

# The Australian Criminal Justice System

## The Mid 1980s

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Butterworths  
Sydney—Melbourne—Brisbane—Adelaide—Perth—Canberra—Hobart  
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National Library of Australia  
Cataloguing-in-Publication entry

The Australian criminal justice system: the mid 1980s.

Includes index.  
ISBN 0 409 49149 7.

1. Criminal justice, Administration of — Australia.
2. Crime and criminals — Australia. I. Chappell, Duncan.  
II. Wilson, Paul R. (Paul Richard), 1941-

345.94

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Inquiries should be addressed to the publishers.  
Typeset in Palacio by Love Computer Typesetting  
Printed in Australia by Star Printery Pty Ltd

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# Corporate Crime and Government Response in Australia

Peter Grabosky and John Braithwaite

## The Magnitude of the Problem

Crimes committed by companies, by individuals acting in furtherance of company objectives, or by individuals in corporate clothing have attracted increasing attention in recent years. The list of scandals seem to grow relentlessly:

*Meat substitution.* In 1981, an American inspector discovered horsemeat in a consignment of boneless beef exported from Australia. Further disclosures of fraudulent misrepresentation in other export shipments and domestic product in Victorian abattoirs and boning rooms jeopardised the entire Australian meat industry.<sup>1</sup>

*Medifraud.* The extension of universal health care in Australia has created a temptation for medical practitioners to charge the government for services never rendered, or for unnecessary treatment. In 1983, the Australian Medical Association itself estimated the cost of fraud and overservicing at \$100 million per year.<sup>2</sup>

*'Bottom of the harbour' tax evasion schemes.* In the course of a Royal Commission on alleged illegal activities of a Victorian trade union, schemes

1 A Woodward, *Report of the Royal Commission into the Australian Meat Industry*, 1982, AGPS, Canberra.

2 *Medical Practice*, 'AMA Accepts Government Estimate of \$100 million', 1983 *Medical Practice*: 7, pp 12-13.

were discovered involving the purchase, sale and winding up of companies for the purpose of tax evasion. These sham transactions resulted in massive loss of revenue to the federal government, and a consequent increase in burdens borne by the average taxpayer.

*Bishopsgate.* In 1983, control of an insurance company was acquired by a group of companies associated with a Sydney entrepreneur. Within eight months of the acquisition, the company was in liquidation, \$19 million of its assets could not be accounted for, and the principal, having left Australia, was nowhere to be found.

But the domain of corporate crime is not confined to household names such as the above. Each year, from behind the corporate shield, many small businessmen incur debts which they have neither the hope nor the expectation of paying.

Corporate crime is by no means limited to fraud and its variants. Each year, hundreds of Australians die, and thousands more are seriously injured, in workplace accidents. An undetermined, but significant proportion of these accidents result from violations of occupational health and safety laws.<sup>3</sup> Industries discharge toxic substances into the air and waterways; consumers are induced to purchase dangerous or defective products; individuals suffer the indignities and the financial burdens of race or sex discrimination (defined as unlawful, if not criminal)—all at the hands of companies.

Moreover, the social consequences of corporate crime are extremely grave. Criminal conduct by Australian companies can lead to an erosion of public trust in business. The ultimate implications are not merely symbolic, but real. The economic costs of corporate crimes are staggering. The meat substitution scandal threatened a \$1000 million per year export market, as managers of American fast-food chains grimaced at jibes about their 'roo-burgers'. The cost of tax evasion has been estimated at \$3 billion per year, with an even greater amount of revenue being lost through tax avoidance.<sup>4</sup> The economic impact of death and injury in the workplace has been estimated at \$6 billion annually.<sup>5</sup>

While an overview of corporate crime suggests that the magnitude and cost of crimes by companies is awesome, statistics on the subject are grossly inadequate. A number of Australian business regulatory agencies do not even produce an annual report. To be sure, a great deal of corporate crime is undetected and unreported: thus contributing to a substantial dark figure. But official statistics tell us too little even about those offences which do come to light. It is a revealing irony about Australian society that our governments can determine with considerable accuracy the average number of working days lost due to strikes, but comparable statistics on death in the Australian workplace are simply not available.

