13|81

REPORT BY K.J. ADBY TO THE CRIMINOLOGY RESEARCH COUNCIL
ON A RESEARCH PROJECT CONDUCTED PURSUANT TO A GRANT FROM THE COUNCIL

PROJECT TITLE

WHITE COLLAR CRIME: THE SPECIAL INVESTIGATION AS A METHOD OF ENFORCEMENT OF COMPANY LAW - USE AND UTILITY

GRANTEE

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ACKNOWLEDGEMENTS

In addition to the funding assistance provided by the Criminology Research Council, the conduct of this project was greatly assisted by the information and co-operation provided by:-

- Corporate Affairs Commissions in the various States and Territories;
- the National Companies and Securities Commission;
- officers of the then Department of Business and Consumer Affairs;
- The Law Society of New South Wales;
- The Securities Institute of Australia;
- The New South Wales Bar Association;
- Australian Shareholders Association.

That assistance and co-operation was is gratefully acknowledged.

TABLE OF CONTENTS

PREFACE

The Companies and Securities Industry legislation of the various Australian States empower Ministers, and since 1 July 1982 a Ministerial Council, to appoint an Inspector to investigate affairs of a company and dealings in securities through the mechanism of a Special Investigation. Special Investigations or Inspections as they were originally named have in recent years assumed greater prominence and importance. The powers have been resorted to on an increasingly regular basis and in some jurisdictions this increase has resulted in the creation of whole administrative Divisions to deal with "Specials". In a period of cut-backs and public spending austerity the unprecedented commital of resources to this task is even more striking.

The Investigation provisions of the Companies Acts formed the subject matter of the 1969 Third Interim Report of the Company Law Advisory Committee to the Standing Committee of Attorneys-General - the Eggleston Committee. That report examined in detail the provisions of the legislation then in operation and as a consequence of its report substantial amendments were made to the provisions, in most States, in 1971.

Despite the importance attached to the provisions by that Committee and by the bodies which made submissions to it and the increasing number of appointments and larger proportion of resources being allocated by enforcement agencies to the conduct of Special Investigations little serious attention has been paid to the provisions by commentators on companies and securities industry law. The Eggleston Committee's report is the only detailed official examination which is publicly available.

LIST OF TABLES

LIST OF FIGURES

CHAPTER 1

OUTLINE OF STUDY AND BACKGROUND TO THE INSPECTION/SPECIAL INVESTIGATION PROCEDURE

(a) Objects of the Study

During the course of research into the development of the law relating to Special Investigations, and in particular the philosophies underlying the procedure [1] it became apparent that despite the increase in use of the procedure and the notoriety attached to it there was very little factual material available on the incidence of the appointment of Inspectors and secondly that little was known of the commercial community's attitudes to the Special Investigation procedure. From that study what was obvious was that Inspectors, commentators and politicians often attributed to the Special Investigation procedure objectives, and had expectations of the procedure, which were not consistent with the historical philosophy underlying the provisions. Similarly the actual use of the procedure and the results did not always fit comfortably with what were either the currently attributed or historical objectives and philosophies.

This study sought, via the use of an attitudinal survey, first to discover the attitude of the commercial community (that section of the community most likely to be familiar with or affected by the procedure), and particular sections of it, to the use of the procedure. It sought to collect data on what the commercial community perceived to be the purpose of the provisions; when the power should be used; how it should be used and how effective the procedure was. Secondly, it sought to compare and contrast those views with the historical philosophies behind the provisions and the actual use made of the provisions and practices associated with their use.

(b) Methodology

Preliminary research and discussions indicated that no previous work had been conducted in this area and suggested that the only feasible manner in which the data could be collected was by way of a postal questionnaire. Following the choice of the research method it was necessary to develop a hypothesis that could be tested, ascertain the population to be studied; develop an appropriate questionnaire and choose suitable quantification methods. A copy of the questionnaire appears in Appendix "A" which also contains a series of Tables setting out the data collected.

The questionnaire was circulated between August and October 1981 [2] to a total population of 1200 members of the "commercial community". The population was made up of six sub-groups:

- Company Secretaries;
- commerical accountants;
- commercial lawyers;
- securities industry participants;
- shareholders divided into
  -large institutional shareholders;
  -small shareholders; and
- officers of company law regulatory authorities.

The questionnaire contained both open and closed questions though the latter predominated. Several measurement techniques were used. The majority of questions were based on a Likert-type scale, a limited number used only a nominal level of measurement. In addition a number of specific questions were included to identify possible biases, to verify the reliability of answers to prior questions and to identify instances where a respondent although selected as a member of one population sub-group was also a member of another sub-group. The questionnaire was made up of 26 questions covering the following major topics:

- purpose and reasons for appointment;
- publication and use of report;
- the Inspector; and
- consequences and costs.

There not having been any prior studies in this area it was not possible to draw on such studies as a source for this work. Similarly the lack of discussion of Special Investigations meant that there was little independent literature available. My earlier research therefore largely formed the basis for delineating the area to be covered. That work constituted an extensive literature review but had the disadvantage of not being independent. So far as was possible biases were tested for and eliminated by consulting with independent parties during the process of developing the questionnaire and through the pilot testing of the early drafts and the final text.

(c) Brief History of the Inspection and Special Investigation Provisions

The Special Investigation provisions had their origins in the Inspection provisions of the English Companies Act of 1856. The English law still refers to its provisions as "Inspection" provisions.

The current form of the provisions and the reasons for their deviation from more traditional investigatory and enforcement procedures is due to two factors. First the persistent refusal by the State to become involved in the supervision of companies and to assume responsibility for the enforcement of company law. Secondly, the failure of the common law and of governments to delineate between criminal activities and that conduct which is viewed as unacceptable but not as criminal conduct. Because of these failures there was, for a period of some two hundred years, almost total dependence on private actions, private remedies and private procedures.

The Inspection procedure was one such private procedure. Enacted at the height of laissez-faire the provisions, whilst on their face constituting a procedure to enable minority shareholders to obtain

information, were in reality a mechanism to protect the undertaking from public scrutiny and to provide an excuse for the State to remain aloof. The original provisions were not enforcement orientated: they were private procedures to safeguard private interests, interests not necessarily synonymous, or even compatible, with the interests of those who were empowered to seek the appointment.

When, as a consequence of the growth of larger "public companies" and the increased complexity of company structures it became apparent that private regulation without some official intervention was not adequate to the task, it began to be recognised that the manner in which companies conducted their affairs had ramifications which extended far beyond the mere protection of the proprietary rights of the members or creditors of a particular company, it was the Inspection provisions which provided the medium through which some, but very limited intervention, could be effected. Use of the Inspection provisions for this extended purpose had a number of attractions. The Inspection provisions provided "a safety valve" for governments which were still clinging to the philosophies of laissez-faire. Shareholders could seek the appointment of an Inspector but the reassuring feature was that whether or not an appointment was ultimately made was within the complete control of government. Unnecessary examinations by "a certain class of shareholder" could be guarded against through cost deterrents and the requirement to meet vague and flexible conditions precedent.

In the period 1879 to 1928 the State gradually acknowledged that it had some responsibilities in respect of the entities it had created. Problems arising in the operation of company law were increasingly met by the insertion in company legislation of criminal penalties. The State also accepted limited responsibility to initiate prosecutions and, in some instances, to pay the costs of an investigation into the affairs of a company. Assumption of responsibility was however linked to the Inspection procedure: before the State's potential responsibility arose shareholders had to have made application for and obtained the appointment of an Inspector and

the offences had to have been revealed by the Inspector's report. The focus was still primarily on private procedures but those procedures were now beginning to take on a public character - it was possible that criminal proceedings could result. The nature of the investigation, which had initially been viewed as a limited one amounting to little more than an independent examination of the accounts to enable shareholders to obtain additional information, was changing.

Because no other investigative procedure was available the Inspection provisions were used to fill the void. The original provisions were steadily built upon by governments whose principal objective was not to become involved, but which were sometimes forced to take some action. The result was that by 1928 the Inspection provisions were classifed by the Greene Committee [3] as provisions for the "investigation and prosecution of offences". During the life of the company they were in fact the only available procedure.

In order to make the provisions more efficient investigation and enforcement tools the Greene Committee recommended a number of changes. With the enactment of those recommendations the Inspection procedure became a curious hybrid. It was not entirely a public law procedure for it could only be initiated by shareholders (the Government of the day having rejected an Opposition proposal that the State itself have the power to appoint an Inspector). However, criminal proceedings were now not merely a possible outcome but one towards which, as a result of a positive obligation being cast on the Board of Trade to seek out in an Inspector's report details of conduct which might warrant the commencement of criminal proceedings, the procedure was now specifically directed.

During the transition period from a private to a now, at least, quasi-public procedure (which in the absence of any other procedure was to become the State's prime investigative tool) powers to question and to otherwise obtain and use evidence were incorporated which did not sit comfortably with criminal law investigative procedures nor

with common law rights. The changing, and finally changed, nature of the procedure went unnoticed - there was no consideration of the appropriateness of the Inspector's powers in fundamentally changed circumstances.

Developments in Australia were along similar lines to those in England until the 1930's when Australian legislatures found they could no longer deny a responsibility to intervene directly in the affairs of companies prior to winding-up.

The earlier acceptance of this responsibility by most of the Australian States, in contrast to acceptance in England more than a decade later, appears to have been due to a number of factors. These included the absence of large and well endowed shareholders prepared to initiate enquiries; the fact that those undesirable activities of companies which gained most notoriety involved the interests of debenture holders who could not evoke the Inspection provisions; and finally the greater tendency generally for Australian legislatures to become involved in the operations of private enterprises.

The direct consequence of the enactment of novel Australian legislation in the 1930's [4] was that it was the Victorian Companies (Special Investigation) Act of 1940, and not English provisions which were the model for the Uniform Companies Acts. This step was to be of considerable importance in determining the shape of future Australian legislation.

The "private" Inspection provisions were not used in Australia except in one instance in the mid-1950's. This lack of private use and the use of the "private" powers as the stock for the Special Investigation graft in the 1930's meant that the Inspection procedure was, in Australia, classified solely as an instrument of public law enforcement. This classification, and the absence of private appointments, had considerable influence on the philosophies of the companies authorities. In Australia the metamorphoses from a "private" to a public procedure also took place without consideration

being given to the new criminal emphasis vis-a-vis traditional common law rights. When serious questions were finally raised, in the mid-1960's, it was at a time when the powers were being resorted to to investigate an unprecedented number of major collapses. The reports of those Inspectors revealed wrongdoings and inadequate professional standards on a grand scale, not in one isolated case, but in a series of cases. Those early reports did much to confirm public acceptance of the procedure. Esoteric arguments that private rights might be infringed gained little support from a public which had seen millions "salted away" and had witnessed the failure of private regulation through the audit procedure on numerous occasions. The fact that public criticism of the procedure concentrated on its public nature rather than the more basic rights (eg refusal to answer) also clouded the issue and defused the impact of the criticism: in some States Ministers silenced criticism merely by adopting more restrictive approaches to the timing of publication.

The initial Australian legislation distinguished the "private" Inspection provisions from the "public" Special Investigation procedure. At first the procedures were dealt with in separate Acts: later in separate Parts of the same Act. Over time the distinction became blurred and with the 1971 legislation the procedures merged. Though private parties could still seek the appointment of an Inspector both procedures were "Special Investigations". Moreover the absolute right of the company to appoint an Inspector was abolished. The metamorphosis from an unutilised private law procedure to a public law investigation procedure was complete. The Companies Act 1981 and the Securities Industry Act 1980 whilst retaining the potential for a private application clearly reflect the public nature of the procedure. Public interest and national interest are now the criteria for appointment. Criteria relevant to particular classes of interests are no longer relevant.

(d) Overview of the Current Special Investigations Provisions

Under the Commonwealth/State Co-operative Scheme legislation Special Investigations may originate under either the

- Companies Act 1981 (Part VII, Sections 289-313); or
- Securities Industry Act 1980 (Sections 19-36).

The Companies Act (CA) provides for four basic sources of appointment of a Special Investigation:

(i) Section 290 (5) by the Minister or Ministerial Council on the application of interested parties (shareholders, debenture and interest holders)

(ii) Section 291 (4) and (5) by Minister or Ministerial Council at the request of the National Companies and Securities Council (NCSC);

(iii) Sections 291 (4) and (2) by

- an individual State or Territory Minister in the public interest; or

- the Commonwealth Minister in the national interest; and

(iv) Section 291(3) by the Ministerial Council.

The Securities Industry Act (SIA) follows a similar scheme to the Special Investigation provisions of the Companies Act. The only substantial differences between a Special Investigation under the CA and the SIA are that under the latter there is no provision for interested parties to make application for an appointment (this has never been provided for in securities industry legislation) and the powers, under the SIA, relate to an investigation into any matters relating to dealing in securities in lieu of into the affairs of a company.

Upon a decision being made to conduct a Special Investigation notice that such an investigation is being conducted together with the

name of the investigator (NCSC or named Inspector) must be made public.

The Inspector appointed pursuant to the Special Investigation provisions then assumes very wide powers of examination of officers and other persons and books and records relevant to the investigation. The most controversial of these powers has been that denying parties the right to refuse to answer questions on the ground that the answers may tend to incriminate. If, however, a party makes such a claim before answering a question then the answer is not admissible in proceedings against that party. Records of examinations may be made and where made must be submitted with the final report of the investigation and are admissible in subsequent proceedings.

On the completion or termination of an investigation a report of the Inspector's opinion on the affairs of the company together with the facts on which that opinion is based must be furnished to the NCSC or relevant State Corporate Affairs Commission. Interim reports may also be made and in some cases are required to be furnished. The NCSC (or party controlling the investigation depending upon its source) has wide power relating to distribution of any reports to interested parties if in its opinion such distribution is desirable. In addition Ministers and the Ministerial Council, subject to a veto power held by each State, Commonwealth and Territory Attorney-General, may cause to be printed and published the whole or any part of a report.

Where a report discloses that an offence may have been committed there is a duty to cause a prosecution to be instituted and prosecuted. In addition the authority is empowered, in the public interest, to bring proceedings in the name of the company to which the report relates for recovery of damages in respect of fraud, negligence, default, breach of trust, breach of duty or other misconduct in connection with the affairs of, or for the recovery of property of the company. Extensive powers are vested in the authority, during the course of an investigation, to, by public notice, make a wide range of orders restricting activities in relation

to the company or its shares. Upon receipt of a report the authority may apply for a winding up order.

Expenses of an investigation are in the first instance assumed by the State. Where, however, in the public interest proceedings are commenced in the Company's name then an order can be made specifying that a particular party be responsible for the whole or part of the expenses incidental to the investigation. The company whose affairs were the subject of the investigation may also be ordered to pay all, or some of the, costs of the investigation.

(e) Profile of Inspections/Special Investigations

From examination of the reports of Inspectors and from analysis of the affairs investigated and of the consequences which can be attributed to to the appointments, a profile of a Special Investigation developed [5]. The profile which emerges is as follows:

- the appointment will almost inevitably be the result of the Minister on his own initiative appointing an Inspector - only one appointment has been made on the ground of an application by interested parties;

- sources of the appointment are diverse (the stockwatch and other surveillance activities of Corporate Affairs authorities are becoming a more important source);

- the investigation will most likely involve a public company and a number of its subsidiaries;

- the type of affairs most likely to be investigated fall within the category of management frauds;

- the affairs to be investigated or the circumstances giving rise to suspicion will almost certainly not be discoverable from terms of the appointment;

- the Inspector appointed is most likely to be a Barrister or a Corporate Affairs officer (with the trend towards the latter);

- the report will set out in chronological order a factual history of the company or of the particular affairs investigated - it will almost certainly (and now is required to) contain opinions of the Inspector (on e.g. the reason for the company's failure or the desirability of accounting practices);

- if the appointment was made in Victoria and the past policy is continued, or Tasmania, the report will almost certainly be published; if in NSW there is an even chance; and if in other States there is no clear indication as to what approach will be adopted though publication is less likely;

- the time for the conduct of the investigation is not likely to be less than twelve months;

- the time lapse between completion of the report and tabling (except in Victoria where it has been the policy to table the report immediately) is not likely to be less than three months;

- the consequences for the company attributable to the appointment have not in fact, been as traumatic as has been suggested by some commentators because appointments have usually been made at a time when the fate of the company had already been determined or the matters to be investigated were already public knowledge (e.g. after - the appointment of a liquidator, the making of an adverse report, widespread press comment on practices or activities) - the investigation can, however, impose a heavy toll on those only incidentally involved;

- some benefits are likely to accrue to aggrieved parties:

- in cases of fraud or subscription offences further dissipation of assets has been prevented and the company's sphere of influence contained;

- in case of management frauds little direct benefit is likely to be discernable although it may assist to gain more equitable treatment of a minority

. recommendations relating to the bringing of criminal proceedings are likely to be made by the Inspector;

. in the past civil proceedings were given substantially lesser consideration and have not been facilitated; and

. finally, the most tangible impact of the report is likely to be in the area of law reform and in the promotion of more effective self-regulation.

The data from which these conclusions have been drawn is fully set out and discussed in my earlier research and is summarised in the Tables and Figures which follow:

TABLE "1"

OVERVIEW OF APPOINTMENTS OF INSPECTORS - 1934 TO 1979

Australia

.	Total No. Appointments 1934-1979		122
.	Total No. Appointments Vic. 1958 & UCA		105
	- Appointments of Private Application	1	
	- Appointments under S.177 UCA	1	
	- Appointments under S.178 UCA	5	
	- Appointments under SIA	2	
	- Minister's Initiative	96	
.	Total No. Companies to which Inspector Appointed	In excess of 1611	
.	Appointments Involving		
	- Public Companies		80 (65.6%)
	- Private Companies Only		40 (32 8%)
	- Not Known		1 (.8%)
	- Not Applicable		1 (.8%)
.	Period Appointment to Submission Final Report - 12 months		(44.5%)
	- 6 - 12 months		(17 6%)
	- 3 - 6 months		(17 6%)
	- 1 - 3 months		(17.6%)
	- 1 month		(2.7%)
.	Period Submission to Publication		
	- 12 months		(15.4%)
	- 6 - 12 months		(11.5%)
	- 3 - 6 months		(3.9%)
	- 1 - 3 months		(26.9%)
	- 1 month		(42.3%)
.	No final reports tabled (Figure includes 4 pre 1958 Act reports)	52	
	No. Interim Only Reports tabled	4	
	Unknown	-	

TABLE "2"

AUSTRALIA : CRITERIA FOR APPOINTMENTS

	No.	%
Private Applications by Shareholders/ Debenture Holders/Interest Holders	1	0.8
Investigation of Ownership of Company and Shares	6	4.9
In Public Interest on Minister's Initiative	115	94.3

TABLE "3"

AUSTRALIA : CLASSIFICATION OF MATTERS INVESTIGATED

	NSW	QLD	SA	TAS	VIC	WA	ACT/ NT	TOTAL	%
Management Frauds (a)	14	1	1	1	10	-	2	29	46.6
Market Frauds or Manoeuvres (b)	5	-	-	1	4	1	-	11	17.8
Trading Offences (c)	2	-	-	2	3	-	1	8	13
Frauds or Subscription Offences (d)	2	1	3	-	4	-	1	11	17.8
Classification Not Applicable	1	-	-	1	1	-	-	3	4.8
								62	100%

NOTES:

System of classification is that used by Hadden, "The Control of Company Fraud" P.E.P. Broardsheet No. 503, 1968.

(a) Covers all forms of illegitimate exploitation of shareholders and others with interest in company by directors or management.

(b) Activities relating to company's securities where a group or individual makes improper use of information about the company or attempts to manipulate market forces.

(c) Occur where directors or managers shelter behind the "shield" of limited liability and incur debts which it is known the company cannot pay.

(d) Includes activities associated with the traditional "con man" - use of a company is merely incidental.

