

Profiling Fraudsters

A Queensland Case Study in Fraudster Crime

Final report to Crime Prevention Queensland

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Preface

As this is a co-authored report, the authors had primary responsibility for writing specific chapters. As a result readers will note some variations in writing style. Nevertheless, the overall flow and feel of the narrative is consistent throughout the report.

As each of the chapters is meant to stand alone while still informing other parts of the report, we have decided to place references cited in the report at the end of the chapters in which they appear. This way, readers may find it more efficient to use parts of the report by not having to distil a long list of citations.

A final note of caution is needed. The interpretations rendered in this report are those of the authors and do not bear any resemblance to the views expressed by participating agencies. Also, while we have made every effort to check our facts against the knowledge of practitioners, errors in reporting still may exist. Where they do, we take full responsibility.

HH and TP
Brisbane, Qld

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CHAPTER 1 LITERATURE REVIEW

*I'm walking about a prison,
What do you think I see?
A lot of dumb-bells doing time,
While all the crooks go free.*

Quoted by Albert Morris (1941) in E. Fattah (1997)

INTRODUCTION

Fraud is broadly defined as obtaining something of value illegally by means of deception. Fraud is different from other property crimes. These offences are generally more complex and usually do not involve physical violence. The types of criminal behaviours that qualify as fraud are diverse, ranging from tax frauds committed by elder pensioners to major corporate scams perpetrated by senior company officials (eg., Weisburd 1991, Levi 1999; Duffield and Grabosky 2001). Academic treatment of fraud generally assumes that it is an offence of the powerful (Braithwaite 1993), following Sutherland's (1983) characterisation of white-collar crime.¹ Indeed, several of the academic sources consulted for this chapter tend to lump white-collar offending in with such crimes as welfare and social security fraud, tax evasion, insurance fraud and payroll fraud, for example. This complicates the analysis of fraud, in that conceptualisations of white-collar (and corporate) crime also are problematic (Muncie and McLaughlin 2001); that is, lacking a consistent use of basic terminology.

In this chapter we summarise the review of national and international literature on fraud. Our aim is to summarise the ways in which fraud has been treated conceptually and empirically, how fraud is measured and counted, the extent or prevalence of fraud in Australia and specifically in Queensland, and how researchers have attempted to account for this diverse criminal behaviour. This review summarises the work

¹ Sutherland is probably best known for his pioneering work on white-collar crime, who coined the term "...to drive a spike into theories that imputed poverty, defective personality, or inability to delay gratification as the causes of crime" (Braithwaite 1993: 219). Sutherland defined white-collar crime as "...a crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland 1949: 9).

undertaken during the first two months (Phase 1-Literature Review) of the consultancy “Profiling Fraudsters” for Queensland Crime Prevention. The results of this review will be used to inform work to be undertaken during Phase 2 (Data Collection and analyses) of the project.

FRAUD DEFINED

As a criminal classification, fraud includes a wide range of illegal behaviour. However, fraud is defined fairly consistently by researchers and criminal justice practitioners writing on the subject. For example, in a recent AIC paper on fraud, waste and abuse, fraud is defined as “a dishonest and deliberate course of action which results in the obtaining of money, property or an advantage to which the recipient would not normally be entitled” (AIC 2000). Similarly, Graycar defines fraud as behaviour involving “the use of dishonest or deceitful conduct in order to obtain some unjust advantage over someone else” (2000: 1). Chapman, writing on fraud in the financial services sector, defines fraud as “deceit or trickery deliberately practiced in order to gain some advantage dishonestly” (2000: 1). More recently, Duffield and Grabosky (2001) defined fraud as: “obtaining something of value or avoiding an obligation by means of deception” (p. 1). Other examples include fraud defined as: “some form of dishonest conduct resulting in the obtaining of a monetary or property benefit to the perpetrator(s)” (McCowan 1999: 1); “seeking to obtain property belonging to another through deception” (Smith 1997: 1); “dishonestly obtaining a benefit by deception or other means” (Butler 2000: 1).

It may appear fairly straightforward from these definitions that the types of behaviour qualifying as fraudulent can vary substantially. Indeed, empirical examinations of fraud often combine seemingly diverse behaviours under this criminal classification (eg., Grabosky et al. 1987; Weisburd et al. 1991; Friedrichs 1996; Dirkis and Nicoll; 1996). Grabosky et al. (1987), for example, included Medibank fraud, social security fraud, and income tax evasion with industrial pollution and employer negligence in their survey of Australian attitudes of white-collar crime. More recently, Weisburd et al. (1991) attempted to rank various white-collar offences according to complexity and severity of injury or financial loss. While securities and anti-trust offences topped the list, offences like tax fraud, credit card fraud and bank embezzlement were at the bottom. Furthermore, the types of offences falling at the bottom of their ranking were

noted to be less complex and to render smaller rewards, and the offenders were typically of lower social status.

Despite diversity in the ways fraud is perpetrated, a common feature among all forms of fraud is that it is an *intentionally* deceptive activity that is often highly rationalised. For example, in discussing some forms of organisational crime, Coleman (1987) noted that “trust violators”, or those employees who siphon funds gradually over time, often rationalise their criminal behaviour as “borrowing money” or as “normal business practice” and become criminals without intending to do so. Also, Roach (1999), commenting on the views of white-collar offenders, quotes one former partner of failed Australian merchant bank Ward Knight and Dunn Ltd., in relation to the arrest of two other partners for fraud, as saying: “I think they really got a hard deal. Back then [circa 1978] everyone was playing the game. It was considered almost like sport between the government and business.” This is consistent with the “everybody does it” rationalisation of fraud, where perpetrators feel it is unfair to be targeted when most other offenders go free (Coleman 1987:413). Similarly, when we look at those offences perpetrated by persons of lower social status (Weisburd 1991), individuals who commit Medicare fraud or social security fraud either feel justified (Grabosky and Smith 1996) or feel it is not a serious crime (Grabosky et al. 1987).

The diversity of fraudulent behaviour noted in empirical investigations into this offence is mirrored in descriptive accounts. Official data on fraud, for example, include securities fraud, commercial fraud, embezzlement, bribery, credit card fraud, EFTPOS card fraud, insurance fraud, tax evasion, social security fraud, and some forms of computer hacking (eg., creating false/illegal financial instrument). These are offences listed in the Australian Bureau of Statistics Standard Offence Classification (2001) and represent the range of illegal activities ordered by Weisburd (1991) – ie., those committed by people in both high and low social statuses. Thus, when we review descriptive accounts of fraud, a wide range of behaviours is necessarily combined under this offence category.

This project aims to examine one form of fraudulent behaviour: that perpetrated by individuals against the public. Examples of this might include e-mail fraud in which victims receive unsolicited e-mail asking for various “fees” in exchange for bogus

products. Others include investment fraud, real estate fraud, and other “cons”. The empirical literature on fraud puts these forms of fraud together with others in descriptive treatments (eg., Smith 1997), or, when isolating specific forms of fraud, tends to focus on various white-collar offences such as complex commercial fraud (eg., Bannerman 1991), superannuation fraud (eg., Freiberg 1996), or frauds against governments (Smith 1999a). Below we summarise the extent of the “fraud problem”, examining a range of empirical research conducted in Australia and overseas. The beginning focus is broad to show the range and extent of behaviour that constitutes fraud. We then, where possible, narrow our focus on “fraudster crimes” (ie., fraud perpetrated by individuals against the public) to demonstrate that, as a subcategory of fraud, little is known about this perplexing criminal activity.

AUSTRALIAN AND OVERSEAS EXPERIENCES WITH FRAUD

Types of fraud

As we have shown above, fraud includes a wide range of activity (see Appendix 1.1 for a summary of studies on various forms of fraud). These include what Grabosky et al. (1987) termed “white-collar” and “blue-collar” frauds or what Weisburd (1991) observed as frauds committed by persons of both high and low social status.

Examples include public sector fraud, telemarketing and Internet fraud, copyright fraud, tax evasion, insurance fraud, customs evasion, theft of services (eg., telephone, cable television, tolls, tickets), copyright infringement, intentional loan default, social security fraud and many others. Recently, Duffield and Grabosky (2001) offered a useful categorisation for these diverse crimes. Their groupings are based on the status of the offender and the victim. This categorisation is instructive in that it assists in organising the diverse literature on fraud. For this reason, we have organised Appendix 1.1 along the Duffield and Grabosky classifications as follows:

Fraud committed against an organisation by a principle or senior official: These include acts more commonly categorised as white-collar and occupational crimes. This category includes insurance fraud, credit card fraud, invoice fraud, financial fraud, insider trading. This category also has a high “dark figure”; that is, a large

proportion of undetected and/or unreported activity. White-collar offences perpetrated against banking institutions, for example, are less likely to be reported, even if detected, as such disclosure can diminish public confidence in these institutions.

Fraud committed against an organisation by a client or employee: This category also includes some forms of white-collar and organisation crime. However, the difference here is that the perpetrators usually do not occupy senior positions within an organisation, or are not what Sykes (1994) termed as “high flying entrepreneurs”. Rather, these offenders are either employees of a company, committing their offences through their organisational roles, or are clients or customers. Examples of this form of fraudulent behaviour include embezzlement, tax evasion, insurance fraud, computer fraud and insider trading.

Fraud committed against a number of individuals through print or electronic media, or by other indirect means: Examples of this type of fraud include mail (and e-mail) fraud, investment scams, pyramid scams, sharemarket manipulation, misleading or false advertising, and real estate investment scams. Some of these offences include what Grabosky et al. (1987) term “white-collar frauds”, or frauds committed by senior executives or corporations (eg., industrial pollution, employer negligence). Others include those investment scams described in several case studies by Brown (1998), as well as pyramid schemes, Internet scams, mail frauds (eg., chain letter scams like the e-mail version illustrated in the Appendix 1.1), telemarketing frauds, and work-from-home business scams like those described in *The Little Black Book of Scams* (Commonwealth of Australia 1999).

Fraud committed against one individual by another in the context of direct face-to-face interaction: Examples of this type of fraud include “cons”, credit card frauds by individual against others, financial fraud committed by individual “advisors”, self-employed and small business owners (eg., builders, plumbers, roofers, doctors, lawyers) who overcharge or bill customers for services not performed.²

² Roach (1999:269) classifies the following types of medical fraud: *time shuffling*, where doctors deliberately schedule patients outside of normal working hours and charge a higher rate; *upgrading*, where doctors charge patients for services never performed; *injury enlargement*, where doctors

There is some overlap among these categories, where certain types of fraudulent activity may qualify as fitting into one or more types. However, for our purpose in examining “fraudster crime”, the last category is useful in classifying illegal behaviours by individuals against other individuals or groups.

How much and at what cost?

Gaining an accurate picture of the true prevalence of fraud is difficult, because counting rules vary from one jurisdiction to the next. In addition, there appears to be substantial variation in the ways that fraud is conceptualised and understood. Nevertheless, it is instructive to describe fraud in terms of size, breadth and cost. In doing so, we rely mainly on published reports from official agency documents, as well as statistical summaries published in various academic journals and other public forums. We begin by looking at general fraud classifications – ie., where little distinction is made in the types of frauds committed. This includes frauds perpetrated against individuals, as well as business organisations. Where possible, we then move to more specific types of frauds, narrowing to those offences perpetrated by individuals against others – ie., fraudster crime.

Smith (1997) assembled data collected by the Australian Federal Police and other Australian police jurisdictions. Summary data showed that, between 1992 and 1996, reported and cleared fraud offences declined steadily (down 66% over the four year period), although the value associated with the offences rose by 17%. Offences reported to police throughout Australia dropped from 1992-93 to 1993-94, then rose steadily over the following two years (see Tables 1 and 2 below).

Table 1.1: Australian Federal Police Commonwealth Fraud Offences 1992-96

	1992-93	1993-94	1994-95	1995-96
Offences Reported	12,827	11,922	9,287	4,358
Offences Cleared	6,544	4,072	3,644	2,470
Percentage Cleared	51.0	34.2	39.2	56.7
Total Value Involved	\$113.1m	\$82.6m	\$94.5m	\$132.1m

Source: Smith 1997:2

exaggerate the nature of patients’ injuries and over-treat; *ping-ponging*, where several doctors collude to needlessly refer patients to specialists; *phantom treatment*, where patients are billed for services never performed; *assembly-line production*, where doctors see more patients by lessening consultation times but charge clients for a full consultation.

Table 1.2: Fraud Offences Reported to the Police in Australia 1992-96

Year	Number	Rate per 100,000 populations
1992-93	110493	625.79
1993-94	74999	420.44
1994-95	80970	448.49
1995-96	86130	470.94

Source: Smith 1997:3

The financial accounting firm Ernst & Young regularly conducts the largest international survey of business fraud (1996). Results from the latest survey (Ernst & Young 2000) show that approximately 66% of businesses surveyed (n=739) reported a fraud victimisation in the twelve months preceding the survey. This was down slightly from their 1995 survey, which showed that approximately 75% of responding businesses reported a victimisation (Ernst & Young 1996). Financial losses sustained by businesses were quite substantial. In the 1995 survey, losses for responding businesses totalled \$US642 million. Total losses for the latest survey were not reported. Instead, findings showed that when the single worst frauds suffered by each responded were combined, total estimated losses were \$US172 million (Ernst & Young 2000).

The Australian accounting firm KPMG conducted a survey of more than 1,800 large Australian businesses in 1997. Results for the two-year period 1995 and 1996 showed that approximately half of all respondents reported some experience with fraud, with losses over the two-year period totalling more than \$104 million. The most common type of fraud reported in both the international (Ernst & Young) and Australian surveys was theft by employees. In their 1999 survey, Ernst & Young reported that employees, with nearly a third in management, committed approximately 82% of frauds (see section below on offender characteristics).

The Australian Institute of Criminology recently undertook a national survey of 4,315 Australian small business operators, who were asked to provide details of business victimisations sustained during the financial period 1998-99 (Perrone 2000). In addition to other types of property and violent victimisations (eg., burglary, vandalism, armed robbery and assault), the survey asked about experiences with credit card fraud, employee theft, employee fraud and bribery/extortion. Below is a

summary of fraud victimisations reported by the respondents. Of the types of fraud examined, credit card fraud and employee theft were the most problematic. Furthermore, these two offences were noted to recur substantially. Among those businesses reporting a credit card fraud victimisation, 62% reported a repeat victimisation. Repeat victimisations also were reported for employee theft (52%) and employee fraud (44%).

Table 1.3. Fraud victimisations (1 July 1998 to 30 June 1999)

Offence type	Number of businesses reporting victimisation	Percent of total victimisations reported (N=2,167)
Credit card fraud	341	16
Employee theft	296	14
Employee fraud	80	4
Bribery/extortion	6	0.3

Source: Adapted from Perrone (2000: 3).

Estimating the costs of fraudulent activity also is difficult. Mainly, this is because methods of calculating losses and counting incidents vary substantially (eg., Smith 1997; Perrone 2000). For example, the Australian Federal Police estimated that fraud resulted in annual losses between \$3 billion and \$3.5 billion (Walker 1997). However, the KPMG survey of Australian businesses put annual losses sustained by 480 large organisations in 1997 at more than \$104 million. Further, losses due to “offences of deception” reported to all policing agencies throughout Australian in 1995-96 were estimated to be approximately \$277 million (Smith 1997:6).

Other forms of fraud resulting in losses in the millions include credit card fraud (Smith 1997a), copyright fraud (Grabosky and Smith 1996), superannuation fraud (Freiberg, 1996), telemarketing fraud (Grabosky and Duffield 2001b), pyramid schemes (Grabosky and Duffield 2001b), direct marketing scams (Sweeney 2000), investment fraud (Muncie and McLaughlin 2001), and creating and propagating computer viruses (McCowan, 1999). Credit card fraud also is a growing problem in Australia, as well as overseas. For example, the Australian Payments System Council reported that between 1993 and 1996, the number of unauthorised electronic funds transfers rose 88%. However, the proportion of unauthorised EFT transactions is quite small in comparison to all EFT transactions during this period (Smith 1997a).

Because recent legislation has made saving for retirement compulsory, Australians are now more vulnerable than ever before to superannuation fraud (Freiberg 1996). The potential damage caused by this particular form of fraud was made poignantly clear in the recent case of British media tycoon Robert Maxwell, who stole \$A1400 million in pension savings from employees of two of his public companies (Muncie and McLaughlin 2001). Freiberg (1996) noted the following types of superannuation fraud likely to plague Australian workers:

1. Improper registration and use of fund assets
2. Collusion between fund managers and trustees improperly to divert assets
3. Collusion between trustees and fund managers in overcharging fees or paying unauthorized expenses
4. Falsification of records
5. Misappropriation of assets
6. Improper or bogus loans to interested parties
7. Failure to pay benefits (see also Casey 1996)

Copyright fraud includes the pirating of software and CDs, the illicit reproduction of designer labels, trademarks and designs, and patent infringement. Annual losses of software piracy in Australia accounted for approximately \$260 million annually, and Australia was reported to have the highest incidence of software piracy in the developed world. In the United States losses from intellectual property theft amounted to US\$5 billion in 1995 (Grabosky and Smith 1996).

Telemarketing fraud, pyramid schemes and Internet financial frauds have escalated during the past decade with the proliferation of Internet access and advances in technology. Telemarketing fraud has resulted in billions of dollars in losses in the United States, where consumers have been sold bogus lotteries, contests, and investment products (Grabosky and Smith 1996). “Computer fraud” (Coldwell 1996) may include any form of fraudulent activity perpetrated with a computer or over the Internet, and consumers are becoming increasingly vulnerable as more and more organisations make their products and services available on-line. Users of the Internet are now vulnerable to several forms of fraud, including pyramid scams and “work-at-home” businesses, where, for example, victims pay a fee to learn how to build a “business” in their spare time using their computer and the Internet (Grabosky and Duffield 2001). Such solicitations often come to potential victims by anonymous

email (see Appendix 1.2 for illustration) and may offer a product or service in exchange for a small *cash* fee. Often, these fees are collected from thousands of victims and the fraudsters have long absconded by the time victims become suspicious that they have been sold a dud. These tactics should be warning signs of potential fraud, or are what Grabosky and Duffield (2001) call “red flags”.

The Internet has changed the way that consumers relate to businesses and other organisations. It is now possible for an individual to create a bogus business on the Internet, one that looks completely legitimate to visitors of a website, for example. Unless consumers are electronically trading with established businesses and organisations also existing outside cyberspace, it may be difficult for consumers to confidently conduct business on the Internet. Advances in encryption have helped to address problems associated with illicit electronic commerce; however, Internet fraud is a growing problem. This is because opportunities for illegal electronic commerce grow with expanded use of the Internet by businesses and other organisations (Iannacci and Morris 2000).

Without a standard method of estimating and calculating losses, it is very difficult to know the true extent of financial damaged sustained by businesses and consumers. Moreover, until policing agencies and other organisations involved in monitoring and preventing fraud (eg., insurance and financial sectors) agree on what constitutes this offence, estimates are likely to remain flawed and inconsistent. Nevertheless, these few estimates clearly demonstrate that pecuniary losses are very severe.

CHARACTERISTICS OF FRAUDSTERS

It is perhaps as difficult to characterise the “typical fraudster” as it is to define and describe the offences he or she perpetrates. Popular media depictions of crime and criminals are often sensational and skewed towards the dramatic. This is certainly understandable given the primary aim of print and television media: to increase circulations and ratings. As a result, we are bombarded with images that portray crime as often violent, carefully planned, and on the rise, and criminals as cunning. This, however, is far from the truth. Most crime is unremarkable (eg., petty property offences) and most criminals are not very interesting (eg., average or below average intelligence, young and impulsive). Violent crime makes up a very small proportion

of offences known to the police, and most criminals are young and perhaps foolish, but certainly not pathological (Fattah 1997; Mukherjee 1996).

It is interesting to note that, as consumers of print and television media, we have a far less clear image of the fraudster than we do of the typical offender. We may wonder why this is so. Perhaps our lack of any clear sense of who is the fraudster centres on the nature of fraudulent crime – ie., stealth, cunning, complexity. These are features of crime far removed from those types of offences perpetrated by typical offenders – ie., often unplanned, opportunistic property crime (eg., break and enter, auto theft, shop stealing). Hence, we should expect that fraudsters (most anyway) would be characteristically different from typical offenders, as fraudulent crime requires a certain degree of planning, decisiveness, ingenuity and greed.³

Despite the difficulty associated with describing the typical fraudster, some good attempts have been made. However, what is typical of the fraudster varies by the type of fraud being committed. For example, as we summarised above, the most recent business survey on fraud conducted by London accounting firm Ernst & Young (2000) showed that employees committed approximately 82% of all identified frauds, and nearly 1/3 of these employees were middle management. This finding was confirmed by an Australian business survey conducted by accounting firm KPMG (1999) and Graycar (2000), who found that approximately 80% of fraud detected by Australian businesses was committed by employees.