3 N Gunningham, *Safeguarding the Worker: The Role of Law*, 1984, Law Book Company, Sydney.

4 Draft White Paper, *Reform of the Australian Tax System*, 1985, Australian Government Publishing Service, Canberra, p 36.

5 *Interim National Occupational Health and Safety Commission Report*, 1984, APGS, Canberra.



## Symbolic enforcement

The dearth of information on the scope of corporate crime in Australia can not be explained by public apathy. Indeed, such public opinion research that has been done in Australia confirms the findings from the overseas literature that the public are aware of corporate illegality, view it very seriously, and advocate harsh punishment of offenders.<sup>6</sup>

Some parliaments have also taken corporate crime seriously by making heavy penalties available at law. Part IV of the *Trade Practices Act* provides for a maximum penalty of \$250,000. The *Occupational Health and Safety Act* 1983 (NSW) provides for a maximum fine of \$50,000 for breach of duty by an employer (s 15). Under s 8 of the *Marine (Sea Dumping) Act* (WA), certain offenders may be fined up to \$100,000. Section 50(2) of the *Banking Act* (Cth) provides for a maximum term of five years imprisonment for failure to comply with regulations relating to interest rates.

In contrast to the stiff penalties available in many jurisdictions, the most distinctive characteristic of governmental response to corporate crime in Australia is its gentle nature. Based upon interviews we conducted with officials of 96 major federal, State and local government business regulatory agencies throughout Australia,<sup>7</sup> we conclude that no major business regulatory agency in Australia can be characterised as aggressively prosecutorial. Only 15 of them regard law enforcement as their most important function. The vast majority prefer to rely upon persuasion and negotiation to achieve industry compliance with the law.

Offences coming to the attention of government tend to evoke warnings and threats of harsher treatment in the event that misconduct persists. When corporate offending does persist, it tends to be met with informal or administrative sanctions rather than the criminal process.

A number of reasons, both stated and unstated, underlie the reluctance of governments to use criminal sanctions against business offenders.<sup>8</sup> Business interests, collectively and often individually, enjoy considerable influence in Australia. Business executives may be on close personal terms with elected officials or senior public servants. Thus, regulatory authorities or their political masters may be reluctant to see the criminal process used against friends or close associates.

Business influence, however, is by no means limited to an 'old boy network'. In the climate of economic uncertainty which characterises contemporary Australia, businesses have the power to make or break governments. A concerted declaration of confidence—or lack of confidence—in a particular government may influence the outcome of an election. So too can a decision to proceed (or not proceed) with a

major development, or to close down an important source of employment. These decisions may be implicitly or explicitly linked with the rigor or laxity of a regulatory regime.

Beyond the sociopolitical environment, Australian business regulators proffer a number of rationalisations for their disinclination to use the criminal law in response to criminal acts. Their preference for administrative or formal sanctions may be traced to a number of factors. Prominent amongst these is a general discomfort with criminal law and procedure. The criminal process tends to be lengthy and cumbersome. Depending on the tenacity and resources of the defendant, both of which are usually substantial in the case of large corporations, the likelihood of success is by no means certain. Data from our interviews, supported by available statistics, suggest that judges and magistrates appear disinclined to impose severe penalties upon those companies which are convicted.

The severity of fines which are imposed on convicted corporate offenders can only be regarded as mild. In our wider study of the enforcement practices of Australian regulatory agencies, we found only six whose prosecutions resulted in average fines in excess of \$1000. Average fines for 50 per cent of the agencies we studied were less than \$200 per case (including multiple charges).

