



# Proceeds of crime

## Principal findings

- ◆ We are not presently in the position to reliably estimate how much illicit drug money is being laundered at any time in Australia. The problem is exacerbated by the differences in the nature of statistical records kept by State, Territory and federal agencies.
- ◆ Emerging technologies can facilitate the money-laundering process enabling electronic money can be made anonymous, leaving no audit trail for investigation. Established informal banking systems, such as the 'Hui', or 'Hawala', will be able to exploit the new technologies and thus present further problems for law enforcement agencies seeking to identify and investigate money-laundering activities.
- ◆ Forty of the 185 members of the United Nations are yet to sign the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Of the countries that have signed, however, fewer than 30 (including Australia) are implementing anti-money laundering measures that comply with the Convention. This situation undermines the efforts of those countries that have implemented anti-money laundering measures.
- ◆ The growing use of new technologies to facilitate electronic crime suggests that laws will need to be constantly reviewed to enhance the ability to intercept the proceeds of crime. Law makers should devise a system that allows potential loopholes to be quickly identified and legislative action to be taken promptly.

## Introduction

The combination of global financial markets, networks for the electronic transfer of money, easy access to financial havens, and banking secrecy laws in some countries has greatly increased the threat of money laundering<sup>2</sup> in the world financial system. The sums involved are enormous, and are moved into legitimate channels.

The lure of wealth to be gained from exploiting the drug culture in Australia has led to the infiltration of ethnically based organised crime groups. These groups bring with them practices and codes that are difficult for financial and law enforcement agencies to understand and deal with (Moffitt 1998).

Because a considerable proportion of money laundering is transnational, and because the emerging technologies of electronic commerce can be abused to facilitate money laundering, Australia aims to target assets derived from, used in, or intended for use in illicit drug trafficking in a number of ways:

- increasing cooperation to combat money laundering in Pacific island countries;
- maintaining Australian participation in the Financial Action Task Force;
- encouraging countries in the Asia–Pacific region that have established offshore banking and similar facilities to comply with the relevant recommendation of the Financial Action Task Force;
- increasing the international community’s awareness of the vulnerability of the Pacific area to drug-related activities, particularly money laundering;
- increasing the proportion of resources allocated by Australia and the international community to ensure that the Pacific islands do not become an integral part of trafficking routes and money-laundering activities;
- improving Australian agencies’ monitoring of developments in the Asia–Pacific region, to identify the movement to particular countries of drug-related assets or the creation of conditions favourable to such movement;
- increasing assistance in techniques for combating money laundering;
- continuing to act against opportunities for money laundering using the emerging technologies of electronic commerce;
- continuing to integrate the attack on money laundering and the proceeds of crime with the overall effort to combat primary criminal activities.

Australia is a prominent member of the Asia/Pacific Group on Money Laundering (APG Secretariat), which is an Australian initiative designed to promote measures that help combat international money laundering.

A report commissioned by the United Nations Office for Drug Control and Crime Prevention describes a deteriorating global situation, with money laundering suspected to be at unprecedented levels as the opportunities for fraud increase in the information technology era. Globally, up to US\$500 million will be recovered each year through anti–money laundering measures. This might seem to be a large amount but it represents an annual success rate of about a quarter of 1 per cent of the total amount of laundered funds (Fazey 1998).

AUSTRAC (the Australian Transaction and Reports Analysis Centre) estimates the total illegal proceeds generated each year by drug-related money laundering in Australia at between A\$1 billion and A\$4.5 billion. This is in spite of the fact that Australia’s cash-reporting laws are among the most stringent in the world.

Some international agencies estimate the global annual criminal product to be approximately US\$100 billion. Of this, it is estimated that about half is derived from drug trafficking (Brossard 1999). Although this figure is considered conservative it means that about US\$140 million is injected into the world economy daily from the proceeds of drug trafficking. The International Monetary Fund estimates that money from illegal sources constitutes around 2 per cent of global gross domestic product (Janes Information Group 1998).

## Money-laundering methods

The term ‘money laundering’ is so called because it designates the cycle of transactions—illegal (or dirty) money is put through a cycle of transactions (or washed) so that it emerges from the cycle as legal (or clean) money. The aim is to hide the source of illegally obtained funds by passing the funds through a series of transfers and deals so that the funds can be made to reappear as legitimate income (Robinson 1997).

One of the most important vehicles for laundering money is the banking system. The transformation of the proceeds of crime into useable cash is achieved through using financial instruments such as bank drafts, bank cheques, telegraphic transfers, and back-to-back loan-back schemes. Criminal profits may also be laundered in a number of other ways, the most common of which are:

- exchanging small-denomination bank notes for gambling chips or winning lottery tickets;
- transferring deposits through company bank accounts in other countries;
- bulk smuggling of cash in courier-carried luggage;
- investing money in front (or shelf) companies;
- manipulating invoices through over-valuing or under-valuing imports and exports;
- transferring remittances through the underground banking system.

