

Recovery of the Proceeds of Crime

Performance Audit

Tabled 13 December 1996

Audit Report No. 23 1996-97

Abbreviations / Glossary

AFP	Australian Federal Police
ANAO	Australian National Audit Office
AUSTRAC	Australian Transaction Reports and Analysis Centre
CAIU	Criminal Assets Investigation Unit
CATF	Confiscated Assets Trust Fund
CLEB	Commonwealth Law Enforcement Board
DPP	Director of Public Prosecutions
IGC	Inter Governmental Committee (for NCA)
ITSA	Insolvency and Trustee Service, Australia
MOSC	Management of Serious Crime
NCA	National Crime Authority
POC	Proceeds of Crime

Summary

Recovery of the Proceeds of Crime

1. The recovery of the proceeds of crime is a complex and difficult task involving the Commonwealth in relationships with State and overseas law enforcement bodies; the application of a range of different laws with different objectives, benefits and problems;

and a need to respect the civil rights of those suspected of serious crime. The law enforcement agencies audited have as their first responsibility the apprehension and conviction of serious offenders. The attack on the financial base of crime is part of the overall strategy to improve the effectiveness of law enforcement within the Commonwealth's sphere of influence and the various proceeds recovery mechanisms form part of that strategy.

Audit Purpose and Scope

2. The objective of the audit was to form an opinion and report on the efficiency, economy and administrative effectiveness of the management of the investigation and recovery of the proceeds of crime.
3. The audit did not examine the conduct of criminal investigations as such, but only in so far as it was necessary to form a view of the way in which recovery of the proceeds of crime was factored into the investigations.
4. The audit examined a sample of cases of serious crime investigated by the NCA and the AFP and prosecuted by the DPP. The sample was statistically significant and can be taken as representative of the way in which the agencies go about their business. The sample of cases was tested against criteria accepted by the agencies as desirable qualities of an efficient and effective procedure to recover the proceeds of crime.

Audit Conclusions

5. The ANAO acknowledges the difficult environment in which any recovery action taken by agencies must be carried out. Some action was taken in respect of the recovery of the proceeds of crime in all NCA cases and in 75 per cent of AFP cases. That said, the audit has identified that much can still be done to differing degrees in the agencies concerned to improve the economy, efficiency and administrative effectiveness of the management of recovering the Proceeds of Crime in the following areas:

- *Corporate planning.* Agencies would benefit from giving more attention to developing up to date corporate plans and a full range of performance indicators for internal and external reporting.
- *Case management processes.* Case management processes within the investigative agencies should be made more responsive to the corporate planning process. There are risks that important corporate goals relating to recovery of the proceeds of crime will not be pursued because of the need to concentrate on criminal investigations. Effective case management provides the means whereby resources are allocated to cases in accordance with the full range of corporate priorities in a way that is sensitive to a dynamic environment.
- *Clarification of areas of responsibilities.* If investigating agencies do not accept prime responsibility for proceeds of crime financial investigations, there is a risk of unnecessary duplication or inefficiency. The ANAO considers that it is important that co-ordination arrangements clearly identify that although the DPP has a key role in assisting investigative agencies at a strategic level, prime investigative and analytical responsibility rests with the AFP and the NCA.

6. Each agency brings its own strengths to recovering the proceeds of crime, for example:

- NCA has a highly competent financial analysis capability;
- AFP's Criminal Assets Investigation Units (CAIU) provide an appropriate organisational approach to recovering the proceeds of crime; and
- DPP's Criminal Assets Branch has particular legal expertise to assist in the strategic direction of proceeds of crime investigations.

7. The audit also considered the Government's expectation, as expressed in the Financial Impact Statement in the 1987 second reading speech to the Proceeds of Crime Bill, to return significant revenue to the Commonwealth through the recovery of the proceeds of crime. Recoveries under the Proceeds of Crime Act amounted to some \$36 million over 6 years. This does not include recoveries using other mechanisms, for example, tax assessments or recoveries under State or overseas legislation. An aggregated figure for total recoveries from all sources does not exist.

8. The ANAO notes that estimates of the value of all criminal activity are \$4.2 to \$4.7 billion per annum of which agencies say less than 10 per cent falls within the Commonwealth's responsibility. The ANAO recognises that not all proceeds of crime can be recovered and the level of recovery reflects a range of environmental, policy and procedural factors but, because the relevant information is not available, the ANAO has not sought to allocate weightings to the impact of the various factors.

Key Findings

1. The audit found that the administrative processes followed within agencies affected the efficiency, economy and/or effectiveness of the management of recovery of proceeds of crime.

Corporate Planning and Reporting

2. At the time of the audit the AFP did not have a corporate plan and the DPP's corporate plan was dated. There is little evidence that the corporate planning processes in the AFP, NCA or DPP are used to drive operational priority setting through the adoption of strategies and allocation of resources in a forward looking way. The NCA places more emphasis on the recommendations of the Commonwealth Law Enforcement Review (CLER), meetings of the Intergovernmental Committee and the Authority than on the NCA's corporate planning (including strategic directions) and national operational priority setting. Performance indicators, where they are set, are not routinely reported on.

3. The linkages between the corporate planning processes of the agencies and their operational planning, implementation and performance reporting can be improved in relation to the recovery of proceeds of crime.

4. The DPP has advised the ANAO that it has commenced a review of its corporate plan and the AFP has started to develop its corporate plan.

Case Management

5. Criminal investigations are sometimes managed without consideration being given to recovering the proceeds of crime. However, the ANAO recognises that the first priority of

the investigating agencies is to obtain a conviction. Criminal investigations are not always managed with recovering the proceeds of crime in mind. Poor compliance with existing case management systems does not ensure that recovering the proceeds of crime are considered early, pursued vigorously or reported regularly for appropriate management decisions.

6. The AFP criminal investigators have little experience or expertise in undertaking *complex* proceeds of crime financial investigation.

Responsibilities

7. The AFP particularly is missing out on the efficiencies flowing from synergies between criminal investigations and thorough financial investigations aimed at recovery of the proceeds of crime as well as the related criminal offence. The NCA has a financial analysis capability which is an integral part of investigations under its references.

8. Some investigators (particularly in the AFP) see proceeds of crime financial investigations as the DPP's responsibility. In this respect, the role of the DPP in proceeds of crime investigations is unclear. Current arrangements, particularly in the case of the AFP, appear to place undue emphasis on the investigation capability of the DPP to the extent that it is not always clear where to draw the line between investigation and the DPP's recovery role.

Attorney-General's Department

9. The audit examined the processes whereby the policy implications of operational experience have been fed back to the Attorney-General's Department for policy consideration. The ANAO concluded that although the coordination and consultative arrangements are satisfactory there is room for improvement in communications with the agencies. Departmental officers have undertaken to ensure that the operational agencies are kept fully informed of the outcome of policy or legislative proposals submitted to the Department for consideration and in a timely way.

ITSA

10. The audit's examination of the operations of the Insolvency and Trustee Service, Australia (ITSA) was restricted to that organisation's contribution to the identification and seizure of criminal assets and did not address its administration of the Confiscated Assets Trust Fund. The audit found that procedures followed by ITSA in relation to the recovery of the proceeds of crime were performed well and has no findings to report in relation to the operations of ITSA within the scope of this audit.

CLEB

11. The audit found that the role played by the Commonwealth Law Enforcement Board (CLEB) in relation to the recovery of the proceeds of crime to date has been minor and therefore presents no findings in relation to the CLEB. However, it does recognise the important role of the CLEB in the development of case management standards.

Recommendations

Set out below are the ANAO's recommendations with Report paragraph reference and agencies abbreviated responses. More detailed responses and any ANAO comments are shown in the body of the report. The ANAO considers that the agencies should give priority to Recommendations Nos. 1, 3, 4 and 6.

Recommendation No. 1 Para. 2.16	<p>The ANAO recommends:</p> <ul style="list-style-type: none">• that the AFP and DPP allocate higher priority to developing up-to-date corporate plans; and• agencies develop a full range of performance indicators relevant to the objectives and strategies identified in their corporate plans for internal and external use and report fully against them as part of their accountability, particularly for outcomes. <p>Responses:</p> <p>DPP: Agree in principle.</p> <p>AFP: Agree in principle.</p> <p>NCA: a) No comment. b) Agree in principle.</p>
Recommendation No. 2 Para. 4.5	<p>The ANAO recommends that operational plans within agencies fully reflect directions and strategies identified within agency corporate plans relating to the recovery of the proceeds of crime to encourage a better focus on outcomes.</p> <p>Responses:</p> <p>DPP: Agree.</p> <p>AFP: Agree in principle.</p> <p>NCA: Agree in principle.</p>
Recommendation No. 3 Para. 4.20	<p>The ANAO recommends that the AFP, NCA, DPP, and CLEB collaborate to develop an effective Case Management System that provides, inter alia, for the efficient, effective and economical investigation and recovery of proceeds of crime.</p> <p>Responses:</p> <p>DPP: No Comment. The DPP stands ready to provide assistance to the investigative agencies.</p> <p>AFP: Agree in principle.</p> <p>NCA: Agree in principle.</p> <p>CLEB: Agree in principle.</p>
Recommendation No. 4 Para. 4.34	<p>The ANAO recommends that the agencies establish a suitable case management information system for better decision making.</p>

Responses:

AFP: Agree in principle.