Occupational health and safety offences actually resulting in death have evoked judicial response which can only be described as tepid. Proceedings arising from the deaths of two workmen gave rise to the following passage from the 1980 annual report of the Western Australian Mines Department:

The registered manager was found guilty on two counts: one against s 54 and one against reg 8.13(1) of the *Mines Regulation Act* 1946–74 and Regulations. He was fined \$20 on each count. The company was found guilty of an offence against reg 8.13(1) and fined \$100. The foreman responsible for the work being undertaken by the men, prior to their deaths, was found guilty on two counts: one against s 54 and the other against reg 19.2. He was fined \$20 on each offence.<sup>9</sup>

More recently, in New South Wales, a young apprentice at Kellogg's was steamed alive inside a rice cooker. The company was subsequently fined \$950 for the safety violations which led to the boy's death.<sup>10</sup>

In addition, those agencies which are forced to rely upon the investigative resources of police and upon the prosecutorial responses of general crown law departments, instead of their own investigators and prosecutors, experience further frustration. Unable to dictate the priorities of the other departments upon which they rely, executives of regulatory agencies find that their cases often linger in someone else's 'pending' files. Cases which an agency would often like to see proceed, for the purposes of law reform or other regulatory reasons, are

6 J Braithwaite, 'Challenging Just Deserts: Punishing White-Collar Criminals', 1982 *Journal of Criminal Law and Criminology*: 73, pp 723–673.

7 P Grabosky and J Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, forthcoming 1986, Oxford University Press, Melbourne.

8 R Cranston, 'Regulation and Deregulation: General Issues' in Tomasic (ed) *Business Regulation in Australia*, 1984, CCH Australia, Sydney.

9 Western Australia, Department of Mines and Energy, *Annual Report*, 1980, Government Printer, Perth.

10 A Hopkins, 'Industrial Homicide at Kellogg's' in Grabosky and Sutton (eds) *Corporate Harm/Corporate Crime: Australian Case Studies*, forthcoming.



prevented from proceeding to satisfy the internal administrative convenience of police and prosecutorial fiefdoms.

American conservative strategists in the Reagan administration have dubbed the process of delegating the enforcement function away from the regulatory agency as 'layering'. Clearly, the more administrative layers a prosecution action must transit, the less likely it is to reach completion. This extensive filtering may explain why, in those relatively infrequent occasions when agencies do prosecute, a majority of them obtain convictions more than 90 per cent of the time.

In contrast to the delay and resistance which may accompany criminal proceedings, agencies have civil<sup>11</sup> and administrative remedies at their disposal which can be mobilised swiftly and unilaterally, and which might carry significant punitive power in their own right. Mines inspectors may require that production in a mine cease. Meat inspectors may stop a production line or condemn a consignment of meat. The National Companies and Securities Commission may stipulate that a company takeover conform to strict and costly procedures. Agencies may use adverse publicity as a regulatory tool. Each of these actions may result in financial burdens to the offending company vastly in excess of those which might be imposed by a court of law.

Yet these punitive alternative sanctions are also very rarely used; in fact they are used much less often than prosecution by most agencies. Enforcement of the law against corporations in Australia is therefore in considerable measure a symbolic activity.<sup>12</sup> It is not something that regulators believe in as an effective strategy to get compliance. Often times they only prosecute in response to scandals which become public—to take the heat off the agency and to create the false impression that when serious offences occur the law is enforced.<sup>13</sup> The injustice of a society with one level of punitiveness for crime in the streets and another for crime in the suites is something most Australian regulatory officials have not even considered. They simply do not see justice as one of their policy goals. Typically, their preference is to achieve compliance with the lowest level of punitiveness possible.

None of what we have said should be taken to imply that we do not think it possible for regulators to improve compliance with a law without ever enforcing it. In our view even the one-third of Australian business regulatory agencies which never prosecute achieve quite a lot by persuading and cajoling business to comply with the law. We do assert, however, that they could achieve much more if they incorporated the word deterrence into their policy vocabulary. Voluntary compliance strategies are likely to be even more effective if they are backed up by a willingness to escalate regulation from voluntarism to punitive enforcement where voluntarism is abused.

