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WHITE COLLAR CRIME

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Introduction

I have been invited to speak on the subject of "White Collar Crime". It is a term that is frequently used to cover a wide range of criminal activities, including:

- theft from, and fraud against, businesses by their senior staff and managers;
- offences against corporations law, such as insider trading or against other regulatory legislation such as the Insurance and Superannuation Act;
- offences against bankruptcy law, such as operating as a director of a company while being an undischarged bankrupt;
- offences against particular legislation (such as environment protection, trade practices and quarantine legislation) by corporate bodies or by the managers of such bodies;
- fraud against the Commonwealth, whether it be the robbing of welfare or other benefits schemes or the evasion of sales tax or income tax; and
- fraud against State/Territory and local governments, whether it be against their benefits schemes or against their revenue raising.

The term "white collar crime" had its genesis in the days when society was quite different to the way it is today, at a time when socio-economic class distinctions, in particular, were more apparent. At that time, it may have been a useful way of categorising the criminal activities of the relatively well-educated and those in clerical occupations or managerial positions, as opposed to the criminal activities of individuals from "blue collar" or manual labour occupations.

The term "white collar crime" is not a useful way of categorising crime in Australia in the 1990s, when individuals from a wide range of occupations and socio-

economic backgrounds have sufficient education and opportunity to carry out, and do in fact commit, the sort of offences which historically may have been carried out by a particular socio-economic group.

I suggest that it is more useful to use the term "fraud" to denote these offences because most of them involve the use of deceit or other dishonest conduct with the object of obtaining money or other benefits or avoiding liabilities.

I propose to concentrate today on the subject of "serious fraud". I will not attempt to indicate how "seriousness" might be defined, other than to say that any consideration of the issue should require an assessment of the nature and extent of the criminality of the activity rather than total reliance on purely monetary benchmarks.

The 1994 Commonwealth Law Enforcement Review (CLER) noted (para 4.86) that : "Most instances of so-called white collar crime amount to a form of fraud. The great majority of these offences are comparatively minor and have cumulatively the greatest impact on the Australian community and governments. A minority of cases are large scale in terms of the sums of money in question and have a major effect on the community's perceptions of the integrity of financial markets, corporate regulation and the tax system."

We can all readily recall instances of serious fraud in recent years which have been of such size and political importance that they have been major factors in changes of government in Australia. Some instances of serious fraud that have occurred overseas have been of such that they have brought down huge multi-national companies.

The cost of fraud

While the major instances of detected serious fraud can be readily identified, one major problem for law enforcement agencies and for governments is that we do not have reliable and comprehensive data on the extent and nature of fraud in Australia.

Many of the existing estimates are no more than extrapolations, based on overseas studies. Others are simply guesswork.

In 1992, Walker (Trends and Issues No 39, *Estimates of the Costs of Crime in Australia*, John Walker, August 1992) estimated the total cost of fraud, forgery and false pretences in Australia at between \$6710 million and \$13770 million, comprising 40-50% of the total cost of crime in Australia. This compares to an estimate of a staggering 8500 million pounds for the cost of serious fraud in the UK.

The revolution in modern technology, particularly in communications and transport, the development of global markets associated with the deregulation of financial systems and the progressive removal of border controls, and the emergence of new market economies have profoundly influenced the criminal environment.

Criminals involved in serious frauds will not confine their activities to one city, or one state, or even one country, any more. The investigation of serious corporate fraud at the national level in Australia now commonly requires the examination of international transactions. **The bottom line is** that even though the offence might be quite local in nature, the investigation of it will frequently require the examination of material and the interviewing of witnesses in other jurisdictions.

Policy response

While there is little doubt that fraud has by far the biggest impact, in monetary terms, on the community, further research is required to better establish the extent of it and the relative importance of the various types of fraud. One of the major findings of the 1993 "Focusing on Fraud" report of the House of Representatives Standing Committee on Banking, Finance and Public Administration (the Elliott Committee) was that there was a need for enhanced data collection and analysis systems for both policy and program evaluation and criminal intelligence purposes.

