

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Report by Katie Bourne – 2014 Churchill Fellow

**The DONALD MACKAY CHURCHILL FELLOWSHIP
to examine the technological resources utilised by international law
enforcement agencies to assist in tracing the proceeds of crime – USA,
Netherlands, UK and Canada**

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Dated

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Table of acronyms

AFTRAC	Asset Forfeiture Tracking and Retrieval System (USA)
ARIS	Asset Recovery Incentivisation Scheme (UK)
AUSTRAC	Australian Transaction Reports and Analysis Centre
CAR Act	Criminal Assets Recovery 1990 (NSW)
CATS	Consolidated Assets Tracking System (USA)
CPA	Confiscated Proceeds Account (NSW)
CRATS	Currency Reading and Tracing System (Canada)
DANY	District Attorney's Office of New York
DEA	Drug Enforcement Administration (USA)
DOJ	Department of Justice (USA)
FAMG	Forensic Accounting Management Group (Canada)
FBI	Federal Bureau of Investigations (USA)
FinCEN	Financial Crimes Enforcement Network (USA)
FLETC	Federal Law Enforcement Training Centres (USA)
FIU	Financial Intelligence Unit/s
FIOD	Fiscal Intelligence and Investigation Service (Netherlands)
GIFT	Global and Illicit Financial Team (USA)
HSI	Homeland Security Investigations (US Department of Homeland Security)
IRS	Internal Revenue Service Criminal Investigations (USA)
JARD	Joint Asset Recovery Database (UK)
NCA	National Crime Agency (UK)
NYPD	New York Police Department
OCC	Office of the Comptroller of Currency
OCDETF	Organised Crime Drug Enforcement Task Force
PCU	Proceeds of crime unit/s
POCA	Proceeds of Crime Act 2002 (UK)
PoCC	Proceeds of Crime Centre (UK)
RART	Regional Asset Recovery Team (UK)
ReAP	Recovered Assets Pool (NSW)
RCMP	Royal Canadian Mounted Police
SNP	Office of the Special Narcotics Prosecutor (USA)
TEOAF	Treasury Executive Office for Asset Forfeiture (USA)

TFF	Treasury Forfeiture Fund (USA)
UNODC	United Nations Office on Drugs and Crime
USSS	United States Secret Service
USAO	United States Attorney's Office
USMS	United States Marshall's Service

Introduction

A fundamental component of the Commission's Organised Crime Disruption Strategy within New South Wales is asset confiscation:

"The capacity to confiscate and recover the proceeds of serious crime is an extremely effective tool in the disruption of organised crime. Organised crime groups are recognised as an increasing threat to the community, and the sophistication of the current detection prevention techniques of criminals and their disregard for normal standards of behaviour, often render conventional investigative methods ineffective. The major motivation of crime groups is invariably money and fundamental to an organised crime strategy is the dismantling of the criminal networks and the disruption of the criminal activities which generate the profits, as well as the confiscation of the proceeds of crimes already committed."¹

Organised crime has become increasingly dynamic, networked and more complex and presents new challenges for law enforcement. Much stronger cross-border cooperation and the efficient exchange of information with other agencies (both domestically and internationally) have never been so important. According to The Australian Crime Commission's Organised Crime Report in Australia 2013,

"organised crime as it affects Australia is inextricably linked to international organised crime. Serious and organised criminals operating in Australia necessarily have international links to facilitate their activities – particularly the movement of illicit goods into Australia – and overseas-based organised criminals actively target Australia. This means that strong and trusted partnerships with overseas law enforcement agencies are now more fundamental to combating organised crime than they have ever been."²

I have been working as a Forensic Accountant with the Commission for more than 10 years in the recovery of proceeds of crime. The Commission has a number of principal functions and objectives, and of particular relevance to this report, are the objectives to:

- identify high-level organised crime figures and their associates, and to conduct effective criminal investigations with a view to apprehension of those persons;

¹ NSW Crime Commission Crime Disruption Strategy 2013, page 8, viewed on 28 February 2015
http://www.crimecommission.nsw.gov.au/files/Organised_Crime_Disruption_Strategy_20131015.pdf

