

A WORKING PAPER ON
WHITE COLLAR CRIME IN AUSTRALIA

by

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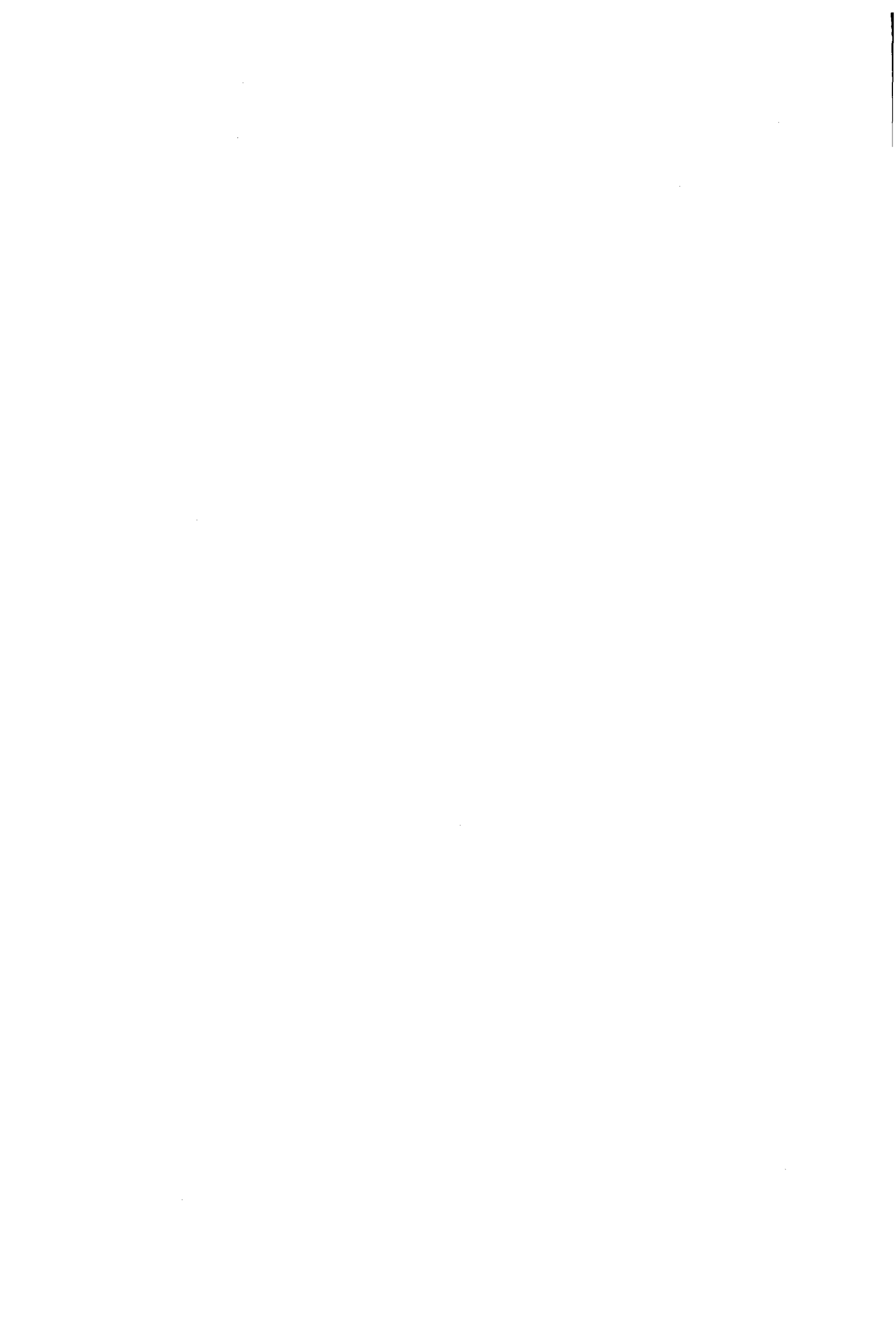
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INTRODUCTION

The phrases white collar and corporate crime are being heard with increasing frequency in this country, particularly in connection with a number of spectacular company crashes in N.S.W. which have cost investors millions of dollars. There are, however, many other types of white collar crime which at present receive little attention. This paper is an attempt to provide some appreciation of the varieties of such crime and of the way this society is responding to it. *Specifically, the paper aims to assemble publicly available information on selected categories of white collar crime.* Because of the current interest in crimes by company directors against investors and creditors there is far more information available on this type of crime than on other varieties of white collar offence. For this reason and for this reason alone the paper will dwell at greatest length on crime against investors and creditors; no implication is intended as to the relative importance of the various types of offence to be considered.

Discussions of white collar crime invariably begin with the issue of definition. There are almost as many definitions as there are writers on the subject and there is no sign of any emerging consensus.¹ Some writers have suggested that the term is inherently ambiguous and recommend its abandonment in favour of such concepts as economic crime, occupational crime and even 'gilded' crime. Not surprisingly, however, there is as little agreement on the definition of these terms as on the original.

The real source of this definitional problem is that there is genuine disagreement as to specifically which offences are to be included in the category of white collar crime. Some writers wish to restrict the types of crime to be considered while others seek to cast their definitional net as widely as possible. Let me exemplify the extremes. Gibbons writes as follows:

We will reserve the term 'white collar crime' for violations of business regulations or occupational roles carried on as contributory to the business or occupational enterprise. An offense will be said to be a white collar one insofar as it represents violation of a legal rule constructed to govern business affairs or occupational practice and insofar as the law violation took place as part of the conduct of regular business or occupational activities.²

Thus, violation of industrial pollution legislation and price fixing among competitors are white collar crimes because they are carried on as contributory to the enterprise, while embezzlement, and fraud by company directors against shareholders are not, because they are not carried out on behalf of the business enterprise. Similarly, income tax evasion would not be a white collar crime on this definition because it is not contributory to ongoing business activity. Gibbons' point is that the distinction between crimes typically committed by middle class individuals and those typically committed by lower social classes, is of secondary importance. Embezzlement, he feels, though typically the preserve of white collar individuals, is not in principle different from theft. The important distinction, he believes, is between crimes committed for personal benefit and those committed for the benefit of the employer or organisation. The latter type of crime attracts little or no moral stigma and its perpetrators are generally seen as 'organisational warriors' doing what they have to for the sake of the enterprise. Gibbons' definition is designed to emphasise this second distinction.

In contrast to Gibbons, Edelhertz has defined the term white collar crime to be as inclusive as possible. For Edelhertz, a white collar crime is

an illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid payment or loss of money or property, or to obtain business or personal advantage.³

This definition covers most of behaviour with which Gibbons was concerned, but covers, in addition, fraud against shareholders, embezzlement by bank employees, income tax evasion and a great variety of other such offences. Edelhertz identifies four types of white collar crime:

1. Crimes by persons operating on an individual basis in a non business context, e.g. tax evasion.
2. Crimes by persons operating inside business or government or other establishments, or in a professional capacity, in violation of their duty of loyalty and fidelity to employer or client, i.e. abuses of trust, e.g. embezzlement.
3. Crimes incidental to and in furtherance of business operations, but not the central purpose of such business operations, e.g. price fixing. (This is roughly the group of offences regarded by Gibbons as white collar crimes.)
4. White collar crimes which are the central activity of the business, i.e. con games, e.g. phoney contests, certain

types of home improvement schemes, and organised income tax refund swindles sometimes operated by income tax 'counselors'.

Edelhertz's definition is deliberately broad. The only explicit exclusion he makes is organised crime (e.g. organised prostitution and illegal gambling operations), which is seen by some as akin to white collar crime. But despite this breadth of definition, Edelhertz does appear to exclude certain types of crime which Gibbons would include. For example, violation of pollution and industrial safety regulations do not appear to be included in Edelhertz's definition since they do not necessarily involve 'concealment or guile'. They do, however, fall within Gibbons' conception of white collar crime since they contribute to the profitability of the enterprise.

It is not my intention to enter into this definitional controversy. Each of the offences I have selected for discussion would be regarded as white collar crimes by either Edelhertz or Gibbons, but neither of their definitions is, by itself, sufficiently broad to cover all the offences to be discussed. The real criterion for inclusion here was whether or not there was sufficient publicly available information to warrant discussion.

Apart from debate over just what is to be included within the category of white collar crime, there is a second controversial issue which arises in any discussion of this topic, namely, is white collar crime really crime? Strictly speaking, both Gibbons and Edelhertz avoid this issue by definition. The first defines white collar crime as a 'violation ... of business regulations ...' while the second defines it as 'an illegal act ...'; neither claims that white collar crime is actually crime. Nevertheless, the originator of the concept, E.H. Sutherland, did make such a claim when he defined white collar crime as 'crime committed by a person of respectability and high social status in the course of his occupation'.⁴ The issue of whether white collar crime is really crime cannot therefore be avoided.

The matter hinges of course on the definition of crime. Sutherland defined crime as 'behavior which is prohibited by the state as an injury to the state and against which the state may react, at least as a last resort, by punishment'.⁵ According to this definition nearly all the behaviour which has been treated as white collar crime is in fact criminal, for it is always prohibited behaviour and it is nearly always punishable, at least in the last resort, by the imposition, if not of imprisonment, then of some financial penalty payable to the state. It should be noted, however, that not all behaviour generally regarded as white collar crime is punishable by the state. In Australia,

the Trade Practices Act of 1971 made it an offence for manufacturers to engage in the practice of resale price maintenance. But the Act specified no penalties in the event of violation. Instead it provided machinery for an aggrieved person or for the Commissioner for Trade Practices to seek an injunction against any *further* violations by the offender. Such further violations were punishable as contempt of court; the original violation, however, was unpunishable.

While Sutherland's definition of crime might thus be criticised on the grounds of being too narrow, most critics have claimed it to be far too broad. Some have argued that most white collar offences, and particularly violations of the law by companies, are not as 'grave' or as morally reprehensible as traditional crimes, and that the concept of crime should not be diluted by the inclusion of such violations.⁶ A second line of attack focuses on the kind of court proceedings to which the behaviour is subject. Many white collar offences are handled not in criminal courts but in civil proceedings or by special administrative tribunals. Such administrative or civil proceedings do not employ the very rigorous standard of proof which applies in criminal proceedings (beyond reasonable doubt); nor do they provide the same procedural and evidenciary safeguards available to defendants in criminal trials. Moreover, a finding of guilt in such proceedings is not recorded as a criminal conviction. Thus, those who emphasise the nature of the court proceedings take the view that much so-called white collar crime is not strictly criminal. To illustrate this point, the Trade Practices Act of 1974 makes price agreements among competitors illegal.⁷ Moreover it imposes heavy financial penalties payable to the state on those found guilty of price fixing. Yet the Act specifies that the proceedings in which such penalties are imposed are to be non-criminal in character. On this basis therefore it can be argued that price fixing is not a crime in Australia.

As before, it is not my intention to take sides on this issue. Some of the white collar offences to be considered in what follows, such as fraud, are crimes, even according the strictest definition, while others, such as tax evasion, are criminal only on the broadest interpretation of that word. All, however, involve illegal acts, violations of declared law. Whether they are considered crimes is, for present purposes, irrelevant.

