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Abstract | Financial investigation is commonly used in policing serious and organised crime. It is less frequently used in routine policing. This paper explores the potential for financial investigation to be used for a wider range of policing purposes.

By following an individual's financial footprint, it is possible to go beyond financial investigation's traditional role of asset recovery. Other purposes include tracking persons of interest, linking multiple individuals in a criminal enterprise and corroborating alibies.

Barriers to implementation include its perception as a specialism, the geographical and organisational isolation of financial investigators, and limited knowledge among general duties police officers. Factors facilitating the routine use of financial investigation include leadership, education and training, collaboration, and judicial and government support.

Financial investigation for routine policing in Australia

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Introduction

Financial investigation has long been used by law enforcement agencies, both domestically and internationally. It has been used as a method to target and police financial crimes such as fraud, money laundering and corruption, as well as for more general crime control purposes. Typically used in the context of serious and organised crime, financial investigation has largely focused on recovering assets from criminals. This has served four crime-fighting objectives, including reducing the profitability of crime, reducing the resources available to criminal groups and therefore their capacity to operate, supporting and reinforcing societal expectations that crime should not pay, and compensating society for the adverse impacts of crime and costs of policing it (Kruisbergen, Kleemans & Kouwenberg 2016).

While financial investigation is clearly beneficial, the focus on asset recovery has detracted from other ways in which financial investigation techniques may be used in routine policing. By routine policing, we mean everyday policing activity (both proactive and reactive) undertaken by non-specialist police officers, which makes up the majority of police work in Australia and other countries. There is evidence that financial investigation methods can be used for a wider spectrum of policing purposes (Brown 2013; Brown et al., 2012; Financial Action Task Force (FATF) 2012; Gale & Kelly 2018; Howell, Horton & Gill 2013; Wood 2017).

This paper explores the ways in which financial investigation has been conceptualised and operationalised in Australia and identifies alternative approaches that have been used overseas that could be beneficial. Three central questions are asked:

- What are the legal and operational contexts that support the use of financial investigation for law enforcement purposes in Australia?
- How is financial investigation applied by law enforcement agencies in Australia?
- What are the benefits of using financial investigation for routine policing?

The findings presented here are based on a narrative review of the available literature in Australia and internationally and examine the opportunities for using financial investigation in routine policing. It also explores the potential barriers and facilitators to using financial investigation for this purpose.

Defining financial investigation

Financial investigation has been defined by FATF (2012: 3) as an:

...enquiry into the financial affairs related to criminal conduct. The major goal of a financial investigation is to identify and document the movement of money during the course of criminal activity.

By focusing on the movement of money, this definition implies that financial investigation is concerned solely with tracing assets and suggests it is a specialist activity requiring highly trained financial investigators or forensic accountants. This appears to be the case internationally, as financial investigation is often viewed by the law enforcement community as the preserve of specialist units focused on recovering assets (Brown et al. 2012; Hughes 2021). This definition fails to take account of the non-asset related aspects of financial investigation that could be used by police officers in their day-to-day work. In an attempt to make financial investigation relevant to all investigators, Hughes (2021: 130) offers a new and more comprehensive definition, which goes beyond the perceived specialism of asset recovery:

Financial investigation is a technique to trace the complete or partial financial footprint of an individual or entity. It is a generic tool to inform strategic and tactical decision-making in the use of information, intelligence and evidence to support enquiries and investigations at all levels.

This takes account of tracing the movement of money, as envisaged by FATF (2012), encompassing the full gamut of the asset recovery and confiscation architecture, including the restraint, seizure and sequestration of crime-related property. It also includes a range of methods that can provide insights into the financial footprint of an individual whether involved in crime or otherwise (eg a witness, victim or offender).

Relatedly, financial intelligence involves analysing financial information to link financial transactions with criminal activity, which can be used operationally as part of an investigation, or strategically to understand a pattern of criminality. Hughes (2021: 130) offers the following definition of financial intelligence:

Financial intelligence is any information which assists in establishing the complete or partial financial footprint of individuals or entities and which can be utilised to inform strategic and tactical decision making for all investigation, prosecution and asset recovery purposes.

The definition was developed to be compatible with the National Intelligence Model adopted by all law enforcement agencies in the United Kingdom but lends itself to any approach to evaluating the efficacy of investigations in any jurisdiction (John & Maguire 2004). In this paper, the discussion of financial investigation necessarily relates to financial intelligence, as each is integral to the other. Information generated from financial intelligence can support an investigation, while a financial investigation may lead to additional intelligence on targeted individuals or be used to generate strategic intelligence insights.

