



No.5

Corporate crime in Australia

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Since its establishment in the early 1970s the Australian Institute of Criminology has always devoted a proportion of its limited research resources to studies of cooperate crime. This interest is in recognition of the now widely accepted fact that the total impact of corporate crime is greater in terms of cost than impact of all individual crimes together.

The prevention and detection of corporate crime are both extraordinarily difficult as much of it is hidden from public gaze, and regulatory agencies are characteristically understaffed. There is also considerable debate about the relative effectiveness of legal or informal approaches to the control of this type of criminality.

This Trends and Issues report, prepared by two of Australia's leading researchers in this field, does not aim to provide solutions to the numerous problems of cooperate crime. It does, however, raise the main issues and thus should contribute to enhancing the quality of public and political debate on this important subject. It should be interest to all who are concerned about the quality of life in Australia.

David Biles
Acting Director

Crimes committed by agents acting on their behalf, take a heavy toll on Australian society:

- Treasury's 1985 Draft White Paper estimated revenue losses of \$3 billion per year arising from tax fraud.
- The 1981 meat substitution scandal threatened an export market worth \$1 billion per year.
- Hundreds of deaths and tens of thousands of serious injuries occur in Australian workplaces each year. An unknown, but significant, proportion of these arise from violations of occupational health and safety laws.
- Illegal price fixing arrangements in the building industry in one capital city helped add an estimated \$30 million in construction costs during the late 1970s.
- The Australian Medical Association estimated in 1981 that the cost of fraud and overservicing by medical practitioners had reached \$100 million per year.
- Corporate Affairs Commissions throughout Australia are deluged with cases involving companies in liquation which are unable to pay 50 cents in the dollar to creditors. The principals of many of these companies incurred debts which they had neither the expectation nor the intention of paying.

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Not only do consumers, employees and members of the general public bear the cost of corporate crime, but honest business men and women suffer economic disadvantage at the hands of those competitors who break the law.

Corporate Crime Defined

Corporate crime falls within the domain of the white collar crime—broadly defined as crime committed within the course of one's occupation by persons of relatively high social status. But in contrast to those white collar offences, such as embezzlement or misuse of computers for fun or profit, which are committed by individuals *against* companies, corporate crime involves offences committed by companies or their agents against members of the public, the environment, creditors, investors or corporate competitors.

In many cases corporate crime can be quite deliberate—as when a pathology practice fraudulently bills the government for tests never performed, or as when a second hand motor car dealer winds back the odometer in order to deceive prospective customers.

On the other hand, much corporate crime arises from recklessness, negligence, or inattention to detail. A factory manager may not *intend* that a worker be injured, but production quotas, financial pressures, or willingness to run risk with the health and safety of others may have harmful consequences.

Dimensions of Corporate Crime

There are numerous areas of corporate conduct which may be in breach of the law. These include:

1. Companies and security offences

Crimes in this category may range from improprieties inherent in the

formation and structure of the company, to the failure to register with or report truthfully to appropriate authorities. They include irregularities in the raising of capital and failure to adhere to proper procedures governing company takeovers. Among the most common offences are those involving management practices which, through design or negligence, result in a company's going into liquidation, thereby victimising share-holders and creditors. Example: the Balanced Property Trust collapsed in December 1983. Some 5000 investors, including many pensioners lost an estimated \$50 million. Investigations were delayed for over two years and charges have recently been laid.

2. Taxation

A variety of offences under Commonwealth and State statutes pertain to the evasion of tax obligations, from the fraudulent avoidance of tax, to failure to furnish returns or information, to obstruction of tax collection authorities. Similar offences exist under Commonwealth law pertaining to customs duties payable on imported goods. Example: In the late 1970s, a businessman was the chief administrator of a large tax avoidance scheme. He became a director of more than 410 companies eventually stripped to avoid at least \$33.7 million in tax. In 1984 he was sentenced to two years imprisonment.

