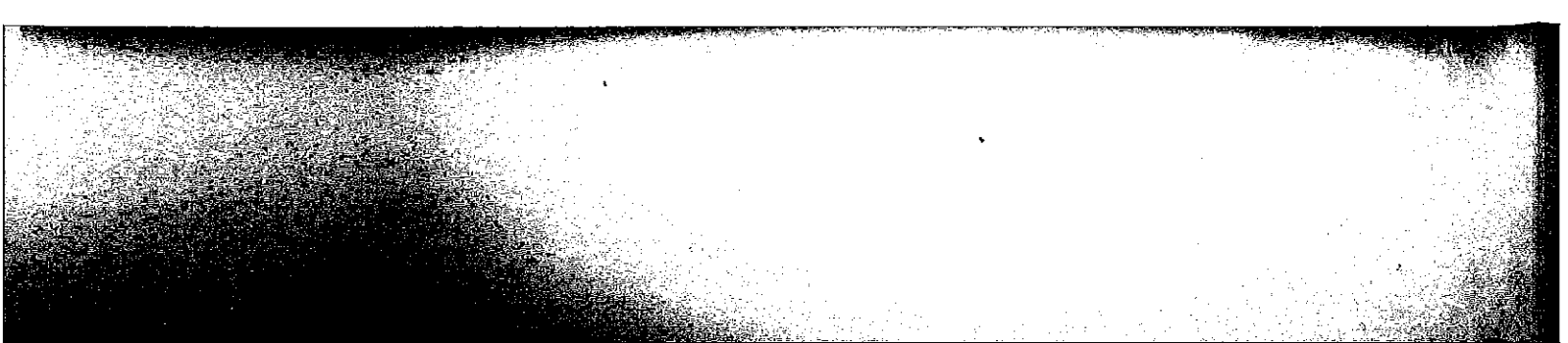
Department of the Attorney General & of Justice NSW Bureau of Crime Statistics & Research

Research Report 4

Company Investigations 1975–1977



Research Report **4** July 1978

Published by the Department of the Attorney General & of Justice NSW Bureau of Crime Statistics & Research

Company Investigations 1975–1977

ISBN 7240 2640 1

PREFACE

The investigation of breaches of company legislation in New South Wales is the responsibility of the New South Wales Corporate Affairs Commission. This report is a study of all investigations initiated in 1975 and was jointly conducted by the Bureau and the Commission.

Adam Sutton, Bureau Research Statistician, was responsible for carrying out all phases of the study. These included discussion between the Bureau and the Commission, design of questionnaires, supervision of data collection, computer analysis and writing up of the final results.

At each stage he had extensive consultation with other members of the Bureau and with the Corporate Affairs Commission.

The team which drafted the initial questionnaire, on which this report is based, comprised Adam Sutton and Ken Searle from the Bureau, and Ken Willis from the Corporate Affairs Commission. The final draft produced by this group was amended and approved by a meeting of all Senior Inspectors from the Commission's Investigation Division.

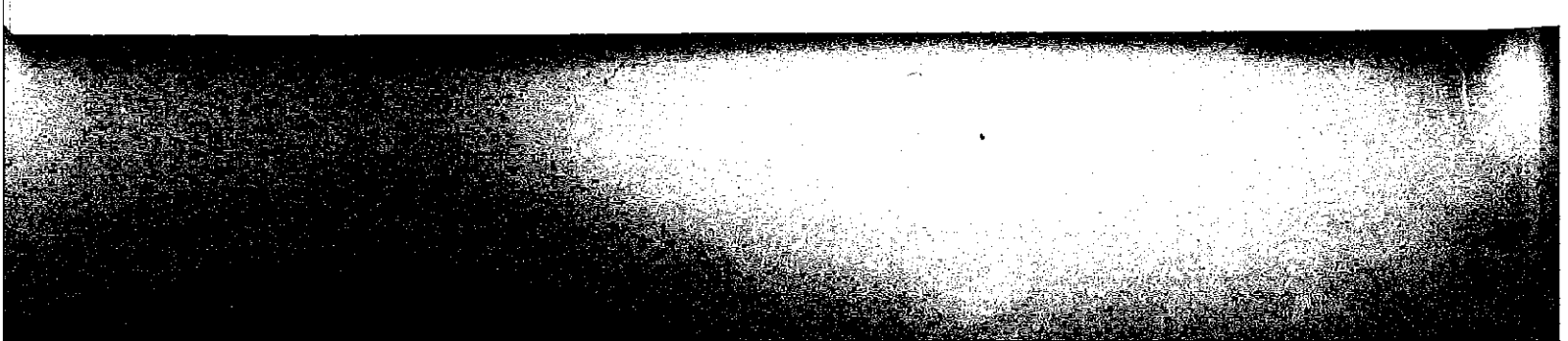
The critical and time-consuming task of transcribing 1975 data from Commission files to statistical forms was carried out by Bureau staff member, Margaret Buckland, who was an invaluable source of feed-back concerning the problems encountered in various types of company investigations.

In 1976 the data collection system was comprehensively revised to make it more compatible with the future data processing needs of the Commission. These revisions became effective on January 1, 1977.

Since November, 1976, Rosamond Wood, Deputy Director of the Bureau, has made recommendations concerning the revision of the data system and very detailed suggestions and criticisms concerning analysis and drafting of the report. The summary and recommendations on pp 66 to 69 were formulated on a joint basis by Adam Sutton, Rosamond Wood and Jeff Sutton. Other Bureau staff who have assisted on aspects of the project are Rosemary Leonard, Cheryl Meakins and Susan Brannagan. The report was typed by Alessandra Daly.

Mr. A. Greenwood, Assistant Commissioner for Corporate Affairs, initiated the project. Individual members of Commission staff have volunteered invaluable comment both on the design of the questionnaire and on specific aspects of their work, especially Mr. J. Cohen, Mr. A. Dunn, Mr. R. Porter, and Mr. K. Willis.

TABLE OF CONTENTS



INTRODUCTION

Ever since the term 'white collar crime' was originated by the American writer, Sutherland, the notion of crimes committed by people who are more powerful, wealthy, or enjoy higher social status than other members of society has attracted vigorous debate. Central to this controversy have been two propositions:

- That members from the more 'privileged' segments of Western society are far more frequent violators of criminal law than is generally known or suspected.

and

- That white collar offenders have a unique capacity to avoid arrest and conviction and that,therefore, statistics on these types of offenders are grossly misleading.

Numerous books and articles have been written attempting to give a factual basis to either or both of these assertions and several theories have been advanced which attempt to explain why they should be true.

One of the most popular approaches has been to criticise enforcement bodies for the alleged anomaly. Sutherland was initiating such a line when he argued that 'the methods used in the enforcement of any law are an adaptation to the characteristics of the prospective violators of the law,as appraised by the legislation and the judicial and administrative personnel'*. Much of the work of the group surrounding U.S. consumer advocate, Ralph Nader, has also concentrated on alleged deficiencies in regulatory procedures. Analyses along these lines are often accompanied by calls for reform in the structure of enforcement agencies - changes designed to produce greater independence and vigour in the performance of their duties.

An alternative, and perhaps more sophisticated approach, has been to focus on the sorts of laws which predominantly affect white collar segments, and to argue that these are, for some reason, different from and more ineffectual than other types of criminal law. The Norwegian sociologist Aubert**pioneered this approach when he analysed political factors affecting business laws in his country.

Of particular concern have been the areas of criminal law which affect business corporations and those who control them. The ultimate goal of this type of analysis is the formulation of some new set of laws and/or sanctions which will more effectively control business behaviour.

The whole of this debate has been of central concern to the New South Wales Corporate Affairs Commission, the body which administers the Companies Act, the Securities Industry Act, the Business Names Act, and the Marketable Securities Act in this State. One of the Commission's major responsibilities is to ensure compliance with these pieces of legislation and to deter conduct not permitted under them. In order to achieve this objective more effectively it has an Investigation Division whose responsibility it is to investigate and advise on the prosecution of possible violations of the above legislation, and of relevant sections of the Crimes Act.

Because of its major responsibilities in these areas, the Commission is well aware of the debate outlined above. It is conscious that enforcement bodies such as itself are apt to be criticised for slowness, inefficiency or even lack of impartiality in their investigations. However, there are special problems in attempting to enforce this type of law; many of them exist within the legal system itself rather than in enforcement bodies.

* Sutherland E, 'White Collar Crime'; New York; Holt, Rinehart and Winston, 1961, p.9.
**Aubert W., 'White Collar and Social Structure', American Journal of Sociology, Vol. 58, No.3 pp 263-271.

In an attempt to provide a factual basis for tackling these problems, the Commission approached the New South Wales Bureau of Crime Statistics towards the end of 1975 with the idea of developing a statistical system for recording the activities of its investigators and the progress of investigations. The development of such a system would have three detailed objectives:

- To provide the basis for more adequate accounts of the Division's activities in its Annual Reports.

Prior to 1975, reports on the work of the Investigation and Prosecution Division (as it was then called) almost entirely focussed on listing prosecutions pending and/or completed. There was no way of recording work done by the Commission which did not culminate in a court action, complaints received and looked into but which later proved to be groundless, investigations taken to an advanced stage but abandoned because of insufficient evidence, etc. It was felt that if such information were made available the general public could gain a clearer picture of the investigatory work undertaken by the Commission, and that more informed public discusssion (and criticism) could take place.

It should be noted that in addition to initiating the present project the Commission, independently, has been making improvements to the statistical aspects of its annual reports. Since 1 January, 1976, it has been compiling figures on many of the matters mentioned above. Details appear on the Commission's Annual Report for 1976, (pp 69-76). The 1977 Report will contain further improvements in the presentation of such data, partially as a result of suggestions by the Bureau.

- To give a foundation for an internal system whereby the Commission would monitor its performance in the investigating area.

The Commission management was strongly aware that each of the enquiries undertaken by the Investigation Division had its own flavour and complexities. Investigators tended to emphasise the unique aspects of the various enquiries in which they were engaged, and to discount the possibility of comparisons between one investigation and another. As a result, it was extremely difficult for management to assess the overall performance of the Division, or to arrive at sensible strategies and targets for its component sections. A statistical system which extracted common features from all the various types of investigations, thus facilitating comparisons on such objective factors as the time taken to complete the various phases, would be a useful tool for management.

- To pinpoint the major obstacles confronting investigations into company crime by summarizing the main reasons given by Inspectors for being unable to prosecute successfully an alleged offence

Once these obstacles were located the Commission would be in a stronger position to advocate whatever measures might be necessary to overcome them.

For the Bureau of Crime Statistics, such a joint project was a unique opportunity to arrive at an independent assessment of the extent and nature of corporate crime. For, despite the prolonged and sometimes acrimonious debate that has taken place on this topic there is very little 'hard data' on any form of white-collar crime. Apart from this purely theoretical consideration, however, the new project also offered the opportunity for the Bureau to develop a role which it saw as important. There is a need within government for research-oriented units to develop knowledge of problems in the area of law enforcement. By combining theoretical insights with practical knowledge, such units can offer valuable assistance in the formulation of policies for combating and containing crime.

This report contains an analysis of the first group of statistics collected on the Investigation Division's activities. It covers all matters received and/or investigations initiated during the calender year 1975.

Before this analysis, however, a brief history of company law in England and Australia is presented, together with description of the types of companies currently operating in New South Wales. There is also a brief summary of the history and functions of the Corporate Affairs Commission. Knowledge in these areas is essential if the data is to be fully comprehended, and the report is intended not only for experts in the field (who no

doubt already will be familiar with the sources used for these chapters), but also for public distribution.

Chapter 4 contains a statement on methodology.

The approach underlying chapters 5 to 7, the 'data chapters' of the report, is that any tabulations which might be of use to the Commission or to other researchers should be presented. For readers who are more interested in interpretation, summaries of various aspects can be found on pp 16 to 28 (which contain an overall outline of the data), pp29-36 (which discuss the 'receipt' stage), and pp57-65 (which discuss all matters investigated beyond receipt.)

The final chapter contains a recapitulation of the proposals which emerged from discussion of the statistics. Some relate to the need for a more sophisticated data system encompassing the corporate sphere. Others relate to possible reforms in law and financial reporting procedures. The Bureau puts primary emphasis on the proposals concerning the data system and accompanying administrative changes. This is the area where the Bureau was asked to make a special contribution and where it is probably most able to do so. Most of the areas in law and accounting encompassed by the remaining proposals have already been the subject of debate by relevant experts. Although our data may bring a new perspective to this discussion, the main effect of our proposals could be to bring the issues to a wider section of the public.

2. THE ORIGINS AND DEVELOPMENT OF THE COMPANY AND OF COMPANY LAW*

The concept of a commercial undertaking where risks and profits are shared by a number of individuals has a long history in Western societies. Such institutions existed in Ancient Greece and Rome and were also prevalent in the medieval Italian city-states. In these societies many of the legal concepts which form the key to the status of the corporation in contemporary English and Australian law were developed. Thus in the 'commenda', Ancient Rome's version of the company, the liability of individual investors was limited, while the 'societas' was an early legal entity whose rights and duties were distinct from those of its members.

The legal history of the corporation can well be seen in terms of the evolution of those two concepts of 'commenda' and 'societas'. This evolution resulted in the concept of limited liability becoming increasingly codified and precise, and the doctrine of corporate personality being extended to wider varieties of trading concerns. However, to fully understand the origin of various organizations operating as companies in modern Australian society one must pay attention to the development of economic institutions as well as to legal theory.

COMPANY LAW IN ENGLAND, 1100-1860

In England, the direct antecendents of the modern trading companies were medieval guilds formed by charter for specific trades and skills. The primary aim of these early charters was to regulate the activities of their members and to set down basic rules which all practitioners had to obey.

With the growth of international commerce, however, charters began to be extended for new purposes. Increasingly, in the sixteenth century, they were granted to traders who conducted their activities in particular geographical regions, often giving them a form of monopoly in that area. A development of this was the joint-stock venture. Several individuals would pool their resources for a single expedition, and at the end of the voyage the profits would be shared out on a pro-rata basis. In contrast to the earlier form of company, joint stock corporations traded on behalf of their members, rather than merely defining rules within which individuals could trade as they pleased.

The joint-stock company was attractive to foreign traders because it provided a mechanism whereby a large initial sum necessary to equip their ventures could be raised. Before long these same advantages led to its use in domestic ventures where considerable capital was required. Thus, the Company of Mines Royal, established in 1564, was apparently founded on a joint-stock basis, and the Mineral and Battery Works, founded in 1565, raised initial and subsequent capital through shares.

The shift to the use of joint-stock corporations for a wider range of activities than foreign trade established the basic pattern of the modern corporation. However, the development of such principles as the right of a company to make calls on its shares (articulated by the House of Lords in 1671) or the transferability of shares (which became common in the 17th Century) was a slow process.

Another late 17th century development was the establishment of a public market. This protected companies from the withdrawal of funds by individual members and opened the way for raising investment capital on a wider basis. As a result of these changes, the 1690's and early 1700's saw a proliferation of joint-stock enterprises in all areas.

*The main sources for the information on pp 4 - 6 are:

Gower, L.C.B., 'The Principles of Modern Company Law'; London, Steven and Sons, 1957 Chapters 2 and 3.

Hadden, T., 'Company Law and Capitalism': London, Heidenfeld and Nicholson, 1972.

McPherson, J., 'The Law of Company Liquidation' Sydney, Law Book Company, 1968.
For a more detailed exposition of the early history of company law in England the reader should consult these texts.

It should be emphasised that the events which culminated in the widespread operation of joint-stock enterprises could hardly be described as planned. They were, rather, a series of responses to perceived commercial opportunities.

That the growth of the corporation was so unplanned and spontaneous is reflected in the development of laws to control corporate behaviour. They are best seen as a series of responses to crises - instances when the inadequacy of existing laws became too obvious to be ignored - rather than as a development of some coherent overall scheme.

The first regulations with respect to joint-stock companies focused on the public share market. By the end of the 17th century it had become a practice for unscrupulous operators to start companies and build them up on the basis of falsely optimistic predictions until the founders' shares could be sold. The resultant spate of company crashes led to the passing of an Act, in 1697, which regulated the buying of stock. Among other things, it licensed share brokers and forbade them to engage in personal dealings.

This measure had only limited scope and impact. It took a hundred years and incidents such as the South Sea Company scandal for government to see a need for laws which intervened more thoroughly in the corporate scene.

The South Sea Company had been formed in 1710. For ten years it conducted trade, without much success, in South America. Throughout this period directors had sustained the price of shares only by circulating false and optimistic rumours about the company's performance. The share price had, in turn, provided the basis for a series of loans which ensured the company's survival.