Finally, a word on sources. It might be thought that court records would be the best source of information on prosecutions for white collar crimes. However, some white collar offences, such as tax evasion do not generally come before the courts. In any case, published court statistics do not provide information on specific white collar offences. Published police statistics, often used for the analysis of

crime, suffer the same defects. The best available sources of information on white collar offences are the annual reports of the various administrative bodies which are exclusively concerned with specific types of white collar crime. The major problem with these reports is that the format in which they present information and the amount of detail they include vary from state to state and from crime to crime. Generally speaking, therefore, it has proved impossible in this paper to present the data in any *systematic* fashion.

CRIME AGAINST INVESTORS AND CREDITORS

The possible ways in which shareholders, debenture holders and creditors of a company can be defrauded are almost limitless. Perhaps because of the difficulty of encompassing these possibilities, there is no single prohibition against such crime. Aspects of fraudulent, dishonest or negligent behaviour by company officers at the expense of investors and creditors are prohibited in a number of statutes - in N.S.W., the Companies Act, the Securities Industry Act and the Crimes Act - and at common law. In each state in Australia a special agency exists to enforce the relevant provisions of this body of law, but in this paper I shall concentrate on one particular agency, the N.S.W. Corporate Affairs Commission, since this is the only one which issues an annual report.

Unfortunately not all fraud against investors and creditors in N.S.W. is handled by the Corporate Affairs Commission. While the Companies and Securities Acts are the responsibility of the Corporate Affairs Commission alone, the prohibitions against company fraud in the Crimes Act are the joint responsibility of the C.A.C. and the police fraud squad. A complete account of enforcement activity would thus need to combine information from both these sources. But this cannot in fact be done since published information on fraud squad activities does not distinguish fraud against investors and creditors from other types of fraud. It seems likely however that most major company fraud is dealt with by the C.A.C. since as a matter of policy the C.A.C. handles all offences under the Crimes Act which involve extensive accounting investigation.⁸ It is thus not unreasonable to confine attention to the activities of the C.A.C.

Let us look in a little more detail at the types of offence dealt with by the C.A.C. The principle function of the Commission is to prevent directors and other company officers from abusing their positions of trust and enriching themselves either at the expense of investors, be they share or debenture holders, or at the expense of suppliers who extend credit to a company in the course of normal business dealings.

It is worth noting, parenthetically, that the term 'corporate crime' is sometimes used to describe this type of offence. Thus for example the Solicitor-General of Australia has said that 'corporate crime consists, in the main, of

breaches of the statute law protecting the investor, the creditor and the corporate assets'.⁹ But the term has also been used to cover any offence in which the individual uses the company or corporate structure to commit a crime.¹⁰ This would include crimes by companies against consumers or against environmental laws. The concept of corporate crime is obviously as ill-defined as the concept of white collar crime itself and, to avoid confusion, it has not been invoked in this paper.

The best known instances of crime dealt with by the C.A.C. involve the misuse of capital which has been raised from the investing public for the purpose of forming or expanding the activities of oil and mineral exploration companies. In one such case the directors made use of capital raised in this way to make a loan at less than commercial interest rates to another company in which they had a substantial beneficial interest. In another case millions of dollars were raised from shareholders for the purpose of buying oil leases. The purchase was to be made through a chain of intermediary companies and individuals, but in the process, most of the money 'disappeared' in a Swiss bank account.

The above cases involve public companies, with thousands of shareholders. Apparently, however, they represent only the 'tip of the iceberg'. Most of the cases investigated by the Corporate Affairs Commission are small, so-called proprietary, companies. Of the 118 cases being held for investigation by the C.A.C. in July 1976 only 15 involved public companies: the remainder concerned proprietary companies.¹¹ The proprietary company, by law, is limited to 50 shareholders; in fact it frequently has fewer than five. Such a company is really a sole trader or business partnership in corporate form. Proprietary companies are restricted in their ability to raise money on the capital market and their shares are not readily transferable. In these circumstances the possibilities of fraud against shareholders is limited or non-existent. When a proprietary company comes to the attention of the Corporate Affairs Commission it is usually for defrauding creditors, not shareholders. The fraud occurs when the directors, aware that their company is insolvent, continue to incur debts in the knowledge that they will not be able to repay them. When the company goes bankrupt the directors themselves are unaffected - their liability is limited - but the creditors remain unpaid. According to a senior inspector of the Corporate Affairs Commission this is a particularly 'pernicious' type of crime.

It would seem, (he says), that the entrepreneur who in our society and economic system is supposed to take the risk is, in fact, only prepared to risk the minimum amount of his capital. In

practice he trades on credit and it is, of course, his creditor's money he places on risk. It is this practice which gives rise to the greatest amount of investigation work that comes into my division.¹²

A third type of offence for which the Corporate Affairs Commission is responsible involves directors and others realising large profits on the stock exchange by buying or selling company shares on their own behalf and at the expense of other share traders who are not aware of the true state of affairs of the company and hence of the real value of the shares. Sometimes the directors may have deliberately misled the stock exchange as the true state of affairs by announcing for example that the company has made a substantial profit when it has in fact made a loss and/or is actually insolvent. In these circumstances the director can unload his shares before their price drops. Alternatively, the director may simply be making use of information which is not yet publicly available - such as the fact that the company has struck oil - to buy before the price rises. The Rae report reveals that during the mining boom many millions of dollars were made as a result of 'insider trading' of this type.

These are some of the substantive types of criminal behaviour with which the Corporate Affairs Commission is concerned. However it should also be recognised that the Commission devotes considerable effort to prosecuting companies for failure to lodge annual returns, failure to keep proper books, and so on. While these are not serious offences in themselves they frequently facilitate the commission of more serious crime. A complete picture of the prosecutions completed by the C.A.C. in 1976, apart from the 4,764 prosecutions of failure to lodge annual reports and other documents is presented in table 1. Several observations are in order. Although the table indicates that some 383 charges were disposed of, only 51 companies (or groups of related companies) were involved, most companies being prosecuted on more than one charge. Thus, for example, the following charges were laid in relation to a single company group: 15 counts of director failing to act honestly, 3 counts of contracting debts without reasonable probability of payment, 6 counts of fraudulent trading, 6 counts of company dealing in its own shares, 6 counts of making false statements in a document and 2 counts of making false statements re marketable securities. Moreover, a single criminal act can give rise to several charges. For example, in one case recently before the courts a single false statement to the stock exchange gave rise to 29 charges. Thus, although some 383 charges were disposed of during the year, the number of instances of criminal behaviour dealt with was substantially fewer.

TABLE 1

NSW CORPORATE AFFAIRS PROSECUTIONS COMPLETED IN 1976
(excluding prosecutions for failure to lodge documents)

<u>Offence</u>	<u>No. of Companies Involved</u>	<u>Total No. of Charges</u>	<u>Disposition</u>
Failure to keep register of directors, or members	2	4	4 convictions - average fine per charge: \$50
Failure to present accounts to, or hold, A.G.M.	3	5	5 convictions - average fine per charge: \$50
Failure to maintain, or secretary not present at, registered office	2	3	3 convictions - average fine per charge: \$37
Failure to exhibit, or register business name	3	8	2 acquittals 6 convictions, average fine per charge: \$48
Failure to notify change of address	1	1	dismissed
Failure to produce records for inspection	1	6	6 convictions, average fine per charge: \$100
Failure to keep proper books	13	72	39 dismissed/withdrawn 29 convictions, average fine per charge: \$160 2 proved, no conviction recc
Bankrupt acting as director	3	4	2 convictions, average fine per charge: \$650 1 proved, no conviction recc 1 withdrawn
Convicted person acting as director	5	18	6 acquittals/withdrawn 12 convictions, average fine per charge: \$67
Loan to a director	1	1	\$100 fine
Director obtaining credit by false representation	1	4	withdrawn
Clerk making false entry	1	1	withdrawn
Director falsifying records	1	1	nolle prosequi
Director failing to act honestly	3	19	3 withdrawn 16 convictions, average fine per charge: \$813
Director failing to disclose interest in contract	1	1	\$250 fine
Contracting debt without reasonable probability of payment	3	26	10 withdrawn/dismissed 16 convictions, average fine per charge: \$356

TABLE 1 (CONT.)

<u>Offence</u>	<u>No. of Companies Involved</u>	<u>Total No. of Charges</u>	<u>Disposition</u>
Conspiracy to conduct illegal lottery	1	2	all withdrawn
Omit to account	1	2	all dismissed
Allotment of shares without minimum subscription	1	22	10 withdrawn 12 convictions, average fine per charge: \$17
Company dealing in own shares, or conspiracy to this effect	3	10	3 withdrawn 7 convictions, average fine per charge: \$414
Share hawking	1	1	Proved, no conviction recorded
Issuing shares on stale prospectus	1	6	4 withdrawn 2 convictions, average fine per charge: \$300
Director improperly using knowledge	1	7	all dismissed
Insider trading	2	9	all dismissed
Making or publishing false statement in document, or to stock exchange, or re marketable security	7	51	35 acquittals/withdrawn/n.p. 16 convictions*
Take and apply property	6	61	18 dismissed/withdrawn/n.p. 43 convictions*
Concealment of property	1	2	2 convictions*
Stealing	1	2	all withdrawn
Larceny as a servant	1	1	7 years prison
False pretences	2	8	8 withdrawn
Fraudulent trading, or arrangement (including conspiracies to defraud)	7	25	16 dismissed/withdrawn 1 conviction, bond 1 conviction, fined \$2000 4 convictions*

* These convictions were all against one man, a director of Intercontinental Development Corporation. He was sentenced to 14 years imprisonment

The offence descriptions in the table correspond to specific sections or groups of sections in the acts administered by the C.A.C. Thus, 'making or publishing false statement in document, to stock exchange or re marketable security' corresponds to sections 375A and 375(2) of the Companies Act, section 73 of the Securities Act and section 176 of the Crimes Act. But it is not clear just how such offences differ from 'director obtaining credit by false representation' or 'director failing to act honestly'. It is obvious that if summary statistics on the operation of the C.A.C. are to convey meaningful information, offences must be classified in such a way as to group together types of behaviour which are substantively similar and distinguish between types which are substantively dissimilar. Such classificatory work is yet to be done.

It is interesting to note that fewer than half the prosecutions resulted in convictions. Of those that did, most resulted in fines of at most a few hundred dollars. Only two people were sentenced to terms of imprisonment.

Although this paper is based in the main on publicly available information, it was decided in this case to approach directly enforcement agencies in other states, in an attempt to gain comparative data. The results are presented in an appendix. It is clear from these data that N.S.W. is considerably more active than other states in the prosecution of this type of crime. Nevertheless, the number of prosecutions in N.S.W. is pitifully small, bearing little or no relationship to the amount of crime actually committed. Only a small number of 'crimes known to the Commission' are prosecuted, and it can be safely assumed that there is a substantial number of crimes of which the Commission never becomes aware. It is often suggested that the limited number of prosecutions for this type of crime in comparison with the much greater number of prosecutions for conventional crime reflects a bias in favour of the white collar criminal. No doubt there is some truth in this. But there are other factors involved. In N.S.W., at least, statements by politicians and members of the C.A.C. indicate no lack of enthusiasm for proceeding against white collar criminals. A major factor limiting the number of prosecutions launched by the C.A.C. is the very great difficulty which it experiences in obtaining and presenting the evidence necessary for conviction. While it may be obvious enough that creditors or shareholders have lost money, it is often very difficult to establish that this was as the result of a criminal act, rather than the result of bad business judgement on the part of the directors. To establish the occurrence of a crime may take months of detailed analysis of company documents, bank records and share market transactions. Moreover, victims are often reluctant to volunteer information which could be regarded as evidence for a prosecution. Although the crime may have

cost the public millions, the loss incurred by any given individual may be relatively small and such an individual may frequently prefer to write off his loss rather than spend days in court with no possibility of the return of his funds and considerable doubt as to whether the guilty parties will even be convicted.