The total amount of drug money circulating worldwide and in the process of being laundered at any time cannot be accurately calculated. Authoritative estimates range upwards from US\$100 billion. Money laundering is often referred to as the ‘alternative economy’: it is probably the world’s third largest business after foreign exchange and petroleum (Robinson 1997). Developments in electronic commerce and the use of ‘smart cards’ can be expected to greatly increase the problem.

The world’s parallel, or underground, banking system takes many forms and relies on trust between families, secret societies or members of ethnic groups, no matter how far apart they may physically be. The Chinese seem to have been the first to use alternative banking systems; they coined the term *fei ch’ien*, ‘flying money’. Alternative banking systems have often grown out of political turmoil and a distrust of banks. They are principally based on family or cultural connections and may be reinforced by retributive violence (Robinson 1997). Underground banking systems have existed for generations and are prominent among Chinese, Vietnamese, Indian and Pakistani communities. In such systems a pool of money is shared between all participants, or

'players', for a given period. Each 'investor' takes turn to borrow the money and repays it by regular contributions to the pool. The practice allows large amounts of money to keep circulating among groups without forming part of the regulated financial structure. These systems are not illegal, and they are very useful for laundering money (ABCI 1998).

Whatever method is used, criminals launder money to distance themselves from the criminal activity that generated the funds. The process typically takes place in three stages:

- distancing the funds from direct association with the crime;
- disguising the 'money trail' to prevent detection;
- making the money available once again after its occupational and geographic origins are hidden from view (UNODCCP 1998a).

Law enforcement agencies differ in their descriptions of this process but all recognise the three stages. The initial stage is critical because when criminals begin moving their illegal profits into legitimate channels they are at greatest risk of detection and until they have done this the profits are of significant less value. Moving funds is often called 'smurfing': in Australia, criminals attempt to structure their illegitimate cash dealings into parcels of less than \$10 000, the level at which cash transactions must be reported to AUSTRAC. One smurfing case in the United States involved US\$29 million in cash being moved to accounts in Ecuador in 40 000 separate transactions through the US banking system (Robinson 1997).

Money launderers worldwide have identified a number of small Pacific island nations as being ripe for exploitation. The Cook Islands, for example, is spread over an area equal to that of India; it has a population only 18 000 yet is home to 3000 separately registered anonymous offshore trusts. Nauru, another nation of 18 000 people, has 288 licensed offshore banks. In Samoa, the newly created offshore industry features 15 offshore banks. And a Russian national who is resident in Samoa regularly travels on Honduran and Russian passports and has some 300 offshore companies registered in Samoa (Winer 1999).

Federal agencies in Australia consider that the most popular method of laundering drug profits involves groups using bank accounts to deposit money interstate, then transferring the funds to accounts in China and Japan. The funds are channelled back into Australia as 'loans' to businesses connected with the launderers. Legitimate funds are simultaneously rerouted between several bank accounts, giving the impression of substantial business activity. Other methods involve using relatives to obtain bank cheques on behalf of drug traffickers or paying overseas visitors to open bank accounts that remain active after the visitors have left Australia.

## Electronic money

Law enforcement agencies are becoming increasingly concerned at the rapid growth in electronic commerce<sup>3</sup> as a facilitator of money-laundering activities. Electronic money makes an audit trail difficult, provides security for the user, and allows the user to remain anonymous. The increasing number of internet users worldwide, and an increasing proportion of them making commercial transactions, adds to regulators' concern. The Australian Bureau of Statistics reports that 1.245 million Australian households were connected to the internet in August 1998—46 per cent more than in February of that year. The Bureau also found that 1.5 billion electronic transactions were made in Australia in the preceding 12 months, which translates to a staggering 65 per cent of the total value of all transactions in Australia during the period (cited in AUSTRAC 1999).

The Australian Federal Police estimates that there are about 65 systems for making electronic transactions on the internet; examples are NetBill, DigiCash and QuickLink. Such systems require funds to be deposited into a bank account then, when making a purchase, the owner of the bank account requests the transfer of funds from their account for deposit in the electronic cash system (Shepherd 1999). The system owner then generates and validates the electronic cash before the customer can use it on the internet. Total anonymity is not available to the user at present because electronic money is available only through reputable banks.

DigiCash was designed by a Dutch company to enable payments to be made across international computer networks. In this system, customers buy electronic money to pay for goods and services provided by a network of participating merchants. Payment can be made from any computer to any other via the internet. DigiCash uses privacy controls to allow buyers to check who has received their money but prevents recipients from seeing where the payment originated (ABCI 1999).