In 1720 the company collapsed. Its directors were summoned to parliament and fined, and subsequently the Bubble Act was passed. It made it a criminal offence for companies to be formed without a charter from the Crown or by Act of Parliament or to transfer shares without legal authority.

A result of these events was for businessmen to turn to unincorporated partnerships which operated as de facto companies. Thus it could be said that the Bubble Act suffered the fate of most enactments which run in the face of social realities - it was ignored, and in 1825 it was repealed. The absence of any restrictions, however, saw a resurgence of the sorts of abuses which had provoked the 1720 legislation. It was in response to this upsurge that the 1844 Companies Act was passed.

The 1844 Act emphasised two basic principles; these were that it should be easy for companies to be formed, if certain registration and publication provisions were obeyed, and that there should be periodic company meetings and audits. In other words, the laws tried to ensure that any investor in a company knew the financial status of the concern to which he was becoming committed and was able at regular intervals rationally to assess whether he wanted the commitment to continue.

These two principles - ease of company registration and insistence on regular disclosures concerning past performance and/or future prospects - have remained at the heart of subsequent company law in England and Australia. However, it was not until a third factor was clarified that the basis for the modern company was fully established. This was how a company's affairs should be brought to an end - in particular how the debts of a failed company should be settled and its assets distributed.

In the earliest joint stock companies it was assumed that in the event of a failure each member's loss was limited to the amount he had already contributed. However, the Harmbourough Company case of 1671 made this position untenable.

This company had been raising large amounts through loans. One financier had lent it over 2,000 pounds. However, when he sought to recover the money it was pointed out that the company had no common stock and the controllers refused to levy members to raise the additional capital. The dispute was taken to the House of Lords, where it was decided that a call on shares should be made.

The first Companies Act of 1844 reaffirmed the Harmbourough judgement. Company members were liable for debts incurred by the company and this liability did not cease until three years after shares had been legally transferred. This aspect, however, incurred severe criticism.

One reason was that unlimited liability placed too harsh a burden on investors, especially those with substantial assets. In the events of a company failure they would be the first to be pursued by creditors. Even a relatively small investment could, therefore, result in massive losses for more affluent shareholders, and as a result they were discouraged from participating in all but the safest of ventures.

Creditors also had reason to be critical of unlimited liability. As MacPherson points out, once proceedings were commenced against one of a company's members, 'this normally had the consequence of driving others to dispose of their property or depart the realm in the hope of avoiding the impending catastrophe'* In the final analysis, therefore, creditors often recovered little from a failed concern.

However, the problem went even deeper than the recovery of debts. Although 1844 legislation** made a start by establishing the grounds on which creditors could petition for a winding-up there was still no systematic set of laws covering the various ways (voluntary as well as involuntary) in which a company's affairs could be brought to an end, and clearly defining the rights of all the parties involved.

By 1856, however, both the limited liability question and the more general one of how to wind up a company had been resolved. The Limited Liability Act of 1855 restricted the liability of shareholders to the amounts unpaid on their shares, and in the following year the Joint Stock Companies Act clearly delineated the grounds on which companies could be wound up, and unequivocally defined the rights of creditors and other parties to a company's assets. With these two Acts the outstanding issues concerning the legal basis of the trading corporation were resolved, and a pattern of law was established which has remained unchanged, though subsequently elaborated upon both in England and Australia.

COMPANY LAW IN AUSTRALIA 1861-1977***

From its beginning, Australian companies legislation has been the responsibility of each State. This arrangement was not altered at federation although recent decisions by the High Court of Australia indicate that under the Constitution the Commonwealth may have extensive powers in this area.

In N.S.W. the major relevant legislation is

- the Companies Act, regulating the setting-up, operating and winding up of companies
- the Securities Industries Act, regulating dealings in shares and debentures in public markets
- the Business Names Act, regulating the registration of business names
- certain sections of the Crimes Act, which deal with corporate activities.

Despite their autonomy there has always been some degree of conformity between the legislation of the various States. All have used United Kingdom Acts as the model for their original laws (for example, the first Companies Act in New South Wales, passed in 1874, was based on a U.K. Act of 1862) and subsequent amendments have also been influenced by events in the U.K.

During the first half of the twentieth century, however, the States amended their laws at different rates. At the same time the operations of more and more companies began to transcend state boundaries.

* Macpherson, op cit, p 12.
** In particular the Winding Up Act, 1844.
*** Most of the information for this section was obtained from CCH Australia Limited: 'Australian Corporate Affairs Reporter', Vols 1 and 2, Sydney, North Ryde.

Throughout the late 1950's and early 1960's therefore, the Attorneys-General of the States and the Commonwealth worked through their Standing Committee to devise a Uniform Act for adoption in all jurisdictions. During 1961 and 1962 each state repealed its companies legislation and adopted the Uniform Act in its place.

In 1967 the Standing Committee established a Company Law Advisory Committee with the task of constantly reviewing the Uniform Act. Its terms of reference included 'to enquire into and report on the extent of protection afforded to the investing public by provision of the Act and to recommend when additional provisions (if any) were reasonable to increase that protection'. Under its chairman Mr. Justice Eggleston, the Committee produced a number of interim reports. Some of these were used by various States, including New South Wales, as the basis for large-scale amendments to the Uniform Act. These amendments became law in either 1971, 1972 or 1973, according to the State concerned.

On the 18th February, 1974, New South Wales, Victoria and Queensland signed the Interstate Corporate Affairs Agreement. The intention of the agreement, later ratified by legislation in each state, was

- to achieve greater uniformity in companies and securities industry law
- to establish reciprocal arrangements and common standards and procedures for administering the law
- to co-ordinate the administration of companies and securities industry law in the various states
- to increase the protection offered to the public by securities industry law.

The agreement also established a Ministerial Council and an Interstate Corporate Affairs Commission. The Commission exercises a supervisory role, attempting to ensure uniformity in administration and facilitate reciprocal arrangements in a number of areas including the incorporation of companies, the regulation of the securities industry and the registration of prospectuses. In 1975, Western Australia also became a signatory to the Interstate Corporate Affairs Agreement.

Two of the most recent developments in the companies and securities area have been the Companies (Amendment) Act, 1975 and the Securities Industry Act, 1975.

The Companies (Amendment) Act 1975 followed a review by the Interstate Corporate Affairs Commission of discrepancies which had developed between the Companies Acts of its members. It came into force on 1 March, 1976, at the same time as complementary amendments in the other three participating states became effective.

The Securities Industry Act, 1975, replaced the previous Security Industry Act of 1970. This Act also coincided with similar enactments in other ICAC States. It brought about several significant policy changes including the introduction of a system of permanent (rather than annual) licences for dealers in securities, and the recognition of licenses issued in other participatory States. The Act also gave the Commission added legislative control over the functions of stock exchanges.

TYPES OF COMPANY IN NEW SOUTH WALES

In its broadest characterisation, a company is an entity in which two or more people have combined to engage in a commercial or other enterprise. This entity is legally distinct from any or all of its members and can sue or be sued in its own name.

Within this general definition, however, there are many different types of companies. These can be classified in two ways:

(1) on the basis of ownership or transferability of a company's shares or debentures, and (2) according to the extent to which shareholders will be personally liable in the event of a call for further funds or for debts incurred by a company which has become insolvent.

Using the first classification, companies are either public or proprietary. A public company is one in which there is no limit to the number of members, as long as the legal minimum is satisfied. In addition the company may issue prospectuses inviting the general public to apply for its shares or debentures, and there are no restrictions on the transferability of shares. Once shares in a public company have been allotted they are the property of the owner and can be transferred in whatever way the owner desires.

Within the class of public companies there is a further distinction between listed and unlisted companies. Being listed entitles a company to have its shares sold at the Stock Exchange. Before gaining this right, however, a company must satisfy certain conditions.

These include:

Size: Its paid-up capital must be at least $300,000. Mining companies must have paid-up capital of $500,000 at least $300,000 of which must be working capital.

Spread of ownership: Companies with paid-up capital up to and including $2 million must have at least 25 per cent of their shares publicly owned; those with paid-up capital over $2 million must have at least 15 per cent of shares publicly owned.

Position in the relevant industry: This is also an important factor. However, there is no single rule for judging a company's position in its industry. Factors taken into consideration include the amount of capital of the company concerned,its record of profit, and the type of business in which it is engaged.

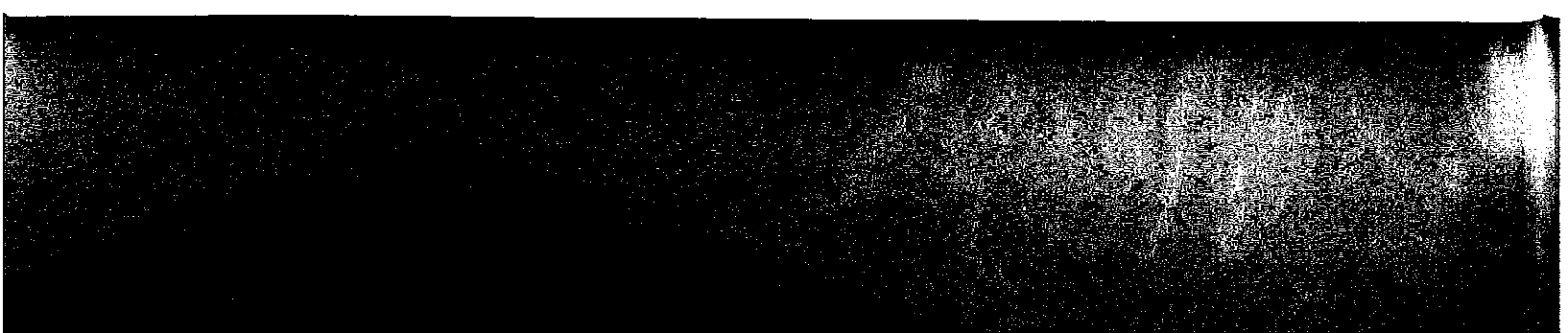
In contrast to public companies, proprietary companies face restrictions on the ownership or transferability of their shares and debentures. In particular, proprietary companies:

- restrict the rights of members to transfer shares (the full range of permitted transfers must be set out in the Company's articles)
- limit their membership to no more than 50
- are prohibited from inviting the public to subscribe for their shares or debentures, or to deposit money with them either at fixed terms or payable at call.

Among proprietary companies, a distinction can be made between the exempt and the non-exempt. Exempt proprietary companies can be granted immunity from certain requirements of the Companies Act, the most important of these being the requirement to appoint an auditor and/or file accounts with their annual returns. In addition, they may make loans to their directors and in the event of a voluntary winding-up the liquidator need not be a registered one.

To qualify for exempt status a proprietary company must have none of its shares owned (either directly or indirectly) by a public company. Therefore, 'in Sec. 156(5) the Act imposes a duty to disclose on any person who holds shares in a proprietary company as a trustee for or otherwise on behalf of a corporation. Disclosure of this holding must be made in writing to the secretary of the proprietary company within a month of the shares being acquired'*.

*Guide Book to Company Law, CCH Australia Ltd., North Ryde, 1976, p.21.



The second basis for classifying companies is members' liability. On this criterion, companies can be divided into five categories:

- Limited by shares. Here liability is only for the unpaid portion of the nominal value of shares. Thus if a share has a nominal value of five dollars but capital of three dollars has been paid to the company, the minimum liability is two dollars. Approximately ninety-eight per cent (98%) of companies in New South Wales are limited by shares.

- Limited by guarantee. Liability here is limited to a fixed amount, stated in the company's memorandum. THe amount can only be demanded if and when the company becomes insolvent. This form of limited liability is generally used by clubs, rather than commercial enterprises.

- Limited by both shares and guarantee. In this case liability is for amounts unpaid on the nominal value of shares, plus a fixed amount payable in the event of an insolvent winding up. This form of limited liability is rarely used.

- Unlimited liability. No limit is put on the amount that members may be required to contribute in the event of a winding up. Again, this type of company rarely occurs.

- No liability. Only mining companies can fall within this category. Purchase or acceptance of shares in a no liability company entails no obligation to pay calls or to contribute in the event of an insolvency.

Appendix V (page 93) contains available analysis on companies registered or recognised in New South Wales during 1975 and 1976. It gives some idea of the proportions of companies in the above categories.

The main points to emerge from Appendix V are that:

- almost nine out of ten companies are proprietary, whether exempt (105,776 or 77.7 per cent of companies registered in 1975) or non-exempt(12,848 or 9.37 per cent of companies registered).

- a further 1.38 percent (1,894 companies) registered in 1975 were public. Of these 1,408 were listed on the Stock Exchange (the latter information supplied by the Sydney Stock Exchange Research Division).

- no liability companies comprised only a small fraction (162 companies, 0.12 per cent) of companies registered or recognised; and during 1975 there were no unlimited liability companies.

The above discussion has explained the terminology most often used in describing companies. Each different term implies a particular set of rights and duties vis-à-vis legal institutions and the stock exchange.

It is important to recognise, however, that most companies have more than a formal existence - they are functioning commercial concerns.

The aim of the law, in setting up and regulating them as formal legal entities, is to provide an ideal model for the conduct of commerce with safeguards to protect the interests of:

- suppliers of credit
- non-managing shareholders
- prospective investors.

One of the main methods of safeguarding these parties is to ensure that companies supply them with regular and adequate information concerning their operations.

3. THE NEW SOUTH WALES CORPORATE AFFAIRS COMMISSION

ORIGINS AND PRESENT STRUCTURE

Prior to December, 1962, administration of companies and business names legislation in New South Wales was the province of one branch of the Registrar General's department. After that date, however, a newly created organisation, the Companies office, took over these functions. In May 1971, following amendments to the Uniform Companies Act, the Companies Office became the Corporate Affairs Commission. As well as administering companies and business names law, the Commission has responsibility for a wide range of activities including investigating potential criminal violations of laws relating to corporate activity and the securities industry and engaging in civil litigation or other court actions when these are necessary to protect company investors and creditors.

The Commission currently consists of an Administrative Services Branch and four divisions: the Investigation, Legal, Corporate Finance and Accounting, and Registration and Document divisions. A full summary of their responsibilities can be found in the Commission's Annual Report for 1976. The following is a brief description of the duties of each:

Investigations Division: to enquire into and gather evidence on all possible violations of laws administered by the Commission.

Legal Division: to advise on, and conduct civil and criminal litigation initiated by the Commission.

Corporate Finance and Accounting Division: to examine accounts and reports which accompany these annual returns, and to advise companies on the preparation of these. The division also carries out research on aspects of accounting in New South Wales. The Division licenses dealers in securities (ie. stockbrokers and merchant banks), a task which involves monitoring their financial stability, and it registers prospectuses and scrutinizes takeover documents.

In the course of examining samples of accounts, the Division isolates cases where a company appears to be in financial risk and communicates with the relevant management. The Division also takes up with company management and auditors certain matters reported on by auditors which detract from an unqualified declaration that the company accounts present a true and fair view.

As the above statement should make clear, the Corporate Finance and Accounting Division is responsible for a major part of the Commission's activities in attempting to prevent corporate crime.

Registration and Documents Division: to supervise company registrations, and to make available to members of the public documents containing relevant details on companies registered in New South Wales.

POWERS OF INVESTIGATION DIVISION OFFICERS

General Powers

The area of law which gives Commission investigators their basic powers are section 7 (6) through to (9) of the Companies Act. Under these sections the Commission has the power to inspect all books required to be kept under the Act.

The precise extent of this power is a matter for dispute even among legal practitioners. One recent view (although, it should be noted, not a view which the Commission would necessarily accept) has been presented by Mr. G. Santow. * He argues that the sections do not permit copies of documents to be made, although S.370(2) of the Act can be resorted to if this is necessary, nor do they empower Commission inspectors to look at other documents (such as memoranda by directors or information tabled at meetings but not included in minutes) which the Companies Act does not make it compulsory to obtain.

* Santow, G.F.K. 'Regulating Corporate Misfeasance and Maintaining Honest Markets' Australian Law Journal, Vo. 51, No. 8, pp 541-582.

Corporate Affairs Commission officers do not have the power to obtain search warrants. However, if it is suspected that an indictable offence (ie. an offence liable for trial in a Higher Court) may have occurred, police officers attached to the Commission may apply for a warrant to search for and seize books. Under Section 368 of the Companies Act the Commission may also obtain a Court order for the production of books. However, this power is so restricted that it is rarely used.

