

# Professional business advisers and organised crime

By Tom Sherman  
Chairperson, National Crime Authority

**T**om Sherman, Chairperson of the National Crime Authority, recently addressed the Chartered Accountants Business Lunch Club in Sydney where he spoke on Professional Advisers and organised crime.

I would like to talk about the involvement of professional people, such as accountants, bankers and lawyers in organised crime; discuss the law enforcement response to that involvement; and outline what steps professionals can take to avoid becoming so involved.

Mr Fitzgerald QC addressed the role of the professional in organised crime in the report on his Inquiry into Possible Illegal Activities and Associated Police Misconduct in Queensland:<sup>1</sup>

"Crime and law enforcement today take place in a complicated commercial and legal world. Elaborate commercial dealings are part of normal business as well as being used as a facade for crime.

"Therefore criminals need skillful advisers. Just as corrupt police and officials disgrace their office, some professional advisers disgrace their professions by becoming the handmaidens of crime. Organised criminals pay well for all-too-good advice about how to avoid being detected and punished. They are advised how to structure and mask dealings to avoid detection, how to complicate the 'paper trail' to illegal funds and activities, how to exploit the protections, rights and privileges which the criminal law affords, and how to acquire and maintain the facade of respectability.

"Some professional advisers become directly involved in criminal activity. Others do not go so far, but still assist criminals to use illicit profits and to achieve their ends. For example, a solicitor may be retained to do property conveyance. He does the task properly, without committing stamp duty fraud, or using false declarations



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or false names, but he knows that the money being used to buy the property is the profits from a string of brothels, or worse, from drug trafficking or child pornography. The solicitor has done nothing illegal, but he has helped the criminal."

Mr Fitzgerald QC went on to say, "The Commission heard evidence of solicitors who helped conduct property transactions which involved undeclared cash considerations to avoid stamp duty and the use of false names. These solicitors said that they did not know the activities to be illegal, and therefore they had no ethical obligation not to act.

"The wealth, history and prestige of the legal profession can give moral torpor an aura of respectability, but in fact means there is less excuse. Claiming high standards of personal probity while knowingly helping criminals achieve their ends is hypocrisy.

"Professions, including lawyers, accountants and journalists, need to

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recall their professional codes are not replacements for personal probity, but guidelines for its exercise.”

These comments were made in 1989. They are still relevant in 1995.

#### **Organised crime as a business**

My basic proposition is the criminals cannot prosper without the help of professionals, such as accountants, bankers and lawyers, anymore than a legitimate business person can.

Organised crime is a business, and big business at that. As Mr Justice Stewart stated in the report of the Royal Commission of Inquiry into Drug Trafficking:

“The ultimate purpose of organised criminal activity is to make money. In some cases this may be associated with a desire for power and social status but maximisation of profits is the prime objective.”<sup>2</sup>

There are two particular areas of organised crime where professional advice is crucial. They are money laundering and revenue fraud.

Organised criminal activity, particularly narcotics, is heavily cash driven. Narcotics traffickers don't pay for shipments with cheques or credit cards; nor should I add do the victims of extortion or those who bribe police. The large sums of cash generated by many forms of criminal activity, especially drug trafficking, create special problems for criminals. Not only have large cash transactions become unusual in much of society, but also cash is an inherently unsafe and inefficient way of storing wealth.

As a consequence, large amounts of cash are placed into the financial system for security, ease of transfer and for reinvestment. These deposits, together with other financial activities of criminals, are a point at which the criminal process crosses into the financial system leaving them not only open to possible detection but also creating a 'paper trail' of documents.

The prime purpose of money laundering is to avoid attracting the attention of law enforcement and revenue officials. A laundering operation ultimately requires a ready explanation of where the money comes from. To be effective, this

explanation need not be believed. But it must be unable to be disproved. In many cases this will require professional help to achieve the criminal's objective.

As to revenue fraud I am not aware of any organised crime figures who dutifully pay their tax. Indeed, it would be quite out of character for them to do so.

In both areas of money laundering and revenue fraud professional advice is necessary to create structures and transactions which disguise the source of the money in particular criminal activity. Further, criminals are now much more conscious of proceeds of crime laws and they also seek professional advice to place their funds beyond the reach of restraining and forfeiture orders.