Developments in microchip technology have given rise to the 'smart card', or stored value card. Smart cards can store large quantities of data and can process and secure the data using a single microchip. This technology is still evolving and gradually gaining acceptance in Western societies as a replacement for cash. Its potential for misuse in money laundering is enormous, and it will greatly hamper the investigative process because there is no limit on the amount of digital cash the smart card can transfer: a \$1 million 'coin' requires no more 'space' and 'bandwidth' than a 50 cent coin (Haines & Johnstone 1999).

One example of a smart card is Mondex, an independent instrument that stores funds electronically within an embedded chip. The card is not referenced to any particular 'owner', the funds stored within it cannot be traced as cash, and it is easy to carry and conceal. It can be used at EFTPOS terminals and may be re-stored via a mobile telephone link. Loading electronic cash<sup>4</sup> in large amounts does, however, attract the attention of banks, and this is at present a point of weakness for criminals misusing the service.

Research by the Australian Federal Police shows that the internet is being used to avoid regulations, including those relating to taxation. Technological change dictates that law makers devise systems that are capable of anticipating and detecting criminal exploitation of loopholes so that changes to legislation can be made (Lynch 1999).

The European Union has approved the use of digital signatures in commerce. In Australia, the Commonwealth Attorney-General has proposed similar legislation, introducing the Electronic Transactions Bill 1999. An Electronic Commerce Task Force has also been established in Australia, under the auspices of the Commonwealth Law Enforcement Board. The Task Force has identified problems in the following areas that have implications for law enforcement agencies (ABCI 1999):

- ensuring that offences committed using e-commerce are identified by law enforcement agencies;
- decoding records of electronic transactions;
- identifying the parties to electronic transactions and obtaining admissible evidence to sufficiently prove the identity of participants;
- achieving these objectives when the offender and the evidence are outside Australia.

## The international situation

At the beginning of 1999 the European Union embarked on the third stage of its economic and monetary union. As a result, a single currency—the euro—is now a reality for all banking and financial purposes in member countries and national currencies now exist as an expression of the euro (Beverly 1999). On 1 January 2002 euro banknotes will go into circulation; the old national notes will remain legal tender for a maximum of six months from that date (although this period may be reduced). Issuers of the old banknotes will exchange them for euro dollars in accordance with their national laws and practices (Beverly 1999).

The question being asked by regulators and law enforcers is, ‘Does this changeover period represent an opportunity for criminals to launder the proceeds of their criminal activities or will it provide an opportunity to expose and seize tainted money and prosecute organised crime?’ The implications for European and worldwide law enforcement must be studied and understood, so that appropriate legislation and responses can be developed.

Beverly reports that the *Financial Times* has claimed the ‘big denomination euros will prove a hit with the Mafia’. The April 1998 *Financial Times* article was based on research conducted by Kenneth Rogoff of Princeton University, who said, ‘By issuing large denomination notes of 100, 200 and 500, the European Central Bank appears to be well poised to challenge the dominance of the ubiquitous US\$100 note.’ Criminals use large-denomination banknotes to transport large amounts of money. The euro will become a currency of significance to all—including criminals.

The European Union’s use of a single currency will also have other repercussions in the fight against money laundering because there will no longer be any need for currency-exchange operations in participating countries. This will result in fewer transactions and fewer suspicious transactions to report.