TABLE "4"

QUALIFICATIONS OF INSPECTORS

APPOINTED 1934-1979

	NO. OF APPOINTMENTS						
	NSW	QLD	SA	TAS	VIC	WA	ACT & NT
Chartered Accountant	1			1	6(b)	2	
Public Accountant					1(c)		
State Audit	1		2		1		
Liquidator					1		
Police-Fraud Squad					2		
Solicitor						1	
Crown Law Officers							
Master Supreme Ct			2	2			
Barrister	6	3		1	21	3	2
Barrister & Chartered A/c	3						
Companies Authority Officers	19		3		5		2
Coys Officer & Barrister	10		1 (a)		1		
Coys Officer & Chartered A/c	2						
Coys Officer & Barrister & Chartered A/c	1						
Coys Officer & Crown Sol.	1						
Coys Officer & Master S. Ct			1				
Coys Officer & State Audit	1						
Unknown	1	2	2	2	6		

NOTES

(a) Barrister appointed was former Master of Supreme Court.
(b) All appointments of Chartered Accountants were pre 1958 Vic. Act.
(c) Only appointment on application of shareholders.

TABLE "5"

AUSTRALIA: DISCLOSED COSTS OF INSPECTIONS AND SPECIAL INVESTIGATIONS

Jurisdiction	Company/Group	Costs $	
Victoria	Vending Machine Group	6,840	
	Rees Emporiums Group	11,745	
	Viney Industries Group	4,622	
	G.I. Home Builders Pty. Ltd.	3,225	
	Fiesta Construction Group	6,189	
	Testro Group	8,011	
	Reid Murray Group	129,578	
	Lustre Hosiery Ltd. & Ors.	1,414	
	Stanhill Group	195,926	(a)
	Neon Signs (Australasia) Ltd.	78,438	(b)
	Menzies Estates	9,423	
	Savoy Group	6,542	
	East Australian Insurance Co. Ltd.	5,260	
	Motorists Mutual Insurance Co. Ltd.	3,990	
	General Mutual Insurance Co. Ltd.	13,630	
	Lefroy Minerals Ltd.	300,000	(c)
	Australia Wide Mining Corporation Ltd.	189,289	
	Tanlalite & Associated Minerals Ltd.	114,766	
	CSL Group	126,081	(d)
	R.J. Moore Transport Services Pty. Ltd.	5,625	(d)
N.S.W.	Latec Investments Ltd.	97,362	(e)
	International Vending Machines Group	1,701	(e)
	Motel Holdings Ltd.	23,271	(e)
	Australian Factors Ltd.	60,625	(e)
	Gollin Group	257,275	(e)
	Unspecified companies (excluding salaries of Commission Officers and Ancillary Costs:		
	1976	239,144	
	1977	300,503	
	1978	239,529	
	1979	519,748	
	1980	389,890	
Tasmania	Stonetex Coatings (Australia) Pty Ltd.	4[illegible]	
		1,660,305	

Notes:
(a) Factors contributed $45,200
(b) Company contributed $50,000
(c) Costs in excess of $300,000 not yet finally assessed
(d) Costs to end 1980
(e) Costs ordered to be paid.

Generally: Table relates only to disclosed cost of investigations. In many cases the costs have not been disclosed or are not available.

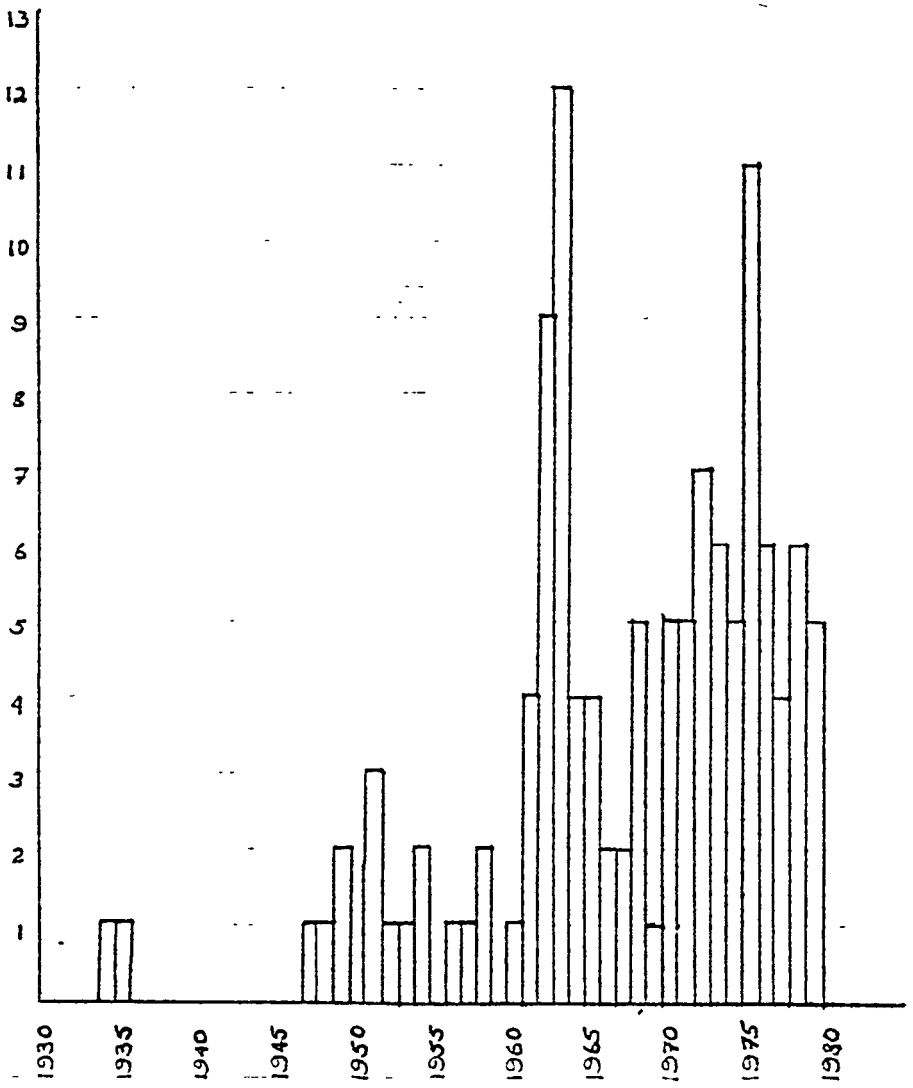

Fig. 1
Australia - Frequency of Appointments
1934 - 1979

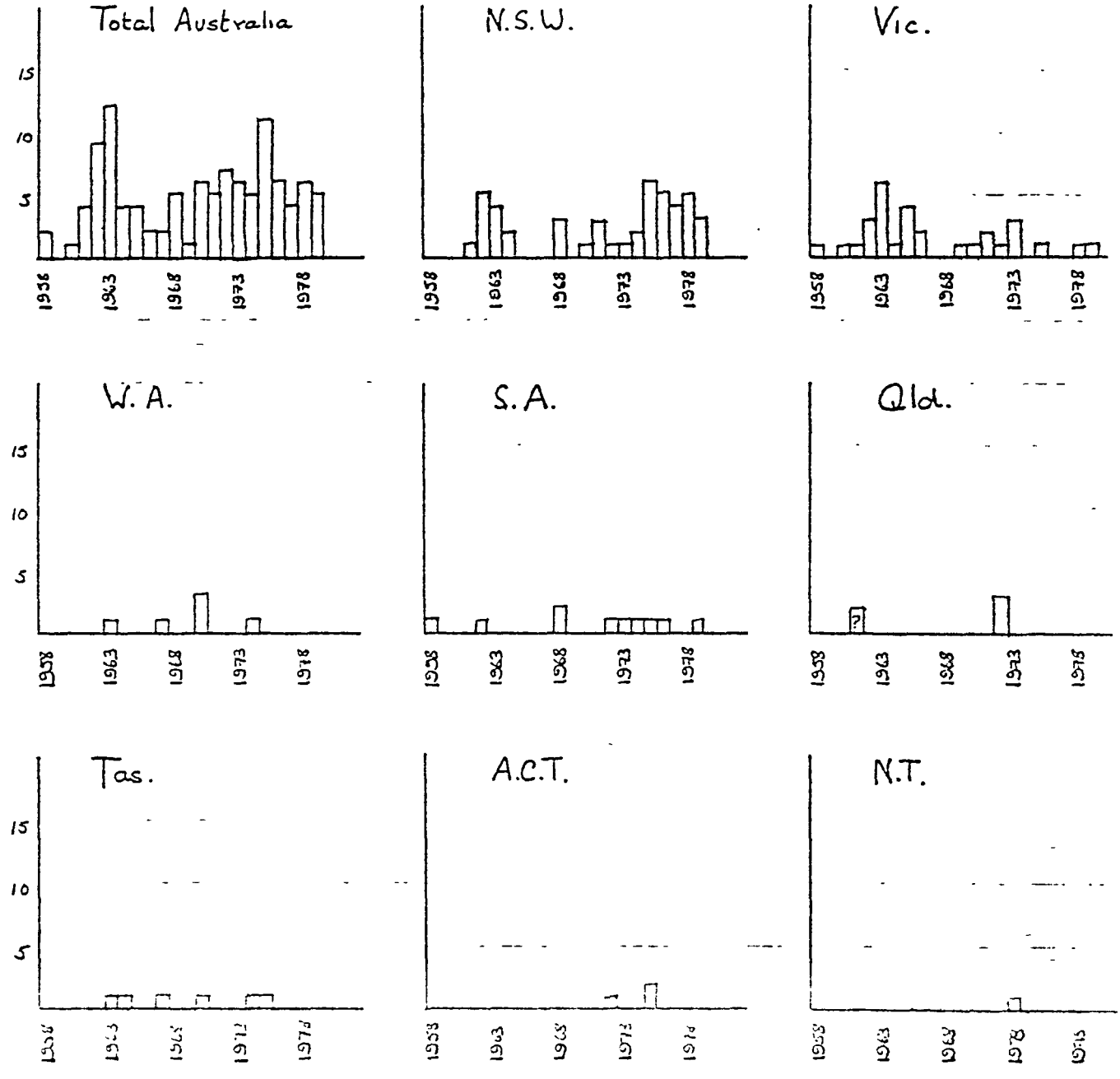

Fig. 2

Australia: Frequency of Appointments Made With State-by-State Break-Up 1958-1979

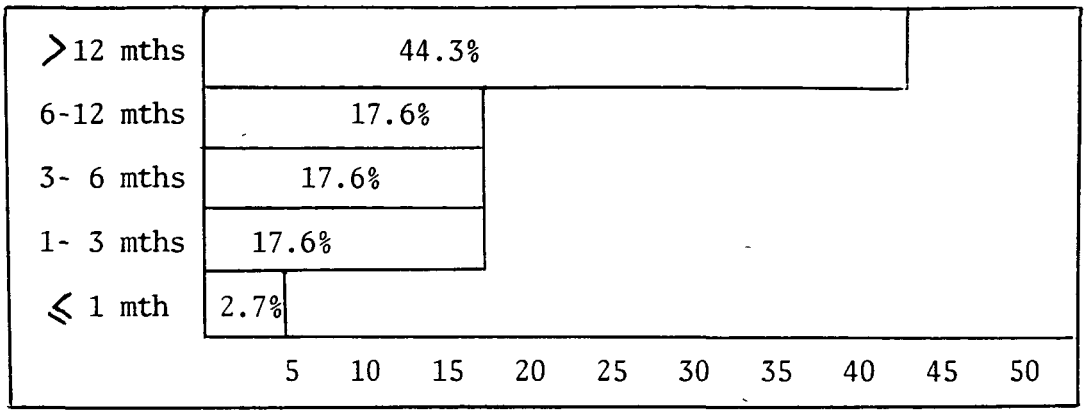

Fig. 3

Australia: Period of Investigations
Appointment to Submission of Final Report

NOTES: Raw figures are misleading. They fail to take account of investigations in progress for some considerable time but in which no final report has been submitted. For example, as at the end of 1979, there were at least 11 investigations in NSW alone which had been running for in excess of one year in which no report had been submitted. (Of these 11, 1 had been running for 7 years, 2 for 4 years, 3 for 3 years and 3 for 2 years). In addition, raw figures are distorted by the fact that of the 27 investigations where the final report was submitted in 6 months or less, 4 were conducted pre-UCA and another 3 were relatively minor investigations.

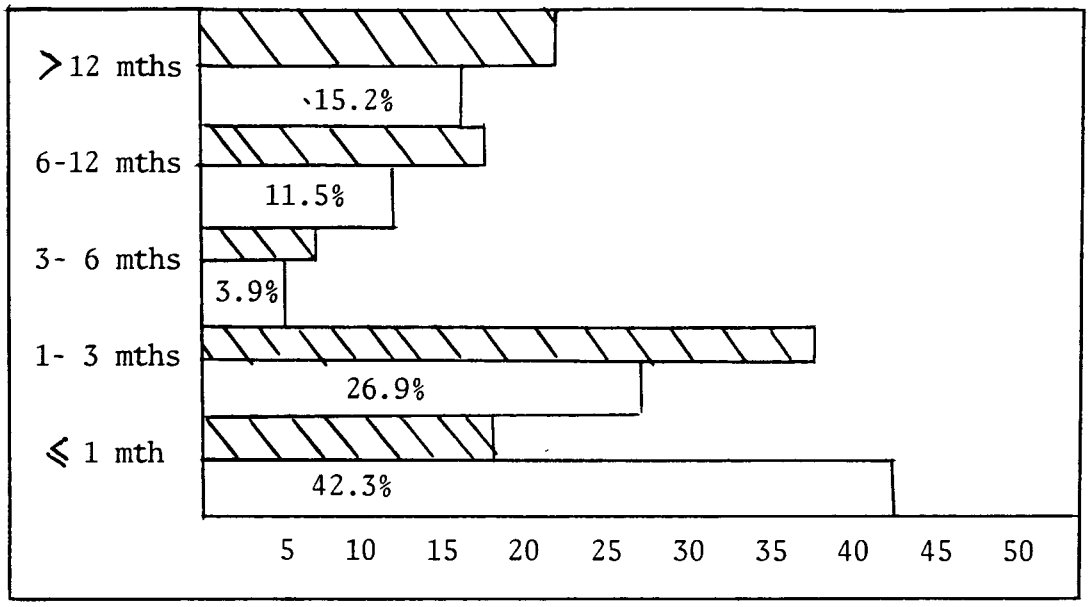

Fig. 4

Australia: Period - Submission of Final Report to Publication

Hatched figures: Demonstrate effect of Removal of Victorian Reports from Total

NOTES: Raw figures in Figure 4 must be viewed with some caution. They do not reflect cases in which a substantial period has elapsed but no final report has been submitted or where the report has been submitted by not tabled.

CHAPTER 2

THE SURVEY AND ITS RESULTS

(a) Introduction

The principal object in conducting the survey was to discover the attitude of the commercial community, and particular sections of it, to the use of the procedure and to match those attitudes against the historical philosophies behind the provisions and the actual use made of the provisions and practices associated with their use. Appendix "A" sets out in tabular form details of the responses and includes a copy of the questionnaire.

Questions in the questionnaire fell into groups relating to:

- purpose and reasons for appointment;
- publication and use of report;
- the Inspector;
- costs and consequences; and
- general verification questions.

(b) Purpose and Reasons for Appointment

The questionnaire required parties to indicate their agreement or disagreement with a number of suggested underlying purposes of the provisions and possible justifications for appointment of an Inspector. Having sought agreement, or otherwise, with the suggested purposes respondents were then asked to state whether or not they considered that purpose to have been fulfilled. The lists used to suggest purposes and justifications were those which had been adopted by the Eggleston Committee as legitimate uses of the provisions and those suggested by a review of the literature on the use of the provisions [6]. As regards purposes the survey revealed (Appendix A1)

that there was overall support for the proposition that the underlying purpose of the provisions should be the protection of shareholders - 91.2% of all respondents supporting this proposition 51.7% strongly agreeing and 39.5% agreeing). No other suggested purpose gained this level of support and none approached it as regards the level of intensity of support. The support was, however, not homogeneous. Relative to other groups small shareholders represented a higher proportion of "strongly agrees" whilst accountants tended to have a higher proportion of "disagree" responses.

Other purposes which were generally supported and where all groups supported were:

- protection of debenture holders - 78.2%
- discovery of fraud and misfeasance - 77%
- protection of interest holders - 74.5%

Purposes which were not supported were protection of company undertaking and facilitation of public policy. Only 50.2% and 31.6% of the total sample supporting respectively those propositions. In both these instances large number of "undecided" answers were recorded. The suggested purpose - "prevention of fraud and misfeasance" - was supported by 69.3% of the total sample but was not supported by all sub-groups. The "protection of creditors" purpose was supported by 81.2% of respondents but as between groups there was no general pattern of response.

To ascertain whether there were any differences between the attitudes of the various sub-groups represented in the sample a chi-squared test was applied to test the hypothesis that all of the sub-groups' answers are equal to one another [7]. The chi-squared test rejected this hypothesis of homogeneity in responses to the question on the purpose of provision in four cases:

- protection of shareholders;

- protection of company undertaking;
- protection of creditors; and
- prevention of fraud and misfeasance [8].

In the first and second cases the rejection of the hypothesis of homogeneity resulted from the fact that Small Shareholders were more supportive than were other groups while Accountants more strongly disagreed. In the second there was no general pattern while in the third case Small Shareholders and Accountants gave more support than the average.

"Protection of the company undertaking" historically was the underlying purpose of the provisions. Against this the survey indicated that in all but one sub-group (Companies) there was a high degree of uncertainty concerning this purpose and that it was supported by only two sub-groups: Companies 58.1% and Small Shareholders 62.8%.

The use of the provisions to prevent fraud and misfeasance has been put forward by the popular press and was espoused by the Greene Committee. The purpose was not universally supported although overall 70.3% agreed that it should constitute an underlying purpose. In contrast there was 77% support by all groups of "discovery of fraud and misfeasance" suggesting support for the post mortem philosophy which has consistently been supported by the Board of Trade in relation to the English provisions.

A more extreme rejection of attributed purpose occurred in the case of facilitation of public policy (e.g. efficient capital market) which was supported by only 31.6% of the sample. Yet facilitation of efficient capital markets was perceived by the Rae Committee to be one of the principal objectives of companies and, in particular, securities industry legislation and the prime reason for establishing a national supervisory body with extensive investigative powers. Also facilitation of public policy was in the first instance seen to be the

only legitimate reason for intervention by the State in the affairs of "private bubbles".

The strong support of shareholder, creditor, debenture and interest holder protection reflects the trend in company law philosophy. The survey demonstrates a community rejection of the more limited purposes which had historically been perceived to be the raison d'e^tre of the Inspection provisions.

When assessing those purposes which had been fulfilled all sub-groups agreed that the purposes had not been fulfilled except in one case (Appendix A2). Respondents of all sub-groups were generally of the opinion that the Special Investigation provisions had not fulfilled the purposes which had been attributed to them, both purposes which respondents agreed with and those purposes they did not support. The highest levels of dissatisfaction with the fulfillment of the suggested purpose were in the case of "prevention of fraud and misfeasance" (83.3%) and "facilitation of public policy" (82.6%). It is interesting that both these purposes received, as for the first example, either little support as being a purpose or, in the second case, was rejected as an underlying purpose. It is suggested that respondents not considering these purposes as having the potential to be fulfilled by the use of the Special Investigation procedures rejected them or were inclined to reject them as constituting purposes or objectives.

Responses to only one suggested purpose did not fit into the pattern described above - "discovery of fraud and misfeasance". The response of the sample as a whole was almost evenly divided. Further examination of this item indicated that the answers of three sub-groups - Small Shareholders, Accountants and Administrators differed significantly from the remainder. In the case of those three the answers were more polarised to either "Yes" or "No" whilst those of the other four groups were evenly divided between "Yes" and "No" [9]. The Small Shareholders were strongly of the view that the purpose had not been fulfilled 72.2% whereas Accountants (71.4%) and

Administrators (95.5%) were strongly of the view that the purpose had been fulfilled. These responses perhaps reveal two different approaches of looking at the proposition. Small Shareholders appear to consider that insufficient of that which could potentially be discovered is discovered whilst the other two groups consider that because the procedure has commonly discovered fraud and misfeasance it has fulfilled its purpose.