NCA: Agree in principle.

Recommendation
No. 5
Para. 5.12

The ANAO recommends that the AFP, consistent with its emerging organisational philosophy, give adequate consideration to the cost efficiency of maintaining and enhancing specialised groups with the necessary expertise and experience for the recovery of the proceeds of crime.

Responses:

AFP: Agree in principle.

Recommendation
No. 6
Para. 6.14

The ANAO recommends that the AFP and the NCA accept prime responsibility, with assistance from DPP at a strategic level, for collection and analysis of financial data involving the proceeds of crime and this be reflected in a revised protocol involving all parties.

Responses:

DPP: Agree in principle - provided that investigative agencies continue to consult with the DPP at an early stage.

AFP: Agree in principle.

NCA: Agree in principle.

1. Introduction

This chapter sets out the background to the audit as well as its objective, scope, methodology, cost and overall conclusion.

1.1 Commonwealth law provides a range of mechanisms to recover from criminals the proceeds of their criminal activity. These mechanisms are:

- the Proceeds of Crime (POC) Act. This Act provides for the confiscation of criminal assets following conviction. The property confiscated must be linked to the commission of a serious offence;
- the Customs Act provides for the seizure of property used in the commission of an offence against the Act; and
- where criminal activity results in undeclared income the Australian Taxation Office can take action to recover unpaid taxes and impose penalties under relevant Taxation legislation.

1.2 Australian States have similar legislation. Cooperative arrangements have been developed between the Commonwealth and the States. The audit did not attempt to evaluate their effectiveness.

1.3 Overseas proceeds of crime provisions (where they exist) are not necessarily compatible with the Australian approach. For example, the Commonwealth Proceeds of

Crime Act is dependent on successful conviction. This is not the case in some overseas jurisdictions or NSW.

1.4 Mutual assistance arrangements have been entered into with some overseas jurisdictions, but cooperation is dependent on meeting the requirements of both Australia and the other country. However, there are no effective cooperative arrangements in relation to the recovery of the proceeds of crime with other overseas jurisdictions. Some of these jurisdictions are highly significant if Australia is to mount a strategic attack on the financial base of crime.

Past performance - overview

1.5 The extent and financial significance of criminal activity (in particular organised crime and narcotics trafficking) has been outlined in a number of Royal Commissions, Parliamentary Inquiries and Reviews. For example:

- AUSTRAC has estimated the worth of criminal activity to be between \$4.2 billion and \$4.7 billion per annum of which audited agencies estimate less than 10 per cent falls within the Commonwealth's sphere of responsibility.
- the Parliamentary Joint Committee on the National Crime Authority has estimated the annual turnover in Australia from cannabis, heroin and cocaine to be in excess of \$2.6 billion.

1.6 There are various legal mechanisms for the recovery of the proceeds of crime:

- the Commonwealth and State Proceeds of Crime legislation;
- the Customs Act;
- the Crimes Act; and
- Tax assessments and penalties applied under Taxation legislation.

1.7 The main avenues for recovery under Commonwealth legislation are:

- a forfeiture order against property that is tainted property in respect of the offence;
- a pecuniary penalty order against the person in respect of the benefits derived by the person from the commission of the offence; and
- civil remedies which refer to actions taken in civil jurisdiction to recover money or property owed to the Commonwealth e.g. under bankruptcy provisions.

1.8 The Commonwealth's intentions for the recovery of proceeds of crime are set out in the Proceeds of Crime Act. The principal objects of the Act, as set out in Section 3 (1) are:

- to deprive persons of the proceeds of, and benefits derived from, the commission of offences against the laws of the Commonwealth or the Territories;
- to provide for the forfeiture of property used in or in connection with the commission of such offences; and
- to enable law enforcement authorities effectively to trace such proceeds, benefits

and property.

1.9 The primary purpose of the Act is to deprive persons involved in major organised crime of the profits and instruments of their crimes, and prevent the reinvestment of that profit in further criminal activity. It is one component of a larger law enforcement package which includes, for example, the policing functions of the AFP, the special references of the NCA, the Financial Transaction Reports Act, criminal intelligence capabilities, mutual assistance with overseas jurisdictions and cooperative arrangements with State and Territory law enforcement agencies.

1.10 In the second reading speech of the Proceeds of Crime Bill in 1987, the then Attorney-General outlined the expected financial impact of the Act and explained that the Act would:

- provide mechanisms to return significant revenue to the Commonwealth;
- result in significant financial benefit to the Commonwealth, the States and foreign countries with which Australia has mutual assistance arrangements; and
- return benefits which greatly outweigh its administrative costs.

1.11 Because of deficiencies in data collection and the management information systems the data is not available on which to evaluate the performance of agencies against these financial expectations (see Chapter 4). Furthermore, the audit did not attempt to measure the extent to which persons involved in major organised crime have been deprived of the profits and instruments of their crimes, or prevented the reinvestment of that profit in further criminal activity. However, some action was taken in respect of the recovery of the proceeds of crime in all NCA cases and in 75 per cent of AFP cases.

1.12 In relation to procedures under the Commonwealth Proceeds of Crime Act between 1989 and 1996 pecuniary penalty and forfeiture orders have been issued for recoveries to the value of some \$119 million and some \$36 million has been recovered as a result of these orders. The following graph shows orders and recoveries for each year of the period.

Diagram 1 - Criminal Asset Forfeitures and Recoveries



(1) In the case of orders, \$93.4 m of the \$98 m in 1993-94 related to two long running cases, and in the case of recoveries, \$16.2 m of the \$19 m related to final orders against three defendants from the same cases.

1.13 PP notes that courts are bound to make orders for the full value of proceeds of crime even though it may be clear that it cannot all be recovered. For this reason, recoveries will always be less than the value of orders issued.

1.14 Other avenues of recovery not reflected in the above data include State Proceeds of Crime Acts, Commonwealth and State tax revenue laws, proceeds legislation in other countries and civil recoveries to which the Commonwealth agencies have contributed to some extent. The data is not available to quantify these recoveries.

1.15 The audited agencies have pointed to a number of factors that must be considered in evaluating the effectiveness of the Commonwealth's proceeds of crime initiatives and which affect the level of recoveries achieved:

- the relatively small proportion of criminal activity represented by crimes against the Commonwealth. Agencies have estimated that crimes against the Commonwealth are less than 10 per cent of the criminal activity in Australia;
- the need to obtain a conviction in the first place. With the exception of action under the various provisions of the taxation and Customs legislation, criminals must be convicted of a serious offence before proceeds of crime can be recovered;
- the dissipation of assets by criminals through various means either before or after arrest. Agencies have reported that criminals are using numerous devices to avoid confiscation of their assets. These include expensive litigation, transfer of funds to family members and activity through the Family Court;
- the international character of much of the crime and difficulties in dealing with overseas jurisdictions. In many cases, the major beneficiaries of money laundering and drug proceeds are overseas nationals who may never have been to Australia or do not hold assets in Australia;
- in a large number of cases of fraud against the Commonwealth, the proceeds of the crime have already been dissipated because the fraud has occurred to pay

gambling debts;

- many criminals have already spent the proceeds of crime to live an extravagant life style;
- in other fraud cases, the victims of the fraud have prior claim on the assets of the criminal; and
- unrealistic quantification of assets available for recovery. For example, where drugs seized are given an estimated street value, that money is not available for recovery because the drugs have not been sold.

1.16 Due to the lack of reliable information the ANAO has been unable to examine the relative impact of these policy and environmental causes on the level of recovery. The focus of the audit was on the management of the recovery process and the audit identified a range of administrative issues, which, if addressed should improve the chances of a successful recovery at the least cost. The ANAO has not sought to allocate weightings to the impact of the various policy, environmental or administrative factors.

The Stakeholders

The Australian Federal Police (AFP)

1.17 The AFP is a Commonwealth authority established by the Australian Federal Police Act 1979. Its main function relevant to this audit is the provision of police services in relation to the laws and property of the Commonwealth. In 1994 the then Minister for Justice issued a ministerial directive to the AFP which stated that the AFP's areas of focus were to include:

- attacking the financial base of criminal activity; and
- targeting major drug traffickers with a special emphasis on financiers and organisers.

1.18 The AFP's 1992-95 Corporate Plan said that the AFP's operational priorities were to 'provide the best in protection, detection, and investigation of criminal offences against the laws of the Commonwealth, with emphasis on:

- providing effective strategic intelligence on criminal activities;
- attacking the financial base of criminal activity; and
- assisting in the maintenance of the integrity of financial institutions and their trading activities.'

1.19 Although the AFP does not have a current Corporate Plan, the current Ministerial Direction retains a focus for the AFP on attacking the financial base of criminal activity. Furthermore, attacking the financial base of organised crime is consistent with the AFP's focussing on deterring serious fraud, major and organised crime.

The National Crime Authority (NCA)

1.20 The NCA was established by the National Crime Authority Act 1984. The States and Territories passed corresponding legislation enabling the NCA to have a national and

multi-jurisdictional focus. The NCA Act also provided the NCA with coercive powers to compel people to produce documents and give sworn evidence. These powers are not available to police forces.