A further obstacle to successful prosecution is that, in contrast to most conventional criminal cases, the motivation of the person accused of a white collar offence is often the crucial issue. Take for example the case of an oil company director accused recently of insider trading.¹³ The prosecution alleged and the magistrate accepted that the director had acquired inside information that the price of shares in the company was likely to fall. The director's family enterprise owned shares in the oil company and shortly before the oil company shares actually fell in price, he sold most of the family owned shares. The prosecution claimed that this sale had taken place as a result of the inside information acquired by the director. The director's defence was that his family enterprise was in the red at the bank and that he would have sold the shares in any case in order to get the family company out of debt. Accordingly, the magistrate acquitted the director on the ground that it had not been proved that the sale resulted from the director's knowledge of inside information. Clearly it would have been difficult if not impossible for the prosecution to establish just what the director's motives were. Thus, where motivation is at issue, as it was in this case, the likelihood of successful prosecution recedes.

A final reason for the relatively small number of prosecutions is that such trials are inordinately and unnecessarily long, complex and expensive. The judges who preside at these trials are particularly concerned about the problem. Here are the views of one.

I am conscious of the appalling waste of time that is taken up in the courts in proving things that cannot be disputed: the cashing of cheques, the drawing of cheques, a particular transaction involving a bank, the state of company books and such matters as that. These matters can take a great time. They waste public time, they are not the crux of the case, and they do nothing but irritate the jury and generally bring the law and the processes of the law into disrepute.¹⁴

According to this judge, the whole process is a 'complete farce', and an inevitable farce, given the rules of evidence which the courts must currently apply. He and other judges have recommended on several occasions that the rules of evidence be changed to allow evidence which is not really at issue to be evaluated by expert witnesses and

presented to the court in summary form.¹⁵

Although changes in court procedures and rules of evidence are obviously desirable and would certainly expedite the trial process itself, they cannot solve the very real problems experienced by the C.A.C. in obtaining the evidence necessary for a criminal conviction. In these circumstances it may be that the emphasis should be placed on preventing such crimes occurring in the first place rather than on prosecuting them after the event. There have been numerous suggestions along these lines. The Commissioner for Corporate Affairs has himself suggested the establishment of a shareholders' tribunal to which shareholders could take their complaints or even suspicions.¹⁶ If it appeared to the tribunal that the directors of a company were about to embark on a course of action which on the face of it might be detrimental to shareholders it could apply to a court for an injunction temporarily preventing the directors from carrying out their intentions and requiring them to justify their proposals. The tribunal might take such action if, for example, directors were proposing to sell a company without putting the matter to a general meeting of shareholders or if the directors were proposing to divert liquid assets invested in one corporation to another in which the directors had a substantial interest. If the directors failed to satisfy the tribunal that the proposed course of action was consistent with shareholder interests it could then apply to the court to have the injunction made permanent. The advantage of this procedure is that a criminal act or intent would not have to be proved; the court would simply need to be convinced that the proposed procedure was potentially detrimental to shareholders. This suggestion is currently being seriously considered by the N.S.W. government.

Other preventive measures which have been suggested involve the licensing of directors, and the requirement that companies make more frequent public reports on the state of their financial affairs.¹⁷ One rather interesting preventive measure already adopted by the C.A.C. involves the routine scrutiny of companies judged especially likely to be the locus of crime against investors or creditors. Thus the Commission is involved in the continuous surveillance of companies which regularly seek public funds through debenture issues. The C.A.C. also pays special attention to the activities of company directors who have been involved in the management of two or more companies which have failed financially within the previous seven years.¹⁸ Systematic research into the types of directors and types of companies most likely to be involved in criminal behaviour might well enable the routine preventive work of the Commission to be given a sharper focus than it currently has.

Another set of preventive measures involves increasing the accountability of those who come into contact with company directors in the normal course of business and whose attitude of non-responsibility facilitates the commission of crime. Auditors, for example, are often in a key position to prevent the commission of crime by company directors. According to one authority,

with a few exceptions the commission of (company) fraud has been as a result of a deplorable audit conducted by the auditors of company records. Auditors have an important part to play in suppression of this type of crime. They are the first hurdle. If a delinquent company officer can hoodwink an auditor there is a chain reaction that will continue and may continue for decades.¹⁹

Stock exchanges have also been criticised for laxity in applying their own self-imposed rules designed to prevent such abuses as market rigging and insider trading. And banks have been castigated for their part in facilitating 'round robbin' transactions in which money passes round a chain of companies back to where it originated. These transactions are an important feature of many of the schemes devised by company directors to circumvent the law and bankers are apparently in a position to detect them. Yet though aware of the existence of these round robbers, banks have not regarded it as their responsibility to call attention to them.²⁰

Finally, mention should be made of a measure which, if implemented, might go a long way toward protecting the creditors of the small proprietary company. At present, because their liability is limited, directors cannot be sued for debts incurred by their company prior to failure. If, however, proprietary firms were treated by the law not as limited liability companies but as corporate partnerships, with the members of the firm, like the members of the traditional legal partnership, liable for the debts of the firm, directors would be far less likely to incur debts which they knew the company could not repay.²¹

A final point which needs to be made about crime against investors and creditors concerns the general relationship of this type of crime to company bankruptcy. Company failures have cost shareholders and creditors some hundreds of millions of dollars in N.S.W. alone over the last ten years (the precise figure is difficult to ascertain but indications in the 1975 report of the C.A.C. are that it is in the vicinity of the \$400 million). The amount lost in company crashes is sometimes taken as an estimate of the cost of company crime on the assumption that most company failures are the result of criminal behaviour on the part of their directors. The available evidence casts doubt on this

assumption, however. Whenever a company failure involves substantial losses to investors and creditors, (specifically, when it is unable to pay unsecured creditors more than 50 cents in the dollar), those responsible for winding up the company, the liquidators, are required to report to the C.A.C. on the affairs of the company. Moreover they are specifically required to notify the C.A.C. of any instances of criminality which they uncover. Their reports indicate that about 25 per cent of substantial company failures are associated with criminal behaviour on the part of company directors.²² The most common criminal acts alleged are: failure to keep proper books, fraudulent trading, misappropriation, and incurring debts without reasonable expectation of being able to pay. Officers of the C.A.C. believe that liquidators become aware of only a small fraction of crimes committed by company directors and that most company bankruptcy is indeed the result of crime, albeit unreported crime. But this has yet to be demonstrated.

Even where company bankruptcy is clearly associated with a criminal offence it cannot always be assumed that the crime was the cause of bankruptcy. Take the case of the director who becomes aware that his company is insolvent, yet continues to take delivery of goods on credit, knowing that he will be unable to pay for them. Those who advance credit under these circumstances are the victims of crime and their losses are due to crime. But those who extended credit to the company before its director knew of its impending failure cannot be said to have lost their money as a result of crime. Their losses were due perhaps to mismanagement by the director, but not to any violation of the law. In such a case bankruptcy losses cannot be taken as an indication of the cost of the crime.

CRIME AGAINST CONSUMERS^{2 3}

Numerous state laws and one federal statute have been enacted to protect consumers against predatory business behaviour. The federal law, the Trade Practices Act is administered by the Trade Practices Commission, and the state acts, by a Consumer Affairs Bureau (or its equivalent) in each state. For example, the South Australian Consumer Affairs Office administers a Second Hand Motor Vehicle Act, a Misrepresentation Act, a Door to Door Sales Act, an Unfair Advertising Act, a Pyramid Sales Act and a Consumer Credit Act. What follows is a brief account of the enforcement activity of these various consumer protection bodies.

The Trade Practices Commission is concerned with three different types of business behaviour: restrictive trade practices, mergers, and specifically consumer protection matters. The restrictive trade practices dealt with by the Commission - price agreements among competitors, exclusive dealing and the like - generally have the effect of stifling competition and thus keeping prices higher than they would otherwise be. At the time of writing, these practices are prohibited by the Act and subject to very heavy penalties: up to \$250,000 in the case of a corporate offender. These are referred to in the Act as 'pecuniary penalties', not fines, symbolising the fact that violations are regarded as civil not criminal offences. Indeed the Act explicitly states that criminal proceedings are not to be used for offences of this type. Thus restrictive trade practices, as dealt with in the Trade Practices Act of 1974, exemplify the definitional ambiguity referred to earlier: on the narrowest legal interpretation they are not criminal, but insofar as crime is defined as prohibited behaviour punishable by the state, they are. Since the Act came into operation in 1975 there have been two completed prosecutions for restrictive practices. Only one of these was successful: a corporation was found to have engaged in the prohibited practice of resale price maintenance and ordered to pay a penalty of \$5,000. In addition, two cases of price fixing are currently under investigation, one involving an agreement among petrol resellers in the Wollongong district not to sell at less than the maximum retail price set by the N.S.W. Prices Commissioner, and the other concerned with price agreements in the liquor industry in N.S.W.

The second area of T.P.C. activity is in the investigation of company mergers. The 1974 Act prohibits

mergers which significantly diminish competition in the relevant market and pecuniary penalties of up to \$250,000 can be imposed on corporate offenders. No such penalties have yet been imposed and there have apparently been no violations of the law in this respect since the Act came into operation.

The third area of Commission activity is in specifically consumer protection matters. The Act specifies a number of misleading or deceptive practices, for example, false advertising, which are to be treated as criminal offences punishable, in the case of a person, by imprisonment for up to 6 months, and in the case of a body corporate, by fines of up to \$50,000. During the period covered by the first two annual reports of the Commission, six companies were successfully prosecuted, mostly for misleading advertising. Fines imposed ranged from \$500 to \$100,000 (\$10,000 on each of ten related charges). One company was prosecuted but acquitted.

There are several reasons for the very small number of prosecutions so far initiated by the Commission. In the case of the restrictive trade provisions, the evidence necessary to prove contraventions is complex and difficult to obtain, while in the case of the antimerger provisions there is often genuine doubt as to whether a merger is anticompetitive and therefore illegal. For at least two mergers investigated by the Commission, the decision taken not to prosecute represented only the majority view: two of the six commissioners argued that the companies concerned had indeed violated the law. The evidenciary problems are not so acute in the case of the consumer protection provisions, but here the Commission has encountered political obstacles. In five cases which the Commission sought to prosecute, the minister exercised the discretion allowed him under the Act and refused to consent to the prosecutions.