11 A Freiberg and P O'Malley, 'State Intervention and the Civil Offence', 1984 *Law and Society Review*: 18:3, pp 373-94.

12 R Tomasic, 'Business Regulation and the Administrative State' in Tomasic (ed) *Business Regulation in Australia*, 1984, CCH Australia, Sydney, pp 43-68.

13 A Sutton, 'Company Crime in New South Wales: A Sociological Perspective', PhD Thesis, 1983, School of Sociology, University of New South Wales.

## Types of regulatory agencies

Australian regulatory agencies have been grouped empirically into seven basic types according to their enforcement practices.<sup>14</sup>

### 1 Conciliators

The first group includes such agencies as the Commonwealth Human Rights Commission, the various State anti-discrimination bodies, and a number of consumer affairs agencies. The distinguishing characteristic of these agencies is their use of conciliation to resolve disputes between conflicting parties. The penal provisions of the Acts which these agencies administer tend to be weak; agency officials in any event regard them as irrelevant.

### 2 Benign Big Guns

A second group of agencies is distinctive for the very formidable powers which they have, but never (or hardly ever) use. Under their respective acts, the Reserve Bank of Australia may take control of a trading bank; the Australian Broadcasting Tribunal may remove the licence of a television station; the Petroleum Division of the Western Australia Mines Department may shut down a drilling rig, at immense daily cost. Like the conciliators, these agencies do not regard themselves as law enforcers. Rather, the style of the broadcasting Tribunal has been characterised as 'regulation by raised eyebrows',<sup>15</sup> that of the Reserve Bank as 'regulation by vice-regal suasion'.

### 3 Diagnostic Inspectorates

A third group of agencies consists primarily of mines inspectorates and radiation safety agencies. This group places great emphasis on fostering industry self-regulation and providing technical assistance on a 'professional to professional' basis. Prosecution is rarely used; when they do prosecute, diagnostic inspectors tend to charge individual managers rather than the company.

### 4 Detached Token Enforcers

A fourth group adopts a more detached posture *vis-a-vis* the companies which they regulate. Its agencies are somewhat more inclined to prosecute than those mentioned above. Among the agencies in this category are the occupational health and safety inspectorates of Western Australia, Victoria and the ACT.

### 5 Detached Modest Enforcers

A fifth group shares the same arms-length approach to business as the previous category. Its agencies tend to be a bit more 'rule book' oriented, and more likely to provide criminal investigation training for their staff.

### 6 Token Enforcers

The sixth group reflects the predominant style of Australian regulatory enforcement. Its members are more inclined to seek out regulatory violations than are agencies in the foregoing groups—they are

14 J Braithwaite, J Walker and P Grabosky, 'A Taxonomy of Regulatory Agencies', forthcoming.

15 M Blakeney, 'Regulation By Raised Eyebrows? The Broadcasting Tribunal and Industry Self-Regulation', 1985, Paper presented at the Third Australian Law and Society Conference, Canberra.



proactive rather than reactive. Their prosecutions tend to be rule book oriented rather than diagnostic. They prosecute, but not aggressively or in great numbers; the penalties which result tend to be insignificant. Included in this group are a number of consumer affairs agencies and state food inspectorates.

#### 7 Modest Enforcers

The seventh and final category is more enforcement oriented than any of the preceding groups. These agencies undertake more prosecutions, which result in higher fines. These agencies also make greater use of alternative means of enforcement: license suspension, shutting down production, injunctions and adverse publicity. Typical of this group are corporate affairs bodies, and the environmental protection agencies of New South Wales and Victoria.

Even though there are many agencies which initiate greater numbers of prosecutions, the Trade Practices Commission has been probably the agency with the strongest enforcement orientation in Australia. It is most unusual in that it targets larger companies in preference to smaller ones; it is unusually litigious in seeking injunctions; and it succeeds in persuading the courts to impose far higher penalties than any other agency.