#### **Money laundering: scale and nature of the problem**

The scale of the money laundering problem is huge. No-one of course knows how much money is laundered each year around the world because it is an inherently secret activity. In its first report in 1990 the Paris based G7 Financial Action Task Force on Money Laundering (FATF) estimated that as much as \$US85 billion a year in proceeds from drug trafficking in the US and Europe alone could be available for laundering and investment. This is a sum larger than the GNP of many countries and is unlikely to have diminished over the past five years. The UK National Criminal Intelligence Service estimates that \$US500 billion of proceeds of crime is currently laundered worldwide each year.<sup>3</sup> By way of contrast a recent estimate of the value of the current world trade in crude oil in 1994 was \$US450 billion.

In 1989 the Parliamentary Joint Committee on the National Crime Authority estimated the annual turnover in the illegal drug trade in Australia at \$2.6 billion.<sup>4</sup>

Modern banking allows for large sums of money to be moved around the world instantaneously by electronic transfer. In the search for better interest rates, exchange rate advantages or new trade, the international movement of money

amounts to about \$US175 billion per day.<sup>5</sup>

Only a small portion of these funds represents conventional international trade by way of imports and exports, the bulk is simply money moving around in pursuit of short-term profit. The size of our financial markets compared with the conventional trade in goods and services is quite staggering. Australia's import and export figures for May 1995 were each about \$5.6 billion. In contrast, the total value of funds moving through Australia's various payment systems amounts to approximately 120 billion dollars per day. The proceeds of crime, even up to tens of millions of dollars, can easily slip into and out of this massive flow unnoticed.

Some individual cases of money laundering reveal quite startling amounts:

- In the "Polar Cap" case, it is believed that \$US1.2 billion of cocaine proceeds were laundered for the Medellín cartel through a complicated system of false gold and jewellery businesses in the United States. Funds were banked in the United States, then transferred to Panama and then to accounts in Britain, Europe and South America.
- Another investigation by the NCA of an Australian narcotics syndicate revealed \$A77 million was laundered through financial institutions in a number of countries.
- An investigation by the NCA of a Chinese based fraud syndicate revealed \$A60 million laundered through Australian financial institutions.

I have digressed a little from my major theme to make the point that criminal markets are significant in their own right but the sheer size of financial markets makes the disguising of proceeds of crime much easier. I now return to my main theme.

### The professional

A professional has expertise in specialised areas that is provided to clients by way of advice and other

assistance. With the increasing complexity of all aspects of business today, legitimate business people cannot operate effectively without good professional advice and assistance. This is not because business clients are incompetent, but simply a recognition that no-one can be an expert in all areas. Business people need professional assistance in creating corporate and trust structures, in engaging in complex transactions, in applying for licences, entering into a myriad of agreements and complying with government regulations.

Likewise, professional criminals require the assistance of experts such as accountants, bankers and lawyers. How many criminals (or legitimate business persons) have the expertise to set up blind trusts in off-shore tax havens and shuffle money between them? Their specialty is crime.

Indeed, there is increasing evidence of the use of "professional" money launderers who specialise in ways to disguise the illicit origin of funds. BCCI was a very professional money laundering operation. There is also growing evidence that professionals such as lawyers and accountants are being used (both wittingly and unwittingly) by money launderers.

Most of the studies undertaken by law enforcement agencies so far have concentrated on solicitors and therefore, most of the examples I am about to refer to relate to solicitors. However, just because the data I have relates mainly to solicitors, this does not mean that other professionals, such as accountants, are not also involved in advising and assisting organised crime.

### Examples of professionals assisting organised crime

Individual cash transactions of more than \$600,000 involving solicitors have been identified.<sup>6</sup> I struggle to think of a bona fide commercial reason for someone to deal in cash of that magnitude. Some interesting figures came out of an Austrac study into significant cash transaction reports:

- solicitors deposited some

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\$40 million in 1670 cash transactions in the two year period from July 1, 1990 to June 30, 1992;

- in the same period, bookmakers and TABs deposited some \$39 million in nearly 2500 cash transactions.<sup>7</sup>

Cases obtained by the NCA during a review of money laundering in 1991-92<sup>8</sup> show a range of activity undertaken by solicitors and accountants. A number show active and knowing participation in money laundering schemes, while others suggest wilful blindness.