Certain other powers of the Commission are derived from Sections 8 to 12 of the Securities Industry Act, 1976. In particular, Section 8 allows the Commission to inspect and make copies of books kept by licensed dealers, or bankers' books which relate to a dealer's activities, in order to ascertain whether a dealer or relevant person has complied with the Securities Industry Act. Section 9 requires any dealer or person acting in that capacity to disclose the identities of persons on behalf of whom securities were acquired or sold, and to disclose the nature of the instructions given. Section 10 authorises the Commission to apply to the Court to allow it to inspect relevant bankers' books, or books under the control of a dealer, if there is reasonable cause to believe that they may contain evidence of a breach of the Securities Industry Act.

If a company is in liquidation(ie. it is in the process of being wound up and the assets distributed to creditors and company members) the Commission may well be reliant on the liquidator for information. The liquidator is the person whose job it is to take charge of a company while affairs are being finalised, and to ensure that the assets are distributed as required by law. Under S. 234 of the Companies Act, the directors of any company going into liquidation must furnish a statement of affairs, in a prescribed form, to the liquidator. Under S. 306 of the same Act, if the liquidator discovers the unsecured creditors will be paid less than 50c in every dollar owed, or that some crime may have been committed, he is obliged to pass this information on to the Commission. However, again as Santow has argued, there are limitations on the liquidator's access to information. The liquidator must ask for any information before he has access to it. If he is not aware that information might be relevant or available, or if he is unable to locate the company officer in possession of it, the liquidator will not obtain the data. It should also be pointed out that often, through lack of funds, the liquidator has done so little work that his report is of very limited value.

Special Investigations

In the ordinary course of events information about possible law breaking in a company is obtained from S.7(6) inspections or from a liquidator's report. However, in New South Wales the Attorney General has the power to dramatically enhance the possibilities for information-gathering by appointing the Commission, or officers from the Commission, or other persons to carry out a Special Investigation.

The Act virtually sets no limit on the Attorney General's discretion to appoint a special investigator, and under S.169 members of any company, or the company as a whole,* also may apply to the Minister for such an appointment.

* See 'CCH Guide Book to Company Law', op.cit. p.213, for a statement of the number of members and the type of resolution required for such an application.

It is impossible for any company to be subject to a Special Investigation without this becoming public knowledge since the Act requires that notice of the appointment of an inspector must be published in the Government Gazette.

A Special Investigator may require any officer* of a company under investigation:

- to produce any books which are under that officer's control
- to give all reasonable assistance in connection with the investigation
- to appear before him to be examined under oath.

* Officer being defined very broadly to include not simply directors, secretaries and employees but such categories as a liquidator appointed in a voluntary winding up, anyone who has acted as a company's banker, solicitor or auditor, anyone who has had possession of any of the company's property, anyone in debt to the company, and any person capable of giving information about the company's affairs. (cf. CCH Guide Book to Company Law, op. cit, p.216).

4. METHODOLOGY OF THE PROJECT

The initial aim of the project was to devise a statistical system for the Investigation Division, to be used in preparing the Commission's annual report and to facilitate management reviews of progress made. The present study, which encompasses matters received and investigations initiated during 1975, is based on a form drawn up to meet these objectives.

As collection and analysis of the 1975 data proceeded, however, it became clear that information systems in this area should have wider applications. Before commencing to collect the data concerning the Division's 1977 activities therefore the original form was expanded. The following pages comment both on the design of the initial (ie.1975) form and the revisions for the 1977 data.

DESIGNING THE STATISTICAL REPORT FORM FOR CASES COMMENCED IN 1975

As mentioned in Section 1, the objective of the system was to allow an overview of all investigations into company crime, not simply those which resulted in prosecutions. With this in mind, a series of conferences involving officers from the Bureau and from the Corporate Affairs Commission were convened. After several drafts, a statistical report form to be applied to all investigations commenced in 1975 was prepared. The form was designed to cope with all types of investigations and all possible outcomes. (See Appendix I).

The basic criterion for inclusion of any item was whether acquiring the relevant information was already a part of the routine investigatory process. Throughout the discussions it was agreed that the ultimate responsibility for maintaining statistics must rest with the investigating officers. To burden them with the tasks of ferreting out data which could be of no practical assistance to an investigation would only damage the quality of the system, no matter how interesting such items might be from the researcher's point of view. Because of this criterion, several items which it had seemed 'natural' to include in the first draft - in particular, items on the backgrounds of offenders or potential offenders - were eventually deleted.

The report form was based on an analysis of the five stages of an investigation. These were: receipt, preliminary investigation, detailed investigation, legal review and prosecution.

Receipt

This is the stage when an investigation is initiated, and takes place either when a complaint is lodged or when one of the Commission's own surveillance systems - whether of the stock market, of newspapers or of company documents lodged with the Commission - provides information that an offence may have taken place. During the receipt stage a decision is made on whether there is 'prima facie' evidence of lawbreaking.

Coming to this decision may involve collecting some routine information on the company concerned or making a few telephone calls. Attention seldom focusses intensively on particular offences but on gaining a general impression of the structure and activities of the company in question, and specifying the nature of allegations made.

Preliminary Investigation

After it has been decided that an investigation is warranted, the next step is to identify any offences that may have occurred. This takes place during the preliminary investigation. It usually lasts several months. Quite often during the preliminary investigation inspectors may go to the office of a company and conduct a Section 7(6) inspection of the books. During this phase attempts are made to interview anyone who might have relevant knowledge of the company's affairs.

At the end of the preliminary investigation all data unearthed is reviewed, and a

decision is made on whether evidence of specific offences appears to be obtainable. If it does, a detailed investigation is authorised. If not, the enquiry is terminated.

Detailed Investigation

The detailed investigation is the most lengthy phase of investigation. It rarely occupies less than several months, and may take more than a year. It involves an intensive search for evidence on the possible offences disclosed at the preliminary stage, as well as an enquiry for evidence of other violations. When all data has been collected, the investigator submits a report to the head of his section. If it is decided that some or all of the alleged offences should be prosecuted a brief is made up and sent for comment to the Commission's legal officers.

Legal Review

The next phase of an investigation into alleged corporate crime is in the hands of the Legal Division. They review all the charges contained in the brief. In addition to recommending the pursuance or non-pursuance of certain charges, they may suggest other charges overlooked by the investigators. The questionnaire used for 1975 investigations was designed to note not only the fate of principal charges recommended in briefs sent to the Legal Division but also new charges suggested during the legal review phase.

Prosecution

The final phase is the court action which may follow an investigation. To be included on the data collection form were details of prosecutions at Petty Sessions and also actions taken at District Courts, and the Supreme Court. A copy of the questionnaire has been attached as Appendix I. Although most of the questions are self-explanatory, one matter requires clarification.

For each stage, the questionnaire records the principal offence being investigated at the time. 'Principal offence' was defined as the offence for which the highest maximum penalty is prescribed in the statutes. Thus, if a particular investigation discloses possible violations of the Companies Act, Section 125(4), (Company, make improper loan to director), which has a maximum penalty of $400, and also of Section 124(1) (Director, fail to act honestly or use reasonable diligence), maximum penalty of $2,000, then Section 124(1) will be selected as the principal offence.

Collecting the 1975 Data

Despite the initial agreement that the statistics should be maintained by the investigating officers, this proved impractical because the study of 1975 data was retrospective. A member of the Bureau therefore undertook the often difficult task of tracing files and transcribing information onto questionnaires.

The initial phase of data collection was completed on 31/12/1976. In July, 1977, questionnaires relating to investigations incomplete at the end of 1976 were updated by the Corporate Affairs Commission.

Computer analysis of the data was carried out by the Bureau and is discussed in the next section.

The 1977 Revisions

The main intention of this report is an analysis of this 1975 data. However, this was only one result of the project.

During the data collection phase, and as the relationships between the Investigation and other divisions of the Commission were better understood by the Bureau, it became apparent that there was a need for an integrated data system encompassing the entire Commission.

For instance, files containing relevant details on corporations (presently the domain of the Registration Division) could be linked to files on directors and files on company investigations. The importance of implementing such a system is emphasised in the following discussion of data.

With this long-term necessity in mind, and drawing on experience gained from collecting the 1975 figures, the statistical form was re-designed to make it suitable for eventual integration into a system covering the whole Commission. The redesigned forms have been in operation at the C.A.C. since 1 January, 1977 (see forms in Appendix II). An accompanying draft manual of instructions for these forms is in Appendix III.

5. OVERALL OUTLINE OF THE DATA

MATTERS RECEIVED

Total number and month of receipt

During the calendar year, 1975, there were 1,168 instances where the Investigation Division of the Corporate Affairs Commission was alerted to possible infringements of companies, securities or related laws in New South Wales. Table 5.1 shows the numbers of complaints, allegations etc. received for each month.

TABLE 5.1 - NUMBER OF MATTERS RECEIVED FOR EACH MONTH

Month	Number of Cases
January	109
February	79
March	99
April	124
May	117
June	94
July	107
August	100
September	119
October	74
November	69
December	78
Not known	4
TOTAL	1,168

Number of Companies

For 48 of the 1,168 complaints made, the company involved was not identified. In a further 22 cases, the organization in question was not a company but a registered business name.

On the remaining 1,098 occasions, a total of 852 separate companies were named. Table 5.2 presents an analysis of the frequency of complaints received (or allegations made) per company.

TABLE 5.2 - NUMBER OF TIMES COMPANIES CAME TO THE ATTENTION OF THE INVESTIGATION DIVISION DURING 1975

Number of complaints received or allegations made per company	No. of companies
One	951
Two	108
Three	23
Four or more	16
	1098

Sources of Information about Corporate Infringements

The Commission can become aware of possible company offences in a number of ways. Every year, a large number of complaints is received directly from the public; during 1975 almost 700 such representations were received. Members of parliament may also direct enquiries about corporate activities to the Commission (56 received in 1975). Another important source of information concerns companies in liquidation. Section 306 of the Companies Act requires that a liquidator appointed to wind up a company should report to the Commission if it appears (either to the court or to the liquidator himself).

- that the company will be unable to pay unsecured creditors 50 cents in the dollars
- that an officer or member of the company may have been guilty of an offence.

During 1975 the Commission received more than three hundred S. 306 reports.

Other methods whereby inspectors can be made aware of possible offences include referrals from other government departments or the Stock Exchange, and the Commission's own systems for reviewing lodged documents and surveying stock market notices or newspaper articles. (For full details of these surveillance systems see the Commission's Annual Report for 1976, pp.74-76). A breakdown of the sources of matters received or initiated during 1975 is in Table 5.3 below.

TABLE 5.3 - SOURCE OF INFORMATION ON POTENTIAL CORPORATE MISCONDUCT 1975.

Source	Number of times information received or matter initiated
Complaint from member of public	675
Representation from member of parliament	56
Report from liquidator	317
Referral from other government department	24
Notification from Stock Exchange	26
Survey, by Commission investigators, of stock market activity, articles in newspapers, etc	46
Review of lodged documents	17
Other Source	7
TOTAL	1,168

General Nature of Complaint Received or Investigation Initiated

For collecting data, matters received or matters initiated by the Commission were grouped according to their general nature. For complaints received this was defined as what the officer concerned saw as the substance of the person's problem. When the Commission itself initiated a matter, it was categorised according to the type of activity which first attracted the relevant officer's attention. Seven categories were used.

1. Mismanagement of company

Refers to instances where a member of the public, a liquidator or a Commission officer suspects there may have been specific activities which offend against the companies Act, the Securities Industry Act, the Business Names Act or the Crimes Act.

2. Report, S.306

In the questionnaire allowance was made only for S.306(3) reports, which are required if a liquidator considers that a company will be unable to pay its creditors more than 50¢ in the dollar. In collecting the data, however, any reports from liquidators, including ones which made specific allegations of mismanagement, were put in this category.

3. Stock Market Activity

Refers to cases where the Commission's attention has been drawn to anomalous stock-market activities.

4. Civil Dispute

Refers to cases where a complaint has been received and the Commission considers that it concerns a civil matter (for example a debt owing, goods not delivered or services not performed or a difference of opinion over the way the memorandum and articles of association of a company should be interpreted).

5. Information required about a company and/or its directors

Refers to cases where someone contacts the Division to ask whether a company is being or has been investigated. Often, although not necessarily, the person requesting the information also will make an allegation about the company or director in question.

6. Clarification required on some aspect of company law.

The Investigation Division does not normally provide the public with opinions or conclusions of a legal nature, particularly if the advice is required for the internal purposes of a company. Such matters would be referred to the Legal Division. However, in some instances an individual may approach the Division concerning some transaction or proposed transaction with a company, with a view to finding whether it contravenes any of the laws administered by the Commission. Provided that the matter is clearcut,the Division will in these cases be prepared to indicate whether the matter is purely civil or would lead to some form of investigation. It should be noted that, as is the case when information is required about a company or its directors, a request for clarification of law may not necessarily amount to an allegation against any company.

7. Not specific

Refers to cases where a complaint has been made about a company, but the informant was not specific about the type of alleged breach or the dispute which had occurred. The item on 'general nature' is useful for two reasons. It gives an indication of the way the public perceives the Commission (eg. what types of matters are referred to it) and how the Commission classifies complaints it receives (this may affect the way the matter is subsequently treated).

TABLE 5.4 - 'GENERAL NATURE' OF MATTERS INITIATED DURING 1975

General Nature	Number
Mismanagement of Company	347
S.306 report	317
Stock market activity	66
Civil dispute (eg. debt owed, dispute over control of a company)	334
Information required about some company, or its directors	18
Clarification required on some aspect of company law	16
Not specific	78
Other	26
TOTAL	1202*

*Total for 'general nature' not equal to total complaints received because in some instances a single complaint involved several different types of allegations.

Decision taken at receipt

Of the 1,168 matters referred or irregularities detected by the Division's own systems of surveillance during 1975, just under one in three resulted in a new investigation by the Commission. In a further 44 instances it was discovered that the Division was already in the process of looking into the company concerned and therefore no new enquiry was necessary. In more than three out of five cases Commission investigators decided not to pursue the matter beyond the receipt stage.

TABLE 5.5 - DECISION TAKEN AT THE RECEIPT STAGE ON THE 988 INSTANCES OF POSSIBLE COMPANY LAW VIOLATIONS OF WHICH THE DIVISION BECAME AWARE DURING 1972

Decision Taken	No.	%
Undertake preliminary investigation	344	29.5
Investigate this allegation in conjunction with enquiries already underway following another complaint received earlier in year	44	3.8
Take no further action on this allegation	780	66.8
TOTAL	1,168	100.0

CASES WHICH WENT BEYOND RECEIPT: THE INVESTIGATION

Stage reached and whether finalised or still underway by 26/7/77

- Almost 80% (275) of matters begun in 1975 and investigated beyond the receipt stage had been finalised (See Table 5.9)

- most of the remaining 20% (69 cases) were still being pursued, or were pending before the courts

- in 4 instances, a submission to the Attorney General, either by the Commission or by company members themselves, had resulted in a Special Investigation being declared.

Among the 275 investigations finalised on or before the 28/7/77, more than three out of four had been taken only as far as the preliminary stage. A further 22 cases had warranted detailed investigation, and 10 had undergone review by the Legal Division before the investigation was terminated. In only 24 cases (or 8.7 percent) of all company investigations taken beyond receipt stage during 1975 had matters been concluded by means of a court action.

Of the 68 cases still under investigation at the end of July, 1977, more than a third were only at the preliminary phase. Another one in four was undergoing detailed investigation, and a slightly higher proportion was at legal review. In just nine instances charges were pending before the courts.

Figure A (opposite) shows the number of matters dealt with at each stage of investigation.