"Protection of creditors" received the second highest affirmative response and then only 34.9% of respondents thought that purpose had been fulfilled. There is some correlation between this opinion and the known consequences of the use of the procedure. In several instances the appointment substantially reduced losses which may otherwise had occurred and assisted in the orderly realisation of assets or the recovery of misappropriated property.

Having sought to ascertain what respondents saw as the underlying purposes of the provisions Question 3 sought to ascertain in more detail what specific reasons for appointment were considered as being justified [10]. Testing of the responses lead in a large number of cases to the rejection of the hypothesis of homogeneity. Of the eleven reasons suggested (Appendix A3) only three were supported by all groups and none was rejected by all groups:

Strongly Agree or Agree

- (x) To investigate dealing in shares etc; by directors and persons associated with the company - 87.9%.
- (i) To assist in the preparation of criminal proceedings - 77.5%.
- (ii) To assist in the preparation of civil proceedings by responsible authority - 69.1%.

The extreme level of support for reason (x), which far exceeded the second highest reason - ("(i) to assist in the preparation of

criminal proceedings") 77.5% - is curious. This is the most recently enacted ground for appointment moreover, in Australia, as a specific ground it is a little used one; it accounts for only 9.3% of all Special Investigations. Although a number of other investigations have raised the question of dealings in shares of the company the investigation of such dealings has usually arisen peripheral to the main investigation which had its origins in the collapse of the company rather than allegations of impropriety in share dealings. In the majority of cases where share dealing has been the principal subject of the investigation no breach of the existing law was suggested by the Inspectors' reports and few civil or criminal actions have resulted from such investigations.

The level of support by all groups for this justification could be the result of the concern amongst the commercial community that many objectionable practices of this kind are not investigated and when investigated are found to be outside the reach of the law [11]. It is also possible that the high level of support is a reflection on the fact that there is in practice no private procedure available for investigation and that in the absence of an official enquiry there will be no investigation. This is in contrast with for example the discovery of the reasons for the company's financial position (for which there was only 51.9% support). The company's financial position is the subject of examination through the annual reports and accounts by auditors and shareholders and, in the event of the company's failure, ultimately by the Liquidator. In such a case in the absence of the appointment of an Inspector it is still likely that there will be some form of scrutiny. With share dealings unless the company subsequently fails this is not likely to be the case and even then share dealings which do not involve use of the company's funds or false reports are not likely to be examined by the Liquidator.

Respondents when considering, in Question 1, the underlying purposes of the provisions resoundingly agreed with the purposes:

- Protection of Shareholders (91.2%); and

. Protection of Creditors (81.5%).

As against this only 55.2% of all groups saw the assisting of the preparation of civil proceedings by shareholders or creditors as being justifications for appointment of an Inspector and there was not, a homogeneous response by all sub-groups. The differences in the responses of the various sub-groups are illustrated in Appendix A3. Thus while 75.4% of small shareholders and 66.7% of large shareholders supported the assistance of shareholders only 26.1% of accountants and 40.7% of Administrator's respondents saw this reason as a justification. The responses of other groups differed significantly being more evenly distributed between support and opposition [12]. As regards assistance of civil actions by creditors this was supported by 62.5% small shareholders, 73.3% large shareholders but by only 30.4% of accountants, 43.9% of companies and 48% of security industry respondents, again the answers of the remaining groups being more evenly distributed [13].

In contrast with the low overall level of support for appointing an Inspector to assist shareholders or creditors to prepare civil proceedings there was support by all groups (68.8%) for an appointment to assist in the preparation of civil proceedings by the responsible authority [14]. Specific power to commence such proceedings has been vested in the authorities in Australia since the 1930's and the desirability of authorities undertaking civil proceedings was commented on by Eggleston and seen by Greenwood and Santow as being extremely important in the scheme of effective companies and securities industry law enforcement [15]. It has, however, only been in recent years that such actions have been undertaken by corporate affairs authorities and then only on rare occasions. The commercial community seeing this as constituting the third most important justification for appointing an Inspector appear to support first, a far greater use of the power with this object in mind and secondly, a far greater use of the power to commence civil actions whatever the initial reason or justification for the appointment of the Inspector.

The Eggleston Committee saw the eliciting of facts and the placing of them before the Crown Law authorities to assist in the preparation and conduct of criminal or civil proceedings against persons concerned with the conduct of a company's affairs as being by far the most important use of the provisions. The primary responsibility for taking civil or criminal proceedings, in its view, should reside with the Crown [16]. This was not rated as the prime reason by respondents. Whilst there was 69.1% overall support for preparation of civil proceedings by the responsible authority and 77.5% overall support for appointment to assist in the preparation of criminal proceedings there was not equal support from all groups. In the latter case analysis revealed that 93.6% of small shareholders and 86.1% of securities industry respondents supported the reason but only 60% of large shareholders supported this reason [17]. When considering this disparity of views it should be noted that there was homogeniety and 77% support for the statement that the underlying purpose of discovery of fraud and misfeasance (Appendix A1). Thus whilst all groups agreed that discovery of fraud and misfeasance should be one of the purposes, and that the assistance in the preparation of civil proceedings by the responsible authorities was justification for the appointment of an Inspector, a consistent level of support was not given by all groups to assistance of criminal proceedings. Similarly, there was a low level of support for assistance of civil proceedings by shareholders and creditors from most groups.

This raises the questions of how the provisions can achieve shareholder protection, creditor protection etc; and what purpose is to be served by the discovery of fraud and misfeasance if it is not the assisting of preparation of criminal or civil proceedings, except in the latter case by the responsible authorities which in the majority of cases have demonstrated little inclination to commence such proceedings.

What is the perceived utility is even more perplexing when the rejection by respondents of the reason for an appointment - to arrest the deterioration in a company's affairs - is borne in mind. This was

only supported by 33.5% of respondents. There was not a homogenous response and the level of support ranged from 51.8% in the case of Administrators , 57.5% in the case of Small Shareholders, 18% in the case of Security Industry and 17.4% for Accountant respondents [18].

The arresting of the deterioration of the affairs of a company was seen by the Eggleston Committee as being a legitimate and important use of the provisions. The Greene Committee[19] also emphasised that the provisions provided the only means for intervention or official investigation prior to a company's failure. Within the commercial community, however, there appears to be no support (except in the case of two groups and then only marginal) for an appointment for this reason.

In contrast there was far greater support for the reason "to investigate action taken by directors and management". The overall level of support being 68.8%. Only large shareholders 38.5% did not support this as being a justification for an appointment. This response by the commercial community conflicts with the conservative approach which has historically been adopted to the appointment of an Inspector in both Australia and England, but particularly in the latter, and the insistence that the procedure should not be used as a mechanism to investigate the internal management of companies. Perhaps most striking of all is that 100% of Administrator respondents supported this reason. When the response to this question is viewed, together with the responses to the question relating to - Who should be appointed as an Inspector? (Appendix A12) - it appears that the commercial community as a whole recognises the need for, and is prepared to accept a far greater level of, official intervention in the affairs of companies than official committees and politicians have either suggested or been prepared to support. It also suggests that the commercial community would not be opposed to Ryan's Shareholder Tribual.

The overall high level of support 77.5%, even if not homogenous support, for the justification of the appointment of an Inspector to

assist in the preparation of criminal proceedings supports the view expressed by Eggleston that this was a legitimate use of the provisions and Greenwood's argument that this was at least one of the two principal justifications. It also suggests that the commercial community supports the emphasis which has been placed by Inspectors on the seeking out of criminal offences and the necessary evidence to found criminal charges and also the priority given by Inspectors and company law administrators to this aspect of the investigation relative to discovery of civil wrongdoing and the commencement of civil proceedings.

(c) Publication and Use of Report

Two of the most sensitive and controversial issues that have arisen in connection with the Special Investigation procedure are: the public nature of the appointment and subsequent publication of the report. Initially the fact of the appointment of the Inspector as well as the report were private matters. The State merely acted as a conduit to appoint a competent Inspector. In Australia since the enactment of provisions empowering the State in its own right, and on its own initiative, to appoint an Inspector there has been provision requiring the fact of the appointment to be made public. The requirements as regards publication of the report have varied from time to time in the various jurisdictions but since the enactment of the UCA there has been provision enabling the publication of the Inspector's report. The practices adopted by different Attorneys-General in the various jurisdictions in exercising their powers have varied widely. There has been considerable debate over the past two decades concerning publicity. The debate has revolved around two issues:

- should the fact of the appointment be made public; and
- should the Inspector's report be made public?

The making public of the mere fact of appointment was criticised by the Law Council in its 1964 and 1966 submissions [20]. The criticism

was based on the perceived resultant harm to the company. The Eggleston Committee whilst recognising the serious consequences which can result from the mere fact that an appointment has been made can have on the credit of the company, especially if the appointment is subsequently proved to have been unnecessary, was of the opinion that the terms of the appointment -

> "should be published because there is an even greater risk that when the fact of an appointment is known, as it almost inevitably will be, rumour will do more harm than truth. In some cases only one subsidary may be under investigation ..., the investigation may only be into a particular transaction not affecting the company's general credit or capacity to carry on business." [21]

In addition the facts do not support the Law Council's argument because in the majority of instances the appointment of an Inspector has been a consequence of and not the cause of the collapse of the company. If facts, not theories, are examined then it becomes difficult to point to a single instance where the fate of the company was not sealed prior to the appointment of the Inspector or where its situation was at least widely rumoured prior to that appointment.

Respondents to the questionnaire supported the concept of the public nature of the appointment. In the case of public companies, the level of support was 83.9%, while in the case of private companies it was 66.4% (Appendix A13).

It was not thought possible to draft a concise question which would allow respondents to indicate a meaningful opinion as to the impact of the publication of the appointment on the company involved. Instead, an attempt was made to obtain opinions on the impact that an appointment of an Inspector in respect of a public company has on the stock market at large (Appendix A14). Only 28.5% of respondents considered that the impact was substantial, 43% considered it depended on the prominence of the company in the market and the state of the market and 8.8% considered it had little, if any, impact. There was no significant difference between the sub-groups in the opinions they expressed as to the impact of the appointment [22].

The Law Council in its submissions had also opposed the making public of the Inspector's report. Eggleston, though recognising that the power to publish was "fraught with serious dangers", considered that there should be a power to publish. It proposed as a safeguard that the Minister should have to certify, before being entitled to publish, that he had considered -

> The probable effect of publication on the interests of the company, its shareholders and creditors, and any other person mentioned in the report, and is satisfied that the public interest requires that the report, or part of it should be published [23].

Respondents resoundingly rejected the contention that "no report should be made public", only 6.7% agreeing with that contention (Appendix A4). A majority 56.3% agreed that all reports should be made public while 37% considered that the Minister should have a discretion to publish or not publish a report [24]. In addition, respondents from all groups, except Administrators who did not support the making public of all reports,were in agreement (Appendix A5) that where all reports are not automatically made public certain parties should have a statutory right to receive a copy of the report. These parties were -

- the liquidator (also supported by Administrators)
- the company under investigation; and
- the parties named in the report.

Further there was general support among those who did not think that all reports should be made public that even if parties should not have a statutory right to receive a copy of the report, the Minister should have a discretionary power to provide a copy to a wide range of potentially interested parties (Appendix A6). This view was particularly strong amongst the Administrator sub-group which had been hesitant to require the making public of all reports or impose a statutory obligation to make the report available to specific parties.

The view expressed by the respondents as a whole vary dramatically from the Law Council's submissions. The view of the Lawyer sub-group is also at variance with that expressed by the Law Council. 53.3% being the opinion that all reports should be made public and 37.8% considering that the Minister should have a discretion as to publication (Appendix A4).

Eggleston had considered that the alternative to the publication of the report was for "Governments to accept the responsibility for all action, civil or criminal, which may result from the Inspector's report" [25]. Most governments have not adopted this approach and the practices that they have adopted as regards the publication of the Inspector's report in most cases have not facilitated the commencement of private actions. Inordinate time delays (outside Victoria) associated with publication and the failure in some jurisdictions to publish at all has to a large extent frustrated the purposes identified by the Eggleston Committee. In many cases, the Statute of Limitation period has long expired by the time of the publication of the report. Further, whilst administrators may become aware of the reasons for a company's failure by reading a non-public, and never to be published report, non-publication does not lead to the knowledge of other interested parties being increased. In a system where industry and professional self-regulation is still not only espoused but in some cases is the only form of regulation and where the questionning of "accepted practices" was until very recently, and in many instances still is, left almost entirely to non-official bodies the non-access resulting from non-publication has severely limited the ability of self-regulation bodies and academics to question practices and consider the need for change. The facts disclosed in Inspectors' reports prepared in the early 1960's, for example, contributed significantly to the development by the accounting profession of accounting standards. Whilst the abuses of the late 1960's and early 1970's were revealed to some extent by Inspectors' reports the Rae Committee's report was a far greater force for disclosure and change than were the Inspector's reports because of the extensive delays in

publication (eg Minsec Report). Self regulation may have been considerably more effective over the past two decades if there had been more widespread publication at an early date of reports.

Apart from these factors, non-publication of the report may result in the continuation of suspicion even where the report may not disclose any wrong doing. There are several examples where despite Parliamentary questions investigations have simply faded away, the report never being published, but where ghosts and allegations of involvement of parties continue to surface from time to time. In only one case in the period covered (Siver Valley) was an investigation actually publicly terminated due to the Attorney being of the opinion that there was no good reason for it to continue. Three questions then arise as to whether:

- there should be a statutory period within which a Minister has to make public a report or make it available to certain parties;
- whether, where a report is not made public, there should be some procedure for clarifying whether any action was recommended; and finally
- whether proceedings or other action is to flow from the investigation?

These questions were put to the respondents (Appendix All). All groups strongly supported the proposal that where a report is not made public, the Minister should be obliged within a statutory period commencing from his receipt of the report, to state:

- that no proceedings were recommended 86.2%
- that proceedings have been recommended 85.3%
- the action to be taken, if any, as a consequence of the report 86.4%

Exploring further the contention that the availability of the report and its timeliness are the essential ingredients in any assessment of the utility of the provisions, a series of questions (Appendices A7 to A10) relating to the possible imposition of a statutory time limit:

- within which an Inspector is required to submit a report to the Minister; and

- within which the Minister should have to either make the report public or available to parties;

were put to respondents. No distinction was made as to whether this should be a final or interim report. If the respondent supported the concept of imposing a statutory time limit he was asked to nominate a suitable time limit [27].

Looking at the overall responses 77.7% supported the proposition that there should be a statutory time limit within which the Inspector is required to submit a report to the Minister (Appendix A7). The responses of the various sub-groups were not homogeneous. Administrators although marginally supporting the imposition of a time period (51.9% in support) tended to favour a longer time period. The intensity of support ranged from Small Shareholders 92.7%, Companies 89.7%, Large Shareholders 83.7% to 61.4% in the case of Lawyers and only 51.9% in the case of Administrators.

As regards what that time limit should be, 57.1% of those supporting the imposition of a time limit considered the report should be submitted in a period of between 3 and 12 months from the date of the appointment while 63.8% considered that the period should be 6 months or less. The time limits which the commercial community appear to favour are considerably out of tempo with the time delays which currently occur in practice in Australia. Current practice was more accurately reflected by the periods suggested by those Administrators who favoured the imposition of a time period [28]. The attitudes of the

commercial community appear to correspond with that expressed by the Secretary of State for Trade [29].

As regards the proposition that a limit should be imposed on the period from the submission of the report to the Minister's making it public or available to parties (Appendix A9) 77.6% of respondents supported the proposition. Although Administrators marginally supported the proposition (51.9%) their response varied significantly from other sub-groups [30]. The highest level of support came from Small Shareholders 91.4% and Companies 90.6%. When indicating what that time limit should be, respondents were far less liberal in the time which they were prepared to allow - 67.1% considered the time limit should be three months or less (Appendix A10), and 87.5% considered that the period should not exceed 6 months. Figure "4" indicates the time lapses in actual cases. The disparity between the time limits which the commercial community would impose and current practice, in States other than perhaps Victoria, is obvious. The commercial community would appear to support the past Victorian practice of tabling the report almost immediately upon receipt. The conclusion can be drawn that it might very well be opposed to the possibility which arises under the Co-operative Scheme which enables <u>any</u> Attorney-General to block the publication of any Inspectors' report.

(d) <u>Costs</u>

The procedure was originally a private one. Cognizant with that approach costs were the sole responsibility of the applicants. Over time there was a mellowing of this hardline: the procedure became progressively more public in its nature and the question of responsibility for costs became less clear. Although the procedure, particularly in Australia, has undergone a metamorphosis from a private to public procedure the State has not, except for a very short time under the Victorian Acts of 1934 and 1935, assumed total responsibility for costs. There has always been the potential at least to require reimbursement for some, or all, of the costs from the

applicant, the company or other party. The Eggleston Committee considered the approach whereby parties could have demonstrated that they had had good reasons for seeking the appointment but still ultimately end up being required to contribute to the costs of the investigation unjust. In its opinion, although in some cases it might be just to require the company itself to pay costs, the concept of ordering expenses to be paid otherwise than out of public monies was "particularly unjust" [31]. The Co-operative legislation perpetuates that injustice.

The questions relating to costs were divided into two groups:

(i) Costs of investigation initiated by Minister

(ii) Costs of investigation on application for each group:

- irrespective of the outcome;
- where adverse report made; and
- where conviction resulted.

(i) Minister Initiates Situation

Throughout the answers as to who should bear the costs of an investigation there was surprisingly homogeneity of response. (Appendixes A15 to A20). Respondents generally supported the contention that the State should, to a greater or lesser extent, bear prime responsibility for the costs of the investigation where the Inspector was appointed by the Minister acting on his own intiative except where convictions result from the report. Where convictions resulted respondents generally agreed that the parties convicted should also be responsible for the costs of the investigation. In contrast there was little support for the suggestion that parties, if any, who derive benefit from the investigation should be responsible for the costs. Similarly respondents did not consider that criticism in the Inspector's report was sufficient to justify the primary onus for costs moving from "The State" to other parties. Support for

payment by the State reduced only marginally in such a situation in a situation where a conviction was obtained:

Question	Agree "The State"
. Appendix A15 Which parties should pay the costs of the investigation, irrespective of the outcome of the investigation, where the Minister of his own initiative, in the public interest, appoints the Inspector?	76.2%
. Appendix A16 Which parties should pay the costs of the investigation where an adverse report is made and the Minister has appointed an Inspector of his own initiative in the public interest?	68.4%
. Appendix A17 Which parties should pay the costs of the investigation where a conviction is obtained and the Minister has appointed an Inspector of his own initiative, in the public interest?	51.0%

. Appendix A17	Agree Parties Convicted
- Directors, if convicted	68.7%
- Auditors, if convicted	66.7%
- Other Parties convicted	65.1%

(ii) Appointment on Application of Shareholders

When faced with the general question as to who should be responsible for costs of an investigation when the Inspector is appointed on the application of shareholders respondents appeared to be uncertain, except where a conviction was obtained, as to who should be responsible. In the first instance respondents were not prepared to hold any particular party responsible but their responses did suggest those who they would not hold responsible:

Annexure A18	Agree	Disagree
Which parties should pay the costs of the investigation, irrespective of the outcome of the investigation, where the Inspector is appointed on the application of shareholders?		
. The Applicant	46.0%	31.1%
. Company Investigated	26.6%	46.8%
. Directors of the Company	8.9%	58.3%
. The State	40.3%	35.3%
. The Parties, if any, who Derive Benefit	33.9%	41.1%

The attitude to the State's responsibility varied dramatically from the attitude expressed (Appendix A15) in response to a similar question relating to an appointment by the Minister on his own initiative. In that instance 76.2% supported responsibility resting with the State, as against only 40.3% where the appointment was made on the application of shareholders. Respondents did not, however, accept that the applicants should be primarily responsible - only 46% agreeing with the proposition and only 26.5% considered that the company investigated should bear the costs.

