunications and transit authorities have taken the lead in developing and employing stored value card (SVC) technology. Additionally, the same players that are looking to deliver information, entertainment and communications services to the home are also interested in payments as an integral part of the package.

The danger here is that as E-cash becomes pervasive and a variety of companies successfully offer their own brand of digital cash, the banks may be bypassed as the primary providers of consumer financial services. The various non-bank purveyors of E-cash, which may include insurance companies, telecommunications carriers and software manufacturers, may become the consumer's first point of contact when they want to obtain some digital money. Combine this possibility with the scenario described above and you would have a need for some very creative work on the part of AUSTRAC to keep ahead of money launderers.

The issue of non-bank involvement in the provision of electronic purse services was explored by European Economic Community policymakers. A May 1994 report from the working group on European payment systems proposed that only banks be allowed to issue electronic purses. The report cautions that cards issued by nonbanks would not be subject to the banking regulations, supervision and deposit insurance schemes that have traditionally protected consumers. Similarly, this level of regulation and supervision has also provided a bulwark against money laundering.

At the November 1994 Financial Action Task Force (FATF) meeting in Paris, it was noted that laundering operations were spreading outwards from the banking to non-banking sector as launderers become more aware of the various directives, legislation and conventions requiring banks and financial institutions to follow the standard requirements of identification and reporting. These non-bank institutions, ranging from large to small less-traditional financial intermediaries, are subject to fewer regulatory requirements and examinations, making them potentially more vulnerable to money laundering.

Is Regulation the Answer?

The concept of electronic money raises a number of questions that are, as yet, unanswered: Who should be allowed to issue E-cash, and who will regulate the issuers? How will taxes be applied in cyberspace, which transcends physical boundaries? How will regulators police money laundering and counterfeiting on private networks? There are a number of aspects to these issues.

Firstly, we must acknowledge that existing monetary regulations do not cover all of the potential uses of E-cash. These systems present untold, and yet to be understood, opportunities for launderers. They are also entirely outside of the current legislative and regulatory regime in Australia, and the regulatory gaps are sizeable. For example, there are no laws that limit the balance of electronic currency that can be loaded onto a smart card and, if E-cash can transcend international borders, it would not be affected by present international currency exchange efforts.

So is regulation an answer? One aim of regulation is to resolve an issue. In this case it is very difficult to resort to pre-emptive regulation as a resolution of issues we have not as yet identified. It is also too early to make any judgments about the extent to which any of these systems really differ in kind from our present day payment system. We are, therefore, uncertain how our extant regulatory, legal, economic and policy frameworks may be able to evolve to cope with these new products—remembering that these

frameworks were designed to accommodate new developments and have done so successfully so far: for example, credit/debit cards, EFTPOS, ATMs, and so on. The fundamental question we are unable to answer at this point is to what extent these systems are category killers (that is, developments that do not fit neatly within the existing structure).

Another issue relates to the ability of the regulators generally, and law enforcement specifically, to enforce any state or federal legislation relating to E-cash. It is quite possible that electronic money will prove as hard to regulate as any other form of digital information, especially where it is used on computer networks or transferred over other communications devices. The anarchical structure of the Internet and the almost total inability of governments to police pornography and stormfronts on the Net, suggests some of the challenges likely to confront law enforcement within the next ten years. For example, how will governments monitor or control stateless E-money? Questions such as this have special significance for financial crime investigators and organisations such as AUSTRAC and the Australian Taxation Office.

The Law Enforcement Dilemma

Law enforcement faces a difficult dilemma. On the one hand we have an opportunity to influence the development of these schemes: as many are "works in progress" their final shape may ultimately depend on regulatory decisions, or the threat of them. However, these very decisions require information about the systems' projected characteristics that we do not possess. Essentially our dilemma is the same as it is for government: how do we ensure and encourage innovation while addressing issues required by the public interest?

Privacy Issues

Privacy is a related but, arguably, more controversial issue. Some believe that cyberpayments should be, in principle, just as anonymous as cash transactions and view statements such as this a real worry. This creates a dichotomy between privacy and traceability and places many of us, especially law enforcement, at odds with the privacy groups. I would contend that cash is not as anonymous as many of these cyberpayment systems. With cash you are normally required to conduct a face-to-face transaction. This is in some ways traceable. And you cannot shove fifty-dollar notes down the telephone line or into your computer and conduct business. The increased functionality of these new means of payment compounds many of the risks associated with abuse. I am not sure the privacy advocates appreciate this fact fully.

Nevertheless, the political clout of these groups cannot be ignored. It is a relatively simple and attractive proposition for politicians to take the moral high ground and declare their intentions to protect the privacy of consumers. It is far more difficult to promise to maintain the integrity of the systems themselves and protect the consumer from their misuse.

Another issue is the relative importance of privacy to the average consumer. Sure, if you ask them whether they are concerned about the prospect of government and big business being able to keep track of their financial transactions, they will probably answer an emphatic "yes!" But if you then ask them if they are prepared to pay a premium for that privacy you may detect some equivocation.

Privacy advocates may counter this argument by stating that cost is not at issue. However, the aim of my logic is to show that when it comes to the essential drivers of the consumer's decision to use a new product, privacy is not high on his list of priorities. His main concerns are the three Cs: cost, convenience, and confidence. The amazing growth of loyalty schemes suggests that consumers are

willing to trade privacy for some benefit—convenience, cost, or a perk of some sort. Notwithstanding this line of argument, I suspect the privacy groups will maintain a higher profile in the corridors of power than law enforcement. Consequently the trick for me will be to find some middle ground between the demands of privacy and consumer groups on the one hand, and the requirements of law enforcement for a more transparent form of currency on the other. It is also important to keep emphasising that privacy and anonymity are not synonymous.

What can be Done?

First of all we need to understand these emerging systems a lot better than we do today. Secondly, law enforcement and regulatory communities will need to work closely with financial institutions, and other entities which are providing cyberpayment services, in identifying, addressing, and possibly resolving emerging issues and areas of potential mutual concern. In particular, we need to develop viable guidelines for pursuing know your customer policies and suspicious transaction detection strategies.

Concurrently we must foster international cooperation among law enforcement, regulatory, and industry representatives to address the possible erosion of international financial borders, and develop strategies for ensuring the integrity and viability of these systems.

Conclusion

Rapidly advancing technology is stimulating an inexorable international move towards electronic commerce and the growth of electronic forms of payment. The next year or two will likely witness the introduction of a complementary instrument, an electronic analogue to cash known as the electronic purse. Although we cannot predict how rapidly and widely this new technology will be accepted and just what forms it will assume, dramatic changes are clearly possible over the next several years both in the way consumers make payments and how they view money. Additionally, many of the existing forms of electronic payment, such as EFTPOS and credit-cards, are likely to continue to replace coins and notes ensuring that paper money at least withers, if not dies. While Australia may not be destined to become a "cashless" economy for some time, it is certainly credible that the relentless advance of electronic payments will make us one with "less-cash".

In the first decade of next century, consumers will be increasingly able to shop from home, gamble remotely and transfer funds without visiting a financial institution. As society moves towards fewer and fewer face-to-face financial transactions there is a possibility that this will present law enforcement with a number of challenges. Principal among these challenges may be the increasingly anonymous nature of crime and the further internationalisation and sophistication of criminal activity utilising powerful encryption devices and computer networks.

Allow me to leave you with one final thought:

> *Crime knows no frontiers [especially in cyberspace], but law enforcement does.*

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4

Economic Consequences of Money Laundering

NEIL MACKRELL

I am grateful to the Institute for the invitation to speak at this seminar. It was not too long ago that money laundering was a fringe issue. The diversity of organisations represented at the seminar confirms that this is no longer the case, and that a broad-based and concerted effort is needed to counter the money laundering industry.

