CASH TRANSACTION REPORTS AGENCY
TARGETING MONEY LAUNDERING WITH TAX REVENUE UNDERPINNING

Bill Coad[1]
Director
Cash Transaction Reports Agency

By the final quarter of 1990 the Cash Transaction Reports Agency (CTRA) will have constructed a financial intelligence data base with both regular on-line and specialist services available to law enforcement agencies around Australia as well as to the Australian Taxation Office. To achieve that end, starting in early 1989, the CTRA has worked to create an environment among financial institutions and other cash dealers to provide that intelligence in a timely and efficient manner. It has worked with relevant agencies to facilitate access to the data, together with intelligence that can be devised from that data, by authorised law enforcement and taxation personnel.

The time is now here for law enforcement officers to include that financial intelligence in the overall planning of their attacks on white-collar and organised crime. New visions are imperative in areas such as money laundering. CTRA information should be one part of that vision.

The CTRA information will basically comprise:

- reports on cash movements (into and out of financial institutions and other cash dealers) — $10,000 or more;
- reports on cash movements (into and out of Australia) — $5,000 or more;
- reports on suspicious financial activity (suspect transaction reports filed by cash dealers).

Reports on cash movements commenced on 1 July 1990 but it will be several months before all cash dealers are fully reporting. Reports on suspect transactions commenced on 1 January 1990. The on-line service to our law enforcement clients should commence in about August/September 1990; by November a full service will be available including specialised analysis done on behalf of particular law enforcement agencies as well as the basic on-line facility. This will provide insights into suspect financial behaviour and big movements of cash which may raise suspicions. A great deal of data will be generated (two million reports per annum) in respect of these matters.

Because there will be such a large amount of data, we expect that many law enforcement (and taxation) officers will limit the use of the data to examination of

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information of known targets — an aid to existing enquiries. Much of our service — particularly on-line service — is geared towards that base load. But it is not the total picture.

To widen the point, I raise for discussion and not criticism, how far law enforcement is gearing itself for the role that Parliaments, Federal and State, are carving out in relation to crimes such as money laundering. Tools such as proceeds of crime legislation, including in some States civil forfeiture provisions, have been established to attack and seize the profits of crime. But that approach is not meant to apply only to seizures related to particular felons and particular drug busts. There is a wider implication.

In Australia, millions of dollars are regularly being laundered from the sale of drugs alone. The continuity with which this offence takes place indicates that the flow of funds is well-organised, as has been discovered in the United States, and not restricted to the odd transaction (or two or three) of cash. Is not this regular flow of millions of dollars the area that legislators are guiding law enforcers towards?

Rumours abound in the law enforcement community that prosecutors are sometimes wary of the offence of money laundering because it is "too hard to prove". The former Chairman of the National Crimes Authority, Peter Faris, was vocal in his criticism of that attitude. He saw it as having the potential to undercut the whole thrust of the move against criminal proceeds. If we are to do justice to the desire clearly expressed by Parliaments in these various laws, we will have to try to deal with the wider and grander fields of money laundering.

I remember in my period in the Trade Practices Commission that some investigators loved the "quick" resale price maintenance case. Those who pursued the more difficult price conspiracies and monopolisation — matters that could take years — were seen as gluttons for punishment; some lawyers right through to senior Counsel would avoid those long and difficult matters like the plague. Yet those issues were fundamental to that area of law. So, too, is money laundering in the criminal context; it is a plague and it cannot be avoided in our priorities.

The CTRA is not immune from the need to think broadly. We could just provide an on-line data load for use in respect of known criminals or tax evaders. This,of course, is not good enough. We must also work with whichever law enforcement agencies that focus on the grander aspects of money laundering to ensure every ounce of worth is screwed out of CTRA data. And we will be doing that with State and Federal agencies who have pitched themselves in that direction. With some States moving to civil forfeiture I would expect that considerable co-operative work would be done with them by the CTRA.

CTRA data is of course only a part of the picture; but it has great potential as a source of information and as an aid to pursuing criminal money flows. Let me examine with a little more detail those propositions.

The basic data load of the CTRA is already focussing on a number of issues through the reporting of suspect transactions:

- **from the retail sector of the banking system:** low to medium level tax cheating in the cash economy is being brought to light. These allegations are being referred to the Australian Tax Office for future audit investigation after the relevant income tax year is complete;
- **from the wholesale sector of the banking industry:** higher levels of tax cheating and fraud will likely be exposed. Some cases have already come to light;
- **from the retail area of banking:** a large number of alleged Social Security frauds have been brought to light;
- **from the retail and wholesale sectors of the banking industry:** unusual transactions, often in cash and suggestive of criminal activity associated with drug money laundering. These cases tend to be indicative of individuals or particular instances of possible criminal activity;
- **from the retail level of banking:** people hiding money in false name accounts.

When the significant cash transaction reporting commences in July 1990 we expect that there will be much more data available on the so-called cash economy. Tax auditors will be able to see, through their on-line access to the CTRA data base, where people are using cash and not declaring income. Similarly there will be increased intelligence on the activities of particular people in criminal activity involving proceeds of crime. But that alone is not likely to point towards bigger fish in money laundering without further analysis. The increased tax revenue that flows from this system will very likely provide a revenue benefit of such magnitude as to offset the cost of providing intelligence on money laundering to law enforcement agencies.

A number of factors can be brought together to postulate a scenario of money laundering. They might include the knowledge of a particular law enforcement agency or agencies; knowledge of cash flows in the banking sector; knowledge from the financial institutions themselves about the behaviour of particular enterprises; comparative analysis of cash flows evident through the CTRA data base; other factors. It would seem feasible to bring those factors together as part of analysing the CTR information to form some likelihood as to money laundering for particular syndicates or enterprises. The resultant analysis, of course, is not proof in any formal sense and clearly all of the difficulties associated with creating chains of evidence on a money laundering offence still follow. But that type of analysis might well provide the opportunity for ongoing (and probably lengthy) investigations of the types that have been witnessed in the United States.