Even so, the Trade Practices Commission is considerably less punitive in its approach to enforcement than comparable antitrust agencies in North America, Europe and Japan. Indeed, the fact that Australia's most enforcement-oriented agency, the Trade Practices Commission, has been criticised for enforcement impotence<sup>16</sup> says something about the non-adversarial style of Australian business regulation.

### Explaining regulatory enforcement

Why do some agencies prosecute more than others? It is possible to explain variation in enforcement activity across regulatory agencies? Elsewhere<sup>17</sup> we tested a wide variety of hypotheses derived from the folklore of Australian politics, from the overseas literature on regulation and from more general theories of social control. We predicted that states with long histories of conservative government would have less punitive, less enforcement-oriented regulatory agencies. Agencies with centralised decision-making structures were expected to be more punitive than agencies which leave field officers free to sort out their own accommodation with industry. We expected that agencies with enormous powers would use those powers to bring about tougher

16 A Hopkins, 'Marxist Theory and Australian Monopoly Law', in E L Wheelwright and K Buckley (eds), *Essays in the Political Economy of Australian Capitalism*, Vol 5, 1983, ANZ Books, Sydney; W Pengilly, 'Competition Policy and Law Enforcement: Ramblings on Rhetoric and Reality', 1984 *Australian Journal of Law and Society*: 2, pp 1-19; G Venturini, *Malpractice: The Administration of the Murphy Trade Practices Act*, 1980, Non Mollare, Sydney; M D Kirby, 'Occupational Health and Safety — Time for Reform', 1984, Address to National Safety Council Seminar, 27 July 1984, Canberra.

17 P Grabosky and J Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, 1986, Oxford University Press, Melbourne.

enforcement. We assumed that agencies with a history of political intervention in enforcement would rely on less formal means of achieving compliance. More reactive agencies would be less prosecutorial than agencies which proactively sent inspectors out into the field to find problems. Stand-alone regulatory agencies were expected to be more prosecutorial than agencies which had to account to a larger department of which they were a part. We also tested the hypothesis that new agencies established at the high tide of pro-regulation sentiment in the early 1970s would be more prosecutorial than agencies which had to account to a larger department of which they were a part. We also tested the hypothesis that new agencies established at the high tide of pro-regulation sentiment in the early 1970s would be more prosecutorial than agencies which were "old" in the regulatory life-cycle.<sup>18</sup> There is little point in outlining the deeper theoretical justifications for the above hypotheses because they all fell by the wayside for the lack of empirical support. It is remarkable how little there is to show for so many cross-tabulations, correlations, factor analyses and regressions (with which we shall not burden the reader).

Table 1 (p 93) suggests that Victoria and Queensland have the most prosecutorial regulatory agencies. For these comparisons, the median number of convictions is a better statistic than the mean because of outliers. This certainly demolishes any association between Labor governments and tough business regulatory enforcement since these are the two states with the longest periods of conservative government in the post-war period. It is also notable that Commonwealth regulatory agencies tend to be among the least prosecutorial.

Table 2 (p 93) compares the number of convictions (1981-84) according to the main functions of the agencies. It can be seen that corporate affairs, worker health and safety and state food standards inspectorates are the most prosecutorial areas of regulation in Australia. On the other hand, it must be borne in mind that these three areas of regulation are all characterised by derisory fines following convictions. Most of the large numbers of corporate affairs convictions are from production-line prosecutions for failure to lodge annual company returns.

The most important findings were that agencies in which the same inspector or investigator was in regular contact with the same company, agencies which regulated a small number of companies and agencies which regulated companies from one industry (rather than multiple industry sectors) were less likely to prosecute. Agencies with a majority of inspectors, investigators and complaints officers from industry backgrounds were also less likely to prosecute, though this relationship disappeared after entering controls. These findings are presented in more detail elsewhere.<sup>19</sup> They are consistent with Black's<sup>20</sup> general theory

18 M H Bernstein, *Regulating Business by Independent Commission*, 1955 Princeton University Press, Princeton.

19 P Grabosky and J Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, forthcoming 1986, Oxford University Press, Melbourne, Ch 15.