1.21 The NCA's mission is to 'counteract organised criminal activity and reduce its impact on the Australian community, working in partnership with other agencies'. One of its corporate objectives is: 'in cooperation with other agencies, contribute to a concerted attack on the profit motive in organised crime.' The NCA is not a police force but an investigative agency made up of multi-disciplinary teams of lawyers, police, analysts, financial investigators and support staff.

1.22 The process whereby particular references are identified and referred to the NCA involves co-ordination through an intergovernmental committee. This process was not audited.

1.23 There are significant differences between the operating environments of the AFP and the NCA:

- the NCA's area of interest is more clearly focused in the area of financial aspects of crime and/or following the money trail. This has a natural affinity for the recovery of the proceeds of crime;
- the NCA's investigations are directed to a smaller number of investigations clearly defined in its references. The AFP has a large number of cases that need to be responded to as they arise. Some of these can be extensive operations and some can be relatively small but the result is that it tends to dissipate resources;
- the NCA has a multi-disciplined workforce at its disposal and employs lawyers and financial analysts as well as criminal investigators; and
- the NCA has special powers that give it added capability in identifying and pursuing the recovery of the proceeds of crime.

The Office of the Director of Public Prosecutions (DPP)

1.24 The DPP was established under the Director of Public Prosecutions Act 1983. The primary role of the DPP is to prosecute offences against Commonwealth laws. This may involve applying for restraining, pecuniary penalty and forfeiture orders under the POC Act, applying for pecuniary penalties under the Customs Act or coordinating action for civil remedies.

The Attorney-General's Department (A-G's)

1.25 A-G's is responsible for policy advice to the Government on the legal issues associated with the various enactments. Within the Department, the Insolvency and Trustee Service, Australia (ITSA) is responsible, as trustee, for property subject to restraint. ITSA has been involved in the physical identification of constrained assets.

1.26 The ITSA also administers the Confiscated Assets Trust Fund (CATF). The CATF was established by the former Government to make use of the proceeds of crime recovered under the POC and Customs Acts for the benefit of the law enforcement community and the victims of the drug trade. Under the CATF arrangements, the proceeds

of crime were distributed for drug rehabilitation (50%) and for specially approved law enforcement projects (50%). Under the rules of the fund, the assets could not be used to substitute for normal appropriations for the law enforcement bodies. Examples of past uses of the CATF money include enhanced computer capabilities, enhanced airport surveillance hardware and communications equipment.

1.27 In the 1996 Budget the Government decided that the net balance of the CATF, exclusive of statutory payments, should be paid to the Consolidated Revenue Fund.

The Commonwealth Law Enforcement Board (CLEB)

1.28 The CLEB consists of the heads of key agencies involved in law enforcement. Its role is to advise the Government on law enforcement policies and priorities and develop law enforcement standards applicable the Commonwealth. It is supported by a staff of 38 and includes the Office of Strategic Crime Assessments.

Audit objective and scope

1.29 The objective of the audit was to form an opinion and report on the efficiency, economy and administrative effectiveness of the management of the investigation and recovery of the proceeds of crime. The audit also aimed to develop recommendations that will, if implemented, improve the recovery processes and increase recoveries from the proceeds of crime.

1.30 The audit focused on:

- the activities of the AFP, the NCA, the DPP and the ITSA in recovering the proceeds of crime. The audit addressed the investigative and recovery process but did not include an examination of the operation of the CATF or the ITSA's management and realisation of forfeited assets; and
- formulation of policy advice and evaluation by the Attorney-General's Department and the Commonwealth Law Enforcement Board.

1.31 The audit consideration included decisions about which recovery mechanism to use, namely, pecuniary penalties under the POC or Customs Act, forfeiture under the POC Act, tax assessment or civil remedy, and whether State, overseas or Commonwealth agencies attempted the recovery.

1.32 The audit did not examine the conduct of criminal investigations as such. That is, it did not review, for example, the adequacy of evidence in any of the cases, whether the investigation of the criminal offence was carried out efficiently, effectively or within the law or not. The audit examined the investigation process only in so far as it was necessary to form a view of the way in which recovery of the proceeds of crime was factored into the investigations.

Criteria

1.33 The audit was based on a set of criteria developed from a range of sources including the relevant legislation, procedures in use within agencies, commonly accepted principles of good management and comments from agencies. The audit considered the processes involved in tasking, planning, and conduct of criminal investigations and subsequent

recovery action with a view to identifying elements that maximise the opportunities for the recovery of the proceeds of crime. Criteria were established for each of these phases. They were then accepted by the agencies at the commencement of the audit. A detailed statement of the criteria is included as [Appendix 1](#).

Methodology and cost

1.34 The audit has been carried out in accordance with ANAO Auditing Standards applicable to performance audits.

1.35 The audit reviewed a random sample of major investigations completed by the AFP and NCA to ascertain compliance with agreed criteria. The sample was selected having regard to statistical principles applicable to performance auditing. The audit examined 24 cases in the AFP and 12 cases in the NCA. However, it should be noted that the relatively small size of the sample gives rise to apparently large variations when expressed as percentages. Given the small size of the sample, the ANAO cannot extrapolate with certainty to all of the AFP or the NCA investigations in relation to individual criteria. Nevertheless, the ANAO considers its general conclusions are soundly based.

1.36 All percentages in the report have been rounded.

1.37 In addition to the random sample, the ANAO reviewed a sample of investigations identified by the AFP and NCA where a significant recovery was known to have resulted. The results of this sample confirmed the conclusions based on the random sample.

1.38 The audit was restricted to investigations that were substantially complete at the time of the audit, although prosecution action need not have been completed. Reasons for this included:

- the opportunities to look at as complete a cycle of investigation and recovery as possible; and
- the sensitive nature of some ongoing operations.

1.39 The cost of the audit was \$401,500. The audit was undertaken between February and July 1996, although preliminary work was undertaken in November and December 1995.

Audit Opinion

1.40 The ANAO acknowledges the difficult environment in which any recovery action taken by agencies must be carried out. Some action was taken in respect of the recovery of the proceeds of crime in all NCA cases and in 75 per cent of AFP cases. That said, the audit has identified that much can still be done to differing degrees in the agencies concerned to improve the economy, efficiency and administrative effectiveness of the management of recovering the Proceeds of Crime in the following areas:

- improved corporate planning;
- revised case management arrangements; and
- clarification of the relative roles and responsibilities of the agencies involved.

1.41 Each agency brings its own strengths to recovering the proceeds of crime, for example:

- NCA has a highly competent financial analysis capability;
- AFP's Criminal Assets Investigation Units (CAIU) provide an appropriate organisational approach to recovering the proceeds of crime; and
- DPP's Criminal Assets Branch has particular legal expertise to assist in the strategic direction of POC investigations.

1.42 The audit also considered the Government's expectation, as expressed in the Financial Impact Statement in the 1987 second reading speech of the Proceeds of Crime Bill, to return significant revenue to the Commonwealth through the recovery of the proceeds of crime. Recoveries under the POC Act amounted to some \$36 million over 6 years. This does not include recoveries using other mechanisms, for example, tax assessments or recoveries under State or overseas legislations. An aggregated figure for total recoveries from all sources does not exist.

1.43 The ANAO notes that estimates of the value of all criminal activity are \$4.2 to \$4.7 billion per annum of which agencies say less than 10 per cent falls within the Commonwealth's responsibility. The ANAO recognises that not all of this money can be recovered and the level of recovery reflects a range of environmental, policy and procedural factors but, because the relevant information is not available, the ANAO has not sought to allocate weightings to the impact of the various factors.

2. Corporate Planning and Performance Information

This chapter discusses how agencies have carried out their Corporate planning and used performance information necessary for well directed recovery of proceeds of crime. The ANAO considers that the corporate planning processes are not well developed and performance information and reporting can be improved.

Have corporate plans been prepared?

NCA

2.1 The NCA had a corporate plan for July 1993 to June 1996. The corporate plan specifies the corporate mission, objectives, strategies for achieving individual objectives and some performance indicators which can be used to assess the results of individual strategies. The NCA has advised that it places more emphasis on the recommendations of the Commonwealth Law Enforcement Review (CLER), meetings of the Inter Governmental Committee (IGC) and the Authority members than on the NCA's corporate plan and national operational priority setting. It comments further 'these sorts of documents (including quarterly reports to the IGC) tend to be used more proactively to set and report on national resource and operational priorities than does the corporate planning process'.

AFP

2.2 The last AFP corporate plan related to the 1992-95 period and the 1991 Ministerial Direction. In 1994 a new Ministerial Direction was issued. The AFP acknowledged in its 1994-95 Annual Report that the last Corporate Plan (ie, 1992-95) was no longer relevant given the new Ministerial Direction. The AFP also began a major restructure in 1994 but

there is as yet no corporate plan to guide this process. The ANAO was advised that a new corporate plan would not be developed until the change process was complete.

2.3 In the ANAO's view, a well constructed corporate plan is essential in guiding complex changes in organisations. In the AFP's case it would also assist to maintain a focus on the recovery of the proceeds of crime.

DPP

2.4 The DPP's last Corporate plan was issued in 1989. The DPP agrees that its corporate plan is due for review and has commenced a review of the plan.