The age-sex nexus of fraudsters is substantially different from that of typical offenders. While most “street crime” is known to be committed by young males, a notable proportion of fraud is committed by the aged and females. Grabosky and Smith (1996), for example, note that: “Australia’s aging population may...become the perpetrators of fraud...”, as many are becoming increasingly discontented with government-funded health care and social security schemes.⁴ Justifications for tax evasion arise as many aged pensioners feel their social security payments are an

³ Interestingly, Weisburd et al. (1991) noted that a substantial proportion of white-collar offenders had prior arrest records or prior convictions for offences other than fraud and other white-collar crimes. Based on this finding, Braithwaite (1993) argued for a general theory of crime, one which can account for not only crimes of need (common street crime) but also crimes of greed (white-collar crimes). See discussion on theory below.

unacceptably low representation of lifetime contributions. Smith (1997) noted that fraud and misappropriation make up a greater share of all crimes committed by females compared to males (15.9% and 4%, respectively). Further, Graycar (2000) noted that 10.5% of females in Australian prisons had fraud or misappropriation as their most serious offence, compared to only 3.5% of male prisoners.

There are definite challenges to “profiling” fraudsters. These include the uncertainty associated with what constitutes a fraud offence, the breadth of behaviour that potentially qualifies as fraud, and the diverse nature of fraudsters. Nevertheless, Duffield and Grabosky (2001) attempt to summarise characteristics common to most fraudsters. Some of these characteristics are common to fraud committed by employees, others by individuals who prey on governments, business organisations and other individuals. For employees in middle-level and upper management, features include narcissism, ambition, and persistence. Other employees may be disgruntled, vengeful or territorial. Individuals committing fraud may be pathologically anti-social and/or immoral, and some may lack the opportunity to perceive and interpret social cues common in face-to-face social interaction – eg., perpetrators of Internet e-mail scams never socially interact with their victims. Virtual victims are easily diminished through electronic media that physically separates offenders and their targets. Duffield’s and Grabosky’s (2001) typology of the fraud offender is summarised below.

The narcissistic manager: Common among senior officers and managers who commit fraud is the tendency to believe they are beyond the reach of criminal law, that they operate at above-average capacity and feel they are easily distinguishable from “the little people”. They may have inaccurate impressions about their own capabilities and may tend to surround themselves by others they view as far less capable to reinforce this impression. They may take extra resources from the organisation or exploit special privileges to which they feel entitled and not deserving of “the ordinary people”. Duffield and Grabosky (2001) note that these offender characteristics are consistent with those summarised in the Diagnostic and Statistical Manual of Mental Disorders for narcissistic personality.

⁴ They do not, however, report data on fraud and age.

The average, obscured and aggrieved: Employees who occupy lower non-management positions within business and government organisations, who feel betrayed by their employers or disgruntled by perceived unfair treatment, may become vengeful and illicitly seek compensation for the “wrongs” their employers have committed against them. Others may feel mistreated by businesses or government agencies. Examples of fraud committed by employees may include falsified expense accounts, seeking reimbursements for expenses not incurred, stealing company stock, and payroll fraud (eg., Perrone 2000; Ernst and Young 1996, 2000; KPMG 1997). Examples of fraud committed by others may include what Friedrichs (1996) termed “avocational crime”: social security fraud, tax evasion, theft of services, theft of copyrighted material, intentional loan default.

The isolated and idiosyncratic: These fraudsters represent a very small proportion of all fraud offenders because they possess personality characteristics that are outside what is considered normal. They may possess some psychopathology and be excessively anti-social. They may lack any sense of conventional morality and lack the ability to empathise with others or appreciate others’ rights. Individuals who possess these characteristics in the general population are somewhat rare: only 1% to 3%. However, the proportion of prisoners possessing these characteristics is much higher (Duffield and Grabosky 2001).

Virtual vagabonds: These fraudsters are interlopers of the Internet, preying on trusting novices. They post unsolicited e-mail messages claiming to have all the answers to their victims’ financial woes. Indeed, advances in Internet technology and expanded access to the Internet among the general Australian population have increased opportunities for these types of fraudsters to extend their reach, where their victims are never seen nor heard. The Internet cloaks these offenders, making it easier to misrepresent oneself and much more difficult for victims to detect insincerity and dishonesty. The isolation that accompanies many Internet frauds renders many formal and informal social controls ineffective, and offenders are better able to perpetrate their crimes without contrition.

Pavlovian puppets: Duffield and Grabosky (2000) place a great deal of explanatory weight on situational factors (see section below on explaining fraud). They state: “There are likely to be situational conditions that would discourage all but the most incorrigible people from committing fraud. Conversely, there are situations that encourage fraud to the point that even the average person is at risk of engaging in it” (p 9). We agree that some situations certainly may give rise to opportunities for committing fraud, but we are unsure if such situations place “even the average person” at risk of committing fraud. More likely is the interaction between situational and offender characteristics, such that *motivated offenders* encounter, recognise and act upon situations that give rise to fraud. To say that the “average person” is also motivated to seize and act upon opportunities to commit fraud may be overstating situational explanations.

Summary: It is clear from the research literature that fraudsters are a very heterogeneous group. Not only are the offences they perpetrate very dissimilar, but also there is very little that is common among them demographically – eg., age, gender, social location. Given all of this diversity, the task of explaining and predicting fraud becomes acutely difficult. Nevertheless, there is a need for sound explanations of fraud and fraudsters. While the current body of criminological and psychological theory is rich in explanatory detail for certain types of offences (eg., “street crimes” perpetrated by male offenders), lacking is a theory of fraud. It is true that no theory of crime can account for all the variation among offenders and types of offending. However, it is very likely that some theories of crime provide more compelling explanations for fraud than do others. What follows is a summary of various attempts to apply criminological, psychological and social-psychological theories to explain fraud. We assess these attempts and suggest ways that current theory may be applied to account for this most perplexing of crimes.

EXPLAINING FRAUD

A very large proportion of the literature reviewed and summarised above is mainly descriptive. That is, fraud is discussed in terms of volume or prevalence or the extent of the problem; results of various surveys of businesses’ and the public’s experiences

with fraud (eg., Ernst and Young 2000, KMPG 1998) and attitudes about this behaviour (eg., Grabosky et al. 1986) are common; and several studies focus more narrowly on one or more types of financial fraud (see recent work by Smith for illustration). There have been some attempts to explain fraud, however. Among the studies summarised above, work by Graycar (2000), Duffield and Grabosky (2001), Grabosky and Smith (1996), Grabosky and Duffield (2001) are illustrative. However, there is a conspicuous dearth of theoretical work on *fraud*. Much of the theorising done in criminology is decidedly preoccupied with common crime or street crime – eg., the mundane crimes of the poor. Given that fraud, like any other criminal behaviour (save perhaps homicide and some violent assaults), involves some amount of rational conduct on the part of the offender, it is possible that some of those theories commonly applied to explain delinquency and crime can also inform our theoretical discussions of fraud (eg., Braithwaite 1991; Gibbons 1999). Thus, we have seen some very good theoretical work on one form of fraud: white-collar crime (eg., Sutherland 1949; Braithwaite 1989; Braithwaite 1991; Weisburd 1991).

Braithwaite (1989), for example, originally developed (with Brent Fisse) and applied his theory of *shaming* to examine ways that white-collar and corporate offenders may be deterred from committing further offences. In a subsequent essay, Braithwaite (1991) attempted to synthesise several criminological themes to develop a general explanation of offending based on inequality. He explained that “...both white-collar and common crime can be pursued by focusing on inequality as an explanatory variable. Powerlessness and poverty increase the chances that needs are so little satisfied that crime is an irresistible temptation to actors who have nothing to lose....When needs are satisfied, further power and wealth enables crime motivated by greed.” (p. 40). He developed this further in a 1993 essay in which he argues for a general theory of crime that explains “crimes of poverty” and “crimes of wealth”, or rather crimes motivated by need (poverty) and greed (wealth) (Braithwaite 1993).

Below we examine theoretical explanations of *fraud* as they relate to the types of fraud discussed in the previous sections (eg., following Duffield’s and Grabosky’s (2001) classification of fraud offenders). In doing so we consider a range of theories, some of which have not commonly been applied to fraud, and ask what works best for each of the various types of offenders.

Social-psychological explanations: Duffield and Grabosky note that while it is not possible to isolate one underlying personality characteristic common to fraudsters, there are a number of psychological factors associated with increased risk of fraud (2001). Especially in face-to-face “con games” and fraud by one individual against another, fraudsters appear to exhibit certain personality traits common to the anti-social or psychopathic personality (Blum, 1972). Lack of empathy or appreciation of other individuals’ rights characterise fraudsters of this kind, as does a pattern of “impulsivity and irresponsibility” and a propensity to take risks:

Particularly notable is the tendency of individuals with anti-social or psychopathic traits to show no genuine remorse for their actions. They offer superficial justification for having hurt others.... They blame their victims for being stupid or deserving of their fate, they minimize the harmful consequences of their actions or they may simply display an arrogant indifference. They are also likely to believe it is a ‘dog-eat-dog world’ and everyone is out for number one. (Duffield and Grabosky, 2001a: 8)

Anti-social and psychopathic personalities are deviant because they have failed to achieve an acceptable level of moral development. Stanley Benn claims that most people have a genuine capacity for what he called “respect for persons”; that is, they are capable of, and have a propensity for, taking on another person’s point of view – “putting themselves in another’s shoes” so to speak. They recognize that others are moral individuals with goals and rights, just like them, and as such, treat them with the respect they deserve as human beings (1986). In this sense “respect” refers to a simple acknowledgement of others’ rights, and a disposition to forebear from violating them. In other words – a “conscience”.

There are two kinds of people who do not achieve this level of moral development: rationally-defective individuals, such as schizophrenics and catatonics, and socially-defective individuals such as sociopaths and psychopaths (Benn, 1986). Benn argues that we develop our conception of respect for others based on the particular beliefs and values we routinely acquire during the development of our reason. This suggests that the kind of fraudsters engaging in con games and scams have failed to acquire the necessary beliefs and values required to function morally in society, probably through failed socialization as a child. They make decisions based on the most immediate consequences of their actions, and cannot formulate long-term plans and projects requiring deferred gratification. But they are not merely weak-willed, seeing the

attractive option as a temptation – they see it merely as the thing to do. The psychopath is drawn by the prospect of “immediate enjoyment”.

Strangely enough, though, such individuals usually present as charming, caring individuals, which allows them to be persuasive and to gain the (at least initial) confidence of so many victims. Indeed, some of the psychological literature describes psychopathic individuals as usually very clever, being able to disguise their lack of empathy by learning cues that are expected in social interaction. They have learnt enough to understand the consequences of various behaviours and make use of that knowledge in making victims believe they are sincere (Benn, 1986).

Our earlier note that prison populations of antisocial and psychopathic personality are much higher than in the general population bears out this explanation. While it cannot be claimed that all sociopaths and psychopaths will commit fraud (or any other crime), it is clear that they possess the one characteristic common to ALL perpetrators – motivation. Lacking a conscience, they are always motivated to pursue immediate enjoyment wherever possible, and this, coupled with a higher than average disregard for the feelings and rights of others, motivates them to take advantage of others wherever possible without remorse or shame. They are not motivated by a desire to obey the law or to do the right thing, making it likely that they will be motivated more often to commit fraudulent offenses.

Situational explanations: Some have observed that economic progress and growth in computing technology and use have given rise to increased opportunities to commit fraud (eg., Grabosky and Smith 1996; Smith 1997; Smith 1999; Iannacci and Morris 2000; Chapman and Smith 2001). Risk of fraud victimisation rises with opportunities. Situational theories locate the causes of fraud perpetration (and many other crimes) in both the offender and his or her environment (eg., Felson 1998; Graycar 2000; Grabosky and Duffield 2001). This explanation derives from Cohen’s and Felson’s (1979) development of routine activities theory, where crime is explained through the presence of three essential elements: a likely (motivated) offender, a suitable target (victim), the absence of capable guardians. When these elements converge in time and place, criminal perpetration is theorised to be the most likely.

Routine activities has been applied to explain a wide range of behaviours, including predatory property offences and violent crimes. The theory also has informed crime prevention initiatives during the past several years. Felson (1998) gives several examples of how “situational crime prevention” has been applied to address problems caused by several forms of property crime (eg., vandalism, auto theft, retail theft, graffiti) and violent crime (eg., violence in sporting venues, assault, domestic violence, armed robbery), as well as drink driving and drug trafficking. Also, situational prevention has been used to combat fraud. Examples include banks refusing to guarantee bad checks thus rendering merchants more cautious about accepting checks from people without adequate identification (Tremblay 1986; Knutsson and Kuhlhorn 1997); government use of computer technology to detect welfare fraud (Kuhlhorn 1997); programming pay telephones to allow only domestic phone calls to eliminate toll fraud (Bichler and Clark 1996); tightening rules in retail stores to make it more difficult for offenders to commit refund fraud (eg., returning stolen goods to a retail store for a cash refund); organisations requiring original receipts from its employees before reimbursing them for expenses.

Felson (1998) explains the general approach to situational crime prevention using the following equation:

$$-I = -T + G + E + R,$$

where **I** represents criminal inducements, **T** represents target rewards, and where **G**, **E** and **R** refer to associated guilt, effort and risk. Crime is predicted to occur when inducements and rewards are high relative to guilt, effort and risk. To prevent crime, situations should be altered to increase the guilt, effort and risk associated with offending and decrease criminal inducements and rewards.

Ways of reducing rewards are illustrated by Laycock (1997), who examined the effectiveness of property etching. When property owners have their identifying information etched onto highly desirable (and highly mobile) targets, rewards are diminished as the risk associated with fencing such property is increased. The guilt associated with committing an offence may be enhanced by controlling disinhibitors (Felson 1998). Homel (1993) noted that the designated driver policy provided an “out” to revellers who preferred not to drink, but might have otherwise been

convinced to do so by other friends. Similarly, improving internal auditing and accounting systems to “design out fraud” makes it more difficult (eg., increases the guilt) for employees to steal money from organisations (Felson 1998: 178).

The effort associated with crime may be increased through “target hardening” – ie., physically restraining likely targets (eg., bolting televisions and VCRs to desks, walls or floors in classrooms; locking computers to desks in computer labs) and controlling access to likely targets (eg., redirecting motivated offenders through street closures; controlling access to “facilitators” such as guns and alcohol) (Felson 1998: 181). Risk can be increased with surveillance and screening (eg., magnetic sensors on retail stock and library books, visible surveillance cameras in retail shops, pubs and other public venues). Some of the examples cited above illustrate how fraud may be prevented by increasing effort and risk (eg., improved auditing and accounting where multiple signatures may be required on organisational checks and where original receipts are required for reimbursement of expenses).

Differential association and social learning: Edwin Sutherland (1949) is known for his seminal work on white-collar crime and professional theft (Sutherland 1940, 1949). While much of criminological inquiry centred on “crime in the streets”, Sutherland attempted to draw serious academic interest to the study of “crime in the suites”. He framed differential association theory in an attempt to explain not only white-collar crime, but also delinquency and common street crimes such as burglary and robbery (eg., Rosecrance 1986; Henry and Einstadter 1998).

Sutherland argued that crimes were learned through association with other criminals. That is, within the “delinquent peer group” a person learns techniques (skills) and definitions favourable towards crime. Sutherland (1947: 6-7) stated the principle of differential association in the following way: “a person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.” This principle and theory have been applied to explain street crime, professional crime and white-collar crime.

Ronald Akers is best known for his reformulation of differential association. Akers (1985) applied concepts of operant psychology to improve explanations of the

learning process, as differential association had been criticised on grounds that concepts such as “definitions” had mental origins and were difficult to measure, and that the learning process was vaguely described (Liska and Messner 1999). Akers (1985) supplemented differential association with the concept “differential reinforcement” – ie., rewards perceived coming from both criminal and conforming behaviour. Crime is more likely when the potential offender perceives and interprets that he or she will receive greater rewards for committing crime than rewards for conformity (Akers 1998).

The application of differential association to white-collar crime is relevant in the explanation of fraud, as several forms of fraud have been treated as white-collar crime in the literature (eg., Grabosky et al 1986; Weisburd 1991; Levi 1999). However, attempts to apply differential association and social learning theories *directly* to the explanation of fraud are rare or nonexistent (ie., there are none to our knowledge). These theories are, however, readily applied to phenomena such as general delinquency, drug abuse and other “common” crimes (eg., Matsueda 1982; Matsueda and Heimer 1987; Akers 1977; Akers and Lee 1999; Hayes 1997). The same is true of other “popular” (ie., extensively tested) theories of crime, such as structural strain theory (eg., Merton 1957; Brezina 1996; Agnew 1997) and social control theory (eg., Hirschi 1969; Gottfredson and Hirschi 1990).

CONCLUSION

Fraud is indeed a very large concept, and as such the literature that describes and examines this offence is massive. We have attempted to summarise and classify much of this body of empirical work in this chapter. From our initial review of the literature, it seems clear that those offenders who perpetrate frauds against the public occupy a very small place in much of the empirical and descriptive work on fraud. Furthermore, these offenders are neglected in theoretical examinations of fraud and related white-collar crimes.

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APPENDIX 1.1 Selected References: Studies of fraud.

Author(s) and Year of publication	Title of study	Types of fraud examined
Fraud against an organisation by principal/senior official		
Casey, K. (n.d.)	The View from a Big Fund	Superannuation fraud
Coleman, James W. (1998)	The Criminal Elite	Embezzlement, computer crime, consumer fraud, financial fraud, false advertising.
Duffield, G & P. Grabosky (2001)	The Psychology of Fraud	High flying entrepreneurial fraud, misappropriation of assets by senior management.
Ernst & Young (2000)	Fraud: The Unmanaged Risk	Managerial fraud
Fisse, B. (1991)	Fraud and the Liability of Company Directors	Fraud committed by senior management
Freiberg, A (1996)	Superannuation Crime	Superannuation fraud
Freiberg, A. (2000)	Sentencing White Collar Criminals	Entrepreneurial fraud, fraud committed by persons of high status in their occupational role.
Grabosky, P. & G. Duffield (2001)	Red Flags of Fraud	Entrepreneurial fraud, misappropriation of assets, defrauding shareholders.
Graycar, A. (2000)	Fraud Prevention and Control in Australia	Entrepreneurial fraud
Inman, K. (2000)	Detecting Fraud in Securities Markets	Investment Scams, Market manipulation
Livemore, G. (1991)	The National Crime Authority and the Investigation of Fraud	Financial fraud, entrepreneurial fraud
Tomasic, R. (1991)	Auditors and the reporting of illegality and financial fraud	Financial fraud, reporting of fraud by auditors
Fraud against an organisation by one of its employees or clients		
Barrett, N. (1997)	Digital Crime: Policing the Cybernation	Internet fraud, software fraud, virus propagation, committing fraud using computers
Butler, B. (2000)	Fraud control – a state perspective.	Employee fraud, fraud against the government by its employees
Chapman, A. (2000)	Controlling Fraud in the Financial Services Sector	Transaction fraud, identity fraud
Coleman, J.W. (1998)	The criminal elite: Understanding white collar crime	Employee fraud, embezzlement, computer fraud, financial fraud, tax evasion
Duffield, G. & P. Grabosky (2001)	The Psychology of Fraud	Employee fraud, transaction fraud, client fraud, healthcare fraud
Ernst & Young (2000)	Fraud: Australian Survey Summary – 1999/2000	Employee fraud, computer fraud
Ernst and Young (2000)	Fraud: The unmanaged risk.	Employee fraud
Freiberg, A. (2000)	Sentencing White-Collar Criminals	Employee fraud, transaction fraud, identity fraud
Freidrichs, D.O. (1996)	Trusted Criminals” White collar crime in contemporary society.	Employee fraud, fraud against the government, embezzlement, transaction fraud, computer fraud.
Gifford, P. (2000)	Preventing, Detecting and Investigating Fraud and Corruption: Lessons from the NSW experience.	Employee fraud, computer fraud

Grabosky, P. & G. Duffield (2001)	Red Flags of Fraud	Employee Fraud, transaction fraud, client fraud, healthcare fraud
Graycar, A. (2000)	Fraud prevention and control in Australia	Employee fraud, credit card fraud, cheque fraud
Potas, I. (1993)	Thinking about tax avoidance	Tax evasion
Roberts, S. et al (1995)	Preventative medicine for corporate crime	Employee fraud
Smith, R. (1997)	Plastic Card Fraud	Transaction fraud
Smith, R. (1998)	Best practice in Fraud Prevention	Employee fraud, client fraud, transaction fraud
Smith, R. (1999)	Organisations as victims of fraud, and how they deal with it	Client fraud, transaction fraud, employee fraud, computer fraud
Smith, R.G. (1997)	Measuring the extent of fraud in Australia	Credit card fraud, employee fraud, misappropriation, computer fraud
Smith, R.G. (1999)	Identity-related crime: risks and countermeasures	Identity fraud, computer fraud, transaction fraud, client fraud
Fraud committed against a number of individuals via Internet, telephone, mail or other indirect means		
Barrett, N. (1997)	Digital Crime: Policing the Cybernation	Computer fraud, computer viruses, Internet fraud, software fraud.
Brown, B. (1998)	Scams and Swindlers: Investment disasters and how to avoid them.	Investment fraud
Duffield G. & P. Grabosky. (2001)	The Psychology of Fraud	Mail fraud, Nigerian advance fee fraud, telemarketing fraud, Internet fraud, email fraud.
Grabosky, P. & G. Duffield (2001)	Red Flags of Fraud	Internet fraud, mail fraud, telemarketing fraud
Ianacci, J & R. Morris (2000)	Access Device Fraud and Related Financial Crimes	Mail fraud, identity fraud, telemarketing fraud.
Ministerial Council for Consumer Affairs (1999)	The Little Black Book of Scams	Pyramid schemes, Internet fraud, false lotteries, mail fraud, telemarketing fraud, false business opportunities, investment fraud
Fraud committed by one individual against another in face-to-face interaction.		
Brown, B. (1998)	Scams and Swindlers: Investment Disasters and how to avoid them	Investment fraud
Duffield, G. and P. Grabosky (2001)	The Psychology of Fraud	Face-to-face fraud, fraudulent home repair services, credit card fraud, transaction fraud, investment fraud, fraudulent door-to-door solicitations.
Grabosky, P. & G. Duffield (2001)	Red Flags of Fraud	Fraudulent door-to-door solicitations, fraudulent home repair services, investment fraud, credit card fraud,
Ministerial Council for Consumer Affairs (1999)	The Little Black Book of Scams	Pyramid schemes.
Tyler Moore, D. (1967)	Wolves, Widows and Orphans	Gambling scams, investment fraud,
US National Consumer's League	Jan-Sept 2000 telemarketing fraud statistics	Telemarketing fraud, including advance fee loans, false lotteries and prizes, credit card fraud, buyers clubs, Nigerian money offers.

