DESTROY CRIME'S ECONOMIC BASE:

The Minister for Justice, Senator Michael Tate, delivered the Sir Samuel Griffiths Memorial Lecture to the Australian Young Lawyers Section of the Australian Law Council at the National Press Club on 2 May. In his address, he commented on the concept of "Following the Money Trail".

MR Frank Costigan QC in his report on the Ship Painters and Dockers Union said in the chapter entitled "Money Tracker":

> "A financial investigation usually encompasses two objectives. The first is to track the money . . . the second is to assess the financial worth of the person being investigated and to identify the sources of the wealth."

This has proved to be particularly important in at least two respects — Firstly as an investigative technique, secondly allowing for the seizure and confiscation of assets.

The Parliament has provided important powers to ensure that the "money trail" is preserved and that certain financial transactions lead to an alerting of law enforcement authorities.

It is patently clear that, in the absence of intelligence of this type, even the most skilled law enforcement agencies will not be able to marshal sufficient evidence for the successful prosecution of the true masterminds and financiers of lucrative and sophisticated criminal conduct and ensure that their vast well-laundered but nevertheless illegally obtained wealth is returned to society.

The Proceeds of Crime Act 1987 imposes obligations upon financial institutions to preserve and allow the monitoring of, and to produce those financial records which are necessary to follow the money trail.

These provisions will make it easier to reconstruct the activities of those engaged in organised crime. In the long term they will deny, or render difficult, access to the banking system by those engaged in organised crime.

The Cash Transactions Reports Act 1988 provides for the reporting of suspect transactions and those of more than $10,000 in cash. So far, only the provision dealing with the opening of an account in a false name has been proclaimed. But, already, a new co-operative attitude can be observed in banking and other financial institutions.

Let me give two examples. On 7 April I informed the Senate of the first successful prosecution under the Cash Transaction Reports Act. It involved generally the operation of an account with a cash dealer in a false name. Investigations revealed that an individual, claiming to be unemployed, had, over a period of four months, deposited and transferred about $4.5 million to an account in Singapore. He has now been convicted and sentenced. In addition, he has been assessed for a further $1.6 million in taxation.

This co-operation has also been of great assistance in the shattering of a major drug importing syndicate. On the same day on which I told the Senate about our first prosecution under the Cash Transaction Reports Act, four persons were convicted and sentenced to terms ranging from 18 to 25 years for offences related to importing cannabis resin.

The AFP operation, code-named 'Tableau', ran from early 1987. Information from financial institutions was crucial to its success.

Given the importance of this technique in investigating crime, it is not surprising that the Parliament, in passing the privacy legislation, acknowledged and provided for the use and disclosure of information where that use or disclosure "is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue".

The other benefit of uncovering an often artfully obscured money trail is to enable the identification of assets to be seized, confiscated and returned to the community.

The old aphorism runs "Crime does not pay". That is untrue. It does — In large amounts when speaking of the importing of drugs or major fraud against the Commonwealth.

Traditional punishment of fines and imprisonment are not going to the heart of the matter, which is greed and the power associated with wealth.

For years we have been locking up criminals who, at the end of their time, have been released from gaol to enjoy the fruits of their crimes.

The accumulated assets of criminal profiteers must be confiscated — not simply, or even primarily, as an individual punishment — but to destroy the economic base which can remain to be utilised by the imprisoned criminal and/or his confederates.

The profit of crime, often transmuted into 'legitimate' assets and business enterprises, must be stripped from the criminal entrepreneurs lest our society's legal businesses become subservient to them.

Thus, not merely the palatial house, the flash car, the luxury yacht, the horse stud, etc. must be forfeited. Any attack on the profits must include forfeiting those interests in legitimate business in which the profits of crime are laundered.

Minister Says

With respect to an ordinary indictable offence, a forfeiture order can relate only to property connected with the offence which "tainted" it. A pecuniary penalty, on the other hand, may be levied against any of the property of the defendant irrespective of how it was obtained — no tracing is required. The Court need only be satisfied to the civil standard of the elements necessary to justify making either a forfeiture order or a pecuniary penalty order.

The consequences which flow from conviction for a serious offence are more drastic. A serious offence includes a serious narcotics, organised fraud or money-laundering offence in relation to either of those.

Senator Michael Tate.

The list of offences which the Proceeds of Crime Act defines as "serious" is comparable to, although not as extensive as, the 38 State and Federal offences from which a pattern of racketeering activity may be inferred in America.

The sentence which can be imposed on being convicted of an organised fraud offence is more drastic then the consequences of being convicted of one of its constituent frauds: If the offender is a natural person, a fine not exceeding $250,000 or imprisonment for a period not exceeding 25 years or both, or if the offender is a body corporate, a fine not exceeding $750,000.

The civil penalties are also more severe. All the frozen property of a defendant, which six months after the date of the defendant's conviction for a serious offence remains the subject of a restraining order, is automatically forfeited to the Commonwealth.

This provision effectively reverses the onus of proof in requiring a defendant to make application to the Court for an order removing all or specified property of the defendant from the ambit of the Act's operation upon the grounds that the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity, and that the defendant's interest in the property was lawfully acquired.

Money laundering is engaged in so as to obscure the criminal origin of the assets. It requires equally vigorous attack and hence money-laundering offences are created under the proceeds of crime legislation.

Section 81 is a traditional offence in the sense that, by its structure, the prosecution must prove all the elements of the offence.

The penalty for that offence is severe — $200,000 fine or 20 years' imprisonment or both — and I make no apology for that.

Section 82 creates an offence where a person receives, possesses, conceals, disposes of, or brings into Australia any money or other property that may reasonable be suspected of being proceeds of crime.

Where the defendant satisfies the Court that he or she had no reasonable grounds for suspecting that the property in question was derived or realised, directly or indirectly, from some form of unlawful activity, the defendant is absolved from liability.

The Scrutiny of Bills Committee accepted that because the elements of the offence were peculiarly within the knowledge of the defendant it was not inappropriate to place the onus upon the defendant.

Some have suggested that lawyers ought to be somehow exempted from these money-laundering provisions.

I can't for the life of me see why they should not be subjected, the same as all others in the community, to the requirement to be on the alert to this use which may be made of them.

I may note, of course, that an accused is able to use his otherwise frozen assets in paying for his defence — consistent with the presumption of innocence it is appropriate for a person to have access to funds that are, at least prima facie, his or her own property in defending criminal charges.

There is a danger that the frozen funds might be dissipated in this way, a matter which Mr Justice Pincus has recently drawn to the Government's attention in his judgment in *The Commissioner of the AFP v Kirk and Others.*

As I have stated, the aim and objectives being gradually achieved must be to go to the heart of the criminal endeavour and to destroy the economic base from which criminal enterprise launches its attack on society. •