Performance information

2.5 Performance information both:

- serves external accountability requirements; and
- aids internal priority setting and resource allocation needs.

2.6 The AFP and the NCA each have an objective to contribute to an attack on the 'financial base of crime'(AFP) or 'the profit motive in crime' (NCA). Although the AFP and NCA linked objectives to their respective mission, neither reported on performance in achieving these objectives.

NCA

2.7 The NCA corporate plan identifies four comprehensive strategies that can be used to achieve the objective of 'contributing to a concerted attack on the profit motive in crime'.

2.8 The NCA developed performance indicators for some, but not all, of its strategies. In relation to the strategy 'identify, trace and contribute to the seizure of the proceeds of significant criminal activity' the performance indicators are: 'value of assets restrained or forfeited as a result of investigations or information provided to other agencies' and 'amount of pecuniary penalties imposed'. There are no indicators for the related strategy 'develop and use investigative strategies to attack the significant criminal groups as profit driven enterprises'. Without considering the relative contribution of the strategies to the objectives as reflected in relevant performance indicators, it is difficult to allocate priorities to any particular approach or to be sure that the objective is being achieved in the most efficient manner.

2.9 Although the NCA linked strategies to objectives, it did not routinely assess or report on:

- the performance of individual strategies; or
- the combined performance of all strategies.

2.10 Priority setting and resource allocation could be enhanced if the performance indicators:

- allowed for an assessment of the performance of individual strategies;
- used a combination of quantitative and qualitative information; or

- included bases for comparison such as:
 - targets;
 - standards;
 - benchmarks for similar activities;
 - trends over time; and/or
 - performance before and after changes to the strategies.

2.11 Examples could include:

- time taken;
- resources involved;
- amount recovered;
- indicators of success rate; and
- regional variations.

AFP

2.12 The AFP sub-objective - 'to attack the financial base of crime' - forms part of the objective 'to prevent, detect and investigate criminal offences'. The AFP identified one strategy (to pursue all avenues to counter criminality, specifically including a focus on the financial assets of the criminal enterprises) to achieve its sub-objective but does not assess or report on the performance of its strategy. In relation to the key strategies concerning the financial base of crime, the AFP has not developed an adequate range of performance indicators or reported on the performance of its strategies. This means that the AFP cannot assess:

- the performance of its strategy; or
- the achievement of its sub-objective, objective or mission.

2.13 ANAO recognises the difficulties involved; however, without an effective performance reporting system that links operational performance to corporate objectives and strategies, management is unable to allocate resources effectively or ensure that decisions taken at the operational level are consistent with corporate priorities.

Conclusion

2.14 The linkages between the corporate planning processes of the agencies and their operational planning, implementation and performance reporting can be improved in relation to the recovery of proceeds of crime and as part of the attack on the financial base of crime. Performance indicators are limited and where they are set, are not routinely reported on.

2.15 The DPP and NCA have questioned what difference a more up to date corporate plan or refined performance indicators would have made to operational decisions and recoveries. In the ANAO's view, the AFP and DPP in particular can benefit from giving

priority to enhancing their corporate planning and reporting frameworks to assist in providing structure, relevance and accountability to the management of the recovery of the proceeds of crime.

Recommendation 1

2.16 The ANAO recommends:

- that the AFP and DPP allocate higher priority to developing up-to-date corporate plans; and
- agencies develop a full range of performance indicators relevant to the objectives and strategies identified in their corporate plans for internal and external use and report fully against them as part of their accountability, particularly for outcomes.

Agency responses:

2.17 DPP: Agree in principle. The DPP agrees that its current Corporate Plan is due for review. The DPP has commenced work on the Plan. The DPP has already developed a set of improved performance indicators and is currently reviewing its computer information systems to determine whether the data required to support the indicators can be captured.

2.18 AFP: Agree in principle. The AFP embarked on a major reform process in 1994 and a conscious decision was made to defer the implementation of a new Corporate Plan until the organisation was able to settle the real dimensions and dynamics of the AFP's new environment. The AFP has now released the first element of a three year corporate plan addressing the AFP's national operations, including proceeds of crime activities and corresponding performance indicators that are focused on measuring performance against desired corporate outcomes.

2.19 NCA: (b) Agree in principle. The NCA reports regularly both internally and externally on its performance indicators. In addition the NCA has reported extensively on investigative strategies to attack organised crime and has made numerous recommendations for administrative and legal reform in this area. Also, in recent years public statements by NCA Chairpersons and other NCA officers have focussed on results achieved in relation to these performance indicators.

3. Management of Recoveries of the Proceeds of Crime

This chapter examines the process of the recovery of the proceeds of crime by focusing on the tasking, planning, implementation and review phases.

3.1 For the purposes of the audit the ANAO distinguished three kinds of investigation:

- the criminal investigation - aimed at developing a brief for prosecution;
- a financial investigation aimed at supporting a criminal investigation eg. to substantiate a case of money laundering, to provide criminal intelligence or to assist in targeting criminal investigations. In the case of major fraud or money laundering this may be the same as the criminal investigation; and
- a proceeds of crime financial investigation which is orientated to presenting a brief

suitable for presentation to the court for an order or action under appropriate legislation for the recovery of the proceeds of crime.

Tasking

3.2 Tasking involves deciding which investigations to undertake and the focus of the investigation.

3.3 The major references of the NCA arise from decisions of an IGC and these decisions were not subject to audit. However, the NCA often undertakes a series of investigations under the Committee's references and these investigations were subject to audit.

3.4 It is clear that it is not possible to recover the proceeds of crime if no proceeds exist. Consideration of the likely financial impact of alleged criminality at the outset of investigations will therefore be important if investigating agencies are going to maximise recovery potential. Recovery of the proceeds of crime may be maximised if investigating agencies:

- ensure recovery of proceeds of crime is considered early for all major investigations; and
- target proceeds of crime investigations to cases where the greatest potential for recovery exists.

3.5 The following table shows the extent to which the financial value of crime featured in tasking decisions in the cases audited.

Table 1 - Tasking decisions

	AFP %	NCA%
Decision to undertake the investigation considered the financial impact of the criminal activity	25	83
The tasking decision set or indicated investigation objectives	42	100
Where investigation objectives were set or indicated these objectives included the need to address the financial aspects of criminal activity	50*	92*

Source: ANAO audit sample.

* These percentages are for the number of investigations where objectives were set or indicated by the tasking process and not the total number of the investigations reviewed.

3.6 The NCA has explicitly considered the financial impact of criminal activity in 83 per cent of the investigations sampled when deciding to undertake the investigation and when setting the investigation objectives. This early consideration of financial issues places the NCA in a strong position to give early consideration to recovering the proceeds of crime. Although the financial aspects of the criminal activity were considered by the NCA, this did not always extend to the consideration of the recovery of the proceeds of crime (see Table 3).

3.7 The AFP considered the financial aspects of crime in only 25 per cent of investigations examined when making tasking decisions and investigation objectives were set for 42 per cent of the investigations examined by the ANAO. The ANAO noted that the investigators based their investigations on their individual expertise or experience rather than setting clear objectives for the investigation. Since as noted elsewhere, this

expertise and experience did not often include recovery of the proceeds of crime this aspect of the investigation was often overlooked.

Planning

3.8 All agencies accept that, for recovery of the proceeds of crime to be successful, the proceeds of crime financial investigation and collection and analysis of relevant material must commence as soon as practicable.

3.9 For this to occur, it is important that the recovery of the proceeds of crime be factored into the planning process and resources identified to undertake the task.

3.10 Notwithstanding the acceptance of the need to recover the proceeds of crime as a part of a wider corporate strategy to attack the financial base of crime, the ANAO found that recovering the proceeds of crime did not always feature regularly in operational planning and tasking.

3.11 The following tables set out the extent to which operational planning addressed the recovery of proceeds of crime in the sample audited.

Table 2 - Operational Planning and Recovery of Proceeds of Crime

	AFP%	NCA%
Merits of attempting to recover the proceeds of crime were considered as part of planning	17	67
Financial investigation skills were considered when planning the team for investigation	13	67
An investigation plan was prepared	8	83

Source: ANAO audit sample

3.12 The following table illustrates the standard of operational planning for recovering the proceeds of crime for those cases where a plan was prepared.

Table 3 - Planning for Recovery of Proceeds of Crime

	AFP%	NCA%
Objectives for financial investigation, including recovery, specified in the plan	50	70
Plan considered resources needed for financial investigation, including recovery	0	60
Timeframes for financial investigation specified in the plan	0	50
Milestones for financial investigation specified in the plan	0	10
Plan included performance indicators to measure progress and achievements for financial	0	10

investigations		
Plan included strategies for recovering the proceeds of crime	0	50

Source: ANAO audit sample

Note: Percentages are expressed in terms of number of investigations reviewed where there was a plan (2 for AFP and 10 for NCA) and not the total number reviewed (24 for AFP and 12 for NCA).

3.13 Planning the overall investigation did not guarantee that strategies for recovering the proceeds of crime would be developed since recovery strategies were not planned in the majority of those investigations for which there was a plan.