For our part, and to avoid any misapprehension, I ought to make it clear that the Reserve Bank of Australia (RBA) lays no claim to expert knowledge of the way money laundering activities are conducted or the extent of money laundering and related criminal activity. However, the Bank does assist the national crime authorities where it can. For instance, our close involvement in cash distribution means that the Bank has a good idea, in broad terms, of the geographic flow of currency. We supply this information to AUSTRAC. We take a close interest in, and contribute to the work of the Financial Action Task Force (FATF) in Australia. The particular perspective we bring to the debate is our experience with the institutional framework of financial institutions through which much of the money flows and of the payment systems they use. I will return to these issues shortly.

The RBA Money Laundry

But first, on a lighter note, I draw your attention to the fact that the RBA runs a genuine money laundering operation of its own in the basements of its branches. Millions of used notes are processed daily to sort unfit notes from those fit for reissue. As you might expect, large denomination notes, those most likely to be used for covert cash transactions, are the least likely to be turned over through the banking system and are the notes we see least of. On average, A$100 notes are returned to the Bank less than once each year while $20 notes for instance are returned, on average, six times each year.

Naturally enough we know precisely the number and value of notes the RBA "launders" each year. Last year it was 1 527 499 627 pieces to a value of A$54 164 993 675; a lot of laundering.

Extent of the Problem

In contrast to that precision we have only a vague idea of the real extent of what this audience understands to be money laundering; either internationally or in Australia. Internationally, estimates range from US$300 billion to US$500 billion annually. In Australia, AUSTRAC recently commissioned a very interesting study that suggested that between A$1 billion and A$A4.5 billion may be laundered in and through our jurisdiction annually, with the most likely figure being around $A3.5 billion.

You could be forgiven for thinking that the economic consequences of an industry on this scale would be obvious. Think of the wool industry in Australia. Last year its exports totalled about A$4.2 billion. On AUSTRAC's estimates it would seem that the money laundering industry legitimises illicit cash flows roughly equivalent to the annual value of our wool exports. The Australian Council of Wool Exporters could tell us all about the economic consequences of their industry. In contrast, the literature on the economic consequences of the money laundering industry is almost nonexistent. Why is that the case?

Well, obviously enough, an industry that we cannot measure and cannot see, in fact an industry whose inherent primary objective is secrecy and covert operation, does not offer itself as an attractive research proposition. The Australian Bureau of Statistics cannot differentiate between the labour of the honest accountant doing the community's tax returns from a dishonest accountant scheming up new and innovative ways to launder the proceeds of crime. Similarly, the labour of legitimate couriers cannot be differentiated from the labour of couriers carrying illegitimate cargoes. The country's payments system infrastructure cannot tell the difference between a transaction that closes the loop on a money laundering scheme and a standard legitimate transaction. In short, much of the economic activity of money laundering is intrinsically interwoven with corresponding legitimate activity— this after all is what money launderers are trying to achieve.

The question I have been asked to address is whether there are any separately identifiable economic consequences that arise as a result of this transitional activity; consequences over and above those associated with the criminal activity itself.

Obviously it has some impact, for instance, in the cost to the community of implementing anti-money laundering measures— the costs of maintaining AUSTRAC for example. But in the scheme of things these costs are minor.

The broad answer to the question is that from an economic view point there are few separately identifiable economic consequences of any substance. Crime generally— and money laundering is a crime in Australia— is just another business activity. It employs people, skills, technological know-how and capital resources just as any other industry but, to the extent that these inputs are measured, they are not differentiated from similar legitimate activities.

This may be a disappointment to hear. Nevertheless, looking across the economy as a whole and with the hard unfeeling eye of the rational economist with a capacity to abstract from social and emotional issues, the activities of money laundering probably are not having major identifiable economic effects. This would certainly help explain the absence of any substantial literature on the topic

We might now move one step up the money laundering ladder and look at some of the consequences associated with the disposal of proceeds.

Disposal of Proceeds

An AUSTRAC paper (prepared for the Asian Money Laundering Methods Workshop held in Hong Kong in October last year) identified five broad avenues for disposing of proceeds in Australia. They include:

- spending on high living;
- storing for future use;
- purchase of assets (real-estate, bullion, businesses);
- physically transported offshore; and
- placed into the banking system.

It would be an interesting, though somewhat academic, exercise to work through the economic consequences of each of these forms of behaviour and to seek to extract any common threads. For instance, we could trace through the effects on the economy of those who choose to launder the proceeds of crime through an improvement in their own lifestyle, perhaps even a lavish improvement. Those of us who earn our money and pay our taxes on a PAYE basis often suspect where some find their lavish improvement. I would expect that in this expert audience there are some who know exactly where the money goes. But to even the untrained eye, the marinas that fringe Sydney Harbour would seem to contain a percentage of craft that would fall into this category. The so-called "grass castles" with their lavish appointments would also. There is a near endless list of avenues for enjoying the high life.

The very thought of the criminal element enjoying the high life triggers strong reactions and raises social and equity issues with heavy emotional content. But the task for the economist is to be rationally analytical in assessing economic consequences, and step back from the emotion: viewed in that light, the money spent on a luxury holiday on the Barrier Reef by the undeserving has the same flow-on effects through the local and broader economy as a similar holiday that represents five years frugal living. In this sense, spending is spending.

The second avenue that AUSTRAC mentioned for disposal of proceeds was that of storing cash for future use. Our note issue records show that there is about A$1100 in currency notes on issue

for every man, woman and child in Australia. About A$500 of that is in the form of hundred dollar notes. It seems intuitively obvious that some of that amount will represent the hoarding of illicit funds. Apart from being a particularly poor investment, having a negative rate of return after the effects of inflation are taken into account and relatively high risk of loss, the economic consequences are unremarkable. The Government, through seigniorage, gets full value for every note as it does for the cash in our wallets. Some of that hoarded money may be lost, or otherwise fail to find its way back into circulation, leaving the government with a "skinner".

There are other issues we could pursue. For instance, the effect on competitive equity of business activities that are used as fronts for money laundering operations competing with legitimate businesses that draw capital funds from the financial markets. We could also consider the consequences, especially for small open economies, of the supposed inherent instability of laundered funds as a capital source and the broader economic instability that is sometimes said to flow from that. It is beyond the scope of this brief discussion to delve into such issues but I would suggest that they might provide a useful research topic for someone, possibly AUSTRAC.

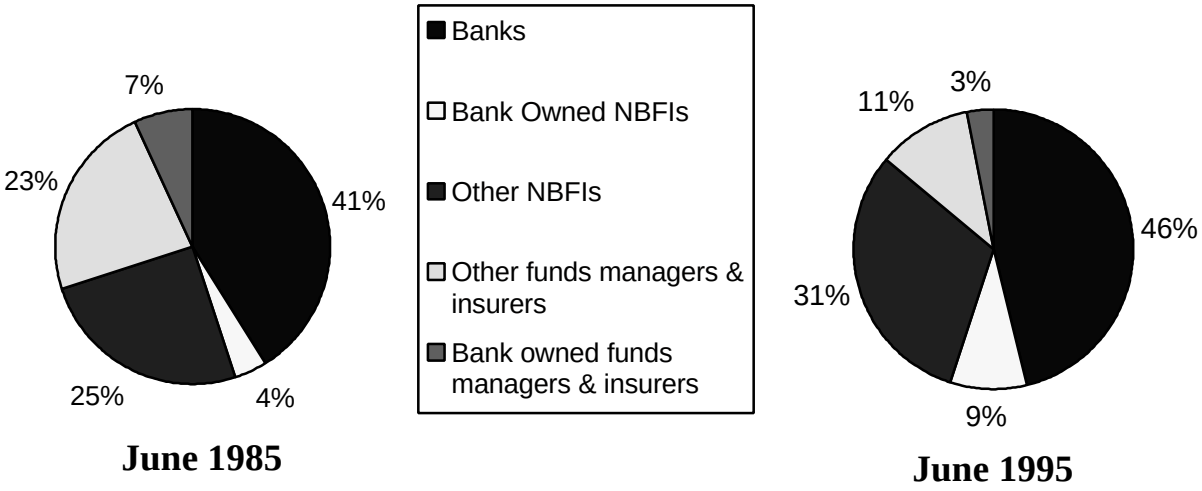
The general point is that money laundering is just another business, and that the economic consequences are relatively unremarkable (beyond those associated with crime itself).