At the Commonwealth level, at least, there is a need to obtain better information on the extent and nature of fraud. This need has been generally acknowledged, and the Government has approved the establishment of the Commonwealth Fraud Information Database (CFID) hosted by the AFP. Commonwealth agencies subject to the *Fraud Control Policy of the Commonwealth* (issued in December 1994) are obliged to implement arrangements to provide to the AFP information on instances of fraud against their programs.

The AFP will enter this information on the CFID in order to produce intelligence and statistical information of value to the Government, the agencies, and the AFP itself. The CFID will take some time to reach its full potential and will be limited to agencies that come within the scope of the proposed Financial Management and Accountability Act and those entities within the scope of the proposed Commonwealth Authorities and Companies Act which are budget funded for their operating costs.

While there is a very important category of Commonwealth entity not subject to the reporting requirements, namely Government Business Enterprises, the establishment of the CFID represents a major step forward.

The establishment of the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Office of Strategic Crime Assessments (OSCA) can also be seen, to some extent, as policy responses to the need for more information on serious fraud at the Commonwealth level.

The main function of AUSTRAC is to provide accurate and timely information and analysis to government agencies on significant movements of cash, international funds transfers and suspect transactions within the financial system which may be relevant to the investigation of taxation and other Commonwealth and State/Territory offences.

OSCA was established in March 1994 to provide the Government and the Commonwealth Law Enforcement Board with over-the-horizon strategic

assessments of significant crime trends and emerging criminal threats to the national interest.

Practical responses

One of the main practical ingredients for a successful investigation in the current criminal environment is a spirit of co-operation and collaboration. We must realise that the game is bigger than the players and that the law enforcement players must operate as a team. There must be greater preparedness to establish multi-disciplinary, multi-agency and multi-jurisdictional (including international) teams or task forces, which contain the skills, expertise, authority and flexibility to best:

- target the individuals/groups under investigation;
- make use of the legal powers and authorities of the jurisdictions in which investigations are conducted;
- minimise demarcation lines and other restrictions which may operate to subvert the investigation and the court process;
- mix and match the range of skills, professional knowledge and local knowledge likely to be vital to success; and
- share and utilise relevant intelligence.

The provision of better training for investigators is another key practical response. While training and education issues have received much increased attention and resources from police services in recent years, particularly in the context of their vigorous pursuit of the development of police professionalism, I believe there is more to be done.

Investigation of serious fraud cases requires, in addition to a good level of competence in relation to standard criminal investigation techniques and practices, a general knowledge of the financial environment in which the criminal activity was committed (i.e. banking, insurance, stock market, bullion market, etc) and of the specialist tools available to the investigator, such as the capabilities of AUSTRAC.

The one constant element in the fraud environment (and which applies to other types of criminal activity as well, although not always to the same extent) is that the motivation for the activity is generally to acquire wealth and/or the power that derives from possession of wealth. This fundamental factor in major fraud provides one of the keys to selecting strategies which effectively deter such criminal conduct.

In order to deter such behaviour it is essential that the criminal justice system not only brand the offender with the stigma of a criminal conviction but strip the person of the money and assets they have gained through their criminal endeavours.

Better training in the use of Proceeds of Crime Act provisions will encourage the use of a tool which has the capacity to hit the perpetrators of white collar crime where it really hurts them - in their hip pockets. The seizure of fraudulently obtained assets constitutes an extremely powerful and meaningful punishment to offenders and a strong disincentive to others inclined to go down the same path.

Law enforcement agencies and law-makers must be alert to the need to modernise powers, legislation and procedures. Numerous recommendations for improvements and reforms were made in the context of the 1992 NCA Conference on White Collar Crime, and the implementation of these has been the subject of ongoing consideration by the Standing Committee of Attorneys-General.

I suspect that there is potential for greater use of the power to compel testimony which is possessed by a number of agencies. The NCA is one such agency, having the power to compel attendance at a hearing before a Member to give evidence and produce documents in relation to matters upon which it is conducting a special investigation, that is, in an investigation being conducted pursuant of a reference granted by the Commonwealth and/or a State or Territory. The Chairperson of the NCA, Mr Tom Sherman, put to the Review of Commonwealth Law Enforcement Arrangements that the NCA should use its special powers to support co-operative investigations.

There is, therefore, a mechanism available to all jurisdictions to obtain testimony in appropriate cases. The exercise of the compulsory examination power needs to be closely aligned with the criminal investigation if the intelligence it produces is to be used to best effect. The AFP, and other police agencies must be prepared to avail themselves of this tool.