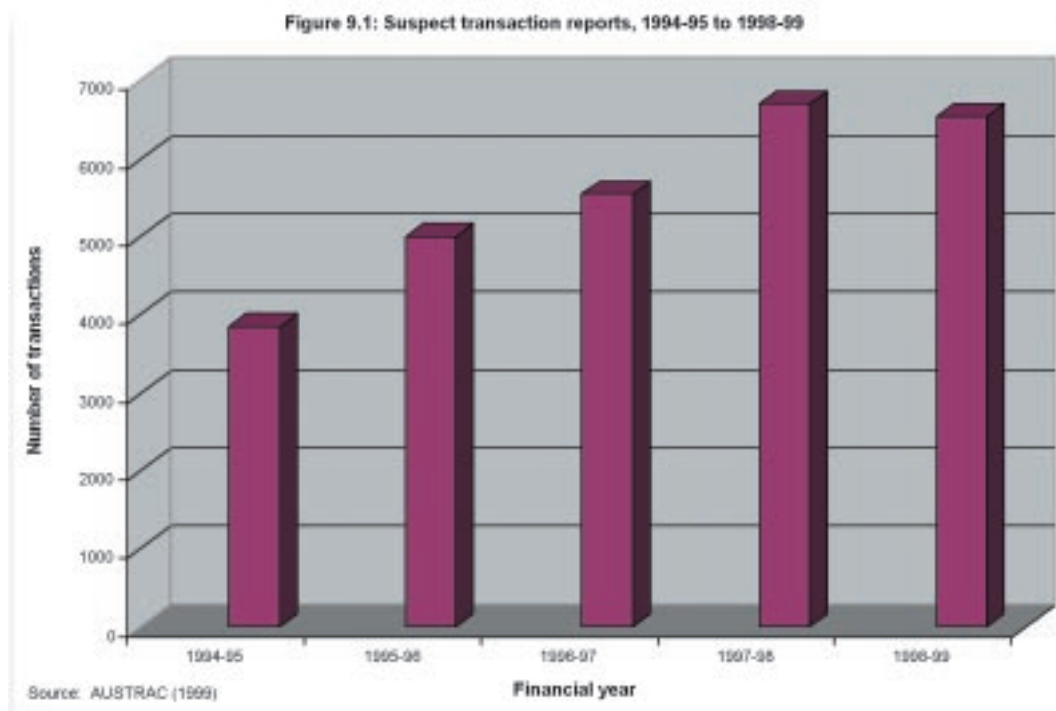
Another concern for Australia—one that has international significance too—is the emergence in the Pacific region of criminal groups from Russia and the former Soviet Union. Some such groups

have infiltrated banking systems in Russia and the nation faces a tremendous outflow of money. This money is predominantly the proceeds of crime or earnings made on the ‘black market’ from the sale of illegally obtained natural resources such as gas, oil and gold, and it has to be laundered. It was reported that by 1995 around US\$700 million from the former Soviet Union was being transferred each month to London via Cyprus. Countermeasures soon forced those involved to look for safer havens, so ‘investors’ from the former Soviet Union, sometimes travelling on Israeli or other passports, applied for business visas for travel to Pacific island nations known for being tax havens. Since the mid-1990s a large number of financial institutions have been registered in offshore financial centres across the Pacific. Some Pacific island nations are facing the threat of being ‘blacklisted’ by world monetary control agencies. A further development, believed to be associated with money laundering, is the advent of internet gambling in the Pacific (AFP 1999a).

In November 1990 the United Nations adopted the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was considered a landmark because it pushed the problem of the proceeds of crime onto the world agenda. By December 1998, however, 40 of the 185 UN member states had not signed the Convention and fewer than 30 are implementing anti-money laundering measures that comply with it (UNODCCP 1998a). This situation undermines the efforts of those countries that have implemented anti-money laundering measures in compliance with the Convention.

## The Australian situation

AUSTRAC statistics on suspicious transaction reports received for 1998–99 show that, while the total number of reports relating to international currency transfers, international funds transfer instructions and significant cash transactions increased, the number of suspect transaction reports received from financial institutions and other cash dealers declined slightly from the 1997–98 level. Figure 9.1 shows the number of suspect transaction reports for



1994–95 to 1998–99. The average annual increase for the period was 19.4 per cent, which is slightly less than the increase for the previous five-year period. This is because of the 2.4 per cent decline in 1998–99.

Domestic drug producers and distributors often seek to move their proceeds offshore, to move their profits out of the reach of Australian authorities. Confiscation becomes difficult if proceeds have been moved to or through foreign jurisdictions. The following examples provided by AUSTRAC demonstrate the ways in which proceeds of crime can be deposited directly into the domestic financial sector or quickly removed from Australia in an attempt to avoid the scrutiny of law enforcement agencies and revenue authorities.

- Case 1. Following deposits of very large amounts of cash and subsequent international funds transfers out of Australia, several banks located in the central business district of a capital city reported the matter to AUSTRAC. The financial transaction report information provided was critical in identifying the money trail associated with the attempted importation of a large quantity of cocaine. Australian Federal Police and Customs officers were able to seize the drugs and arrest several people.
- Case 2. Financial transaction report information triggered an investigation into narcotics trafficking. The movement of funds and details of a network of targets and associates were uncovered and a number of people were arrested. The syndicate was alleged to have distributed heroin valued at several million dollars. Investigators seized quantities of heroin, gold and cash and charged a number of people.
- Case 3. A major heroin investigation was initiated after unusual patterns of financial transactions were identified by AUSTRAC's computer-based financial transactions targeting system. Analysis of the financial transaction report information revealed the identities of the principals of the syndicate, their money-laundering methods, and the identities of other group members. Australian Federal Police and the Customs officers subsequently intercepted an air-freight shipment containing a large amount of heroin and conducted a controlled delivery that resulted in the arrest of several people and the restraint of assets.
- Case 4. AUSTRAC information led to an Australian Federal Police–Customs investigation of money laundering associated with drug trafficking. At an Australian international airport two people attempting to leave the country while in possession of cocaine were arrested. A third person was arrested and charged in connection with importation and possession of cocaine.