Unlike the prosecutions undertaken by the Corporate Affairs Commissions, most of the proceedings initiated by the T.P.C. are against the corporations themselves and not the individual directors. This raises some interesting questions about the effectiveness of those few sanctions so far imposed. Fines of the magnitude of a few thousand dollars make little impact on the profits of a large corporation. In any case the fine is likely to be treated as simply one of the costs of doing business and passed along to the consumer in the form of higher prices. Of course the publicity associated with a fine may have a significant deterrent effect, so it cannot be assumed that the penalties are without result, but the issue obviously requires empirical investigation. It may be, as many commentators have suggested that, the fine is an inappropriate way of controlling the antisocial behaviour of

large corporations and that other strategies are called for. But we will not be in a position to devise alternatives until we know just what effect currently imposed sanctions are having.

The major aim of the state consumer protection agencies is to resolve disputes between consumers and traders, as far as possible, to the satisfaction of the parties concerned. Generally speaking, prosecutions are launched only in respect of flagrant violations or where the trader defies a decision of the agency. Sometimes, however, even the most flagrant cases escape prosecution. One such case concerned a single pest control firm about which the Western Australian Consumer Affairs Bureau received more than 24 complaints. Salesmen for the company apparently gained entrance to private houses by posing as pest control inspectors. Only after the homeowner had been convinced that his house was infested with pests did the salesman 'let on' that he was associated with the company. In one case a salesman apparently told the homeowner that holes in the mortar of the brickwork of her house were caused by beetles, and that considerable damage could result, when in fact the holes were caused by bricklayers' pin lines during construction. Despite such evidence, it appears from the annual report of the Bureau that no prosecutions were launched against the company.

The state most active in the prosecution of offences against consumers is South Australia. The report of the South Australian Commissioner for Prices and Consumer Affairs reveals that 52 prosecutions were undertaken in 1974-1975, the great majority of them under the Second Hand Motor Vehicle Act, for offences such as winding back the odometer of a car to deceive a buyer as to the mileage it had done. It appears from the report that all prosecutions were successful, resulting in most cases of fines of less than \$100. In Victoria, according to the annual report of the Department of Labour and Industry, 19 prosecutions were initiated in 1974 covering such matters as misleading advertising, pyramid selling and winding back odometers. In Queensland, in 1974, there were 7 prosecutions for winding back odometers and 4 for refusing to reply to correspondence. Fines again were generally less than \$100. In Western Australia in 1974-1975 the Bureau of Consumer Affairs launched 4 successful prosecutions, resulting in a fine in one case of \$50 and in another of \$200. Penalties in the other two cases are not recorded in the report. Annual reports for N.S.W. and Tasmania for 1974-1975 suggest that no prosecutions were launched in these states in the relevant period.

The small number of prosecutions revealed in this survey indicates that, with the possible exception of South Australia, traders can violate state consumer protection

laws with impunity. Even when their violations are detected, traders can expect to escape prosecution by making restitution to the aggrieved consumer. And, in those few cases actually prosecuted, the penalties imposed by the courts are negligible. At the state level then, crime against the consumer goes almost unchecked.

CRIME AGAINST EMPLOYEES

Under this heading I shall deal briefly with violations of industrial health and safety laws designed to protect employees. In Britain such offences are widely regarded as white collar crimes;²⁴ in Australia, they are seldom discussed in this context and few would even think of the violation of safety regulations as criminal.

A variety of state acts of parliament protect the health and safety of industrial employees. In Victoria, for example, the Labour and Industry Act, the Boilers and Pressure Vessels Act and the Lifts and Cranes Act all impose obligations on employers in relation to employee health and safety (as well as in relation to other matters such as hours of work and leave entitlements). These acts are administered in each state by a Department of Labour and Industry, except in Queensland, where a Minister for Industrial Development, Labour Relations and Consumer Affairs is responsible. Departmental officers carry out regular programs of inspection to ensure compliance with the law and where a breach is detected the general procedure is to issue an oral or written instruction to comply: prosecutions are usually launched only when the offender fails to comply with such an order or if the case is regarded as particularly serious. Thus in South Australia in 1974, 316 breaches of the Inflammable Liquids Act were detected but in no case was a prosecution initiated. This general reluctance to impose criminal sanctions on delinquent employers is evident in the courts as well, as can be seen in the following case. The case involved an employee who lost a part of his hand when it was caught in the unprotected driving cog of a conveyor belt. The man laid an information against his employer alleging failure to guard dangerous machinery. The magistrate who heard the case adjourned the information for 12 months on condition that the company enter into a good behaviour bond of \$200 and pay costs of \$80. An appeal against the lenience of the decision was dismissed on the grounds that 'the respondent is a company which has been manufacturing in this area for a very long time and nothing is alleged against it ...'.²⁵

A number of convictions are, nevertheless, recorded each year. Unfortunately, statistics on these convictions are scattered through a wide range of reports, each of which presents figures, if it presents them all, in its own idiosyncratic fashion. The following rather scrappy account represents the best that can be achieved under the

circumstances. In South Australia there were six successful prosecutions in 1974 under the Industrial Safety, Health and Welfare Act and 29 successful prosecutions in 1973 under the Construction Safety Act, these latter being initiated only after builders had failed to comply with written orders and warning letters. In Victoria in 1974 there were 112 prosecutions under the Labour and Industry Act for failure to guard dangerous machinery, resulting in 107 convictions with an average fine of \$85. The annual report of the Department also lists 31 prosecutions for miscellaneous offences under the Boilers and Pressure Vessels Act and the Lift and Cranes Act. These resulted in 20 convictions with an average fine of \$94. Presumably most, but probably not all of these were for violating the safety provisions of these acts. In N.S.W. in 1972 (the latest year for which information could be obtained) there were 39 prosecutions for violation of the safety provisions of the Factories, Shops and Industries Act, resulting in 29 convictions, most of these being for failure to guard dangerous machinery and for contravention of boiler regulations. In Queensland in 1974-1975 there were 116 prosecutions for breaches of the Inspection of Machinery Act and 26 for violations of the Construction Safety Act. In Western Australia the 1973-1974 annual report of the Factories and Shops branch of the Department of Labour and Industry states that 'the majority of deficiencies in matters affecting safety, health and welfare of employees in factories were rectified on verbal requests by inspectors or by requests in writing, court action being necessary in only one case'. In Tasmania there were apparently no prosecutions for violations of safety regulations in 1974.

CRIME AGAINST THE ENVIRONMENT - POLLUTION

The pollution of the environment is, in the opinion of some, one of the most serious white collar crimes, more serious, in particular, than crime against shareholders and creditors.²⁶ In recent years in Australia there has been widespread legislative activity aimed at curbing this type of behaviour.²⁷ Three states - Western Australia, Tasmania and Victoria - have passed Environmental Protection Acts and set up environmental protection agencies to administer them. The Victorian Environmental Protection Authority reports that during 1975-1976 41 defendants were prosecuted for 85 offences. These resulted in 68 convictions, 13 withdrawals and four dismissals. The reports of the Western Australian and Tasmanian environmental protection agencies for 1974-1975 give no evidence of any prosecutions.

In other states there is no single umbrella anti-pollution statute. In N.S.W., for example, there is a Clean Air Act, a Clean Waters Act, a Noise Control Act, a Prevention of Oil Pollution of Navigable Waters Act, Port Authority Smoke Control Regulations and a Public Health Act, all of which create environmental offences. Moreover responsibility for enforcement is spread among several agencies. In N.S.W. two agencies are primarily responsible: the State Pollution Control Commission and the Maritime Services Board.

In 1975-1976 the State Pollution Control Board successfully prosecuted 17 companies, including some of Australia's largest, such as Shell, C.S.R. and Australian Iron and Steel, under the Clean Air Act. The prosecutions were for failing to install control equipment as directed, emitting air impurities in excess of the prescribed limit and open burning. Penalties ranged generally from \$150 to \$500 per charge with one penalty of \$1,000. The Commission also prosecuted 24 companies, among them John Lysaght, Tooth, Pioneer Concrete and Australian Iron and Steel, under the Clean Waters Act. Fines were generally a few hundred dollars, but there were four much larger fines ranging from \$7,000 to \$8,500. In view of the size of the companies involved, these fines, especially those under the Clean Air Act, are clearly of no financial significance, and it would be interesting to know whether the companies concerned have taken any steps to avoid further offences.

The other principal enforcement agency in N.S.W., the Maritime Services Board, launched 32 successful

prosecutions in 1975-1976, four for violations of smoke control regulations and 28 for discharging oil into navigable waters. No information on fines is available in the annual report.

In Queensland a Clean Air Act is administered by a Director of Air Pollution Control. The report for 1974-1975 refers to 490 complaints from members of the public concerning air pollution, but apparently in only three cases was formal action taken against the offending companies. The report states that:

In November 1973 two Companies which had persistently ignored requests to comply with the Clean Air Regulations were served notices under Section 32 of the Clean Air Act. These notices ... required them to install certain equipment, prescribed by the Director, within a specified period of time.

One of the above Companies ceased trading before the time limit expired and the other installed equipment to satisfy the requirements of the notice.

In June 1975 a brickworks which had also ignored requests to comply with the Clean Air Regulations was served notice under Section 28 of the Clean Air Act. This notice, applicable to scheduled industries, required alterations to fuel burning equipment within a specified period of time. Failure to comply with this notice will render the Company liable to prosecution for an offence against the Clean Air Act.

The Queensland Department of Harbours and Marine administers a Pollution of Waters by Oil Act, and its report for 1975-1976 indicates that 23 prosecutions were launched under this act, resulting in fines totalling \$10,400.

In South Australia there is apparently no legislation against pollution. (There is, however, a Department of Environment and Conservation and a Department of Engineering and Water Supply, both of which are to some extent concerned with problems of pollution.)

CRIME AGAINST THE GOVERNMENT - TAX EVASION

The final category of crime I shall deal with is income tax evasion, probably the most costly of all white collar offences. At the outset we should distinguish between tax evasion, which is illegal, and tax avoidance, which is legal. Mr Justice Nimmo has provided the following considered definitions of these terms in his report on Norfolk Island.

Tax evasion is the term used to cover the commission or omission of an act knowingly, with the intent to deceive, so that the tax paid or to be paid by the taxpayer is less than the tax payable under the law as interpreted by the administering authorities and the Courts. Examples of tax evasion occur when one deliberately omits income, or fraudulently claims deductions, or deliberately misrepresents, conceals or withholds material facts from those authorities who are responsible for levying the tax. The deliberate failure to pay tax due and payable is also regarded as tax evasion. Unlike tax avoidance, tax evasion incurs the displeasure of the law and carries penalties.

Tax avoidance is the term used to cover those cases where the intention of the law is circumvented, in circumstances that do not amount to evasion, by the use of a scheme, arrangement or device, often of a complex nature, the main or sole purpose of which is to defer, reduce or completely escape the tax that would be payable but for the scheme. Usually a series of transactions is involved which do not truly reflect the real substance of what is actually happening, and sometimes avoidance is accomplished by shifting liability for tax to other entities not at arm's length, in whose hands the tax payable is reduced or eliminated.

The annual reports of the Commissioner for Taxation contain information on action taken against certain types of income tax evasion. One such form is the failure to furnish an income tax return. In such cases the Commissioner can proceed in one or both of two ways: he can formally prosecute, in which case the offender is liable to a maximum fine of \$200, hardly a significant

deterrent; or he can administratively impose a penalty of up to the amount of tax evaded. (The evader is thus liable for the tax evaded plus a penalty of up to the same amount.) This latter is the preferred method of dealing with offenders and in 1975-1976 the Commissioner imposed administrative penalties amounting to some five million dollars in 162,335 cases of failure to furnish returns.