² Australian Crime Commission, Organised Crime in Australia 2013, page 5.
<https://www.crimecommission.gov.au/sites/default/files/ACC%20OCA%202013-1.pdf>

- to identify persons who have gained substantial financial benefit from criminal activities; to identify the benefits acquired and confiscate assets, returning the proceeds to the Crown; and
- to carry out investigations using the most advanced technological solutions.³

During my fellowship, I travelled to the United States of America, Canada, The Netherlands and The United Kingdom and met with other investigative agencies to examine the technological solutions and tools used, particularly in complex investigations with a focus on organised crime and in financial investigations. I also examined practices around asset confiscation and their applicability to law enforcement regimes in Australia. I discussed new and emerging approaches to combating money laundering. Money laundering is a “cross-cutting” crime and an essential supporting activity for criminal groups seeking to disguise their illicit proceeds.⁴ The success of organised crime is based on its ability to launder money.

Australia has a thriving and very lucrative market for illicit drugs. According to the United Nations Office of Drugs and Crime World Drug Report 2014, typical wholesale prices per kilogram for cocaine and heroin is as follows (in \$USD):

	Australia	UK	USA	Netherlands	Canada	Colombia
Cocaine	\$228,080	\$79,131	\$54,000	\$41,596	\$34,960	\$2,473
Heroin	\$191,795	\$47,479	\$6,500- \$112,000	\$22,078	\$89,897	\$11,561

⁵

The ACC reported that in 2012-13 Australia had 86,918 national illicit drug seizures making that year the highest on record⁶. Money laundering by organised crime groups is estimated to involve tens of billions of dollars a year in Australia alone, yet efforts to confiscate the proceeds of crime in Australia return only tens of millions of dollars a year.

³ New South Wales Crime Commission Annual Report 2013-2014, pages 4-5.
http://www.crimecommission.nsw.gov.au/files/Annual_Report_2013-2014.pdf

⁴ Europol Police Office, Serious and Organised Crime Threat Assessment (SOCTA) 2013, The Netherlands.
<https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>

⁵ United Nations Office of Drugs and Crime World Drug Report <http://www.unodc.org/wdr2014/>

⁶ Australian Crime Commission, Illicit Drug Data Report 2012-13,
<https://www.crimecommission.gov.au/publications/intelligence-products/illicit-drug-data-report/illicit-drug-data-report-2012-13>

Prior to the 1990s, the identification and subsequent confiscation and forfeiture of proceeds of crime has not traditionally been a core function of law enforcement; however it must be driven and supported by Police and their partners as a major crime reduction strategy. Police need to go beyond gathering evidence relevant to the criminal investigation and also gather evidence relevant to the tracing of proceeds from crime. Asset confiscation must be integrated in all appropriate investigations. The tracing and recovery of proceeds of crime must be integrated with any anti-crime strategy. Asset recovery should be used as an aggressive weapon against crime rather than a means of balancing the books at the end of an investigation⁷. There is enormous potential, through the recovery of proceeds of crime, to:

- deprive criminals of their illegally-obtained assets and demonstrate to the community that crime does not pay;
- weaken the influence and capacity of criminals to participate in organised crime by taking away their ill-gotten gains,
- prevent further crime by confiscating the means to commit crime; and
- put the criminally recovered proceeds of crime to the use and benefit of society.

Investigators must be provided with all the regulatory and legal tools to remain ahead of, or at the very least, keep up with the organised crime groups, organised crime enablers and money launderers. Asset confiscation is a strategic tool that “can provide critical assistance for overcoming these demanding challenges and ensuring there is no safe haven for criminal proceeds”⁸.

⁷ Criminal Justice Joint Inspection, Joint Thematic Review of Asset Recovery, Restraint and Confiscation Casework, March 2010, United Kingdom.