Thankfully, however, the world is not populated with economists alone. Money laundering helps make crime worthwhile. It helps give legitimacy and even respectability to some of the most unworthy in society. It gives economic power to criminals and takes it from the law abiding tax payer. The use and abuse of that economic power raises a whole new range of social and equity issues with which this audience would be only too familiar. It provides for the redistribution of income from the good to the bad. To some, it shows that crime does pay with all the negative consequences that flow from that. In extreme cases we have seen it lead to the virtual take-over of legitimate government. The real consequences of money laundering are more social than economic and are very serious. And well worth the fight.

I will now turn briefly to the financial system and developments that may have consequences in the opportunities they present for money laundering.

I will focus on the institutional framework and some of the newer developments in payment instruments, then briefly touch on recent developments in systems for transferring high value payments both within Australia and overseas.

Figure 1
Assets of Financial Institutions: percentage of total assets



Institutional Framework

A watershed for financial institutions in recent years was the Government's decision to deregulate the financial system, announced in 1984. It gave rise to rapid expansion of the financial sector and competition that has become increasingly effective. It led to a decade where there were winners and losers and sizeable shifts in market share between the main institutional groupings.

Figure 1 shows that the banking sector (including their funds management and insurance subsidiaries) has been a clear winner. After generations of quiet, uncomplicated stability in the banking industry the number of licensed banks in Australia rose from around fourteen to over fifty, and is likely to rise further. We have seen new foreign entrants and some of the larger non-bank financial intermediaries have converted to bank status. Managed funds are also among the winners of the past decade with the merchant bank, finance company, building society and friendly society industry groups losing market share.

A point to note is that we now have a lot more banks in Australia, each with their own networks of domestic and international financial links. We are now much more locked into the rest of the world. Another point of particular interest to central bankers is that the vast bulk of financial institutions now come under the oversight of one of the official supervisory bodies.

In the years ahead, it may be that the next watershed will be seen as having been the Government's decision to promote a retirement income policy actively, drawing increasingly large amounts of domestic savings into superannuation and the managed funds industries. Naturally the banks are working to get further into the superannuation fund business. At the same time, the life offices (which are heavily into superannuation) are working to expand their "banking" business. What we are seeing emerge are financial conglomerates that offer a broader range of financial products.

Payments

The pattern of payments is also changing. Traditionally payments were made by banks and they effectively controlled the payment system. We are now seeing a range of other institutions getting into the payments business. Last year the Government announced its intention to change the *Cheques and Payment Orders Act 1986* (Cwlth) to allow building societies and credit unions to issue cheques; Australia Post has cemented a number of agency arrangements with banks to effectively turn its widespread branch network into something approaching a financial institution in its own right, with a primary focus on payments. Payments are being recognised as a profitable business in their own right and the banks are meeting very stiff competition on all fronts. Diversity in payment channels is, of course, music to the ears of the money laundering industry.

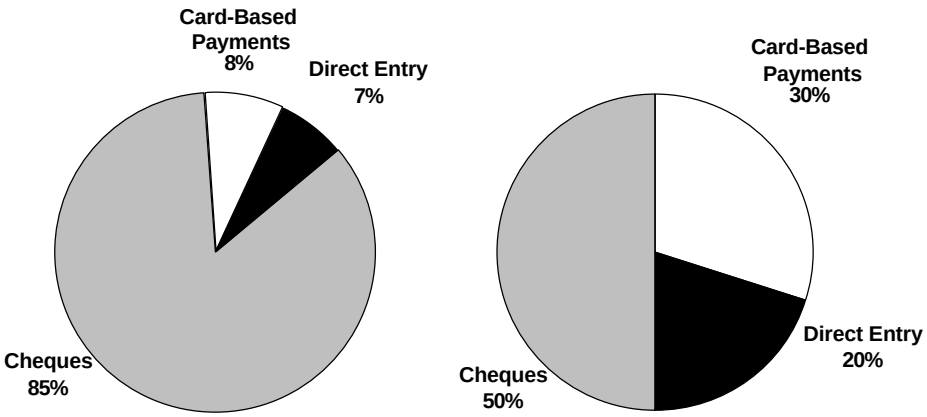
Payment Instruments

The past decade has also seen sizeable shifts in the way payments are made.

Figure 2 shows, as you would expect, the large sectoral shift from paper payment instruments, mostly cheques, towards electronic payment instruments. On one measure of market share cheques have fallen from 85 per cent to 50 per cent. In absolute terms the use of cash and cheques is not really declining but in relative terms it is. The growth payment instruments have been electronic direct entry, credit card and EFTPOS payments. Direct entry payments are deposited or debited directly into bank accounts. Payroll payments are the usual example. Over 95 per cent of Government payments are now handled this way. EFTPOS and ATM payment mechanisms are taking banking deeper into the community. Financial electronic data interchange (EDI) payments are now emerging mainly for commercial payments.

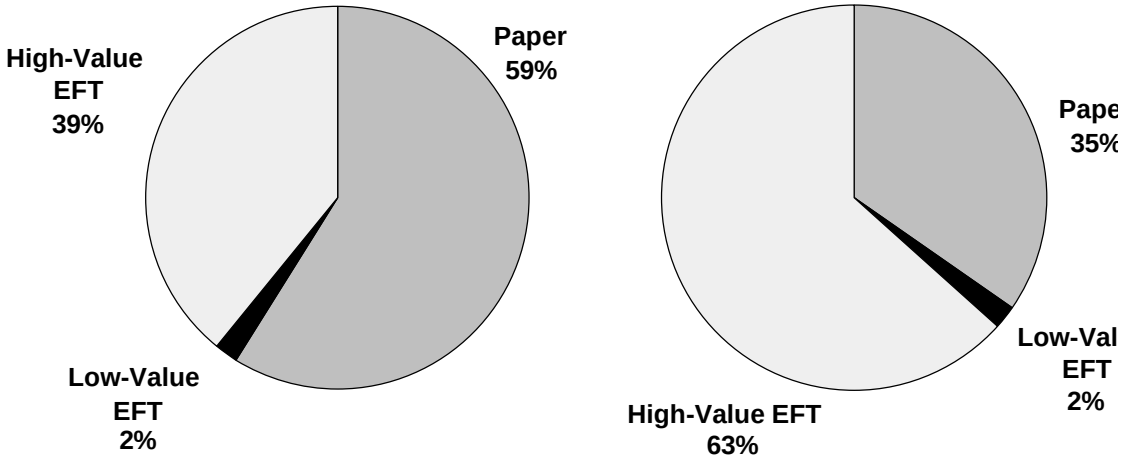
NUMBERS (8.5 m per day in 1995)

Early 80s **1995**



VALUES ($120 billion per day in 1995)

1991 **1995**



Smart Cards

The payment instruments attracting a lot of interest at the moment are those based around "electronic money". This includes smart cards, or more accurately stored-value cards (SVCs), and some of the more exotic payment instruments of the Internet products like Cybercash and the like. As you know, a number of SVC schemes are being trialed in Australia at the moment. Australia is at the forefront with this form of payment technology, but even so it will be some time yet before they gain widespread acceptance. Mondex is a related, electronic payments system that is being trialed overseas and examined by Australian banks, but as yet there has been no confirmation of Australian banks committing to this system.