Appendix 1.2 Example of potentially fraudulent email

Extract:

Dear Friend:

AS SEEN ON NATIONAL TV :

"Making over half million dollars every 4 to 5 months from your home for an investment of only \$25 U.S. Dollars expense one time" THANKS TO THE COMPUTER AGE AND THE INTERNET!

=====

BE A MILLIONAIRE LIKE OTHERS WITHIN A YEAR!!! Before you say "Bull", please read the following. This is the letter you have been hearing about on the news lately. Due to the popularity of this letter on the Internet, a national weekly news program recently devoted an entire show to the investigation of this program described below, to see if it really can make people money. The show also investigated whether or not the program was legal. Their findings proved once and for all that there are "absolutely NO laws prohibiting the participation in the program and if people can follow the simple instructions, they are bound to make some mega bucks with only \$25 out of pocket cost". DUE TO THE RECENT INCREASE OF POPULARITY & RESPECT THIS PROGRAM HAS ATTAINED, IT IS CURRENTLY WORKING BETTER THAN EVER. This is what one had to say: "Thanks to this profitable opportunity. I was approached many times before but each time I passed on it. I am so glad I finally joined just to see what one could expect in return for the minimal effort and money required. To my astonishment, I received total \$ 610,470.00 in 21 weeks, with money still coming in". Pam Hedland, Fort Lee, New Jersey.

Here is another testimonial: "This program has been around for a long time but I never believed in it. But one day when I received this again in the mail I decided to gamble my \$25 on it. I followed the simple instructions and voila' - 3 weeks later the money started to come in. First month I only made \$240.00 but the next 2 months after that I made a total of \$290,000.00. So far, in the past 8 months by re-entering the program, I have made over \$710,000.00 and I am playing it again. The key to success in this program is to follow the simple steps and NOT change anything" More testimonials later but first,

****PRINT THIS NOW FOR YOUR FUTURE REFERENCE****

\$

If you would like to make at least \$500,000 every 4 to 5 months easily and comfortably, please read the following...THEN READ IT AGAIN and AGAIN!!!

\$

FOLLOW THE SIMPLE INSTRUCTION BELOW AND YOUR FINANCIAL DREAMS WILL COME TRUE, GUARANTEED! INSTRUCTIONS:

****Order all 5 reports shown on the list below.

****For each report, send \$5 CASH, THE NAME & NUMBER OF THE REPORT YOU ARE ORDERING and YOUR E-MAIL ADDRESS to the person whose name appears ON THAT LIST next to the report. MAKE SURE YOUR RETURN ADDRESS IS ON YOUR ENVELOPE TOP LEFT CORNER in case of any mail problems.

****When you place your order, make sure you order each of the 5 reports. You will need all 5 reports so that you can save them on your computer and resell them. YOUR TOTAL COST $\$5 \times 5 = \25.00 .

****Within a few days you will receive, via e-mail, each of the 5 reports from these 5 different individuals. Save them on your computer so they will be accessible for you to send to the 1,000's of people who will order them from you. Also make a floppy of these reports and keep it on your desk in case something happens to your computer.

CHAPTER 2

AGENCY RESPONSES - OFFICIAL DOCUMENTS

This chapter examines responses by law enforcement agencies to fraudster crime. The main sources are the latest annual reports, with supplementation from other official publications. The documents have been analysed to contribute to a profile of fraudsters in terms of government responses and to practical ideas for prevention. Many government agencies now provide highly detailed annual reports, and other regular and ad hoc reports, as part of enhanced accountability processes. Focus groups from the four agencies (see Chapter 3) were also asked for any relevant publications. During the research phase of this project only annual reports for 1999-2000 were available.

Consistent with the Queensland case study approach of this report, the focus is on the Queensland Police Service (QPS), Queensland Office of Fair Trading (OFT) and, where possible, the state branches of the two main federal agencies responsible for fraudster crime in Queensland – the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC). With regard to ASIC and the ACCC, data in annual reports are not usually disaggregated by State⁵, but these national data are useful nonetheless. Additionally, it should be noted that a much wider range of private and public sector bodies are active in fraud detection and prevention, but the ones examined here are the main agencies responsible for responding to public complaints of personal fraud.

REGULATORY THEORY

The chapter examines complaints data and outcomes, investigative and preventive activities, performance indicators, key prosecutions, and policy statements. This analysis is framed in terms of modern developments in regulatory theory and practice, with specific attention to performance measures and the relationship between research and strategic planning. The past two decades have seen a body of prescriptive theory develop around the concepts of “responsive regulation” (Ayres and Braithwaite 1995) and “smart regulation” (Gunningham and Grabosky 1998). These approaches

developed from a critique of regulatory behaviour centred on a judgement of “regulatory failure”. Australian and overseas research identified major problems with under-enforcement by agencies responsible for control of discrimination, fraud, environmental crime, consumer exploitation and public sector corruption. Some under-enforcement was related to inadequate powers and resources, but a significant factor was a culture of deference to the powerful private and public sector bodies whose behaviour was the target of regulation.

Since one of the key Australian studies in this area was published – Grabosky and Braithwaite’s 1986 *Of Manner Gentle: Enforcement Strategies of Australian Business Regulatory Agencies* – there has been a trend towards regulatory agencies adopting many of the strategies in the prescriptive theory. Consistent with the concept of responsive regulation, agencies have consulted more closely with industry and other regulated bodies, the general public and other stakeholders – such as consumer advocacy groups – to obtain their views about appropriate standards and ways of obtaining compliance. To counter the threat of regulatory capture – where the regulated body has undue favourable influence of the regulator – agencies have adopted a diverse set of strategies and enhanced powers to facilitate and enforce compliance. This “regulatory mix” includes the following strategies (see Ayres and Braithwaite 1995, Briody and Prenzler 1998, CJC 1997, Gunningham and Grabosky 1998, Mastrofski and Wadman 1991, Prenzler 2000):

- Legal and technical advice to aid compliance,
- Prosecution of serious and repeat offenders with heavy fines and the option of jail
- warning notices,
- publicising prosecutions to deter offending,
- the encouragement of in-house quality assurance procedures by regulated bodies,
- confiscation of illegally obtained assets,
- compensation to victims,
- shutting down operations,
- powers to enter property and seize documents,
- proactive auditing of compliance,

⁵ ASIC does assemble and maintain disaggregated data by State but does not include these data in annual reports.

- inquisitorial powers (to demand answers to questions and obtain evidence),
- negotiating compliance agreements,
- making it easier for members of the public to make complaints,
- complaints profiling to identify patterns and trends in possible misconduct,
- consumer education,
- complainant satisfaction surveys to assess agency performance and guide strategy,
- independent auditing of sample files to assess the quality and rigour of investigations and case assessments,
- a research function tied to preventive policy development and testing of strategies.

AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION (ASIC)

ASIC is a Commonwealth agency established in 1991 under the *Australian Securities and Investments Commission Act 1989*. In 1999-2000 it operated on a budget \$134m and employed 1,234 people – up by 28 from the previous year. However, a \$2.3m budget cut meant ASIC needed to reduce staff to 1,200. There were 121 staff in Queensland, and 662 staff involved in “regulatory and enforcement operations” nationally (full-time equivalent). ASIC’s primary role is the regulation of companies, securities and financial services, including superannuation funds, insurance firms, banks, investment firms, and financial advisers (ASIC 2000:6-13, 51, 21). ASIC is one of three agencies in the federal system of financial regulation. The other two are the Australian Prudential Regulation Authority – responsible for banking, insurance and superannuation institutions – and the Reserve Bank – responsible for interest rates and national financial stability. ASIC primary tasks are summarised as follows:

We protect markets and consumers from manipulation, deception and unfair practices. We regulate advising, selling and disclosure of all financial products and services to consumers, except credit. We are also the Corporations Law watchdog, promoting honesty and fairness in companies and in the market (ASIC 2000:3).

Regulatory strategies adopted by ASIC include the following:

- issuing warnings
- prosecuting in the criminal and civil courts
- making advice available to consumers
- listing banned company directors, advisers and schemes

- advising companies of their legal obligations
 - auditing company prospectuses
 - reviewing new types of financial products and issuing discussion papers on regulatory issues
 - conducting surveillance and enforcement campaigns following analysis of complaints clusters (e.g., computer sharetrading software)
 - negotiating voluntary and forced compliance plans with company managers
 - launching enforceable undertakings to change behaviour and repay consumers
 - licensing investment managers and registering investment schemes
 - reviewing specific areas of financial services
 - issuing stop orders on misleading company prospectuses
 - facilitating compliance with extensive on-line information and forms
 - engaging in research leading to law reform recommendations
 - publicising successful prosecutions and penalties
 - “Gull Awards” provide a small prize incentive for the public to inform ASIC about suspect offers
 - Cooperatively developing industry-specific codes of conduct
- (ASIC 2000:1-21, *ASIC News*, Johnston 2001, www.asic.gov.au, Segal 2001).

The following is a snapshot of ASIC’s activities nationally for 1999/2000.

- 461 prosecutions were completed
- 84% of these were successful
- 25 prison sentences were obtained
- 234 new investigations were begun
- 1,033 company prospectuses were received
- 107,000 calls were received by the Infoline
- 6,000 monthly newsletters were distributed
- 7,440 visits were made per month to the consumer website
- 8,384 complaints of misconduct were finalised
- public access was available to a database of information on 1,195 million companies
- 14 warnings and consumer alerts were issued

- \$361m in fees were collected for the federal government
- \$2.5b of corrections in financial statements were required of listed companies
- 50 people were banned from providing investment advice, including 16 for life
- 62 enforceable undertakings were made, mainly to remedy investor and consumer complaints

(ASIC 2000:4-14, 25).

ASIC also experienced a number of highlight events. It completed a very large investigation into the “Yannon transaction”, which involved the loss of \$18m by Coles Myer, but was disappointed when the Director of Public Prosecutions refused to lay charges. (Decisions on prosecutions are made by the DPP, which also conducts the prosecutions in the courts.) Nine investment advisers were banned in relation to the Wattle Group – an investment scheme that lost \$165m. ASIC also began civil action to recover over \$10m lost in the EPAS superannuation fund fraud by 26,000 members (ASIC 2000).

ASIC does not categorise and report fraud data in terms of the categories of “personal fraud” or “fraudster crime” adopted for use in this report. However, it reported that 5,534 complaints of misconduct were made by the public in 1999-2000 against businesses. Complaints were analysed to “identify patterns” as well as selectively investigated on an individual basis. ASIC deemed 574 outside its jurisdiction. The remainder resulted in the following outcomes (ASIC 2000:33-34).

Table 2.1: Complaints and Outcomes, ASIC, 1999/00

Investigation	1.5%
Surveillance	19.4%
Resolved by information provided/negotiation	17.6%
Analysed, assessed and recorded only	53.9%

N = 4,960. ASIC 2000:34

The ASIC annual report provides detailed information on offenders who are jailed or banned following action by the Commission. All appeared to be male. Of the 25 jailed in 1999-2000, 12 were engaged in forms of personal fraud. Almost all of these cases involved investment advisers or unlicensed investment managers stealing or

misappropriating money from investors. The frauds were all substantial, involving between \$125,000 and \$4m. The full number of victims is not recorded, but some involved church groups, pensioners and disabled people. The 16 investment advisers banned for life were also engaged in forms of personal fraud against investors. Some of these involved enormous sums of money, up to \$17m. Many of the guilty were employees of large companies, and the companies provided compensation to victims in many cases (ASIC 2000:36-38). The following three cases provide a sample (ASIC 2000:39):

- Sydney adviser placed elderly investors seeking low-risk ventures into high-risk speculative investments, causing substantial losses.
- Launceston adviser obtained about \$40,000 of clients' money for himself by falsely telling a fund manager that clients wanted to redeem money.
- Victorian employee falsified 150 clients' signatures to receive fees from their superannuation investments, totalling \$26,337.

ASIC's workload has increased significantly in the last few years without commensurate increases in funds and staff. The following provides just a few examples for differences from 1998-99 to 1999-2000 (ASIC 2000:41, 25):

- new companies incorporated increased by 6% to 105,472
- the number of companies deregistered by ASIC increased 78% to 38,036
- the number of companies deregistered on request increased 74% to 24,937
- public complaints increased by 6% to 8,384
- licensed managed investment entities increased 169% to 274
- registered managed investment schemes increased by 281% to 1,780.

There were two main areas of ASIC reporting⁶ that could be questioned in light of the advanced regulatory framework summarised at the beginning of this chapter. The first is that of preventive strategies. Annual reports make references to strategies of "surveillance, compliance reviews and campaigns", for example (ASIC 2000:7), but these tend to be ambiguous and lack detail. Consider the following extract from a table, "Identifying and Solving Problems - Early results of a fresh approach" (ASIC 2000:9):

Campaign and objective	Results
Discourage secret, bogus “high yield” offshore investment schemes	Number of schemes has declined. ASIC publicity and enforcement has slowed down these operations.

Although objective quantification of these types of changes is difficult, some attempt at quantification might assist with accountability. It is also not clear if there were any attempts to put in place permanent prevention systems for such schemes. This may not be possible, but the issue is not canvassed. There also were no data on the impact of public education campaigns. Although interpretation of complaints data is notoriously difficult, there was no attempt to interpret the increase in complaints. For example, an increase in the number of substantiated complaints (with independent auditing of investigations) could be considered as an indicator of real increases in fraud and a possible failure of current prevention strategies. Nor is there any detailed breakdown of types of complaints that would allow for specific analysis of the impact of prevention strategies. One prevention and control strategy that appeared beneficial was that of compliance monitoring and inspections, although greater quantification and specification might assist accountability. Consider the following: “In our first review of superannuation member statements, we found substantial compliance in the industry, despite some problems” (ASIC 2000:27). Similar qualitative reports are made for services such as managed funds and insurance broking. Another example for company prospectuses and investment offers is as follows: “We inspected 109 prospectuses where our staff or the public thought disclosure looked weak. These inspections resulted in corrections, supplementary prospectuses and occasionally, orders that stopped fundraising altogether” (p. 28).

The second area where improvements might be made is that of performance indicators. This overlaps in part with preventive strategies in that data on compliance plans or the dollar value of corrections in company statements, for example, serve as both indicators of preventive effects and performance indicators. An area of performance not directly linked to prevention is financial compensation.

⁶ We note that this summary of ASIC’s regulatory role is based solely on annually reporting and as

Compensation to victims is an area where some very positive action was taken and reported in detail. Another performance area – a target of 70% successful court actions – saw the target exceeded at 84%. The Commission also has a goal of completing all investigations within 12 months. This target was reached in 95% of cases – an increase of 6%. However, whether this is an ideal target is open to debate. Complainant input would be of use in developing a completion target that balanced practical realities with complainant expectations. However, there is no reporting of any complainant surveys, ad hoc or regular, on key issues such as how complaints were handled. This is particularly important for the very large number of complainants who did not have their matter investigated. Potential neglect of minor complaints is also born out in the ASIC data. Of 4,960 complaints from the public received in 1999-2000, 54% were “analysed, assessed and recorded only”, not investigated or resolved. Reference was made in the *1999-2000 Annual Report* to benchmarking studies of the business community’s satisfaction with enforcement – up from “moderate to good” – but no further information was provided (ASIC 2000:7). There was also some market research on the Commission’s “impact on the market” (p. 24).

More sophisticated evaluation could also be developed in the areas of investigations and prosecutions. Independent auditing of samples of cases can provide useful expert unbiased views on decisions about the dispensation of cases, the quality and rigour of investigations, and the quality of briefs. It is possible that ASIC reviews all failed prosecutions, but there is not evident in the annual report. Offenders who are prosecuted should also be tracked to see that exposure and sanctioning are having a preventive deterrent effect.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)

In 1995 the Commonwealth Trade Practices Commission merged with the Prices Surveillance Authority to form the Australian Competition and Consumer Commission. The Commission has a major role in ensuring fair market place competition between companies. It enforces laws against restrictive trading practices

such does not include detail relating to some activities performed by this agency.

such as collusive tendering and price-fixing, and adjudicates on planned company mergers and acquisitions. In the 1999/2000 period it had a major role in monitoring the implementation of the new Goods and Services Tax (GST) to ensure against price exploitation. The ACCC also has a major role in consumer protection, especially in the area of product misrepresentation. In 2000 the ACCC had 518 staff (full time and part time). This increased from 359 the previous year following extensive staffing for GST monitoring (ACCC 2000a).

In its 2000 *Annual Report* the ACCC identified consumer protection as a priority area, and noted that “the majority of (the Commission’s) 48 current litigation matters are in response to alleged breaches of Part V of the *Trade Practices Act*” (ACCC 2000a:1). The *Trade Practices Act 1974* is the core Act for the Commission. Part V prohibits “misleading and deceptive conduct” as well as setting a range of standards regarding safety, product information, warranties and liabilities, covering “the basic rights of people in their everyday consumer transactions” (2000a:1). The prohibition on deceptive conduct is the primary legal fiat for attacking fraudster crime. Closely related sections include prohibitions on pyramid selling, unsolicited invoicing, misleading claims about employment opportunities, and accepting payment without the intention of supplying goods or services (ACCC 2000c:29-33).

To protect consumers, the Commission receives and investigates complaints, conducts litigation and can refer criminal matters to the public prosecutor. It also has at its disposal enforceable undertakings in regard to payment of compensation and changing behaviour, public education programs, and publicity and warnings about faulty products and scams. For example, in the “Small Business Program” in 1999/2000 230 seminars were held on fair trading requirements (ACCC 2000a:116). A number of specific regulatory strategies and methods for facilitating complaints handling are listed below.

- an annual “Internet Sweep Day”, which is an international effort to identify violations of consumer laws on commercial websites (ACCC 2000a:111),
- regular communication with businesses and consumers through the *ACCC Journal*, which reports current developments in the Commission’s work, as well as publication of guidelines,

- surveys of the market to audit compliance with safety standards with enforcement where necessary,
- policy development through research, liaison and publication of discussion papers (e.g., ACCC 1997),
- development of negotiated industry codes of conduct - such as the Internet Industry Association's codes (ACCC 2000a:109), and
- development of an online complaints facility.

It is clear from the Commission's reportage that enforcement of competition policy is an extremely complex and time consuming task and takes up the bulk of the Commission's routine work. This applies particularly in the areas of company mergers and acquisitions, and the conduct of government statutory corporations. Related tasks, such as prices surveillance, are also resource intensive. Resource constraints and the balancing of priorities means that consumer protection strategies need to be highly selective. This applies particularly to complaints investigations.

The 2000 *Annual Report* asserts that in consumer protection "the year saw a heavy commitment to investigation and compliance. At one stage the Commission had 55 matters before the courts" (ACCC 2000a:27). The Commission received 79,699 inquiries and complaints. The following table was used by the Commission to summarise complaints and outcomes.

Table 2.2: ACCC, Inquiries and Complaints, 1999/00

Pursued	
<i>consumer protection</i>	3,286
restrictive trade practices	547
<i>unconscionable conduct/industry codes</i>	118
Prices	82
Other	104
Subtotal	4,137
Not pursued	
Inquiries	2,937
<i>Complaints</i>	13,057
Subtotal	15,994
GST	
Inquiries	43,453
Complaints	16,115
Subtotal	59,568
Total	79,699

ACCC 2000a:193. Note: “Pursued complaints include all matters where additional information was sought to establish whether possible contravention was involved and whether Commission action was appropriate”. Italicised figures are discussed below.