20 D Black, *The Behavior of Law*, 1976, Academic Press, New York.



of law which predicts that the greater the relational distance between regulator and regulatee, the greater the tendency to use formal sanctions. The tendency for formality to vary directly with social distance has been observed in a wide variety of contexts, from police-citizen encounters<sup>21</sup> to primitive societies<sup>22</sup> to collectivities in general.<sup>23</sup>

The other important finding was that agencies which disproportionately regulate big business (for example, the banks, the insurance industry and the oil industry) are much less prosecutorial than others. Even within agencies which did not prosecute heavily, we found that big business is rarely touched. This probably stems from both wariness of litigation involving formidable adversaries and from widespread beliefs among regulators that big businesses are more willing to comply with the law voluntarily because of their desire to protect their corporate reputations, and the resources they have available to make internal compliance systems work.

## Corporate crime control in a democratic society

It has long been recognised that despite the annual expenditure of \$1000 million on Australian police forces, the public themselves must bear responsibility for a substantial part of the burden of crime prevention. Thus, we have seen in recent years the emergence of citizen involvement in such crime prevention programs as the widely emulated 'neighbourhood watch' scheme.

By contrast, public participation in activities designed to control corporate crime are rarely encouraged. Perhaps the most significant exception occurs in the area of mine safety regulation. The Queensland government pays \$24,000 per year towards the salaries of full time trade union safety inspectors in the state's mines. The Western Australian Mines Department pays the entire salaries of five full time union safety inspectors. In addition, most operational commercial mines in Australia must maintain a record book in which both governmental and union inspectors write their reports, and management indicates what action has been taken, as appropriate. The record book is available to all who work in the mine.

However, away from the mining environment there has been considerable resistance to worker participation in occupational health and safety policy. Worker safety representatives and workplace safety committees have been opposed by employer groups and some governments.

Beyond occupational health and safety, the only significant attempt at fostering community corporate crime prevention has involved the

21 D Black, *The Manners and Customs of the Police*, 1980, Academic Press, New York.

22 Levi-Strauss, *Tristes Tropiques: An Anthropological Study of Primitive Societies in Brazil*, 1963, Atheneum, New York.

23 P Grabosky, 'The Variability of Punishment' in D Black (ed) *Toward a General Theory of Social Control*, Vol 1, 1984, Academic Press, Orlando, pp 163-89.

Table 1  
Australian business regulatory agencies: number of convictions, corporate offenders, 1981-1984 by jurisdiction

	Cth	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	Local
Median	0.7	13.5	68.0	48.0	5.0	16.0	1.0	6.0	2.0	51.0
Mean	9.3	517.3	1454.0	322.3	119.2	97.3	11.4	171.5	6.1	202.0
Range	0-51	0-2527	0-9631	0-1820	0-980	0-370	0-55	0-645	0-25	6-641
N	20 (1 missing)	8	7 (2 missing)	9	11	8 (2 missing)	7	4 (1 missing)	7	4 (3 missing)

Table 2  
Australian business regulatory agencies: number of convictions 1981-1984 by main function of agency

	Consumer affairs	Environmental protection	Oil spill control	Worker health & safety	Miner health & safety	Anti discrimination	State food	Radiation control	Corporate affairs	Prudential regulation	Transport safety	Fraud against government	local government	Other
Median	56.5	1.0	6.5	345.0	0.6	0	7.5	0.2	707.5	5.3	13.0	—	125.0	0.5
Mean	83.1	23.8	6.5	432.0	2.8	0	311.8	0.3	2318.3	7.0	9.3	46.0	267.3	16.1
Range	1-225	0-208	0-13	5-1820	0-12	0-0	0-1225	0-1	1-9631	0-21	0-15	46-46	36-641	0-72
N	10	14	4	7 (1 missing)	8 (1 missing)	4	6 (2 missing)	4	6	3	3	1 (2 missing)	3 (3 missing)	12 (2 missing)



use of a voluntary consumer movement product monitor network by the NSW Department of Consumer Affairs.