These developments are rightfully of concern to the law enforcement agencies. Such products are designed specifically to replace cash for day-to-day transactions. The proposed Mondex scheme, for example, would permit so-called card-to-card transfers of which no durable record would be kept.

The question here is whether SVC systems might be effectively restricted to low-value transactions. It is likely that they can and that such restrictions would not have a substantial cost in terms of the reduced functionality of such stored-value cards. I should point out in passing that the promoters of SVC schemes are well aware of the concerns of central banks about their potential for money laundering and are actively discussing these issues.

In short, the in-principle concerns about money laundering which arise with the innovation of

Figure 2
Methods of Payment

stored-value cards is well recognised, but thinking generally is that these problems can be properly managed and the scope for money laundering severely curtailed.
For instance, SVC cards could have a modest limit on the maximum value that can be stored on them, especially if they are able to be used for card-to-card transfers. There could also be a limit on the life of the cards which would restrict their usefulness for hoarding and money laundering.
Electronic money certainly captures the imagination and will undoubtedly open up new and as yet unknown avenues for laundering money, despite the best efforts of the authorities. But, this will probably remain the domain of the small time players in the international money laundering industry.

Large Value Payment Systems

Developments in Australia and internationally in the large value payment systems are every bit as exciting as those with SVCs and the Internet, but are less obvious because of their lack of mass appeal; being the domain primarily of the finance industry professionals and central banks. Nevertheless it's these systems that are likely to offer greatest scope to the professional money launderer.
Large value payment systems are used by banks to transfer funds between each other, on their own behalf and for customers. Internationally, SWIFT is the best known, linking about 2200 banks around the world. The Asian Money Laundering Methods Workshop I referred to earlier identified SWIFT as one of the main means for moving illegal proceeds between jurisdictions (which is no reflection on the undoubted integrity of SWIFT).
In Australia, we have not had such a widely available system for use domestically. Five of the large banks have been using a system called BITS (Bank Interchange and Transfer System) for transfers between themselves, but, more generally, large value payments have been passed through most of the existing payment channels (cheques, direct entry, and so on). Until recently only a few countries had well developed large value transfer systems in place; countries such as the United States, United Kingdom, and Switzerland.
This is about to change. In Australia, the RBA and the Australian Payments Clearing Association (APCA) have been planning such a system for several years now. We expect it to be up and running late next year. Our primary motivation is to eliminate settlement risk from the large value payment systems, but these developments will bring a range of other benefits to the users of payment services.
Briefly, we will be introducing Real Time Gross Settlement into the Australian financial system, which means that large payments between banks will be settled through accounts at the Reserve Bank as they occur. All banks (and indirectly credit unions and building societies) will be connected directly to the system, and all transfers will be for credit funds (that is real dollars) and completed in real time (that is virtually instantly). Once completed, transfers will be irrevocable. Access to the system will be widespread and the banks have agreed (only at the end of last year) to use SWIFT to access the system, and to scrap BITS.
When the system becomes operational, all banks in Australia will exchange large value funds for value in real time. This will be a major change to the Australian financial system.

Large Value Transfers Internationally

These developments in Australia are broadly in step with developments in a range of other countries. Major development efforts are under way to implement RTGS systems throughout the European community countries, and in our region China, Hong Kong, Thailand, South Korea, Vietnam, New Zealand and others are on similar paths. These developments will change the way large value payments are made in these countries in much the same way they will in Australia. They will bring a quantum leap to the ease, speed and range of options for transferring large value payments between institutions in these countries.
In the next few years these various domestic systems will become operational. Some of these

countries are already talking about how they could link their domestic systems together and to the Fedwire (RTGS) system in the United States. For instance, the domestic high value transfer systems of China, Hong Kong and the United States could effectively be linked within the not too distant future.

Conclusion

In summary, money laundering is a serious and growing problem. Its measurable economic consequences are probably well outweighed by its damage to the social and equity values of society. Developments in the financial system in Australia and internationally seem certain to guarantee job security for the law enforcement agencies.

5

Domestic Cooperation: Australians Working Together

JOHN BROOME

My predecessor Tom Sherman has quite rightly argued that the lack of effective cooperation between law enforcement agencies has been one of the most significant impediments to fighting organised crime, both within Australia and internationally. Cooperation and coordination are very effective weapons in counteracting organised crime.

Although state, territorial and Commonwealth agencies are vital players, the wider business and professional community can also make a valuable contribution, particularly in fighting money laundering in the 21st Century.

Role of the National Crime Authority

The National Crime Authority (NCA) was established in July 1984 to work closely with existing law enforcement agencies in containing and combating what was seen as becoming an entrenched problem in Australia at that time—organised crime and money laundering which is such an integral part of sophisticated and organised criminal enterprises.

During the House of Representatives debate on the NCA Bill in June 1984, the then Minister for Communications, Michael Duffy, said of organised crime:

> *Activities of this kind may be so intricately interwoven, may involve so many jurisdictions and may be so well camouflaged under legitimate ways of doing business that they may well not cause any one police force to take notice. . .*

The Minister's comments still accurately describe the Government's rationale for the NCA and underline that the National Crime Authority was not envisaged to stand alone. Indeed, the requirement for cooperation is written into the NCA Act. Parliament has recognised that the problem of organised crime— and by implication money laundering—is too big and complex for individual law enforcement agencies to successfully tackle alone.

The NCA's staff represents less than 1 per cent of Australia's total law enforcement resources and must work with other agencies to fulfil its charter. The NCA is not a threat to other agencies and other agencies are no threat to us.

The Principle of Cooperation

The general principle of cooperation is hardly controversial and today no one needs convincing that it is essential to successfully fighting organised crime. Cooperation and coordination are crucial players in the NCA's *raison dètre* and both my predecessors, Judge John Phillips and then Tom Sherman, actively promoted this

role. I intend to do the same. The recent Review of Commonwealth Law Enforcement Arrangements (CLER 1994) confirmed the importance of this role for the NCA and State and Territory governments expect cooperation, as does the Australian public for whom we work.

Why then is the issue of cooperation between law enforcement agencies a recurring issue? Why does it appear twice on today's agenda?

The reason is, of course, that cooperation between law enforcement agencies in complex and difficult areas like the investigation of major organised crime is much easier said than done. To consistently achieve effective cooperation requires hard work. Knowledge, trust and understanding are necessary for agencies to commit substantial resources to relatively long-term projects with sometimes uncertain outcomes. Only then is there the preparedness to share information— a vital ingredient in law enforcement.

In Australia's federal system, the different law enforcement agencies understandably and properly have different priorities. Resources are scarce compared to growing public expectations and increased scrutiny of performance. And, like most organisations these days, restructures, reorganisations, and from time to time crises of management and administration are not uncommon. Law enforcement is a difficult environment and it is not getting easier.

The rewards of effective cooperation are undoubtedly high, but there are clearly costs, difficulties and risks for individual agencies committing resources to long-term cooperative projects over which they do not have total control.

It is heartening that at the very senior levels of law enforcement agencies in Australia, there is general agreement that agencies must work together to seriously impact organised crime.

The issue is no longer to cooperate or not to cooperate, but what are the best ways of implementing effective cooperation, especially at a strategic level both nationally and internationally.