In the situation where an appointment had been made at the request of shareholders and an adverse report resulted there was again no clear support for any particular party bearing responsibility although there was an increase in support for the State being responsible for costs (from 40.3% to 45.4% Appendices A18 and A19). There was, however, a dramatic increase in support for the proposition that directors who had been criticised in the report should be responsible - 38.1% as against only 8.9% that directors as a general principle irrespective of whether they were subsequently criticised should be responsible (Appendices A18 and A19). The increased support for directors having responsibility if criticised appears to have come from those respondents who had previously been uncertain. There appears to have been a general tendency to consider that parties criticised should bear the costs:

	Agree
Directors, if criticised	38.1%
Auditors, if criticised	38.8%
Other parties criticised	33.7%

Whilst there was not majority support for any party being responsible for costs there was general support 53.5% that where an adverse report was made the applicants should not be responsible. Although respondents were not yet prepared to hold any party responsible they appeared to consider that the making of an adverse report meant that the applicants should not be responsible. The making of the adverse report appears to have established the applicants' bona fides and shifted the onus from them - but respondents were still not prepared to say to whom.

The only situation, where an Inspector was appointed at the request of shareholders, in which respondents generally indicated clear preferences as regards responsibility for costs was where a conviction had been obtained. There was clear and strong opposition from all groups to the applicants being responsible: 70.1% opposing that proposition (Appendix A20). All groups, except Accountants, considered that parties convicted should bear responsibility:

Appendix A20	Agree
Directors, if convicted	69.0%
Auditors, if convicted	68.9%
Other parties convicted	64.9%

Accountants consistently opposed (Agree 33.3%, Disagree 55.6%) the proposition that convicted parties should bear the responsibility.

An interesting contrast between the attitudes of respondents to the State's responsibility which appears to depend on the source of the investigation is continued through to the case where a conviction is obtained. Overall only 44.8% supported the proposition that the

State should be responsible where a conviction was obtained when the appointment was made on the application of shareholders. Opposition came mainly from Large Shareholders (100% in opposition) and to a lesser extent Companies and Small Shareholders (44.6% and 40.7% respectively). Accountants (50%), Lawyers (61.3%), Securities Industry (50%) and Administrators (52.6%) supported the State having some responsibility.

In the case of an appointment at the instigation of private applicants the commercial community appears to see the State as having a significantly reduced responsibility as regards costs. Whilst there is no clear view as to who should be responsible prior to a conviction being obtained there is a clear trend that the potential responsibility of the applicants should be reduced where their fears are found to have some grounds (eg where an adverse report is made) and to have that responsibility assumed by others when a conviction is obtained. Of those who considered that costs should follow the guilty: Large shareholders appeared to be most united in this view in excess of 92% considering that parties convicted should pay the costs. (Appendices A17 and A20). That group also appeared to shift the responsibility at an earlier stage, on the basis of criticism in the report only, than other groups (Appendix A19).

As regards the actual practice on seeking costs Table 5 records that in a number of cases (eg Neon Signs, International Vending Machines, Motel Holdings and Stanhill Group) substantial contributions to the costs of the investigations were sought from, and made by, the companies whose affairs were investigated. In a number of other cases recommendations have been made by Inspectors that the company, particular companies in the group or particular individuals pay the costs of the investigation. All of these were cases in which the Inspector was appointed on the initiative of the Minister.

In the one case in which an Inspector was appointed at the instigation of applicants - it was made very clear that the State

irrespective of the outcome did not see itself as having any potential responsibility for costs.

(e) Costs, Purposes and Private Applicants

The attitudes of the commercial community to the State's responsibility for costs in the two situations are interesting if examined in conjunction with responses to questions relating to purpose (Appendix A1) and fulfillment of purpose (Appendix A2). Of respondents - 91.2% considered that the underlying purpose of the provisions should be the "Protection of Shareholders" whilst 78.2% and 74.5% agreed that the underlying purpose should be, respectively, the "Protection of Debenture Holders" and the "Protection of Interest Holders". Respondents did not consider that these purposes had been fulfilled. Turning to reasons or justifications for an appointment only 55.2% considered that assistance in the "preparation of civil proceedings by shareholders" or by "Creditors" (56%) justified an appointment. It would appear that the commercial community although supporting the protection of shareholders and other parties through the Special Investigation mechanism does not consider that such protection should when triggered by an application of shareholders etc; be at the public expense nor is there a great deal of support for shareholders using the provisions as a mechanism of self-help to assist the bringing of private civil actions. The conclusion that is suggested from the responses to the series of questions is that the commercial community considers that there should be a greater level of official intervention directed at the protection of shareholders and other parties directly interested in the fortunes of companies and that such intervention is mainly justified in two circumstances to

- investigate possible insider trading; and
- to assist in the preparation of criminal proceedings.

Protection of shareholders etc; is viewed as a matter for the State; it is the State which should initiate Special Investigations for this purpose and the State which should bear the costs.

(f) The Inspector and Credibility of the Use of the Provisions

The reason for the Victorian Act of 1934 being enacted as "sunset legislation" was that it was

> not thought desirable to place in the hands of .... any .... Government for a longer period the very drastic and unusual powers conferred ....[32]

From time to time throughout the history of the Inspection provisions similar concern that the powers in the provisions may be subject to abuse has been voiced. In a number of instances the fact that an appointment has, or has not, been made has been attributed to the desire of the Minister to use the provisions for political gain or for political reasons refuse to exercise his powers. In an attempt to gauge the credibility of the provisions and their exercise at least in retrospect respondents were asked - "In your opinion is the power to appoint an Inspector abused?" The responses to the question can only be considered as being subjective in the extreme and it is not surprising that 39.2% of all respondents indicated that they were UNDECIDED (Annexure A21). Turning to those who were prepared to commit themselves 1.5% considered the provisions were abused VERY OFTEN, 5.3% answered OFTEN and 32.2% responded SOMETIMES while 22% considered the provisions were NEVER abused. Application of the Chi-squared test to the responses resulted in a rejection of the null hypothesis of homogeneity at the 5% level there being significant differences amoung the seven sub-groups' responses [33]. Lawyers and Administrators sub-groups responses fell outside the general response. Lawyers tended to consider that the powers were more commonly abused than was accepted by other groups - 2.3% being of the opinion that the provisions were VERY OFTEN abused; 16.3% responded OFTEN; whilst a further 39.5% considered the provisions were SOMETIMES abused. In contrast to the response of Lawyers 63.0% of Administrators considered that the provisions were NEVER abused.

In an attempt to make the question a little less vague and the responses more meaningful a follow-up question asked respondents who

thought that the power had ever been abused to nominate the nature of the abuse and the name of the company. Only 19.5% responded to this question. Their replies suggested that their responses to the prior question may have been considerably influenced by one particular recent investigation. Of those that nominated an investigation which involved an abuse of power 32.5% nominated the Sinclair investigation and 60% attributed the nature of the abuse as being "political". Of those who referred to that investigation 61.5% responded SOMETIMES to the prior question.

The investigation which was nominated as an example was that into the "Sinclair Companies". The investigation was into five companies associated with funeral activities and a separate pastoral company. The investigation achieved notoriety only because of the connection with the activities of the companies of the father of a Commonwealth Cabinet Minister and, after the father's death, of the Minister. The investigation, even prior to the publication of the interim Inspector's report, was the subject of widespread press comment. The Inspector's interim report reached conclusions but made no recommendations. The conclusion was that the Minister's father had over a period of 15 years defrauded five of the companies of almost $600,000 which was paid to a company controlled by the father and the Minister. The Inspector also concluded that signatures on some documents had been forged. The Minister was subsequently charged with several offences, including forgery, and acquitted. The publication of the report, the trial and the acquittal occurred prior to the circulation of the questionnaire. In view of these facts and the responses it is highly likely that responses to the question were considerably influenced by that one recent investigation.

It is helpful to link with the "abuse of power" question the responses to the question who should be appointed as an Inspector? This is so because a suspicion of the use of the provisions may reflect on those who subsequently carry out the investigation or the body charged with the administration of the legislation. This appears to be the case (Appendix A12) - at least so far as Lawyers are

concerned in that 58.1% of Lawyers considered that the power to appoint an Inspector was VERY OFTEN, OFTEN OR SOMETIMES ABUSED and 61.9% of Lawyers considered that an officer of the NCSC or Corporate Affairs Commission should not be appointed as an Inspector [34]. Lawyers principal support as possible Inspectors was given to "Barristers in Private Practice" 90.9% and "Chartered or Public Accountants" 76.2% although in the latter the support is reduced by the fact that all of the remaining 21.4% disagreed with the proposal. A high level of support for Barristers also came from the Administrator group - 80.8%. Yet curiously this group reflected the most conservative view of abuse of the provisions (Annexure A21). Also it is interesting that whilst overall the greatest level of apprehension was expressed by Lawyers, Small Shareholders were the most extreme group as regards considering that the powers were VERY OFTEN abused 5.4% being of that opinion. Opposition to the NCSC and CAC officers appeared to be strongest amongst those who considered that the provisions were VERY OFTEN or OFTEN ABUSED. There was slightly less disagreement with the proposition that a CONTRACT SPECIAL INVESTIGATOR should be appointed.

When drafting the questionnaire some concern arose as regards the extremely subjective and imprecise nature of the abuse question and the extent to which responses could be influenced by two factors - recent events and respondents' personal experiences. The influence of recent events has been discussed and the concern appears to have been justified. However, there does not appear to be a direct correlation between involvement and attitudes to abuse and in the case of Lawyers the opposite conclusion is suggested. Of the total respondents only 18.9% had been "involved" in the conduct of a Special Investigation (Appendix A22) Accountants (28.6%). Lawyers (25%) and Administrators (59.3%) being most heavily represented. None of those who had personal experience of a Special Investigation, however, also considered that the provisions had been VERY OFTEN abused and only 9.3% considered that the provisions were OFTEN abused on contrast to 6.7% of all respondents and 21.2% of all Lawyers who were of those

opinions. It is suggested that a greater level of apprehension was reflected by those who had not been involved with a Special Investigation as against those who had been personally involved.

The examination of actual appointments shows that the original practice as regards the choice of an Inspector was clearly biased in favour of Chartered Accountants in private practice or other persons with an accounting background (Table 4). This was particularly the case in Victoria pre-UCA. Since the enactment of the UCA there has clearly been a trend away from private accounting practitioners towards practising Barristers and more recently towards the appointment of Companies Officers. The responses overall (Appendix A12) support the appointment of Inspectors from those groups which have in practice been the most and common sources for appointment:

. Chartered of Public Accountant	71.4%
. Contract Special Investigators Employed for set terms by NCSC or CAC	67.1%
. Officer of NCSC or CAC	62.7%
. Barrister in Private practice	56.1%

There were, however, except in two cases, quite apparent differences in the opinions of particular groups to the appointment of particular types of persons. Thus whilst there was 62.7% overall support for appointment of NCSC or CAC Officers 61.9% of Lawyers opposed the appointment of Officers.

Lawyers gave a considerably higher level of support to "Contract Special Investigators" 51.2%. Highest support for this source came from the Large Shareholder sub-group 92.9% and were the source most preferred by that sub-group. The higher level of support for a "Contract Special Investigators", as against 73.3% for NCSC or CAC Officer suggests that the Large Shareholder sub-group may see some advantage in the appointment of persons who have some depth of

experience in the conduct of Special Investigations and independence from the day-to-day demands of private professional practices and who whilst under the general umbrella of a regulatory authority have some measure of divorcement from it and possibly also experience gained from outside the public service.

Whilst appointments of "Practising Barristers" are quite common and supported overall by 56.1% - opinions tendered to be polarised: 80.8% of Administrators and 90.9% of Lawyers supported such sources but only 21.4% of Large Shareholders, 36.8% of Companies and 34.3% of Small Shareholders supported appointment of Barristers. The appointment of "Chartered or Public Accountants" was supported by all groups (71.4%) with extremely high level of support coming from Accountants 95.7% and a high level of support from Administrators 76.9% and Lawyers 76.2%. Two possible reasons for these responses, other than perhaps the leaning towards the respondents' own discipline in the case of Accountants and to a lesser extent Administrators, are that the reports of Inspectors have had a very real and direct impact over the past two decades on the development of accounting standards and practices and the fact that most Special Investigations have involved detailed examination of the investigated company's accounts and of its accountant's actions.

No group supported the appointment of an "Other Public Servant" or of a "Member of the Securities Industry". In response to both suggestions however, the Administrators sub-group rather than opposing such an appointment tended to record UNDECIDED responses - 50% and 34.6% respectively. This suggests that Administrators may see it desirable in certain circumstances to make an appointment from other than traditional sources.

(g) Commercial Community's Profile of a Special Investigation

Based on the survey responses a profile of a Special Investigation emerges. It has some similarities to that drawn up from a historic examination of actual appointments but it differs in many important respects:

- The underlying purposes of the provisions are firstly the protection of shareholders and secondly, the discovery of fraud and misfeasance and the protection of those parties whose interests are most directly aligned to the companies fortunes.

- The only purpose seen as possibly being fulfilled is that of discovery of fraud and misfeasance.

- The greatest justifications for the appointment of an Inspector are:

  - to investigate dealings in shares by insiders;
  - to assist in the preparation of criminal proceedings and to a lesser extent civil proceedings by the responsible authority; and
  - to investigate action taken by directors and management.

- All reports should be published and in the absence of such a policy the liquidator, the company and parties named should have a statutory right to receive a copy of the report.

- A statutory time limit should be placed on the duration of the investigation - the period preferred being not less than six months or more than twelve months.

- The Minister should be required to make public the report, exercise his discretion or make it available to parties within a statutory period - the preferred period being three months or less.

- Where a report is not made public the Minister should be required within a statutory time period to state:

  - the action, if any, to be taken as a consequence of the report; and
  - whether or not proceedings were recommended.

- Inspectors should be chosen from:

  - Chartered or Public Accountants;
  - Barristers in Private Practice; and

- Officer of CAC or NCSC or Contract Special Investigators employed by those authorities.

. The appointment of an Inspector should be made public.

. The appointment of an Inspector to investigate a public company does not necessarily have any impact on the stock market at large.

. Where the Inspector is appointed on the Minister's own initiative primary responsibility for the costs of the investigation should rest with the State except where convictions result. In the case of appointment resulting from an application the State's responsibility should be considerably reduced and if parties are convicted they should bear the costs.

. The power to appoint an Inspector may sometimes be abused.

FOOTNOTES

1. See Adby K.J. Unpublished Thesis submitted to the Australian National University entitled "The Place of the Special Investigation or its Counterpart in Australian and English Company Law" August 1982, copy held by ANU Law Library and J.V. Barry Memorial Library.

2. The majority of responses were received within two months. However, the bulk of "Administrator" group responses were not received until late 1982. When incorporating those responses "late" responses from other groups were also incorporated. This study therefore draws on a wider base than the preliminary report in the Thesis although in most cases the additional responses did not significantly alter the previous results.

3. Report of the Company Law Amendment Committee B.P.P. Reports from Commissioners 1926, 9, 477, Cmd. 2659.

4. Companies (Special Investigations) Act 1934 (No. 4224) Vic.

5. For detailed analysis of reports see Adby K.J. Op Cit Primary data included Commonwealth and State Government Gazettes, Hansards, Parliamentary Reports, Eggleston Committee Report, Newspaper reports, Reports of NSW Corporate Affairs Commission and responses of Corporate Affairs Commissions to requests for information.

6. Eggleston Committee (Company Law Advisory Committee, Report to Standing Committee of Attorneys-General on Investigations 1969 Victorian Government Printer C-No2, 5310/69 para. 16 and in particular the following articles Young, J.Mc.I. "Companies in Uniform" (1963) 36 ALJ, 330; Campbell, W.B. "The Future of Limited Liability Companies and their Administration: (1967) 43 ALJ, 348; Lockhart, J.S. "The Lawyer as an Investigator" (1971) 45 ALJ, 504. Adby K.J. op cit.

7. In each of the questions in which a chi-squared test was used a respondent can be classified into a different category. It is assumed that each sample is drawn at random; that the outcomes of the various sub-groups are mutually independent and that each observation (answer) may be categorised into one of the categories. The following hypothesis can be formulated:

   H_0 : all of the sub-groups' answers are equal to each other

   H_1 : at least two of the sub-groups' answers differ.

   A chi-squared test statistic -

$$T = \sum_{i=1}^{r} \sum_{j-1}^{c} \frac{(Oij - Eij)^2}{Eij}$$ can be used to test the hypothesis.

The decision rule is - Reject H_0 if T exceeds $x^2 1-x$ with (r-1) x (c-1) degrees of freedom. In certain cases Eij is small would invalidate the conclusions as the test statistic T is only approximately chi-squared when Eij is large. In such cases the approach was taken of combining like answers eg "agree" and "strongly agree".

8. Chi-squared T values were 59.77, 52.85, 42.67 and 52.13 respectively $\alpha = 0.05$; n = 24 degrees of freedom; H_0 rejected if T exceeded 36.42.

9. Chi-squared T value was 33.35%, $\alpha = 0.05$; 6 degrees of freedom; H_0 rejected if T exceeded 12.59.

10. The reasons or justifications listed in the question to which a reaction was sought were again those suggested or rejected by the Eggleston, Greene, Cohen or Jenkins Committees, by commentators on the provisions or stated by Parliament or Ministers to be justifications.

11. eg Ducon and Cox Bros investigations.

12. Chi-squared T value was 56.11, $\alpha = 0.05$ and 24 degrees of freedom, H_0 rejected if T exceeded 36.42.

13. Chi-squared T value was 45.71, $\alpha = 0.05$ and 24 degrees of freedom, H_0 rejected if T exceeded 36.42.

14. Although supported by all groups the response was not homogeneous Chi-squared T value was 40.75, $\alpha = 0.05$ and 24 degrees of freedom, H_0 rejected if T exceeded 36.03. A greater proportion of Small shareholders "Strongly Agreed" whilst amongst Administrators no one "Strongly Disagreed".

15. Santow op cit, Eggleston Committee paras 11-12 and Greenwood op cit.

16. Eggleston Committee op cit para 12.

17. Chi-squared T value was 43.95, $\alpha = 0.05$, and 24 degrees of freedom, H_0 rejected if T exceeded 36.42. The responses of Small shareholders and Accountant responses were more positive than average whilst lawyers showed a tendancy to disagree.

18. Chi-squared T value 46.17, $\alpha = 0.05$ and 24 degrees of freedom, H_0 rejected if T exceeded 36.42. Small shareholders and Administrators recorded a higher level of "Agree" and "Stongly Agree" than other groups.

19. Greene Report op cit.

20. Law Council Newsletter. Submission of Bar Council of NSW Vol. 3, No. 1, May 1967.

21. Eggleston Committee Report op cit para 16.

22. Chi-squared T value 26.52, α = 0.05 and 24 degrees of freedom, reject H_0 if T exceeds 36.42.

23. Eggleston Committee, op cit, para 17.

24. Chi-squared T value 19.61, α = 0.05, 12 degrees of freedom, reject if H_0 exceeds 21.03.

25. Eggleston Committee, op cit para 17.

26. Chi-squared T value 7.10, α = 0.05, with 6 degrees of freedom, reject if H_0 exceeds 12.59.

27. The questionnaire used an open form for responses to the time limit questions although for analysis purposes the responses were grouped into five categories.

28. 10% favoured >3-6 months and 50% >12 months.