The financial footprint

Contemporary financial systems are highly centralised. Transactions are increasingly made electronically and involve the centralised storage of information by financial institutions, who share agreed pieces of information whenever a bank transfer or credit/debit card payment is made. With each transaction, the financial system collects information about when and where transactions are made, with whom and for what purpose. In many cases, a significant amount of personal information may also be collected about the individuals or businesses concerned. Mortgages, other loans, insurance policies, subscriptions and licensing arrangements all leave a centralised financial footprint that can be subject to intelligence analysis or evidential scrutiny.

In many countries, the transaction or financial information held by commercial enterprises is supplemented by information held by government entities. Financial institutions are often required to provide the government with information on transactions that are over a certain limit, or that are deemed to be of concern to the employees handling the transaction. For example, the Australian Transaction Reports and Analysis Centre (AUSTRAC) received almost 179 million reports from regulated entities in 2020–21 relating to international funds transfers, suspicious activities and threshold transactions (AUSTRAC 2020a). Governments also hold central repositories of major asset transactions, such as land registries and motor vehicle registries—data sources which allow investigators to track financial footprints.

The centralisation of financial information held by the financial sector and government can be contrasted with decentralised financial transactions involving cash, bartering or promise systems, which may not produce any official record. There are also new online payment applications developed by fintech companies that sit on the periphery of the traditional banking system and do not necessarily collect the same amount of information as more established financial institutions. Then there are cryptocurrency transactions, which sit entirely outside the centralised banking system, where a record of the transaction is made on a decentralised 'public ledger', but those making the

transaction remain anonymous. An individual who uses these new payment systems can leave a much smaller financial footprint than they would using the traditional banking system. Cryptocurrencies in particular have proved difficult to track, which poses a challenge to financial investigators, although network analysis of cryptocurrency transactions has been used for law enforcement purposes (United States Department of Justice 2019).

The case for the financial footprint

When applying financial investigation to routine policing, we advocate for the contemporary approach of ‘following the financial footprint’, as proposed by Hughes (2021), rather than the historic approach of ‘following the money’. Instead of following the money trail to identify assets or establish money laundering, following the financial footprint allows investigators to trace victims, witnesses or missing persons; to establish connections between individuals and businesses; and to verify a suspect’s alibi or interview account. In terms of intelligence, the financial footprint offers an often rapid pathway to obtaining crucial information including dates of birth, familial connections, lifestyle information, email details, and previous and forwarding addresses. It can even reveal travel movements including refuelling stops and possible intervention points in real time and, in certain cases, contemporaneous with ongoing mobile or static surveillance. This needs to be undertaken within the relevant human rights framework and with due regard to an individual’s right to privacy. Indeed, ‘Investigators should be able to justify such enquiries as proportionate, non-discriminatory, legitimate, accountable and necessary to the investigation being undertaken’ (FATF 2012: 7). Nevertheless, the potential of financial investigation and the intelligence opportunities it offers is significant. It is also possible for an investigation to follow both the financial footprint and the money. The former can provide an insight into general criminality and the latter can uncover details of assets that can be confiscated as redress for that criminality.

How do police use financial investigation in Australia?

Financial investigation (following the money) is commonly used in Australia to recover the proceeds of crime. This is supported by proceeds of crime legislation in every state and territory and also by Commonwealth legislation (Bartels 2010a). In addition, unexplained wealth laws in the Commonwealth and all states and territories have provided powerful (if somewhat under-used) tools to recover illegitimate earnings; in 2020 the Australian Capital Territory was the last to enact such legislation (Bartels 2010b; Parliamentary Joint Committee on Law Enforcement 2012; Smith & Smith 2016).

Proceeds of crime legislation and unexplained wealth laws are most commonly used to address serious and organised crime and are particularly used by law enforcement agencies with a focus on organised crime. At the Commonwealth level, this includes the Australian Criminal Intelligence Commission and the Australian Federal Police but also extends to regulatory agencies with investigative powers such as the Australian Taxation Office, AUSTRAC, the Australian Securities and Investments Commission and the Australian Commission for Law Enforcement Integrity. At the state and territory level, financial investigation is used by police services and specialist agencies such

as the New South Wales Crime Commission, Victoria's Independent Broad-based Anti-corruption Commission and Queensland's Crime and Corruption Commission to investigate organised crime (Morgan et al. 2021).