These are stark figures. They do not allow specification of fraudster crime but it is clear that there is an enormous gap (excluding GST matters) between the 4,137 complaints investigated or actioned and the 13,057 complaints not “pursued”. The large majority of matters investigated were consumer protection or unconscionable conduct/industry codes matters and conceivably many of these related to personal fraud. However, these 3,404 matters (3,286 + 118) make up only 20% of the 17,194 complaints investigated or not investigated (4,137 + 13,057). The figures also do not identify final outcomes in terms of prosecutions and convictions, fines and jail terms, orders and undertakings, compensation and refunds, nor closure of schemes.

The ACCC engages in qualitative reportage of key prosecutions of companies for misleading and deceptive conduct. The following cases exemplify fraudster crime (ACCC 2000a:35, 36). The latter two were prosecuted by the Brisbane office

- Australian Taxation Services sent businesses forms that appeared as though they came from the Australian Taxation Office or a related government department. The forms made it appear that businesses were required to pay a fee of \$175 to register for the GST. The director of the company was found guilty and jailed for three months and the company was fined \$5,000 (also *ACCC Journal* 27).

- An Adelaide-based franchise, Mobile Radiator Repairs, was prosecuted for misleading conduct and the director ordered to pay refunds to franchisees of \$77,500.
- A pyramid selling scheme called World Netsafe was shut down. The scheme involved marketing of an “Asset Transfer Teleminute Manager” (ATTM) card along typical pyramid lines. The card was claimed to serve as a credit card, telephone card and provide a loyalty rewards. “Thousands of consumers paid \$2,389 but none received cards (ACCC 2000b:15, also *ACCC Journal* 27).
- The operators of a Vanuatu based pyramid selling scheme Golden Sphere International were ordered to pay \$550,000 into a trust fund to reimburse victims of the fraudulent scheme (ACCC 2000b:14).

ACCC publications have adopted the rhetoric of performance indicators but these are underdeveloped in the publicly reported data. For example, the two key alleged performance indicators stated for consumer protection have no real standards for measurement or sources of measurement data:

- Responded to complaints and inquiries
- Appropriate enforcement action taken and goals achieved, i.e., stopped unlawful conduct, compensation gained for loss or damage, compliance with the Act, pecuniary penalty (ACCC 2000a:27).

These tend to be descriptions of functions rather identification of measurable objectives. There is some attempt to identify trends in non-compliance in some areas, as a measure of agency impact, as the following example shows:

It is notable that for some quarters in 1999-2000, complaints to the Commission in relation to unconscionable conduct and franchising problems have reduced. However, the numbers remain volatile and the trend remains unclear (2000a:29).

There is also no indication of the use of complainant satisfaction surveys, victimisation surveys nor quality audits of complaints handling and investigations.

The ACCC *Annual Report* is not focused on ideas for prevention. However, some space is given to this issue in other ACCC publications, in particular a 1997 discussion paper on consumer protection in a globalising market (ACCC 1997). The following lists some suggestions for improved consumer protection related to fraudster crime identified in ACCC publications.

1. The ACCC has been giving increasing attention to mediation – or “alternative dispute resolution” – as a possible means for resolving consumer complaints without resource intensive investigations and prosecutions. Mediation allows the complainant and the subject of complaints to discuss the complaint with a trained third party brokering the discussion and attempting to find a practical outcome that satisfies both parties. Outcomes can include refunds, apologies or acceptance of explanations. For example, in 1999-2000 the Queensland ACCC office referred 25 disputes over franchising to the Office of the Mediation Adviser. Sixteen were resolved with four still in progress at the time of reporting (ACCCb:21). The potential advantages of mediation take on a particular urgency in light of the high volumes of complaints that the Commission does not pursue. This situation is summed up in a discussion of mediation by ACCC Commissioner Sitish Bhojani:

In the 1997-98 financial year the Commission received 10,942 inquiries and complaints. Of these some 2,247 were pursued. Just from these figures it should be obvious that the Commission, in pursuit of its various statutory objectives including compliance with the Act, must rely heavily on ADR processes (*ACCC Journal* 22:13).

2. The *Trade Practices Act* addresses the problem of accountability of overseas manufacturers without an office in Australia by deeming the importer as the “manufacturer” (*ACCC Journal* 22:20). However, a problem remains with goods purchased directly from overseas – a process that is increasing rapidly through Internet purchasing (ACCC 1997). In 2000 the ACCC signed two agreements with the US Federal Trade Commission (FTC) on cooperation to prevent fraud:

The first, the FTC-ACCC Cooperation Agreement, provides for enhanced cooperation and information sharing between the FTC and the ACCC. The purpose is to increase law enforcement assistance between the two countries. The second agreement, the Consumer Sentinel Agreement, allows the ACCC to participate in the FTC’s Consumer Sentinel System – a consumer complaint database used by more

than 250 law enforcement agencies. This will enable both countries to prosecute fraud more efficiently (*ACCC Journal* 29:18).

The United Nations is a potentially valuable agency to take the initiative in developing model standards and codes for international implementation (*ACCC* 1997:21, chp. 9). A readily accessible database of all consumer protection agencies will also allow agencies representing victims in one country to seek assistance from agencies in the suspect's home country. This can occur in investigations and in administration of compensation orders (*ACCC* 1997:94, 100). Agreements of this nature will need to be more commonplace to prevent cross-border fraud and to close down havens for fraudsters.

3. Improved processes for authenticating the identity of sellers is likely to prove an increasingly important means of fraud prevention with increased Internet sales and solicitations of customers from across borders. Greater international cooperation is required to establish common stringent identification processes for businesses (*ACCC* 1997:20). This may include requirements such as inclusion of a physical location of offices on all communications, and inclusion of links to consumer protection organisations to allow checks on the bona fides of sellers and locations to lodge complaints.
4. Consumer protection agencies can do more to encourage industry to set up its own in-house complaints handling departments, develop high consumer protection standards and develop a market image as ethical traders:

As many ethical businesses recognise, there are also enormous benefits for industry members that take a role in the provision of consumer protection mechanisms for global market consumers in terms of ensuring consumer confidence and maintaining a good reputation (*ACCC* 1997:51).

This can be achieved by consumer protection agencies offering advice and training, and certificates attesting to the establishment and maintenance of ethical consumer interest practices by companies. Industry sectors can also work together through associations to establish codes of practice that enjoy wide support and that level the competitive playing field by squeezing out unscrupulous operators (*ACCC* 1997:chp. 8).

OFFICE OF FAIR TRADING (OFT), Department of Tourism, Racing and Fair Trading

The Office of Fair Trading (formerly the Office of Consumer Affairs) exists within the Department of Tourism, Racing and Fair Trading. Prior to February 2001, the Office ran within the Department of Equity and Fair Trading. The role of the Department of Tourism, Racing and Fair Trading is to: “foster an effective Queensland marketplace and encourage responsible and sustainable growth in the racing, liquor and tourism industries” (DTRFT 2002: 4). The Department regulates “...general marketplace conduct, as well as...specific industry sectors through registration and licensing systems, codes of conduct and other prescribed standards....(DTRFT 2002: 4).

Within the Department the Office of Fair Trading actively maintains fraud prevention projects. These include the Protecting Seniors against Mail Fraud project, located at Toowoomba and the Sunshine Coast; the Campaign against “Blowers” project, which assisted small business to avert paying for advertising in fictitious publications; the Heads Up project, a community fraud prevention project located on the Gold Coast. Other fraud prevention initiatives focused on community education. These include activities to help consumers deal effectively with door-to-door conmen and pressure sales. A new publication titled “How to Deal Effectively with the ‘Hard Sell’” has been particularly useful for consumers. Furthermore, the Office of Fair Trading section of the Department’s website provides up-to-date information regarding equitable business practice, as well as warnings and alerts about recent scams and other fraudulent activity.

The Office of Fair Trading engaged in several other significant consumer protection activities. These include developing AUZSHARE (a national consumer fraud alert system); conducting major investigations with the Queensland Police Service into loan sharking; working with Australia Post to help consumers avoid being defrauded through overseas mail scams (DTRFT 2002: 15).

The consumer education activities of the Office of Fair Trading seem effective, as a substantial proportion of Queenslanders report to have heard or read about various OFT consumer warnings. For example, 55% of Queenslanders had heard or read warnings about product safety and recalls, and 47% had heard or read warnings about scams and fake lotteries. Fewer Queenslanders had heard or read warnings about door-to-door sales (33%), telemarketing (29%) and prosecutions of businesses (28%) (DTRFT 2002: 18). This, however, may be a reflection on main sources of information reported. Most consumers received information about warnings from newspaper stories, television shows and newspaper advertisements. Therefore, it may be that higher press coverage was given to issues like product safety and fake lotteries during the survey period (May 2002).⁷

The Office of Fair Trading received 11,832 written complaints for a broad range of issues. This number was up 12.3% from the preceding fiscal period (2000-2001). The top five areas of complaint, in rank order, were “household/personal goods sales, repairs” (2,541); “real estate sales, management and rentals” (1,780); “motor vehicles sales and repairs” (1,705); “occupation/services” – eg., recreation and personal services, security providers, fitness centres, introduction agents, advertising and directors – (1,688); “scams” (1,089) (DTRFT 2002: 19). Of the total 11,832 complaints received, 75% were resolved satisfactorily (DTRFT 2002: 12).

From 2000-2001 to 2001-2002, there was a consistent increase in proactive compliance activities. Compliance activities include actively insuring that businesses, industries and incorporated associations comply with current legislative requirements. Investigations increased 28% to 3,394; trade measurement increased 15% to 3,394; business services increased 50% to 24,897 (DTRFT 2002: 20).

During 2001-2002 the Office of Fair Trading pursued 65 successful prosecutions for breaches of legislation. The penalties involved varied substantially. For example, the Office prosecuted several people for trading without a license, and penalties ranged from a few to several hundred dollars. One individual incurred more substantial penalties for “making false representations as to the standard of adjustable towing

⁷ It is unclear from the 2001-2002 Annual Report who participated in the population awareness survey.

hitch and alleged engineering approval”. Penalties for this offender ranged from \$2,000 to \$10,000. Several offenders were successfully prosecuted for loan sharking offences and incurred very substantial monetary penalties. One offender was ordered to pay \$270,000 plus court costs, and another was ordered to pay \$68,000. Two offenders charged with misappropriating trust monies received substantial prison terms of six years.

QUEENSLAND POLICE SERVICE (QPS)

The Queensland Police Service (QPS) is the main traditional respondent to “crime” in Queensland, including fraud. Fraud constitutes a crime category reported by the QPS - along with crimes such as homicide, assault, sexual assault, robbery, burglary, extortion, kidnapping, etc. However, personal or fraudster crime is not treated as a distinct category. In 1999-2000, the QPS received 28,565 reports of fraud, an increase of 2% on the previous year. In terms of the rate, there was no real increase due to the population increase in the state. In 1999-2000, there were 800 frauds reported per 100,000. These frauds were separated into three categories, as shown in the following table, including the rates and percent “cleared”. “Cleared” is defined in the *Statistical Review* primarily in terms of action taken against a suspected offender (QPS 2000b:147).

Table 2.3: Fraud by Type, Rate and Clearance, QPS, 1999/00

Type	Total	Rate per 100,000	% Cleared
by cheque	4,664	131	61
by credit card	7,774	218	66
other fraud	16,127	452	78
Total	28,565	800	72

QPS 2000b:4, 5

The following table shows the number of reported fraud cases “by location”. These show a preponderance of frauds in the retail sector. It is not possible to say how many of these cases involve fraudster crime.

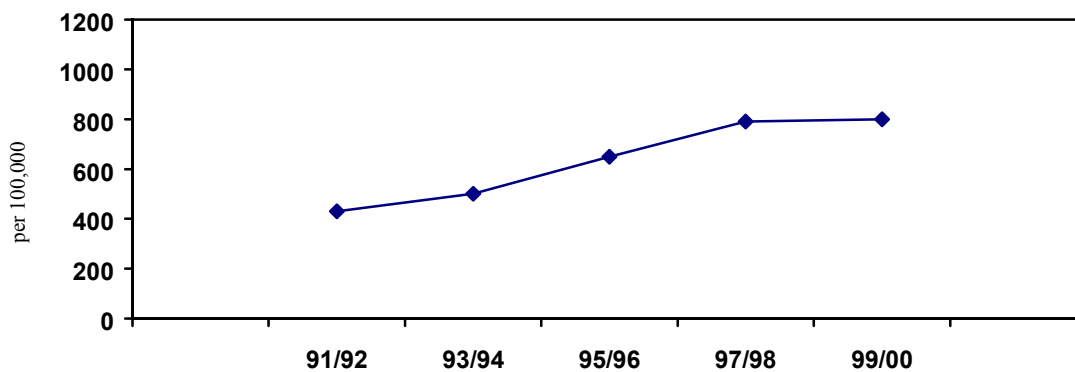
Table 2.4: Fraud by Location, QPS, 1999/00

Administration or Professional	1,091
Banking	3,095
Retail	16,253
Wholesale	27
Warehouse & Storage	53
Manufacturing	179
Agricultural	24
Recreational	522
Other (not further defined)	17
Other (not elsewhere classified)	0
Unspecified	932

QPS 2000b:99

Trend data for the last three decades are affected by changes in reporting behaviour - especially by a trend away from reporting by financial institutions (QPS 2000b:39). Nonetheless, overall, reported fraud quadrupled from just over 200 offences per 100,000 in 1975/76 to 800 in 1999/00. The last ten years are shown in Figure 2.1.

Figure 2.1: Trend in Reported Fraud, QPS, 1991/92-1999/00



QPS 2000b:39

The following table shows fraud reported to the QPS by police region for the last two financial years. It shows that fraud is highest in the South Eastern Region (encompassing the Gold Coast) and the two Brisbane Metropolitan Regions.

Table 2.5: Fraud by Region, QPS, 1998/99 & 1999/00, Rate per 100,000

Region	1998/99	1999/00
Far Northern	621	417
Northern	503	527
Central	573	616
North Coast	612	728
Southern	476	621
South Eastern	894	759
Metropolitan North	1,477	1,144
Metropolitan South	827	1,099
Average	797	800

QPS 2000b:55

The following table shows the outcome of investigations of fraud. Results indicate a large numbers of arrests (leading to a court appearance) and notices to appear in court for adults - a total of 13,456 actions related to a court appearance compared to 28,565 reports of fraud. The table also shows clearly that cautioning is the main approach to juvenile fraud, with only very limited use made of the community conference option (victim-offender mediation). Conferencing was only used in three cases for adults.

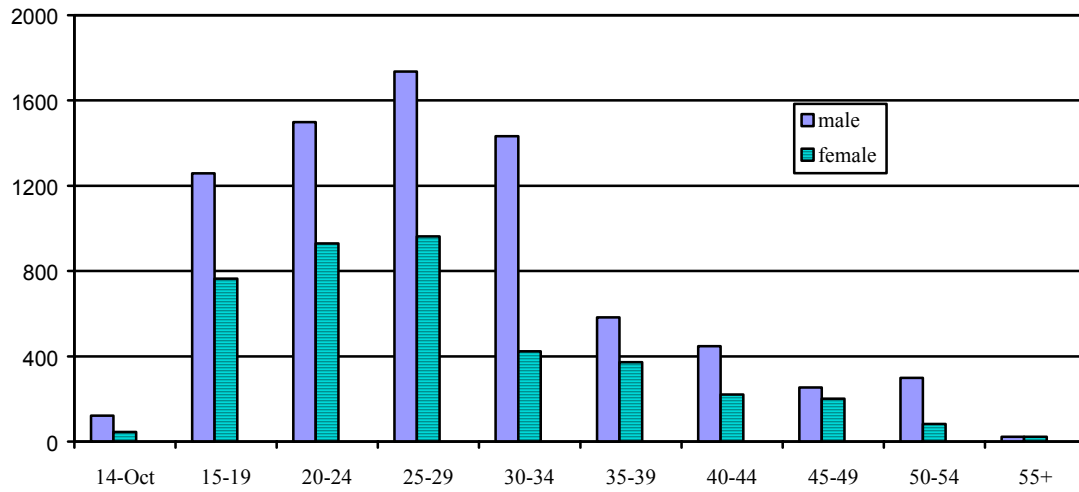
Table 2.6: Fraud by Action by Age, QPS, 1999/00

Disposition	Juvenile	Adult
Arrest	161	7,022
Caution	434	17
Conference	21	3
Notice to Appear	0	6,834
Notice to Attend	166	60
Summons	0	256
Warrant	0	42
Other	2	243

QPS 2000b:72, 73

The figure below shows the distribution of “offenders” by age and sex according to QPS data. Fraud is a type of offence where there is a much higher representation of female offenders than for many other offences. In 1999/00 women were 34% of those “proceeded against” by police. The figures also indicate a higher average age profile for the (mostly male) offenders, with the majority in the 15-34 bracket. Victim data by age and sex are not provided.

Figure 2.2: Fraud Offenders by Age and Sex, QPS, 1999/00



QPS 2000b:98

The figures above indicate what might be considered a high volume of fraud. There were 28,565 cases of fraud dealt with by the Queensland Police in 1999/2000 – although victim surveys are not reported to compare with reported offences. The high volume of reported fraud must also be considered in terms of the total volume of crime reported to, or identified by, police - 437,183 offences (including fraud) in 1999-2000. Despite this load, police reported a relatively high overall clearance rate for fraud of 72%. This might appear to show a very high degree of success. However, clearance rates are a notoriously unsatisfactory performance measure. A percentage of prosecutions are lost in court, and clearance rates do not given any indication of restitution to victims or victim satisfaction. Furthermore, the continuously rising rate of reported fraud suggests that the clearance rate is not having a preventive effect. Official publications of the QPS do not provide any information on anti-fraud strategies other than the implied approach of deterrence and incapacitation through investigation, prosecution and sanctioning.

SUMMARY

The implications of the above analysis for improving prevention are developed in the final chapter of this report: “Discussion and Recommendations”. To summarise the descriptive analysis, it is clear that the four main agencies responsible for personal fraud in Queensland deal with an enormous volume of complaints each year.

Although figures specific to Queensland are not available for all agencies, it is worth noting that the national figures for ASIC and the ACCC, and the State figures for the OFT and QPS, for fraud and consumer related complaints add up to total of approximately 50,000 for 1999/2000. The agencies are charged with providing a conscientious response to these complaints, along with their duties in a wide range of other, often highly complex, matters. Of particular concern is the increasing rate of complaints, which has not been matched by increases in staff numbers. It is also clear that agencies are making increasing use of creative responses beyond a simple investigate-and-prosecute approach, consistent with modern concepts of “responsive regulation” and “smart regulation”. While investigations and prosecutions are necessarily a mainstay, increasing use is being made of consumer education, confiscation of assets, orders and agreements, “sweeps” of advertisements and mediation. At the same time, the main reporting documents employed by these agencies indicate that some modern quality assurance methods could be given more prominence, including case file audits and complainant surveys, as part of a more reflective research-based approach to find more effective ways to reduce fraud and its effects.

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CHAPTER 3

FINDINGS FROM PRACTITIONER FOCUS GROUPS

Practitioner focus groups were the core research instrument for this project. Four focus groups were held with the four agencies described in the preceding chapter. These were:

Australian Securities and Investments Commission (ASIC)
Australian Competition and Consumer Commission (ACCC)
The Office of Fair Trading (OFT)
Queensland Police Service, Major Fraud Investigation Group (QPS)

ASIC and the ACCC are Commonwealth agencies. The focus groups were held with Queensland office staff. The following staff members participated.

ASIC

Director – Regulatory Projects
Enforcement Coordinator
Principal Investigator
Principal Investigator

ACCC

Regional Director - Queensland
Assistant Director - Queensland
Assistant Director - Queensland
Assistant Director - Queensland
Assistant Director – Queensland

OFT

Executive Manager, Compliance
Manager, Investigations
Principal Investigations Officer, Fair Trading Unit
Principal Investigations Officer, Auctioneers and Agents Unit

A/Senior Investigations Officer, Fair Trading Unit
Senior Investigations Officer, Gold Coast Regional Office

QPS

Senior Sergeant, Major Fraud Squad
Sergeant, Major Fraud Squad

The focus groups were organised around eight topics related to fraudster crime: definitions, dimensions, victims, perpetrators, modus operandi, law and legal cases, agency responses and prevention. These topics were designed to obtain the views of experienced law enforcement practitioners regarding the nature and causes of fraudster crime and, in particular, their ideas for improving prevention.

1. DEFINITIONS

Focus group members were presented with the four categories of fraud developed by Duffield and Grabosky (2001), described in Chapter One of this report. It was suggested to the group that the third category was the most appropriate as a target for the current study:

Fraud committed against one individual by another in the context of direct face to face interaction. This would include classic “con games” ... frauds by sales staff and predatory activities against clients or customers by investment advisers, roof repairers and others who prey directly on a consumer (p. 1).