National Crime Authority investigations have found accountants and lawyers assisting in the purchase of property in a way that disguised the source of the funds and, or identity of the owner; establishing "nominee companies" and trusts for use by money launderers; placing cash criminal proceeds in trust accounts, and arranging false "loans" with other parties on behalf of criminals. Some of the activities involved revenue fraud at both Federal and State level.<sup>9</sup>

In one NCA investigation an accountant was involved in setting up a fake gold mining syndicate and two gold mining companies. Cash generated by drug sales was 'smurfed' (deposited in amounts just under the reporting limit) into an account of one of the companies and used to buy worthless mining tenements from the other company and the syndicate. The accountant then prepared tax returns for the companies and the syndicate members showing income and capital gains from gold related activities. This money was then exempt from taxation (the scheme was implemented before the "gold tax" was introduced).

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In another NCA investigation a major international narcotics trafficker enlisted the assistance of banks in Singapore and the United States to transfer funds from Asia to the United States and then to his Liberian company account with BCCI in Hong Kong. The interesting feature of this case was that the trafficker started out by placing money in casinos and using cash couriers as well as wire transfers under \$US10,000. However, these process proved more cumbersome and labour intensive as the volume of cash increased. It was then that he obtained the assistance of banking professionals to move larger amounts of money faster, safer and more cheaply.

I could provide further examples in NCA investigations of professionals (including accountants) knowingly involved in assisting organised crime but I would be starting to stray into matters now before the courts.

Professionals are also becoming involved in organised crime in other ways. We have seen recent allegations in the Royal Commission into the NSW Police Service that lawyers have been involved in distributing narcotics, and as conduits for bribes from clients to corrupt police.

Professionals of all descriptions should avoid becoming drawn into the borderline (and more obviously illegal) activities of their less scrupulous clients. Involvement in organised criminal activity does not happen by someone asking you to "sign up". You are asked to do something slightly shady, and then something more shady, and so on, until you find yourself firmly enmeshed in illegal activity. Further, professionals who deal with criminals need to realise that organised criminals are not friendly people. If you become involved with them you may not be able to extricate yourself as easily as you might with a normal client. For example in one of our matters an accountant was seriously assaulted and is now under witness protection.

#### **The targeting of professionals**

In the USA, lawyers and accountants acting as professional

money launderers are being charged and convicted regularly. The specialist publication *Money Laundering Alert* reports in almost every monthly issue the arrest of another accountant, banker or lawyer for money laundering.

The NCA is increasingly taking a more comprehensive and proactive approach to counteracting organised crime. This includes targeting and investigating professional people who knowingly advise and assist criminal enterprises.

One effective method of attacking organised crime businesses is by reducing the availability of professional services to those businesses.

If law enforcement, by locking up professionals who assist criminals, can deter others from assisting criminals, this will have an adverse impact on organised crime. Professionals, in fact, may be one group in society that can be deterred from crime by prosecution — they are in a position to choose to commit the crime, and to weigh up the costs and benefits. Their professional reputations and livelihoods are also at stake. The professional criminal has less to lose by imprisonment; indeed many of them continue to plan and execute further criminal activity from the prison cell.

In most cases, the professionals are an "easier nut to crack" than those who have been involved in criminal activity all their lives, and are wary of, and take action to avoid, possible law enforcement activities. In these cases, the professional may be used by law enforcement as an entrance into the criminal organisation.

To demonstrate that the NCA's intentions are real I note that two accountants, two business consultants and two solicitors have recently been charged in four separate investigations by the NCA into money laundering or related offences.

#### **What can be done?**

The fight against organised crime, particularly money laundering and revenue fraud, cannot be the sole responsibility of government and law



enforcement agencies. (This is a point I made when I addressed the Institute's Money Laundering Seminar in August 1994.) The fight is a community concern. The private sector cannot pass the entire responsibility to government. In relation to money laundering, the old adage "money has no smell"<sup>10</sup> simply doesn't wash today. If these activities are to be suppressed and hopefully in the long term, substantially eliminated, it will require the collective will and effort of the public and private sector working together.

There are laws that now expose the careless or unscrupulous professional to quite severe penalties, such as the money laundering offence contained in the Commonwealth *Proceeds of Crime Act 1987*.