There are also longstanding multi-agency Commonwealth taskforces that use financial investigation methods. The Serious Financial Crime Taskforce, led by the Australian Taxation Office, proactively investigates offshore tax evasion, illegal phoenix activity, cybercrime affecting the tax and superannuation systems, and financial crime affecting the Commonwealth Coronavirus Economic Response Package. In 2020–21, the taskforce raised \$121m in liabilities and \$145m in cash collections (Australian Taxation Office 2021). The Criminal Assets Confiscation Taskforce, led by the Australian Federal Police (nd), uses Commonwealth powers to target the proceeds of organised crime and recover assets. In 2021, this taskforce confiscated assets valued at \$53.9m and produced a return on investment of \$2.44 for every dollar spent (Australian Federal Police 2021). In 2017, AUSTRAC established the Fintel Alliance, a public–private partnership involving financial institutions and law enforcement agencies which aims to use financial intelligence to improve responses to serious and organised crime. In 2019–20, the partnership produced 255 intelligence products and commenced 29 operations to tackle various crime problems (AUSTRAC 2020b). These taskforces and partnerships demonstrate the range of ways in which financial intelligence and investigation techniques are currently being applied to address serious and organised crime in Australia.

Implementing financial investigation in the context of organised crime has not been without its perceived problems (Freiberg & Fox 2000; Skead et al. 2020; Smith & Smith 2016). Concerns have been raised about the way in which proceeds of crime legislation and unexplained wealth laws are interpreted and implemented (Skead et al. 2020), while resource constraints and capabilities of those assigned to financial investigations have also been noted (Parliamentary Joint Committee on Law Enforcement 2012; Queensland Organised Crime Commission of Inquiry 2015).

Beyond tackling organised crime, the extent to which financial investigation is used by law enforcement agencies in Australia is unclear. A survey of police officers in Queensland found that almost 70 percent of general duties officers and 20 percent of detectives had received no formal training in financial investigation (Drew, Moir & Newman 2021). As a result, both knowledge of and confidence in routinely using financial investigation methods were significantly lower among general duties officers than among detectives. However, an online training course was demonstrated to improve the potential of both groups to use financial investigation (Drew, Moir & Newman 2021). It has also been noted that some victims of financial crime perceive the police to be unresponsive (Cross, Richards & Smith 2016), perhaps reflecting the limited use of and confidence in financial investigation methods at the local policing level.

What does financial investigation offer routine policing investigators in their day-to-day enquiries?

Financial investigation can facilitate routine policing in three key ways. First, it assists in the complex and specialist area of asset recovery, already the domain of trained financial investigators in many countries. Second, financial investigation creates opportunities for tactical intervention using cash seizure powers, various court orders and related methods. Third, it has the potential to enhance evidence gathering in criminal prosecution cases and other enquiries including locating witnesses, victims and offenders. This third approach has been acknowledged by various governments and international commentators, although implementing financial investigation within routine policing has proven problematic (FATF 2012; Golobinek 2006; Maxwell & Artingstall 2017). Financial intelligence can play a part in supporting all three roles. Although not explicitly stated, financial intelligence would appropriately sit alongside other forms of intelligence outlined in the Australian Criminal Intelligence Model (Australian Criminal Intelligence Commission 2017).

Potential uses of financial investigation

The potential of financial investigation as a routine investigation tool is demonstrated by the following de-identified examples, collated by the first author during his career as a financial investigator in the United Kingdom:

- A murder suspect provided an alibi indicating he was a considerable distance from the scene of the crime. Simple credit checks revealed that the individual used an alias, possessed a credit card in the false name and had used that card on the day in question to buy utensils which were used in committing the crime. The alibi was disproved.
- A murder took place in a city centre in the early hours of the morning, and CCTV footage revealed a potential witness walking on the street where the assault took place. A financial investigator knew there was an ATM at the crime scene and contacted the bank to ask if the ATM had a camera. A witness who made a transaction using the ATM was identified, enabling officers to take a statement from someone who had witnessed the murder other than those involved in it.
- Credit checks on a property connected to a serious sexual assault case located a credit card some years old. Checking with the financial institution concerned led to a second card in an alias name but linked to the same address, which had been used by the offender in the location of the offending. Appropriate checks on the card with financial institutions identified the offender and where he was staying. An arrest was subsequently made.
- Detectives received information that a vehicle was being used in Europe to collect a significant amount of illegal drugs. The information identified the driver but not the vehicle. Simple checks concerning the driver and a home address revealed a credit card that a financial institution confirmed was currently being used on the continent. A court granted an account monitoring order, which allows a financial institution to inform police about subsequent transactions, and each time the credit card was used to refuel the vehicle the police were immediately informed. Detectives were able to work out the vehicle's destination port after it had travelled across three countries and the offender was arrested while attempting to embark on a ferry with a substantial amount of drugs.