3. Occupational health and safety

Legislation in the State and Territories provides for penalties for unguarded machinery, inadequate fire precautions, improper use of scaffolding and related equipment and misuse of harmful substances in the work place. Example: In 1982 a South Australian factory inspector left instructions to place a guard around an unguarded conveyor belt. The employer failed to heed the inspector's instructions, and a worker had his leg caught in the unguarded conveyor. The leg was later amputated in

hospital. The company was fined \$250.

4. Environmental offences

A number of statutory provisions govern industrial emissions to air, land and water, noise pollution; waste management, and the control of other dangerous substances. Others pertain to breaches of zoning or other planning restrictions. Example: In 1983, over 10 tonnes of oil spilled into Botany Bay from an Australian Oil Refinery pipeline. It was the company's fifth oil spill in seven years. A fine of \$300 was imposed.

5. Consumer affairs

Offences in this category include deceptive advertising, the manufacture or sale of defective or hazardous products, unlawful debt recovery, consumer fraud and violation of licensing restrictions. Example: In 1984, a second hand car dealer in South Australia sold nine vehicles without a licence, and wound back the odometers of five cars to make them more attractive to prospective purchasers. On one vehicle, he reduce the odometer reading by 76 000 kilometres and realised a \$900 profit. The dealer was fined a total of \$1400.

6. Restrictive trade practices

Included in this category are various types of anti-competitive conduct including resale price maintenance, exclusive dealing, boycotts, price fixing and monopolisation. Example: In August 1984, Mobil Oil was fined \$50 000 for resale price maintenance in that Mobil middle management had induced service station proprietors not to discount petrol. In 1985, a \$20 000 penalty was imposed on BP for resale price maintenance.

7. Food standards

State statutes regulate the manufacture and sale of food for domestic consumption. Ensuring the quality of food for export is the responsibility of the Commonwealth Department of Primary Industry. Example: In 1984

the Queensland government closed down the Suimin instant Chinese food factory when the Health Minister reported that 'even the cockroaches in the factory had contracted salmonella poisoning'.

8. Prudential regulation

Certain standards are required for banks, insurance companies and other financial institutions to ensure that the funds of depositors and policy holders remain secure, and to ensure the stability of the financial system as a whole. These regulations entail liquidity requirements, periodic documentation and auditing, and restrictions on investments. Example: In 1983, Bishopsgate Insurance went into liquidation, with a total deficit of over \$18 million. Millions of dollars had been invested, and lost, in the highly speculative gold futures market. The principal of the company left Australia and has not been seen since.

9. Economic offences against employees

Included in this category are breaches of awards, non-payment of wages, and related offences covered by various industrial and wage legislation. Every year the Commonwealth Arbitration Inspectorate detects over 20 000 offences involving breaches of federal awards.

10. Discriminatory practices

In most jurisdictions it is unlawful to discriminate in employment, in the provision of goods and services, access to public places and accommodation. It is also unlawful to publish certain types of advertisements such as 'Help Wanted: Men Only'. Example: In 1978, Ansett Airlines refused to hire a pilot because she was female. Following civil proceedings before the Victoria Equal Opportunity Tribunal, and the High Court of Australia, the company was required to employ the pilot and to reimburse her for wages foregone.

Statistics On Corporate Crime

The dearth of statistics on 'street' crime in Australia has been widely lamented. As inadequate as these may be, statistics on corporate crime are worse. Despite the existence of the National Companies and Securities Scheme, there are no national statistics on corporate affairs enforcement, and at least one State corporate affairs agency, Queensland, does not even publish an annual report.

Although authorities are able to state with considerable precision the number of working days in Australia which are lost due to industrial disputes, comparable statistics on deaths and injuries in the Australian workplaces are simply not available. We have no way of knowing the number of offences against worker health and safety which are detected by the various State and Territories inspectorates; nor are there statistics which enable comparison of State prosecution and sentencing activity.

Even statistics produced by Commonwealth authorities leave much to be desired. Published reports of federal taxation and customs authorities fail to distinguish between individual and corporate crime in offenders. Even a superficial statistical portrayal of corporate crime in Australia is not available. It may well be that corporate crime causes more death, injury and financial loss than does common street crime. Accurate comparisons must await improved statistics, however.