The successful investigation of proceeds-of-crime cases such as those just listed is generally dependent on effective international exchange of information and intelligence. To facilitate this exchange between Australia and certain overseas jurisdictions, a number of memorandums of understanding have been formulated. They provide for AUSTRAC to exchange financial transaction report information with its foreign counterparts, subject to Australia's *Mutual Assistance in Criminal Matters Act 1997* and *Financial Transaction Reports Act 1998*.

The memorandums of understanding require AUSTRAC, and relevant financial intelligence units, to cooperate in the exchange of general information that may assist in the investigation and prosecution of people suspected of having engaged in money laundering and other serious criminal activity. The information that may be provided to or by AUSTRAC will generally be in the

form of transaction reports pursuant to legislation in force in the respective countries.

## Legislation

Jurisdictions are almost unanimous in their desire to adopt legislation similar to that in New South Wales relating to civil forfeiture of assets. This legislation does not require a conviction prior to forfeiture being effected.

### The Commonwealth

On 1 July 1998 new Commonwealth legislation amending the *Financial Transaction Reports Act 1988* and the *Banking Act 1959* took effect. The legislation, which is designed to better regular the finance industry, consists of several new Acts and two related Acts that amend or repeal more than 70 other Acts.

In most cases the amendments to the Financial Transaction Reports Act involve replacing the term 'bank' with the term 'approved deposit-taking institution'. The Commonwealth and State and Territory governments agreed that the legislation should encompass building societies and credit unions.

The *Australian Prudential Regulation Authority Act 1998* came into effect on 1 July 1998 as the comprehensive prudential regulator in the Australian financial system. The Act's purpose is described in its subtitle:

To regulate bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or retirement income standards, and for developing the policy to be applied in performing that regulatory role ... [and] to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality.

In accordance with the Constitution and the division of powers between the States and Territories and the Commonwealth, building societies and credit unions were until 1 July 1999 regulated by State and Territory authorities. Governments have now agreed that building societies and credit unions will be supervised under the Banking Act which came into effect on 1 July 1999. The Financial Transaction Reports Act now provides for regulations to be made to capture other types of activity as part of the definition of 'banking business' (AUSTRAC 1999).

On 18 January 1998 the Federal Minister for Justice and Customs, Senator Amanda Vanstone, announced that an agreement had been signed between AUSTRAC and the Danish Anti-Money Laundering Secretariat for the exchange of financial intelligence. This agreement is the sixth in a series of bilateral agreements; in addition to Denmark, AUSTRAC now has formal arrangements for exchanging financial intelligence with the United States, the United Kingdom, New Zealand, Belgium and France.

The Electronic Transactions Bill was put before the Federal Parliament on 30 June 1999. This legislation incorporates the recommendations of the Electronic Commerce Expert Group established by the Attorney-General in 1998 to consider legal matters associated with electronic commerce in Australia and overseas. It is also based, in part, on the Model Law on Electronic Commerce proposed by the United Nations Commission on International Trade Law in 1996 and agreed to by the Standing Committee of Attorneys-General in October 1998 (Shepherd 1999). It will give electronic transactions the same legal status as paper transactions and remove any legal impediments to using electronic communications.

The scope of the Commonwealth’s legislation relating to controlled operations is under review. A wider controlled operations scheme could allow more effective targeting of money laundering, which would further enhance law enforcement efforts. In addition, the Australian Federal Police reports that the Australian Law Reform Commission is reviewing the *Proceeds of Crime Act 1987*. As it stands, the Act does not provide for the forfeiture of unexplained wealth without there being a conviction for an offence. It is now proposed, however, that the Act should allow for the seizure and forfeiture of unexplained wealth if the person who accumulated the wealth fails to provide a satisfactory explanation of its source (AFP 1999b).

**Victoria**

Victoria’s *Confiscation Act 1997* was enacted on 1 July 1998, replacing the *Crimes (Confiscation of Profits) Act 1986*. On 8 June 1999 the Victorian State Parliament amended s. 123 of the new Act to create forfeiture provisions relating to the offence of ‘possession of the proceeds of crime’. The *Telecommunications (Interceptions) Act 1979* has not yet been amended to take account of the Confiscation Act: until this occurs information obtained through telephone interception cannot be used in affidavits before the matter is heard in court.

**Queensland**

Legislation in Queensland is conviction based and the assets of suspected traffickers cannot be subjected to forfeiture action. Law enforcement agencies have expressed the view that it would be preferable to have legislation based on the New South Wales model, which applies the reverse onus and civil standard of proof. The Brisbane office of the Nation Crime Authority reported that a joint submission by Queensland law enforcement agencies for civil forfeiture legislation has received preliminary support from the State Government and has been put forward for formal cabinet consideration.