- Concerns over a missing person were alleviated when their credit card was used in a different city. The local police located CCTV footage of the individual, who was subsequently identified by a shop owner, leading to a conclusion that the missing person was safe and well.
- When a police officer was struggling with an outstanding arrest warrant, the financial investigation unit provided details of a linked address. A land registry check on the linked address showed the individual subject to the warrant had purchased the property six months earlier. The following morning, after almost four months of trying without success, uniformed officers were able to execute the warrant at the newly identified premises.

These examples are neither prescriptive nor exhaustive. Financial investigation (following the financial footprint) is often the swiftest way to profile an individual or business and to identify evidential possibilities for prosecuting criminal offences. Material linking individuals who deny an association is often to be discovered in passport applications, customer recommendations for new business in financial institutions, and purchaser agreements for vehicles, equipment and real estate (which also have asset implications).

The unanswered question is whether law enforcement agencies are sufficiently educated and invested in the idea that financial investigation has more to offer than asset recovery and can be used beyond organised crime investigations. It remains unclear whether wider application of financial investigation skills is actively encouraged at all levels. This raises questions about the extent of training, who is trained, and the level of training required. There appears to be little information concerning routine policing investigators' attitudes to and understanding of financial investigation and what they can apply it to, although the experience in Queensland suggests that both attitudes and knowledge could be improved (Drew, Moir & Newman 2021). However, research elsewhere has primarily focused on the experiences of financial investigators rather than on routine policing investigators and supervisors, who could be trained to follow the financial footprint at a general investigation level or as a tactical option (Brown et al. 2012; Howell, Horton and Gill 2013).

Implementing financial investigation in routine policing

If one accepts the potential of using financial investigation in routine policing activities, it is worth considering how this might be achieved. As demonstrated in other areas of policing, implementing new approaches that challenge the status quo can be fraught with difficulty (Brown & Scott 2007) and consideration should be given to both the barriers to implementation and the factors that facilitate it.

Barriers to implementation

It is not difficult to identify factors inhibiting a broader and more effective implementation of financial investigation techniques in routine policing. Some of these barriers are listed below.

- **A perception that financial investigation is a specialist discipline**—Many routine investigators believe that financial investigation equates to specialist, complex and time-consuming asset recovery, which requires a dedicated financial investigator or forensic accountant (Hughes 2021). While this may be the case for serious and organised crime cases employing proceeds of crime or unexplained wealth processes, there are many other situations in which specialist officers are not required.

- **A perception that financial investigation is a post-conviction process**—Some investigators believe that financial investigation is a process that takes place after conviction (confiscation) and that has little value before that. However, Brown et al. (2012) demonstrated that it could be used to identify criminality, to investigate covertly pre-arrest and to investigate more openly post-arrest, as well as in confiscation proceedings post-conviction.
- **Geographical isolation**—Financial investigation units are often located at police headquarters, which can mean that financial investigators have little day-to-day contact with routine policing investigations. This geographical isolation can result in lost opportunities for financial investigators to routinely meet and work with general investigators.
- **Organisational isolation**—As a result of being treated as specialists, financial investigators can have limited opportunities to work with routine investigators. This is not only because of their geographical isolation but also because of management choices about how financial investigators are used (or, more importantly, how they are protected). This organisational isolation may mean that routine investigators are simply not exposed to the potential ways in which they could use financial investigation techniques. From a day-to-day operational perspective, there may also be limited opportunity for financial investigators to share their intelligence (such as identifying new addresses and personal details) to assist routine investigators in their duties.
- **Limited knowledge and understanding**—As noted earlier, there is a general lack of knowledge of proceeds of crime legislation and procedures among both tactical and strategic level managers (Chave 2017). Managers also have limited knowledge of basic financial investigation tools such as credit searches and suspicious matter reports, which can be used to trace a financial footprint in routine investigations.
- **Attitude of prosecutors**—Prosecutors may be reluctant to use proceeds of crime legislation other than in cases involving serious and organised crime and asset recovery (Chave 2017; House of Commons 2016).
- **Attitude of judiciary**—Judges may also be reluctant to apply proceeds of crime legislation or unexplained wealth laws generally (Brown et al. 2012; House of Commons 2016; Hughes 2021). This could mean that extending the use of financial investigation for prosecuting more routine crime cases would be met with judicial opposition.
- **Policies favouring asset recovery**—At the government level in many countries, asset recovery, as a method of serious and organised crime control, appears to remain the central goal of financial investigation. This ignores the significant potential for financial investigation to be used beyond asset recovery.