Varieties Of Governmental Response To Corporate crime: Agencies, Strategies And Outcomes

The legacy of Australia's federal system has been a patchwork of regulatory responsibility. In some domains, notably customs revenue, and regulation of medical benefits

abuses, enforcement authority lies undisputedly with the Commonwealth Government. In others, such as occupational health and safety enforcement, regulatory responsibility resides with the States. Elsewhere on the Australian regulatory landscape, however, the division of responsibility is less clear and often more contentious. Companies and securities regulation takes place under a co-operative Commonwealth/State scheme which allows State corporate affairs authorities to enforce the law, or to overlook offences, as they see fit.

Responsibility for the regulation of food quality is highly fragmented; in some States, the central health authority has primary responsibility for food inspection. In others, most of the inspectorial and enforcement activity occurs at the level of local government. The Commonwealth Government is responsible for food imported to or exported from Australia. The vast majority of Australian business regulatory authorities do not regard themselves as law enforcers, and look to formal legal remedies only as a last resort.

Persuasion, negotiation, and the provision of technical advice are the most common strategies of Australian regulatory authorities. This is particularly characteristic of occupational health and safety agencies, environmental protection agencies, and of those agencies responsible for the regulation of banks and insurance companies. Regulation through the conciliation of disputes is the major strategy of anti-discrimination agencies and a few consumer affairs agencies.

Of those Australian business regulatory agencies which do prosecute, most do so very infrequently. Penalties available at law tend to be modest, and those actually imposed in the event of conviction fall far short of the maximum. With very few exceptions, penalties imposed on corporate offenders, or upon individuals involved in corporate offences, tend to be nominal fines. Indeed, the average

fine imposed by Australian courts for regulatory violations is about \$200. Prison sentences are imposed in only the rarest of cases, almost always involving fraudulent conduct.

Key Issues In Corporate Crime Control

Is Australia a safer place because of business regulation? There are those who would criticise existing regulatory activity as unduly restricting Australian enterprise, and imposing unreasonable costs on business. On the other hand, there are those who argue that were it not for current regulatory effort, workplaces would be even less safe, the air and water even more polluted, and consumers, creditors and investors even more vulnerable at the hands of the fraudulent. Indeed, it is very often the case that the diagnostic inspections and technical advice provided by many regulatory authorities constitute a valuable service to industry.

Perhaps the most trenchant criticisms that have been levelled against Australian regulatory agencies is that they are inefficient at best, and moribund at worst. Part of this may be explained by lack of political leadership. In the current climate of economic uncertainty, most Australian governments have been unwilling to jeopardise economic recovery by antagonising or intimidating business. Ministerial intervention to prevent prosecutions of corporate offenders from proceeding is not uncommon. The secrecy which surrounds the regulatory process in general, and prosecution in particular, effectively excludes public scrutiny, and helps perpetuate discussions of the regulatory process which are long on rhetoric and symbols, and short on substance.

The key choice in business regulatory enforcement is between punitive approaches—the use of criminal charges or civil damages in response to corporate misconduct—and those based on

education and persuasion. The sheer volume of business offending makes any consistent approach to the use of prosecution very difficult indeed. Recently the present authors were told during field work on Victorian occupational health and safety enforcement of an inspector who had detected 2000 violations of the law in one factory. To institute prosecutions for each of those offences would not only mean that the inspector would be tied up in litigation to the point where he would never see another factory for the rest of the year, but many of the remaining staff of his agency would also be required to do nothing but pursue this offender for an extended period.

While Australian police departments can afford to devote enormous resources to a single major case, this is a choice of which is simply not available to most business regulatory agencies. There are also those who believe that informal strategies ranging from education programs, to fostering industry self-regulation, to use of adverse publicity against offenders are more cost-effective than resorting to the criminal law.

In fact, the choice is not so stark as this. The challenge for research on corporate offending is to show how business regulatory resource constraints can be managed by an optimal mix of punitive and persuasive measures.

Reference

Peter Grabosky and John Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies* Melbourne: Oxford University Press, 1986



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