A second type of evasion occurs when the taxpayer understates his taxable income on his return. Again the Commissioner may proceed by way of formal prosecution or by imposing an administrative penalty of up to, in this case, double the amount of tax evaded. And again, the administrative procedure is the preferred method. In 1974-1975 the Commissioner proceeded in this way against 24,892 taxpayers who had understated their incomes by a total of some 41 million dollars thus evading some 18 million dollars in tax. Penalties imposed on these offenders totalled approximately six million dollars.

The annual report also lists the names, addresses and occupations of several hundred of the most flagrant cases of understatement of income. Not surprisingly the great majority of these individuals are self-employed: building contractors, shop proprietors, farmers and professionals in private practice. Correspondingly, there are very few clerks or labourers on the list; these people are on fixed wages or salaries and their opportunities for evasion are limited. Surprisingly, there are relatively few company directors listed; perhaps these people devote their energies to tax avoidance rather than evasion.

It is clear from these figures that tax evasion is a very widespread and costly form of white collar crime. It should be stressed, moreover, that the data presented here refer only to cases of evasion which are actually detected. There can be no doubt that tax evasion is far more common than this.

Enforcement activities against this type of crime are uniquely rewarding. The Commissioner for Taxation estimates that the annual net gain from an investigation officer's services, in terms of tax and penalties recovered from defaulters, may often be in excess of \$200,000. If one can use this figure as a basis for extrapolation; the employment of an additional five officers would yield an additional one million dollars in revenue that would otherwise be lost; an additional 500 offices would yield an additional 100 million dollars, and so on. Whether this extrapolation is valid or not, it is clear that from a purely financial point of view enforcement activities against tax evasion are well worth while.

DISCUSSION

The figures presented in the previous sections tell us nothing about the extent of white collar crime in Australia, for it is obvious that most white collar offences escape prosecution. What the figures provide us with is a picture of the enforcement activity mounted against these offences. By inference, therefore, they provide information on community attitudes towards white collar crime. There are clearly some striking differences in the vigour with which enforcement activities are pursued in relation to the various offences. Tax evasion stands out as an exceptional case in terms of the numbers of offenders processed. There are various reasons for this, among them being the fact that enforcement activity in relation to tax evasion is so profitable. Moreover, most of the cases are handled administratively or civilly, thus enabling the Commissioner to process large numbers of offenders without becoming involved in time consuming criminal procedures and without provoking the kind of resistance which taxpayers would exhibit if they were aware that the matter could result in a criminal conviction.

Leaving taxation aside, there is still substantial variation in the vigour with which various types of white collar offences are prosecuted, and indeed in the degree of community concern expressed about these offences. On one hand, crimes against investors and creditors attract considerable attention and much thought is currently being given to how best to deal with this type of crime. On the other hand, violations of consumer protection, environmental and industrial safety law attract relatively little public concern and are typically not even prosecuted. Instead the aim of the authorities is to secure future compliance with the law. Prosecutions tend to occur only when the firm concerned defies orders to comply.

It is tempting to speculate about possible reasons for this difference in attitude towards crimes against creditors and investors on the one hand and crimes against consumers, employees and the environment, on the other. One potentially relevant difference between the two categories is that crime against investors and creditors is crime against capitalism and capitalist enterprise, while crimes against consumers, workers and the environment are in fact contributory to the ongoing activities of capitalist enterprise. Let me elaborate this point.

Fraud perpetrated at the expense of investors tends to destroy confidence in the fairness of the capital market and thus to make it more difficult for entrepreneurs to mobilise capital for new ventures. Potentially, therefore, it undermines the very basis of capitalism. Here is a recent statement by the federal minister for Business and Consumer Affairs which makes this point.

The Government's interest in the mechanism of the capital market must not only be seen in terms of investor protection although this is a fundamental element. It must also be seen in terms of the Government's responsibility to assist in improving the performance of the capital market. We shall do an important economic institution a great disservice if Government regulation and involvement is seen only in the punitive sense of curbing and punishing the dishonest and the deceitful.

This, however, is not to underestimate in any way the importance of investor protection. Investor confidence in the future of the institution as an enterprise in which his savings are invested and in the fairness of the market through which liquidation of his holdings can occur, is basic to our economic system. For that reason alone, the Government must be concerned that confidence is maintained through adequate protective provisions.²⁸

It is interesting to note that a recent survey has given some support to the fears implicit in the minister's statement. The survey showed that Australian investors do not regard shares as the most attractive form of investment. The stock exchange came third as a place for investment - after building societies and property. The survey also showed that stockbrokers were third on a list of people to whom the public would go for investment advice - after solicitors and bank managers.²⁹

Fraud against creditors is also readily interpretable as crime against capitalism and capitalist enterprise, since it is necessarily associated with the liquidation of the debtor company and not infrequently pushes creditors into insolvency.

In contrast with the type of crime just discussed crimes against employees, consumers and the environment contribute to the profitability of capitalist enterprise. It costs a company money to install safeguards for workers or anti-pollution equipment. If the company can avoid doing so, profits are correspondingly greater. Crime against the consumer is similarly profitable.

The distinction I have made, then, is between crimes which are damaging to capitalism and capitalist enterprise and those which are not. This difference may account to some extent for the rather different attitudes shown by the authorities and by the community as a whole to these two classes of white collar crime. But there is another difference between these types of crime which is perhaps more relevant to an understanding of the variation in enforcement activity. Crime against investors and creditors is similar to conventional predatory crime in that there is an identifiable perpetrator, usually a fraudulent company director, and identifiable victims, perhaps numbering into the thousands, each of whom has lost a significant amount of money and thus feels personally victimised. Crimes by, or on behalf of, companies tend not to have these features. Offences such as pollution and the violation of industrial safety regulations can seldom be sheeted home to specific company officers; rather they are a result of the failure of the organisation as a whole to concern itself with these problems. Moreover, there are seldom identifiable victims of these offences. Even in the case of industrial safety violations, if the crime is detected and the company ordered to rectify the situation before an accident actually occurs, there will be no identifiable victim of the offence. Now crimes which do not have clearly identifiable perpetrators and victims, tend not to arouse strong public condemnation, no matter how serious they may be from a societal perspective. Hence, the relatively tolerant community attitude to violation of pollution, industrial safety and consumer protection law.

It is clear, then, that more adequate enforcement of the above laws must await a growth in community concern about these offences. By contrast, no matter how much public concern is expressed about crimes against investors and creditors, a significant increase in the number of successful prosecutions for these crimes will not occur until methods are found to overcome the evidenciary and procedural problems which presently plague trials for this type of offence.

ENDNOTES

- 1 See, for example, E. Edelhertz, *The Nature, Impact and Prosecution of White-Collar Crime*, (U.S. Dept. of Justice, L.E.A.A., Washington, 1970); G. Geis, 'Avocational Crime', chap. 8 in D. Glaser (ed), *Handbook of Criminology*, (Chicago, Rand McNalley, 1974); D.C. Gibbons, *Society Crime and Criminal Careers*, 2nd edition, (Prentice-Hall, Englewood Cliffs, 1973), pp. 325-341; J.C. Meyer, 'An Action Oriented Approach to the Study of Occupational Crime', *Australian and New Zealand Journal of Criminology*, 5 (1972), pp. 35-48; D.J. Newman, 'White-Collar Crime', *Law and Contemporary Problems*, 23 (1958), pp. 735-753; R. Quinney, 'The Study of White Collar Crime: Toward a Reorientation in Theory and Research', *Journal of Criminal Law, Criminology and Police Science*, 55 (1964), No. 2; E.H. Sutherland, 'White-Collar Criminality', *American Sociological Review*, 5 (1940), pp. 1-12.
- 2 *op. cit.*, pp. 326-7.
- 3 *op. cit.*, p. 3.
- 4 E.H. Sutherland, *White Collar Crime* (Holt, R. & W., New York, 1961, orig. pub. 1949), p. 9.
- 5 *ibid.*, p. 31.
- 6 W. Friedman, *Law in a Changing Society* (Univ. of Calif. Press, Berkeley, 1959), pp. 200, 202.
- 7 This prohibition is modified slightly by the amending Act of 1977.
- 8 Sydney University Institute of Criminology, Proceedings of Seminar No. 28, *Corporate Crime No. 2*, pp. 70-71.
- 9 *ibid.*, p. 3.
- 10 Sydney University Institute of Criminology, Proceedings of Seminar No. 23, *White Collar Crime, Can the Courts Handle It?*, p. 61.

- 11 *Corporate Crime No. 2, op. cit.*, p. 79.
- 12 *ibid.*, p. 79.
- 13 *Financial Review*, March 29 and 30 1977.
- 14 *Corporate Crime No. 2, op. cit.*, p. 85.
- 15 See *ibid.*, pp. 85-6 and *White Collar Crime, Can the Courts Handle It?, op. cit.*, pp. 13-14.
- 16 Minute to the N.S.W. Attorney-General from the Commissioner for Corporate Affairs concerning the Alexander Barton Group of Companies. Parliamentary Paper No. 38 of 1973.
- 17 Sydney University Institute of Criminology, Proceedings of Seminar No. 19, *Corporate Crime*, p. 134; and *Corporate Crime No. 2, op. cit.*, pp. 82-3.
- 18 See the Annual Reports of the N.S.W. Corporate Affairs Commission for 1976, p. 75 and for 1975, p. 60.
- 19 *Corporate Crime No. 2, op. cit.*, p. 10.
- 20 See *Financial Review*, December 22 and 24 1976; and the Fourth Report on the Barton Group of Companies.
- 21 See *Corporate Crime, op. cit.*, p. 136.
- 22 *ibid.*, p. 102.
- 23 Unless otherwise indicated information in this and subsequent sections was obtained from reports listed in Appendix 1.
- 24 See W.G. Carson, 'White-Collar Crime and the Enforcement of Factory Legislation', *The British Journal of Criminology*, 10 (1970).
- 25 See *Australian Industrial Law Review (C.C.H.)*, 19, 5 (1977), p. 119.
- 26 See C.D. Stone, 'Stalking the Wild Corporation', *Working Papers*, Spring 1976, p. 21.

- 27 A. Lanteri, 'Legislative Control of Environmental Quality', in K.E. Lindgren, H. Mason & B. Gordon (eds.), *The Corporation and Australian Society* (Sydney, Law Books Co., 1974).
- 28 Ministerial statement to the House of Representatives, 17 March 1977.
- 29 *Financial Review*, May 12 1977, p. 2.

APPENDIX 1

REPORTS CONSULTED

CRIME AGAINST INVESTORS AND CREDITORS

Australia: *Australian Securities Markets and Their Regulation*, Report of the Senate Select Committee on Securities and Exchange (A.G.P.S., Canberra, 1974).

New South Wales: Report of the Corporate Affairs Commission for 1974-75 and 1975-76.

CRIME AGAINST CONSUMERS

Australia: Report of the Trade Practices Commission for 1974-75 and 1975-76.

New South Wales: Report of the Consumer Affairs Council and Consumer Affairs Bureau for 1974-75.