Although examples of cooperation between law enforcement agencies exist in Australia's past, historically Australian law enforcement has not been very effective at developing strategic cooperation at the national level.

Australian law enforcement, however, should not be singled out for criticism. Lack of strategic cooperation is a problem within many countries and internationally. Competing pressures and problems arising on a day-to-day basis in different agencies make it difficult to agree on and commit resources to longer term, collaborative, strategic projects.

Recent Developments

The early vision of federal and state governments in establishing the NCA in 1984 with its coordinating role in the area of organised crime was not met, in the early years, with the corresponding vision, understanding and acceptance by all agencies and perhaps by some areas of the NCA itself.

However, over the past 12 years the NCA has had ample opportunity to learn from mistakes made in its efforts to work effectively with other law enforcement agencies. The NCA has certainly learnt a great deal about cooperation and in the last four years implemented strategies with partner agencies that are showing worthwhile strategic results.

In achieving this, the NCA and partner agencies have had to recognise and deal with fundamental issues. Firstly, the NCA and its partner agencies have had to develop structures and procedures to enable all to participate in setting priorities for work that is best undertaken collectively.

To commit increasingly scarce law enforcement resources to what are usually complex, long-term projects, requires sound understanding of the rationale behind undertaking those projects on a

joint basis. Cooperation for the sake of cooperation tends not to be successful. The costs and difficulties involved must be outweighed, in the minds of each participating agency, by the expected outcomes and benefits. The NCA and partner agencies now realise that it is fundamental to reach a certain level of agreement at the outset. Agencies must agree that joint projects are sufficiently high priority and that the best chance of success is likely to come from a coordinated, cooperative effort.

It is also fundamental that all agencies— on an ongoing basis— need to be kept adequately informed about the progress and direction of joint projects.

A fundamental, but in the past underestimated requirement is the need to work consistently at the processes of cooperation. It is a mistake to simply believe that effective cooperation can be achieved by the mere stroke of a pen, or by command from heads of relevant agencies. In Australia, as in most developed nations, many agencies have to be involved if a truly national response to organised crime is to be achieved. However, our Federal structure creates significant barriers to effective law enforcement, both structurally and jurisdictionally. Hard work and goodwill are vital to overcome such barriers. It needs to be recognised that there are many groups and individuals— with sometimes competing and overlapping interests— that have to be catered for.

Similarly, differences between and within agencies in priorities, cultures and even personalities must be heeded. Cohesion cannot be taken for granted and certainly in larger national operations requires full-time attention.

Secretariat and Consultative Committee to the Inter-Governmental Committee

While the Inter-governmental Committee of ministers which oversees the NCA plays an important role in bringing together ministers with primary law enforcement responsibility, it does not provide a direct forum for the operational agencies with which we work on a daily basis.

The establishment in 1990 of a Secretariat and a Consultative Committee to service the Inter-governmental Committee on the NCA were important steps in rectifying this. In the last two to three years as agencies have taken a much more active role in these committees significant strategic results are starting to flow.

The first nationally coordinated investigation to pass through the Secretariat and Consultative Committee process, Operation Cerberus (focussed on Italian-Australian organised crime), has now been accepted by participating agencies as a valuable and worthwhile initiative. It is in this spirit that the nationally coordinated investigations, Blade (Asian-Australian organised crime) and Panzer (Outlaw Motorcycle Gangs) have been established.

Each of these national investigations, Cerberus, Blade and Panzer, when completed, will have involved the cooperation of about fifteen state and Commonwealth agencies in Australia over— in each case— an estimated two-year period.

In Cerberus, the only nationally coordinated investigation completed at this stage, a joint Commonwealth/state task force was established and coordinated by the NCA, which included officers from the 15 participating agencies in Australia. These agencies nominated 125 different targets who were subsequently included on Commonwealth and state references approved by the Inter-governmental Committee: 60 of these targets were actively investigated in 156 joint operations over a two year period. More than 10 tonnes of cannabis, 37 000 cannabis plants and 400 kilograms of amphetamine were seized, while 771 charges were laid against 283 individuals in all Australian states and territories. Amended income tax assessments totalling more than A$10 million were also issued to more than

40 individuals and companies associated with Cerberus targets.

As you can see, cooperation nets significant results. These sorts of achievements could not have been delivered by agencies working alone.

Review of Commonwealth Law Enforcement Arrangements

In August 1993 the Commonwealth Government commissioned a Review of Commonwealth Law Enforcement Arrangements (CLER) as part of the Budget process. Terms of reference of the Review included:

- to target arrangements at maximising the cooperative efforts of agencies, including in sharing information and intelligence; and
- to ensure there is no unnecessary duplication or overlap in relation to their activities.

The *CLER Report*— published in February 1994— made a number of recommendations in relation to cooperation between Commonwealth law enforcement agencies in the fight against organised crime. The Report concluded

> *. . . that this whole area of coordination needs to be strengthened . . to ensure that every relevant Commonwealth agency has a clear commitment and mandate towards collective projects approved by the Commonwealth Government, as well as to ensure the continuance of State participation.*

After nominating a number of organised crime areas where it considered the NCA should undertake an expanded strategic and/or coordination role, the Report went on to conclude that the NCA's priorities in these areas should be set by a new body— the Commonwealth Law Enforcement Board— in consultation with the Inter-governmental Committee.

In relation to priority setting this may have been a very clever way of ". . . ensuring the continuance of State participation", although I fear it may not have been. Whether by purpose or accident the *CLER Report* in apparently elevating the Commonwealth's role in setting NCA priorities, seems to have stimulated State and Territorial contribution to the debate.

The Bingham/Avery Report and the Establishment of SCOCCI

Another report— The Future Strategic Role of the National Crime Authority in State Law Enforcement Systems— contends that ". . . the Review by the Commonwealth of law enforcement arrangements was completed without collaboration or consultation with the States". I am sure those involved in conducting CLER disagree.

What is both important and positive is that both Commonwealth, State and Territory governments and agencies are showing a very keen interest in making cooperation and coordination work effectively in this area of law enforcement. Positive recommendations are being made in relation to the ways and means by which a coordinated, strategic approach to counteracting organised crime might be achieved.

Not surprisingly the Bingham/Avery Report focussed again on mechanisms for setting the correct strategic focus for collaborative work with the main recommendation being the establishment of a Standing Committee on Organised Crime and Criminal Intelligence (SCOCCI) to replace the NCA Secretariat and Consultative Committee.

The Report recommended membership of both SCOCCI and the Management Committee of the Australian Bureau of Criminal Intelligence be integrated with membership of both committees comprising the eight Commissioners of Police and heads of AUSTRAC, NCA, Customs, NSW Crime Commission and the Queensland Criminal Justice Commission. In addition, it has since been agreed, that the Executive Officer of the Commonwealth Law Enforcement Board will also be a member

of SCOCCI, as will the head of the Australian Securities Commission.

At the last meeting of the Inter-governmental Committee on the NCA, all governments agreed to the creation of SCOCCI and it is expected to meet early in 1996.

Strategic Initiatives to counter Money Laundering

In identifying strategic areas in which the NCA should take an expanded coordinating role, the *CLER Report* (1994) did not identify the generic area of money laundering as a priority for the NCA. Rather, the Report recommended that the NCA's work on specific groups such as Chinese Triad Societies, the Ndrangheta and others might ". . . from time to time, be supplemented by generic references . . . such as money laundering . . . which deal with the facilitation of organised crime." The Report warned, however,

> *. . . that care must be exercised here because generic references could lead to the NCA reverting to being a competitive "ninth" police force and undermining the cooperative base of NCA work addressing organised crime.*

Consequently, the NCA has sought to use its coercive powers under its generic money laundering references in a cooperative rather than an exclusive way. The NCA has sought to work jointly with other agencies to identify and develop opportunities to target major organised criminal enterprises through their money laundering components. In doing so it uses suspect financial activity reported to AUSTRAC by banks and other cash dealers, as a key indicator of major money laundering schemes.