FIGURE A - NUMBER OF COMPLAINTS DEALT WITH AT EACH OF FIVE STAGES OF INVESTIGATION AND AVERAGE TIME TAKEN

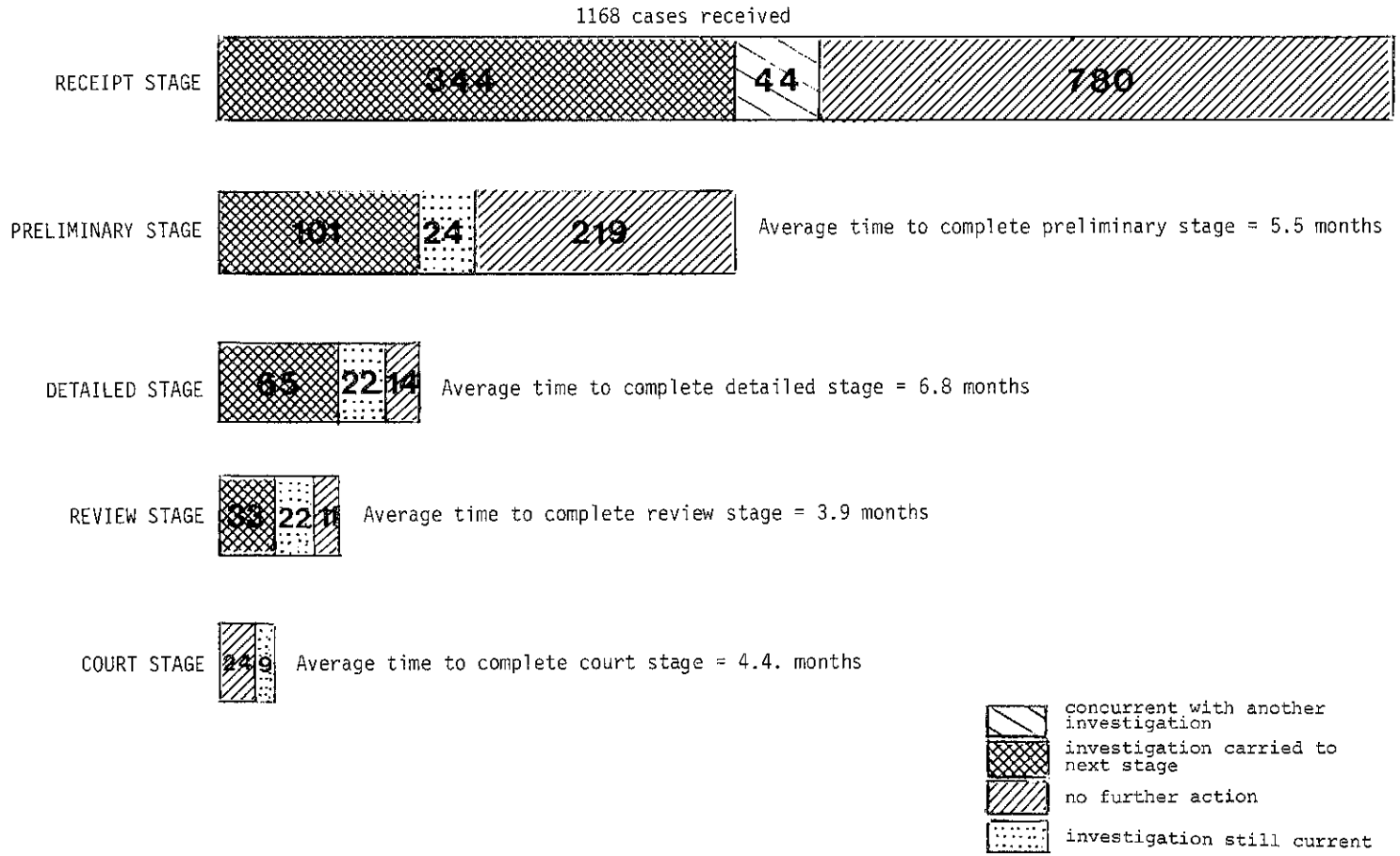


TABLE 5.6 - STAGE REACHED, COMPANY INVESTIGATION INITIATED IN 1975

	Cases finalised		Cases still being investigated	
	No.	%	No.	%
Preliminary	219	79.3	24	35.3
Detailed	22	8.0	14	20.6
Legal Review	10	3.6	22	32.4
Court	24	9.1	9	11.8
	275	100.0	69	100.0

Period of time taken on investigation

One of the major objectives in designing a statistical system for the Investigations Division was to find out how long investigations take.

Of enquiries already brought to conclusion by the Division, most had been concluded within 12 months. After that time, there was a steady decrease in the rate of finalising matters. Among cases still being investigated, 30 percent had been with the Division for between 12 and 18 months. A further 60 percent had been under investigation for two years or more.

TABLE 5.7 - TIME TAKEN ON INVESTIGATION

	Finalised		Still being investigated	
	No.	%	No.	%
6 months or less	144	52.2	-	-
7 - 12 months	67	24.3	-	-
12 - 18 months	25	9.1	1	1.5
18 - 24 months	16	5.8	19	27.9
24 - 30 months	6	2.2	40	58.8
30 - 36 months	-	-	4	5.9
Not recorded	175	6.5	5	5.9
	275	100.0	69	100.0

Average time taken to complete each phase

Another important measurement is the time taken by the Division to complete each of the separate phases of investigation. Table 5.8 shows these times.

TABLE 5.8 - AVERAGE TIME TAKEN TO COMPLETE PHASES OF INVESTIGATION

	Average time taken to complete	Number of instances on which average is based
Preliminary Phase	5.6 months	302
Detailed Phase	6.8 months	70
Review Phase	4.1 months	34
Court Phase	3.4 months	21

Reasons for Discontinuing matters before the Court Phase.

As stated above, by the end of the data collection period for this study (27/7/77) the Investigation Division had finalised 80 percent of the investigations begun in 1975. In 90 percent of instances, resolution had occurred before the court stage, while in the remaining 26 cases a prosecution had occurred. Tables 5.9 and Appendix IV present more detailed analyses with regard to each of these modes of finalising matters.

Table 5.9 summarizes the reasons given by inspectors for deciding that it would be inappropriate to further pursue any matter. Two categories dominated the receipt stage. These were 'no apparent offence' and 'civil matters' only. Both categories suggest that the Division had made some enquiries, but had found no evidence of criminal behaviour. After the Receipt stage, categories such as 'lack of evidence' or 'no jurisdiction/ referred on' are more predominant. In many of these instances the Division may have had grounds for suspecting that criminal behaviour had occurred but considered that it would be unable to establish this in a relevant court of law.

It is interesting that there were almost 300 occasions where the Division considered that a matter could not be dealt with under criminal law, but could only be resolved by a 'civil' action.

TABLE 5.9 - REASONS FOR DECIDING ON NO FURTHER ACTION ('N.F.A.')

	Stage at which NFA decided				
	Receipt	Preliminary	Detailed	Review	Total
Civil only	269	23	1	1	294
Lack of Evidence	49	48	8	3	108
Lack of Witnesses	45	36	4	-	85
Too great a time has elapsed	8	10	2	-	20
Offence, but not serious enough to warrant prosecution	3	12	-	2	17
Alleged offender cannot be located	10	4	3	1	18
Offender cautioned, given period of grace and/or breach rectified	20	26	1	2	49
No jurisdiction/referred on	51	12	1	1	65
No apparent offence has occurred	333	75	4	1	413
Division lacks resources	38	3	1	-	42
Leave, come back later	8	12	2	-	22
Other	4	16	2	-	22
Total Reasons*	838	277	29	11	1155
Total Matters N.F.A. at this stage	780	219	22	10	1031

*Total reasons not equal to total cases 'NFA' at such stage because sometimes multiple reasons given.

Matters Prosecuted

Appendix IV summarizes the prosecutions which ensued from the 1975 investigations. It will be noted that every court action initiated by the Division resulted in a finding of guilty on at least one charge.

The most frequent basis for a prosecution was S.122 of the Company Act, which forbids persons with relevant convictions from directing companies. Out of the 24 completed company investigations which resulted in persons being brought before a court, eight involved this charge.

In every prosecution but one, final sentence was passed in a court of Petty Sessions and the defendant was fined. The single matter decided by a District Court resulted in the defendant receiving 14 years imprisonment.* Another interesting point is the relatively short time taken by the Division to complete the cases which have been prosecuted.

It should be noted that not all of the information in Appendix IV was obtained from the 1975 statistical forms. They recorded only the most serious charge. For data on total charges laid and their outcomes it was necessary to cross-refer to the Division's own records.

CASES INVESTIGATED BEYOND RECEIPT: THE COMPANIES

Types of Company

In the majority of cases (almost 2/3), Commission investigations which went to the preliminary stage were of proprietary companies. However, it is interesting to note that public companies limited by guarantee and no liability public companies, which accounted for only 1.76 per cent registered with the Commission during 1975, accounted for one in ten of those investigated.

TABLE 5.10 - TYPE OF COMPANY INVESTIGATED

	Number	Percentage
Proprietary exempt, limited by shares	215	62.5
Proprietary, non-exempt	12	3.5
Public, limited by shares	73	21.2
Public, limited by guarantee	14	4.1
Public, no liability	21	6.1
Not relevant**	9	2.6
	344	100.0

Place of Incorporation

Most of these companies or businesses had originally been incorporated or registered in New South Wales. Only twenty-one had their origins in other States. One overseas registered company was investigated.

* Following an appeal, this was reduced to 8 years.
** Business under investigation was not incorporated.

TABLE 5.11 - PLACE OF INCORPORATION OF COMPANIES INVESTIGATED

	Number	Percentage
New South Wales	321	93.3
Victoria	7	2.0
South Australia	1	0.3
Queensland	5	1.5
Tasmania	-	-
Western Australia	1	0.3
Australian Capital Territory	7	2.0
Northern Territory	-	-
Overseas	1	0.3
Not recorded	1	0.3
	344	100.0

Operating Status

The majority of companies investigated were reported to be apparently still operating. However, more than one in three was in liquidation and a further twenty-seven, though not in liquidation, had ceased to operate by the time investigations commenced. It is interesting to note the low numbers of companies in receiveship or under official management among those investigated.

TABLE 5.12 - STATUS OF COMPANIES INVESTIGATED FOLLOWING INFORMATION RECEIVED IN 1973

Operating status	Number	Percentage
Apparently operating	186	54.1
In liquidation	121	35.2
Receiver appointed	9	2.6
Under official management	1	0.3
Ceased operating but not in liquidation	27	7.8
	344	100.0

In the context of discussing Table 5.12 and all following tables in this section, it must be regretted that data was not available on relevant characteristics such as operating status, age, paid-up capital, field of activity, of all companies registered in New South Wales. The Commission collects the last three of these itemson a routine basis for all companies. However, this is only in order that people can acquire

information about individual companies, by making a search of the records which are publicly available. The Commission makes no attempt to extract statistics from any of its collections. Objective comparisons with such data would have made possible more meaningful statements on the types of companies 'at risk' of being subject to investigation.

Age of Companies

In view of the high proportion of investigated companies which were already in liquidation, it is interesting to note that most were relatively young.

TABLE 5.13 - AGE OF COMPANIES INVESTIGATED BY C.A.C.

Age of Company	Number	Percentage
Less than 5 years	168	48.8
5 - 9 years	84	24.4
10 - 14 years	22	6.4
15 - 19 years	22	6.4
20 years or more	31	9.0
Not known/not relevant	17	5.0
	344	100.0

Paid Up Capital

The word 'capital' has many uses in the corporate sphere. 'Nominal capital' refers to the maximum amount of money which a company is allowed to raise through the sale of its shares. This is usually specified in the memorandum of association. 'Working capital' refers to those assets which a company anticipates it will dispose of within the next twelve months, less the liabilities which will become payable within the same period.

'Paid-up capital' refers to the amount of money a company has raised through the sale of its shares. For proprietary companies, the paid-up capital may be an indicator of the assets at the start of its career, although this is not always the case because a company promoter may put money into a concern without buying shares. Paid-up capital is one of the items which the Commission collects on a routine basis for all companies, and gives some idea, however imprecise, of the size of a company.

As table 5.14 shows, both companies with substantial and with minimal paid-up capital figured prominently in investigations initiated during 1975. More than 40 per cent had paid-up capital of a thousand dollars or less, and 37% were in the $10,000 and over category. Again, it must be regretted that comparative data on the paid-up capital of all registered companies is not available.

TABLE 5.14 - PAID-UP CAPITAL OF COMPANIES INVOLVED IN INVESTIGATIONS INITIATED DURING 1975

Paid-up Capital	Number	Percentage
None (eg. company was a club)	19	5.5
$1-$50	100	29.1
$51-$1,000	38	11.0
$1,001-$10,000	47	13.7
$10,001 plus	128	37.2
Not recorded	12	3.5
	344	100.0

Field of Activity

A final characteristic recorded about companies investigated was their field of activity. Table 5.15 contains these statistics

TABLE 5.15 - FIELD OF ACTIVITY

Field of Activity	Number	Percentage
Building, Construction and Allied Industries	56	16.3
Wholesale, Retail and Distribution	41	11.9
Import and Export	2	0.6
Financiers and Investors - Leasing and Hire Purchase	29	8.4
Pastoral and Mining	53	15.4
Steel and Engineering	14	4.1
Light Manufacturing and Chemical Processing	11	3.2
Electrical Sales and Manufacturing	6	1.7
Insurance and Trustee	14	4.1
Transport and Communication	11	3.2
Motor Dealers and Service Station	4	1.2
Real Estate and Land Development	40	11.6
Printing and Publishing	4	1.2
Professional Services - Law Accountants, Consultant	12	3.5
Accommodation - Motels/Hotels, Private Hospital and Nursing homes	3	0.9
Public Relations - Advertising and Employment Agencies	1	0.3
Textiles and Clothing	8	2.3
Food Manufacture and Sales	5	1.5
Aircraft-Building, Maintainance and Transport	1	0.3
Entertainment and Restaurants	2	0.6
Maintainance and Cleaning	14	4.1
Club	6	1.7
Miscellaneous	5	1.4
Not Recorded	2	0.8
	344	100.0

6. DETAILED DISCUSSION OF THE RECEIPT STAGE

INTRODUCTION

The above discussion presents the 'bare bones' of the Investigation Division activities. It summarizes the types of matters which concern the Division, and its sources of information. It gives an idea of the time-scales of investigations and types of companies involved; it contrasts the proportions of matters resolved by court action and by other means. However, it offers few clues on why events took place as they did; nor is there any attempt to suggest how statistical data might be used to assist the Division in fulfilling its functions.

This chapter and the next will concentrate on these issues. Chapter 6 focusses on the Receipt stage, giving analysis of the Division's existing sources of information, and pointing to areas from which relevant information might have been, but was not, received. It will also attempt to isolate the factors which determine whether or not a potential offence, once drawn to the Division's attention, incurs a fuller investigation. Discussion of these factors will be linked with suggestions on how conversion of the existing statistical system to a broader information base might facilitate the Division's task of sifting through the mass of information it receives for evidence of corporate crime.

Chapter 7 analyses matters which proceeded beyond the receipt stage. Investigations will be grouped in five categories, an assessment made of the special problems associated with each type, and proposals formulated on how each type of problem may be alleviated.

THE RECEIPT STAGE

In collecting the 1975 data the aim was to ensure that for every enquiry which took up an inspector's time a corresponding questionnaire should be completed. Therefore the 1168 items recorded as received during 1975 include not only investigations independently initiated by the Commission, but all letters, personal visits and even telephone calls in which allegations about company offences were made. Inclusion of data from the last of these areas was only made possible by analysing inspectors' work - diaries.

Because the data system was so comprehensive only a few details could be recorded for the receipt stage. The six items included in this section of the questionnaire were:

- name of company
- date of receipt
- source of matter
- general nature
- whether the matter was investigated more fully
- if no investigation took place, why not.

Not only was the number of items in the receipt stage limited, the categories used for classifying 'source' and nature had to be broad. At this early stage inspectors rarely obtain specific information in these areas. Despite the limitations, however, analysis of the receipt stage of the 1975 questionnaire yields information not merely on the Division's workload but on the ways it can become aware of company crime, on the types of allegation that are made, and on the factors which determine whether or not the matter led to a full-scale investigation.

SOURCE AND GENERAL NATURE OF MATTERS RECEIVED

Table 6.1 summarizes the ways the Division initially obtains information, and the general nature of the complaints and enquiries received. It suggests that obtaining information from the public is a fairly inefficient way of becoming aware of specific criminal offences. The reverse face of this is that the criminal law often fails to encompass corporate activities which the public considers unjust. Both points will be discussed in more detail later.

TABLE 6.1 - SOURCE AND NATURE OF COMPLAINTS, ALLEGATIONS OR ENQUIRIES.

Nature	Source																	
	Member of Public		M.P.		Liquidator		Other Govt. Dept. or Private Agency		Review of Lodged Documents		Stock Exchange		Independent Survey of Newspapers, etc.		Other		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Mismanagement of Company	263	37.6	34	60.7	3	0.9	12	50.0	13	72.2	7	25.0	12	25.5	3	42.9	347	28.9
S.306(3) Report	-	-	-	-	317	98.4	-	-	-	-	-	-	-	-	-	-	317	26.4
Irregular Stock Market Activity	17	2.4	1	1.8	-	-	-	-	-	-	18	64.3	29	61.7	1	14.3	66	5.5
Civil Dispute	313	44.8	17	30.4	-	-	3	12.5	-	-	-	-	1	2.1	-	-	334	27.8
Information requested about a Company	14	2.0	2	3.6	-	-	1	4.2	1	5.6	-	-	-	-	-	-	18	1.5
Clarification of Law	12	1.7	-	-	2	0.6	1	4.2	-	-	-	-	-	-	1	14.3	16	1.3
Not specific/ not recorded	62	8.9	2	3.6	-	-	6	25.0	2	11.1	-	-	5	10.6	1	14.3	78	6.5
Other	18	2.6	-	1.8	-	-	1	4.2	2	11.1	3	10.7	-	-	1	14.3	26	2.2
Total*	699	100.0	56	100.0	322	100.0	24	100.0	18	100.0	28	100.0	47	100.0	7	100.0	1,202	100.0

*Note: Totals not equal to total received (i.e. 1,168) because in some instances more than one type of allegation was made in a single complaint.