Queensland: Report of the Consumer Affairs Bureau for 1974-75.

South Australia: Report of the Commissioner for Prices and Consumer Affairs for 1975.

Tasmania: Report of the Consumer Protection Council for 1974-75.

Victoria: Report of the Department of Labour and Industry for 1974 (N.B. Information on consumer affairs prosecutions is contained in the above report - not in the report of the Consumer Affairs Council.)

Western Australia: Report of the Consumer Affairs Council and the Bureau of Consumer Affairs for 1974-75 and 1975-76.

CRIME AGAINST EMPLOYEES

New South Wales: Report of the Department of Labour and Industry on the Factories, Shops and Industries Act for 1972.

Queensland: Report of the Chief Safety Engineer and Chief Inspectors of Machinery, Construction Work and Weights and Measures for 1974-75.

South Australia: Report of the Department of Labour and Industry for 1973-74.

Tasmania: Report of the Department of Labour and Industry on the Administration of the Factories, Shops and Offices Act for 1974.

Victoria: Report of the Department of Labour and Industry for 1974.

Western Australia: Reports of the Construction Safety Branch, the Factories and Shops Branch and the Inspection of Machinery Branch of the Department of Labour and Industry for 1973-74.

CRIME AGAINST THE ENVIRONMENT

New South Wales: Report of the State Pollution Control Commission for 1975-76.
Report of the Maritime Services Board for 1975-76.

Queensland: Report of the Air Pollution Council for 1974-75.
Report of the Department of Harbours and Marine for 1975-76.

South Australia: Report of the Engineering and Water Supply Department for 1974-75.

Tasmania: Report of the Department of the Environment for 1974-75.

Victoria: Report of the Environmental Protection Authority for 1975-76.

Western Australia: Report of the Environmental Protection Authority for 1974-75.

CRIME AGAINST THE GOVERNMENT - TAX EVASION

Australia: Report of the Royal Commission into Matters
Relating to Norfolk Island (A.G.P.S., October 1976).
Report of the Commissioner of Taxation for 1975-76.



APPENDIX 2

CORPORATE AFFAIRS PROSECUTIONS

An approach was made to all states (other than N.S.W. for which the data are published - see Table 1, pages 10-11) asking for information on prosecutions for crimes against investors and creditors for a recent two year period. The information obtained as a result is reprinted here exactly as it was received.

Investigations and prosecutions carried out by the
Commissioner for Corporate Affairs for
QUEENSLAND

SCHEDULE "A"

Investigations carried out by the Commissioner for Corporate Affairs under all Acts administered.

<u>ACT</u>	<u>Period</u> <u>30/6/71 - 30/6/74</u>	<u>Period *</u> <u>1/7/74 - 25/8/76</u>	<u>Total</u>
Companies Act 1961-1975	170	271	441
Building Societies Act 1886-1976	83	312	395
Securities Industry Act 1975	Nil.	Nil.	Nil.
Marketable Securities Act 1970-1971	Nil.	Nil.	Nil.
Auctioneers and Agents Act 1971-1975	511	567	1,078
Co-operative and Other Societies Act 1967-1974	Nil.	16	16
Business Names Act 1962-1971	71	65	136
Pyramid Selling Schemes Elimination Act 1973	Nil.	10	10
Friendly Societies Act 1913-1974	2	7	9
Contractors' Trust Accounts Act 1974	N/A	2 (Investigations carried out by Justice Dept.)	2
Invasion of Privacy Act 1971	27	34	61
Co-operative Housing Societies Act 1958-1974	Nil.	1	1
Money Lenders Act 1916-1973	43	20	63
Hire Purchase Act 1959	52	68	120
Cash Orders Regulation Acts 1946-1959	Nil.	Nil.	Nil.
Bills of Sale and Other Instruments Act 1955-1971	Nil.	Nil.	Nil.
State Securities Registration Act 1925-1971	Nil.	Nil.	Nil.
Liens on Crops of Sugar Cane Acts 1931-1971	Nil.	Nil.	Nil.
Voting Rights (Public Companies) Regulation Act 1975	N/A	Nil.	Nil.

<u>ACT</u>	<u>Period</u> <u>30/6/71 - 30/6/74</u>	<u>Period *</u> <u>1/7/74 - 25/8/76</u>	<u>Total</u>
Administration of Commercial Laws Act 1962-1971	N/A	N/A	

* The figures in this column do not include matters on which an investigation has not been completed.

SCHEDULE "B"

PROSECUTION DETAILS

<u>ACT</u>	<u>(a)</u> <u>PROSECUTIONS RECOMMENDED BY COMMISSIONER</u>		<u>(b)</u> <u>ACTUAL INSTITUTED</u>		<u>(c)</u> <u>SUCCESSFUL PROSECUTIONS</u>	
	<u>Period</u> <u>(1)</u>	<u>Period</u> <u>(2)</u>	<u>Period</u> <u>(1)</u>	<u>Period</u> <u>(2)</u>	<u>Period</u> <u>(1)</u>	<u>Period</u> <u>(2)</u>
	30/6/71 - 30/6/74	1/7/74 - 25/8/76	30/6/71 - 30/6/74	1/7/74 - 25/8/76	30/6/71 - 30/6/74	1/7/74 - 25/8/76
Companies Act 1961-1975	18	51	10	41	8	14 (27 pending - adjourned)
Building Societies Act 1886-1976	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Securities Industry Act 1975	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Marketable Securities Act 1970-1971	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Auctioneers and Agents Act 1971-1975	40	124	23	115	15	66
Co-operative and Other Societies Act 1967-1974	Nil.	25	Nil.	25	Nil.	6
Business Names Act 1971-1975	6	9	5	7	4	6
Pyramid Selling Schemes (Elimination) Act 1973	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Friendly Societies Act 1913-1974	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Contractors' Trust Accounts Act 1974	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Invasion of Privacy Act 1971	4	1	4	1 (pending)	4	Nil.

Co-operative Housing Societies Act 1958-1974	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Money Lenders Act 1916-1973	1	1	Nil.	Nil.	Nil.	Nil.
Hire Purchase Act 1959	1	1	1	Nil.	1	Nil.
Cash Orders Regulation Acts 1946-1959	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Bills of Sale and Other Instruments Act 1955-1971	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
State Securities Registration Act 1925-1971	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Liens on Crops of Sugar Cane Acts 1931-1971	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
Voting Rights (Public Companies) Regulation Act 1975	N/A	Nil.	N/A	Nil.	N/A	Nil.
Administration of Commercial Laws Act 1962-1971	N/A	N/A	N/A	N/A	N/A	N/A

Prosecutions in
TASMANIA

PHONE: ~~30 3449~~ 30 3449

G.P.O. BOX 167 B HOBART, TAS. 7001

IN REPLY PLEASE QUOTE:

C/1. RM/SV.



5205
SUPREME COURT
AND SHERIFF'S DEPARTMENT.
PUBLIC BUILDINGS, Franklin Sq.,
HOBART, TAS. 7001

5th April, 1977.

Mr. Andrew Hopkins,
Criminologist,
Australian Institute of Criminology,
P.O. Box 28.,
WODEN. Australian Capital Territory. 2606.

Dear Sir,

Re: COMPANIES ACT 1962.

I refer to your letter of the 31st March, 1977 and advise as follows.

The only prosecution of the kind to which you refer in the last (2) two years was as follows:

A director of a company "Austco Enterprises Pty. Ltd" was convicted and fined \$75.00 for failure to keep proper books, failure to keep proper minutes of meetings and failure to lodge annual returns contrary to the provisions of Sections 161, 148 and 136 of the Act.

The company was in liquidation.

Yours faithfully,

DEPUTY REGISTRAR OF COMPANIES.

Prosecutions undertaken by the
Crown Law Officer, Department of Legal Services of
SOUTH AUSTRALIA

	Person Charged	held in Company		& Section	
Platypus Paint Company Pty. Ltd.	Leon Daniel <u>BRUMMER</u>	Director	Undischarged bankrupt acting as a director	Companies Act Section 117	Dismissed
Australian Syndication S.A.) Pty. Ltd.	Peter Gordon <u>GOODALL</u>	Director	Fraudulent Conversion (2 counts)	C.L.C.A. Section 184	Withdrawn on arrangement re plea to fraudulent approp.
Melbura Property Securities Pty.Ltd.	Peter Gordon <u>GOODALL</u>	Director	Fraudulent Appropriation \$18,000	C.L.C.A. Section 189	Convicted. Sentenced to 10 mths gaol with hard labour.
Penlita Products Pty. Ltd.	Edward James <u>SHEPHERD</u>	Scheme Manager	Failed as Scheme Manager to act at all times honestly in the discharge of the duties of his office	Companies Act. Sec.124	Dismissed. Defendant awarded \$3,680. Court costs against Reg. of Comp. Subject to appeal by Crown. Appeal pending.
Goldenlay Products Pty. Ltd.	Ian George <u>WALSH</u>	Director	Acting as a director within 5 years after his conviction of an offence involving fraud or dishonesty	Companies Act Section 122	Adj. sine die Whereabouts of Officer of Company unknown.
	Ian George <u>WALSH</u>	Director	Undischarged bankrupt acting as a director	Companies Act Section 117	Adj. sine die
Maceys Car Sales Pty. Ltd.	John Oswald <u>MACEY</u>	Director	Failed to submit statement of affairs to Liquidator	Companies Act Section 234	Fined \$450 Costs \$59.80. Subject to appeal. Appeal dismissed. Costs reduced.

	Person Charged	held in Company	Offence	& Section	
Mayon Constructions Pty. Ltd.	John Blakeway <u>TWELFTREE</u>		Undischarged bankrupt concerned in the management of a corporation	Companies Act Section 117	Convicted Fined \$100 Costs \$26
Peninsula Finance Pty. Ltd.	Tennyson <u>TURNER</u>	Director	Fraudulent Conversion. 14 main counts and 6 alternative charges \$155,300	C.I.C.A. Section 104	Convicted of 14 counts. 6 alternative charges not considered. Sent. to 2½ years gaol with hard labour.
M.F.G. Boat Company Pty.	Noel Dexter <u>HALL</u>	Director	Incurring a debt without reasonable expectation of paying (2 counts) \$180	Companies Act Sec.303(3)	Fine \$116 Costs \$4 Counsel fee \$30
Mineral Fertilizers	<u>HILL</u> , Fabian Graham Douglass		Use of word "limited"	Companies Act Sec.377	Fined \$15 Costs \$4 Counsel & witn. fees \$40
Brian Gibson Motors Pty. Ltd.	Brian GIBSON	Director	Acting as a director within five years after his conviction of an offence involving fraud or dishonesty.	Companies Act Section 122.	Dismissed.
Nadara Security Services Pty. Ltd.			Failure to display company name of registered office	Companies Act Section 113(3)	Fined \$20 Costs \$24

	Person Charged	held in Company	Offence	Companies Act & Section	Result
P.R. Malone Transports S.A. Pty. Ltd.	John Raymond <u>PROWSE</u>	Director	Failure to deliver up to the liquidator all books and papers in his custody. Failure to submit statement of affairs.	Companies Act Section 374 Section 234	Convicted Fined \$200 Costs \$8
Molnar Engineering Pty. Ltd.	Frank <u>MOLNAR</u>	Director	Acting as a director within five years after his conviction of an offence involving fraud or dishonesty.	Companies Act Section 122	Fined 60
Light City Pty. Ltd.	David Clifford <u>JACKSON</u>	Director	Acting as a director within five years after his conviction of an offence involving fraud or dishonesty.	Companies Act Section 122	Fined \$60
P.V.C. Metals Pty. Ltd. and P.V.C. Investments Pty. Ltd.	Geoffrey Raymond <u>FOSTER</u>	Director	Acting as a director within five years after his conviction of an offence involving fraud or dishonesty	Companies Act Section 122	Fined \$400 Costs \$14

Prosecutions undertaken by the
Corporate Affairs Office in
VICTORIA

CORPORATE AFFAIRS OFFICE

YOUR REF.: dmz
 OUR REF.: FA:DM
 ENQUIRIES MR.: ANTONIE

167 QUEEN STREET, MELBOURNE, VIC. 3000
 P.O. Box 4567, MELBOURNE, VIC. 3001
 TELEPHONE: 60 0361

OFFICE HOURS: 9.30 A.M. - 12.45 P.M.
 1.45 P.M. - 3.00 P.M.