⁸US Department of Justice, Asset Forfeiture Program, National Asset Forfeiture Strategic Plan 2008-2012, page 5, <http://www.justice.gov/criminal/afmls/pubs/pdf/strategicplan.pdf>

Executive Summary

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Many of the challenges and frustrations experienced by Australian investigators and personnel working in the areas of organised crime, money laundering and asset confiscation were also experienced to varying degrees by each agency with which I met. The globalisation of crime and the electronic age in which we live has indelibly affected the way in which investigations must be approached, yet so many of our practices largely remain unchanged. The ability of some international law enforcement agencies to gain access to confiscated funds to finance future expenses associated with investigations where there is significant asset recovery potential is a distinct advantage to the current practical position in New South Wales, and many of the jurisdictions in Australia. Such access is minimal in New South Wales and is not a major advantage. There are a number of valuable opportunities to disrupt organised crime, to deprive its actors of their profits, and to secure further confiscated funds which would otherwise be lost due to the cost of investigations and disruptive strategies which simply cannot be funded within existing and sometimes declining budgets. Other international jurisdictions have recognised the need to invest significant time, attention and funding in this area and have reaped the rewards for many years.

The Government in The Netherlands has recently invested a substantial amount of money (€100 million over 5 years) to boost and strengthen its efforts in asset recovery. This scheme requires case-by-case bids by the relevant investigation teams to demonstrate how they are going to return three times the investment in the recovery of criminal proceeds. The results are not required to be returned until 2018, but the interim results are very strong and demonstrate the level of commitment from both the Government and the practitioners in this area. In that jurisdiction, there has been a meaningful change of mindset in relation to disrupting organised crime and the importance of taking away the profits from the criminals has received both serious attention and funding.

In Australia, there is a need to continue to work towards overcoming barriers to effective partnership, particularly between the States and the Commonwealth. Many of the issues

raised in this report incorporate four key themes; sharing, training, incentivisation and electronics.

There are number of ways to improve New South Wales' approach to asset recovery. First, existing procedures and practices need to be fine-tuned and updated. For example, an improvement in the area of electronic information exchange between investigating agencies and financial institutions would revolutionise the speed and accuracy of financial investigations.

The second and possibly the highest priority is collaboration. As with criminal investigations and counter terrorism work, closer collaboration and communication between the agencies involved in this complex area would create awareness, share knowledge and skills and open up some meaningful discussion about how best to educate investigative personnel and strengthen both the state and national approach to asset recovery. Every overseas organisation with which I met had long-running, entrenched, specialist financial investigation training and support for its agents, police and other personnel. It was not the exception, it was the rule. This is not the case in Australia.

Finally, there must be some innovation in the approach to the identification or investigation of persons of interest and the ways in which organised crime investigations are conducted. Recovering the proceeds of crime must be considered as important as the recovery of narcotics. This is not because money is as dangerous as drugs but taking away the profits from the sale of narcotics is the often the most effective approach to disrupting organised crime. There are agencies that use innovative and aggressive methodologies to infiltrate and investigate money launderers and enablers of organised crime. There are ways in which agencies can collaborate, share and better utilise technological resources to sift through voluminous data sets to make links and proactively target criminals who are not currently on the radar. The continual improvement and strengthening of the legislative infrastructure which underpins the asset recovery regime within New South Wales and the rest of Australia is also vital. It is important to note, however, that the asset confiscation practices and legislative framework in New South Wales, is at least equal to, or in some respects, superior to the overseas jurisdictions I visited.

The focus of this report is the experience in New South Wales. New South Wales has always achieved significant results, comparatively speaking, in the area of asset

confiscation, but there is always room for improvement and it is on these areas that this report is focused.

This report has benefited from the generous sharing of knowledge and experience of Federal Agents, Police Officers, Analysts and Lawyers. The recommendations on the following pages encompass both short and long-term proposals. Some of these recommendations may not be new concepts but are still, for one reason or another, not current practice in New South Wales and many of the jurisdictions in Australia. This report will be submitted to the Commissioner for the New South Wales Crime Commission and to other investigative agencies with an asset recovery function. It will not be publicly available due to the sensitive nature of some of the information contained within.