Table 6.1 has shown that a high proportion of all matters received were from members of the public, and concerned 'civil' matters. Below are listed some of the incidents which fell into this category.

- Complainant stated that he had bought shares in a company and still had received no dividends.
- Complainant alleged that company had sold a loan entitlement, receiving money from the buyer, but had not accounted to him for the proceeds
- Cheque dishonoured
- Furniture removed by company, not seen again
- Director not validly nominated
- $5,000 deposit paid to company for home renovations, but no work done.

It should be noted, however, that the fact that a matter initially appears to be of a civil nature does not mean that further enquiries will not disclose a criminal offence. This is made clear in later discussion of offences involving abuse of limited liability (see especially pages 61, 63). Another important category was made up of complaints from the public alleging mismanagement. The examples below give some idea of the range of matters classified in this way.

- Company did not display name on office door
- Company failed to supply financial report
- Company had not answered a letter asking when the Annual General Meeting was to be held
- Company's funds had been misappropriated by director
- Office not open during business hours.

WHY MATTERS WERE FINALISED AT OR WENT BEYOND RECEIPT

To help discover the types of matters which most often develop into full-scale investigations, several cross-tabulations of receipt-stage items were made. Among these is table 6.2 which analyses each source for the proportions investigated or finalised at the receipt stage. It shows that almost seventy percent of complaints received from members of the public went no further than the receipt stage. Nonetheless complaints from this source still accounted for more than 50 percent of all matters investigated at least to the end of the preliminary stage. (for table 6.2, see page 32).

As table 6.3 shows only 24 matters initially were received by the Division from another Government agency or from a private association (the Australian Shareholders' Association). The agencies or associations concerned were:

TABLE 6.3 - GOVERNMENT AGENCIES OR PRIVATE ASSOCIATIONS WHO REFERRED COMPLAINTS TO THE CORPORATE AFFAIRS COMMISSION

Agency	Number of referrals
N.S.W. Consumer Affairs Bureau	3
Consumer Claims Tribunal	1
N.S.W. Ombudsman	3
Australian Shareholders' Association	2
Not stated	15
	24

TABLE 6.2 - SOURCE OF COMPLAINT BY WHETHER OR NOT IT WAS INVESTIGATED BEYOND THE RECEIPT STAGE

	Member of Public		Member of Parliament		Liquidator		Other Department		Lodged Documents		Survey of Stock Market		Stock Exchange		Other		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Investigated at least as far as preliminary stage	150	22.2	31	55.4	73	23.0	10	41.7	23	88.5	40	87.0	12	70.6	5	71.4	344	29.5
Examined in conjunction with an investigation which was already underway	27	4.0	5	8.9	6	1.9	-	-	2	7.7	1	2.2	1	5.9	2	28.6	44	3.8
N.F.A. at Receipt Stage	498	73.8	20	35.9	238	75.1	14	58.3	1	3.8	5	10.9	4	23.5	-	-	780	66.8
	675	100.0	56	100.0	317	100.0	24	100.0	26	100.0	46	100.0	17	100.0	7	100.0	1,168	100.0

The notable absence of some agencies from this list will be discussed later.

Table 5.9 in Section 5 has already summarized inspector's reasons for deciding on no further action at the receipt stage. Of particular interest is the proportion of times (66.6%) in which the reason for no further action was that a matter was judged to be 'civil' only or because no apparent offence at all had occurred.

Note also the volume of matters referred on to other agencies. At the receipt stage, 51 matters were referred on to other departments or agencies. In a further 14 instances such referrals occurred at a later stage of investigation.

SUMMARY AND DISCUSSION

The detailed tables on the receipt-stage have revealed three problems associated with the Division's approach to corporate crime.

These are:

a) the Division is receiving a lot of information which, because it is not used in investigations leading to prosecutions, is not used at all;

b) it is receiving too little data from some sources, and/or the information it receives is arriving too late for the Division to intervene effectively;

c) there is a 'grey area' of problems or injustices in the corporate sphere which is inadequately documented.

These three problems are discussed below.

(a) Receipt of information which, because it is not relevant to investigations, is not used at all

The foregoing data shows that for many of its 'leads' on corporate crime the Division had to sift through a mass of complaints from the public, many of which were found not to involve breaches of law. To an external observer, contrasting total matters dealt with to the amount of information judged to be valuable, this process may seem inefficient. However, there are many problems in attempting to find an alternative.

One suggestion would be to offload dealing with the initial stages of complaints from inspectors to less skilled personnel responsible for excluding matters which were civil or appeared to be trivial and forwarding only the more serious cases to investigators. However, this would be ill advised. In collecting the 1975 data the Bureau was constantly reminded of the importance of using highly skilled and experienced personnel at point of first contact with the public. There were several instances where a remark made or name mentioned during a seemingly irrelevant or trivial complaint was enough to warn an inspector that an offence may have occurred.

A more satisfactory approach would be for the division to compile more systematic and complete data on the companies it polices. If, as the present data suggests, the sheer volume of complaints is an important factor in deciding whether or not a company should be investigated it would seem sensible to keep comprehensive and readily accessible records on everything received so that incoming matters could quickly be evaluated in the light of previous events. If such information was kept 'on line'* inspectors would still be able to deal with the receipt stage but their job would be considerably simplified and their decisions more informed.

* i.e. immediately accessible by an English language programme at a convenient computer terminal.

Not only would comprehensive data on complaints received assist decision-making, it would also be a valuable research source, indicating areas of abuse where current criminal law is ineffectual.

(b) Too little information, or information received too late.

On the whole, the Division adopts a reactive approach to obtaining leads on corporate crime. Out of its seven major sources of information only two were 'self generating'. There were reviews of lodged documents and surveys of the stock-market and of newspapers. Between them, however, these two sources accounted for less than 6 percent of receipt stage matters, and there are reasons for concluding that the Division's heavy reliance on the five other 'external' sources may not be justified.

Previous discussion has already highlighted problems associated with relying on the general public as a source of information in this complex area. Many leads from this source proved to be of a civil nature only or to be without factual basis. Although almost all (23 out of 26) referrals from the Stock Exchange did incur a preliminary investigation, in most of these instances it was found that adequate evidence for a criminal prosecution could not be amassed. (For reasons, see the discussion of 'market' offences, pp 60 to 61). Only 10 out of the 24 matters referred by other agencies were found to warrant even a preliminary investigation, and although a high proportion of complaints from M.P.'s were taken beyond the receipt stage this may be because a complaint from an M.P. often culminates a series of allegations from other sources.

One source for which a relatively large number of matters were not finalised at receipt was the liquidator's report. Out of the 317 reports received 73, or 23 percent, incurred at least a preliminary investigation. Liquidators can be an important source of information about directors who shelter behind limited liability in order to incur debts which their company will be unable to pay. This type of activity is prohibited by Sections 374A to 374C of the Companies Act. As the law now stands, however, an officer can only be found to have breached these sections if the company subsequently has 'failed' (see S.374E for the definition of 'failure'). This virtually compels the Division to rely on liquidators for a lot of its initial information. However, there are reasons for doubting whether S.306 reports invariably will give evidence of offences that may have occurred in failed companies.

A liquidator generally only gains control of a company after the damage had been done, after the parties concerned have concluded that the financial position is such that there is no alternative to a winding up. Investigating allegations in a liquidator's report often, therefore, has the effect of 'shutting the door after the horse has bolted'. In addition, witnesses' memories about events long-past may often be clouded, and important evidence may have been lost or destroyed.

It is not a liquidator's primary function to act as a policeman. Whether appointed by the court or as part of a voluntary winding up, his job is to realize a company's assets so that creditors and investors receive the maximum possible returns. Since assets tied up in a company undergoing liquidation tend to depreciate it is important for both shareholders and creditors that the process be concluded quickly. It is unreasonable to expect a liquidator to devote long periods of time to following up clues about possible offences, particularly if funds are scarce.

Nothing in the data suggests that the requirements of S.306 are not diligently observed. Nonetheless, it must be recognised that the interests of liquidators and company investigators need not always coincide and that, despite the limitations imposed by the law, the Commission should think seriously of finding ways to supplement or anticipate the information which liquidators can supply.

So far only the sources from which at least some information was received during 1975 have been discussed. It must also be pointed out that there are important areas from which the Division did not receive information, even though it might have been expected. One of these is company auditors.

Right from the earliest companies legislation, regular and independent audits have been seen as the most effective method of protecting parties who have a financial stake in, but do not control, companies. Under the law in New South Wales only certain exempt

proprietary companies are immune from having their accounts audited at least once a year. Further emphasis on the auditor's role in protecting investors is found in S.167(8) and (9) of the Companies Act, which requires that the Commission be notified if any evidence of lawbreaking is discovered during an audit.

Despite this requirement, the 1975 system recorded only three matters as received directly from auditors. There may be several reasons for this. One has to do with the statistical system itself: in a few instances the fact that a matter came from an auditor may have been overlooked, because the statistical form did not include a special code for referrals from this source.

Other possibilities relate more to the complexity of accounting rules and the relationships between companies and their auditors. Some forms of corporate law breaking may have become so complex and indirect that an audit will no longer show them up. In addition, recently, there has been considerable debate over whether there exist unequivocal standards whereby auditors can judge whether funds have been used properly or improperly, or whether accounts are 'true and fair'.* If an auditor does detect a matter in this 'grey area', where there are no unequivocal standards, it is likely that he will attach a qualifying note to his audit report rather than directly contacting the investigation Division.

Another factor which cannot be ignored is that auditors still lack complete financial independence from company directors. The 1971 amendments to the Act, which considerably added to an auditor's duty to report breaches, also gave him qualified privilege against defamation and strengthened his tenure of office. An auditor now can only be removed from office by an ordinary resolution of a general meeting. Special notice of this meeting must be given to the auditor himself, to the Company Auditor's Board and to all shareholders. The auditor may then make special representations to the company and to its members. He may also demand that these representations be read aloud at the general meeting and that he be allowed personally to address it.

Despite these amendments, auditors are still vulnerable in instances where alleged breaches have been committed by directors who control the required majority of votes at the general meeting, or where the non-controlling shareholders are completely inactive. Thus, notwithstanding all the safeguards of the law a determined director often can remove an auditor with whose work he is dissatisfied.

Finally, it should be noted that in some ways there is a parallel between auditors and company liquidators. Although the law may require them to report violations of law of which they become aware, this does not mean they have a primary duty to 'ferret out' all possible evidence of lawbreaking.

Another relatively untapped source of information about possible corporate misconduct was other government agencies or private associations. During 1975 only 26 matters were referred to the Division from such sources. As later discussion will show, at least one type of corporate crime seldom occurs without 'warning signs': indications that a company is financially unstable. Agencies such as the Water Board, the Sydney County Council, various local government bodies and the Workers' Compensation Commission, to name a few, supply services to, or have other sorts of dealings with the private sector. They could be educated to look for these 'warning signs' and pass them on to the Commission.

To sum up, because of its reactive policy with regard to obtaining initial leads on corporate crime, the Division is not gaining access to information which might help it prevent offences, rather than merely investigate them after they have occurred. It is important that some ways be found to make the Division more active in seeking evidence of corporate misconduct.

* ....."within certain flexible extremities, "true"and "fair" can mean very much what directors and auditors want them to mean'.
F.J.O. Ryan 'A True and Fair View' Abacus, Vol. 3, No.2, Dec, 1967.
Note also that on 17th November, 1977, the Attorney General of N.S.W. announced the establishment of a Steering Committee on Accounting Standards which will review all existing standards for financial reporting and make recommendations for reforms. See also R. Chambers 'Accounting, Evaluation and Economic Behaviour' Prentice-Hall Inc., Englewood Cliffs, N.J., 1966 for a proposed alternative approach to financial reporting.

In making these conclusions, it is acknowledged that:

. The Commission has hitherto judged that there are sound reasons for separating its 'preventive' and 'enforcement' roles. It believes that better co-operation in relation to 'preventive' inspection is achieved when a 'police' overtone, which implies suspected misconduct and the possibility of retribution, is eliminated. For this reason a conscious effort has been made to build up preventive capacity within the Corporate Finance and Accounting Division.

. The present study, which depended solely on data from the Investigation Division, has understated the role played by the Corporate Finance and Accounting Division.

. The Commission always has had far more criminal activity coming under notice than it has been in a position to cope with, and to be 'active' in seeking evidence of corporate conduct has therefore not been an available option.

All of these factors highlight the complexity of the corporate crime problem, to which no simple solutions are available. From the present data, however, it would seem that in many instances the distinction between prevention and enforcement is very blurry; (see pp40 to41 on procedural offences), and therefore that even if the functions of the Investigation and Corporate Finance and Accounting Division are kept separate they could be more closely integrated. Another point worth noting is that if the Investigation Division became more active in seeking evidence of corporate misconduct, this could have a deterrent effect on potential offenders. This would, in turn, reduce the Division's present workload.

Consideration therefore should be given to granting the Commission wider powers to inspect company records, regardless of whether a specific offence is suspected. A system of regular and rigorous inspections could be a useful means for deterring potential lawbreakers, and for maintaining the regular flow of information which is so important for effective detection and prevention of corporate crime.

(c) The grey area of 'civil' matters.

As Table 5.9 has shown, more than one in three reasons given for 'no further action' at the receipt stage was that the matter did not involve a breach of criminal law, but should be resolved through a civil action.

This figure points to a substantial 'grey area' in corporate behaviour: an area where a complainant felt he had been the victim of an injustice but where Division inspectors, with their more extensive knowledge and experience, considered that criminal law was powerless to intervene.

In any future statistically based research into the Division's activities, it is important that these 'civil' categories be further broken down. Among the important questions which more intensive research in this area might help resolve are:

- should the criminal law be extended to cover activities for which at present there are only civil remedies? and

- should the Commission adopt a policy of more actively supporting civil actions where it judges that individuals or groups have suffered an injustice although the criminal law has not been infringed?

In this context it should be noted that the C.A.C. gradually is becoming more active in civil matters. Thus it has intervened, on behalf of the Attorney General, in the affairs of charitable companies where mismanagement occurs, and on behalf of the same Minister various civil proceedings have been instituted under S.367B, S. 374D and S.178(9).* The present data indicates that serious consideration should be given to even more vigorous activity in these areas.

* Companies Act.

7 DETAILED DISCUSSION OF MATTERS INVESTIGATED BEYOND RECEIPT STAGE

INTRODUCTION

The calendar year,1975,saw the commencement of investigations* into 344 companies. However, by the end of July,1977, more than 18 months after the last of these had commenced, one in five was still incomplete, and of the investigations which had been finalised only 36 had reached the prosecution stage.

Such figures indicate not only that investigating company crime is time-consuming, but that convictions in this sphere are rare. This chapter attempts to explain why these problems occur, and to suggest methods for confronting them.

A typology of corporate offences will be constructed. From his research Hadden** identified four major types:

- management frauds and manoeuvres ('management' offences)
- offences involving the sharemarket ('market' offences)
- the abuse of limited liability ('trading' offences)
- frauds and subsciption offences;

and from the present data it is clear that there is one more category:

- procedural breaches.

In the next few pages each of these five types of corporate crime is defined and discussed. Then follows an attempt to categorise the Commission's investigations on the basis of the offence under investigation or disclosed at the end of the preliminary stage. The special problems inherent in attempting to type investigations in this way also will be discussed. Statistical comparisons then are made between the various types in order to clarify such aspects as the sorts of companies and amounts of money allegedly involved and the particular problems of each category of investigation. The chapter closes with a summary of the main points that haveemerged and suggestions for improved methods of investigating and preventing each type of offence.

TYPOLOGY OF CORPORATE OFFENCES

Management frauds and manoeuvres

These are defined as "all forms of illegitimate exploitation by directors and managers of shareholders and others with an interest in the (company's) assets"** Hadden points out that the factor which opens the way for this 'illegitimate exploitation' is 'the important division between legal ownership and effective control'.** In his earliest discussions Hadden concentrated on management offences in public companies. More recently, however, he has pointed out that large unquoted companies, which 'fall between the small unincorporated business and the public quoted company' may also be the scene of oppression of shareholders who have no effective say in management.***

* Investigation being defined as any enquiry which was taken beyond the receipt stage.