However, in the first focus group, with ASIC, participants argued that categories three and four were closely connected and that many offenders and scams that fitted a “fraudster” label involved individualised and “personal” victimisation but at some distance. This could be through telephone calls, newspaper advertisements or the Internet. Consequently, it was agreed that this dimension should include:

Fraud committed against a number of individuals through print or electronic media, or by other indirect means. This would include Nigerian Advance Fee frauds ..., sharemarket manipulation, and deceptive advertising or investment solicitations pitched at a relatively large number of prospective victims (p. 1).

Subsequent focus groups confirmed that these two definitions encompassed the main dimensions of a definable field of “personal” or “fraudster” crime.

2. DIMENSIONS

Focus group respondents were unanimous that fraudster crime was extensive, diverse and growing. Precise figures in terms of losses or numbers of victims were difficult to estimate because of the problem of under-reporting. OFT participants, who deal with many of the smaller offences, estimated that complaints to their agency represented only 10% of cases. Many of these involve relatively small amounts of money. Larger cases may involve millions of dollars. The Wattle scheme, for example (see chapter 4), involved \$160 million. However, there is also a major problem with tens of thousands of victimisations annually involving amounts between \$200 and \$1,000. The Dexter case, for example (see chapter 4), involved up to 3,000 investors. Many of these cases are not reported because of the victim’s embarrassment, the fact victims expect that officials can do little in the way of recovery and because the victim can usually recoup the loss through reducing spending for a time. Some victims, such as business people who are victims of invoice fraud, do not even know they have been victimised. Others, such as the victims of franchise scams, may try to deal with matters as a civil dispute over contract provisions but become bogged down in delaying tactics, legal costs and vague elements of contracts.

Respondents also argued that there was considerable variation in personal fraud by location. Small communities were more likely to identify fraudsters and were often more protected. Cities that attracted large numbers of retirees, such as the Gold Coast, were particularly “rife” with victimisations. There was also a notable problem in the early-1990s with insurance fraudsters targeting Aboriginal communities.

Focus group participants were asked to identify sub-categories of fraudster crime. Initially, they were also asked to rank order them according to a combined index of notional prevalence and severity. However, it was decided this was too difficult to do, given the unreliability of the data. Nonetheless, a rough consensus emerged about sub-categories of personal fraud. These are listed below.

1. ***Fake billing or invoice “blowing”*** involves invoices being sent to businesses for services that have not been requested. The fraud works when a payments clerk assumes the service was ordered by another member of staff. The most common frauds involve advertisements in business directories that are never processed. Sometimes directories are published, but with only limited distribution.
2. ***Investment scams*** work by direct sales pitches promising high returns on specific projects, such as property developments or novel agricultural products (e.g., ostrich farming). Victims send cheques that are cashed and the fraudulent investment manager either disappears or makes sure that the investment falls through. In the latter case the fraudster declares bankruptcy or declares that no dividends can be paid.
3. ***Advance fee fraud*** is a variant of investment fraud targeted at potential investors who need to raise capital by borrowing. The investor is given an investment plan and pays a fee to apply to borrow funds. The fee is pocketed and the fraudster either disappears or informs the victim that the loan was not approved.
4. ***“Ponzy”-type investment scams*** use new borrowing to pay dividends on earlier borrowings. There is either no investment, or limited investment, of funds. The system is reliant on new investors and usually collapses like a pyramid scheme.
5. ***Franchise scams*** initially involve the same process as legitimate franchises. Franchisees are sold a geographical sales area for a particular product. They are promised supplies, training, and sales and management assistance. The scheme works by persuading victims to sign up for an inferior product that has little chance of succeeding in the market. Training and other support is either inadequate or not supplied at all. The seller can blame the victim for poor management skills or blame circumstances such as an unforeseen drop in the market. Contracts are often non-specific about the obligations of the franchisor.
6. ***Pyramid schemes*** work in two ways. (1) In simple ***“get rich quick”*** schemes new members send money to a member who has recruited them. The new members then recruit other members and the money is shared out according to one’s place

in the expanding pyramid. Eventually insufficient participants can be found to continue the process and the pyramid collapses, leaving more recent members out of pocket. (2) Pyramid ***selling schemes*** involve individuals purchasing stock and selling it on a one-to-one basis. Additional money is made by recruiting new sellers. Participants are often recruited through motivational seminars and are required to recruit friends and relatives. In most cases, expectations far exceed the capacity of the majority of participants to sell the product or recruit new sellers.

7. ***Insolvency trading*** occurs when companies continue to trade despite the fact they know they are insolvent. Bankruptcy procedures are delayed as long as possible while goods and services are purchased that will never be paid for. Creditors receive little or no funds when the remaining assets are liquidated. Customers have no recourse for repairs or refunds when products fail.
8. ***Computer betting*** involves the creation of Internet sites where punters can pay by credit card to bet on real or fictitious races. No winnings are distributed and the victim cannot locate the agency. Internet betting sites can be closed down instantaneously and reappear under another name and image.
9. ***Psychics*** may have face-to-face meetings with their victims or provide a fraudulent service over the telephone or via the Internet. False promises are made regarding predicting the future.
10. ***Maintenance scams*** usually involve direct contact with victims. Offenders identify part of a home that needs repair – such as roof painting or re-roofing – and provide a quote. Upfront payment is requested and the offenders then disappear. In other cases, poor workmanship will be hidden and mistakes appear only after payment has been processed and the offender has moved on. Typically, these types of fraudsters work in small gangs and are itinerant – targeting an area and then moving on before being exposed.
11. ***Employment scams*** promise employment for a small fee but fail to deliver. A common target is young people living in the country. Advertising will make claims such as “guaranteed jobs in the city for country kids”. The schemes may

require victims to pay for transport and other costs associated with moving to the supposed employment location. There may be promises of on-the-job training or apprenticeships, none of which materialise. Other scams may involve taking fees for agency representations – for acting or modelling for example – with no efforts to place victims. The phone number may be caller billed and lead to an answering service with a long message (see phone fee fraud below).

12. **Portfolio shoots** involve fees for photographic sessions with promises of subsequent work as models. No serious efforts are made to find work for the victim. (This overlaps with employment scams.)
13. **Introduction agencies** take fees from people looking for dates or partners. False promises are made about the number of possible matches and few or no efforts are made to provide matches. The excuse is that the matching system is voluntary and that no members responded to the victim's profile.
14. **Rental Unit Management Fraud** is considered a growing problem. Holiday resort managers may rent out units and take cash-in-hand instead of paying unit owners. It is also possible to bill owners for services not performed. For example, invoices could include weekly window cleaning when window cleaning is only done once a fortnight.
15. **"Passing off"** is outright fraud regarding the identity of a business or caller. Usually the pretence is one of a registered charity or a government agency. False charity workers will ask for a donation. They may present false ID, take the money and issue a false receipt. Others may claim to be from a government agency, with an official sounding name, such as a "Quality Assurance Agency", and will demand payment for compulsory registration.
16. **Loan forgery** involves obtaining a copy of a person's signature through an apparent legitimate business process – such as provision of investment advice. The fraudster will then copy the signature on a loan application and put the loan into an account they can access. The victim is then left with the repayments.

17. **Insurance scams** work by selling non-existent insurance. These schemes can run for a long time because very few claims are made, and because claimants can be deflected by spurious protracted investigations of claims and by spurious rejections of claims. Large amounts of money can be made with thousands of people paying small premiums of \$100-200.
18. **Phone fee fraud** works by advertising a service that requires telephone enquiries on a pay-per-minute system. Anything can be advertised, but it is often competitions or services such as easy loans. The competitions don't have winners, or pseudo-winners are advertised. In other cases, callers are kept talking on the line as long as possible and then told that their application is rejected according to spurious criteria. Higher mobile phone rates mean callers by this means often pay very large fees for nothing.
19. **Loan sharks and pay day lenders.** Traditional "loan sharks" operated by lending money to desperate people and using violence to enforce exorbitant interest rates on unwritten contracts. In the last few years there has been increasing concern in Australia about businesses that lend money to people at very high interest rates in-between their pay periods. Often the victims are borrowing money to repay other loans and become caught in a vicious cycle of debt. Lending codes and laws that had exemptions for short-term loans allowed a loophole for unscrupulous operators to hide the real interest rates and fees being charged.
20. **Lottery scams** generally work by notifying people by mail that they have won a prize in a lottery but need to send a small amount of money for administrative purposes or postage before their winnings can be released. There is no genuine lottery or real winners but the scheme relies on gullible people sending money in the expectation they will win a prize.

3. VICTIMS

Focus group participants agreed that particular categories of fraudster crime applied to some groups more than other groups. Many franchise fraud victims are middle-aged people who have recently been made redundant and received a severance package

with which they were looking to start a small business. Maintenance scams are often targeted at widowers living alone. Investment scams are often most successful with middle aged and older salaried earners and small business people concerned about insufficient superannuation for retirement. Some retirees are also caught in these traps when they have some spare cash on which they want to obtain a high return. Young people tend to be the main victims of employment and portfolio scams. Nearly all complainants against introduction agencies are males – although not all are single! Pyramid schemes often spread like wildfire through church groups or workplaces. Pyramid schemes tend to be highly cyclical, with re-occurrences dependent on loss of collective memory. Victims' losses can vary enormously: "Some lose only \$150. Others lose their homes, savings and everything".

Respondents associated increases in personal fraud with a number of social trends including lump sum payouts, early retirement, expansion of superannuation and more self-managed superannuation funds. Respondents also identified a significant problem with repeat victimisation, especially with small scale frauds. Many victims learn a lesson which stays with them for life. However, it would seem that other victims are extremely naïve and are easily duped by advertisements and approaches which are readily transparent to most people. Respondents, in fact, referred to "serial" or "perpetual" victims. Some are so desperate for money or obsessed with obtaining with easy wealth that they will keep participating in different fraudulent schemes. Another target group was people with poor credit ratings, desperate to borrow money, who are rejected by mainstream lenders. Victim naivete makes prevention particularly challenging.

In some cases victims are uncooperative or even hostile toward law enforcement agencies because they are afraid that prosecution will destroy any hope of a return on their investment. Many business people are reluctant witnesses because of concern about their image. Lack of co-operation or hostility can seriously reduces victims' chances of redress. For example, an ACCC respondent noted that in the Golden Sphere case (see chapter 4), "Golden Sphere contacted victims to opt out of a class action. 1,800 people opted out and lost their money."

4. PERPETRATORS

Fraudsters were considered to be a highly diverse group, with four main types emerging from the focus group participants' experience:

1. Natural fraudsters
2. Accomplices
3. Evolved fraudsters
4. Opportunistic fraudsters.

Respondents agreed these are useful categories, but by no means exclusive or comprehensive. One of the problems identified in profiling fraudsters is that so few are caught "The really successful ones we don't find", remarked one respondent.

1. **Natural fraudsters** are the core type of offender who fits the classic "con artist" stereotype. These are generally middle-aged and older males who are repeat habitual offenders. They are career criminals locked into fraud as a way of life. They exhibit many classic traits of the psychopath – lacking remorse or sympathy for victims, able to rationalise exploitation of victims, and skilled actors who present a false persona that engenders confidence and trust in their victims. They often rationalise their offending behaviour by arguing that victims are "so stupid they deserve to be fleeced" or "if I don't do it someone else will". It is difficult to estimate how much fraud this group accounts for. They tend to occupy the ranks of the most successful fraudsters who lived glamorous multi-million dollar lifestyles. However, many are largely unsuccessful, living almost hand-to-mouth and often experiencing periods in jail. This group was most likely to be active in frauds relating to investments, invoices and franchises. They frequently work at one remove from their victims, using intermediaries (accomplices) to make direct contact. They also appear to obtain pleasure and a sense of achievement from outwitting victims. They are highly mercurial and mobile, and "tend to re-invent themselves every 5-10 years".
2. **Accomplices** are commonly employed by natural fraudsters to act as the respectable front for a fraudulent scheme, and to contact victims and to

manage the accounts. These **intermediaries** usually lack initiative but can be very skilled in deceiving victims on the telephone or at the front desk. They also often do much of the administrative work necessary to run the fraud, such as submitting advertisements and developing databases of targets. Women often work as intermediaries because they are more likely to engender trust and to attract males. Accomplices are often key players in exposing fraud and acting as witnesses in successful prosecutions. They may “blow-the-whistle” after a falling-out with the principal.

3. Another category of fraudster observed by focus group participants was legitimate business people who drifted into fraud. These “**evolved fraudsters**” initially intend to operate their business by the law but resort to “creative accounting” to try to make up losses when they get into financial difficulties. This puts them on a “slippery slope” in which they became increasingly reliant on illicit transfers of funds. The main source of such funds is trust accounts; and real estate agents and solicitors were allegedly the groups most likely to engage in this type of fraud. Another group includes those with a background in sales or small business who develop skills of persuasion and evolve ideas about ways of defrauding people.
4. A fourth group was roughly categorised as “**opportunistic**” or “**miscellaneous**”. A prominent subgroup here were young men skilled with computers who could engage in Internet fraud. This group could also include used car salespersons who wind back speedometers or misrepresent the quality of vehicles. None of the perpetrators in this sub-category might necessarily be highly committed to pursuing a livelihood through fraud, but they exploit opportunities that arise as part of their normal work.

5. MODUS OPERANDI

“Cold calling” and deceptive advertising were cited as the main strategies of fraudsters. Cold calling involves unsolicited telephone calls or other forms of contact – such as face-to-face house calls - usually on a random basis. A major source is the telephone book. This method is often called “telemarketing”. There has been a

“massive increase in this type of fraud” in recent years, according to focus group participants.

Some cold calling will be targeted – such as maintenance fraudsters who will select houses that look like they may belong to widowers. Clues include well kept gardens and no car in the carport. Other target groups are already known to the fraudster or an intermediary, such as churches or workplaces. There appears to be some circulation of contact lists of vulnerable people. This applies particularly to introduction agencies and invoice fraud. Employees of fraudsters will take these databases with them when they leave, sometimes after a dispute.

Advertising is another major mechanism for contacting potential victims. Newspaper advertisements, for example, will appeal to people’s greed and desire to get rich quick. Claims will be made of “50% return investment” or similar. Other advertisements will focus on desires such as the desire to find a partner. Others again will focus on basic needs such as the need to find employment or sufficient income for a comfortable retirement. False documents are generated designed to impress readers. Glossy brochures with logos, crests and other signs of respectability, will engender the appearance of stability and legitimacy. Prominence may be given to forms of government certification and licensing to add to the aura of legitimacy.

Fraudsters use a number of strategies to evade detection and prosecution. Destroying documents, use of “stooges”, and “keeping moving” or “jumping jurisdictions”, are all common techniques. Using false identities means it is difficult for law enforcement officials to prove that the fraud was committed by the person suspected. A relatively new strategy is to hold false investment seminars overseas to avoid regulator crackdowns in the fraudster’s home jurisdiction. Money laundering does not appear to be a major issue in relation to personal fraud. Fraudsters who make large amounts of money often do not need to hide it because the fraud is focused on the form of acquisition. In other words, they are confident of being able to hide behind the law, evade prosecution and, hence, evade confiscation. Successful fraudsters often have skilled lawyers who are able to assist them in exploiting ambiguities in the law and ensure they are either exempt from prosecution or difficult targets for prosecution.

Many other fraudsters spend money as soon as they acquire it and have few assets. Many lease vehicles and rent their homes and office premises.

6. LAW AND LEGAL CASES

In this section of the focus group discussions, participants were asked to identify strengths and weakness in the law in relation to enforcement and prevention.

OFT respondents noted a number of positive aspects of their primary legislation (see previous chapter). These were the power to obtain information on notice without requiring a warrant, powers to seek substantiation of claims, the capacity to prosecute company directors even if the company is dissolved, and the length of maximum penalties for offences. Some OFT respondents emphasised the value of naming powers and argued that negative publicity about pyramid selling schemes sometimes led to their rapid collapse. Orders to provide information were considered especially beneficial when third parties who want to co-operate may be inhibited by concerns about protecting privacy or about retribution. For example, newspapers or public servants are able to say they had “no choice” about handing over information on a target: “People want to help but they require a legal demand”. OFT respondents were also strongly supportive of infringement notices. Infringement notices apply to lower level offences and may involve fines up to \$200. They are a very useful tool and mean that court processes can be avoided. The ACCC and ASIC have similar powers to compel provision of documents and answer questions. Both are “very valuable and very useful” powers. The option of civil action was also considered valuable in providing access to justice on the “balance of probabilities” standard of proof. ASIC respondents considered corporations law was particularly good on directors’ responsibilities, but “insolvency trading law has too many defences”. The QPS Major Fraud Squad representative similarly believed “our legislation for fraud in Queensland is very good”.

All respondents agreed that “fraud is difficult to prosecute”. It is complex, resource intensive, and requires a large amount of documentation. The Wattle case, for example, involved 150 cartons of documents. Respondents were generally happy with current legal definitions of fraud, but the standard of proof for intent in fraud was

considered too high. Jurors' comprehension is also a challenge. Prosecutors wanted business people as jurors, but business people easily obtain exemption from jury duty. OFT respondents felt there were sometimes problems with how judges and magistrates interpreted the law in terms of under-valuing the impact of fraud on victims and the criminality of fraudster actions. There was also a feeling amongst respondents that too many judges took a tolerant view of some fraudster activities, evincing a caveat emptor (buyer beware) view of the market place. The courts also often failed to appreciate the urgency of freezing assets before they are disposed of (e.g., by shifting cash offshore).

"Jurisdiction" was considered a major problem, with fraudsters often being located in a different state to where they committed offences and differences in state laws hampering prosecution. This problem was greatly exacerbated at a national level with Internet fraud. Internet fraud was likely to increase enormously in the future. One respondent asserted that "fraudsters have been slow to take up the Internet but this will change soon". Small scale Internet or telephone fraud presented particular problems, as one QPS respondent observed: "Jurisdiction is a big problem, especially with overseas e-commerce. For example, with an offender overseas and a victim in Australia and the fraud is for \$200 it's very difficult to get action".

Respondents expressed a strong need for uniform powers across agencies and across different Acts. ASIC complained that its officers did not have the power of arrest, but had to call in AFP officers. This entailed a degree of delay and double-handling. ASIC representatives considered their powers to compel answers to questions very useful, but lamented the inability to use answers in criminal cases. The ACCC is required to hand over criminal prosecutions to the DPP and respondents observed they were not always happy with this. The DPP has its own priorities and delegation of a brief can involve a dilution of expertise. OFT respondents expressed frustration with the need for warrants to obtain information under the *Auctioneers and Agents Act*.

Questions were also raised about the immunity of organisations that act as conduits for fraud, such as newspapers, telephone companies and Internet providers. For example, ACCC participants argued that "The current state of the law encourages

organisations like Telstra not to ask questions”. Such organisations need to be encouraged to take more responsibility for screening out dubious clients.

In terms of the relation between statute and case law, respondents argued that there were really no precedent setting cases in personal fraud in recent times and, in particular, that there were no significant failed criminal prosecutions or civil actions with lessons for law reform. In fact, no respondents could identify cases they had lost. ASIC stated: “Very few of our prosecutions fail. In fact, we have been accused of being risk averse”. The ACCC adopted a “model litigant policy”, but respondents acknowledged the Commission has also been criticised at times for a conservative approach to prosecutions.

7. AGENCY RESPONSES

All respondents emphasised how they were swamped by complaints and the need to respond to victims by pursuing investigations. Agencies were locked into putting almost all of their resources into reactive measures responding to victimisation “after the event”. “Fraud has traditionally been treated reactively”, stated a QPS respondent. “We are complaints driven”, conceded an ASIC respondent. This scenario applied particularly to the OFT, which attempts to investigate all complaints but has only 38 inspectors across Queensland. All agencies claimed to be heavily under-resourced and unable to pay justice to legitimate claims by victims. “Resources do not equate to volume of cases”, was the conclusion of all respondents.

Respondents also remarked on differences in their responsibilities in relation to personal fraud. Respondents agreed that many complainants first go to the local police station, but police necessarily give priority to violent crime: “If you commit an armed robbery and net \$50,000 you will get the attention of law enforcement. But if you defraud 100 victims of \$500 each, you are much more likely to get away with it”. The QPS Major Fraud Squad is charged with “complex, cross-border or organised fraud on \$500,000”; but QPS respondents were concerned that a perception had developed, including in the anti-fraud enforcement community, that this applied across the whole QPS. The respondents wished to emphasise that local police and regional detectives were charged with responding to all other fraud complaints. OFT members described

themselves as being “at the bottom of the food chain” as far as fraud was concerned. From the OFT point of view, the other agencies were able to work selectively and make more strategic decisions about priorities. ASIC and the ACCC, in particular, appear to have more freedom to focus on major cases. The ACCC noted that “fraudsters are not our main work”. Nonetheless, they receive “a lot of enquiries from people looking at schemes and wanting advice”. ASIC and the OFT have a memorandum of understanding in which “financial services deception” is accepted as primarily the province of ASIC. However, OFT appears to be the prime agency for responding to fraudster crime, particularly for scams involving a large number of relatively small victimisations.