Mr. A. Hopkins - Criminologist
 Australian Institute of Criminology
 P.O. Box 28
WODEN A.C.T. 2606

11th. July, 1977

Dear Mr. Hopkins,

As requested by you I have set out below a listing of the prosecutions undertaken by the Investigation Section of this office over the last two years :-

Company/Person Charged	Section of Act and Result
<u>JUNE 1977</u>	
Mt. Ophir Wines Pty. Ltd. S.161A Companies Act (3 Charges)	Not keeping proper books. Result - Convicted. Fined \$100 on each charged with \$250 costs.
Ronald William McPherson (Director Mr. Ophir Wines S.161A Companies Act (3 Charges) S.374B Companies Act (2 Charges)	Not keeping proper books. Result - Convicted of 1 charge under S.374B. Fined \$250 with \$250 costs. 3 charges under 161A and 1 charge under 374B to be marked "withdrawn". Costs of adjournment \$200.
Kevin Edward Gilbee S.156 Crimes Act (27 Charges)	Using monies entrusted to Kaygee Mortgage Securities Pty. Ltd. of which Gilbee was a director contrary to directions given as to use of the money and converting that money to the use of Kaygee Mortgage Securities or himself.
<u>RESULT:</u>	Gilbee committed for trial following Magistrates Court hearing in September 1975. Pled guilty to 27 charges in Supreme Court. Sentenced to 2 1/2 years imprisonment on first charge. Sentenced to 2 1/2 years imprisonment on charges 2 to 27, each sentence to be served concurrently i.e. 5 year imprisonment, eligible for parole after 2 years.

Company/Person Charged Section of Act and Result

MAY 1977

John Pacholli S.117 Companies Act Undischarged Bankrupt director or manager of company.
 Result - Convicted one month goal.
 Costs: \$3113 or 150 days.
 Appeal pending.

Ian Beck S.374B Companies Act Not keeping proper books.
 S.161A " " False Statement Affairs
 Result - Convicted
 S.374B and S.161A Fined \$50 on each
 S.374A. Fined \$2500.
 Costs: \$704

A. Zotos S.234(1) Companies Act Failure to submit Statement of Affairs
 Result - Fined \$250
 Costs: \$245

APRIL 1977 - NO PROSECUTIONS

MARCH 1977

Gilbert Auer S.12 Securities Industry Act Dealing in securities without a licence. Result- Convicted order to cease dealing in Securities and appointment of trustee.

A.A. Sereika S.72 Crimes Act - Theft - Result - Convicted and fined \$1,500.

R.W. Transport Ind. (Vic.) Pty. Ltd. S.113(I)(b) not having company name on business stationery - 8 charges. Result - fined \$240 Costs \$152.50
 E.C. Wahlert

Stifer (Australia) Pty. Ltd. Catering S.136 & S.158. Not holding A.G.M. and not lodging Annual Return. Result - each company fined \$150 Costs \$30 each. A. Graff fined \$150 Costs \$40.
 Advisory Services Pty. Ltd.
 G. Graff

FEBRUARY 1977

R. Matranga S.374C(1) - Companies Act
 Fined: \$400
 Costs: \$793

Company/Person Charged	Section of Act and Result
<u>JANUARY AND DECEMBER</u>	
R.E. & I. Joint Ventures Pty.Ltd. G.F. Phillips	S.83 Companies Act offering "Interest" to public. Result - Each defendant fined \$100. Costs - \$315 against G.F. Phillips.
Sungro Juice Co. Pty. Ltd. Noel Scarff	S.161A & S.374B - Company not keeping proper accounting records. Fine - \$600 Costs - \$572
Universal Units Ltd. P. Buckland R. Simpson P. McKeon	S.67 company dealing in its own shares. Result - Each defendant fined \$1000 Plus costs - \$4190 each. <i>Appeal Pending</i>
<u>NOVEMBER 1976</u>	
Timberlands Pty. Ltd. I.M. Cameron A.M. Cameron C.F. Moran	S.83 Companies Act offering "Interest" to public. Result - Each person \$500 Costs - \$116 each
Universal Units Ltd. Directors	S.67 company dealing in its own shares. Duggan S.M. reserved decision. (Appeal)
<u>OCTOBER 1976</u>	
Academy of Health & Fitness Pty. Ltd.	S. 199, S.136, S.158 Companies Act. Failure to hold meetings and lodge Annual Return. Result - Company Fined \$400.00 Costs - \$40, Directors - Fined \$300 Costs - \$80
Olympic Fitness Centre Pty. Ltd.	S.113 Companies Act S.5(1) B/N Act Carrying on unregistered business and not displaying name of company. Result - Fine \$50 Costs - \$175

Company/Person Charged

Section of Act and Result

AUGUST 1976

Baden Swan Pty. Ltd.

Norfolk Insurance Corp. Pty. Ltd.

Sections 136 & 156 Companies Act. Failure to hold A.G.M. and lodge return. Result -

Total Fines: \$760

Costs: \$315

First Mortgage Equities Ltd.

Sections 99(1), 116(1) & (3) Companies Act.

Result - S.99 Fined - \$400

Costs - \$250

S.116 Fined - \$100

Mutual Home Loans Fund (Aust.) Ltd.

N.S.W. Mortgage & Discounting Co. Ltd.

John Green Bickford

Section 37(1) Companies Act and S9(1) Securities Industry Act. Result - Each company on \$500 bond, Bickford on \$200 bond.

Costs - \$724

E.J. Brown, Downey and Hancock.

(re Hancock Motors P/L)

S.67 Companies Act - Company dealing in its own shares. Result - Fined \$200 each.

Costs - \$750

P. Jenkins

(Property & Transport Pty. Ltd.)

S.124 Companies Act - Director not acting honestly. Conviction upheld. (Appeal).

G.N. Gabriel & Others

(O.T. Lempriere & Co. Ltd.)

S.180K Companies Act - Branch of takeover provisions.

Result - Parties ordered to sell shareholdings at auction.

JULY 1976

Leige Investments

Sections 136 & 158 Companies Act. Failure to hold Annual General Meeting and lodge Annual Return.

Result - S.136 Fine \$25.00

S.158 Fine \$40.00

Costs - \$10.00

JUNE 1976

Norman Taylor

S.5 & 5A Business Names Act. Carrying on business under unregistered name. Carrying on business within 5 years of conviction as described in S.5A.

Result - S.5(1). Fine \$25.00

S.5A(2) Fine \$50.00

Costs - \$150

Company/Person Charged

Section of Act and Result

MAY 1976

David James Smith

S.374A(1)(C)(iv) Coys. Act

False Entry in books of company.

Result - Bond 12 months

Costs - \$350 plus costs of adjournment \$250.

Brian M. Cook

S.375(2) Companies Act - Lodging a document false in a material particular.

Result - Convicted & Fined \$100.

Costs - \$300 Appeal lodged.

Effim Zola

S.375(1) Companies Act - Circulating or publishing misleading statement regarding capital.

Result - Convicted & Fined \$250

Costs - \$75

James McPherson

S.117 Companies Act - Acting as director of company whilst undischarged bankrupt.

Result - Convicted & fined \$250.

Costs - \$320

Julius Holt

S.27(7) Companies Act - Deposit money with private company.

Result - Dismissed.

APRIL 1976

G.Z. J. Willems

Failing to submit a statement of affairs Section 234 Fined \$500.00 costs - \$509.00

MARCH: 1976

Max Beck

(1) Concealing part of the property of company from liquidation Companies Act Section 374A(1)(C)(i).

Result - Convicted

Fined - \$500 : Costs \$500

(2) Fraudulently removed part of the property of the Company to the value of \$100 or upwards (2 charges) Companies Act - Section 374 (1)(C)(ii).

Result - Convicted

Fined - \$100 (total)

Company/Person Charged

Section of Act and Result

FEBRUARY 1976

Phillip Felman

- (1) Incurring debts without reasonable hope of paying them - S.374C Companies Act.
Result - Convicted
Fined - \$100 : Costs \$1012

Phillip Felman

Maurice Felman

- (2) With intent to defraud.
Creditors did execute a charge over company's assets.
Result - Dismissed
Order to review being considered.

JANUARY '76 - NO PROSECUTIONS

DECEMBER 1975 - NO PROSECUTIONS

NOVEMBER 1975

Minor

B.C. Motors Pty. Ltd.

- (1) S.112(1A) Failing to advise change of address of Registered Office.
Results: Total Fines \$30
Costs \$20

Major

Atlas Carpet Sales Pty. Ltd.

- (1) S.374B Failure to keep proper accounting records
S.374C Incurring debt without hope of repayment
Results: Total Fines \$500
Costs \$280

OCTOBER 1975

Minor

R.G. Edge

- (1) S.122 - Acting as director and or manager or company when debarred.
Result: Total Fines \$300
Costs \$60

International Resources Pty. Ltd.

- (1) S.111(1) - Failure to have registered office accessible to the public.
Result : Total fine \$50
Costs \$50

Company/Person Charged

Section of Act and Result

Universal Hirers Pty. Ltd.

- (1) S.5 Business Names Act -
Carrying on business under unregistered
name.

Result: Fined \$75

SEPTEMBER 1975

Minor

Mail-A-Way Wholesalers Pty. Ltd.

- (1) S.112(1A) - Failure to notify change of
address of registered office.

Superior Cordials Pty. Ltd.

Result: Total Fines \$90
Costs \$120

S.Z.C. Nominees Pty. Ltd.

- (1) S.136 - Failure to hold Annual
General Meeting.
S.158 - Failure to lodge Annual
Return.

Result: Fines \$80
Costs \$21

Major

Top Meat Supply Pty. Ltd.

- (1) S.374A(1)(C)(iv) - 9 charges
(2) S. " " (ii) - 8 "

Result: Total Fines \$1800
Costs \$414.50

AUGUST 1975

Minor

Geo. A. Pockett and Associates Pty. Ltd.

- (1) Failure to hold Annual General
Meeting S.136
(2) Failure to submit Annual Return.