Some of these barriers to implementation would be easier than others to overcome. Altering police training or positioning financial investigation units nearer to uniform and local investigators for better integration is probably easier than bringing about a more routine application of financial investigation. The perception that financial investigation is a specialist area and something that takes place post-conviction may also be difficult to address. Similarly, the antipathy of judges and prosecutors evident in some cases in the United Kingdom (House of Commons 2016) seems to demand a transformation in the way financial investigation is regarded beyond law enforcement. A comprehensive approach will be elusive while asset recovery remains the dominant perception in the minds of investigators and policymakers at all levels.

Factors facilitating implementation

The successful implementation of financial investigation in routine policing may rely on some of the following factors.

- **Leadership**—Forward-thinking managers who understand the potential of financial investigation as a routine policing tool will need to create a climate in which traditional ideas can be challenged and new approaches can be tested.
- **Education and training**—Routine investigators will need improved knowledge of and skills in the use of basic financial investigation tools such as credit checks and suspicious matter reports. Investigators at all levels will also need increased understanding of and confidence in the use of proceeds of crime and unexplained wealth powers.
- **Collaboration**—A cohesive approach involving law enforcement agencies, regulatory agencies and financial institutions will be required to realise the potential of financial investigation in routine policing.
- **Changing local strategies**—The use of financial investigation could be facilitated by changing local level responses to illicit drug control from targeting commodities (ie seizing drugs) to targeting the cash flow of criminal enterprises through cash seizures, which can disrupt their liquidity.
- **Judicial and legal support**—The judiciary will need greater understanding and acceptance of cases built on financial investigation. Prosecutors will also need to be more willing to use proceeds of crime and unexplained wealth legislation and more accepting of financial investigation techniques being used in cases beyond serious and organised crime (in particular when prosecuting standalone money laundering cases).
- **Government support**—Governments at the state/territory and Commonwealth levels need to recognise the benefits of financial investigation beyond asset recovery in serious and organised crime cases, and support policies that make it easier to use financial investigation in routine policing cases.

In the United Kingdom, successive governments, independent reviews and academic commentators have concluded that financial investigation has potential beyond asset recovery and have sought to embed the approach in routine policing investigations (HM Crown Prosecution Service Inspectorate, HM Inspectorate of Court Administration & HM Inspectorate of Constabulary 2010; HM Inspectorate of Constabulary, HM Crown Prosecution Service Inspectorate & HM Magistrates Court Service Inspectorate 2004; House of Commons 2016). However, even in this context, financial investigation techniques have yet to be fully embedded in routine policing.

Conclusion

Financial investigation as a tool for controlling serious and organised crime by recovering assets under proceeds of crime or unexplained wealth legislation is well understood in Australia. It is frequently used at the state/territory and Commonwealth levels in financial crime cases (eg fraud, corruption and money laundering) and in other cases (eg drug trafficking) to understand the criminality involved and to recover assets. This is demonstrated by the range of mechanisms (crime and corruption commissions, regulators, taskforces, public–private partnerships) that pursue financial investigation and asset recovery methods in the ongoing fight against serious and organised crime. Given its relative success in these areas, there is potential to extend the use of financial investigation to routine policing activities.

As a starting point, there would be benefit in training general duties police officers in financial investigation, as has been done in Queensland, for example. While there can be no expectation that routine policing investigators will be trained in the same way as financial investigators, they could be trained in basic skills that have the potential to enhance routine policing.

There would also be benefit in developing a repository of examples illustrating how financial investigation techniques have been used in Australia. Such a repository could be used to highlight methods officers could replicate in other contexts and to fire the imagination of investigators about future possibilities for financial investigation methods.

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URLs correct as at March 2022

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