29. Department of Trade Handbook of the Companies Inspection System London: HMSO, 1980, 70.

30. Chi-squared T value 19.89, α= 0.05, 6 degrees of freedom, reject H_0 if T exceeds 12.59.

31. Eggleston Committee, op cit para 26.

32. Victorian Parliamentary Debates 1934, Vol. CXCV. 1381.

33. Chi-squared T value 58.77, α = 0.05, 24 degrees of freedom, reject H_0 if T exceeds 36.42.

34. Chi=squared T value 42.64, α = 0.05 12 degrees of freedom, reject H_0 if T exceeds 21.03.

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Session	Parliamentary Papers Volume	Page
1947/48	2	1087
1948/48/50	3	881
1948/49/50	3	883
1950/51/52	1	185
1953	1	187
1954/55	1	205
1956/57	1	193
1956/57	1	195
1957/58	1	203
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1959/60	1	293
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TABLE OF CASES

Questionnaire Type:

SPECIAL INVESTIGATIONS IN COMPANY LAW: THEIR USES AND UTILITY

PURPOSE AND REASONS FOR APPOINTMENT

QUESTION 1

Which of the following statements do you consider should constitute the underlying purpose/s of the special investigation provisions. Indicate your answer by placing an 'X' in the appropriate box.

	Strongly Agree A	Agree B	Undecided C	Disagree D	Strongly Disagree E
i. Protection of Shareholders	☐	☐	☐	☐	☐
ii. Protection of Company Undertaking	☐	☐	☐	☐	☐
iii. Protection of Creditors	☐	☐	☐	☐	☐
iv. Protection of Debenture Holders	☐	☐	☐	☐	☐
v. Protection of Interest Holders	☐	☐	☐	☐	☐
vi. Prevention of Fraud and Misfeasance	☐	☐	☐	☐	☐
vii. Discovery of Fraud and Misfeasance	☐	☐	☐	☐	☐
viii. Facilitation of Public Policy, e.g. efficient capital market	☐	☐	☐	☐	☐
ix. Other, please state: _____ _____	☐	☐	☐	☐	☐
x. Other, please state: _____ _____	☐	☐	☐	☐	☐

QUESTION 2

Indicate by placing an 'X' in the appropriate box whether you think that the listed purposes have been fulfilled.

	Yes A	No B
i. Protection of Shareholders	☐	☐
ii. Protection of Company Undertaking	☐	☐
iii. Protection of Creditors	☐	☐
iv. Protection of Interest Holders	☐	☐
v. Prevention of Fraud and Misfeasance	☐	☐
vi. Discovery of Fraud and Misfeasance	☐	☐
vii. Facilitation of Public Policy, e.g. efficient capital market	☐	☐
viii. Other, please state: _____ _____	☐	☐
ix. Other, please state: _____ _____	☐	☐

QUESTION 3

Listed below are a number of possible reasons or justifications for the appointment of an Inspector. Indicate which reasons you agree or disagree with by placing an 'X' in the appropriate box.

	Strongly Agree A	Agree B	Undecided C	Disagree D	Strongly Disagree E
i. To assist in the preparation of criminal proceedings	☐	☐	☐	☐	☐
ii. To assist in the preparation of civil proceedings by responsible authority	☐	☐	☐	☐	☐
iii. To arrest the deterioration in a company's affairs	☐	☐	☐	☐	☐
iv. To provide information on the causes of company failure	☐	☐	☐	☐	☐
v. To assist in the preparation of civil proceedings by shareholders	☐	☐	☐	☐	☐
vi. To assist in the preparation of civil proceedings by creditors	☐	☐	☐	☐	☐
vii. To discover the reasons for a company's financial position	☐	☐	☐	☐	☐
viii. To state, through a report to Parliament the reasons for a company's financial position	☐	☐	☐	☐	☐
ix. To collect and state the evidence of witnesses for use in proceedings	☐	☐	☐	☐	☐
x. To investigate dealing in shares etc; by directors and persons associated with the company	☐	☐	☐	☐	☐
xi. To investigate action taken by directors and management	☐	☐	☐	☐	☐
xii. Other, please state: _____	☐	☐	☐	☐	☐
xiii. Other, please state: _____	☐	☐	☐	☐	☐

PUBLICATION AND USE OF REPORT

QUESTION 4

What, in your opinion, should be the practice relating to the publication of the reports of Inspectors appointed under the Special Investigation Provisions. Insert 'X' in appropriate box.

i.(a) ALL reports should be made public ☐ A - If this box marked proceed directly to Question 7.

ii.(b) NO report should be made public ☐ B

iii.(c) The Minister should have a DISCRETION to publish or not publish a particular report ☐ C

QUESTION 5

If all reports are NOT to be automatically made public indicate by placing an 'X' in the appropriate box which, if any, of the parties should have a statutory right to receive a copy of the report.

		A Agree	B Undecided	C Disagree
i.	the liquidator	☐	☐	☐
ii.	shareholders	☐	☐	☐
iii.	a nominated shareholder representative	☐	☐	☐
iv.	the company under investigation	☐	☐	☐
v.	Chairman of the Australian Associated Stock Exchanges	☐	☐	☐
vi.	parties named in the report	☐	☐	☐
vii.	the applicant for the appointment	☐	☐	☐
viii.	other, please state: _____			

QUESTION 6

After completing Question 5 look at the parties who you did not think should have a statutory right to receive a copy and those instances where you were undecided. Indicate by inserting an 'X' in the appropriate box where you think the Minister should have a discretionary power to provide those parties with a copy of the report.

		A Agree	B Undecided	C Disagree
i.	the liquidator	☐	☐	☐
ii.	shareholders	☐	☐	☐
iii.	a nominated shareholder representative	☐	☐	☐
iv.	the company under investigation	☐	☐	☐
v.	Chairman of the Australian Associated Stock Exchanges	☐	☐	☐
vi.	parties named in the report	☐	☐	☐
vii.	the applicant for the appointment	☐	☐	☐
viii.	other, please state: _____	☐	☐	☐

QUESTION 7

Indicate by placing an 'X' in the appropriate box if you think that a statutory time limit, commencing from the date of the appointment, should be placed on when an Inspector is required to submit a report to the Minister.

	A		B
Yes	☐	No	☐

IF YOU INDICATED YES PROCEED TO QUESTION 8 -
IF NO PROCEED TO QUESTION 9.

QUESTION 8

What do you think that statutory time limit should be?

_____

QUESTION 9

If you consider that reports should always be made public or should be made available to parties as of right or made available to parties at the Minister's discretion indicate by placing an 'X' in the appropriate box if you think that a statutory time limit, commencing from the date of presentation of report to Minister, for tabling or making available should be stated in the legislation.

	A		B
Yes	☐	No	☐

IF YES PROCEED TO QUESTION 10
IF NO TO QUESTION 11.

QUESTION 10

What do you think that statutory time limit should be?

_____

QUESTION 11

Where a REPORT IS NOT MADE PUBLIC do you consider that the Minister should be obliged, within a statutory period, commencing upon his receipt of the report, to state any, or all, of the following:

		A Yes	B No
i.	that no proceedings were recommended	☐	☐
ii.	that proceedings have been recommended	☐	☐
iii.	the action to be taken, if any, as a consequence of the report	☐	☐

THE INSPECTOR

QUESTION 12

By placing an 'X' in the appropriate box please indicate which, if any, of the following persons should be appointed as an Inspector.

		A Agree	B Undecided	C Disagree
i.	Officer of the Corporate Affairs Commission or N.C.S.C.	☐	☐	☐
ii.	Other Public Servant	☐	☐	☐
iii.	Contract Special Investigators employed for set terms by Corporate Affairs Commission or N.C.S.C.	☐	☐	☐
iv.	Barrister in private practice	☐	☐	☐
v.	Chartered or Public Accountant	☐	☐	☐
vi.	Solicitor in private practice	☐	☐	☐
vii.	Member of the Securities Industry	☐	☐	☐
viii.	Other, please state: _____	☐	☐	☐

CONSEQUENCES AND COSTS

QUESTION 13

Indicate by placing an 'X' in the appropriate boxes whether you consider that the appointment of an Inspector should be made public at the time of the appointment.

			A		B
i.	In case of public company	Yes	☐	No	☐
ii.	In case of private company	Yes	☐	No	☐

QUESTION 14

In the case of a public company indicate by placing an 'X' in the most appropriate box which statement best describes the impact that the appointment has on the stock market at large.

i. Little, if any ☐

ii. Varies, depends on the state of market ☐

iii. Varies, depends on prominence of the company in the market ☐

iv. Varies, depends on prominence of the company in the market and the state of the market ☐

v. Substantial ☐

QUESTION 15

Where the Minister of his own initiative, in the public interest, appoints an Inspector indicate by placing an 'X' in the appropriate boxes which, if any, of the parties listed should pay the costs of the investigation irrespective of the outcome of the investigation.

	A Yes	B Undecided	C No
i. the company investigated	☐	☐	☐
ii. the State	☐	☐	☐
iii. the parties, if any, who derive benefit from the investigation	☐	☐	☐
iv. other, please state: _____	☐	☐	☐

_____

QUESTION 16

Where the Minister of his own initiative, in the public interest, appoints an Inspector indicate by placing an 'X in the appropriate boxes which, if any, of the parties listed should pay the cost of the investigation where an adverse report is made.

		A Yes	B Undecided	C No
i.	the company investigated	☐	☐	☐
ii.	the State	☐	☐	☐
iii.	the parties, if any, who derive benefit from the investigation	☐	☐	☐
iv.	directors, if criticised	☐	☐	☐
v.	auditors, if criticised	☐	☐	☐
vi.	other parties criticised	☐	☐	☐
vii.	other, please state: _____	☐	☐	☐

QUESTION 17

Where the Minister of his own initiative, in the public interest, appoints an Inspector indicate by placing an 'X' in the appropriate boxes which, if any, of the parties listed should pay the costs of the investigation where a conviction is obtained.

		A Yes	B Undecided	C No
i.	the company investigated	☐	☐	☐
ii.	the State	☐	☐	☐
iii.	the parties, if any, who derive benefit from the investigation	☐	☐	☐
iv.	the directors, if convicted	☐	☐	☐
v.	auditors, if convicted	☐	☐	☐
vi.	other parties convicted	☐	☐	☐
vii.	other, please state: _____	☐	☐	☐

QUESTION 18

Where the Inspector is appointed on the application of shareholders, debenture holders or interest holders of the company indicate by placing an 'X' in the appropriate box which, if any, of the parties listed should pay the cost of the investigation irrespective of the outcome of the investigation.

		A Yes	B Undecided	C No
i.	the applicant			
ii.	the company investigated	☐	☐	☐
iii.	the directors of the company	☐	☐	☐
iv.	the State	☐	☐	☐
v.	the parties, if any, who derive benefit from the investigation	☐	☐	☐

QUESTION 19

Where the Inspector is appointed on the application of shareholders, debenture holders or interest holders of the company indicate by placing an 'X' in the appropriate box which, if any, of the parties listed should pay the cost of the investigation where an adverse report is made.

		A Yes	B Undecided	C No
i.	the applicant	☐	☐	☐
ii.	the company investigated	☐	☐	☐
iii.	the parties, if any, who derive benefit from the investigation	☐	☐	☐
iv.	directors, if criticised	☐	☐	☐
v.	auditors, if criticised	☐	☐	☐
vi.	other parties criticised	☐	☐	☐
vii.	the State	☐	☐	☐

QUESTION 20

Where the Inspector is appointed on the application of shareholders, debenture holders or interest holders of the company indicate by placing an 'X' in the appropriate box which, if any, of the parties listed should pay the cost of the investigation where a conviction is obtained.

		A Yes	B Undecided	C No
i.	the applicant	☐	☐	☐
ii.	the company investigated	☐	☐	☐
iii.	the parties, if any, who derive benefit from the investigation	☐	☐	☐
iv.	the directors, if convicted	☐	☐	☐
v.	auditors, if convicted	☐	☐	☐
vi.	other parties convicted	☐	☐	☐
vii.	the State	☐	☐	☐

TO CONCLUDE

QUESTION 21

Do you recall the names of any companies which have been the subject of special investigations? If so, could you state the names of three companie

_____

_____

_____

QUESTION 22

In your opinion is the power to appoint an Inspector abused?

Very Often	Often	Undecided	Sometimes	Never
A	B	C	D	E
☐	☐	☐	☐	☐

QUESTION 23

If you consider that the power has ever been abused please complete the following in respect of that abuse.

(a) Company the subject of the investigation _____

_____

(b) Nature of the abuse _____

_____

(c) Any other comments _____

_____

QUESTION 24

(a) Have you ever been involved in the conduct of a Special Investigatio

	A		B
Yes	☐	No	☐

(b) In what capacity? _____

_____

QUESTION 25

Indicate by placing an 'X' in the appropriate box/es if you are -

i. Qualified as an Accountant ☐

ii. Hold Law Qualifications ☐

iii. A shareholder ☐

iv. An officer of a company ☐

QUESTION 26

In which State/Territory do you reside -

A	B	C	D	E	F	G	H
VIC.	N.S.W.	TAS.	QLD.	S.A.	W.A.	N.T.	A.C.T.
☐	☐	☐	☐	☐	☐	☐	☐

TABLE A.1

APPENDIX "A"

QUESTION 1

Which of the following statements do you consider should constitute the underlying purpose/s of the special investigation provisions?

		STRONGLY AGREE	AGREE	UNDECIDED	DISAGREE	STRONGLY DISAGREE
		%				
i. "PROTECTION OF SHAREHOLDERS"	(N=238)	51.7	39.5	3.4	4.2	1.3
COMPANIES	(N = 39)	46.2	51.3	-	-	2.6
SHAREHOLDERS (S)	(N = 41)	80.5	14.6	4.9	-	-
ACCOUNTANTS	(N = 41)	34.8	43.5	-	21.7	-
LAWYERS	(N = 45)	48.9	44.4	2.2	2.2	2.2
ADMINISTRATORS	(N = 26)	30.8	65.4	3.8	-	-
SECURITIES INDUSTRY	(N = 49)	57.1	28.6	6.1	6.1	2.0
SHAREHOLDERS (L)	(N = 15)	40.0	46.7	6.7	6.7	-
ii. "PROTECTION OF COMPANY UNDERTAKING"	(N=233)	14.6	35.6	20.6	24.9	4.3
COMPANIES	(N = 36)	13.9	44.4	27.8	8.3	5.6
SHAREHOLDERS (S)	(N = 40)	30.3	32.5	20.0	5	12.5
ACCOUNTANTS	(N = 23)	8.7	39.1	-	52.2	-
LAWYERS	(N = 44)	13.6	36.4	18.2	25.0	6.8
ADMINISTRATORS	(N = 26)	7.7	42.3	23.1	26.9	-
SECURITIES INDUSTRY	(N = 49)	10.2	30.6	20.4	38.8	-
SHAREHOLDERS (L)	(N = 15)	13.3	20.0	40.0	26.7	-
iii. "PROTECTION OF CREDITORS"	(N=238)	31.1	50.4	6.3	8.8	3.4
COMPANIES	(N = 39)	25.6	64.1	2.6	5.1	2.6
SHAREHOLDERS (S)	(N = 40)	37.5	32.5	12.5	10.0	7.5
ACCOUNTANTS	(N = 23)	17.4	52.2	4.3	21.7	4.3
LAWYERS	(N = 45)	44.4	46.7	2.2	2.2	4.4
ADMINISTRATORS	(N = 26)	50.0	46.2	3.8	-	-
SECURITIES INDUSTRY	(N = 50)	16.0	60.0	6.0	16.0	2.0
SHAREHOLDERS (L)	(N = 15)	26.7	46.7	20.0	6.7	-
iv. "PROTECTION OF DEBENTURE HOLDERS"	(N=238)	26.9	51.3	7.1	11.3	3.4
COMPANIES	(N = 36)	23.7	57.9	7.9	5.3	5.3
SHAREHOLDERS	(N = 41)	51.2	29.3	9.8	2.4	7.3
ACCOUNTANTS	(N = 23)	21.7	56.5	4.3	17.4	-
LAWYERS	(N = 44)	22.2	48.9	4.4	20.0	4.4
ADMINISTRATORS	(N = 26)	26.9	57.7	3.8	11.5	-
SECURITIES INDUSTRY	(N = 50)	16.0	62.0	6.0	14.0	2.0
SHAREHOLDERS (L)	(N = 15)	26.7	46.7	20.0	6.7	-
v. "PROTECTION OF INTEREST HOLDERS"	(N=232)	21.1	53.4	12.5	10.8	2.2
COMPANIES	(N = 37)	21.6	45.9	21.6	8.1	2.7
SHAREHOLDERS (S)	(N = 39)	41.0	35.9	12.8	5.1	5.1
ACCOUNTANTS	(N = 23)	17.4	56.5	8.7	17.4	-
LAWYERS	(N = 45)	15.9	59.1	9.1	11.4	4.5
ADMINISTRATORS	(N = 26)	23.1	69.2	3.8	3.8	-
SECURITIES INDUSTRY	(N = 49)	10.2	61.2	12.2	16.3	-
SHAREHOLDERS (L)	(N = 14)	21.4	42.9	21.4	14.3	-
vi. "PREVENTION OF FRAUD AND MISFEASANCE"	(N=234)	36.8	32.5	9.8	16.2	4.7
COMPANIES	(N = 37)	27.0	27.0	18.9	24.3	2.7
SHAREHOLDERS (S)	(N = 40)	62.5	25.0	7.5	2.5	2.5
ACCOUNTANTS	(N = 22)	13.6	50.0	-	31.8	4.5
LAWYERS	(N = 45)	44.4	31.1	11.1	4.4	8.9
ADMINISTRATORS	(N = 26)	23.1	50.0	3.8	19.2	3.8
SECURITIES INDUSTRY	(N = 49)	28.8	30.6	6.1	18.4	6.1
SHAREHOLDERS (L)	(N = 15)	20.0	20.0	26.7	33.3	-
vii. "DISCOVERY OF FRAUD AND MISFEASANCE"	(N=235)	40.0	37.0	8.5	10.6	3.8
COMPANIES	(N = 38)	28.9	39.5	10.5	18.4	2.6
SHAREHOLDERS (S)	(N = 40)	55.0	30.8	5.0	2.5	7.5
ACCOUNTANTS	(N = 22)	27.3	45.5	9.1	18.2	-
LAWYERS	(N = 45)	40.0	40.0	11.1	4.4	4.4
ADMINISTRATORS	(N = 26)	57.7	38.5	3.8	-	-
SECURITIES INDUSTRY	(N = 49)	38.8	32.7	10.2	14.3	4.1
SHAREHOLDERS (L)	(N = 15)	20.0	40.0	6.7	26.7	6.7
viii. "FACILITATION OF PUBLIC POLICY, EG. EFFICIENT CAPITAL MARKET"	(N=225)	9.8	21.8	19.6	30.2	18.7
COMPANIES	(N = 37)	8.1	18.9	32.4	21.6	18.9
SHAREHOLDERS (S)	(N = 39)	25.6	30.8	10.3	20.5	12.8
ACCOUNTANTS	(N = 21)	4.8	14.3	19.0	47.6	14.3
LAWYERS	(N = 43)	4.7	25.6	18.6	32.6	18.6
ADMINISTRATORS	(N = 24)	8.3	25.0	20.8	33.3	12.5
SECURITIES INDUSTRY	(N = 46)	6.5	13.0	17.4	32.6	30.4
SHAREHOLDERS (L)	(N = 15)	6.7	26.7	20.0	33.3	13.3

TABLE A.2

QUESTION 2
Which of the purposes listed have been fulfilled?