Focus group respondents felt that “the field (of fraudster crime) is covered”, in terms of agency responsibilities and that diversity and specialisation were advantageous. The problem is essentially one of resources. All respondents felt information sharing was fairly good. It was also claimed that there was some attempted “flick passing” of cases from agencies receiving the complaints to other agencies, but that this was a minor problem.

Respondents reported adoption of a variety of strategies to respond to personal fraud. One strategy favoured by OFT to try to ameliorate the problem of volumes of complaints and costs of investigations is mediation. This is focused on attempting to persuade traders to repay complainants without the need for a trial or for restitution orders. Other agencies target the more prolific or harmful offenders, and through prosecutions and penalties send out a message to other potential offenders. The main vehicles of communication were media releases and website information about prosecutions. All agencies have introduced “project management systems” where cases are prioritised and strategies determined before investigations are conducted. Investigations cannot be conducted on a case-by-case in-turn system. Investigations are also targeted on elements of a case that are most amenable to prosecution, rather than trying to convict for every likely offence. According to ASIC, reconstructing bank records is a key strategy for building a case, especially after suspects have destroyed documents. Technology has provided some assistance. For example, electronic scanning of documents allows for rapid search in court cases.

All agencies reported efforts to develop greater proactive prevention measures. At the start of 2001, the OFT established a Proactive Compliance Unit, which works to ensure that businesses and industries comply with relevant legislation. There was also some limited periodic surveillance of advertisements to identify suspect ads for investigation. ASIC staff periodically attend suspicious investment seminars. ASIC had been running a Small Business Program which it claimed was a very effective form of preventive education. However, it was forced to drop the program following a \$5 million cut to its budget in July 2000. Additionally, ASIC has introduced a fake scams program to attract and then warn vulnerable members of the public (see preceding chapter). The QPS Major Fraud Squad is initiating joint projects (especially with banks against institutional fraud), with State Development and in community education through seminars and pamphlets, and with a new web page on scams. The ACCC has a Serious White Collar Crime Liaison Committee for maintaining links with key commercial stakeholders and anti-fraud agencies.

Respondents also expressed some frustration with their data collection procedures. QPS respondents, for example, stated that the quality of fraud data was “mixed”, and that they had been unable to keep up with changes. For example, there was no recording category for e-crime.

8. PREVENTION

All respondents were essentially pessimistic about the capacity of governments to make any major inroads into the high volume of personal fraud. There is often such a fine line between legitimate business practices and fraud that it is difficult for the law to adequately protect citizens without impeding business. In an environment of high unemployment, governments are also reluctant to add obstacles to business enterprise. There is the additional problem of victim gullibility and the prevalence of a get-rich-quick attitude that exacerbates victim susceptibility to fraud. Nonetheless, respondents did present a variety of ideas for prevention.

Business Name Registration

One area of vulnerability identified by focus group participants was registration of business names. Consumers attribute status and legitimacy to business names and

official registration. At present in Queensland the business name application process for individuals does not require presentation of identification,⁸ nor are there any background checks for criminal history or probity.⁹ Checks could be made with the national fraudster databases proposed by respondents (below).

Identification

False identities are a major means by which fraudsters avoid detection. All respondents argued that this was an area where improvements needed to be made. It was felt, for example, that the failure of the proposed Australia Card in the 1980s was a major setback to fraud prevention. Laxity in ID requirements provided a wide window of opportunity for fraudsters skilled in the use of aliases. This was described by some respondents as “a crucial issue”, especially in the case of “highly mobile door-to-door fraudsters”. These can not be arrested or stopped because proper legal process requires correct names on summonses and other documents of demand. An amendment made in 2001 to the Queensland *Auctioneers and Agents Act* to require photo ID on licences was hailed as a step forward that should be emulated for other businesses vulnerable to fraudster operations. It was also argued that it needs to be a clear offence to use a false name in business dealings and in applications for business licences. QPS respondents expressed concern over the ease with which people can change their names without reliable records available on previous names.

Franchise Contracts

Respondents argued that franchise contracts need tightening to prevent fraud. Because franchise firms are not corporations they are not covered by a code of conduct and are not required to disclose company details. Some respondents described this as a “big area” for reform.

Agency Powers

Respondents also argued for some refinement and extension of powers to more effectively combat fraudster crime through incapacitation. OFT emphasised the need to be able to put people out of business, to seize illegal material, and to incapacitate

⁸ The *Business Names Act 1968* was recently amended so that proof of identification may now be required. The amended Act will likely be enacted by the end of 2003.

fraudsters by refusing access to advertising or telephones. They also argued for the capacity to disqualify people from certain types of business for a period of time. In similar terms, the ACCC respondents supported greater capacity for emergency interventions to stop questionable practices. They argued the need to be able to apply for cease-and-desist orders, with some reversal of the onus of proof (and inclusion of the right of subjects to appeal). The OFT also wanted to be able to seize mail without a warrant.¹⁰

ASIC argued that the exclusion of compulsorily acquired statements from criminal courts accorded too much protection to the accused. ASIC were also of the view that they needed to be able to obtain information from Internet service providers and to stop Internet service providers supplying websites to fraudsters. ASIC also argued for independent powers of arrest as an efficiency measure. ASIC would also “like to be able to bring suspects back from overseas. We can’t at present”.

Community Education

Given the problem of victim gullibility there is an increasing emphasis being placed on community education. Respondents considered there was considerable scope for expansion in this area, particularly by targeting pensioner groups. A closely related area is that of education in schools. This could be along the lines of “protective behaviours” education against sexual abuse. Junior and senior level students could be taught the risks they faced from fraudsters in ad hoc classes by “police in schools” or by other agencies. However, the ideal would be to build this kind of awareness into the curriculum so it is universal and assessable.

A National Fraudster Database

All respondents felt strongly that there was an urgent need for a national fraudster database. The Australian Bureau of Criminal Intelligence in Canberra has a “Fraud Desk” and a “National Fraud Database”. Access is largely limited to police, and it was felt that a system was needed that engaged all consumer protection agencies and that had a more developed database on individual fraudsters. It would need to contain

⁹ We note that this sentiment was expressed by individuals working within participating agencies and does not reflect the policy position of these agencies.

information such as names and known aliases of fraudsters, criminal histories, associates, and modus operandi. It would also be essential to include complaint histories in this database as part of a process of making greater use of complaints as intelligence. This would allow for tracking of fraudsters between jurisdictions, and for more efficient and systematic information sharing between agencies. OFT, for example, noted they had obtained useful information from the QPS in some cases, but that this was only discovered by chance.

In terms of fraudster's exploitation of anonymity in a complex society, a central question put forward by participants was "How can we flag these people?" One means of achieving this would be through business licence and business name applications that include a check on a fraudster database. The database could also be linked to a public information access system. The public could use this system, via Internet and telephone, to check the bona fides of businesses and licence holders. At present it is difficult for consumers to do a proper search on any business or persons who have approached them.

A very positive step in the direction of developing a national consumer fraud database is the OFT initiative AUZSHARE. Working with other Australian and New Zealand fair trading agencies, OFT has begun development of a national consumer fraud alert system (AUZSHARE), which will be operational in 2002-2003.

Trust Fund Controls

Trust fund abuse was considered a particularly difficult area to control, given that respondents felt there were already controls in place which were probably optimal from a resource limitation perspective. It was also felt that trust account abuse was taken seriously by the courts. At present there is a system of financial auditing by independent auditors including spot visits. The window of opportunity for embezzlement lay in the time between audits, but it was obviously impossible to close this off completely.

¹⁰ Again, we emphasise that these views were those of the individuals who participated in this research and to not reflect the policy positions of the participating agencies.

Reparation

Respondents argued that there was greater scope for compensation to victims. Although, strictly speaking, this is not prevention, it is a crucial part of the continuum of justice responses. Restitution, including part restitution, can help considerably to ease both the psychological and financial damage of fraud. Respondents cautioned that many fraudsters had no assets or cash that could be accessed. However, there were sufficient cases where assets and cash were being held to justify consideration of expanding methods of compensation.

In general, respondents agreed that confiscation of assets was “too convoluted” and restricted. For example, the Queensland *Crimes (Confiscation) Act* is limited to serious and indictable offences. Consequently, it is particularly limited in terms of applicability to OFT cases. It was argued that the Act should include non-indictable cases. There is a claims fund under the Queensland *Property Agents and Motor Dealers Act 2000*, but this only covers businesses regulated by that Act (auctioneers and real estate agents, and motor vehicle dealers). Travel agents are covered under a separate act – *Travel Agents Act 1988* – which also provides access to compensation funds. Under the *Fair Trading Act*, victims have to go to court to obtain compensation and there is no jail penalty for non-payment. Although bailiffs can be engaged, respondents felt that the threat of jail would assist with payment. This applied also to judgements of the Small Claims Tribunal.

Concerns were also expressed about time delays in obtaining court injunctions to freeze or seize assets. Additionally, respondents considered there was an excessive onus of proof on the prosecuting agency regarding the likelihood that assets were proceeds of crime or that they were at risk of dissipation. For example, ACCC respondents argued strongly for the need a “fast tracking system for cases at high risk of dissipation with greater recognition of agency expertise and risk assessment procedures”.

It was also felt that fraudsters’ obligations to repay victims could be held over. Those who obtained future earnings or superannuation could have their income garnished to repay victims. All respondents were strongly supportive of this. Even if the amounts repaid to victims were minor, a symbolic justice function would also be served. Thus,

fraudsters could “carry a debt” until they were able to make repayments. This obligation could be part of the information held on the national database. (A warning was sounded that this approach could be counterproductive in stimulating greater subterfuge or additional fraud.)

Qualifications of Company Directors

There was some discussion, especially with the ASIC focus group, concerning qualifications of company directors. It was felt that it was far too easy for a person to become a director, with no training required in law, ethics or financial management. However, it was also felt that the present value placed on free enterprise and personal freedom in Australia meant that it was unlikely that much could be done in this area. Most respondents felt that the prevailing philosophy was that “we need to avoid putting up obstacles to business”.

Offshore Havens

It was strongly felt that too many fraudsters were able to relocate or hide proceeds of crime in offshore havens. A much greater effort was required by Australia and the international community to shut down these havens through trade embargoes and other pressures.

Judicial Training

Some respondents felt there was a need for enhanced training of judges and magistrates in the effects of personal fraud and the challenges faced by agencies trying to deal with the problem. Such training might make judicial officers more sympathetic to the need for haste in freezing assets, and for the need for a more inquisitorial approach that is less restrained by traditional criminal standards of evidence and the right to silence. Judicial education might also facilitate the need for law reform in these areas.

Third Party Responsibility

Respondents were critical of media “that take money from the victims and a share of the profits but takes no responsibility”. Consequently, it was felt that media outlets should have a legal responsibility to report suspicious advertising or applications for

services. Agencies also wanted the power to demand information on clients without the need to obtain warrants (see “Agency powers” above).

Proactive Surveillance and Agency Resources

All respondents emphasised the need for more proactive measures to prevent victimisation, reduce complaints and reduce the need for expensive judicial procedures to prosecute offenders and obtain compensation. However, respondents emphasised they were hamstrung by resource limitations and the need to respond to complainants’ rights to have their matters investigated. Nonetheless, a number of embryonic measures were evident (apart from community education initiatives) with potential for expansion, especially under improved funding arrangements. One of these measures is regular surveillance or “sweeps” of likely contact points between fraudsters and victims. These include print media advertising and the Internet. Suspicious advertisements can be investigated by traditional open measures or covertly tested using undercover respondents. Principals and employees of suspect schemes could be checked on the national database (above). Surveillance of this type allows for early identification and closure of fraudster activities before sufficient damage is done for information to come to the notice of authorities from complainants. All respondents argued that there was probably a point where increasing resources would not yield a justifiable return in compliance, even with diverse proactive measures following from enhanced resourcing. However, all respondents were of the view that that point was some distance away and that additional resources were needed for optimal enforcement.

CHAPTER 4

MEDIA REPORTS

In the preceding chapters we have presented data from a range of sources on the nature of fraudster crime. These sources included the contemporary empirical literature on fraud (Chapter 1), agency reports containing case flow data (Chapter 2) and narrative descriptions of the agency experience with fraudster crime (Chapter 3). In this chapter we shift the focus on what is known about fraudster crime by agency practitioners to what members of the community think they know about this phenomenon. Members of the community rely primarily on the print and television media for information about fraudster crime and crime in general. Therefore, how this information is presented and conveyed has a direct impact on community perceptions of "the crime problem".

In reviewing various media reports on fraudster crime, we offer an interpretation of the texts, rather than simple summaries and discussions. We juxtapose reports of frauds and scams with reports of "street crime" to highlight the ways in which media organizations are oriented towards these offences. We focus on the form of text and the use of vernacular in depicting crime in Queensland. Our aim is to examine the ways various types of offences are treated in the print media and show how such treatments bear on community views.

DEPARTURES FROM REALITY

We know from surveys of the Australian population that fear of crime is high (Mukherjee 1997; van Dijk and Mayhew 1992). A substantial proportion of the Australian population report feeling vulnerable when walking alone in their own neighbourhoods after dark or report feeling at risk of violent crime. When one examines official data on the current status of "the crime wave", one learns that many of the fears harboured among community members are unfounded. Official data released by the Australian Bureau of Statistics, for example, shows that from 1998 some forms of violent crime have declined or remained stable. The rate for armed robbery has decreased 15% since 1998, and the rate for "other robbery" has dropped

by 4% since 1998 (ABS 2002). Furthermore, when we include data gathered from victims of crime, we learn that some trends are actually reversed. Australian Bureau of Statistics figures show a steady rise in sexual assault offence. However, data from victimisation surveys shows that sexual assault victimisations have declined slightly between 1993 and 1998 (the two most recent waves of victim surveys for Australia) (ABS 1994, 1999).

While data collected by official agencies and from victims can help to debunk many myths about serious crimes like homicide and serious violent assault, far less is known about the prevalence of crimes like fraud. This is because “fraud” is an elusive concept. There remains debate over which types of behaviours constitute fraud and how these behaviours are to be counted and classified. Furthermore, even in the absence of uncertainty surrounding the nature of fraudulent conduct, such behaviour is notoriously difficult to detect and police. Braithwaite and Grabosky (1986), for example, distinguish various fraudulent activities from “street crime” to show how such behaviour may evade detection and sanction. In relation to “white-collar crime” (a variant of fraudster crime – see Chapter 1 on definitional issues), they characterise fraud in the following ways. Fraud offences are: low in visibility; oftentimes complex; culpability is ambiguous; victimisation is difficult to discern; ambiguous laws render the criminal status of certain behaviours unclear; offences are difficult to detect and prosecute.

MEDIA DEPICTIONS OF “THE CRIME PROBLEM”

With far less official data available on fraudulent crimes, it is likely that the community’s general knowledge about this type of offence is informed more by popular media accounts than any empirical data. Therefore, how various media treat such offences is important in determining the ways that Australians, and Queenslanders in particular, view this form of crime. Furthermore, with far less known about fraud from official sources such as the Australian Bureau of Statistics, it is likely that media presentations of fraud offences are closer to “the truth” about the nature of this offence and the character of such offenders.

Below we summarise the ways in which fraudster offences and offenders have been characterised in the media. We surveyed the Courier-Mail (Queensland's main newspaper) over a period of 12 months (1/1/01 to 31/12/01) and discovered that fraudster crimes involving various scams featured rather prominently in various reports. For example, during 2001 the Courier-Mail published 121 stories relating to one or another form of fraud, where the words "scam" or "fraud" featured in the headline. Offences varied substantially, ranging from simple scams to complex property marketeering schemes. For the same period, 109 stories relating to other forms of "street crime" were published, where the word "crime" featured in the headline. These stories dealt with offences such as break and enter, theft, and crimes of violence such as rape and serious assault.

Street crime

It is interesting to compare media treatments of street crime and fraud. Scanning the headlines of crimes dealing with property and violent crime shows that the text oftentimes describes offence and offender details in broad and general terms. Offences are characterised as markedly rising by using words and phrases such as "soaring", "crime wave", "epidemic", and "spiralling crime rate". Offenders are described as "brazen" and "ruthless". Some of the headlines appearing in the Courier-Mail during calendar year 2001 are illustrative of this trend: "Noosa's reputation hit by wave of violent crime - Trouble in paradise", "Crime up as heroin drought takes hold", "Crime wave hits home", "Teenage crime wave", "Teen gang on crime rampage", "Crime at the door". These headlines and the associated stories portray Queensland as a state besieged by violent and property crime. Crime rates are "soaring" out of control and police are "...fighting a losing battle as they struggle to keep up with the growing..." crime rates (CM 12 August 2001, p.92).

Media representations of violent crime and property crime are largely driven by the need to create a sense of drama and suspense – ie., to entertain a readership. Stories are constructed to lure readers, to hold their attention and to give them something to enjoy. Banal crime statistics are presented accurately, but interpretations are skewed to heighten the drama and facilitate readability. As Ezzat Fattah suggests, "...reporting and sensationalizing crime seem to be sure ways of increasing

circulation, regaining audiences, improving sagging popularity, and securing a higher ranking on the Nielsen ratings" (Fattah 1997: 13).

Police are fighting a losing battle as they struggle to keep up with the growing toll of home break-ins in Queensland. More than 45,000 houses are burgled each year and police are able to solve only about 11 per cent of them. Add to that 30,000 shops and business that are broken into and we have a fairly depressing picture that makes a mockery of the saying "safe as houses". With about 120 houses burgled every day, the odds are shortening that yours could be next. (CM 12 August 2001, p. 92)

Police have condemned bail procedures after a teenage gang crime wave which swept across an area from Brisbane to the Gold Coast. The gang had committed crimes including assault, unlawful use of motor vehicles, rape, bag snatches, burglary and ram raids, many while on bail, police sources said. The gang is made up of 40 members aged between 12 and 21 years with 10 teenage boys at its head. (CM 22 October 2001, p. 1)

Violent crime is invading Queensland homes. New police figures show the number of murders, attempted murders and manslaughters (a total of 102) in "residential dwellings" jumped 36 per cent in the past year. The number of rapes and attempted rapes at home has risen almost 30 per cent to 785. Assault and other sexual offences inside homes also increased. (CM 18 November 2001, p. 23)

Poor surveillance of King George Square has been blamed for surging crime in the popular Brisbane city hangout. Police statistics obtained by The Courier-Mail show crime in the square has more than doubled in the past two years. In 1998-99, 76 offences were detected, compared with 167 last financial year, including 13 assaults, 14 robberies, 34 cases of stealing and 20 public order offences. Liberal Party councillors demanded more security cameras in the square, saying it had been neglected at the expense of surveillance in Queen Street Mall. (CM 20 November 2001, p. 5)

Noosa's reputation as a luxury haven for holidaymakers is at risk of being tarnished by vicious crime. Business leaders will meet this week to discuss whether security measures need to be put in place at Noosa National Park after the abduction and rape of a Japanese tourist last week. It was the latest in a number of violent attacks over the past three years. (CM 30 December 2001, p. 11)

These excerpts from various stories published during 2001 are dramatic and seductive. They tell a story about crime that is alarming and sensational. Media treatments of crime remain dramatic because readers like it that way (Sacco and Kennedy 1994). The public demand such programming and news reporting, as it forms a sort of "ritual moral exercise" (Katz 1987), and the supply currently reflects this trend. In a book titled *Crime Talk: How Citizens Construct a Social Problem*, the author demonstrates the reciprocal relationship between crime news and crime views (Sasson 1995). He shows how the reporting of various forms of crime heightens public concerns over the "growing crime problem" and how demand for crime news remains high. In a similar book, *Creating Fear: News and the Construction of Crisis*,

David Altheide (2001) argues that the news media's use of the word "fear" produces a "discourse of fear", which is defined as a sense that one is at risk of victimisation.

These stories describe crime as a phenomenon that is growing, as something that concerns us all, and as something from which we must be protected. Less is said about individual perpetrators, however. Many of the narratives describe crime in general terms rather than illustrating specific cases. They portray "crime" as a social concern, ill, or problem. They highlight a community's fear and dread of impending doom and disorder. These words describe a society that is recoiling from imminent harm, and despairing about the coming crisis. They describe a society that seeks defence against the enemy in its midst.

Fraudster crime

When we turn our attention to fraudster crime, the portrayal of offences, offenders and community is markedly different. Descriptions move from the general to the specific, and narratives serve to uncover complicity and induce shame among those accused. Stories do not confront readers with a sense of despair and want. Rather, they depict fraudster crimes as "crimes of greed" and the offenders as morally repugnant. Offenders are "dirty rotten scoundrels", "cons", "unscrupulous", and "grubby". They are callous financial predators.

The narratives describing fraud offences seem to engender less fear among the community than they do rage and anger about the crime. The narratives seem less dramatic and more sympathetic. They detail the financial crimes and the impact on the victims and they portray offenders as greedy and seedy conmen. The community does not retreat in fear, but rather demands a fight – the prosecution of fraudsters. Below are excerpts from various fraudster crimes reported in the Courier-Mail during 2001. They demonstrate the differing orientation the media has towards this offence compared to "street crime". The narratives are less dramatic, less sensational, but compelling nevertheless. They seem to strike a communal nerve that increases indignation, not fear.