** T. Hadden P.E.P. Broadsheet 'Control of Company Fraud', Vol.34 No.503,168 p.284.

*** T. Hadden,'Company Law and Capitalism', London: Neidenfeld Nicholson 1972 p.232.

The basic theme of 'management' offences is that a company's controllers utilize its assets for their own benefit rather than considering the interests of all the members. This can be achieved in an almost infinite variety of ways. Below are listed a few:

- direct misappropriation: directors and/or managers simply embezzle company funds

- loans: company funds may be lent to controllers at low interest, without security, and with repayments over a very long period of time.

- exhorbitant fees, generous retirement funds, etc: directors pay themselves fees, endowments etc. which are grossly out of proportion to the work they actually perform

- channelling funds into private companies; various methods may be used to divert a large company's assets into smaller private companies owned by directors and/or managers. These include ensuring that the larger company buys the smaller company's assets at high prices, or conversely selling the larger company's assets to the smaller concern for low amounts. Directors may also ensure that their privately owned businesses enjoy favourable service contracts, etc., with the major company.

- Favouring own type of shares: not all shares in a company carry the same entitlements. Some give special voting rights, others entitle their owners to first claim (after creditors) to assets when the company is wound up. Directors may act consistently to favour the type of shares they own. Thus, if they own preference shares, which give the holder priority over other shareholders at a liquidation, they may do their best to ensure that the company does go into liquidation.

Whenever management crimes are perpetrated, a director will attempt to ensure that non-controlling shareholders remain in ignorance. Since the annual report containing the profit and loss account and the balance-sheet is the 'outsider's' major source of information, it is essential that these documents contain no data to alert him to what is going on.

Market frauds and manoeuvres

These offences can occur only whan a company's shares are listed on the stock exchange. The justification for a public share market is that because investors seek capital gains and/or high dividends on the stocks they buy, funds automatically will flow towards profitable and expanding companies and away from ones which are stagnating. This in turn will promote the overall efficiency of the economy.

For a sharemarket to operate in accordance with this rationale potential investors must be supplied with adequate data on the past performances and future prospects of companies whose shares are for sale. If it becomes clear that some have privileged access to relevant data confidence in the share-market will decline and investors may turn to other areas.

Market offences occur when a person or group makes unfair use of special information gained about a company's performance or prospects, or when an attempt is made to interfere with market forces. The Senate Select Committee Report on Securities and Exchanges contains detailed case-studies of the types of activities involved. Among the most prevalent are market rigging, insider trading and giving false or misleading reports to the stock exchange. These are described below.

(1) Creating a false price for shares (or 'market rigging')

There were several investigations for this type of activity in the current study. It involves buying shares not for their own sake but in order to maintain their listed price at a certain level. For example, if shares in a company are quoted at 50c but someone wants their price to be 75c he may instruct his broker to buy a quantity of them at the latter price, but to spread the purchases over several days. If few other people deal in the same shares at the same time, the listed price (which is based on the amount at which most of the shares are being traded) will become 75c.

Market rigging most often occurs in takeover situations. The following example, though complex, gives a clear idea of what may occur.

Someone owns shares in two companies: company A and company B. He effectively controls company A and decides that it should take over company B, acquiring the shares at market prices. He is, however, not satisfied to be paid the current price for his own company B holding. Therefore he creates a higher market listing using the technique described above, sells his company B shares at this level, then allows the market to subside to its normal level before the takeover proceeds.

If Company A decides to pay for the shares it acquired not in cash but by an exchange of shares, further market rigging may occur. Company A's listing may be given a 'boost' so that its shares can be exchanged for the maximum number of company B equities.

(2) Insider trading

This is possibly the best known type of market offence. It involves the use of privileged information about a company as the basis for buying or selling its shares at personal profit. Inside traders can include not only company directors and managers but also employees, persons who trade with a company and persons in receipt of special 'tips'.

(3) False reports to the stock exchange or misleading or inadequate replies to queries from that body.

Untrue information given to the stock exchange may either inflate or force down the prices of shares. Both situations can be turned to advantage by unscrupulous operators.

Trading Offences

Trading offences occur when a company director or manager, sheltering behind limited liability, continues to incur debts which he knows his company will be unable to pay. By doing so he may be defrauding a wide range of creditors, including customers, suppliers, debenture holders and financial institutions.

Trading offences can occur in a variety of circumstances. In some cases, directors may simply be blindly optimistic when their company is in trouble, refusing to countenance that they cannot 'trade their way' out of difficulty. At the other extreme, trading offences may be part of a premeditated scheme to extract money from the public; the whole purpose of incorporation being to trade at a loss but to pay directors generous salaries. A common theme among all these offences, however, is company controllers' extreme reluctance to allow a major source of their livelihood to go out of existence.

Not surprisingly, trading offences are most commonly detected or suspected among small proprietary companies. Such companies are more 'at risk' in that more of them go into liquidation. (See the analysis of liquidation figures, C.A.C. Annual Report 1976). However, even directors of large public companies theoretically can be guilty of trading offences.

The key to a 'successful' trading offence is to keep creditors unaware of the true financial position of the company. Once again, therefore, control over the content of financial reports is important.

Frauds or subscription offences

Included in this category are the types of activities associated with the traditional 'con man'. They include such things as:

- selling or hiring out assets which one does not own

- selling or hiring out assets which one does own, but to two or more parties simultaneously

- inducing people to subscribe to projects which will never be developed, or to pay for goods which do not exist and never will. The longer there can be a legitimate delay before the goods are produced, the more will the fraud be likely to succeed because customers or subscribers will tend to forget the original contract. For this reason subscription frauds commonly involve such things as long-term agricultural projects etc.

- selling franchises which turn out to have hidden 'catches'.

A central characteristic of all frauds and subscription offences is that they could have been perpetrated by persons working outside the company sphere. Working through a company may make the administration of a fraud easier and it may make it more difficult to identify its architect. However, fraud and subscription offences do not depend for their very existence on some factor unique to companies (such as limited liability, separation of ownership and control, or the existence of a sharemarket).

Almost every serious criminal manoeuvre that can occur in the corporate sphere conforms to one of Hadden's four types, outlined above. However, a high proportion of company law aims to do more than provide punishment for specific types of activity. It has the more general purpose of providing a corporate environment in which unethical behavour will be unable to survive, let alone flourish. To encompass violations of these kinds of laws the fifth category of 'procedural' offences must be used.

Procedural Offence

Procedural offences can be committed in every type of company. These are of three basic types:

(i) Failure to comply with regulations aimed at ensuring adequate disclosure. The rationale of these regulations is that private individuals involved in the commercial sector will protect their own interests as long as they have adequate information. Among the sections of company law which conform to this rationale are laws which specify:

- that most types of companies publish an annual report, which must contain certain basic information

- that every company should have a registered office, open for a minimum number of hours each day

- that all companies have a register of directors, which can be inspected by the public

- that directors should disclose any interest they have in contracts with a company

- that all companies keep proper accounting records (this law also aims to ensure that small businessmen have some idea of the financial status of their companies and therefore cannot unknowingly commit trading offences)

(ii) Violations of laws which prevent specific categories of persons, shown by experience to be particularly 'dangerous', from acting as directors. Two sections are particularly important in this regard:

- Section 122 of the Companies Act, which bars a person with a relevant* conviction

and

- Section 117, which bars an undischarged bankrupt

(iii) Violations of sections which facilitate the investigations of company crime.

Some of these sections have already been mentioned, they include

- S.7(9) Fail to surrender relevant documents to Commission Inspector

- S.374A Fail to surrender books, etc. to liquidator.

HOW THE INVESTIGATIONS WERE CATEGORISED

Each investigation was assigned to one of six categories according to the type of matter under investigation or disclosed at the end of the preliminary stage. Five of the categories corresponded to the five types of offence outlined above. Thus, if at the end of the preliminary stage an investigation mainly concerned the possible exploitation of company members by management, it was classed as a 'management' investigation, if attention focussed on a possible market offence it was classed as a 'market' investigation, and so on. The sixth category corresponded to investigations where no specific type of offence was under investigation or had been disclosed throughout the preliminary stage: the Division inspectors merely had been 'exploring' for evidence of any type of violation. Investigations of this type were categorised as 'general exploratory.'

Although breaking investigations down into these six categories was essential for obtaining a clearer understanding of the Division's activities, one or two notes of caution should be sounded.

As with most typologies, there is a degree of overlap between categories. For example, it is sometimes difficult to decide how to classify a violation of law which is on the borderline between being a purely procedural offence and one which is part of a criminal manoeuvre. Similarly, there are problems in deciding whether some offences are part of a 'market' scheme or whether they have more to do with management's exploiting shareholders. In both instances the same legal offence may indicate either two types of crime and further background research is needed before deciding on the correct category.

Another problem arises because many company investigations involve more than one offence. Thus almost every criminal manoeuvre in a company (whether classed as management, market, trading or fraud) also involves procedural breaches, and alleged management and market offences are also often closely associated.

To some degree this problem was resolved by the fact that only the 'principal' offence (ie. the offence for which the law provides the most severe penalty) was collected at the preliminary stage. However, it must be acknowledged that assigning an investigation to just one category still produces a distortion in some instances where more than one type of offence may be involved.

Table 7.1 shows the results of the classification, which provided a basis for the following statistical analysis of investigation.

* Defined as relevant are: any offence connected with the promotion, formation or management of a corporation, any offence involving fraud or dishonesty punishable by imprisonment for 3 months or more, insider trading offences and not keeping proper books of accounts.

TABLE 7.1 - TYPES OF MATTERS INVESTIGATED BEYOND THE RECEIPT STAGE

Type of Matter	Number of cases
Management	33
Sharemarket	62
Trading	83
Fraud	14
Procedural	103
General exploratory	49
	344

STATISTICS ON VARIOUS TYPES OF INVESTIGATIONS

This section presents statistical data on the companies involved in each type of investigation. Table 7.2 shows the types of companies involved.

TABLE 7.2 - TYPE OF COMPANY INVOLVED IN EACH TYPE OF INVESTIGATION

Type of Company	Type of Investigation						
	Management	Share-Market	Trading	Fraud	Procedural	General Exploratory	Total
Proprietary, non-exempt	2	-	5	-	5	-	12
Exempt Proprietary	10	5	74	12	75	39	215
Public, Limited by Shares	10	46	1	-	12	4	73
Public, Limited by Guarantee	3	-	-	1	7	3	14
Public, No Liability	8	11	-	-	2	-	21
Not Relevant*	-	-	3	1	2	3	9
	33	62	83	14	103	49	344

* Investigation was of an unincorporated business.

Of particular interest is the high proportion (36 percent) of management investigations involving private companies. Hadden's point, that oppression of minority shareholders may also occur in companies not subject to the special listing requirements of the stock exchange,may account for some of these cases. It is also possible that shareholders in large public companies are less likely to become aware of possible exploitation by directors, and therefore the Commission is less likely to be informed. Five 'market' investigations related to non-public companies. In all of these instances the company was being investigated for its activities as a dealer in the shares of a public company.

Where incorporated

Table 7.3 shows whether companies investigated for each type of offence were registered in New South Wales or elsewhere. Note the relatively high proportion of companies involved in suspected 'market' offences which originally were incorporated outside this state.

TABLE 7.3 - PLACE OF INCORPORATION

	Management	Sharemarket	Trading	Fraud	Procedural	General Exploratory	Total
Incorporated in New South Wales	30	47	82	14	100	48	321
Incorporated elsewhere	3	14	-	-	3	1	21
Not Relevant/ Recorded	-	1	1	-	-	-	2
	33	62	83	14	103	49	344

Operating Status of Companies Investigated

Table 7.4 shows the operating status of companies investigated at least as far as the preliminary stage. Eighty-three percent investigated for trading offences were either in liquidation or had ceased operating. This is not unexpected, since by definition trading offences can only occur when a company is in dire financial straits. The high proportion of companies in liquidation investigated for other types of offence is more interesting. It re-emphasises the remarks made earlier about the Division's sources of information. Unless a company fails and/or a liquidator is appointed there may be little opportunity for the investigator to become aware of any offence.

TABLE 7.4 - OPERATING STATUS OF COMPANIES IN EACH TYPE OF INVESTIGATION

	Management	Sharemarket	Trading	Fraud	Procedural	General Exploratory	Total
Apparently operating	21	58	10	10	52	34	185
In liquidation	7	4	59	3	37	9	119
Receiver appointed	2	-	3	-	4	-	9
Under official management	-	-	-	-	1	-	1
No longer operating	3	-	10	1	7	6	27
Not recorded	-	-	1	-	2	-	3
Total	33	62	83	14	103	49	344

Age, at time investigation commenced

Companies investigated in connection with possible trading procedural or fraud offences, generally were younger than companies where market and management violations were involved.

TABLE 7.5 - AGE OF COMPANIES IN EACH TYPE OF INVESTIGATION

	Management	Sharemarket	Trading	Fraud	Procedural	General Exploratory	Total
Under 5 years	11	4	53	10	62	28	168
5-9 years	10	26	19	-	19	10	84
10-14 years	1	5	4	1	6	5	22
15-19 years	2	7	1	-	7	5	22
20 years or more	7	16	2	-	6	-	31
Not recorded	2	4	4	3	3	1	17
Total	33	62	83	14	103	49	344

Paid-up capital

Table 7.6 shows that companies where there were suspected trading offences or frauds generally had low paid-up capital, whereas those investigated for management and market offences had more substantial shareholders' equity. Although procedural offences occurred mainly among companies with low paid-up capital (50.1 percent had $1,000 or less), almost one in four had substantial capital assets.

TABLE 7.6 - PAID UP CAPITAL OF COMPANY IN EACH TYPE OF INVESTIGATION

	Management	Sharemarket	Trading	Fraud	Procedural	General Exploratory	Total
$1 - $50	2	1	32	7	41	17	100
$50-$1,000	2	2	16	3	11	4	38
$1,000-$10,000	3	-	23	-	11	10	47
$10,000 plus	24	59	6	2	29	8	128
Not relevant/ Not recorded	2	-	6	2	11	10	31
	33	62	83	14	103	49	344

In the light of the data on their capital (57.8% at $1,000 or less), age (63.5% under 5 years) and operating status (83% in liquidation or no longer operating), it is important to examine the reported deficits of companies investigated for possible 'trading' offences. In particular, it is useful to contrast these deficits with the original paid-up capital. Table 7.7 does this.

TABLE 7.7 - PAID UP CAPITAL AND REPORTED DEFICITS OF COMPANIES SUSPECTED OF 'TRADING' OFFENCES

Reported Deficit	Paid-up Capital					
	$1-$50	$50-$1,000	$1,000-$10,000	$10,000+	Not known	Total
Under $50,000	14	5	5	-	-	24
$50,000 - $100,000	7	1	2	-	-	10
$100,000 - $500,000	6	5	9	5	-	25
$500,000 - $1 million	-	-	1	2	-	3
$1 million +	2	3	3	-	-	8
Not known	-	-	-	-	13	13
	29	14	20	7	13	83

It shows that although the majority had been operating for less than five years these companies had managed to accumulate losses many times the size of their original paid-up capital. Some simple arithmetic makes the contrast even clearer. For 59 suspected 'trading' offenders which were in liquidation it was possible to record both the exact amount of paid-up capital and the precise liquidation deficit. The total capital of these companies was $225,917. Their total reported liquidation deficit was $8,772,759. In other words the 59 companies had accumulated debts more than 34 times greater than the original capital subscribed by their promoters.

Field of Activity

Another factor on which comparison can be made is a company's field of activity. Table 7.8 presents the relevant figures. Of some interest are the relatively high proportion of suspected 'trading offenders' in the building constructions and allied industries and in real estate; and the number suspected of management, market, and fraud offences in the 'pastoral and mining' area.