One of the more formidable impediments to citizen involvement in corporate crime control is secrecy. Ours is an ostensibly democratic, self-governing society. Yet access to information about the regulatory process is barred under many regulatory regimes. With few exceptions, regulators are content to remain shielded from public scrutiny.

The worst examples of secrecy are found in many occupational health and safety statutes which prevent inspectors from divulging the result of an inspection even to a worker whose complaint led to the inspection.<sup>24</sup>

By mid 1986, only the Commonwealth and Victorian governments had freedom of information legislation in place. But even in each of these jurisdictions, many secretive bureaucrats were protected by a spate of statutory exemptions. Provisions for discretionary exemption are used freely in Victoria, where requests can be denied on 'public interest' grounds. The remaining States and Territories have yet to attempt even a charade of freedom of information laws, arguing in at least one case that the costs of open government are prohibitive.

In the light of this lack of commitment by governments to the principle of an informed public, it appears not surprising that in many regulatory regimes, the most severe penalties are reserved not for corporate offenders but for public servants who violate secrecy provisions of the statute. The only provision for imprisonment under the *Environment Protection Act 1973* (Tas) is for unauthorised disclosure of information (s 53). In the Northern Territory, a public servant may be imprisoned for up to three years; five years if the disclosure is done for purpose of gain (*Criminal Code Act*, (NT) s 76).

Another important dimension of low visibility decision making in corporate crime control involves political intervention in the decision to prosecute. The question of the degree to which the regulatory process should be independent of the political process is a vexed one. In our study of 96 agencies throughout Australia, we learned of instances of political interference in enforcement at no fewer than twenty-six. While we concede that the public interest may, at times, be served by a decision not to proceed in a criminal matter, we were told, mostly off the record, some disturbing stories of ministers, for what seem to have been reasons of political favouritism, ordering that enforcement actions be stopped.

Such allegations are occasionally made on the public record.<sup>25</sup> A ministerial intervention against proceeding with criminal charges should surely be a public act. Whether or not it has been made in the public interest is a matter for judgment by the citizens of a democratic society.

24 J Braithwaite and P Grabosky, *Occupational Health and Safety Enforcement in Australia: A Report to the National Occupational Health and Safety Commission*, 1985, Australian Institute of Criminology, Canberra.

25 W Bacon, 'Charges Dropped Over Sale of Protected Birds', *National Times*, 3-9 May 1985, p 14.

Civil law is another way that citizens are empowered to participate in controlling the illegalities of companies which victimise them. Potentially, companies are at greater risk of significant financial loss from civil actions by citizens victimised by an offence than they are by the petty fines which we have seen result from criminal enforcement. Typically, however, there are collective victims of corporate crimes—hundreds of consumers who have been injured by a faulty product, thousands of investors duped by a stockmarket fraud. Our legal system makes it difficult for large numbers of victims to act collectively in the courts against the collective might of the corporation. So the Australian Law Reform Commission has had a reference on class actions to consider how to facilitate such collective suits for many years. At the time of writing, nothing has been produced by the Law Reform Commission on the subject since 1979, and some of us are cynical enough to think that this itself is evidence of the jitters associated with any attempts to empower ordinary citizens with tools to challenge corporate might more effectively.