The investigation of serious fraud cases can be greatly assisted through the use of information technology. Fraud cases generally involve the examination and analysis of very large numbers of documents. Some recent investigations by the AFP have involved the seizure of over 100,000 documents. Such seizures cause serious problems in relation to the maintenance of evidentiary continuity and in relation to the efficient and logical exploitation of the material.

Like a number of other agencies, the AFP is looking to information technology to assist with the management of documentary evidence. AFP studies have established the feasibility of a document control and management database to assist investigators to locate documents, to control continuity, and to make efficient and effective use of large amounts of seized material.

The ability to transfer information to other agencies is essential to realise the full potential of such systems. To this end, the AFP has participated in a working party at Commonwealth level, chaired by the DPP, which has reached agreement on standard image file formats. Ultimately, it is aimed to have a document handling system which will allow for information to be passed from an agency to the AFP, from the AFP to the DPP, and from the DPP to the defence and the court.

The other key practical response I would like to mention is the use of experts from relevant disciplines to assist investigators. Police services have increasingly

recognised that the services of auditors, accountants, financial analysts, information technology specialists, lawyers and other professionals are of great assistance, if not essential, to the successful investigation of complex fraud.

To a greater extent than ever before, these professionals are being used in teams or task forces, where their work is fully integrated with other elements of the criminal investigation and where their priorities are directed by the case officer. The trend to use such professionals in this way should be encouraged and applauded.

The AFP and the NCA are currently collaborating on a joint research project into white collar crime in Australia. The purpose of the project is to provide Governments, law enforcement agencies, and public and private sector agencies with a clear understanding of the nature, extent and impact of white collar crime in Australia and ways of combating it.

Concluding comments

I believe that Australia already has the basic organisational structures in place to deal with serious fraud of national concern:

- the State police services to conduct and co-ordinate investigations at the State level;
- the Australian Federal Police to conduct and co-ordinate investigations at the Commonwealth level;
- the National Crime Authority to conduct and co-ordinate investigations into organised frauds impacting upon both the States and the Commonwealth; and
- specialist agencies at both Commonwealth and State level, such as the Australian Securities Commission, the Insurance and Superannuation Commission which have relevant specialist roles.

One of the topics that is frequently mentioned in discussions about major fraud is the need for a Serious Fraud Office along the lines of the United Kingdom model. One of the attractions of this model is the ability to compel witnesses to give evidence. NSW and Queensland already have access to this facility through the State Crime Commission and Criminal Justice Commission respectively.

As I noted earlier, such a facility is also available to all jurisdictions in Australia through the National Crime Authority, which can compel attendance at a hearing before a Member to give evidence and produce documents in relation to matters upon which it is conducting a special investigation, that is, in an investigation being conducted pursuant to a reference granted by the Commonwealth and or a State or Territory.

There is, therefore, a mechanism available to all jurisdictions to use to compel testimony in appropriate cases.

Law enforcement must think more in terms of a multi-agency approach to serious fraud of national concern. While one agency may have principal carriage of an investigation, the support and co-operation of other agencies is essential where the activity breaches a number of laws, some of which are administered by other agencies. At both State and Commonwealth levels there will frequently be other agencies with a strong interest in (and in some cases statutory responsibility for) aspects of major fraud investigations.

At the Commonwealth level, the other agencies may include for instance, the Australian Securities Commission, the Australian Taxation Office, the Australian Customs Service or the Insurance and Superannuation Commission. Serious fraud frequently involves breaches of both State and Commonwealth criminal and regulatory legislation.

The pursuit of evidence will often be facilitated by access to the intelligence and information holdings of numerous agencies such as the AFP, State police services, State land titles offices, the Australian Transaction Reports and Analysis Centre and the Australian Securities Commission.

The tracking of overseas transactions may be facilitated by Interpol, the use of the AFP's international liaison officer network, international treaty arrangements and the bi-lateral assistance of law enforcement agencies in other countries.

Clearly it is essential that there be close co-operation between agencies, both within and between jurisdictions and a preparedness to ask for, and to provide, assistance in relation to such investigations. We are already moving in this direction but we need to do more.

Thank you.