Result: S136 - Fine \$70
S158 - Fine \$100

Costs - \$100

Company/Person Charged

Section of Act and Result

JULY 1975

L.H. Cann

Re Welbilt Upholstering Co. Pty. Ltd.

Result - S.374A(1)b & c withdrawn.

S.374A(1)(a) Fined £750

S.124 Fined \$250

Costs: \$369

Roy G. Haffenden

(1) Air Lite Packaging Pty. Ltd.

(2) Stab Investments Pty. Ltd.

Result - (1) S.136 - Fined \$30

S.158 - Fined \$40

(2) S.136 - Fined \$120

S.158 - Fined \$100

S.380 - Fined \$183

S.114 - Fined \$30

Total \$503

Costs: \$80

John McMunn (Arrested 25.6.75)

Mandex Pty. Ltd.

Result - S.122 - Fined \$150

Costs: \$60

JUNE 1975

Major

Graham A. Palmer

Being a director of a company within 5 years of conviction of fraud S.122 of Companies Act (2 charges).

Unregistered Business Name Section 5(a) of Business Names Act (1 charge).

Result - Sentenced to 3 months on each charge to be served concurrently and ordered to pay \$362 costs. An appeal has been lodged.

Robert Dudley Widdowson

Incurring debts without reasonable hope of paying such debts. S.374c Companies Act (13 Charges).

Result - Convicted on each charge - fined \$650 in total and ordered to pay costs of \$1471 in total.

Company/Person Charged

Section of Act and Result

Keith Stringer

Acting as director of company whilst undischarged bankrupt S.117 Companies Act (3 charges). Acting in management (3 charges).

Result - Sentenced to imprisonment of 4 months on each charge. Total 12 months imprisonment. Ordered to pay \$624 costs Charges of acting in management adjourned to a date to be fixed.

(2) Mirror

T.C. Meehan }
D.F. Meehan }
J.T. Meehan }
P.L. Meehan }

Default proceedings - Failing to lodge a statement of affairs with liquidator S.234 Companies Act. Each defendant fined \$500 each.

Timothy Henry Beattie
Andrew John Holt

Failure to call meeting of creditors after request by creditor. Owed an unsatisfied debt of \$500 or more. S.199 Companies Act.

Result - Beattie fined \$30
Costs - \$56. Holt fined \$100
Costs - \$112

Barry William Seddon

Acting as director whilst undischarged bankrupt (2 charges) S.117 Companies Act.

Result - Fine \$200 Costs \$280.

Greenhil Investments Pty. Ltd. }
" Wilson Pty. Ltd. }
" Holdings Pty. Ltd. }
L.H. Wilson

S.136 and 158. \$25 on each of 4 charges and costs.

Prosecutions pursuant to S.158 i.e. failure to lodge an Annual Return over the same period resulted in fines totaling \$687,253 being imposed. These prosecutions are handled by an officer in the registration section of the office.


L. MARCHESI

Deputy Commissioner for Corporate Affairs -
Investigations

Prosecutions undertaken by the
Commissioner for Corporate Affairs for
WESTERN AUSTRALIA

DEFENDANT:	COMPANY:	COMPANIES ACT SECTION:	OTHER:	RESULT:
<u>PERIOD 1.1.75 to 31.12.75:</u>				
GULLEY, Robert William	MAVERICK AUTO WRECKERS PTY LTD	122		Pleaded Guilty, Fined \$100.00, Costs \$13.60.
CHILDERS, Paul	SILFAR PTY LTD	374(1)		Withdrawn. Costs awarded in favour of defendant and fixed at the sum of \$50.00 under Official Prosecutions (Defendants) Costs Act.
		374(1)		Fined \$400.00. Costs awarded against Defendant \$462.48.
SILFAR PTY LTD		374(1)		Dismissed, costs awarded in favour of Defendant \$75.00.
ROBINSON, William Irvine	SILFAR PTY LTD	374(8)		Dismissed. Costs awarded in favour of Defendant \$124.46.
D'ORSOGNA, Rudolph Joseph	TENDERFRESH MEATS PTY LTD	5,374(1) 374(1)		Fined \$500.00. Costs \$118.00.
UNIVERSAL UNITS LTD		83(2)		Fined \$150.00. Costs \$65.00.
TRANter CORPORATION PTY LTD		81		Fined \$1,000.00. Costs \$73.20.
		374(1)		Fined \$250.00. Costs \$73.20.
		374(3)		Fined \$250.00. Costs \$73.20.
TRANter, Dennis Harley	TRANter CORPORATION PTY LTD	81		Dismissed. Costs \$250.00 to be paid by Complainant.
CLYNE, Roy Grant CLYNE, Isolde Ida LARSEN, Martin Paul CASSERLEY, Yvonne Marie BARNDEN, Maxwell Earl	CONSOLIDATED O'CONNOR ERECTION SERVICES PTY LTD	374B		Prosecution action withdrawn by Crown.

CONTINUED/.....

- 2 -

W.A. PINES PTY LTD		81	Fined \$500.00, Costs \$202.10. Order Nisi to Review Entered.
TRENT, John Thomas William	JOHN TROJAN HOMES PTY LTD	67(1) 67(2)	Complaint Dismissed. Costs awarded in favour of Defendant \$300.00.
PARKER, John Anthony	JOHN PARKERS CLEANING SERVICE PTY LTD	122(1)	Convicted. Fined \$100.00, Costs \$12.10.
CORY, James Andrew	QUALE CONSTRUCTIONS PTY LTD	374B(1)	Fined \$500. Costs \$98.50.
GALLAND, Noel Marie Albert LINDQUIST, Harold Jeffery MURRAY, Ian James Douglas CAMERON, Ewen John DE LOUGHERY, John Paul PINN, Phillip Francis	MOGUL MINING N.L. MINERAL UNDERWRITERS LTD FIRST WESTERN CORPORATION LTD COMSTOCK MINERALS LTD CAPITAL MINING AND PROPERTIES LTD		Criminal Code S.412 (Conspiracy to Defraud) Acquitted by Trial Judge After being Committed for trial in Magistrates Court (Longest Committal in State's history).
HALL, Lawrence Alwyn VINCENT, Leslie Vincent	KEWDALE TRANSPORT POOL PTY LTD	374C(1)	Dismissed.
<u>PERIOD 1.1.76 to 31.12.76:</u>			
KRUK, Terence Arund	TOPLISS BROS. PTY LTD	374A(1)(c) (iii)	Plea of Guilty. Fined \$1,000.00 Costs \$18.80.
PARKER, John Anthony	LONDON CARPETS	377	Fined \$50.00. Costs \$21.10.
W.A. PINES PTY LTD		81	Appeal heard 9.12.75, Judgement delivered 15.1.76. Conviction quashed.
TRENT, John Thomas	JOHN TROJAN HOMES PTY LTD	374B(1)	Reserved decision delivered in March 1976. Defendant found not guilty.
BATTEL, Corrado Fulvio	JOHN TROJAN HOMES PTY LTD	67(1),67(2)	Withdrawn.
CENEVIVA, Anthony	JOHN TROJAN HOMES PTY LTD	67(1)	Withdrawn.

3/...

CONTINUED/....

- 3 -

JACOBS, Raymond			Securities Industry Act 5.16	Plea of Guilty. Fined \$200.00 Costs \$12.10.
O'ROURKE, Rory James	ROADSIDE HOLDINGS PTY LTD	67(1)(b) as read with 67(3)		Convicted. No penalty imposed under S.669 of Criminal Code (First Offenders), ordered to pay all costs.
ROADSIDE HOLDINGS PTY LTD		67(1)(b) as read with 67(3)		Convicted and fined \$150.00.
SNASHALL, Leslie Brian	NEWPORT MARINE PTY LTD	67(1)(a)		Convicted and Fined \$100.00 and Costs \$190.90.
COONEY, Thomas Joseph	NEWPORT MARINE PTY LTD	67(1)(a)		Convicted and Fined \$100.00 and Costs \$190.90.
KRUK, Terence Arund	TOPLISS BROS. PTY LTD	374B(1)		Fined \$200.00, Costs \$329.10.
PEARSON, Colin Frank	CREST CONSTRUCTIONS PTY LTD	374B(1)		Fined \$50.00, Costs \$50.60.
HIRST, Frederick Lloyd	JAY PASTORAL COY. PTY LTD	117(1) 374B(1)		Fined \$200.00, Costs \$18.60. Fined \$500.00, Costs \$20.10.
HIRST, Frederick Lloyd	BOULDER MODULAR MASONRY CO. PTY LTD	117(1) 161(1) and 161A(1)		Fined \$200.00, Costs \$18.60 Fined \$500.00, Costs \$20.10
MARION, Joseph Slavko	MARION PROPERTIES LTD		Criminal Code S.378 (Stealing)	Pleaded Guilty. Sentenced to a maximum of 7 years gaol to serve a minimum of 4 years.
ROBERTS, Douglas Vincent	GRAHAMS TRANSPORT PTY LTD	374B(1)		Fined \$200.00 and \$102.10 costs. 20 days imprisonment in default.
ADAIR, Graham Alexander	CARNE AIR HOMES PTY LTD	374B(1)		Reserved Judgement not handed down due to death of Magistrate - case now withdrawn.

CONTINUED/....

DAFF, Arthur Alan	SOUTHSIDE MOTORS PTY LTD	374C(1)	Convicted on nine counts. Fined \$450.00 (\$50.00 each), Costs \$531.00 (\$59.00 each).
BERCHEM, Victor Roland	L. SAME & CO PTY LTD	374C(1)	Fined \$100.00, Costs \$361.60.

PERIOD 1.1.77 to 31.3.77:

MEAD, Ernest Winthrop	MEAD SON & CO. PTY LTD		Criminal Acquired. Code 378(8) (Director stealing and Fraudulently appropriating property).
RADIATA DEVELOPMENT CO. PTY LTD		81	Convicted, Fined \$200.00, Costs \$81.05.
PLANTATION PROMOTIONS PTY LTD		81	Convicted, Fined \$200.00, Costs \$81.05.

Prosecutions undertaken by the
Companies Office in the
A.C.T.

A.C.T. COMPANIES OFFICE

PROSECUTION SCHEDULE

<u>Proceedings Instituted</u>	<u>Year</u>	<u>Total Fines</u>
342	1975	\$12,867
506	1976	\$27,783
82	1st Quarter 1977	\$8,571

Particulars of Cases with an element of Fraud

<u>Section.</u>	<u>Fined</u>	<u>Comment</u>
Companies Ordinance		
S. 303(1.)	\$150 + costs	Total deficiency \$222,000
S. 303(1.)	\$150 + costs	Total deficiency \$18,400
S. 124	\$500 + costs)	Total payments
S. 124	\$500 + costs)	subject to acts \$9,100
S. 161A	\$250 + costs	Total deficiency \$5,000
S. 161A	\$250 + costs	Total deficiency \$50,000
S. 303(1.)	\$150 + costs	Total deficiency \$309,000
S. 37(1.)	\$100 + costs	Total subscription
S. 374(8.)	\$100 + costs	for shares \$35,000
S. 161A	\$100 + costs	Total deficiency Not known
S. 161A	\$200 + costs	Total deficiency Not known
Crimes Act		
S. 156)	In prisonment for 2 years	Sum involved totalled.
S. 157)		
S. 158)		
Total 28 charges.		

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