Implementation

3.14 The AFP has developed a Management of Serious Crime (MOSC) methodology as the standard approach to investigation management. It is an investigation planning process designed to be implemented at the start of investigations. It is based on a series of matrices (including an evidence matrix and resource spreadsheet) which form the skeleton of the investigation management structure. It also involves the development of formal plans, the setting of investigation objectives, formal review processes and recording of major decisions.

3.15 The AFP is now developing Investigation Management Guidelines. These guidelines are based on project management principles and include the MOSC matrices. The Guidelines note that 'project management requires objectives be set for quality, time and cost thereby achieving maximum efficiency and effectiveness. Techniques used in project management to achieve these objectives include developing an overall plan for the project, systematically recording decisions and regularly reviewing progress. Other techniques entail setting milestones and deadlines, developing work breakdown structures, and establishing reporting mechanisms. Together, these techniques ensure that a project remains on track, within budget, and on time.'

3.16 The NCA has a Policy and Procedures manual which outlines in great detail a range of administrative requirements including those for management of investigations. For example, the manual requires the preparation of operational plans which define objectives, proposed duration of the operation, proposed operational strategy, resources required, and criteria by which to measure progress. However, the manual has not been updated to take account of changes in structure and operating procedures.

3.17 The principles embodied in the AFP's MOSC methodology and Guidelines and NCA's Policies and Procedures manual and its Financial Investigation Methodology manual provide a sound framework for managing proceeds of crime financial investigation at the operational level. But, as illustrated in Tables 1, 2 and 3, these principles and procedures were not implemented adequately in all cases in relation to planning the recovery of the proceeds of crime. Tables 4 and 5 indicate difficulties with some of the implementation. In the ANAO's view this emphasises the importance of including consideration of recovery of the proceeds of crime in initial planning decisions.

Timing of investigations

3.18 In a significant proportion of cases audited, the financial investigation associated with the recovery of the proceeds of crime commenced late in the process, although there were significant differences in practice between the NCA and the AFP. Table 4 sets out

the stage at which recovery investigations commenced for the cases audited.

Table 4 - Commencement of Financial Investigations

Stage at which Financial Investigation Commenced	AFP%	NCA%
Same time as criminal investigation	17	67
Early	17	25
Approximately half way	0	0
Late	8	8
After arrest	29	0
After prosecution started	4	0
No financial investigation started	25	0
TOTAL	100	100

Source: ANAO audit sample

AFP Criminal Assets Investigation Units

3.19 The ANAO carried out its audit fieldwork in the AFP in Eastern Region (NSW) and Southern Region (Victoria) because these two regions were responsible for the majority of investigations of major crime handled by the AFP.

3.20 The AFP set up Criminal Assets Investigation Units (CAIU) following the introduction of the POC Act. In the major centres, officers were assigned full time to these units and in smaller centres responsibility was given to officers who had other duties, or the responsibility for proceeds of crime was added to the responsibility of the investigating officer.

3.21 The AFP CAIU officers in Eastern Region at the time of the audit were no longer actively involved in proceeds of crime investigations. They had only an advisory role and were completing unfinished cases. Financial investigation relating to proceeds of crime recovery action was supposed to be undertaken by the team responsible for the criminal investigation, but investigators interviewed said that this did not happen. Southern Region has retained its CAIU and increased staff resources during the course of the audit, because criminal investigation teams did not undertake proceeds of crime investigations. This indicates that different regions have adopted different approaches. ANAO considers that the AFP should resolve whether it wishes to retain specialised units within the context of its organisation structure of 'empowered teams'.

3.22 The AFP has advised that its team-based approach is designed to make resources available for proceeds work and integrate it with the criminal investigation. Teams are now required to report on proceeds issues. The ANAO sees this as an advance, particularly at the operational level, but sees room for further improvement if the standards set out in Chapter 4 are to be met. Specifically, the corporate planning processes are not driving the operational planning and decision making.

Purpose of Financial Analysis

3.23 In contrast to the AFP, the NCA always undertook a financial investigation as part of its investigative process. But as demonstrated in the following table, the purpose of the investigation for both agencies was not always focused on the recovery of the proceeds of crime (See Table 9 for tabulation of who analysed the financial information collected).

Table 5 - Purpose of financial analysis

	AFP%	NCA%
Information analysed solely for purposes of criminal investigation	100	50
Information analysed for both criminal investigation and recovery of proceeds of crime	0	50
Information analysed solely for recovery of proceeds of crime	0	0

Source: ANAO audit sample

3.24 The information collected in the course of investigations was analysed by investigators for the purposes of sustaining the criminal investigation. As a general rule CAIU officers within the AFP, where they were involved, carried out asset checks at the direction of the DPP (see Table 9). Investigators within the NCA also placed priority on the criminal investigation; but did not always analyse the material with proceeds of crime in mind.

3.25 ANAO attempted to measure the cost effectiveness of operations but, as pointed out in paragraph 4.30, the necessary information was not available.

Review of recovery potential

3.26 Continual review of operations is important to ensure that strategies and plans remain relevant, are being implemented properly, and resources assigned to tasks are being used effectively.

3.27 ANAO found that the AFP often did not review the recovery potential of its investigations during or at the conclusion of its operations. The NCA reviewed recovery potential for most of its investigations. The DPP frequently reviewed the potential for recovery in AFP investigations. The DPP has instituted procedures to review all cases referred to it for prosecution to ascertain if there is any potential for recovery of proceeds of crime.

3.28 However, the review by the DPP often takes place after arrest or charging. In these cases, there is little opportunity for the criminal investigation to benefit from the proceeds of crime financial investigation. The likelihood that assets will be dissipated is also heightened.

3.29 Some level of review by the DPP is important regardless of whether or not the investigating agency has completed its own investigation and review. This is demanded by the need to ensure that information submitted to the Court is accurate at the time it is presented. However, investigating agencies should exercise the prime responsibility for reviewing their cases for recovery of the proceeds of crime.

Conclusion

3.30 The ANAO recognises that the first priority of the investigating agencies is to obtain

the conviction. However, criminal investigations are not always managed with recovering the proceeds of the crime in mind. Poor compliance with existing case management systems does not ensure that proceeds of crime are considered early, pursued vigorously or reported accurately for appropriate management decisions.

3.31 Recommendations to address these issues are discussed in the next chapter.

4. Case Management

This chapter sets out the ANAO's suggestions for improved case management and case management information systems.

4.1 The previous Chapter describes the way agencies, particularly the AFP and the NCA, manage the recovery of the proceeds of crime associated with their cases.

4.2 Efficient case management involves a series of procedures and guidelines designed to manage cases from their earliest stages to their final completion within the relevant organisation. It is designed to ensure that cases progress in an orderly and timely way through the various stages of the life of the case. It allows for accurate measurement of resources and any delays so that cases are not allowed to languish because of external or internal factors and cannot fall into 'black holes'.

4.3 Good case management is able to demonstrate that organisational objectives and strategies are being implemented at the operational level and that the strategies are achieving the desired outcome. This is best achieved by having:

- a corporate plan that develops linkages between objectives, strategies and performance indicators so that they can contribute to achieving the corporate mission, together with a structured framework for operational performance reporting based on the corporate plan; and
- case management information systems to provide regular and cost effective information on inputs, processes, outputs and outcomes.

Do operational priorities reflect broad corporate priorities?

4.4 There are three factors that suggest that operational priorities do not reflect corporate priorities:

- in only 8 out of 36 cases were financial investigation objectives, including recovery of proceeds of crime set and in only 5 (all NCA) were strategies for recovering proceeds of crime included in a plan (see Table 3);
- decisions in relation to individual operations do not always assess the potential for the recovery of the proceeds of crime. Decisions relating to the proceeds of crime in the AFP are often made by default and/or too late in the operational cycle to maximise the recovery potential (see Chapter 3); and
- the framework of performance reporting does not provide a mechanism whereby management can ensure that decisions taken at the operational level are consistent with corporate priorities (see Chapter 2).

Recommendation 2

4.5 The ANAO recommends that operational plans within agencies fully reflect directions and strategies identified within agency corporate plans relating to the recovery of the proceeds of crime to encourage a better focus on outcomes.

Agency responses:

4.6 DPP: Agree. The DPP's practices already comply with this recommendation.

4.7 AFP: Agree in principle. Operational plans reflect the strategies and tactics to achieve the overall objectives of an operation. Where appropriate the AFP includes in operational planning activity to restrain and recover from criminals the proceeds of their crimes. This has been a priority since the introduction of the Proceeds of Crime Act in 1987 as reflected in subsequent AFP Corporate Plans.

ANAO Comment

4.8 The data presented in Tables 1, 2 and 3 suggests that this is not always the case.

4.9 NCA: Agree in principle. While the NCA agrees that all operational plans should reflect relevant corporate strategies, it does not agree that in instances where original plans may have been defective in this regard that this has necessarily resulted in inefficiencies in proceeds investigations. The performance audit did not identify any NCA investigations where further or alternative NCA action in relation to proceeds inquiries would have been likely to result in better proceeds outcomes.

ANAO Comment

4.10 It is not possible, after the event, to say what the effect of specific alternative decisions might have been. In any event, the benefits flowing from the recommendation are to be found in improved efficiency and economy as well as the potential for more successful outcomes.

Do case management systems provide adequate information?