TABLE 7.8 - TYPE OF INVESTIGATION BY FIELD OF ACTIVITY, COMPANIES INVESTIGATED FOLLOWING COMPLAINTS RECEIVED DURING 1975

	Management	Share-Market	Trading	Fraud	Procedural	General Exploratory	TOTAL
Building, Construction and Allied Industries	4	4	26	1	17	4	56
Wholesale, Retail and Distribution	1	3	16	2	11	8	41
Import & Export	-	-	1	-	1	-	2
Financiers and Investors - Leasing and Hire Purchase	4	12	4	1	4	4	29
Pastoral and Mining	13	26	2	2	8	2	53
Steel & Engineering	2	1	5	-	4	2	14
Light Manufacturing and Chemical Processing	1	5	-	-	3	2	11
Electrical Sales and Manufacturing	-	1	1	-	2	2	6
Insurance & Trustee	1	2	2	-	6	3	14
Transport & Communication	1	1	3	-	5	1	11
Motor Dealers and Service Station	-	-	1	-	2	1	4
Real Estate and Land Development	1	2	8	5	16	8	40
Printing and Publishing	-	2	-	-	2	-	4
Professional Services - Law, Accountants, Consultant	-	-	1	1	6	4	12
Accommodation - Motels/ Hotels, Private Hospital and Nursing Homes	-	1	-	-	2	-	3
Public Relations - Advertising and Employment Agencies	-	-	-	-	1	-	1
Textiles and Clothing	1	1	3	-	2	1	8
Food Manufacture and Sales	-	-	5	-	-	-	5
Aircraft-Building, Maintainance and Transport	-	-	-	-	-	1	1
Entertainment and Restaurants	-	-	1	-	-	1	2
Maintainance and Cleaning	1	-	1	-	-	-	2
Club	2	-	1	1	7	3	14
Miscellaneous	1	1	-	-	2	2	6
Not recorded	-	-	2	1	2	-	5
TOTAL	33	62	83	14	103	49	344

Aggrieved Party

Whenever a matter was investigated beyond the receipt stage, we attempted to identify the 'aggrieved party'. 'Aggrieved party' can be defined as the person or group who, in the opinion of Division inspectors, was most active in seeking that an investigation should take place. This is not always identical with the source of complaint because on some occasions the person who first contacts the Commission merely is passing on information. 'Source' is also a very broad category, whereas 'aggrieved party' attempts to be more precise about the relationship between the person pushing for an investigation and the company about which the allegations are made.

TABLE 7.9 - AGGRIEVED PARTY, INVESTIGATIONS INITIATED DURING 1975

Aggrieved Party	Management	Share-Market	Trading	Fraud	Procedural	General Exploratory	TOTAL
Officer of Company	9	-	3	-	9	8	29
Shareholder	15	7	2	-	9	4	37
Stock Exchange	3	19	-	-	2	-	24
Liquidator or Receiver	1	2	47	1	34	5	90
Customer	-	-	3	2	1	5	11
Franchisee	-	-	-	4	1	2	7
Other Creditor	1	1	24	2	8	11	47
Other Government Department or Private Agency	-	1	1	1	6	-	9
No External Aggrieved Party (C.A.C. only)	3	28	1	1	22	3	58
Not Recorded	1	4	2	3	11	11	32
	33	62	83	14	103	49	344

Table 7.9 shows that for investigations of 'management' offences, another officer or shareholder of the company was most likely to be the aggrieved party. Market offences, however, seldom involved a private citizen or group putting pressure on the Division. Usually, a request came from the Stock Exchange or the Division conducted the investigation entirely of its own initiative.

More than 50 percent of all 'trading' investigations took place at the request of a liquidator or receiver. In a further 30 percent of cases a creditor was the aggrieved party. More than a third of procedural offences were investigated at the request of a liquidator or receiver. However, a substantial proportion did not involve any external 'aggrieved party'.

Stage Reached

Table 7.10 analyses the stages reached in the various types of investigations and whether or not the matter had been finalised.

TABLE 7.10 - STAGE REACHED AND WHETHER FINALISED OR STILL BEING PURSUED

Type of Investigation		Preliminary	Detailed	Legal Review	Court	Total
Management	Current	2	2	3	-	7
	Finalised	17	4	1	4	26
Market	Current	5	2	3	-	10
	Finalised	48	2	1	1	52
Trading	Current	9	7	12	3	31
	Finalised	41	7	2	2	52
Fraud	Current	-	-	1	1	2
	Finalised	9	-	2	1	12
Procedural	Current	6	2	2	5	15
	Finalised	62	7	3	16	88
General Exploratory	Current	2	1	1	-	4
	Finalised	42	2	1	-	45
TOTAL	Current	24	14	22	9	69
	Finalised	219	22	10	24	275

It will be noted that of the 24 matters finalised by court action, 16 resulted from the investigations of what was identified as a "procedural" matter. A further 3 involved enquiries into alleged trading offences and 4 involved alleged management offences. Few investigations categorised at the preliminary stage as market or fraud were resolved by court action.

Investigations discontinued before court stage: reason given

Table 7.11 contrasts the reasons given for discontinuing investigations of each type. Matters finalised at receipt are not included.

It is interesting to note the number of times 'offender cautioned by the Division and/or breach already rectified' was the grounds for 'no further action' on a procedural investigation. More than a quarter of the reasons for N.F.A. on this type of enquiry were in this category. This point will be discussed in detail later. However, it is obvious that the very light penalties generally imposed by courts for 'procedural' offences (see appendix IV) may help explain not only this figure but the fact that 'offences apparently committed, but insufficiently serious to warrant prosecution',

accounted for a further 6 per cent of procedural N.F.A.'s. Other factors frequently providing the basis for N.F.A. of a procedural matter were: 'no apparent offence' (17 per cent reasons given); 'lack of evidence' and 'no jurisdiction/referred on'.

Among investigations of possible trading offences, 'lack of evidence' was the most common reason for no further action, accounting for just under a third of all reasons (32 per cent). Then followed 'lack of available witnesses' and 'no jurisdiction/referred on; each accounting for about 19 per cent.

For market investigations, the most common basis for no further action was that 'no apparent offence has occurred'; this accounted for 53 per cent of all reasons given. In gathering the data, the researchers gained the impression not that there were frequent 'false alarms'in this area but that investigators have immense problems in obtaining basic evidence establishing a link between share-trading and the officers of any particular company.

'Insufficient evidence', which indicates that the Division had something to go on but not enough for a conviction, accounted for a further 15 per cent of reasons for N.F.A. on 'market investigations'.

Among the remaining two types of investigations, 'management' and 'fraud', there was a wide spread of reasons for no further action. No single category was dominant.

TABLE 7.11 - REASONS GIVEN FOR NO FURTHER ACTION, CASES FINALISED BEFORE COURT STAGE

	Management	Share-Market	Trading	Fraud	Procedural	Exploratory	TOTAL
Civil Only	4	2	3	3	1	12	25
Lack of Evidence	6	9	24	2	12	6	59
Lack of Witnesses	5	4	16	1	8	6	40
Too great a time has elapsed	1	-	5	-	-	-	6
Offence, but not serious enough to warrant prosecution	2	2	4	1	5	-	14
Alleged offender cannot be located	1	1	1	-	3	1	7
Alleged offender cautioned, given period of grace and/or breach rectified	-	1	3	1	23	1	29
No jurisdiction/ referred on	2	3	3	1	2	3	14
No apparent offence has occurred	4	32	12	2	14	16	80
Division lacks resources to pursue matter	1	2	1	-	-	-	4
Leave, come back later	2	2	1	-	6	4	15
Other	3	2	1	2	7	4	19
Total Reasons*	31	60	74	13	81	53	312
Total investigations NFA'd before prosecution	22	51	50	11	72	45	251

* Reasons not equal to total cases NFA'd because sometimes multiple reasons given for halting an investigation.

Amounts of Money and Numbers of Persons Involved

Whenever allegations of company crime are discussed, there is speculation concerning the amount of money and the numbers of people who may be involved. Items on both areas were included in the questionnaire. For every matter incurring a preliminary investigation it was asked:

- what amount of money did the investigators suspect to have been involved?
- how many people were under investigation?

Estimates on the amounts of money were arrived at using the following 'rules of thumb':

- management and fraud: any sums of money alleged to have been misappropriated or diverted to another company
- market: value of shares bought or sold through 'doubtful' transactions
- trading: deficit reported by liquidator
- procedural: any amount of money mentioned when original complaint was made (even if this later turns out to pertain largely to a 'civil' matter) or, if the company was in liquidation, the reported size of the deficit.

The questions were repeated for matters which went as far as the detailed stage. Table 7.12 and Table 7.13 contain the preliminary stage results, Tables 7.14 and 7.15 contain those for the detailed stage.

The tables show how difficult it is to arrive at precise estimates in these areas.

Figures on alleged amounts of money were possible for only 42.9 percent of preliminary investigations and 42.5 percent of detailed. Statements on the number of persons possibly involved were possible for only 53.4 percent preliminary cases and 92.5 percent of detailed investigations.

Nonetheless, from the figures which are available it is clear that investigations in the company sphere may involve sums of money which are vast in comparison with more well-known forms of lawbreaking.

TABLE 7.12 - AMOUNTS OF MONEY SUSPECTED TO HAVE BEEN INVOLVED AT PRELIMINARY STAGE OF COMPANY INVESTIGATIONS

Amount of Money	Type of Investigation						
	Management	Market	Trading	Fraud	Procedural	General Exploratory	Total
Under $500	-	-	-	2	2	4	8
$500 less than $1,000	-	-	2	1	1	1	5
$1,000 less than $100,000	16	13	33	4	17	11	94
$100,000 plus	4	11	18	-	5	1	39
Not applicable (no loss or gain to any party mentioned)	13	38	30	7	78	32	198
Total	33	62	83	14	103	49	344

TABLE 7.13 - NUMBER OF PERSONS UNDER INVESTIGATION AT PRELIMINARY STAGE

Number	Type of Investigation						
	Management	Market	Trading	Fraud	Procedural	General Exploratory	Total
One	16	9	24	1	39	3	92
Two	5	4	22	4	22	2	59
Three	1	-	9	-	4	-	14
Four	2	-	4	1	2	-	9
Five plus	2	1	6	-	-	1	10
Don't know	7	48	18	8	36	43	160
Total	33	62	83	14	103	49	344

Tables 7.14 and 7.15 present figures for the detailed stage.

TABLE 7.14 - AMOUNTS OF MONEY SUSPECTED TO HAVE BEEN INVOLVED, DETAILED STAGE OF COMPANY INVESTIGATIONS

Amounts	Type of Investigations						
	Management	Market	Trading	Fraud	Procedural	General Exploratory	Total
Under $50,000	-	-	11	-	3	2	16
$50,000 less than $100,000	-	-	2	-	1	-	3
$100,000 less than $500,000	6	2	6	-	-	-	14
$500,000 plus	3	1	1	1	-	1	7
Not applicable (no loss or gain to any party mentioned) or not recorded	5	6	13	4	24	2	54
TOTAL	14	9	33	5	28	5	94

TABLE 7.15 - NUMBER OF PERSONS UNDER INVESTIGATION AT DETAILED STAGE

Number	Type of Investigations						
	Management	Market	Trading	Fraud	Procedural	General Exploratory	Total
One	11	6	20	1	18	2	58
Two	1	1	9	4	6	1	22
Three	-	-	2	-	-	-	2
Four	1	-	1	-	1	-	3
Five plus	-	-	-	-	1	1	2
Don't know	1	2	1	-	2	1	7
TOTAL	14	9	33	5	28	5	94

Time-factors associated with company investigations

Table 7.16 contains a summary of time-factors associated with company investigations. It gives a breakdown for each type of investigation and for all enquiries taken together and shows:

- the average ages of companies involved

- the average times taken to complete those investigations which had been finalised by the end of the data collection period

- the average time already taken on investigations still underway at the end of the data collection period.

It should be noted that for a few investigations some relevant dates (eg. date of incorporation, date of receipt) were unavailable. These cases therefore had to be excluded when averages were calculated.

Table 7.16 shows that the youngest companies were those looked into in connection with possible trading offences. Their average age was 5.3 years. The average for companies where 'fraud' was suspected was a year younger (4.2 years) and 'procedurals' 18 months older (6.9 years). Suspected management offences occurred mainly among public companies. It is not surprising that their average age was almost 12 years, significantly more than the first three. To come under suspicion for a 'market' offence the company must have been listed, and as mentioned on page 8 this requires a long-term record of stable trading. This explains why companies involved in suspected 'market' investigations were much older than the others.

TABLE 7.16 - AVERAGE: AGE OF COMPANIES
TIME TO COMPLETE EACH STAGE
TIME TO FINALISE
TIME TAKEN SO FAR (CASES STILL CURRENT)
BY TYPE OF INVESTIGATION: MATTERS INITIATED DURING 1975

Type of Investigation	Average Age* of companies investigated		Average time taken to complete each stage of investigation								Average time taken, case finalised		Average time taken, cases still under investigation	
			Preliminary		Detailed		Legal review		Court					
	Average	Number of cases on which average based	Average	No. of Cases	Average	No. of Cases	Average	No. of Cases	Average	No. of Cases	Average	No. of Cases	Average	No. of Cases
Management	11.8 yrs.	30	5.0 mths.	29	8.6 mths	10	4.0 mths.	4	1.3 mths.	3	8.1 mths.	24	25.3 mths.	7
Market	16.2 yrs.	59	5.9 mths.	35	8.6 mths	6	7.1 mths	2	-	-	4.7 mths.	50	23.8 mths.	10
Trading	5.3 yrs.	81	6.7 mths.	73	8.3 mths.	22	3.8 mths.	2	2.6 mths.	2	9.5 mths.	50	25.7 mths.	27
Fraud	4.2 yrs.	12	4.8 mths.	12	8.7 mths.	4	4.7 mths.	4	0.8 mths.	1	5.7 mths.	11	28.1 mths.	2
Procedural	6.9 yrs.	101	5.9 mths.	94	3.7 mths.	25	3.7 mths.	18	4.1 mths.	15	7.6 mths.	88	26.1 mths.	4
General Exploratory	6.4 yrs.	48	2.5 mths.	39	8.7 mths.	3	-	-	-	-	3.6 mths.	38	24.4 mths.	4
All investigations	8.4 yrs.	331	5.6 mths.	302	6.8 mths.	70	4.1 mths.	34	3.4 mths.	21	6.8 mths.	21	25.5 mths.	64

* Based on the time elapsed between the incorporation of a company and the receipt of the complaint which prompted the enquiry. It is, therefore, not entirely accurate to call this the 'age' of a company, since some may have already been in liquidation or no longer operating when the complaint was received.

Average times for each phase of investigation

Figures on the average time taken to complete each phase of investigation should be looked at in conjunction with Table 7.10. This shows the progress made (i.e. the stage reached and whether or not finalised) for various types of matters.

In Table 7.16 the time taken for any phase of investigation is equivalent to the time elapsed between the date that phase was completed and the date at which the previous phase ended. In most instances, of course, investigators would not have been working continuously on a matter for all of this time.

From Table 7.16 it emerges that:

- preliminary investigations into possible management and market offences generally took less time than for other types, possibly because inspectors knew from experience that they were less likely to uncover 'real' evidence
(Note the high proportion of both types of investigation N.F.A.'d at the preliminary stage).)

- Investigations into suspected 'procedural' offences generally took less time to complete each phase subsequent to the preliminary than investigations into other types of offences.

- "trading" investigations generally took longest to finalise, whereas those into alleged market offences took the least time.
(Note again, however, the high proportion of "market" investigations that were finalised at the very early stages).

DISCUSSION OF DATA

The detailed cross-tabulation on the Division's investigations, presented above, have not been accompanied by any sustained theoretical discussion. An approach which concentrated only on testing theories would have run the risk of omitting data which might be useful for the Commission or for other researchers.

In the remainder of this section, however, a more selective approach is adopted. Taking each type of investigation in turn, a statistical profile is first built up, and is then used as a springboard for a general policy discussion.

Management Investigations

Statistical profile

Management investigations generally involved large companies, with paid-up capital in excess of $10,000. About 36 percent were private, the remainder were public. Allegations of exploitation by management concerned corporations in a wide variety of industries. However, 4 out of 10 were involved in finance, pastoral or mining activities. While the majority were still operating, about 36 percent were in liquidation or receivership, or had ceased to conduct business by the time investigations had commenced. The average age of 'management' companies was about 12 years. Only companies mentioned in the context of possible 'market' offences were older. Where information was available, it was found that alleged 'management' offences often involved vast sums of money.

'Management' investigations rarely resulted in prosecutions, most being finalised at the preliminary stage. One out of the 4 instances where an investigation categorised at the preliminary stage as 'management' did end up in court, the charges finally laid were of a purely 'procedural' nature.

Discussion

The statistical data, especially that on the length of investigations and the percentages prosecuted, has shown that the Division encountered immense problems in its attempts to investigate 'management' allegations. One reason is that there is a fundamental inconsistency between the 'ideal model' of corporate activity, as contained in company law and affirmed by judicial administration, and the structural realities of medium and large corporations.

The philosophy dominating company law is that directors merely act as 'fiduciaries' for shareholders. It sees them as a kind of trustee, though with greater discretion than administrators of conventional trusts. As a consequence of this philosophy company law itself does not attempt to provide a comprehensive definition of directors' rights and duties: this is left to the members of each individual company*. As the law currently operates, therefore, its major task lies not in directly supervising company controllers but in ensuring that shareholders have adequate information to do the job themselves.