The following headlines from the Courier-Mail illustrate the absence of drama in reporting fraud: “Call for more property fraud investigators”, “International share scam suspect nabbed in Brisbane”, “Share scam chase”, “Debt payment scam falls foul of ASIC”, “Scam ads target job-seekers”, “Conman accused in Fiji diet-pill scam”, “Car boot fashion scam closed”. However, the narratives associated with these and other stories convey a sense of moral outrage.

An off-duty fair trading inspector has unravelled a long-running scam where con men asked \$1500 for fake “Versace leather” jackets worth \$35. The “shop front” was the boot of a vehicle parked on a service station driveway near Yatala on the Gold Coast Motorway. As motorists drove in, the crooks spun a yarn about working for the famed fashion house in Italy; they were going back there but needed directions to Brisbane airport. The shysters said export laws prevented them taking the jackets out of Australia and they were prepared to part with them for the knockdown price of \$1500. They even offered to throw in a second at no cost. (CM 11 November 2001, p. 55)

An investigation by The Courier-Mail in August led to urgent new laws and the naming of Dudley Quinlivan as “King Con of Queensland” by Fair Trading Minister Merri Rose. The publicity and the new laws have largely shut down the marketeering industry in Queensland and ruined Dudley Quinlivan's business, forcing him and other operators to move interstate. The quest by Mr Sweeney to recoup funds from the Quinlivans followed extravagant spending that made earlier headlines. In his formal report this week, Mr Sweeney said: “In mid 1999, following his discharge from bankruptcy, Dudley Quinlivan received publicity in The Courier-Mail regarding the acquisition of property. “The reporter subsequently contacted me inquiring as to how a person, who was bankrupt only a matter of a couple of years ago, could now be a ‘millionaire’. At about the same time I was provided with certain information regarding Dudley Quinlivan's business activities. “It was not until the federal police executed a series of search warrants against Dudley Quinlivan and other related parties in late June, 2001, that I was able to bring my own inquiries to a head.” He said yesterday: “My investigations into the bankrupts' affairs are now concluded.” (CM 17 November 2001, p. 1)

Australian conman Peter Foster has been accused of involvement in another diet pills swindle, this time in Fiji. And a New Zealand businessman has demanded Foster refund more than \$250,000 he invested in the scheme. Mr Foster's lawyer, Sean Cousins, told Channel Nine his client was not involved in selling Trim-It diet pills, and had merely acted as a negotiator for Trim-Its parent company -- the Chaste Corporation -- in selling the New Zealand distribution rights for the product. But businessman Andy Lowe has said Trim-It is a pyramid scheme, and demanded Mr Foster refund more than \$250,000 Mr Lowe paid for the New Zealand rights. Mr Foster, previously jailed in England for his role in a fraudulent weight-loss scheme, has been living in a Fijian resort with his mother and sister for more than a year. (CM 23 November 2001, p. 3)

As flights bringing unwitting dupes touch down on the Gold Coast and in Brisbane today, a well-greased machine driving Queensland's most lucrative and best-organised fraud smoothly moves up a gear. The targets, almost always husband-and-wife couples, are arriving from across Australia. And the most crucial stage of a rip-off campaign that began with a telemarketer's unsolicited call -- leading to a friendly seminar in their home-town and a personal presentation on negatively geared investment properties -- is under way. By Sunday afternoon, with deals done after some ruthlessly effective and deceptive marketing, the machine is throttling back. The flights depart. And 75 in every 100 couples -- not wealthy, but gullible working-

class folk enmeshed in the machine that moved too quickly for them to get off until it was too late -- return to modest homes in which they typically have less than \$100,000 in equity. In their luggage will be the sales contract for an investment property, perhaps seemingly cheap at \$140,000 and marketed with the promise it will secure their family's financial future. They do not yet know the property was overvalued by about 40 per cent, or that they have been systematically conned. (CM 11 August 2001, p. 30)

These narratives depict fraudsters as conniving, deceptive, and unscrupulous. They portray fraudsters as callous and craven. Some of these stories detail how innocent victims have been preyed upon by greedy conmen. When comparing the narratives describing street crime and fraudster crime, we see that street crime is feared but understood. The community has little tolerance for the young offender who breaks into a dwelling to steal something or the drug addict who violently assaults another to take money by force. However, the community understands there are severe limitations on the human experience for a substantial proportion of the population (eg., poverty, poor education, parental neglect and abuse, drug addiction). The number of persons aged 15-19 employed full-time has declined between 1992 and 2002 (Australian Bureau of Statistics website). There are fewer formal social controls in place for some people in our society, and that inextricable pressure (financial or otherwise) may force some members of our community to do things they know are wrong.

The types of offences falling under the category of “street crime” are utilitarian in the main. People steal other people’s possessions out of want. The impoverished youth takes (steals) what he is unable to legally obtain. Robert Merton first articulated this explanation for utilitarian crimes in the late 1940s. He argued that cultural goals are more evenly distributed across all social strata – ie., members of the upper- and lower-classes desire the same or similar material possessions. However, legitimate access to these cultural goals is not available to everyone. There are substantial limits on legitimate access to cultural goals for members of lower social classes. This produces “strain” for these people, some of whom “adapt” by “innovating” or committing criminal acts to obtain their cultural goals (Merton 1949).

If we extend this explanation to fraudster crime, we find it more difficult to account for why some ostensibly wealthy members of our community prey on others for

financial gain. How is it that the “King Con of Queensland” is not able to legitimately access cultural goals, and so must trick and deceive others to increase his fortune? Why does the conman selling leather jackets from the boot of his car need to reap a 4,185% profit? Will the more common and more modest profit margin of 100% to 150% not help him reach his financial goals? The motives behind the financial crimes of fraudsters are avarice, abundance and adeptness. Fraudsters need to amass large amounts of material wealth through their ingenious schemes, outsmarting victims and law enforcement agencies. Their crimes are oftentimes complex and are executed with a degree of arrogance. The flamboyant posture of many fraudsters (for example, the Gold Coast marketerring giant Quinlivan) strikes a moral nerve with the community, and this resonates in the narrative descriptions of these offenders. Fraudsters are ... “unscrupulous”, “grubby”, “dirty rotten scoundrels”.

LEVELS OF HARM

Another way to view the ways in which “street crime” and fraudster crime are depicted in media narratives is by focusing on how harms are represented. For property and violent crimes like break and enter and assault, media reports rely heavily on official police data. They describe aggregate trends in offending and victimisation. For example, a recent report in the Courier-Mail reported that between 1995 and 2000, armed robbery in Australia had increased by 70% and sexual assault had increased by about 13% (CM 26 January 2002, p.1). Data used for the report came from the Australian Bureau of Statistics publication titled *The Year Book of Australia 2001*. These data show that rates per 100,000 population of indictable offences have risen or remained stable during this period. These figures are based on the number of arrests for various crimes. In other words, these data centre on offenders.

Police data do not include information about fraudster crimes, so it is difficult to know how pervasive this crime is throughout Australia. In the absence of official data, media reports of late have centred on the victims to convey the level of harm caused by fraudsters. The Courier-Mail conducted an extensive investigation into the

marketeering scam on the Gold Coast. Many of the reports included stories relating how victims had been financially affected.

They had worked hard all their life and when it came to retirement they looked to the interest on their superannuation lump sum to provide them with a living. They could proudly declare they were self-funded and not a burden on the community. That was until they were lured into suspect mortgage investment schemes – many based on overvalued properties – operated by solicitors and finance brokers....about 30,000 retirees are affected, up to 10,000 of them in Queensland. (CM 23 September 2001 p. 84).

They looked like the jolly, slightly rotund ladies you see at every horse show....Instead, they are a pair of conniving Australians who used to run a whiplash whorehouse and who have been swanning around England, meeting the Queen, promising vast sums to jockeys, stables, charities and passersby while conning the gullible out of an estimated \$A7 million. (CM 21 January 2001, p. 12)

A smooth-talking conman has defrauded Queenslanders of goods worth more than \$500,000.... 'He takes their property and leaves them with a worthless cheque'. (CM 13 May 2001, p. 43)

Retiree and consumer groups have warned that the public is a risk because governments and regulators have failed to crack down on a series of property scams which already have cost small investors millions of dollars.... Calls for greater protection follow revelations of a mortgage broking scandal in Western Australia which is believed to have resulted in more than 7000 investors losing about \$250 million. (CM 15 January 2001, p. 6)

These narratives efficiently convey the level of harm in financial terms aggregated across victims rather than offenders. An interesting characteristic of fraudster crimes is the level of harm a single offender can cause. Compared to the break and enter offence committed by a young person, the systematic scamming of thousands of unsuspecting or gullible citizens is far more lucrative for offenders and financially damaging to victims. The following excerpt from a Courier-Mail report illustrates the point and conveys a sense of disgust and moral indignation.

THE marketing gurus for Australia's banks have become adept at banging on about customers' charters and social responsibilities. These hollow devices are the olive branch for us having to pay more in fees or stamp our feet at the closure of yet another local branch. But there are some outrages that even the oiliest spin-doctors should not attempt to justify. Like the complicity of banks in deceptive, misleading and unconscionable marketeering of properties to thousands of Australians every year. It starts with a friendly telephone call to your home. 'Would you like to pay less tax?' the perky sales consultant often asks.... If you replied 'yes, of course I would like to pay less tax', then hang on to your wallet. You are asking to be conned into buying a grossly overpriced investment to enrich a ring of white-collar thieves with gold neckchains, leased BMWs and crocodile smiles. Too many Australian families will never recover from the financial loss and misery. Those who can least afford to lose many tens of thousands of dollars for a dud property have been easy prey. They are ensnared in a sophisticated and unscrupulous conspiracy, known in the industry as a 'food chain', involving a financial consultant, a solicitor, a runner

and a real estate agent. But of all the grubby parties, the bank is the most important. Without the funds provided by the banks, there can be no deals. (CM 26 January 2002, p. 28)

CRIME PREVENTION

A final aspect of comparison is crime prevention and how this is treated in view of combating “street crime” and fraudster crime. In various writings on the topic street crime can be addressed by focusing on the situation or the sinner. If we take a situational approach we focus our attention on the environment and what aspects are conducive to crime. We ask what is attractive about a “target” (eg., a home or car) and how can it be “hardened” (made more defensible against crime) (Felson 1998). On the other hand, if we focus our crime prevention efforts on the offender, we ask what early life experiences may have promoted unlawful behaviour with a view to addressing specific needs (alcohol and/or drug addiction, employment problems, education problems).

These crime prevention efforts flow from a basic understanding of the nature of the offence and the offender. A property crime occurs because an opportunity arises, is recognised and acted upon (eg., an unlocked car, an unoccupied home). A young person vandalises property out of boredom and lack of supervision. A drug addict assaults and robs another to support a habit. A chronically unemployed person steals food and clothes from a shop for sustenance. These events are not difficult to understand or explain. The offenders committed their acts to address a need (excitement or sustenance) rather than greed.

Turning to fraudsters crime prevention efforts seem less sympathetic. Furthermore, because the nature of their offences is complex and deceptive, efforts to prevent fraudulent behaviour are directed at the pocket.

Tough fines for rorters – Property marketeers face millions of dollars in fines under a State Government crackdown on price scams. Offenders who falsely mislead buyers into paying inflated prices for Queensland real estate will be fined \$250,000 per offence. (CM 9 September 2001, p. 2)

A man who falsely advertised and sold a dangerous adjustable towing hitch has been ordered to pay \$75,000 in compensation and fines. (CM 3 February 2002, p. 31)

However, other efforts to curb the unscrupulous behaviour of fraudulent property marketeers were reported to be less effective.

Notorious Gold Coast property marketeer Dudley Quinlivan and his son Steve are walking away from \$17 million in debts in a deal that gives creditors less than one cent in the dollar. A report this week by the Quinlivans' trustee in bankruptcy found they ``may have committed a number of breaches under the Bankruptcy Act". Federal police, who raided the homes and businesses of the Quinlivans earlier this year, have been investigating the Bankruptcy Act offences, which carry prison terms of up to three years.... Bankruptcy trustee Paul Sweeney has extracted a total of \$360,000 from Dudley and Stephen Quinlivan, but creditors will likely see just \$128,000 next week after accountancy costs, legal fees and GST are taken out. The payout amount was calculated by estimating the income of the Quinlivans during their three years of bankruptcy, which ended in late 1997. While bankrupt, they failed to declare large earnings paid to companies they controlled. The money was commissions from selling overpriced properties in an organised scam involving solicitors, real estate agents, developers and banks. But the \$360,000 payout by the Quinlivans, who reside in neighbouring \$2 million-plus mansions fronting the Nerang River in Southport, will not put a dent in their personal finances. Their businesses, operating out of Broadbeach, last year organised \$750 million in financing for thousands of property clients. Two-time bankrupt Dudley Quinlivan, told associates he made more than \$20 million profit last year.

It is unlikely that any monetary fine will deter the financial predatory behaviour of some fraudsters. Even the new legislation enacted to protect consumers from these offenders (the \$250,000 fine per offence) is unlikely to sway them from further offending. However, the tact taken by the Courier-Mail during 2001 (the extended investigation into marketeering on the Gold Coast) may be more effective – bad press and social condemnation (shame). The dogged media coverage of the property scams operating on the Gold Coast served to derail sophisticated marketeering schemes, inform victims and potential victims, and bolster community support for protective legislation. The pool of susceptible prey will have narrowed substantially, given statewide coverage of the schemes. Furthermore, because similar schemes have been uncovered in other states (for example, Western Australia – CM 15 January 2001, p. 6), it is likely that the interstate market is atrophying as well.

Bad press or negative publicity can have a greater crime prevention impact than can monetary fines. John Braithwaite and Peter Grabosky first articulated this argument in their book title *Of Manners Gentle* (1986), in which they describe the limited ability of Australian regulatory agencies to curb the criminal conduct of various Australian businesses. They suggested that bad press or public censure was akin to shame, that loss of reputation could have a far more damaging effect on company

profits than the nominal financial penalties meted out by regulatory agencies with limited powers.

Whether extended media coverage of fraudulent activity induces shame and remorse among fraudsters is an empirical question yet to be answered. And whether the community is willing to accept an ostensibly repentant fraudster back into its midst is unclear. When Braithwaite (1989) expanded on the concept of shame, he added the notion of reintegration. Communal focus and disapproval should be on an offender's behaviour, not the offender. If the community is effective in "shaming" the offender in an inclusive way (contrasted with the exclusive shame associated with arrest, conviction and detention), crime prevention is rendered more effective. Braithwaite has attempted to apply his theory (reintegrative shaming) to both street crime (eg., young offenders) and corporate offenders in the nursing home industry (Makkai and Braithwaite 1994). However, it remains unclear how effective shaming is in helping fraudsters to reform or change. This is mainly because for shaming to be effective, the community must be willing and capable of eschewing the act but not the actor.

Let us consider two scenarios. The first consists of a property crime (a break and enter) committed by a young person. In Queensland, arresting police officers have discretion in referring such matters to diversionary conference when the offender has admitted to the offence and the victim has consented to the referral. Flowing from Braithwaite's theory of reintegrative shaming, the young offender (accompanied by his/her parents) is required to meet the victim, to tell his/her story (events leading up to the crime), listen to the victim's story, and participate in a deliberation about suitable outcomes (the "agreement" – usually community work or work for the victim or monetary compensation to the victim). The goal is not to stigmatise young offenders, but to make them aware of the impact of their crimes, to encourage them to accept responsibility for their actions, to afford them an opportunity to make up for the offence – ie., to offer a sincere apology.

Can we imagine a similar diversionary practice for property marketeers who defraud thousands of people of their financial security? Is it likely that victims would consent to a "conference" with an individual who duped them into investing their nest egg into overpriced real estate? Should we expect victims to forgive these offenders and

accept them back into their community? Viewed from the vociferous tone of some of the media reports on marketeering on the Gold Coast, we might expect that a conference is a less viable diversionary approach. Nevertheless, the bad press is perhaps vicariously cathartic for many victims of such crimes – it perhaps has served in giving them a voice in shouting “*You dirty rotten scoundrel!*”

CONCLUSION

There are marked differences in the ways that media reports treat “street crime” and fraudster crime. The narratives depicting street crime induce fear in the community; and those depicting fraudster crime induce indignation. Some have suggested that media presentations of “the crime problem” skew reality and misinform the public; that journalists are rarely interested in telling a story accurately but rather telling it dramatically (Daly 1995). Many of the stories relating street crime are vastly different from the types of crimes commonly reported to police and experienced by victims. News accounts of violent crime portray it as rising, which gives the community the impression that violent crimes make up the bulk of all offences reported to police. These depictions may lead to fear of crime, but the relationship between media representations of crime and community impressions is still unclear (Fattah 1997).

Media accounts of street crime may entice and entertain, but accounts of fraudster crimes may work to inform. It seems there is little value to be gained for journalists to embellish and sensationalise stories about crimes that are inherently sensational - eg., the deceptive theft of millions from retirees in a property marketeering scam; the clever systematic duping of thousands of Queenslanders in e-mail scams. However, coverage of these offences may work to derail fraudsters' efforts by depleting the pool of viable victims. An informed community is less likely to fall prey to various scams covered in the media.

Our review of the Courier-Mail during 2001 illustrates a marked degree of attention to fraudster crime and related white-collar offences. The impressions gleaned from various stories appearing in the Courier-Mail are that fraudster crime is pervasive and affects many thousands of Queenslanders and other Australians. This view is consistent with the impressions emerging from our discussions with practitioners

across various agencies charged with responding to fraudster crime - it is a growing problem.

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CHAPTER 5

DISCUSSION AND RECOMMENDATIONS

This chapter briefly reviews the findings of the previous four chapters and then draws out the implications of these findings for prevention initiatives in fraudster crime. A number of ideas are presented which could contribute to reductions in the volume of fraud, and also contribute to improved prosecution of offenders and compensation to victims. Government crime prevention coordinating agencies – such as National Crime Prevention and Crime Prevention Queensland – have a potentially vital role to play in facilitating these initiatives and monitoring their implementation.

DISCUSSION

The preceding chapters reported on various dimensions of fraudster crime using a literature review, analysis of anti-fraud agency reports, interviews with law enforcement practitioners, and analysis of media reports. A major finding of these combined sources is that personal fraud is an enormous and growing problem in Australian society. The main evidence for this is the tens of thousands of complaints made to law enforcement agencies each year. There is also the fact that under-reporting means the number of victims of fraud is predictably much higher than is shown by complaints figures (Goodman-Delahunty 2001).

A second major finding is that public sector law enforcement agencies are swamped by this deluge of complaints and are unable to provide an adequate response. They are not able to properly investigate complaints. They are not able to order proper restitution to victims where fraud is identified. They cannot devote sufficient resources to the development of prevention strategies. The gap is growing between demand for help from victims and supply of assistance by government agencies. Increases in agency workloads have not been matched by increases in funds and staff.

A third major finding concerns the neglect of minor complaints. Agencies need to prioritise investigations and cannot investigate all complaints, even where there is a

strong chance of identifying an offender. Consequently, thousands of frauds involving only a few thousand dollars each cannot be treated. However, this may cause significant hardship to many victims on limited incomes.

Another major finding of this research is that fraudster crime prevention is difficult. The practitioners interviewed for the project were pessimistic about the capacity of governments to make any major inroads into the high volume of personal fraud. The fine line between legitimate business practices and fraud makes it difficult for the law to adequately protect citizens without impeding business. In an environment of high unemployment, governments are reluctant to add obstacles to business enterprise. There is the additional problem of victim gullibility and the prevalence of a get-rich-quick attitude that exacerbates victim susceptibility to fraud. Fraudsters can evade detection by moving to new locations and changing identities. Nonetheless, respondents did present a variety of ideas for prevention. Given the size of the fraud problem in Australia, there is an imperative that these ideas be trialed and, if successful, be maintained.

The following section lists ideas for prevention. These are recommended by the researchers for consideration by relevant government departments. They represent a synthesis of ideas derived from all of the sources used in the research project. It should be noted that they do not necessarily consistently represent the views of the respondents in the focus groups – neither of specific individuals, groups nor the agencies they work for. The recommendations are loosely grouped under seven headings:

1. Agency Resources,
2. Agency Powers,
3. Contracts,
4. Compensation,
5. Specific Proactive Strategies,
6. Research and Strategic Development, and
7. Miscellaneous Issues.

Although the primary concern for regulatory agencies should be to prevent the occurrence of fraud, agencies also have a responsibility to provide the most just and efficient response once fraud has been committed. Consequently, this report also makes recommendations that relate to both the prosecution of offenders and restitution to victims. These issues can be conceptualised in terms of the following model of a hierarchy of outcomes.