			YES	NO
			%	%
i.	"PROTECTION OF SHAREHOLDERS"	(N=218)	26.6	73.4
	COMPANIES	(N = 36)	36.1	63.9
	SHAREHOLDERS (S)	(N = 39)	17.9	82.1
	ACCOUNTANTS	(N = 23)	43.5	56.5
	LAWYERS	(N = 43)	18.6	81.4
	ADMINISTRATORS	(N = 19)	21.1	78.9
	SECURITIES INDUSTRY	(N = 45)	24.4	75.6
	SHAREHOLDERS (L)	(N = 13)	38.5	61.5
ii.	"PROTECTION OF COMPANY UNDERTAKING"	(N=212)	22.2	77.8
	COMPANIES	(N = 35)	31.4	68.6
	SHAREHOLDERS (S)	(N = 37)	16.2	83.8
	ACCOUNTANTS	(N = 23)	43.5	56.5
	LAWYERS	(N = 41)	9.8	90.2
	ADMINISTRATORS	(N = 19)	15.8	84.2
	SECURITIES INDUSTRY	(N = 44)	25.0	75.0
	SHAREHOLDERS (L)	(N = 13)	15.4	84.6
iii.	"PROTECTION OF CREDITORS"	(N=218)	34.9	65.1
	COMPANIES	(N = 36)	41.7	58.3
	SHAREHOLDER (S)	(N = 37)	29.7	70.3
	ACCOUNTANTS	(N = 23)	39.1	60.9
	LAWYERS	(N = 44)	38.6	61.4
	ADMINISTRATORS	(N = 20)	25.0	75.0
	SECURITIES INDUSTRY	(N = 45)	35.6	64.6
	SHAREHOLDERS (L)	(N = 13)	23.1	76.9
iv.	"PROTECTION OF INTEREST HOLDERS"	(N=213)	28.6	71.4
	COMPANIES	(N = 36)	30.8	69.2
	SHAREHOLDERS (S)	(N = 37)	21.6	78.4
	ACCOUNTANTS	(N = 22)	40.9	59.1
	LAWYERS	(N = 42)	23.8	76.2
	ADMINISTRATORS	(N = 19)	15.8	84.2
	SECURITIES INDUSTRY	(N = 44)	36.4	63.6
	SHAREHOLDERS (L)	(N = 13)	30.8	69.2
v.	"PREVENTION OF FRAUD AND MISFEASANCE"	(N=216)	16.7	83.3
	COMPANIES	(N = 35)	20.0	80.0
	SHAREHOLDERS (S)	(N = 39)	17.9	82.1
	ACCOUNTANTS	(N = 22)	22.7	77.3
	LAWYERS	(N = 42)	11.9	88.1
	ADMINISTRATORS	(N = 20)	25.0	75.0
	SECURITIES INDUSTRY	(N = 45)	13.3	86.7
	SHAREHOLDERS (L)	(N = 13)	7.7	92.3
vi.	"DISCOVERY OF FRAUD AND MISFEASANCE"	(N=212)	48.6	51.4
	COMPANIES	(N = 34)	44.1	55.9
	SHAREHOLDERS (S)	(N = 36)	27.8	72.2
	ACCOUNTANTS	(N = 21)	71.4	28.6
	LAWYERS	(N = 44)	45.5	54.5
	ADMINISTRATORS	(N = 22)	95.5	4.5
	SECURITIES INDUSTRY	(N = 42)	35.7	64.3
	SHAREHOLDERS (L)	(N = 13)	53.8	46.2
vii.	"FACILITATION OF PUBLIC POLICY, EG, EFFICIENT CAPITAL MARKET"	(N=211)	17.4	82.6
	COMPANIES	(N = 32)	18.8	81.3
	SHAREHOLDERS (S)	(N = 32)	25.0	75.0
	ACCOUNTANTS	(N = 21)	19.0	81.0
	LAWYERS	(N = 42)	7.1	92.9
	ADMINISTRATORS	(N = 19)	15.8	84.2
	SECURITIES INDUSTRY	(N = 43)	16.3	83.7
	SHAREHOLDERS (L)	(N = 12)	38.3	66.7

TABLE A.3

QUESTION 3
Possible reasons or justifications for the appointment of an Inspector.

			STRONGLY AGREE	AGREE	UNDECIDED	DISAGREE	STRONGLY DISAGREE
			%	%	%	%	%
i.	"TO ASSIST IN THE PREPARATION OF CRIMINAL PROCEEDINGS"	(N=240)	30.8	46.7	6.3	13.8	2.5
	COMPANIES	(N = 39)	23.1	53.8	2.6	20.5	-
	SHAREHOLDERS (S)	(N = 41)	58.5	34.1	4.9	2.4	-
	ACCOUNTANTS	(N = 23)	17.4	52.2	13.0	17.4	-
	LAWYERS	(N = 45)	22.2	44.4	2.2	24.4	6.7
	ADMINISTRATORS	(N = 27)	29.6	44.4	11.1	3.7	3.7
	SECURITIES INDUSTRY	(N = 50)	34.0	52.0	8.0	4.0	4.0
	SHAREHOLDERS (L)	(N = 15)	13.3	46.7	6.7	26.7	6.7
ii.	"TO ASSIST IN THE PREPARATION OF CIVIL PROCEEDINGS BY RESPONSIBLE AUTHORITY"	(N=239)	17.6	51.5	10.0	16.3	4.6
	COMPANIES	(N = 39)	10.3	56.4	12.8	15.4	5.1
	SHAREHOLDERS (S)	(N = 40)	40.0	45.0	7.5	5.0	2.5
	ACCOUNTANTS	(N = 23)	8.7	56.5	13.0	21.7	-
	LAWYERS	(N = 45)	20.0	40.0	4.4	26.7	8.9
	ADMINISTRATORS	(N = 25)	7.4	51.9	11.1	25.9	3.7
	SECURITIES INDUSTRY	(N = 50)	16.0	60.0	12.0	8.0	4.0
	SHAREHOLDERS (L)	(N = 15)	6.7	53.3	13.3	20.0	6.7
iii.	"TO ARREST THE DETERIORATION IN A COMPANY'S AFFAIRS"	(N=239)	12.6	20.9	16.7	38.5	11.3
	COMPANIES	(N = 39)	7.7	20.5	20.5	38.5	12.8
	SHAREHOLDERS (S)	(N = 40)	32.5	25.0	17.5	20.0	5.0
	ACCOUNTANTS	(N = 23)	-	17.4	8.7	60.9	13.0
	LAWYERS	(N = 45)	8.9	20.0	17.8	42.2	11.1
	ADMINISTRATORS	(N = 27)	14.8	37.0	7.4	33.3	7.4
	SECURITIES INDUSTRY	(N = 50)	10.0	8.0	26.0	38.0	18.0
	SHAREHOLDERS (L)	(N = 15)	6.7	33.3	-	53.3	6.7
iv.	"TO PROVIDE INFORMATION ON THE CAUSES OF COMPANY FAILURE"	(N=240)	15.4	49.6	11.3	18.8	5.0
	COMPANIES	(N = 39)	15.4	56.4	7.7	17.9	2.6
	SHAREHOLDERS (S)	(N = 41)	22.0	51.2	12.2	7.3	7.3
	ACCOUNTANTS	(N = 23)	4.3	65.2	4.3	21.7	4.3
	LAWYERS	(N = 45)	11.1	62.2	6.7	15.6	4.4
	ADMINISTRATORS	(N = 27)	37.0	37.0	11.1	14.8	-
	SECURITIES INDUSTRY	(N = 50)	12.0	30.0	18.0	30.0	10.0
	SHAREHOLDERS (L)	(N = 15)	-	53.3	20.0	26.7	-
v.	"TO ASSIST IN THE PREPARATION OF CIVIL PROCEEDINGS BY SHAREHOLDERS"	(N=239)	13.8	41.4	11.7	27.6	5.4
	COMPANIES	(N = 39)	7.7	46.2	12.8	30.8	2.6
	SHAREHOLDERS (S)	(N = 40)	35.0	40.0	15.0	5.0	5.0
	ACCOUNTANTS	(N = 23)	-	26.1	13.0	56.5	4.3
	LAWYERS	(N = 45)	20.0	42.2	4.4	31.1	2.2
	ADMINISTRATORS	(N = 27)	3.7	37.0	7.4	37.0	14.8
	SECURITIES INDUSTRY	(N = 50)	12.0	40.0	18.0	26.0	4.0
	SHAREHOLDERS (L)	(N = 15)	-	66.7	6.7	13.3	13.3
vi.	"TO ASSIST IN THE PREPARATION OF CIVIL PROCEEDINGS BY CREDITORS"	(N=239)	12.6	41.4	13.8	25.9	6.3
	COMPANIES	(N = 39)	10.3	43.6	12.8	28.2	5.1
	SHAREHOLDERS (S)	(N = 40)	22.5	40.0	22.7	7.5	7.5
	ACCOUNTANTS	(N = 23)	-	30.4	17.4	43.5	8.7
	LAWYERS	(N = 45)	22.2	42.2	2.2	28.9	4.4
	ADMINISTRATORS	(N = 27)	7.4	37.0	3.7	37.0	14.8
	SECURITIES INDUSTRY	(N = 50)	10.0	38.0	24.0	26.0	2.0
	SHAREHOLDERS (LO)	(N = 15)	-	73.3	6.7	13.3	6.7
vii.	"TO DISCOVER THE REASONS FOR A COMPANY'S FINANCIAL POSITION"	(N=239)	11.7	40.2	12.6	26.4	9.2
	COMPANIES	(N = 39)	5.1	38.5	7.7	35.9	12.8
	SHAREHOLDERS (S)	(N = 40)	20.0	32.5	22.5	12.5	12.5
	ACCOUNTANTS	(N = 23)	4.3	52.2	8.7	30.4	4.3
	LAWYERS	(N = 45)	11.1	46.7	13.3	22.2	6.7
	ADMINISTRATORS	(N = 27)	22.2	55.6	7.4	11.1	3.7
	SECURITIES INDUSTRY	(N = 50)	10.0	26.0	12.0	40.0	12.0
	SHAREHOLDERS (L)	(N = 15)	6.7	46.7	13.3	26.7	6.7

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TABLE A.3 (continued)

QUESTION 3

		STRONGLY AGREE	AGREE	UNDECIDED	DISAGREE	STRONGLY DISAGREE
		%	%	%	%	%
viii. "TO STATE, THROUGH A REPORT TO PARLIAMENT, THE REASONS FOR A COMPANY'S FINANCIAL POSITION"	(N=239)	12.1	36.0	13.4	25.5	13.0
COMPANIES	(N = 39)	5.1	30.8	15.4	33.3	15.4
SHAREHOLDERS (S)	(N = 41)	26.8	39.0	12.2	12.2	9.8
ACCOUNTANTS	(N = 23)	13.0	39.1	8.7	30.4	8.7
LAWYERS	(N = 44)	9.1	34.1	11.4	25.6	20.5
ADMINISTRATORS	(N = 27)	25.9	44.4	14.8	14.8	-
SECURITIES INDUSTRY	(N = 50)	4.0	32.0	16.0	32.0	16.0
SHAREHOLDERS (L)	(N = 15)	-	40.0	13.3	33.3	13.3
ix. "TO COLLECT AND STATE THE EVIDENCE OF WITNESSES FOR USE IN PROCEEDINGS"	(N=239)	10.5	35.6	22.2	24.3	7.5
COMPANIES	(N = 39)	-	28.4	30.8	28.2	12.8
SHAREHOLDERS (S)	(N = 40)	29.3	39.0	22.0	4.9	4.9
ACCOUNTANTS	(N = 23)	-	30.4	26.1	39.1	4.3
LAWYERS	(N = 44)	6.8	38.6	13.6	34.1	6.8
ADMINISTRATORS	(N = 27)	18.5	40.7	11.1	29.6	-
SECURITIES INDUSTRY	(N = 50)	8.0	32.0	32.0	18.0	10.0
SHAREHOLDERS (L)	(N = 15)	6.7	46.7	6.7	26.7	13.3
x. "TO INVESTIGATE DEALING IN SHARES ETC., BY DIRECTORS AND PERSONS ASSOCIATED WITH THE COMPANY"	(N=240)	30.4	57.5	4.6	5.4	2.1
COMPANIES	(N = 39)	15.4	74.4	5.1	2.6	2.6
SHAREHOLDERS (S)	(N = 41)	56.1	34.1	4.9	2.4	2.4
ACCOUNTANTS	(N = 23)	4.3	82.6	8.7	4.3	-
LAWYERS	(N = 45)	20.0	66.7	-	8.9	4.4
ADMINISTRATORS	(N = 27)	48.1	51.9	-	-	-
SECURITIES INDUSTRY	(N = 50)	36.0	46.0	6.0	12.0	-
SHAREHOLDERS (L)	(N = 15)	20.0	60.0	13.3	-	6.7
xi. "TO INVESTIGATE ACTION TAKEN BY DIRECTORS AND MANAGEMENT"	(N=231)	25.1	43.7	10.8	14.7	5.6
COMPANIES	(N = 38)	10.5	47.4	10.5	21.1	10.5
SHAREHOLDERS (S)	(N = 37)	51.4	27.0	8.1	8.1	5.4
ACCOUNTANTS	(N = 22)	4.5	72.7	9.1	13.6	-
LAWYERS	(N = 45)	22.2	51.1	4.4	17.8	4.4
ADMINISTRATORS	(N = 26)	42.3	57.7	-	-	-
SECURITIES INDUSTRY	(N = 50)	22.0	32.0	18.0	20.0	8.0
SHAREHOLDERS (L)	(N = 13)	15.4	23.0	38.5	15.4	7.7

TABLE A.4

QUESTION 4
What should be the practice relating to the publication of reports of inspectors?

		ALL REPORTS SHOULD BE MADE PUBLIC	NO REPORT SHOULD BE MADE PUBLIC	THE MINISTER SHOULD HAVE DISCRETION TO PUBLISH OR NOT PUBLISH
		%	%	%
TOTAL RESPONDENTS	(N = 238)	56.3	6.7	37.0
COMPANIES	(N = 36)	44.7	5.3	50.0
SHAREHOLDERS (S)	(N = 41)	78.0	4.9	17.1
ACCOUNTANTS	(N = 23)	52.2	8.7	39.1
LAWYERS	(N = 45)	53.3	8.9	37.8
ADMINISTRATORS	(N = 27)	48.1	-	51.9
SECURITIES INDUSTRY	(N = 49)	57.1	6.1	36.7
SHAREHOLDERS (L)	(N = 15)	53.3	20.0	26.7

TABLE A.5

QUESTION 5
Parties who should have statutory right to receive a copy of the Inspector's report where all reports are not automatically made public.

			AGREE	UNDECIDED	DISAGREE
			%	%	%
i.	"THE LIQUIDATOR"	(N=104)	79.8	9.6	10.6
	COMPANIES	(N = 21)	95.2	4.8	-
	SHAREHOLDERS (S)	(N = 9)	100.0	-	-
	ACCOUNTANTS	(N = 10)	90.0	-	10.0
	LAWYERS	(N = 21)	85.7	-	14.3
	ADMINISTRATORS	(N = 14)	42.9	21.4	35.8
	SECURITIES INDUSTRY	(N = 22)	63.6	27.3	9.1
	SHAREHOLDERS (L)	(N = 7)	100.0	-	-
ii.	"SHAREHOLDERS"	(N=103)	35.0	24.3	40.8
	COMPANIES	(N = 21)	57.1	28.6	14.3
	SHAREHOLDERS (S)	(N = 9)	44.4	11.1	44.4
	ACCOUNTANTS	(N = 9)	11.1	22.2	66.7
	LAWYERS	(N = 21)	38.1	4.8	57.1
	ADMINISTRATORS	(N = 14)	7.1	35.7	57.1
	SECURITIES INDUSTRY	(N = 22)	22.7	40.9	36.4
	SHAREHOLDERS (L)	(N = 7)	71.4	14.3	14.3
iii.	"NOMINATED SHAREHOLDER REPRESENTATIVES"	(N=101)	43.6	23.8	32.7
	COMPANIES	(N = 19)	42.1	36.8	21.1
	SHAREHOLDERS (S)	(N = 9)	88.9	11.1	-
	ACCOUNTANTS	(N = 11)	45.5	-	54.5
	LAWYERS	(N = 20)	31.6	15.8	52.6
	ADMINISTRATORS	(N = 14)	28.6	35.7	35.7
	SECURITIES INDUSTRY	(N = 22)	40.9	27.3	31.8
	SHAREHOLDERS (L)	(N = 7)	57.1	28.6	14.3
iv.	"COMPANY UNDER INVESTIGATION"	(N=104)	70.2	13.5	16.3
	COMPANIES	(N = 21)	90.5	4.8	4.8
	SHAREHOLDERS (S)	(N = 9)	77.8	22.2	-
	ACCOUNTANTS	(N = 10)	70.0	10.0	20.0
	LAWYERS	(N = 21)	76.2	9.5	14.3
	ADMINISTRATORS	(N = 14)	21.4	21.4	57.1
	SECURITIES INDUSTRY	(N = 22)	63.6	22.7	13.6
	SHAREHOLDERS (L)	(N = 7)	100.0	-	-
v.	"CHAIRMAN OF AUSTRALIAN ASSOCIATED STOCK EXCHANGES"	(N=104)	34.6	26.9	38.5
	COMPANIES	(N = 20)	45.0	30.0	25.0
	SHAREHOLDERS (S)	(N = 9)	77.8	11.1	11.1
	ACCOUNTANTS	(N = 11)	27.3	18.2	54.5
	LAWYERS	(N = 21)	19.0	9.5	71.4
	ADMINISTRATORS	(N = 14)	14.3	50.0	35.7
	SECURITIES INDUSTRY	(N = 22)	27.3	45.5	27.3
	SHAREHOLDERS (L)	(N = 7)	71.4	-	28.6
vi.	"PARTIES NAMED IN THE REPORT"	(N=105)	66.7	14.3	19.0
	COMPANIES	(N = 21)	76.2	19.0	4.8
	SHAREHOLDERS	(N = 9)	55.6	22.2	22.2
	ACCOUNTANTS	(N = 11)	81.8	-	18.2
	LAWYERS	(N = 21)	71.4	4.8	23.8
	ADMINISTRATORS	(N = 14)	35.7	14.3	50.0
	SECURITIES INDUSTRY	(N = 22)	59.1	27.3	13.6
	SHAREHOLDERS (L)	(N = 7)	100.0	-	-
vii.	"THE APPLICANT FOR APPOINTMENT	(N= 98)	50.0	28.6	21.4
	COMPANIES	(N = 19)	57.9	42.1	-
	SHAREHOLDERS (S)	(N = 8)	37.5	12.5	50.0
	ACCOUNTANTS	(N = 9)	77.8	-	22.2
	LAWYERS	(N = 20)	45.0	30.0	25.0
	ADMINISTRATORS	(N = 14)	35.7	28.6	35.7
	SECURITIES INDUSTRY	(N = 21)	38.1	42.9	19.0
	SHAREHOLDERS (L)	(N = 7)	85.7	-	14.3

TABLE A.6

QUESTION 6
Parties who may not have statutory right to receive but to whom Minister should have discretion to provide with copy of report.

NB Parties were only asked to respond to this question where they answered (ii) or (iii) to Question 4 and Disagree to the respective sub-part of Question 5. The instructions were not followed and the answers are therefore not statistically meaningful.