The NCA established a Common-wealth Task Force (The Agio Task Force) in October 1994 through which the NCA works with other Commonwealth agencies (AUSTRAC, AFP, ATO, ASC and ACS) to develop AUSTRAC reports for further detailed investigation mainly by other Commonwealth and State/Territory agencies.

The Agio Task Force is a comparatively recent innovation. It is based to a large degree on the underlying premise that money laundering is an integral part of all major organised criminal enterprises and that suspect financial activity on a reasonably large scale, is a fairly good indicator of money laundering. The NCA, and I am sure other law enforcement agencies in Australia and around the world, has plenty of experience to support these sorts of arguments.

Operation Omo involved investigations into the laundering of proceeds of sale of a 10 tonne cannabis importation— A$77 million in cash. The crooks successfully sold all the cannabis (and who knows how many previous importations) without detection. As a result of suspect transactions (pre AUSTRAC) reported by a bank direct to the NCA, investigations started.

Operation Endure involved the investment in Australia of more than A$20 million, proceeds of heroin trafficking in New York. The international heroin trafficking syndicate laundered more than A$100 million through more than 300 false name accounts with the Bank of Credit and Commerce in Hong Kong before investing it in various countries around the world, including Australia. The investigation of suspect real estate transactions in Australia led to the arrest of one of the key players, Tommy Law Kin-man in Hong Kong, and helped facilitate the confiscation of more than $40 million of the syndicate's funds in both Hong Kong and Australia.

Operation Quit, which involved the investigation of organised fraud on the revenue of state governments (mainly Victoria and NSW) commenced as a direct result of suspect financial activity reported by banks to AUSTRAC.

These are just a few of the organised crime investigations started in Australia and overseas as a result of the identification of money laundering activity in one form or another.

As envisaged by CLER, however, the NCA does not see itself as solely responsible for (or solely capable of) conducting all major investigations of this type in Australia.

The NCA does, however, believe that targeting organised crime syndicates through the identification of large-scale money laundering activity is a highly effective strategy for counteracting and disrupting organised crime in Australia. Investigating the financial affairs of these groups in Australia and around the world, leading in the most successful cases to confiscation of their financial base, is one of the most effective tools that law enforcement agencies have in suppressing their activities.

It hardly needs reiterating, but this work cannot be done by the NCA or any other law enforcement agency acting alone. Each agency brings to bear on the problem those particular resources and capabilities in which they excel.

Australia is fortunate to have probably the most advanced system of financial transaction reporting and analysis in the world, administered by AUSTRAC, as well as sophisticated Commonwealth and State proceeds of crime and anti-money laundering legislation, mutual assistance in criminal matters legislation, and a new Commonwealth *Evidence Act*. In addition, the Australian Federal Police operate 15 liaison offices in 14 different countries. Sophisticated taxation, customs and corporate and securities industry regulators exist and the Inter-governmental Committee on the NCA has given the NCA references to use its coercive powers to investigate suspect financial activity that may be associated with large scale money laundering underlying organised criminal enterprises.

Our future strategies must combine these capabilities in a coordinated attack against major organised crime syndicates at their most vulnerable point— their financial base.

A "Whole of Government" Approach

It is clear that policy development is becoming increasingly multidimensional. In whatever area of government one works, the implications of policy need to be fully considered and its impact understood so that all issues are addressed. An example of where this has worked well is the development of fraud prevention policies within the Australian Government. The Government's concern about the extent of fraud in Commonwealth projects led to a great deal of work in improving the means to both identify and prevent significant fraud. Such policies are not, of course, an end in themselves. Rather, they are about ensuring that those involved in the development of government policy understand the need to build into those policies fraud control procedures. New program initiatives now routinely involve consideration of the potential for fraud and the means to combat it.

This is the approach that needs to be fostered in the future as few areas of government policy do not impact on areas well outside their principal focus. Changes in the financial sector, superannuation, employment training and information technology all have potential implications for law enforcement. Just as the narrower law enforcement community has recognised the need to work together, so we have seen a much greater appreciation of the need to address law enforcement issues as part of broader policy development.

Community Role in combating Money Laundering

In its 1989 report, "Drugs Crime and Society", the Parliamentary Joint Committee on the NCA estimated revenues on total sales of cannabis, heroin and cocaine in Australia at $2617 million per annum. More recently, a report

commissioned by AUSTRAC by John Walker (1995) concludes, although rather tentatively, that

> *". . . a range of between A$1000 [million] and A$4500 million [is likely to be laundered in and through Australia each year], . . . with perhaps some confidence that the most likely figure is around A$3500 million . . . ".*

In 1987, the United Nations estimated that the total value of proceeds from international narcotics trafficking was in the order of US$300 billion. In 1990, the Financial Action Task Force on Money Laundering estimated that the street yield of cocaine, heroin and marijuana in the United States alone was in the order of US$104 billion.

Narcotics trafficking is a highly profitable business for those at the top of criminal organisations. Each year a significant portion of the revenues from narcotics trafficking is likely to be reinvested in legitimate business enterprises or other legitimate assets.

The syndicate in Operation Endure shipped bulk heroin from Thailand to New York and laundered the proceeds of sale through more than 300 false name accounts at the Bank of Credit and Commerce in Hong Kong before investing these profits in other parts of the world. The syndicate was the Bank's biggest single depositor in Hong Kong— its best customer. A small group of up to 12 operatives appeared to be all that were needed to generate about US$50 million per year from this enterprise. None had any tertiary qualifications and Law himself seemed to have little more than a primary school education.

Laundered funds were invested in the names of companies incorporated in Panama, Liberia, Hong Kong, Australia and other countries. Solicitors, accountants, bankers, merchant bankers, and other financial and business advisers acted for the group in numerous countries.

The various business and professional advisers who serviced the group's needs appear likely to have had varying degrees of insight into the real basis of its astounding financial success.

The bank in Hong Kong was probably the most culpable. Bank managers accepted individual cash deposits of as much as US$2 million at a time and conveyed these amounts in suitcases, by taxi through Hong Kong traffic, to distribute them among different accounts at different branches of the bank in order to disguise that the deposits were coming from only one customer. It also gave different branch managers a share of the lucrative business.

At the other extreme, solicitors and real estate agents involved in individual property conveyances funded by wire transfer from overseas could not be expected to be suspicious of the true source of funds being invested in Australia and other countries.

Clearly, hundreds of billions of dollars are generated globally each year from organised criminal enterprises and each day bankers, lawyers, accountants, real estate agents, and other business and financial advisers assist organised criminals, directly or indirectly, to manage and invest these funds. This is not to say that the great majority of these business and professional people provide their services knowing the illegal nature of these investment funds. Most, with some exceptions, would run a mile if they were told the "funny money" they were moving or investing on behalf of clients, who they may not know all that well, came from narcotics trafficking.

However, in a number of recent investigations into large scale suspect financial activity there appears to have been an almost deliberate policy to disregard the likelihood that large amounts of money have come from illegal sources.

While it depends on the circumstances and evidence available in individual cases as to whether bankers, solicitors, accountants and others who have provided questionable services are charged with money laundering and/or tax related offences, the fact is that those who become involved in this area are often acting in

their own interest and at the expense of the rest of the community.