Section 81 of the *Proceeds of Crime Act* makes it an offence to engage in a transaction, or possess, conceal, dispose of, or bring into Australia money or property that is the proceeds of crime (i.e. proceeds of an indictable Commonwealth offence or an overseas offence that is equivalent to an Australian indictable offence). The offence carries a punishment of up to 20 years imprisonment and a fine of up to \$200,000, or of up to \$600,000 in the case of a body corporate.

In addition to these penalties, money launderers or their associates may be ordered to forfeit any property derived from the laundering, and pay a pecuniary penalty equal to any benefit derived from the laundering.

In relation to accountants, it is important to note that conduct engaged in by a servant or agent, within the scope of the actual or apparent authority of the servant or agent will be deemed to have been engaged in by the employer and the state of mind of the servant or agent will be deemed to be that of the employer. Thus if an employee of a firm commits a money laundering offence within the scope of his or her employment, the principals of the firm will also have committed the offence.<sup>11</sup>

In a number of recent US money laundering cases, the US Government has sought to forfeit assets of the law

firms associated with money laundering lawyers.

Professionals must be more sensitive to the potential of their clients becoming involved in activities that may entangle the professional in criminal activity. One of the most important aspects of this self protection is the principle of "know your client". The essence of good business for a professional is building good relationships with good clients.

The converse of this is the recipe for avoiding the traps of organised crime: don't build relationships with clients whom you suspect to be criminals. Be very wary of clients wishing to conduct transactions that do not make sound commercial sense. Suspect motives and dirty money may be driving the transaction.

#### **Institute of Chartered Accountants in Australia Guidelines**

I would like to finish on a more positive note. Following the ICAA Seminar on money laundering in August last year the Institute set about the task of developing money laundering guidelines with the assistance of law enforcement agencies. The Institute has now developed a set of guidelines for its members. Those guidelines and associated papers set out the basic legal framework dealing with money laundering and make it clear that the duty of confidence does not prevent the disclosure of iniquity. The guidelines also cover such matters as proper identification of clients; trust accounts; avoidance of arrangements which are intended to misrepresent the true nature of a transaction, the true source of funds or the true ownership of assets; and the reporting of suspicious transactions.

The Institute is to be highly commended for this important work.

#### **Conclusion**

By world standards, Australia is a hostile environment for money launderers. Our legislative and administrative counter-measures are to the forefront of world best practice. However, money laundering and organised crime remain significant and intractable problems and we must remain vigilant.

#### **References**

I would like to acknowledge the considerable assistance of Andrew Throssell, the NCA's Proceeds of Crime Officer, in the preparation of this paper.

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2. Royal Commission of Inquiry into Drug Trafficking (the Hon. Mr Justice D.G. Stewart, Royal Commissioner), *Report*, AGPS, Canberra, 1983, page 497.
3. *Global Organised Crime, The New Empire of Evil*. Editors L.P. Raine and F.J. Cilluffo, Centre for Strategic and International Studies, Washington, 1994.
4. *Drugs, Crime and Society*, AGPS, Canberra, 1989, page 52.
5. 'Corruption. Organised Crime and Money Laundering World-Wide'. Chapter by Pina Arlacchi in *Coping with Corruption in a Borderless World* (Proceedings of the Fifth International Anti-Corruption Conference), Kluwer Law and Taxation Publishers, Boston, 1993. Some more recent estimates are significantly higher, for example reports of a conference of central bankers in Wyoming in August 1993 suggest that \$US1 trillion moves around the world each day in foreign currency trading (*Australian Financial Review*, 24 August 1993, page 33).
6. Submission No.29 made by Austrac to the Senate Standing Committee on Legal and Constitutional Affairs for the purpose of the report *Checking the Cash*, November 1993.
7. Submission No.29 made by Austrac to the Senate Standing Committee on Legal and Constitutional Affairs for the purpose of the report *Checking the Cash*, November 1993.
8. *Taken to the Cleaners: Money Laundering in Australia*, NCA, December 1991.
9. *Taken to the Cleaners: Money Laundering in Australia*, NCA, December 1991.
10. According to the *Concise Oxford Dictionary of Quotations* (page 262) this phrase was uttered by the Roman Emperor Vespasian - AD9 to 79 - in Latin Pecunia non olet He was answering Titus' objections to the imposition of a tax on toilets!
11. The basis of this liability is section 85 of the *Proceeds of Crime Act 1987*.