4.11 The previous chapter shows that investigations are not always managed with the recovery of proceeds of crime in mind. Within AFP, the ANAO considers that proceeds of crime financial investigations take place too late in the process for efficient recovery. It is recognised by ANAO that the first priority is to obtain the conviction; however, the implementation of current case management systems does not ensure that proceeds of crime are considered early, pursued vigorously or reported accurately for appropriate management decisions.

4.12 As set out in the previous chapter, case management systems as they operate in AFP do not routinely:

- set performance milestones for the recovery of the proceeds of crime;
- consider resource requirements; or
- review performance.

4.13 Although NCA has a wide range of internal reporting mechanisms the documentation examined by ANAO was not adequate to confirm that project management of the

recovery of the proceeds of crime was conducted in a systematic manner. That is, it was not always clear that recovery of the proceeds of crime was considered at appropriate stages or what decisions were made in relation to it.

4.14 The ANAO considers that a well designed case management system as it relates to proceeds of crime would:

- ensure that proceeds of crime are considered and that decisions are made on the basis of likely outcomes considered rationally rather than by default;
- ensure that any proceeds of crime are recovered economically, efficiently and effectively;
- be well linked to the criminal investigation and be able to realise any potential benefits from synergies between proceeds and the criminal investigations; and
- aid accountability and provide a defence against any allegations of corruption.

4.15 In the ANAO's view, a suitable case management system has the following characteristics:

- an ability to focus the attention of decision makers on the corporate aims, objectives and strategies and assists them in accepting tasks most likely to achieve the objectives;
- performance indicators and targets for each case undertaken to provide a suitable reporting framework;
- a frame of reference for the decision to accept or reject an investigation task and provision for the facility to record the reasons for the decisions. In particular it ensures that all significant risks are adequately assessed;
- the capability to allocate and reallocate resources effectively, efficiently and economically. This may involve monitoring the workload of individual officers particularly where they have expertise (eg. financial investigation or proceeds recovery experience) that may be in short supply; and
- provision for regular review of all cases to determine if:
 - progress is satisfactory;
 - workloads are properly distributed;
 - objectives, targets and risk assessments remain current;
 - there is a need for corrective action, change of time frames and targets or the level or mix of resources; or
 - in all the circumstances it is reasonable to continue with the case or not.

4.16 Given the wide variety of factors influencing the recovery of the proceeds of crime, the ANAO was not able to identify any significant correlation between individual elements of the investigation process and a successful recovery outcome. The nature of the recovery process is far too dynamic and must be seen within the context of a more

important criminal investigation. Nevertheless, the implementation of a systematic case management process is likely to improve the chances of successful recovery by allowing agencies to focus their resources on those cases and elements of the investigation process most likely to produce a successful outcome at the least cost.

4.17 The audit did not examine the case management systems as they related to the conduct of the criminal investigation only the recovery of the proceeds of crime. However, ANAO observes that there may be value in NCA and AFP working together to ensure that their case management systems are adequate to provide the full range of management capabilities. ANAO sees benefits in a joint approach:

- furthering the strategic alliance between the AFP and the NCA;
- developing of a common standard of case management;
- costs of development are shared;
- further encouraging joint operations by the NCA and AFP; and
- improving the ease with which AFP investigators adapt to the NCA environment when on secondment to the NCA.

4.18 Given the responsibility of the DPP for ultimate decisions relating to outcomes of investigations and particularly proceeds of crime investigations, it would be appropriate to consult with the DPP to ensure its input is considered at the appropriate time. This is currently covered by the protocol between the DPP and the AFP but the protocol does not include the NCA.

4.19 The CLEB has a responsibility to the Government for law enforcement standards and would appear to have a legitimate interest in any developments affecting case management.

Recommendation 3

4.20 The ANAO recommends that the AFP, NCA, DPP, and CLEB collaborate to develop an effective Case Management System that provides, inter alia, for the efficient, effective and economical investigation of the recovery of proceeds of crime.

Agency responses:

4.21 DPP: The DPP stands ready to provide assistance to the investigative agencies.

4.22 AFP: Agree in principle. The AFP closely co-operates with other agencies in restraining and recovering the proceeds of crime. The AFP is in the process of devising and implementing mechanisms to upgrade its information technology systems and applications to better meet the corporate needs of the organisations. Part of this process is aimed at delivering an AFP operations and case management system. It is acknowledged that the further development of a common case management system may assist the efficiency, effectiveness and economies of investigation and recovery of the proceeds of crime. The AFP has no difficulty in joining with the NCA and DPP in such a project providing that the separate objectives and independence of the agencies are able to be maintained.

4.23 NCA: Agree in principle. Both the NCA and AFP have recognised the need for the development of a generic Case Management System to assist with operations management. A joint AFP/NCA project was commenced earlier this year to develop a computerised case management system for use by both agencies. NCA does not agree that it has not been able to monitor the items listed under paragraph 4.29 without a generic case management system in place. Day to day management of NCA resources, procedures and operational performance is a dynamic process which utilises a range of reporting, accountability and feedback mechanisms.

ANAO comment

4.24 ANAO considers the development of the joint AFP/NCA Case Management System will provide the necessary structure to ensure consistent and systematic consideration of operational options and reporting.

4.25 CLEB: Agree in principle. Subject to the views of the individual agencies and to formal consideration by the Board, the Board Support Group could be in a position to coordinate the development of a case management system for the investigation and the recovery of proceeds of crime.

4.26 The Board, which involves, amongst other agencies, the AFP and NCA, has not had the opportunity to consider the recommendation in the light of individual agency responses and the DPP is not a member of the Board. It is therefore not possible for the Board to agree without reservation at this time.

4.27 The development of case management guidelines would need to take into account the existing Commonwealth Fraud Investigation Standards approved by the Board in July 1996 as well as AFP and NCA guidelines and procedures.

Case Management Information Systems

4.28 Case management information systems provide regular and cost/effective information on inputs, processes and outputs to:

- improve internal management through planning, monitoring, reviewing and assessing operational performance in relation to corporate objectives, strategies and performance indicators;
- assist agencies discharge their external accountability responsibilities through efficient and effective performance reporting; and
- enhance internal accountability and minimise corruption by including desirable preventative practices such as recording who is responsible for investigation work, the actions they take, and the results.

4.29 The AFP and the NCA have not developed effective case management information systems to assist their management of proceeds of crime financial investigations. Without a proper case management information system (including good performance indicators and performance reporting) the agencies have been unable to monitor:

- implementation of procedures and guidelines to ensure compliance;
- allocation of resources to ensure consistency with corporate objectives;

- decision making to ensure consistency with corporate objectives;
- progress by reference to activity levels, milestones and performance indicators; and
- performance reporting to assess operational performance in recovering the proceeds of crime including cost effectiveness of various strategies or approaches.

4.30 Data collection and existing management information systems do not provide sufficient information necessary for cost/benefit analysis. There are no reliable estimates of the amount of effort (apart from full time dedicated positions) devoted to recovery activities within the agencies. There is no reliable information from the AFP, for example, of funds recovered through taxation assessment following police investigations, particularly where cases have not progressed to conviction. The management systems and information needed to support a rational resource allocation process are, in large measure, not present. The existing case management information systems are not capable of providing this data to the ANAO or, for that matter, to the agencies themselves.

4.31 An effective case management information system also provides the mechanism for agencies to report to Parliament and the Government with details of how resources have been allocated and the extent to which the allocation reflects the importance attached to functions by Parliament and the Government.

4.32 Internal reporting has generally consisted of reports on activities undertaken rather than identifying options, documenting reasons for decisions, setting performance targets and reporting achievement against them. The information relating to these steps is not maintained in a consistent fashion that would make the best use of resources or enhance management decision making and accountability.

4.33 All agencies are faced with resource constraints. In these circumstances the direction of scarce resources to those cases which offer the greatest chance of success is increasingly important as is the need to keep those decisions constantly under review. A well designed case management information system would support this.

Recommendation 4

4.34 The ANAO recommends that the agencies establish a suitable case management information system for better decision making.

Agency responses:

4.35 AFP: Agree in principle. The AFP in conjunction with the NCA is developing a common case management information system. Components of the new system will include:

- referral assessment, evaluation and prioritisation including evaluation against POC requirements;
- operational planning and resourcing for multi-disciplinary and multi-jurisdictional teams, including POC expertise and actions as and where appropriate;
- case management review and reporting including job costing, outcome and performance measures for all aspects of case management including POC; and

- recording, tracking and management of identified and restrained, seized and/or confiscated assets as part of an overall property and exhibit management system.

4.36 NCA: Agree in principle. See response to Recommendation 3 (paragraph 4.23).

5. Staff Expertise

A key element in the recovery of proceeds of crime is the capability of investigators to undertake the work. The NCA and DPP have staff with the necessary expertise but the AFP is less well served in this regard.

5.1 Transactions involving money often leave a trail and this evidence can be used to recover the proceeds of crime and ascertain to a greater extent the size and nature of the crime. There can often be a natural synergy between the proceeds of crime financial investigation and the criminal investigation. The proceeds of crime financial investigation can also provide circumstantial or direct evidence connecting the person to the commission of the substantive offence. Because of this, investigators who are trained and equipped to follow these money trails and prepare financial analyses are essential for proceeds of crime financial investigations and are an important aid to the criminal investigations.

