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"Money laundering in the 21st century: risks and
countermeasures"

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MONEY LAUNDERING IN THE 21ST CENTURY: RISKS AND COUNTERMEASURES

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Introduction

MONEY LAUNDERING IN THE 21ST CENTURY: RISKS AND COUNTERMEASURES

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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 organization 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 Australian Institute of Criminology (AIC), the Office of Strategic Crime Assessments (OSCA), and . Australian Transaction Reports and Analysis Centre (AUSTRAC) decided to explore the issue further, and hence this conference, 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" 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. 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 the objectives of the conference at which these papers were originally presented.

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, used with great success to date by the Royal Canadian Mounted Police and the U.S. Customs Service, they would seem likely to be accorded greater use in future. The use of such methods 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 globalization 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 industrialized 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 “bought off” and regulation effectively neutralized. 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 the pages below. 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; organizational incentives for interagency cooperation may produce overzealous conduct or other perverse consequences.

Upon conclusion of a conference such as that summarized 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 mobilize their resources appropriately. The pages which follow are a first step in that direction.