Queensland’s Criminal Justice Commission reported that in 1998–99 the *Crimes (Confiscation) Act 1989* was amended by the *Justice Legislation (Miscellaneous Provisions) Act 1999*, the *Statute Law (Miscellaneous Provisions) Act 1999* and the *Financial Sector Reform (Queensland) Act 1999*. The Justice Legislation (Miscellaneous Provisions) Act effected the most substantial changes to the Crimes (Confiscation) Act: it altered the definition of ‘tainted property’ to include property mentioned in s. 90(2)(a), dealing with the offence of money laundering, and s. 92(1), dealing with the offence of possessing tainted property.

**Western Australia**

No new legislation relating to proceeds of crime was introduced in Western Australia during 1998–99. The Western Australia Police Service Asset Investigation and the State Director of Public Prosecutions are currently working on a draft of the *Criminal Property Confiscation Bill 1999*. The proposed legislation is non-conviction based and will enhance the asset seizure provisions of the *Misuse of Drugs Act 1982*.

Breaches of any holding orders, embargo notices or restraint orders are also expected to carry heavy penalties, including fines and imprisonment. The legislation is expected to include provision for withholding property from use in the payment of legal expenses.

**South Australia**

The South Australian Parliament is in the final stages of drafting regulations under the *Controlled Substances Act 1984* to ensure that equipment used in the production of cannabis can be seized and confiscated.

**Northern Territory**

Amendments to the Northern Territory’s *Misuse of Drugs Act 1999* came into effect on 5 May 1999. This brings the legislation into line with the national approach and with earlier amendments to the *Poisons and Dangerous Drugs Act 1997*. The amendments ensure that possession or sale of innocuous hemp products, such as clothing or make-up containing only a trace of THC (delta-9-tetrahydrocannabinol), will not be an offence. The national standard for the uniform scheduling of drugs and poisons has recently been amended to provide for the sale of hemp products with low THC levels. The Northern Territory agreed to the standard at the Australian health ministers annual conference in 1999.

Table 9.1: Confiscation of assets—Australian Federal Police, 1998-99	
	1998-99
Value of criminal assets identified \$	5 112 007
Value of criminal assets restrained \$	5 702 105
Value of criminal assets recovered \$	5 665 845

Note: The database has been redesigned and comparative data for previous years are not available. Table does not include figures for the Australian Capital Territory, which are given in Table 9.8.

Source: Australian Federal Police.

**Table 9.2: Confiscation of assets—Commonwealth Director of Public Prosecutions, 1998-99**

	1998-99
No. of restraining orders obtained	24
No. of forfeiture orders obtained	55
No. of pecuniary penalty orders obtained	8
Value of restraining orders \$	9 549 202
Value of forfeiture orders obtained \$	10 006 378
Value of pecuniary penalty orders \$	1 440 840
Other <sup>a</sup>	622 508

a. Additional value recovered from settlements and voluntary payments.

Source: Commonwealth Director of Public Prosecutions.

**Table 9.3: Confiscation of assets and taxation results—National Crime Authority 1996-97 to 1998-99**

	Direct NCA results (\$)			Task forces and joint investigations (\$)			Indirect results (\$)		
	1996-97	1997-98*	1998-99	1996-97	1997-98	1998-99	1996-97	1997-98	1998-99
<b>Commonwealth Proceeds of Crime Act</b>									
Restrained	n.a.	100 000	n.a.	1 600 000	n.a.	106 175	1 326 000	n.a.	n.a.
Forfeited	n.a.	n.a.	1 406 000	73 000	1 508 893	n.a.	n.a.	n.a.	n.a.
Pecuniary penalties	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
<b>Commonwealth Customs Act</b>									
Restrained	n.a.	n.a.	n.a.	23 500	n.a.	n.a.	n.a.	n.a.	n.a.
Forfeited	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Pecuniary penalties	n.a.	n.a.	n.a.	140 000	n.a.	n.a.	n.a.	n.a.	n.a.
<b>State Proceeds of Crime Acts</b>									
Restrained	749 693	100 000	2 797 460	1 741 373	2 977 536	8 718 521	n.a.	n.a.	n.a.
Forfeited	1 236 800	n.a.	1 457 415	407 000	904 000	n.a.	n.a.	n.a.	n.a.
Pecuniary penalties	913 000	n.a.	556 200	n.a.	21 082 828	531 000	n.a.	n.a.	n.a.
Commonwealth taxation#	251 559	34 414 319	17 496 670	2 837 161	10 735 634	28 815 504	5 100 000	n.a.	694 702
<b>Overseas law enforcement</b>									
Restrained	n.a.	n.a.	n.a.	n.a.	1 570 745	n.a.	n.a.	n.a.	n.a.
Realised	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

n.a. Not available

Notes: \*1998-99 Direct NCA results originate largely from Government funded Swordfish investigations. NCA staff including staff seconded from the Australian Taxation Office and other agencies undertook these investigations.