In the event that the criminal standard of proof on money laundering cannot be met — that is, the bridge between the "analysis and postulation" and "evidence and prosecution" cannot be reached — there are other possibilities.

Firstly, there is the emerging civil standard in, for example, New South Wales. Secondly, there are offences such as that in the *CTR Act* itself relating to the structuring of reports to avoid the CTR reporting thresholds; it may be that such an offence could be more easily constructed in an evidentary sense than the money laundering offence itself; it may become "the Al Capone" solution. Thirdly, there is the likelihood that tax evasion is involved in the laundering. Thus the tax remedy still remains. Spending resources on

major money laundering enquiries (even if one is tempted to see the ultimate prosecution for money laundering as being difficult to achieve) is not a futile exercise, and in my view is precisely what our political leaders have been calling for.

Furthermore, whatever we do, it should be directed towards seizure and confiscation. We may need "study and consideration" but the bottom line of what we should be aiming for is "seizure results" not just reports. It is our objective in the CTRA to put our lot in with those who are results-oriented in the arena of forfeiture and seizure of the proceeds of crime. Thus we contemplate that there can be a linking of the background knowledge of law enforcement agencies and the intelligence derived from the financial institutions and held by the CTRA which would be reflected in both the analysis of knowledge factors and the expert systems that may be attached to the CTRA information holdings. Such an approach of linking "investigative knowledge" with "expert systems" and "financial intelligence" provides a challenging framework to provide a real-time aid to investigators who are charged with money laundering enquiries. But implicit in that is co-operation not only between the CTRA and relevant agencies but between relevant agencies themselves. Patch consciousness will need to be subsumed; and that is clearly the experience in the US in relation to matters like this where major issues can often transcend the "patches" of numbers of law enforcement authorities. The CTRA is not likely, therefore, to be keen to provide these services to agencies which might be tempted to keep the CTRA and other law enforcement groups in "the mushroom club".

What services can law enforcement agencies expect from the CTRA in pursuance of the objectives to which I have referred? These can be summarised as follows:

- reports of suspect transactions that have been undertaken in the banks and other financial institutions and cash dealers will be referred by the CTRA to relevant law enforcement agencies. Where the CTRA is not able to make that decision, a special Commonwealth Task Force has been established to do some preliminary analysis to determine where the suspect transaction reports would best be sent for investigation. Either way it is hoped that those suspect transaction reports may be linked up with investigations of relevant law enforcement agencies; and indeed that is happening.
- The on-line service referred to below will also provide law enforcement agencies with an index of all suspect transaction reports so that if a specific referral has not been made to a particular agency, a window into the whole list of reports can be utilised.
- The on-line service will provide a window into all of the financial intelligence holdings of the CTRA with some exceptions. The exceptions are sensitive data, particularly those relating to suspect transaction reports and certain classes of significant cash transactions reports where total security is required. The whole data base will be covered by security systems but some of the data is more sensitive than others. Thus law enforcement agencies will be able to gain a fairly broad insight into the CTRA holdings.
- The analysis service that will be provided by the Agency in pursuance of these objectives on money laundering is perhaps the most important for that purpose. This will include the capability to utilise artificial intelligence analysis that will be provided by the CTRA based on expert systems that will cull over the whole data base to assist particular projects by particular organisations. That work will have to be done

on a one-by-one basis between the Agency and the particular law enforcement authority. Coupled with that will be (human) analysis based on a mix of tools. This will include exploiting and tapping into the special relationship that the Agency has forged with cash dealers throughout Australia to increase the potency of its intelligence holdings and to make use of that relationship in terms of ensuring all data available is held on particular matters or transactions. Thus again we would expect that for particular projects the Agency will work with a particular law enforcement authority to ensure that authority gains the best service it can in relation to major matters of money laundering and the like that it may be looking into.

Access to the CTRA information systems will be governed by agreements between the head of a particular law enforcement agency and the Director of the Cash Transaction Reports Agency. Those agreements will be formal and will contain:

- arrangements as to control of CTR computer data in terms of physically accessing the CTR system, the logging of that access and also restriction on further recording of that information once accessed;
- identification of the persons or occupants of positions who may have access to CTR data and the purposes for which that access is granted;
- the consequences of not following the arrangements (in the main these reflect the provisions of the *CTR Act*); and
- provisions governing the following-up of data, more particularly that different law enforcement agencies not duplicate approaches that might be made to the cash dealer and ultimately to the person who is the subject of the report.

Thus, for example, in the case of State Police, access to the CTR system is for a small group of people (about six in each State) with clearly delineated purposes. This access is relatively narrow. At the other end there will be fairly widespread access to CTR information by officers of the Australian Taxation Office. The latter is consistent with the general tenor of the *CTRA Act* which, by law, permits the Taxation Commissioner and ATO officers general access. Access to the law enforcement community is at the discretion of the Director.

There are reasonably well-defined controls that will govern access to the system. It must be said, however, that the principle purpose of the Cash Transaction Reports Agency is to facilitate steps against tax evasion and to enhance law enforcement and that is the starting point in respect of data access.

Thus we view the Agency as having the potential to offer a professional service. We hope that law enforcement authorities would look at the Agency as, for example, a builder might look at an architect's office; a contractor might look at a lawyer's office; or someone in commerce might look at an accountant's office. In other words we want to develop a professional service role that we can provide to law enforcement agencies in this field. That is our ambition and we are working positively towards that with our hope that we can, by late this year or early next year, be in a position to deliver all of those services.