Model 1: A Hierarchy of Outcomes for Fraudster Crime

1. Eradication
2. Reduction - in losses to victims - in offending behaviour
3. Compensation - to victims - to society
4. Retribution

Eradication is the goal to aspire to but is clearly unlikely to be achieved given the inability of state agencies to fully control the many factors that facilitate fraudster crime. Nonetheless, incremental reductions in offending, both in the number of offences and in the damage to victims, are more likely to be achieved through diverse strategies. The goal of reducing the severity of losses overlaps with the goal of compensation because repayment of money is one way to reduce losses even though an offence has been committed. More general restitution can be achieved through community service orders when offenders have no assets or prospects of developing assets for monetary restitution to victims. Finally, anti-fraud agencies also have a mission to bring offenders to justice as expeditiously as possible.

It should be noted that in the period since this research project began, in early-2001, there were significant changes in fraud prevention in Queensland, some of which pre-empted recommendations being considered for this report. Although the report is Queensland focused, the implications have universal application in many cases. Consequently, the recommendations are placed in a universal format, with specific reference to recent initiatives, both in Queensland and nationally, wherever possible.

RECOMMENDATIONS¹¹

1. Agency Resources

Australian governments are not adequately protecting citizens from fraudster crime. A major dimension of this problem is the under-resourcing of law enforcement agencies. There is an obvious implication here regarding the need for increased funding. This, in turn, provokes the argument that such measures require greater taxation. Nonetheless, a commitment to greater justice for ordinary citizens would mark a courageous policy shift by governments, especially the federal government, where it entailed a shift in income and expenditure away from private accumulation of wealth towards provision of public services such as protection from fraud. All respondents argued that there was probably a point where increasing resources would not yield a justifiable return in compliance, especially if resources were put entirely into investigations. Nonetheless, all respondents in the focus groups were of the view that this point was some distance away and that additional resources were needed for optimal enforcement and, especially, for the enlargement of prevention initiatives.

With a view to improving agency resources, consideration could be given to relating business registration fees more closely to the costs of regulating business. For example, ASIC collected over \$300m in company fees and passed it to general revenue (Chapter 2). There is an argument that government imposed fees for operations of businesses or professions should not be treated as a general tax but only

¹¹ Readers should bear in mind that the following section on recommendations is based on information provided by individuals working within participating agencies (eg., QPS, ASIC, OFT and ACCC). As

cover the true costs of regulation. In light of that, the money should go into agency budgets to be spent on compliance and achievement of a level playing field for legitimate businesses. Regulatory agencies could then be more effectively self-funded and seek government approval for charging fees consistent with an optimal level of compliance.

2. Agency Powers

As noted in the findings sections of this report, anti-fraud agencies are generally satisfied with their legal powers, and there has been a clear trend for governments to give agencies the tools they need to do their job. Nonetheless, respondents also argued persuasively for some refinement and extension of powers to more effectively combat fraudster crime – largely through incapacitating offenders. OFT emphasised the need to be able to put people out of business, to seize illegal material, and to incapacitate fraudsters by refusing access to advertising or telephones. They argued specifically for the capacity to disqualify people from certain types of business for a period of time. (Under the *Fair Trading Act* Part 5 the court has this power.) In similar terms, the ACCC respondents supported greater capacity for emergency interventions to stop questionable practices. They argued the need to be able to issue cease-and-desist orders without applying to a court for an injunction (cf. s.80ff *Trade Practices Act*). This summary power would allow for a more speedy and efficient process, and would enhance the professional autonomy of consumer protection agencies (recipients of such notices would of course have the right of appeal). The OFT also wanted to be able to seize mail without a warrant.

ASIC respondents argued that the exclusion of compulsorily acquired statements from criminal courts accorded too much protection to the accused. ASIC were also of the view that they needed to be able to obtain information from Internet service providers (see following paragraph), and to stop Internet service providers supplying websites to fraudsters. ASIC also argued for independent powers of arrest as an efficiency measure. ASIC would also “like to be able to bring suspects back from overseas.

such, these recommendations flow from the views expressed by these individuals and do not represent the policy positions of participating agencies.

We can't at present". The ACCC preference for prosecuting its own cases (rather than having to hand them over to the DPP) seemed a reasonable request in terms of continuity of knowledge about a case and ability to proceed without having to fit in with DPP priorities.

Third Party Responsibility

Respondents were critical of media that "that take money from the victims and a share of the profits but takes no responsibility". Consequently, it was felt that outlets for fraudster advertising should have a legal responsibility to report suspicious advertising or applications for services. At the very least it would seem reasonable to grant regulatory agencies uniform powers to require information from third party providers without recourse to obtaining a warrant.

Agency powers and legislation in relation to compensation and licensing are discussed below.

3. Contracts

Legal contract provisions have often provided loopholes that have been exploited by fraudsters. This has been evident most recently in Queensland in the investment property "marketeering" scam in which solicitors and real estate agents colluded to sell rental properties at grossly inflated prices. Amendments made in 2001 to the *Property Agents and Motor Dealers Act* look likely to put an end to this form of personal fraud. Tightened provisions include the following:

- a five day cooling off period,
- explicit advice on the official contract form encouraging clients to obtain an independent valuation and independent legal advice,
- "Hotline" telephone numbers to property advisory authorities on the contract,
- enlarged disclosure requirements, including fees to agents and relationships amongst parties,
- making directors liable for offences by their corporation,

- increasing fines up to \$250,000,
- an enforceable code of conduct for agents,
- enabling the Property Agents and Motor Vehicles Tribunal
 - to order compensation
 - to ban inappropriate people from working in real estate
 - to conduct examinations in public,
- enabling the Chief Executive Officer of the Office of Fair Trading to freeze assets where there is a possibility of “asset stripping” to avoid compensation (OFT, 2001a).

This is a set of model initiatives for jurisdictions facing similar scams.

Franchise Contracts

Respondents argued that franchise contracts need tightening to prevent fraud. Because franchise firms are not corporations they are not covered by a code of conduct and are not required to disclose company details. Some respondents described this as a “big area” for reform.

4. Disclosure

As indicated above, increasing use is being made of mandatory disclosure of fees, associations and other matters that help put potential customers in more complete possession of all the facts and implications relating to the purchase or contract they are considering. The inclusion of disclosure in company advertising and on contracts is enforceable through fines for non-disclosure and possible voiding of contracts for non-disclosure. Apart from the examples cited above, another recent example in Queensland concerns efforts by OFT to halt exploitation of payday lending. In 2001 legislation was passed in Queensland to bring payday lenders under a national code of conduct. Requirements include full disclosure of all fees and costs to the borrower, and a requirement on the lender to realistically assess the applicant’s ability to make repayments (OFT 2001b).

5. Compensation

Focus group respondents argued that there was scope for expanding compensation to victims. Although, strictly speaking, this is not prevention, it is a crucial part of the continuum of justice responses. Restitution, including part-restitution, can help considerably to ease both the psychological and financial damage of fraud. Respondents cautioned that many fraudsters had no assets or cash that could be accessed. However, there were sufficient cases where assets and cash were being held to justify consideration of expanding methods of compensation.

In general, respondents agreed that confiscation of assets was “too convoluted” and restricted. For example, the *Crimes Confiscation of Profits Act* (Qld) is limited to serious and indictable offences. Consequently, it is particularly limited in terms of applicability to OFT cases. It was argued that the Act should include non-indictable cases. There is a claims fund under the Queensland *Property Agents and Motor Dealers Act 2000*, but this only covers businesses regulated by that Act (auctioneers and real estate agents, and motor vehicle dealers). Travel agents are covered under a separate act – *Travel Agents Act 1988* – which also provides access to compensation funds. Under the *Fair Trading Act*, victims have to go to court to obtain compensation and there is no jail penalty for non-payment. Although bailiffs can be engaged, respondents felt that the threat of jail would assist with payment. This applied also to judgements of the Small Claims Tribunal.

Concerns were also expressed about time delays in obtaining court injunctions to freeze or seize assets. Additionally, respondents considered there was an excessive onus of proof on the prosecuting agency regarding the likelihood that assets were proceeds of crime or that they were at risk of dissipation. For example, ACCC respondents argued strongly for the need for a “fast tracking system for cases at high risk of dissipation with greater recognition of agency expertise and risk assessment procedures”.

Given the potential importance of compensation for redress of wrongs that could not be prevented, it seems questionable that the amended Queensland *Property Agents and Motor Vehicles Act* (see “Agency Powers and Legislation” below) excludes losses to property developers.

Focus group respondents felt that fraudsters' obligations to repay victims could be held over. Convicted fraudsters who obtained future earnings or superannuation could have their income garnished to repay victims. Even if the amounts repaid to victims were minor, a symbolic justice function would also be served. Thus, fraudsters could "carry a debt" until they were able to make repayments. This obligation could be part of the information held on the national database. (However, a warning was sounded that this approach could be counterproductive in stimulating greater subterfuge or additional fraud.)

It has already been argued that agency efficiency could be improved in a number of areas by allowing them to take direct action where court procedures are now required – subject to appeals and other accountability requirements. Compensation is an area where this principle appears to have a potentially beneficial effect. There would seem to be a strong case for enhancing agencies' administrative capacity to order compensation following a conviction, rather than require victims apply to a court.

6. Specific Proactive Strategies

All focus group respondents emphasised the need for more proactive measures to prevent victimisation, reduce complaints, and reduce the need for expensive procedures to prosecute offenders and obtain compensation. However, respondents emphasised they were hamstrung by resource limitations and the need to respond to the right of complainants to have their matters investigated. Nonetheless, a number of measures were suggested. Some of these were already in place or had been used at times but needed to be expanded under improved funding arrangements.

Proactive Surveillance

One strategy with considerable potential is regular surveillance or "sweeps" of likely contact points between fraudsters and victims. These include print media advertising and the Internet. Internet sweeps can be done automatically with keywords. Suspicious advertisements can be investigated by traditional open measures or covertly tested using undercover respondents. Principals and employees of suspect schemes could be checked on the national database (below). Surveillance of this type allows for early identification and closure of fraudster activities before sufficient

damage is done for information to come to the notice of authorities from complainants (e.g., ASIC 2001).

A National Fraudster Database

All respondents felt strongly that there was an urgent need for a national fraudster database. This should be located in an already existing agency, such as the Australian Bureau of Criminal Intelligence (ABCI). It would need to contain information such as names and known aliases of fraudsters, criminal histories, associates, and modus operandi. It would also be essential to include complaints histories in this database as part of a process of making greater use of complaints as intelligence. This would allow for tracking of fraudsters between jurisdictions and for more efficient information sharing between agencies. Alerts could be sent quickly and easily by e-mail. A national database would require “all agencies on board putting in information and sharing information”. OFT, for example, noted they had obtained useful information from the QPS in some cases, but that this was only discovered by chance.

At present the ABCI (based in Canberra) operates a “National Fraud Desk”, which is available on the Australian Law Enforcement Internet (ALIEN). This is a secure website accessible by Australian police departments, Customs, Immigration, and the National Crime Authority. Fair Trading organisations do not contribute. The Fraud Desk provides trend data on fraud, with a focus on new types of scams. The ABCI also manages the Australian Criminal Intelligence Database (ACID) which holds intelligence data on specific individuals. In December 2001 a National Fraud Section was established within ACID to provide profiles on fraud offenders and suspects. The Board of Control of the ABCI derives from the Australian Police Commissioners Conference. The ABCI is in the process of expanding access to its databases – for example to the ACCC. However, confidentiality concerns are a major impediment to more open access because entry to the system allows access beyond fraudsters to other criminal activities covered by the ABCI. The Head of the National Fraud Desk has advised that the best strategy for advancing the concept of a national fraudster database would be through the establishment of a new stand-alone database. This could be located at the ABCI, with all anti-fraud agencies having access and contributing intelligence. The best way forward would be for State offices of fair trading to start the project, with other agencies joining as the database developed.

(Information supplied by Mr Jeff Pope, Manager, National Fraud Desk, ABCI, January 2002.)

In terms of fraudsters' exploitation of anonymity in a complex society, a central question posed by focus group participants was "How can we flag these people?" One means of achieving this would be through business licence and business name applications (see below) that include a check on the fraudster database. The database could also be linked to a public information access system. The public could use this system, via Internet and telephone, to check the bona fides of businesses and licence holders. At present it is difficult for consumers to do a proper search on any business or persons who have approached them.

Business Name Registration

One area of vulnerability identified by focus group participants was registration of business names. Consumers attribute status and legitimacy to business names and official registration. At present in Queensland the business name application process for individuals does not require presentation of identification, nor are there any background checks for criminal history or probity. Application forms should require inclusion of all previous names. Checks could be made with the national fraudster database (above). Some focus group respondents also suggested that sweeps of *Yellow Pages* and other advertising outlets needed to be undertaken to identify people trading without an authorised business name (see "Proactive Surveillance" above).

Identification

False identities are a major means by which fraudsters avoid detection. All respondents argued that this was an area where improvements could be made. It was felt, in particular, that the failure of the proposed Australia Card in the 1980s was a major setback to fraud prevention. Laxity in ID requirements provided a wide window of opportunity for fraudsters skilled in the use of aliases. This was described by some respondents as "a crucial issue", especially in the case of "highly mobile door-to-door fraudsters". These cannot be arrested or stopped because proper legal process requires correct names on summonses and other documents of demand. An amendment made in 2001 to the Queensland *Auctioneers and Agents Act* to require photo ID on licences was hailed as a step forward that should be emulated for other businesses vulnerable

to fraudster operations. It was also argued that it needs to be a clear offence to use a false name in business dealings and in applications for business licences. (Application forms should require inclusion of all previous names.)

Community Education

Given the problem of victim gullibility in personal fraud, an increasing emphasis is being placed on community education. There would seem to be considerable scope for expansion in this area, particularly by targeting pensioner groups and small businesses. Respondents certainly felt this is an area with considerable potential. OFT maintains an active community education initiative, and independent assessment and evaluation of these activities (eg., by the Queensland Office of Economic and Statistical Research) show them to be effective. Also, as indicated in Chapter 2, a substantial proportion of Queensland residents are aware of OFT consumer warnings.

A closely related area is that of education in schools. This could be along the lines of “protective behaviours” education against sexual abuse. Junior and senior level students could be taught the risks they faced from fraudsters in classes by “police in schools” or by other agencies. However, the ideal would be to build this kind of awareness into the curriculum so it is universal and assessable.

Licensing

Licensing is a standard strategy by which governments regulate the conduct and competency of businesses, professions and trades through entry criteria and removal of licences for misconduct. The effectiveness of licensing in protecting the public depends on the rigour of background checks and accreditation procedures, as well as rigour in investigating complaints or auditing licensees’ performance. Licensing can severely restrict the capacity of individuals to engage in business and employment and may, at times, be legitimately alleged to be anti-competitive. Nonetheless, one potentially effective way of restricting fraudsters is by extending licensing to vulnerable areas of business. Recently in Queensland the Office of Fair Trading responded to match making scams by licensing introduction agencies. Restrictions included criminal history checks and limits, a three day cooling off period for clients, a limit on up-front fees, disclosure provisions and fines up to \$40,500 for breaches

(OFT 2000). Nationally consistent licensing is essential to close off fraudster havens in jurisdictions with weak licensing (OFT 2000).

Encouraging in-house complaints management

There would appear to be scope for consumer protection agencies to encourage companies to establish their own in-house complaints handling departments, employ specialist complaint resolution officers and investigators, develop high consumer protection standards and develop a market image as ethical traders. Agencies can provide advice, training, and certification of consumer protection practices. Regulatory agencies can also facilitate industry sectors working together through associations to establish codes of practice that enjoy wide support and that level the competitive playing field by squeezing out unscrupulous operators (ACCC 1997:chp. 8). The aim of this strategy is to deflect complainants to the responsible company as the first contact point, so protection agencies only receive complaints from complainants who are dissatisfied with the way the relevant company handled their complaint. Complaints also provide valuable information about product-consumer interactions, which can feed into improved product design to further reduce complaints and increase customer satisfaction (Goodman-Delahuntly 2001). A quality complaint response system will include separate complainant satisfaction services so that the complaint response system itself can be evaluated and improved as well as the product.

7. Research and Strategic Development

It appears that anti-fraud agencies have not made optimal use of research to inform anti-fraud strategies. Nor have agencies developed performance indicators to their full potential. This was shown in the review of official reports in Chapter 2 and was supported by agency self-critiques in the focus groups reported in Chapter 3. The use of statistics varied considerably between agencies, but it appeared from available sources that categories used to report frauds did not always allow sufficient disaggregation of offences, tracking of cases, identification of trends, or diagnosis of facilitative factors. For example, QPS reportage of clearance rates did not allow for

complete tracking of cases to their conclusion nor for identification of any compensation to victims, nor for identification of re-offending patterns amongst convicted fraudsters. In fact, no agency reported recidivism data.

There was also variation between agencies in terms of performance measurement. In some cases, excessive reliance was placed on reportage of activity rather than objective assessments of outcomes. The main area of outcomes measurement was in the area of prosecutions, where agencies appear very successful with the cases selected for criminal prosecution. In addition, greater use could be made of complainant surveys to identify levels of satisfaction with law enforcement responses with a view to improving “client” satisfaction. This kind of research could mesh with preventive-diagnostic research. Greater use could also be made of evaluations of investigative rigour and the effectiveness of investigative strategies through the use of independent audits of case files.

Agencies are clearly developing in this direction, towards more “responsive” and “smart” regulation. The trend towards a more strategic, reflective, application of the “regulatory mix” is summed up in the following statement from an ASIC

Commissioner regarding future directions for the Commission:

ASIC must take a “risk-based” approach to regulation. That is, we are seeking to be a regulator who can identify risks and address industry issues before they become major problems. We do not want to be a regulator that simply cleans the mess after it has occurred. Effective risk identification and assessment is therefore a key challenge for ASIC, but we believe that this approach will deliver better regulation and higher levels of consumer and industry confidence. This approach requires good communication with industry members ... with alternative dispute resolution schemes and with consumers... Such an approach also requires an understanding that we have a range of tools in our regulatory toolkit. We will use the right tool to achieve the best outcome. This may include criminal prosecutions, civil applications and administrative banning, which are part of ASIC’s set of enforcement options, but it may also include other tools which we think may be equally effective, in the right circumstances. In particular, it seems to me that a pro-active stance to prevent misconduct or breaches of legislation, by education and consumer alerts, may sometimes be more effective and reach a wider audience more cheaply and effectively, than a conviction or civil order. At the same time, I want to make it crystal clear that we will take strong and decisive action to enforce the law when we need to (Segal 2000:5-60).

What is vital then is that agencies have a research capacity to evaluate the effectiveness of these enforcement strategies, and to forecast trends in non-compliance in order to activate targeted prevention strategies.

8. Miscellaneous Issues

Trust Fund Controls

Focus group respondents considered trust fund abuse a particularly difficult problem to control, given that they felt there were already controls in place which were probably optimal from a resource limitation perspective. It was also felt that trust account abuse was taken seriously by the courts. At present there is a system of financial auditing by independent auditors including spot visits. The window of opportunity for embezzlement lay in the time between audits, but it was obviously impossible to close this off completely.

Qualifications of Company Directors

There was some discussion, especially with the ASIC focus group, concerning qualifications of company directors. It was felt that it was far too easy for a person to become a director, with no training required in law, ethics or financial management. However, it was also felt that the present value placed on free enterprise and personal freedom in Australia meant that it was unlikely that much could be done in this area. Most respondents felt that the prevailing philosophy was that “we need to avoid putting up obstacles to business”. Nonetheless, compulsory training of company directors in fraud-related legal obligations may be an option worth pursuing.

Offshore Havens

It was strongly felt that too many fraudsters were able to relocate or hide proceeds of crime in offshore havens. A much greater effort was required by Australia and the international community to shut down these havens through trade embargoes and other pressures.

Judicial Training

Some respondents felt there was a need for enhanced training of judges and magistrates in the effects of personal fraud and the challenges faced by agencies trying to deal with the problem. Such training might make judicial officers more sympathetic to the need for haste in freezing assets, and for the need for a more inquisitorial approach that is less restrained by traditional criminal standards of

evidence and the right to silence. Judicial education might also facilitate the need for law reform in these areas.

CONCLUSION

This chapter has suggested that achieving large scale reductions in the predatory behaviour of fraudsters will be extremely difficult. Nonetheless, the research undertaken for the project has identified a variety of strategies that could be implemented and trialed with the aim of reducing victimisation and improving justice system responses to offending. Adequate resourcing of agencies would seem of necessity to be a priority area. This would allow for more extensive investigations of selected complaints, greater incapacitation of offenders and improved chances of providing compensation to victims. It would also allow agencies to devote more resources to proactive preventive strategies. Some promising strategies that could be implemented or expanded under this heading include surveillance sweeps, a national fraudster database, tougher business licensing and identification requirements, community education, and expanded licensing of occupations vulnerable to exploitation by fraudsters. Anti-fraud agencies could also devote resources to developing closer links between research and policy, and to quality assurance measures to assist in providing the best possible service to clients. There would appear to be considerable scope for government crime prevention coordinating agencies – such as National Crime Prevention and Crime Prevention Queensland – to facilitate these initiatives and monitor their implementation.

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