## Conclusion

What we do know about crime and governmental response to it in Australia? We know that corporate offences do more harm to persons and property in aggregate than traditional criminal offences. We know this not because we have systematic statistics on corporate crime, but because if we look even at the very minor areas where there are data on levels of corporate offending, the volume of crime is so enormous as to leave little question as to where most crimes against persons and property are socially located. For example a survey of used car fraud suggested that one third of the used cars sold in Queensland had their odometers turned back.<sup>26</sup> Large surveys of petrol pumps have found 32 and 15 per cent to be giving short-measure petrol to motorists.<sup>27</sup> A large survey of factories has found 51 per cent non-compliance with regulations concerning the guarding of power presses,<sup>28</sup> and another of mines found 35 per cent non-compliance with stone dusting standards to prevent the spread of explosions.<sup>29</sup> These are relatively minor aspects of the total corporate crime problem, but when one considers the number of cars sold each year, the number of petrol sales or the number of industrial machines, alone they imply a higher number of offences against persons and property than those known to state and territory police forces.

We also know that the harm can be greater. Murder from direct physical violence kills fewer Australians each year than corporate crime.

26 J Braithwaite, 'An Exploratory Study of Used Car Fraud', in P R Wilson and J Braithwaite (eds), *Two Faces of Deviance: Crimes of the Powerless and Powerful*, 1978, University of Queensland Press, Brisbane.

27 *Canberra Times*, 13 January 1981, p 1; *Sunday Telegraph*, 3 February 1980, p 7.

28 Department of Labour and Industry, Victoria, *Annual Report*, 1982, 1983, Government Printer, Melbourne.

29 Queensland Department of Mines, *Annual Report*, 1983, Government Printer, Brisbane.



Million dollar robberies are all but unheard of in Australia, but million dollar frauds, price fixing conspiracies,<sup>30</sup> tax offences, and the like, occur regularly.

We know that corporate crime is unusual in that police forces have little interest and involvement in controlling it. Even police fraud squads tend to hand over most corporate cases to corporate affairs commissions. It is specialised business regulatory agencies which do most of the investigation and enforcement. The consequence is that an unequal criminal justice system is created by leaving crime in the streets with agencies having an enforcement orientation (police forces), while crime in the suites is delegated to agencies with a voluntary compliance orientation (regulatory agencies). While this arrangement is structurally unjust, it is also undoubtedly more efficient for securing compliance with the law than the alternative. Whatever the deficiencies of most regulatory agencies, they certainly have more expertise, sophistication and capacity to persuade the industries they regulate than police forces could ever be expected to have. Nor would one want to turn regulatory agencies into specialist police forces. There is a need, nevertheless, to convince Australian regulatory agencies that deterrence is necessary both to enforce the law against unscrupulous elements in industry and to give more authority to the voluntary compliance programs they undertake with more responsible business.

30 J Grant, 'The Economic Benefits and Costs of the Australian Trade Practices Legislation', in R Tomasic (ed), *Business Regulation in Australia*, 1984, CCH Australia, Sydney.

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## Professional Crime: The Case of Doctors

Paul R Wilson

Criminologists have had a good deal to say about illegal actions undertaken by individuals which contribute to the financial success of an organisation (commonly called white-collar or organisational crime), but relatively little to say about crimes carried out by individuals in the course of their occupations. In this chapter, consideration is given to one form of occupational crime — that perpetrated by doctors — and to the multifaceted ways in which it occurs.

Discussions of crimes committed by professional persons for their personal benefit are often seen as the work of a few aberrant individuals who, by virtue of their personalities or because of specific circumstances, commit these offences for monetary gain. Thus a recent major and influential text in criminology by Don C Gibbons, *Society, Crime and Criminal Behaviour*, referred to crimes by lawyers, doctors and other professionals and suggested that 'they are occupationally deviant and are often committed by marginal figures within the professional group'.<sup>1</sup>

Gibbons suggests that occupational offenders are frequently regarded with condemnation within the professions in which they practice and their offences are usually 'endeavours of individuals acting alone rather than organisation events involving a collection of fellow deviants'.<sup>1</sup>

In contrast to this approach, the present discussion on crimes by doctors takes the view that it is the structure of the organisation, the profession, and specific roles of the individuals which create the conditions for crimes. These crimes are not committed by 'sick' individual

1 D Gibbons, *Society, Crime and Criminal Behaviour*, 1982, Prentice-Hall, Englewood Cliffs, p 310.