Where services are provided on a "no questions asked" basis, involving large amounts of money that appear out of nowhere and where there appears to be no rational commercial basis for conducting particular transactions, people who know better should do better. If they have serious doubts about the source of funds or the purpose of particular transactions they are asked to facilitate, ethical lawyers and other advisers should be prepared to say: "This is work I will not do". Just as householders, through such programs as Neighbourhood Watch, can play an important part in community law enforcement, professional advisers have a responsibility to assist the public interest in law enforcement.

Information regarding possible large scale money laundering is invaluable to agencies charged with combating organised crime. I am not suggesting that legal, financial, and business professionals investigate whether clients are criminals. What is important, however, is that those professionals with whom significant organised criminals must inevitably deal are aware that information they may have could be of critical importance to law enforcement agencies.

While banks increasingly report suspect transactions, there have been very few instances where business and professional advisers have come forward with information regarding suspect financial activity.

One very pleasing development has been the approach, in late 1994, by the Institute of Chartered Accountants to the NCA, AFP, AUSTRAC and a number of other agencies for assistance in developing Ethical Guidelines for Chartered Accountants to help them in identifying and reporting suspect financial activity that might involve money laundering. The Institutes' accountancy journal raised awareness of the relevant issues and gave the Institute's membership general guidance in their legal and ethical obligations. Guidelines were developed and included in the Institute's Members Handbook last year.

Conclusion

The Australian law enforcement community has recognised the importance of developing mechanisms to facilitate strategic cooperation and coordination at a national level to counteract organised crime. The law enforcement community has also recognised that one of the most vulnerable areas of sophisticated organised crime syndicates is their financial affairs and will continue to target this area.

However, greater community participation is necessary to more effectively target the major players. The banking, legal, accounting and financial services sectors can obviously make important contributions. If these sectors join law enforcement agencies and work together against money laundering we will be significantly more successful.

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6

International Cooperation to combat Money Laundering: The Australian Perspective

MARK JENNINGS

This paper will focus on the current state of efforts to promote cooperation in a number of international fora. It is not a purely descriptive exercise but rather provides an Australian perspective on work in these fora and details the benefits of Australia's involvement in that work. I conclude by offering some thoughts on the future course of international cooperation.

If I had been asked to address this issue in 1990 or 1991 I could have devoted myself to dealing primarily with the activities of the Financial Action Task Force and Australia's participation in it, with some additional comments about the role of the United Nations. I would also have referred to the work being done in the Council of Europe, in which Australia was participating, towards the adoption of the Council's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. Having done so I would have given you a fair summary of the principal components of international efforts to combat money laundering.

In talking about international cooperation as it stands in early 1996, however, I must cover considerably more ground. For example, in the last couple of years the Commonwealth has made substantial progress towards having its Members adopt comprehensive anti-money laundering measures. The World Ministerial Conference on Organised Transnational Crime held in Naples in November 1994 adopted a Global Action Plan which devoted considerable attention to the issue of money laundering.

Clearly, international cooperation to combat money laundering has expanded in recent years with work going on in a range of fora. Cooperation is taking place on a global, regional and bilateral level. Australia has sought to play an active role in promoting cooperation on the foundation of its membership of the Financial Action Task Force.

Australia has pursued such a role in tandem with its broader efforts to promote international cooperation against organised crime. The linkage in this regard needs little explanation. As you will be aware, the expansion of the international reach of organised crime groups in the last decade has seen a substantial growth in their economic power. The profits generated by the illegal activities of these groups are available to be reinvested in further criminal enterprises. Once laundered, money is also used to fund legitimate business enterprises which further add to the economic structure and strength of organised crime. Effective international cooperation against money laundering has a vital role to play in diminishing this economic power.

The strength of Australia's support for international cooperation in these areas can

be explained by its long held view that countries cannot meet alone the challenges posed by organised crime and its exploitation of money laundering. They can do much at the domestic level. For its part, Australia has adopted a "whole system" approach to dealing with organised crime by putting in place appropriate law enforcement structures, legislation and operational techniques. Effective action domestically, however, must be coupled with a commitment to international cooperation if countries are to put in place a comprehensive response to organised crime and its activities, including money laundering.

From a foreign policy perspective, Australia's support for international cooperation can also be seen as an expression of its policy goal of being "a good international citizen".

Fora

I will now consider the state of play in a range of the fora that promote cooperation to combat money laundering. This will not be an exhaustive treatment of all fora dealing in some way with money laundering. Rather I will focus on major fora in which Australia participates. I will also seek to detail some of the advantages which Australia has secured from that participation.

Financial Action Task Force

I will start by providing an outline of the FATF's work and Australia's role in it.

Since its inception in 1989 the FATF has been the principal focus of Australia's international anti-money laundering strategy. It has been the premier body in the anti-money laundering field during this decade. It is not a formal international organisation based on a treaty. Membership, which consists mainly of OECD members, includes Hong Kong, Singapore, Japan and New Zealand

Australia has made a significant contribution to the success of the FATF. It was actively involved in the drafting of the 40 Recommendations and held the presidency for FATF IV (1992-93) through the Chairperson of the NCA, Tom Sherman.

The 40 Recommendations are at the core of the FATF's work . While they do not have legal effect, FATF members have undertaken to implement them as a comprehensive package of anti-money laundering measures. Australia has done so. Members are also subject to evaluation of their implementation.

Efforts have been made to inform countries outside the FATF of its work and to seek their involvement in the battle against money laundering. These efforts have been focussed on priority countries and regions. Special attention has been given to countries which have a significant financial system, but have not, or have insufficiently, implemented the 40 Recommendations.

Turning from this outline I will now deal with the work currently being undertaken by the FATF.

A review of the future work of the FATF was carried out in FATF V (1993-94). As a result of this review, the life of the FATF was extended for a further five years with the expectation that it would be wound-up by the turn of the century. The main tasks for the FATF over the following five years were identified as:

- keeping under review developments in money laundering methods and countermeasures, and their implications for the 40 Recommendations as well as sharing information and expertise internationally;
- monitoring the implementation of anti-money laundering measures in FATF members; and
- encouraging the implementation of anti-money laundering measures in third world countries and monitoring their progress in doing so.

The current work of the FATF is focussed, therefore, in these three areas. I

will touch on aspects of the first and third tasks of particular interest to Australia.

The FATF has recognised that the 40 Recommendations may require amendment and refinement in response to developments in money laundering techniques and the implications of new technology. Accordingly, the FATF is undertaking a stocktake of the Recommendations to determine what amendments and refinements may be necessary in this regard. Australia strongly supports this process. Clearly, the FATF's status in the anti-money laundering field would be called into question if the Recommendations failed to keep pace with contemporary developments. It would also become increasingly difficult to sell the Recommendations to countries outside the FATF were this to occur.

In the context of promoting the implementation of anti-money laundering measures by non-member countries, the FATF is well aware that the Asian region plays a very significant part in the world's economic and financial activity. The rapid rate of economic growth in the region has brought many benefits but it has also presented opportunities for organised crime to engage in money laundering.

Accordingly, the FATF, with Australia playing a leading role, has developed a strategy for the Asian Region which will seek to develop a consensus amongst Asian countries on the seriousness of the problem of money laundering and on the need for governments to take collective action to combat it.

In pursuing this strategy, the FATF, in conjunction with the Commonwealth Secretariat, has hosted three regional symposia on money laundering: the first in Singapore in April 1993; the second in Kuala Lumpur in November 1994; and the third in Tokyo in December 1995. The purpose of these symposia has been to bring together representatives from Asian countries, which are not members of the FATF, to share knowledge and experience on money laundering issues, to discuss the extent of money laundering in the region, to build consensus on the need to implement the FATF recommendations and to identify countries' needs for training and technical assistance in implementing money laundering counter-measures.