# The figures relating to Commonwealth taxation refer to tax assessments issued.

Source: Head Office National Crime Authority.

**Table 9.4: Confiscation of assets—New South Wales Crime Commission, 1996-97 to 1998-99**

	1996-97	1997-98	1998-99
No. of referrals	432	381	566
No. of restraining orders obtained	145	166	101
No. of forfeiture orders obtained	46	128	82
Value of forfeited property (\$)	3 193 943	7 500 712	4 681 108
No of proceeds assessment orders obtained	17	46	40
Value of proceeds assessment orders (\$)	7 276 902	2 651 580	6 114 571
Total value of confiscation orders (\$)	10 470 845	10 152 292	10 795 679
Legal costs recovered (\$)	17 000	873 313	653 931
Estimated recoverable confiscation orders (including legal costs) (\$)	4 000 345	11 025 605	10 039 970
No. of restraining orders on hand	193	170	101

Source: New South Wales Crime Commission.

**Table 9.5: Confiscation of assets—Victoria, 1996-97 to 1998-99**

	1996-97	1997-98	1998-99
No. of referrals	..	215	194
No. of restraining orders obtained	10	5	40
No. of forfeiture orders obtained	43	41	336
No. of restitution orders obtained	n.a.	n.a.	8
No. of pecuniary penalty orders obtained	a	a	43
Value of restraining orders (\$)	1 773 000	n.a.	n.a.
Value of forfeiture orders (\$)	420 788	n.a.	2 631 901
Value of restitution orders (\$)	n.a.	n.a.	n.a.
Value of pecuniary penalty orders (\$)	332 136	n.a.	517 706

n.a. Not available.

.. Not known.

a. Included in 'No. of forfeiture orders obtained'.

Source: Victoria Police Assets Squad.

**Table 9.6: Confiscation of assets—Western Australia, 1996-97 to 1998-99**

	1996-97	1997-98	1998-99
No. of referrals/cases investigated	49	75	163
No. of forfeiture orders obtained	44	58	137
No. of restraining orders obtained	3	6	n.a.
No. of pecuniary penalty orders obtained	3	19	5
Value of forfeiture orders obtained (\$)	n.a.	n.a.	1 147 000
Value of pecuniary penalty orders obtained (\$)	161 150	799 060	59 760

n.a. Not available.

Note: Some \$246 000 was obtained from orders made under the *Misuse of Drugs Act 1981* and \$275 000 was obtained under the *Crimes (Confiscation of Profits) Act 1988*. A further \$33 000 was obtained from orders made in the Court of Petty Sessions and \$868 000 was paid in under the Commonwealth–State asset-sharing arrangements.

Source: Director of Public Prosecutions, Western Australian office.

**Table 9.7: Confiscation of assets—South Australia, 1996-97 to 1998-99**

	1996-97	1997-98	1998-99
No. of referrals	61	98	200
No. of restraining orders made	31	12	15
No. of restitution orders made	2	1	1
No. of forfeiture orders made	20	16	19
No. of pecuniary penalty orders	n.a.	n.a.	10
Value of restraining orders (\$)	5 389 937	1 557 195	1 604 944
Value of restitution orders (\$)	192 581	7 559	3 753
Value of pecuniary penalty orders(\$)	n.a.	n.a.	84 615
Value of forfeiture orders (\$)	n.a.	324 084	340 000

n.a. Not available.  
 Source: South Australia Police, Confiscation of Profits Section.

**Table 9.8: Confiscation of assets—Australian Capital Territory, 1998-99**

	1998-99
No. of referrals and/or notifications	26
No. of restraining orders	2
No. of forfeiture orders	8
Value of assets identified and/or seized (\$)	621 249
Value of restraining orders (\$)	35 194
Value of forfeiture orders (\$)	227 497

Note: The Australian Federal Police is responsible for community policing in the Australian Capital Territory.  
 Source: Australian Federal Police, Australian Capital Territory Region.

## Law enforcement concerns

Australian law enforcement agencies have been unanimous in their support for legislative changes that mirror the existing New South Wales civil forfeiture legislation, which allows for a non-conviction based automatic forfeiture of the proceeds of crime and a reverse onus of proof. In May 1999 the Conference of Commissioners of Police of Australasia and the South West Pacific Region resolved that all nations involved would pursue these aims.