			AGREE	UNDECIDED	DISAGREE
			%	%	%
i.	"THE LIQUIDATOR"	(N=36)	77.8	5.6	16.7
	COMPANIES	(N = 4)	50.0	25.0	25.0
	SHAREHOLDERS (S)	(N = 3)	100.0	-	-
	ACCOANTANTS	(N = 5)	100.0	-	-
	LAWYERS	(N = 5)	80.0	-	20.0
	ADMINISTRATORS	(N = 8)	87.5	-	12.5
	SECURITIES INDUSTRY	(N = 11)	63.6	9.1	27.3
	SHAREHOLDERS (L)	(N = 0)	-	-	-
ii.	"SHAREHOLDERS"	(N=68)	72.1	7.4	20.6
	COMPANIES	(N = 9)	88.9	-	11.1
	SHAREHOLDERS (S)	(N = 5)	100.0	-	-
	ACCOUNTANTS	(N = 10)	90.0	-	10.0
	LAWYERS	(N = 13)	61.5	15.4	23.1
	ADMINISTRATORS	(N = 12)	83.3	-	16.7
	SECURITIES INDUSTRY	(N = 17)	41.2	17.6	41.2
	SHAREHOLDERS (L)	(N = 2)	100.0	-	-
iii.	"NOMINATED SHAREHOLDER REPRESENTATIVE"	(N=67)	59.7	14.9	25.4
	COMPANIES	(N = 13)	76.9	7.7	7.7
	SHAREHOLDERS	(N = 5)	100.0	-	-
	ACCOUNTANTS	(N = 5)	60.0	-	40.0
	LAWYERS	(N = 15)	46.7	26.7	26.7
	ADMINISTRATORS	(N = 11)	81.8	-	18.2
	SECURITIES INDUSTRY	(N = 15)	26.7	33.3	40.0
	SHAREHOLDERS (L)	(N = 3)	66.7	-	33.3
iv.	"COMPANY UNDER INVESTIGATION"	(N=44)	63.6	11.4	25.0
	COMPANIES	(N = 4)	50.0	-	50.0
	SHAREHOLDERS (S)	(N = 4)	100.0	-	-
	ACCOUNTANTS	(N = 7)	85.7	-	14.3
	LAWYERS	(N = 6)	50.0	16.7	33.3
	ADMINISTRATORS	(N = 12)	66.7	16.7	16.7
	SECURITIES INDUSTRY	(N = 11)	45.5	18.2	36.4
	SHAREHOLDERS (L)	(N = 0)	-	-	-
v.	"CHAIRMAN OF THE AUSTRALIAN ASSOCIATED STOCK EXCHANGES"	(N=73)	63.0	9.6	27.4
	COMPANIES	(N = 11)	63.6	18.2	18.2
	SHAREHOLDERS (S)	(N = 4)	100.0	-	-
	ACCOUNTANTS	(N = 10)	70.0	-	30.0
	LAWYERS	(N = 15)	60.0	6.7	33.3
	ADMINISTRATORS	(N = 12)	75.0	-	25.0
	SECURITIES INDUSTRY	(N = 19)	52.6	21.1	26.3
	SHAREHOLDERS (L)	(N = 2)	-	-	100.0
vi.	"PARTIES NAMED IN REPORT"	(N=43)	67.4	14.0	18.6
	COMPANIES	(N = 2)	50.0	25.0	25.0
	SHAREHOLDERS (S)	(N = 6)	83.3	-	16.7
	ACCOUNTANTS	(N = 5)	100.0	-	-
	LAWYERS	(N = 7)	71.4	-	28.6
	ADMINISTRATORS	(N = 9)	66.7	11.1	22.2
	SECURITIES INDUSTRY	(N = 12)	50.0	33.3	16.7
	SHAREHOLDERS (L)	(N = 0)	-	-	-
vii.	"THE APPLICANT FOR THE APPOINTMENT	(N=60)	63.3	13.3	23.3
	COMPANIES	(N = 10)	60.0	20.0	20.0
	SHAREHOLDERS (S)	(N = 6)	50.0	16.7	33.3
	ACCOUNTANTS	(N = 5)	100.0	-	-
	LAWYERS	(N = 12)	66.7	16.7	16.7
	ADMINISTRATORS	(N = 10)	70.0	-	30.0
	SECURITIES INDUSTRY	(N = 16)	56.3	18.8	25.0
	SHAREHOLDERS (L)	(N = 1)	-	-	100.0

TABLE A.7

QUESTION 7
Should a statutory time period, commencing from the date of the appointment, be placed on when an Inspector is required to submit a report to the Minister?

		YES %	NO %
TOTAL RESPONDENTS	(N = 238)	77.7	22.3
COMPANIES	(N = 39)	89.7	10.3
SHAREHOLDERS (S)	(N = 41)	92.7	7.3
ACCOUNTANTS	(N = 23)	73.9	26.1
LAWYERS	(N = 44)	61.4	38.6
ADMINISTRATORS	(N = 27)	51.9	48.1
SECURITIES INDUSTRY	(N = 49)	83.7	16.3
SHAREHOLDERS (L)	(N = 15)	86.7	13.3

TABLE A.8

QUESTION 8
If there should be a statutory time period what should it be?

		1 mth %	1-3mth %	3-6mth %	6-12mth %	12 mth %
TOTAL RESPONDENTS	(N = 163)	10.4	21.5	31.9	25.2	11.0
COMPANIES	(N = 30)	10.0	16.7	43.3	26.7	3.3
SHAREHOLDERS (S)	(N = 26)	17.9	32.1	28.6	14.3	7.1
ACCOUNTANTS	(N = 17)	-	23.5	17.6	47.1	11.8
LAWYERS	(N = 26)	11.5	11.5	42.3	30.8	3.8
ADMINISTRATORS	(N = 10)	-	-	10.0	40.0	50.0
SECURITIES INDUSTRY	(N = 40)	12.5	27.5	27.5	22.5	10.0
SHAREHOLDERS (L)	(N = 12)	8.3	25.0	41.7	-	25.0

TABLE A.9

QUESTION 9
Where reports should always be made public or made available to parties as of right or made available to parties at the Minister's discretion should there be a statutory time period, stated in the legislation, from the date of presentation of the report to the Minister, for tabling or making available the report?

		YES %	NO %
TOTAL RESPONDENTS	(N = 214)	77.6	22.4
COMPANIES	(N = 32)	90.6	9.4
SHAREHOLDERS (S)	(N = 35)	91.4	8.6
ACCOUNTANTS	(N = 21)	76.2	23.8
LAWYERS	(N = 43)	72.1	27.9
ADMINISTRATORS	(N = 27)	51.9	48.1
SECURITIES INDUSTRY	(N = 43)	74.4	25.6
SHAREHOLDERS (L)	(N = 13)	92.3	7.7

TABLE A.10

QUESTION 10
If there should be a statutory time period - what should it be?

		1 mth %	1-3mth %	3-6mth %	6-12th %	12 mth %
TOTAL RESPONDENTS	(N = 152)	35.5	31.6	20.4	7.2	5.3
COMPANIES	(N = 28)	39.3	28.6	17.9	7.1	7.1
SHAREHOLDERS (S)	(N = 28)	53.6	32.1	7.1	3.6	3.6
ACCOUNTANTS	(N = 16)	12.5	56.3	18.8	12.5	-
LAWYERS	(N = 25)	44.0	20.0	24.0	4.0	8.0
ADMINISTRATORS	(N = 13)	7.7	30.8	23.1	23.1	15.4
SECURITIES INDUSTRY	(N = 30)	23.3	33.3	33.3	6.7	3.3
SHAREHOLDERS (L)	(N = 12)	58.3	25.0	16.7	-	-

TABLE A.11

QUESTION 11
Where a report is not made publid should the Minister be obliged, within a statutory period, commencing upon the receipt of the report, to state any, or all, of the following -

		YES %	NO %
i. "THAT NO PROCEEDINGS WERE RECOMMENDED"	(N=188)	86.2	13.8
COMPANIES	(N = 29)	89.7	10.3
SHAREHOLDERS (S)	(N = 29)	93.1	6.9
ACCOUNTANTS	(N = 18)	94.4	5.6
LAWYERS	(N = 38)	78.9	21.2
ADMINISTRATORS	(N = 24)	75.0	25.0
SECURITIES INDUSTRY	(N = 38)	89.5	10.5
SHAREHOLDERS (L)	(N = 12)	83.3	16.7
ii "THAT PROCEEDINGS HAVE BEEN RECOMMENDED"	(N=190)	85.3	14.7
COMPANIES	(N = 29)	86.2	13.8
SHAREHOLDERS (S)	(N = 31)	100.0	-
ACCOUNTANTS	(N = 18)	88.9	11.1
LAWYERS	(N = 38)	76.3	23.7
ADMINISTRATORS	(N = 24)	79.2	20.8
SECURITIES INDUSTRY	(N = 38)	86.8	13.2
SHAREHOLDERS (L)	(N = 12)	75.0	25.0
iii. "THE ACTION TO BE TAKEN, IF ANY, AS A CONSEQUENCE OF THE REPORT"	(N=199)	86.4	13.6
COMPANIES	(N = 32)	90.6	9.4
SHAREHOLDERS (S)	(N = 34)	97.1	2.9
ACCOUNTANTS	(N = 18)	88.9	11.1
LAWYERS	(N = 38)	78.9	21.1
ADMINISTRATORS	(N = 24)	58.3	41.7
SECURITIES INDUSTRY	(N = 41)	92.9	7.3
SHAREHOLDERS (L)	(N = 12)	100.0	-

TABLE A.12

QUESTION 12
Persons who should be appointed as an Inspector -

		AGREE %	UNDECIDED %	DISAGREE %
i. "OFFICER OF THE CORPORATE AFFAIRS COMMISSION OR N.C.S.C."	(N=228)	62.7	11.8	25.4
COMPANIES	(N = 38)	78.9	7.9	13.2
SHAREHOLDERS (S)	(N = 35)	65.7	20.0	14.3
ACCOUNTANTS	(N = 22)	59.1	9.1	31.8
LAWYERS	(N = 42)	28.6	9.5	61.9
ADMINISTRATORS	(N = 27)	88.9	11.1	-
SECURITIES INDUSTRY	(N = 49)	61.2	10.2	28.6
SHAREHOLDERS (L)	(N = 15)	73.3	20.0	6.7
ii. "OTHER PUBLIC SERVANT"	(N=224)	5.8	26.8	67.4
COMPANIES	(N = 39)	2.6	25.6	71.8
SHAREHOLDERS (S)	(N = 35)	11.4	28.6	60.0
ACCOUNTANTS	(N = 20)	5.0	15.0	80.0
LAWYERS	(N = 42)	2.4	21.4	76.2
ADMINISTRATORS	(N = 26)	7.7	50.0	42.3
SECURITIES INDUSTRY	(N = 48)	8.3	18.8	72.9
SHAREHOLDERS (L)	(N = 14)	-	42.9	57.1
iii. "CONTRACT SPECIAL INVESTIGATORS EMPLOYED FOR SET TERMS BY CORPORATE AFFAIRS COMMISSION OR N.C.S.C."	(N=231)	67.1	12.6	20.3
COMPANIES	(N = 38)	71.1	13.2	15.8
SHAREHOLDERS (S)	(N = 39)	76.9	12.8	10.3
ACCOUNTANTS	(N = 21)	57.1	4.8	38.1
LAWYERS	(N = 43)	51.2	9.3	39.5
ADMINISTRATORS	(N = 26)	69.2	26.9	8.8
SECURITIES INDUSTRY	(N = 50)	65.0	12.0	22.0
SHAREHOLDERS (L)	(N = 14)	92.9	7.1	-
iv. "BARRISTER IN PRIVATE PRACTICE"	(N=228)	56.1	20.2	23.7
COMPANIES	(N = 38)	36.8	26.3	36.8
SHAREHOLDERS (S)	(N = 35)	34.3	34.3	31.4
ACCOUNTANTS	(N = 22)	72.7	9.1	18.2
LAWYERS	(N = 44)	90.0	2.3	6.8
ADMINISTRATORS	(N = 26)	80.8	2.8	15.4
SECURITIES INDUSTRY	(N = 49)	44.9	30.6	24.5
SHAREHOLDERS (L)	(N = 14)	21.4	35.7	42.9
v. "CHARTERED OR PUBLIC ACCOUNTANT"	(N=227)	71.4	11.5	17.2
COMPANIES	(N = 38)	66.7	21.2	12.1
SHAREHOLDERS (S)	(N = 35)	57.1	17.1	25.7
ACCOUNTANTS	(N = 23)	95.7	-	4.3
LAWYERS	(N = 42)	76.2	2.4	21.4
ADMINISTRATORS	(N = 26)	76.9	3.8	19.2
SECURITIES INDUSTRY	(N = 49)	65.3	18.4	16.3
SHAREHOLDERS (L)	(N = 14)	64.3	14.3	21.4
vi. "SOLICITOR IN PRIVATE PRACTICE"	(N=223)	43.9	22.9	33.2
COMPANIES	(N = 38)	31.6	26.3	42.1
SHAREHOLDERS (S)	(N = 34)	29.4	38.2	32.4
ACCOUNTANTS	(N = 21)	47.6	14.3	38.1
LAWYERS	(N = 42)	73.8	4.8	21.4
ADMINISTRATORS	(N = 26)	65.4	11.5	23.1
SECURITIES INDUSTRY	(N = 48)	31.3	33.3	35.4
SHAREHOLDERS (L)	(N = 14)	21.4	28.6	50.0
vii. "MEMBER OF THE SECURITIES INDUSTRY:	(N=219)	30.6	26.0	43.4
COMPANIES	(N = 38)	31.6	23.7	44.7
SHAREHOLDERS	(N = 34)	44.1	17.6	38.2
ACCOUNTANTS	(N = 20)	5.0	20.0	75.0
LAWYERS	(N = 41)	31.7	22.0	46.3
ADMINISTRATORS	(N = 26)	34.6	34.6	30.8
SECURITIES INDUSTRY	(N = 46)	28.3	32.6	39.1
SHAREHOLDERS (L)	(N = 14)	28.6	35.7	35.7

TABLE A.13

QUESTION 13
Should the fact that an Inspector has been appointed be made public at the time of the appointment?

			YES %	NO %
i.	"IN CASE OF PUBLIC COMPANY"	(N=236)	83.9	16.1
	COMPANIES	(N = 39)	76.9	23.1
	SHAREHOLDERS (S)	(N = 39)	87.2	12.8
	ACCOUNTANTS	(N = 23)	82.6	17.4
	LAWYERS	(N = 44)	81.8	18.2
	ADMINISTRATORS	(N = 27)	96.3	3.7
	SECURITIES INDUSTRY	(N = 49)	85.7	14.3
	SHAREHOLDERS (L)	(N = 15)	73.3	26.7
ii.	"IN CASE OF PRIVATE COMPANY"	(N=235)	66.4	33.6
	COMPANIES	(N = 39)	53.8	46.2
	SHAREHOLDERS (S)	(N = 38)	65.8	34.2
	ACCOUNTANTS	(N = 23)	52.2	47.8
	LAWYERS	(N = 44)	70.5	29.5
	ADMINISTRATORS	(N = 27)	92.6	7.4
	SECURITIES INDUSTRY	(N = 49)	65.3	34.7
	SHAREHOLDERS (L)	(N = 15)	66.7	33.3

TABLE A.14

QUESTION 14
In case of public company what impact does the appointment have on the stock market at large?

		LITTLE, IF ANY %	VARIES, DEPENDS ON STATE OF MARKET %	VARIES, DEPENDS ON PROMINANCE OF THE COMPANY IN THE MARKET %	VARIES, DEPENDS ON PROMINANCE OF THE COMPANY IN THE MARKET AND STATE OF THE MARKET %	SUBSTANTIAL %
TOTAL RESPONDENTS	(N = 228)	8.8	3.1	16.7	43.0	28.5
COMPANIES	(N = 37)	8.1	-	18.9	54.1	18.9
SHAREHOLDERS (S)	(N = 32)	13.2	5.3	15.8	42.1	23.7
ACCOUNTANTS	(N = 23)	13.0	-	17.4	47.8	21.7
LAWYERS	(N = 41)	4.9	4.9	9.8	36.6	43.9
ADMINISTRATORS	(N = 25)	8.0	-	24.0	52.0	16.0
SECURITIES INDUSTRY	(N = 49)	8.2	6.1	12.2	42.9	30.6
SHAREHOLDERS (L)	(N = 15)	6.7	-	33.3	13.3	46.7

TABLE A.15

QUESTION 15
Which parties should pay the costs of the investigation, irrespective of the outcome of the investigation, where the Minister of his own initiative, in the public interest, appoints the Inspector?

			YES %	UNDECIDED %	NO %
i.	"THE COMPANY INVESTIGATED"	(N=196)	18.9	26.5	54.6
	COMPANIES	(N = 35)	14.3	22.9	62.9
	SHAREHOLDERS (S)	(N = 36)	23.1	30.8	46.2
	ACCOUNTANTS	(N = 19)	21.1	10.5	68.4
	LAWYERS	(N = 38)	18.4	28.9	52.6
	ADMINISTRATORS	(N = 24)	33.3	45.8	20.8
	SECURITIES INDUSTRY	(N = 40)	12.5	25.0	62.5
	SHAREHOLDERS (L)	(N = 14)	14.3	14.3	71.4
ii.	"THE STATE"	(N=227)	76.2	13.8	11.0
	COMPANIES	(N = 37)	86.5	2.7	10.8
	SHAREHOLDERS (S)	(N = 36)	61.1	22.2	16.7
	ACCOUNTANTS	(N = 17)	76.2	9.5	14.3
	LAWYERS	(N = 43)	76.7	14.0	9.3
	ADMINISTRATORS	(N = 24)	87.5	12.5	-
	SECURITIES INDUSTRY	(N = 50)	78.0	14.0	8.0
	SHAREHOLDERS (L)	(N = 15)	66.7	6.7	26.7
iii.	"THE PARTIES, IF ANY, WHO DERIVE BENEFIT FROM THE INVESTIGATION"	(N=195)	23.1	30.8	46.2
	COMPANIES	(N = 33)	18.2	36.4	45.5
	SHAREHOLDERS	(N = 28)	39.3	28.6	31.1
	ACCOAUNTANTS	(N = 21)	41.2	11.8	47.1
	LAWYERS	(N = 38)	23.7	31.6	44.7
	ADMINISTRATORS	(N = 24)	21.7	39.1	39.1
	SECURITIES INDUSTRY	(N = 41)	12.2	36.6	51.2
	SHAREHOLDERS (L)	(N = 14)	14.3	14.3	71.4

TABLE A.16

QUESTION 16
Which parties should pay the cost of the investigation where an adverse report is made and the Minister has appointed an Inspector of his own initiative in the public interest?

			YES %	UNDECIDED %	NO %
i.	"THE COMPANY INVESTIGATED"	(N=207)	31.4	22.7	45.9
	COMPANIES	(N = 36)	27.8	13.9	58.3
	SHAREHOLDERS (S)	(N = 30)	33.3	26.7	40.0
	ACCOUNTANTS	(N = 19)	10.5	31.6	57.9
	LAWYERS	(N = 41)	36.6	19.5	43.9
	ADMINISTRATORS	(N = 22)	31.8	40.9	27.3
	SECURITIES INDUSTRY	(N = 46)	34.8	19.6	45.7
	SHAREHOLDERS (L)	(N = 13)	38.5	15.4	46.2
ii.	"THE STATE"	(N=215)	68.4	14.9	16.7
	COMPANIES	(N = 38)	73.7	7.9	18.4
	SHAREHOLDERS (S)	(N = 30)	23.4	14.1	37.5
	ACCOUNTANTS	(N = 22)	72.7	13.6	13.6
	LAWYERS	(N = 41)	70.7	12.2	17.1
	ADMINISTRATORS	(N = 23)	82.6	13.0	4.3
	SECURITIES INDUSTRY	(N = 46)	69.9	17.4	13.0
	SHAREHOLDERS (L)	(N = 15)	53.5	6.7	40.0
iii.	"PARTIES, IF ANY, WHO DERIVE BENEFIT FROM THE INVESTIGATION"	(N=196)	19.4	27.0	53.6
	COMPANIES	(N = 35)	17.1	37.1	45.7
	SHAREHOLDERS (S)	(N = 29)	27.6	24.1	48.3
	ACCOUNTANTS	(N = 19)	36.8	15.8	47.4
	LAWYERS	(N = 37)	21.6	21.6	56.8
	ADMINISTRATORS	(N = 21)	14.3	38.1	47.6
	SECURITIES INDUSTRY	(N = 42)	9.5	31.0	59.5
	SHAREHOLDERS (L)	(N = 13)	15.4	7.7	76.9
iv.	"DIRECTORS, IF CRITICISED"	(N=205)	35.6	23.9	40.5
	COMPANIES	(N = 36)	30.6	25.0	44.4
	SHAREHOLDERS (S)	(N = 34)	59.3	14.8	25.9
	ACCOUNTANTS	(N = 18)	11.1	16.7	72.2
	LAWYERS	(N = 39)	28.2	25.6	46.2
	ADMINISTRATORS	(N = 21)	42.9	33.3	23.8
	SECURITIES INDUSTRY	(N = 44)	27.3	27.3	45.5
	SHAREHOLDERS (L)	(N = 13)	46.2	23.1	30.8
v.	"AUDITORS, IF CRITISED"	(N=204)	35.8	26.5	37.7
	COMPANIES	(N = 36)	30.6	33.3	38.1
	SHAREHOLDERS (S)	(N = 34)	67.6	14.7	17.6
	ACCOUNTANTS	(N = 18)	11.1	11.1	78.8
	LAWYERS	(N = 38)	28.2	28.2	43.6
	ADMINISTRATORS	(N = 21)	47.6	33.3	19.0
	SECURITIES INDUSTRY	(N = 43)	23.3	32.6	44.2
	SHAREHOLDERS (L)	(N = 13)	46.2	23.1	30.8
vi.	"OTHER PARTIES CRITISED"	(N=195)	25.1	32.8	42.1
	COMPANIES	(N = 36)	22.2	30.6	47.2
	SHAREHOLDERS (S)	(N = 29)	44.8	31.0	24.1
	ACCOUNTANTS	(N = 18)	11.1	16.7	72.2
	LAWYERS	(N = 38)	18.4	31.6	50.0
	ADMINISTRATORS	(N = 19)	26.3	57.9	15.8
	SECURITIES INDUSTRY	(N = 42)	19.0	33.3	47.6
	SHAREHOLDERS (L)	(N = 13)	46.2	30.8	23.1

TABLE A.17

QUESTION 17
Which parties should pay the costs of the investigation where a conviction is obtained and the Minister has appointed an Inspector of his own initiative, in the public interest?