5.2 Since 1991 both the AFP and NCA have had significant reductions in the resources available to them. This has resulted in fewer resources being allocated to proceeds of crime work. The aim in allocating resources should be to achieve a rational balance between conviction and recovery pursuits. Within the dynamic environment faced by agencies, achievement of that balance is a matter for the agencies to determine.

5.3 The NCA employs financial investigators who have the ability to undertake investigations, particularly investigations of complex corporate structures, cash flows and financial transactions. These financial investigators undertake or assist with:

- fraud investigations;
- money laundering investigations;
- proceeds of crime investigations;
- investigations designed to provide corroborative evidence of wrong doing; and
- provision of financial information for use in intelligence analysis.

5.4 Since the introduction of the POC Act, the DPP has employed financial analysts who have the ability to conduct and supervise complex financial investigations with particular emphasis on tracing and reconstructing financial transactions and tracing assets. The DPP considers that financial analysis is crucial to the success of prosecution and recovery action.

5.5 As indicated at paragraph 3.19 to 3.22, the AFP has established CAIUs to assist in the recovery of the proceeds of crime and the role of the CAIUs was undergoing change.

5.6 However, the ANAO found that where a proceeds of crime financial investigation was carried out in AFP cases it was usually the DPP who directed and/or undertook these

investigations. Complex money trail investigations were referred to the NCA further evidencing the AFP's limited specialist financial investigation expertise. Where the AFP did undertake proceeds of crime financial investigations, they were done by the CAIUs. Staff in these units varied in terms of background, experience, expertise and attitude to the work of the unit; but none of the CAIUs possessed the expertise to undertake complex financial investigations aimed at the recovery of the proceeds of crime. As a consequence, the CAIU generally investigated smaller, more routine cases and assisted the DPP with information collection for the more complex investigations. The analysis for the proceeds of crime financial investigation was usually undertaken by the DPP (see Table 8).

5.7 Table 6 sets out the skills employed by the AFP and the NCA in relation to the cases audited.

Table 6 - Skills of officers involved in investigations

	AFP%	NCA%
Police investigation skills including surveillance, undercover work and handling informants	100	100
Financial analysis skills to reconstruct money trail for money crime related charges and to identify criminal assets for confiscation or forfeiture	38	100

Source: ANAO audit sample

5.8 Training within the AFP has provided generic skills to undertake fraud and other criminal investigations. Current initiatives in financial investigation training are aimed at providing officers with the skills and knowledge needed to undertake basic financial investigations. Appropriate qualifications for such officers could include, for example, tertiary qualifications such as accountancy or business and experience in areas such as commerce, banking and taxation. The outcome of this is that investigators have an awareness of the need for recovering the proceeds of crime but generally no expertise in undertaking complex proceeds of crime financial investigations.

5.9 It is NCA policy that financial investigators be assigned to each investigation team. Proceeds of crime financial investigations are only a part of the responsibilities of the NCA financial investigators. In 89 per cent of cases where financial investigators were included on investigation teams, their role explicitly included the investigation of the proceeds of crime.

5.10 The DPP has made a significant commitment of expert resources to recovering the proceeds of crime. When the POC Act was introduced, DPP received the bulk of the resources for the function. The number of expert financial analysts is small (3.5 in the Sydney and Melbourne offices) although Criminal Assets Branch lawyers and support staff have also been used in support of proceeds of crime financial investigations.

Conclusion

5.11 The AFP in particular is missing out on the efficiencies that come from the synergies between criminal investigations and thorough financial investigations aimed at recovering the proceeds of crime as well as the predicate offence through not having suitably qualified investigators. The NCA has a financial analysis capability which is part of investigations under its references.

Recommendation 5

5.12 The ANAO recommends that the AFP, consistent with its emerging organisational philosophy, give adequate consideration to the cost efficiency of maintaining and enhancing specialised groups with the necessary expertise and experience for the recovery of the proceeds of crime.

Agency responses:

5.13 AFP: Agree in principle. In 1995 the AFP moved to refine and implement a new operational model based on work teams suitably empowered to undertake investigative functions with assistance from operational support teams. Integral to the adoption of the teams model is that, where criminal investigation involves proceeds of crime activity, members of the operational team undertake the inquiry. This is also consistent with the audit findings that there can be a natural synergy between the proceeds of crime financial investigation and the criminal investigation.

5.14 The AFP acknowledges the benefits of retaining units of core specialist knowledge and experience, including proceeds of crime, to support investigation teams. The AFP also continues to seek assistance from the DPP, including its financial investigators.

5.15 The adoption of the teams model was underway when the audit commenced. Consequently the audit examined practices and processes which were becoming obsolete in the new environment.

ANAO Comment

5.16 Paragraphs 3.19 to 3.22 refer to the impact of the evolution of the 'teams' model on the CAIUs at the time of the audit. This recommendation is designed to draw AFP's attention to the importance of maintaining a minimum level of expertise in the recovery of the proceeds of crime.

6. Roles and Responsibilities

Successful recovery requires effective co-ordination arrangements. The ANAO found that there are some misconceptions about how the co-ordination arrangements work in practice.

6.1 The DPP, AFP and ITSA have developed a protocol designed to codify their cooperative arrangements in relation to the recovery of proceeds of crime. This protocol does not include the NCA, although there are cooperative arrangements in place between the NCA and the AFP.

6.2 Investigative agencies pointed to the important role of the DPP in advising investigators at an early stage of investigations of the strategies to recover the proceeds of crime. The DPP particularly possesses the legal expertise to do this but the NCA also has lawyers who are competent to advise on recovery strategies. But for this to work effectively investigators need to involve the DPP Criminal Assets Branch (CAB) at an early stage of major investigations to provide the necessary guidance on what is necessary to achieve a successful outcome. Although both the NCA and the AFP have requirements to involve the DPP early in the investigation, the following table shows that this does not always happen.

Table 7 - DPP Involvement

Stage DPP became involved	%
Early	22
Halfway through investigation	3
Late	3
Immediately prior to arrest	3
After arrest	44
Not involved	25
Total	100

Source: ANAO audit sample

6.3 There are several factors that can militate against the early involvement of the DPP in the recovery of the proceeds of crime. Chief amongst these is the need to maintain the security of sensitive investigations. Inquiries into the financial affairs of targets of criminal investigation can sometimes jeopardise the effectiveness of the criminal investigation. The ANAO accepts that there are sensitive decisions that must be made if the law enforcement operation is to result in prosecution and successful recovery. However, this later involvement of the expert resources is made at the cost of:

- possible synergies with the criminal investigation with the resultant efficiencies in processing and an increased risk that the assets will be transferred overseas or otherwise lost;
- possible inefficient duplication and/or repetition of collection and analysis of information, or
- collection of information of limited value.

6.4 In certain instances, the NCA made use of the assistance of the DPP to undertake proceeds of crime financial investigations because the NCA's financial investigators were focused on the criminal investigation. The ANAO accepts that flexible co-operation between agencies is desirable but there is a risk that continued use of DPP resources for proceeds of crime investigations will engender an attitude that proceeds of crime recovery is a DPP responsibility (as distinct from providing advice on approaches or strategies).

6.5 The ANAO recognises that the circumstances relating to each case may be different and there are often operational reasons why accepted coordination arrangements may not be suitable or proceeds action may need to be delayed. The evidence also suggests that the NCA with its expert financial investigation capability is more able than the AFP to pursue proceeds of crime financial investigations. Nevertheless, the sample shows there is no consistent approach to co-ordination arrangements. This can lead to ineffective or inefficient proceeds investigation.

6.6 From discussions with investigators in the AFP, it is clear that many AFP investigators consider that proceeds of crime work is either the work of the CAIUs or, more often, the DPP. Changes from a dedicated 'squad' structure to a multi-purpose team-based approach currently being implemented may address some of this misapprehension

and result in more clearly identifying that the responsibility for proceeds of crime financial investigations rests with the investigation agency in the first place.

6.7 It must be acknowledged that in many instances the proper preparation of a brief necessarily involves the DPP in a level of analysis and research, particularly to ensure that all material presented to the court is up-to-date and accurate at the time of presentation. However, in the ANAO's view, the heavy involvement of the DPP in the financial investigation (as indicated in the statistics below) runs the risk of the DPP's taking on an investigative role beyond its mandate. This would be contrary to the Commonwealth's Prosecution Policy which requires a clear delineation between the prosecution and investigative functions. In contrast to this view the DPP considers that its involvement depends on the nature of the case and, in any event, this policy delineation does not extend to the recovery of criminal assets. The ANAO is not convinced that this is the case.

6.8 The DPP considers that its role does not go as far as to direct or control investigations.

6.9 However the audit showed that the relationship between the investigating agencies and the DPP was not so clear cut.

6.10 The following tables show how the investigating agencies worked with the DPP in the collection and analysis of proceeds of crime information

Table 8 - Who collects the information?

	AFP%	NCA%
Information collected solely by investigators under their own direction	21	75
Information collected solely by investigators under direction from DPP	8	0
Information collected solely by DPP	0	0
Information collected by both investigators (under direction from DPP) and DPP	42	0
Information collected by investigators (under direction from DPP), DPP and ITSA	4	25
No POC investigation	25	0

Source: ANAO audit sample

Table 9 - Who analysed the information?