The growth in e-commerce necessitates an accelerated review of laws governing computer-related crime. Another difficulty is that electronic transactions cannot be adequately investigated by traditional forensic means because fingerprints, handwriting and signatures cannot be compared or dated. Yet another difficulty concerns non-standard agency record systems, which result in statistics that cannot be translated into a national picture. It is thus desirable to develop a national format for use by State, Territory and federal agencies, so that a clearer national picture can be developed.

The New South Wales Crime Commission reported that the potential targets of confiscation proceedings are now very conscious of the impact of the civil forfeiture legislation and are devoting greater attention to concealing and laundering money. One method of avoiding the legislation is leasing property such as land, houses and vehicles.

Other concerns relate to the proliferation of internet sites that offer to produce counterfeit documents and provide online gambling. The potential here for money laundering is obvious.

## Confiscation of assets

Tables 9.1 to 9.8 provide a breakdown of pecuniary penalty orders, forfeiture orders and restraining orders and their values across the various jurisdictions in 1998–99. In some instances figures for the two preceding years are provided for comparison.

## Conclusion

In the absence of reliable estimates of the extent of drug-money laundering, it is difficult to draw reliable conclusions about the effectiveness of proceeds-of-crime action. The impact of new legislation relating to civil forfeiture of assets may, however, be reflected in the data becoming available in 1999–2000.

Drug trafficking is, by its nature, a global problem, and it follows that laundering the proceeds of crime is also a global problem. Law enforcement agencies thus need to take account of worldwide developments in electronic commerce. The basic processes of money laundering remain unchanged, but law enforcement agencies must understand the threats posed by the emerging technologies.

As transactions through normal financial institutions become subject to increased levels of scrutiny, money launderers can be expected to increasingly use less regulated services to avoid such scrutiny. The money-laundering process recognises no international boundaries and will be influenced by conditions in the world marketplace.

The cost of keeping abreast of new technologies, particularly as they relate to electronic commerce, will place increased pressure on law enforcement resources, many of which are already under considerable pressure. Serious consideration may need to be given to allowing the bulk of seized money and certain assets relating to illegal drug activities to be transferred to the agencies responsible for the seizures.

## Outlook

The innovative and dynamic money-laundering industry will go on evolving complex schemes to exploit global trade, finance and investment schemes. As banking laws are tightened, increasing use will be made of non-bank financial institutions. Emerging technologies will continue to augment drug-money laundering capabilities that were previously facilitated by the development of informal banking systems. This may be offset, however, by forfeiture-of-assets legislation, the introduction of which is planned by some Australian States and Territories.

Investigation of computer crime requires that law enforcement

agencies assign higher priority to the allocation of adequate resources. This will include increased emphasis on forensic computing<sup>5</sup> as criminals exploit advances in information technology and the use of electronic money. The employment of forensic investigators with training and experience in electronic technology will also need higher priority.

It is expected that in the foreseeable future all Australian States and Territories will have enacted legislation dealing with forfeiture of assets without prior conviction. This will involve placing the onus on suspects to validate the source of their wealth.

Reforms initiated to combat money laundering should take account of the principles of bank secrecy and the future of financial havens, offshore trusts, shelf companies and shelf banks. One objective should be to ensure transparency of the ownership of assets transactions: there should be no need for anonymity if the transactions concerned relate to legitimate commercial activities. The fact that banking or business records will not be obtainable from any country operating as a tax haven—and the Pacific region will continue to be exploited for this purpose—poses continuing problems.

## Notes

- <sup>1</sup> 'Hui', or 'Hawala', refers to the practice of moving money between groups of individuals. A pool of money is shared between all participants for a given period. Each has a turn borrowing and the loan is repaid by making regular contributions to the pool. This practice does not launder money so much as keep the activity hidden. It is also known as 'Fei ch'ien', 'Hundi', 'Chiti', 'Tontine' and 'Chop Shop'.
- <sup>2</sup> For the purpose of this chapter, money laundering is defined as 'the process by which one conceals the existence, illegal source, or illegal application of income and then disguises or converts that income to make it appear legitimate' (UN International Drug Control Program 1997, p. 136).
- <sup>3</sup> 'Electronic commerce' refers to transactions that take place via telephones, facsimiles, stored-value cards (SVCs) and the internet.
- <sup>4</sup> E-cash is an untraceable online payment system that uses a 'blind signature protocol' that is designed to be as foolproof and anonymous as cash. It is being used by banks in Europe and Australia (Shepherd 1999, p. 6).
- <sup>5</sup> Forensic computing is the process of identifying, preserving, analysing and presenting digital evidence in a manner that is legally acceptable (McKemmish 1999, p. 1).

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