			YES %	UNDECIDED %	NO %
i.	"THE COMPANY INVESTIGATED"	(N=202)	36.6	20.3	43.1
	COMPANIES	(N = 36)	47.2	11.1	41.7
	SHAREHOLDERS (S)	(N = 29)	34.5	27.6	37.9
	ACCOUNTANTS	(N = 18)	11.1	27.8	61.4
	LAWYERS	(N = 40)	35.0	20.0	45.0
	ADMINISTRATORS	(N = 22)	31.8	40.9	27.3
	SECURITIES INDUSTRY	(N = 43)	39.5	14.0	46.5
	SHAREHOLDERS (L)	(N = 14)	50.0	7.1	42.9
ii.	"THE STATE"	(N=210)	51.0	17.1	31.9
	COMPANIES	(N = 37)	45.9	13.5	40.5
	SHAREHOLDERS (S)	(N = 29)	37.9	27.6	34.5
	ACCOUNTANTS	(N = 21)	76.2	9.5	14.3
	LAWYERS	(N = 40)	57.5	12.5	30.0
	ADMINISTRATORS	(N = 24)	62.5	20.8	16.7
	SECURITIES INDUSTRY	(N = 42)	50.0	20.5	29.5
	SHAREHOLDERS (L)	(N = 15)	20.0	13.3	66.7
iii.	"THE PARTIES, IF ANY, WHO DERIVE BENEFIT FROM THE INVESTIGATION"	(N=192)	21.4	26.0	52.6
	COMPANIES	(N = 34)	14.7	32.4	52.9
	SHAREHOLDERS (S)	(N = 26)	26.9	38.5	34.6
	ACCOUNTANTS	(N = 18)	38.9	11.1	50.0
	LAWYERS	(N = 38)	23.7	23.7	52.6
	ADMINISTRATORS	(N = 22)	22.7	36.4	40.9
	SECURITIES INDUSTRY	(N = 41)	14.6	17.1	68.3
	SHAREHOLDERS (L)	(N = 13)	15.4	23.1	61.5
iv.	"DIRECTORS, IF CONVICTED"	(N=214)	68.7	9.3	22.0
	COMPANIES	(N = 36)	69.4	5.6	25.0
	SHAREHOLDERS (S)	(N = 37)	91.9	-	8.1
	ACCOUNTANTS	(N = 18)	27.8	11.1	61.1
	LAWYERS	(N = 41)	61.0	14.6	24.4
	ADMINISTRATORS	(N = 22)	68.2	22.7	9.1
	SECURITIES INDUSTRY	(N = 46)	65.2	10.9	23.8
	SHAREHOLDERS (L)	(N = 14)	92.9	-	7.1
v.	"AUDITORS, IF CONVICTED"	(N=213)	66.7	9.4	23.9
	COMPANIES	(N = 36)	69.4	8.3	22.3
	SHAREHOLDERS (S)	(N = 37)	91.9	-	8.1
	ACCOUNTANTS	(N = 18)	27.8	5.6	66.7
	LAWYERS	(N = 41)	53.7	17.1	29.3
	ADMINISTRATORS	(N = 22)	77.3	18.2	4.5
	SECURITIES INDUSTRY	(N = 45)	57.8	11.1	31.1
	SHAREHOLDERS (L)	(N = 14)	92.9	-	7.1
vi.	"OTHER PARTIES CONVICTED"	(N=209)	65.1	10.5	24.4
	COMPANIES	(N = 36)	66.7	5.6	27.8
	SHAREHOLDERS (S)	(N = 35)	88.6	2.9	8.6
	ACCOUNTANTS	(N = 18)	27.8	11.1	61.1
	LAWYERS	(N = 40)	55.0	17.5	27.5
	ADMINISTRATORS	(N = 22)	72.7	18.2	9.1
	SECURITIES INDUSTRY	(N = 44)	56.8	13.6	29.5
	SHAREHOLDERS (L)	(N = 14)	92.9	-	7.1

TABLE A.18

QUESTION 18
Which parties should pay the costs of the investigation, irrespective of the outcome of the investigation, where the Inspector is appointed on the application of the shareholders?

			YES %	UNDECIDED %	NO %
i.	"THE APPLICANT"	(N=161)	46.8	23.0	31.1
	COMPANIES	(N = 34)	55.9	26.5	17.6
	SHAREHOLDERS (S)	(N = 23)	30.4	34.8	34.8
	ACCOUNTANTS	(N = 14)	35.7	28.6	35.7
	LAWYERS	(N = 37)	51.9	18.5	29.6
	ADMINISTRATORS	(N = 20)	55.0	10.0	35.0
	SECURITIES INDUSTRY	(N = 30)	40.0	26.7	33.3
	SHAREHOLDERS (L)	(N = 13)	46.2	7.7	46.2
ii.	"THE COMPANY INVESTIGATED"	(N=203)	26.6	26.6	46.8
	COMAPNIES	(N = 36)	16.7	22.2	61.1
	SHAREHOLDERS (S)	(N = 32)	37.5	31.3	31.3
	ACCOUNTANTS	(N = 20)	15.0	30.0	55.0
	LAWYERS	(N = 36)	22.2	25.0	52.8
	ADMINISTRATORS	(N = 21)	23.8	38.1	38.1
	SECURITIES INDUSTRY	(N = 44)	29.5	25.0	45.5
	SHAREHOLDERS (L)	(N = 14)	50.0	14.3	35.7
iii.	"THE DIRECTORS OF THE COMPANY"	(N=192)	8.9	32.8	58.3
	COMPANIES	(N = 34)	14.7	26.5	58.8
	SHAREHOLDERS (S)	(N = 27)	14.8	40.7	44.4
	ACCOUNTANTS	(N = 19)	-	26.3	73.7
	LAWYERS	(N = 36)	11.1	27.8	61.1
	ADMINISTRATORS	(N = 21)	14.3	42.9	42.9
	SECURITIES INDUSTRY	(N = 42)	2.4	38.1	59.5
	SHAREHOLDERS (L)	(N = 13)	-	23.1	76.9
iv.	"THE STATE"	(N=201)	40.3	24.4	35.3
	COMPANIES	(N = 34)	23.5	23.5	52.9
	SHAREHOLDERS (S)	(N = 32)	43.8	25.0	31.3
	ACCOUNTANTS	(N = 19)	52.6	26.3	21.1
	LAWYERS	(N = 37)	48.6	21.6	29.7
	ADMINISTRATORS	(N = 20)	45.0	30.0	25.0
	SECURITIES INDUSTRY	(N = 45)	46.7	26.7	26.7
	SHAREHOLDERS (L)	(N = 14)	7.1	14.3	78.6
v.	"THE PARTIES, IF ANY, WHO DERIVE BENEFIT FROM THE INVESTIGATION"	(N=192)	33.9	25.0	41.1
	COMPANIES	(N = 29)	48.3	27.6	24.1
	SHAREHOLDERS (S)	(N = 26)	46.2	26.9	26.9
	ACCOUNTANTS	(N = 19)	36.8	21.1	42.1
	LAWYERS	(N = 38)	31.6	23.7	44.7
	ADMINISTRATORS	(N = 20)	31.8	22.7	45.5
	SECURITIES INDUSTRY	(N = 44)	20.5	29.5	50.0
	SHAREHOLDERS (L)	(N = 14)	28.6	14.3	57.1

TABLE A.19

QUESTION 19
Which parties should pay the costs of the investigation where the appointment has been made on the appalication of shareholders and an adverse report is made?

			YES %	UNDECIDED %	NO %
i.	"THE APPLICANT"	(N=198)	26.3	20.2	53.5
	COMPANIES	(N = 32)	37.5	21.9	40.6
	SHAREHOLDERS (S)	(N = 31)	9.7	22.6	67.7
	ACCOUNTANTS	(N = 20)	30.0	5.0	65.0
	LAWYERS	(N = 37)	27.0	27.0	45.9
	ADMINISTRATORS	(N = 22)	36.4	27.3	36.4
	SECURITIES INDUSTRY	(N = 44)	23.8	19.0	57.1
	SHAREHOLDERS (L)	(N = 14)	21.4	7.1	71.4
ii.	"THE COMPANY INVESTIGATED"	(N=208)	37.0	24.0	39.0
	COMPANIES	(N = 35)	34.4	25.6	40.0
	SHAREHOLDERS (S)	(N = 33)	45.5	21.2	33.3
	ACCOUNTANTS	(N = 20)	20.0	20.0	55.0
	LAYWERS	(N = 40)	35.0	22.5	42.5
	ADMINISTRATORS	(N = 21)	38.1	28.6	33.3
	SECURITIES INDUSTRY	(N = 45)	35.6	28.9	35.6
	SHAREHOLDERS (L)	(N = 14)	57.1	7.1	35.7
iii.	"THE PARTIES, IF ANY, WHO DERIVE BENEFIT FROM THE INVESTIGATION"	(N=194)	25.3	26.3	48.6
	COMPANIES	(N = 32)	21.3	31.3	37.4
	SHAREHOLDERS (S)	(N = 30)	30.0	25.3	46.7
	ACCOUNTANTS	(N = 18)	33.3	22.2	44.4
	LAWYERS	(N = 38)	26.3	26.3	47.4
	ADMINISTRATORS	(N = 20)	25.0	30.0	45.0
	SECURITIES INDUSTRY	(N = 22)	14.3	33.3	52.4
	SHAREHOLDERS (L)	(N = 14)	21.4	-	78.6
iv.	"DIRECTORS, IF CRITICISED"	(N=202)	38.1	24.8	37.1
	COMPANIES	(N = 35)	34.2	22.8	43.0
	SHAREHOLDERS (S)	(N = 33)	60.6	18.2	21.2
	ACCOUNTANTS	(N = 18)	11.1	16.7	72.2
	LAWYERS	(N = 39)	30.8	33.3	35.9
	ADMINISTRATORS	(N = 20)	35.0	45.0	20.0
	SECURITIES INDUSTRY	(N = 43)	34.9	23.3	41.9
	SHAREHOLDERS (L)	(N = 14)	64.3	7.1	28.6
v.	"AUDITORS, IF CRITISED"	(N=201)	38.8	23.9	37.3
	COMPANIES	(N = 35)	34.2	22.8	43.0
	SHAREHOLDERS (S)	(N = 33)	60.6	21.2	18.2
	ACCOUNTANTS	(N = 18)	11.1	11.1	77.8
	LAWYERS	(N = 39)	33.3	30.8	35.9
	ADMINISTRATORS	(N = 20)	50.0	35.0	15.0
	SECURITIES INDUSTRY	(N = 42)	28.6	26.2	45.2
	SHAREHOLDERS (L)	(N = 14)	64.3	7.1	28.6
vi.	"OTHER PARTIES CRITICISED:	(N=199)	33.7	27.6	38.7
	COMPANIES	(N = 35)	31.4	22.8	45.8
	SHAREHOLDERS (S)	(N = 32)	53.1	28.1	18.8
	ACCOUNTANTS	(N = 18)	11.1	16.7	72.2
	LAWYERS	(N = 38)	28.9	34.2	36.8
	ADMINISTRATORS	(N = 20)	25.0	50.0	25.0
	SECURITIES INDUSTRY	(N = 42)	28.6	26.2	45.2
	SHAREHOLDERS (L)	(N = 14)	64.3	7.1	28.6
vii.	"THE STATE"	(N=163)	45.4	19.6	35.0
	COMPANIES	(N = 29)	34.5	24.1	41.4
	SHAREHOLDER (S)	(N = 23)	39.1	21.7	39.1
	ACCOUNTANTS	(N = 15)	46.7	26.7	26.7
	LAWYERS	(N = 31)	58.1	19.4	22.6
	ADMINISTRATORS	(N = 18)	50.0	16.7	33.3
	SECURITIES INDUSTRY	(N = 36)	55.6	19.4	25.0
	SHAREHOLDERS (L)	(N = 11)	9.1	-	90.9

TABLE A.20

QUESTION 20
Which parties should pay the costs of the investigation where the appointment has been made on the application of shareholders and a conviction is obtained?

			YES %	UNDECIDED %	NO %
i.	"THE APPLICANT"	(N=194)	15.5	14.4	70.1
	COMPANIES	(N = 32)	21.9	12.5	65.6
	SHAREHOLDERS (S)	(N = 31)	3.2	12.9	83.9
	ACCOUNTANTS	(N = 20)	15.0	5.0	80.0
	LAWYERS	(N = 35)	25.7	20.0	54.3
	ADMINISTRATORS	(N = 21)	19.0	28.6	52.4
	SECURITIES INDUSTRY	(N = 41)	7.3	14.6	78.0
	SHAREHOLDERS (L)	(N = 11)	21.4	-	78.6
ii.	"THE COMPANY INVESTIGATED"	(N=200)	33.5	22.0	44.5
	COMPANIES	(N = 34)	38.2	29.4	32.4
	SHAREHOLDERS (S)	(N = 32)	34.4	18.8	46.9
	ACCOUNTANTS	(N = 20)	15.0	20.0	65.0
	LAWYERS	(N = 37)	32.4	21.6	45.9
	ADMINISTRATORS	(N = 21)	38.1	19.0	42.9
	SECURITIES INDUSTRY	(N = 42)	31.0	26.2	42.9
	SHAREHOLDERS (L)	(N = 14)	50.0	7.1	42.9
iii.	"THE PARTIES, IF ANY, WHO DERIVE BENEFIT FROM THE INVESTIGATION"	(N=194)	21.5	24.1	54.4
	COMPANIES	(N = 32)	18.8	31.3	50.0
	SHAREHOLDERS (S)	(N = 31)	22.6	29.0	48.4
	ACCOUNTANTS	(N = 18)	33.3	5.6	61.1
	LAWYERS	(N = 37)	27.0	29.7	43.2
	ADMINISTRATORS	(N = 21)	23.8	23.8	52.4
	SECURITIES INDUSTRY	(N = 41)	14.6	24.4	61.0
	SHAREHOLDERS (L)	(N = 14)	41.3	7.1	78.6
iv.	"DIRECTORS, IF CONVICTED"	(N=214)	69.6	11.2	19.2
	COMPANIES	(N = 35)	68.6	14.3	17.1
	SHAREHOLDERS (S)	(N = 35)	85.7	-	14.3
	ACCOUNTANTS	(N = 18)	33.3	11.1	55.6
	LAWYERS	(N = 43)	60.5	18.6	20.9
	ADMINISTRATORS	(N = 23)	73.9	17.4	8.7
	SECURITIES INDUSTRY	(N = 46)	71.7	10.9	17.4
	SHAREHOLDERS (L)	(N = 14)	92.9	-	7.1
v.	"AUDITORS, IF CONVICTED"	(N=212)	68.9	11.8	19.3
	COMPANIES	(N = 35)	71.4	11.4	17.1
	SHAREHOLDERS (S)	(N = 35)	85.7	2.9	11.4
	ACCOUNTANTS	(N = 18)	33.3	11.1	55.6
	LAWYERS	(N = 43)	58.1	20.9	20.9
	ADMINISTRATORS	(N = 23)	78.3	17.4	4.3
	SECURITIES INDUSTRY	(N = 44)	65.9	11.4	22.7
	SHAREHOLDERS (L)	(N = 14)	92.9	-	7.1
vi.	"OTHER PARTIES CONVICTED"	(N=208)	64.9	14.9	20.2
	COMPANIES	(N = 35)	65.7	11.4	22.9
	SHAREHOLDERS (S)	(N = 34)	79.4	8.8	11.8
	ACCOUNTANTS	(N = 18)	33.3	11.1	55.6
	LAWYERS	(N = 42)	57.1	21.4	21.4
	ADMINISTRATORS	(N = 23)	65.2	30.4	4.3
	SECURITIES INDUSTRY	(N = 44)	65.1	14.0	20.9
	SHAREHOLDERS (L)	(N = 13)	92.3	-	7.7
vii.	"THE STATE"	(N=163)	44.8	16.6	38.7
	COMPANIES	(N = 25)	32.0	24.0	44.0
	SHAREHOLDERS (S)	(N = 27)	40.7	18.5	40.7
	ACCOUNTANTS	(N = 14)	50.0	28.6	21.4
	LAWYERS	(N = 31)	61.3	9.7	29.0
	ADMINISTRATORS	(N = 19)	52.6	21.1	26.3
	SECURITIES INDUSTRY	(N = 36)	50.0	13.9	36.1
	SHAREHOLDERS (L)	(N = 11)	-	-	100.0

TABLE A.21

QUESTION 22
Is the power to appoint an Inspector abused?

		VERY OFTEN %	OFTEN %	UNDECIDED %	SOMETIMES %	NEVER %
TOTAL RESPONDENTS	(N =227)	1.5	5.3	39.2	32.2	22.0
COMPANIES	(N = 37)	-	2.7	48.6	37.6	10.8
SHAREHOLDERS (S)	(N = 37)	5.4	5.4	32.4	37.8	18.9
ACCOUNTANTS	(N = 22)	-	-	50.0	22.7	27.3
LAWYERS	(N = 43)	2.3	16.3	25.6	39.5	16.3
ADMINISTRATORS	(N = 27)	-	-	25.9	11.1	63.0
SECURITIES INDUSTRY	(N = 47)	-	2.1	51.1	31.9	14.9
SHAREHOLDERS (L)	(N = 14)	-	7.1	42.9	35.7	14.3

TABLE A.22

QUESTION 24
Have you ever been involved in the conduct of a Special Investigation?

		YES %	NO %
TOTAL RESPONDENTS	(N =228)	18.9	81.1
COMPANIES	(N = 38)	7.9	92.1
SHAREHOLDERS (S)	(N = 38)	2.6	97.4
ACCOUNTANTS	(N = 6)	28.6	71.4
LAWYERS	(N = 44)	25.0	75.0
ADMINISTRATORS	(N = 27)	59.3	40.9
SECURITIES INDUSTRY	(N = 45)	11.1	88.9
SHAREHOLDERS (L)	(N = 15)	6.7	93.3