	AFP%	NCA%
Information analysed solely by investigators under own direction	13	75
Information analysed solely by DPP	42	0
Information analysed by investigators and DPP	0	25
Information analysed by DPP and ITSA	4	0
Information collected not analysed	17	0
No POC investigation	25	0

Source: ANAO audit sample

6.11 It is clear that in many instances there would have been no recovery action but for

the initiative of the DPP. The ANAO notes the potential for duplication and inefficiency in the cases examined during the audit. There are two primary options available to address this issue:

- procedures could be implemented which require the DPP Criminal Assets Branch to be involved in investigations from the outset; or
- investigative agencies could accept responsibility for directing and undertaking all proceeds of crime financial investigations.

6.12 The advantages for the second option are:

- it is more likely that criminal investigators will involve proceeds of crime investigators at an early stage when the proceeds of crime investigators are from their own agency. This is particularly the case for covert proactive operations;
- if investigators are responsible for proceeds of crime financial investigations, they are likely to give greater priority to undertaking the work;
- the investigative agencies will have greater incentive to develop and/or maintain skills in proceeds of crime financial investigation; and
- it is consistent with the general policy that the DPP is not an investigative agency.

Conclusion

6.13 Some investigators (particularly in the AFP) see proceeds of crime investigations as the DPP's responsibility. In this respect, the role of the DPP in proceeds of crime investigations is unclear. There are clear benefits in the AFP and the NCA taking the prime role in financial investigations aimed at the recovery of proceeds of crime assisted by the DPP at a strategic level early in the criminal investigation. Current arrangements appear to place undue emphasis on the investigation capability of the DPP to the extent that it is not always clear where to draw the line between investigation and the DPP's recovery role. On the other hand there have been instances where there would have been no recoveries if the DPP had not taken the initiative.

Recommendation 6

6.14 The ANAO recommends that the AFP and the NCA accept prime responsibility, with assistance from the DPP at a strategic level, for the collection and analysis of financial data involving the proceeds of crime and this be reflected in a revised protocol involving all parties.

6.15 This should assist in earlier commencement of the necessary proceeds of crime financial investigation and reduce the risk of duplication or missed opportunities for recovery.

Agency responses:

6.16 DPP: Agree in principle. The DPP agrees with the recommendation, provided that investigative agencies continue to consult the DPP at an early stage of every major investigation, including the point at which strategies are set for pursuing the proceeds of crime and that they continue to obtain legal advice from the DPP when need arises.

6.17 AFP: Agree in principle. The AFP believes that the DPP has a prime role in supporting the investigation of proceeds of crime not just at a strategic level but in all aspects of the process. Criminal Assets Branches were created to perform this role. Criminal Assets Branch financial analysts and lawyers provide advice, assistance and support to the AFP investigators to the mutual benefit of both agencies. The protocol agreed between the AFP, DPP and ITSA reflects these arrangements and formalises the roles and functions of the agencies.

6.18 The protocol, agreed between the AFP, DPP and ITSA, formalises the roles and functions of the agencies. The AFP has no objection to the inclusion of the NCA in the protocol if the NCA wishes.

6.19 NCA: Agree in principle. The NCA has always accepted prime responsibility for proceeds investigations in relation to the operations it conducts. It will formalise this position in an MOU with the Commonwealth DPP.

7. Other Issues

Policy advice

7.1 The audit examined the processes whereby the policy implications of operational experience have been fed back to the Attorney-General's Department for policy consideration. The ANAO concluded that although the coordination and consultative arrangements are satisfactory there is room for improvement in communication with the agencies. Departmental officers have undertaken to ensure that the operational agencies are kept fully informed of the outcome of policy or legislative proposals submitted to the Department for consideration and in a timely way.

ITSA

7.2 The audit's examination of the operations of the ITSA was restricted to that organisation's contribution to the identification and seizure of criminal assets and did not address its administration of the CATF. The audit found that the ITSA performed its functions within the audit scope well in that its cooperation with the other agencies was consistent with agreed procedures. The ANAO has no recommendations in relation to ITSA's operations within the scope of this audit.

CLEB

7.3 The involvement of the CLEB in the operational elements of the recovery of proceeds of crime has to date been minimal. As pointed out elsewhere in the report there may be value in greater CLEB involvement in the development of case management systems. The audit recognises the important role of the CLEB in the development of case management standards. In other respects, the ANAO has no comment to offer concerning the CLEB in relation to this audit.



Appendix 1 - Audit Criteria

1. Policy Advice Formulation

Efficient, effective and economical policy advising starts with systems to identify the major issues which require attention.

Issues should be assessed and prioritised to ensure the greatest risks to an efficient and effective proceeds of crime system are addressed.

When analysing an issue prior to formulating policy advice, pertinent information should be sought from affected and interested agencies.

The outputs of the policy advice function should include the formulation of effective options which address mechanisms for implementation, monitoring and evaluation.

Policy advice should be communicated to government in a timely manner.

Accepted policy advice should be communicated to operational law enforcement agencies in a timely manner.

2. Tasking

Tasking decisions should take into account, among other factors, the investigative resources available, significance of the perceived criminality and financial impact of the perceived criminality.

Tasking should set up an adequate planning framework by setting or indicating investigation objectives.

Tasking decisions should be documented.

3. Investigation Planning

Each investigation should have a plan.

The merits of attempting to recover the proceeds of crime should be considered as part of the investigation planning process.

Investigation plans should include objectives, resources, investigation strategies, timeframes, milestones, criteria for continuing, a management control framework and strategies for financial investigation/analysis.

Investigation plans should be developed only after considering the skills necessary to conduct a successful investigation.

Planning should incorporate consideration of the necessary co-ordination arrangements.

Planning should incorporate consideration of the necessary reporting and review arrangements.

4. Financial Investigation and Analysis

Financial investigations should be commenced at an early stage of the investigation.

As a general rule financial investigation/analysis should be conducted for all major criminal investigations.

During the covert stage of investigations, financial profiles of targets should be prepared including the identification of financial links between targets, their associates, advisers, companies, banks and other financial institutions.

If financial investigation/analysis was not conducted, the reasons for this decision should be adequately documented.

The role of the financial analyst should be clear and part of, not separate to, the criminal investigation.

Planned co-ordination arrangements should be implemented.

Financial analysis/investigations should be undertaken by officers sufficiently skilled and experienced for the task.

If the investigating agency did not possess the necessary expertise for financial analysis, assistance should have been sought from other agencies.

Early DPP involvement in cases should be considered as it can assist in identifying possible charges, advising of evidence necessary to support charges and with possible recovery of proceeds of crime.

Financial investigations should only be concluded when:

- it is determined there are no or insufficient proceeds to pursue; or
- recovery action is complete.

5. Restraint and Recovery of the Proceeds of Crime

Decisions regarding the appropriate recovery mechanism should be made by one agency only (in consultation with the relevant agencies) and the decision should be made only once, by an appropriate officer who has considered all information pertinent to the decision.

When deciding on which recovery mechanism to employ, consideration should be given to the most effective way of removing the proceeds from the offender.

Decisions on which assets to restrain should be made by an appropriate officer who has considered all pertinent information.

Assets not initially restrained because of doubts about the prosecution being successful should be monitored and action taken to restrain the assets if the prosecution is successful.

Where a decision is made by other than the investigation agency not to pursue recovery action, this decision and the reasons for it should be communicated to the investigating agency.

When the DPP decides to settle on a recovery, the decision to settle should be documented and justified.

6. Operational Monitoring and Review

Each investigation should be reviewed to ascertain whether there is the potential for recovery of the proceeds of crime.

The review of recovery potential should occur at an early stage of the investigative process.

A successful financial investigation should:

- identify funds associated with the substantive offence and/or identify offences;
- quantify the benefits derived from criminal activity;

- identify tainted property; and/or
- decide that further financial investigation and/or recovery action is not warranted.

Outcomes of the investigation should be reviewed to evaluate performance in recovering the proceeds of crime

Efficient and effective reporting and review arrangements should have been adopted including reporting on recovering the proceeds of crime

Performance agreements and performance appraisal should include performance in recovering the proceeds of crime.

7. Evaluation

Evaluation should compare performance with predetermined targets

Evaluation should involve the systematic collection and analysis of data.

Data collected should be related to the objectives for which performance is being evaluated.

In evaluating policy effectiveness sufficient information is needed to be able to make an informed assessment. This information should include:

- regular management reporting from investigative and other operational agencies including difficulties encountered and benefits realised; and
- statistics to monitor trends, including those within the annual reports of operational agencies.

Appendix 2 - Performance Audits in the Attorney-General's Portfolio

Set out below are the titles of the reports of the main performance audits by the ANAO in the Attorney-General's Portfolio tabled in the Parliament in the past three years.

Audit Report No.26 1994-95

Inoperative Staff in the APS

Audit Report No.27 1994-95

Study bank

Audit Report No.27 1995-96

Financial Control and Administration Audit

Asset Management

Audit Report No.4 1996-97

Family Court of Australia

Use of Justice Statement Funds and Financial Position

Audit Report No.6 1996-97

Commonwealth Guarantees, Indemnities and Letters of Comfort