Another important component of the strategy has been the creation of an Asia Secretariat to carry out a variety of tasks, including support of the regional symposium, dissemination of information on money laundering and coordination of assistance by way of advice and training in developing and implementing effective counter-measures against money laundering.

The Asia Secretariat is being financed by Australia with an allocation from the Confiscated Assets Trust Fund. It is co-located with the National Crime Authority's headquarters in Sydney.

Benefits to Australia from its FATF participation

Against this background, what have been the benefits of Australia's participation in the FATF? I would argue that this participation has brought domestic and international benefits.

Domestically, the implementation of the 40 Recommendations has enabled Australia to put in place a comprehensive regime of anti-money laundering measures. These measures have created an environment hostile to the money laundering activities of organised crime.

Australia's links with the FATF in addition have given domestic agencies such as AUSTRAC the opportunity to enhance further their capabilities through contacts with counterpart agencies under the FATF umbrella.

Internationally, Australia's active and constructive role in the FATF has contributed significantly to its standing as a country at the cutting edge of efforts to combat money laundering. Australia is seen as a leader in the field.

By having a seat at the FATF table, Australia has been well-placed to participate not only in shaping the FATF's work on money laundering, but also in broader international initiatives to tackle

the problem. Australia, for example, used its position in the FATF as a basis for the active role it took on money laundering at the World Ministerial Conference on Organised Transnational Crime in 1994. Australia has also used its FATF membership to good effect in promoting action on money laundering by Commonwealth countries.

As noted, Australia has also been able to work through the FATF to promote the adoption of anti-money laundering measures by countries in the Asian Region.

The United Nations

Unlike the FATF, there is no single forum within the UN which focuses exclusively on money laundering. The UN's work on money laundering is subsumed in the broader topic of combating organised crime.

In this regard, I have already referred to the World Ministerial Conference on Organised Transnational Crime held in Naples in November 1994. The holding of the Conference under UN auspices was clear evidence of the widespread concern among members of the international community, including Australia, that organised crime represents a serious threat to the economies and social fabric of many countries and may even undermine the political stability of some countries.

The Conference adopted a Political Declaration and a Global Action Plan, which addressed the nature and extent of the problems and dangers countries confront in dealing with organised crime and identified the most effective counter-measures that could be deployed against it.

As noted, the Action Plan devotes considerable attention to the issue of money laundering. It outlines measures States should consider taking to combat money laundering. These measures are drawn from the 40 FATF Recommendations, although the latter are not referred to by name.

In keeping with its policy of promoting international cooperation against organised crime, Australia played a significant role in the drafting of the Declaration and Action Plan. The UN General Assembly at its 49th session approved both documents.

The UN Commission on Crime Prevention and Criminal Justice, in addition to its other responsibilities, has been charged with keeping implementation of the Action Plan under regular review. The Commission meets annually in Vienna. Australia was a member from 1992 until 1994 and is currently an observer.

The value of the Action Plan, apart from the measures it advocates, lies in the fact that it has been adopted by an organisation with a near universal membership of countries. Although, as is the case with the 40 Recommendations, the Action Plan is not legally binding, the political commitment of States to its implementation can be kept under review by their peers. Australia will be working, accordingly, to ensure that effective action is taken by the UN Crime Commission to follow-up implementation of the Action Plan.

Benefits to Australia from its participation in UN efforts to combat organised crime

As is the case with its participation in the FATF, there are benefits to Australia from its participation in UN sponsored efforts to promote cooperation against organised crime. By taking an active role and helping to shape the UN agenda in this area, Australia has been able to secure outcomes such as the Action Plan which reflect its approach to the main issues, including money laundering. This reinforces Australia's position at the forefront of efforts to combat organised crime.

The Commonwealth

The third major forum I will deal with is the Commonwealth. The Commonwealth has a lengthy history of promoting cooperation in combating crime. In this regard there is a Commonwealth Scheme for the Rendition of Fugitive Offenders (the "London Scheme") in which participating Commonwealth countries incorporate the principles of the Scheme into their domestic legislation and undertake to apply that legislation to other participating countries. There is also the Commonwealth Scheme for Mutual Assistance in Criminal Matters (the

"Harare Scheme") which operates on a similar basis.

Australia and other Commonwealth countries which are members of the FATF, such as the UK and Canada, strongly supported the Commonwealth taking action in relation to money laundering.

At their meeting in 1993 the Commonwealth Heads of Government identified money laundering as a serious threat to financial systems and agreed on the need to combat this threat. They commended the 40 Recommendations and called for their early implementation. They also gave law ministers and finance ministers a mandate to take action on the issue of money laundering. In particular, ministers were tasked to consider appropriate legislation and regulatory standards. Both law ministers and finance ministers assisted by their senior officials have taken significant steps towards discharging the mandate given to them. The issue of money laundering was again on the agenda for the Auckland CHOGM in 1995.

A model Commonwealth anti-money laundering law has been developed. Commonwealth countries have agreed to undergo self-evaluation on the implementation of anti-money laundering measures using the questionnaires on legal and financial issues developed by the FATF.

The Commonwealth Secretariat has also been active in raising the awareness of the problems posed by money laundering through holding workshops for countries. The Secretariat has developed, as well, a valuable working relationship with the FATF. This relationship has encompassed, for example, the joint sponsoring of the Asia money laundering symposia.

The momentum which has been developed in the Commonwealth for action on money laundering must be maintained. The Commonwealth Secretariat has an important role to play in this regard. Countries such as Australia will clearly need to maintain pressure for action. It may well be called on also to provide assistance to countries adopting anti-money laundering regimes.

Benefits to Australia from its participation in Commonwealth efforts to combat money laundering

Although the work of the Commonwealth to combat money laundering is still in its early stages, Australia has derived benefits from being involved in it. Australia has had the opportunity to argue the case successfully for anti-money laundering measures to a large and diverse group of countries. The FATF could not have reached all of these countries through the one forum.

Australia's efforts in this regard have enhanced further its standing as a leading country in the fight against money laundering.

If the momentum for action can be maintained and anti-money laundering regimes are extensively adopted and fully implemented by Commonwealth countries, the benefits to Australia from its involvement in the process will certainly increase.

Future course of International Cooperation

The challenge faced by Australia and other like-minded countries in the years leading up to the turn of the century is to put in place strategies to sustain the momentum in international cooperation to combat money laundering. The foundation has been laid through the work of the FATF, which is now being built on in the United Nations, the Commonwealth and other international bodies.

Australia will need to look for new opportunities to encourage cooperation. This will mean adopting a flexible and pro-

active approach to promoting the anti-money laundering message in existing and yet to be established international fora.

We must be careful, however, to avoid the temptation of thinking that the endorsement of anti-money laundering measures by international fora means that the greater part of the battle has been won. Such endorsements serve to lay the important political foundation for future work. Much hard work remains, however, to be done in ensuring that the agreed measures are implemented. Implementation will not occur overnight and countries such as Australia must commit themselves to working over the long term in the various fora to secure the implementation of measures by member countries.

In closing, I would note that Australia will continue to focus closely on developments in the Asia/Pacific region. Australia's involvement with the regional money laundering symposia and its support of the Asia FATF Secretariat are evidence of its commitment to work towards developing a regional commitment to combat money laundering. The benefits to Australia of concerted action against money laundering in the region are clear.

Money laundering is a silent crime. It crosses international boundaries leaving in its wake no obvious victims, no lethal weapons and usually no witnesses. Modern technology has lead to new avenues to disguise the proceeds of crime. The advent of electronic money has meant that tracing the transfer of possibly illicit funds is an extremely difficult, if not impossible task. How can law enforcement agencies around the world combat this complex crime? As the papers from this seminar show, international cooperation and the rapid identification of countermeasures to control the incidence of money laundering are the keys to prevention.

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