In Australia, as in England, courts generally have adhered to this ideal. Both in civil and criminal cases there has been reluctance to upset the doctrine of 'majority rule' in companies or to make commercial judgements on how a company's affairs should have been conducted. Companies have been seen as sovereign states, in whose internal affairs neither government nor court should meddle except in extreme circumstances. Even in the few places where the law has been amended to define company controllers' powers directly the courts have been very conservative in their interpretations. Thus,although S.186 of the Companies Act allows for appeals by minority shareholders on the grounds that a company's action would constitute 'oppression', successful actions on this basis are rare. Moreover,prosecutions under S.124 of the same Act, which provides that directors should 'at all times act diligently and in the interests of their company' have been successful against only the most blatant of abuses. Without a comprehensive definition of directors' rights and duties and legal clarification of what are the interests of a company as a whole, courts are reluctant or unable to find directors guilty of this offence 'beyond all reasonable doubt'.

What the legislation, with its 'ideal model' of corporate self-regulation, does not recognise is that in all but the smallest modern companies shareholders are either unable and/or unwilling to exert control over directors.

One reason has already been discussed. Accounting rules with respect to company financial reporting are so 'loose' that directors often can keep shareholders 'in the dark' about the way their finances have been used. Even more importantly, however, minority shareholders - especially those in public companies - rarely take a close interest in the affairs of their company, nor do they often act as a coherent group (few even attend the annual general meeting). The apathy of shareholders in public companies was reflected in our data, where most of the allegations concerning 'management' offences related to proprietary companies, and in about a third of instances the 'aggrieved party' was another officer of the same company.

It is unlikely, therefore, that directors of larger companies will have their activities closely supervised by shareholders and it is not surprising that a few may take advantage of this to syphon off company funds. Moreover, in the instances where the Division's attention is drawn to such activities the lack of a comprehensive definition of directors' duties often means that it is powerless to take action.

There are three ways in which attempts might be made to rectify this problem.

The first involves leaving company law as it is but concentrating on blocking the specific avenues used to divert assets out of companies. This is the philosophy behind such measures as S.125 which forbids companies to make loans to their directors and S.129 which concerns retirement funds.

* Possibly the most striking evidence of this is the fact that directors do not even have a 'prima facie' claim to remuneration: the memorandum and articles of association must empower a company to pay them for their work.

The problem with this approach, as was mentioned in the introductory remarks on management offences, is that, there is no limit to the techniques which a determined director can use to channel money out of a company. As soon as one avenue is blocked, another is found. Moreover,the amounts of money that can be derived from illegal management manoeuvres vary greatly, according to the size of the company concerned. It is almost impossible for legislators to arrive at a penalty which is adequate for all offences (a good example is the present $500 fine for making loans to directors: hardly a disincentive when massive loans may be involved). Continuous amendments to the legislation, aimed at stopping specific manoeuvres, therefore can never amount to much more than a 'holding' operation.

Another solution, which still leaves the basic structure of company law unchanged, would be for government to tighten up and systematize disclosure provisions, and to take the initiative in this area away from directors themselves and direct it more towards independent bodies. An important step in this direction would be to devise a single set of accounting standards for financial reporting, and to establish an independent body which could protect auditors from arbitrary dismissal.

More comprehensive and intelligible disclosure would at least mean shareholders have a chance to protect their interests. However, the problem of apathy would still remain. Unless shareholders are prepared to examine information received and take action on it, more effective disclosure would not have a great impact on management offences. It is even possible that more voluminous disclosure would confuse shareholders and make them less likely to study it and take action.

In conjunction with moves aimed at improving disclosure, therefore, serious consideration should be given to legislative measures which would facilitate shareholder actions against directors and make it possible for the Commission to intervene if shareholders were unwilling to act on their own behalf. In this context the idea of a shareholders' tribunal, to which the Commission also would have access, is of interest, as is the much-discussed idea of allowing 'class actions' by shareholders.

Implicit in the idea of more active intervention by the Commission is that there would be a breakdown of the present rigidly observed distinction between the civil and criminal spheres with the Commission playing a more active role in the civil area.

In the context of fuller disclosure and wider initiatives by the enforcers of law, another possibility would be for the Commission to build up comprehensive records of the backgrounds of directors, with particular emphasis on the companies with which they are associated. This information either could be made available to shareholders directly, or it could be the basis for Commission intervention before relevant courts or tribunals if established. Using the data it had collected, the Commission could, for example, apply to have directors with 'bad records' suspended or removed from the boards of companies.

The third and most far-reaching approach would be to abandon the idea that it is primarily a shareholder's responsibility to regulate directors. Instead, the state could attempt to do this directly, via the law. This would involve restructuring companies legislation, so that it concentrated on clearly and comprehensively stating company controllers' rights and duties. It may also involve the establishment of special courts or tribunals, capable of evaluating a director's performance in a wider range of factors than conventional courts of criminal jurisdiction can allow. In this context it should be remembered that there already exist many areas of quasi-criminal jurisdiction where proof can be established 'on the balance of probabilities' rather than 'beyond reasonable doubt'.* It must be acknowledged, however, that enunciating a clear and comprehensive definition of the rights and duties of company directors would be a difficult task, and applying these rules also would pose problems for the legal system.

As with the previous alternative, this approach would involve dissolving the rigid distinction between civil and criminal matters, and interventions by the Commission in a wider range of corporate affairs. It would have the advantage of making law correspond much more closely with commercial reality. Its disadvantage is that it would impose added constraints upon the honest, as well as the dishonest, director. It might also add considerably to the expense of supervising corporate behaviour, and therefore any moves in this direction would have to be preceded by careful cost-benefit analysis.

*Cf. Commonwealth Trade Practices Legislation; the Child Welfare Act of N.S.W.

Care would have to be taken that the capacity of directors to take commercial initiatives was not inhibited.

Above,we have outlined briefly three possible approaches to the control of 'management' offences. It should be noted, however, that these are not mutually exclusive. Perhaps the best solution would involve initiatives on all three fronts.

Market Investigation

Statistical Profile

Investigations into possible market offences generally involved large public companies, older than others mentioned during Division investigations (average age 16.2 years) and with substantial paid-up capital. Initial leads usually came from the Stock Exchange or from the Division's own survey of the market: there was generally no identifiable ''aggrieved party' external to these two authorities.

A high proportion of the Companies whose shares were linked with 'doubtful' market activities were active in the finance, pastoral and mining areas; 11 of them were 'public, no liability' (only mining companies can fall within this category). Preliminary stage figures showed that 'doubtful' share-trading often involved substantial amounts of money. More companies mentioned in this context had been incorporated outside the state than were companies involved in other investigations.

The data would suggest that investigating and prosecuting 'market' offences is an almost hopeless task. Ninety-one percent of all matters of this type were finalised at the preliminary stage after a comparatively brief enquiry. Moreover, although the reason most often given was 'no apparent offence', it seems that it was the almost total inaccessibility of evidence linking sharemarket activities to specific parties that contributed most to the decision.

Discussion

Whenever a company has shares which can be sold on a public market there will be conflicts of interest and the possibility of 'insider' activities. Directors, employees, stockbrokers and large institutional investors, to name just a few groups, always have greater knowledge about a company's performance and prospects than total outsiders and they or their associates can use this knowledge for their own gain. This leads businessmen to use phrases such as 'the bamboo curtain' to describe informal constraints they attempt to impose on themselves during their everyday business dealings.

Similarly, wherever markets have existed there have been attempts to influence or control them. Share markets are particularly vulnerable because of the low volumes of trading that occur in many companies' shares, and the high sensitivity of prices to market rumours.

Attempts to control illicit sharemarket activities using the criminal law generally are ineffective because the evidentiary burden of proof is too high. It must be shown not simply that certain share-trading took place, but that it was the result of insider knowledge or had the intention of rigging the market. Short of obtaining a direct confession from the defendant, there is little chance for the prosecution to establish these factors 'beyond reasonable doubt'.

One possible way around these problems would be to alter the onus of proof for market offences: for example to make share-trading by certain categories of people automatically an offence, regardless of intention. However, this would generate more problems than it would solve.

Insider trading provides a good example. Many public companies require their directors to own shares. Any blanket prohibition on share-dealing by insiders would make it impossible for directors either to add to or to sell off part of their holdings.

What the data confirms, therefore,is that law is inherently ineffectual against market-type offences. The flexible controls presently being exerted by the Stock Exchange are both the

first and the last line of defence against unscrupulous operators. However, the fact that in 26 cases the Stock Exchange referred a matter on to the Commission is clear evidence that it cannot cope with all instances of suspected malpractice.

The deficiencies of existing market regulators have already been well documented by the Senate Select Committee on Securities and Exchanges. Their solution is a National Securities Commission along the lines of the S.E.C. in the U.S., with the capacity to create its own regulations and apply a wide range of sanctions.

However, it must be acknowledged that even with these broader powers any regulatory body still would face immense difficulties in obtaining proof of market offences. Another point worth making in this context is that more coherent and intelligible accounting rules possibly could bring about a more rational market where illegal behaviour can more quickly be detected.

Trading Investigations

Statistical Profile

Although the average age of companies involved in trading investigations was only 5.3 years more than 80 per cent were already in liquidation or had ceased to operate. In 59 instances where both capital and a liquidation deficit were recorded it was found that they had built up debts more than 34 times the original capital.

Trading investigations mainly focussed on exempt proprietary companies active in 'service' areas such as building, retail and real-estate. The 'aggrieved party' was generally a liquidator, a receiver, or a company creditor. Although more trading than management or market investigations eventually resulted in a prosecution, the charges laid often related to a purely procedural matter, rather than specifically concerning abuses of the limited liability provisions.

Sixty per cent of trading investigations had been finalised before the prosecution stage. The main reasons for non-pursuance were 'lack of evidence' or 'lack of witnesses' (50 percent of all reasons). Three out of ten trading investigations were still underway at the end of the data collection period, almost one and a half years after the end of 1975.

Discussion

The strongest point to emerge from the files relating to suspected trading matters was that the issues in this area are rarely clearcut. Whenever a company encounters financial problems there will be a period when directors continue to trade even though prospects are bleak. It is unreasonable to expect that activity should cease immediately it becomes possible that a company will be unable to meet its debts.

A further complicating factor is that no company operates in isolation. When one company encounters problems this will affect others with which it interacts. Some of the Division's investigations involved tracing a chain-reaction among companies in difficulties where some (usually the largest) survived and met their obligations but others (the smaller ones) failed. At least one lengthy investigation revealed that a company suspected of trading violations to some extent itself had been the victim of default by a major supplier. It is not surprising, therefore, that courts may tend to take a very cautious attitude towards prosecutions for 'trading' offences, being reluctant to make judgements on the commercial wisdom of a director's actions and only convicting when there is strong evidence of deliberate fraud. Such caution inevitably would affect the number of matters the Division decides to bring before them.

As with alleged management and market offences, however, this judicial caution while protecting the innocent may well tilt the balance too far in favour of the guilty.

In the introduction it was shown that limited liability was devised to protect investors in large companies who played no part in running them. However, the data has shown that 'trading' investigations mainly concerned proprietary companies; sole-traders or partnerships which have availed themselves of incorporation. In these concerns, there are generally only a few shareholders, most of whom take an active part in directing the company's affairs. Extending limited liability in this area seems inconsistent with the original idea behind the law.

The only section of existing law which can abolish the right to limit liability is S.374D of the Companies Act. This allows the Commission to apply to the Court to declare an officer convicted of a 'trading' offence personally liable for all or part of the debts incurred by his company. However, as the present data has indicated, the Commission encounters formidable problems in obtaining a conviction in this area, and therefore S.374D cannot be a really effective deterrent to potential trading offenders.

Consideration could therefore be given to devising a new form of incorporation for small private businesses with low paid-up capital. Hadden* has pointed out that this would be consistent with practice in many free-enterprise countries. He suggests that a simplified form of statutory organization, like France's 'societe en commandite' or Germany's 'Kommanditgesellschaft' could be developed. Full limited liability would only extend to investors who were not directly involved in company management. Director-owners would have 'prima-facie' liability for debts incurred. It would be their task to provide justification for exemption. Factors to be taken into consideration could include the record of turnover of the company, the length of time it had survived, the previous business record of the director, and so on.

This would be a radical solution. Drafting the legislation and defining companies to which it would apply could be difficult, and even if the new laws were made to apply to a small range of private companies they would have profound effects throughout the economy. It should be pointed out moreover, that even without changing existing law many effective measures could be taken.

At present, a potential creditor's major source of protection from 'trading' abuses are the private credit rating agencies. For a price, they will compile a dossier on any company which can be used in deciding whether to extend it credit. One of the major sources of information is the record of civil claims courts where companies may be sued for outstanding debts. This information is made available to private agencies by the New South Wales Department of the Attorney General and of Justice.

Investigations Division officers also utilize civil claims data in the context of specific investigations into possible 'trading' offences. However, the Commission could make much more extensive use of civil claims information. It could be acquired and made available to any creditor rather than only to those who can afford the services of a private agency. It is acknowledged that a credit enquiry is generally considered to be a business cost, not a matter to be performed at the public expense. Nonetheless, abusing limited liability is a criminal offence and the prevention of such offences certainly is a State function.

In the context of self protection by potential creditors it is worth reiterating the point mentioned earlier; that government authorities who constantly deal with corporations could be encouraged to look for warning signs of financial instability, and to pass this information to the Commission. This data, if verified, could also be supplied to potential creditors on request. Nor is there any reason why the Commission should not compile dossiers on directors who seem habitually to be involved in corporate failures, and make this information available to the public. Some or all of the above suggestions may involve amendments to existing law. However, it should be emphasized that all are compatible with existing company law philosophy; that the advantage of limited liability should be granted if there are compensatory disclosure provisions. Moreover, if the Commission was to extend the range of information it makes available as suggested, it is imperative that a body such as the New South Wales Privacy Committee be consulted on the ways this information should be collected and disseminated. A minimum safeguard would be that all such data be made available to companies themselves, to challenge and rectify where necessary.

* 'Control of Company Fraud', op. cit., p.331.

In compiling the data, many instances were noted where alleged trading breaches appeared to have occurred more through ignorance of law and business procedure than for any other reason. This brings out a paradox with regard to corporate affairs. In our society it is accepted that persons aspiring to positions of responsibility should prove their fitness for the job. No-one could work as a taxi-driver, a pilot, a teacher or a medical practitioner, to name just a few positions, without demonstrating some basic competence in the field. There are no such barriers for company directors even though, as the data has shown, directors often have considerable financial responsibilities. Almost anyone with enough money to pay the incorporation fees can become the director of a proprietary company. Perhaps some basic standards should be developed to ensure that directors have at least a rudimentary knowledge of the relevant law and of basic bookkeeping.

A final point of interest about 'trading' investigations is the high proportion of exempt proprietary companies involved. Great Britain, which has provided the model for much of company law, abolished the 'exempt proprietary' category in 1968. Now all companies must file accounts annually. This ensures both that companies keep proper books (which in itself often prevents directors from making gross errors of judgement) and that potential creditors can inspect these documents if they have doubts about a company's financial stability. Perhaps Australian legislators should give thought once more to emulating the British example.

Fraud Investigations

Because of the small numbers in this category it is not possible to build up a statistical profile of fraud investigations. For the same reason very few general conclusions can be drawn from the data.

The 14 fraud investigations concerned real-estate and forestry schemes, and several franchise arrangements. In many instances, specialist opinions were required (eg. on whether a bona fide effort had been made to establish a pine forest) and sometimes even the specialists disagree. Because of the long-term nature of many of the schemes the Division often had been approached long after available evidence and witness had disappeared.

Despite these complications fraud investigations came closest to the traditional types of police enquiry and therefore it seems that traditional techniques, such as building files on doubtful characters and their 'modus operandi', are the best approach. The need for fuller data in this area dove-tails with the fact that one of the most effective ways of combating management, market and trading offences also lies in compiling more comprehensive information on companies and their directors.

Procedural Investigations

Statistical Profile

These investigations are among the most important undertaken by the Division. As was mentioned earlier, the 'procedural' sections of company law are the first barrier against more serious criminal manoeuvres.

In terms of types of incorporation, paid-up capital and areas of activity, procedural investigations involved a wider range of companies than other types of enquiries. Whatever the type of company, however, almost fifty percent were in liquidation, under official management or had ceased to operate by the time the Division initiated the enquiries. This reflects the Division's sources of information: in more than a third of cases a liquidator or receiver was classified as the 'aggrieved party'.

A higher proportion of 'procedural' than any other alleged offence was prosecuted. Charges were most often laid under S.117 (undischarged bankrupt, direct company) or S.122 (person with relevant conviction, direct company). Once any procedural matter is pursued beyond the preliminary stage thereis a high probability that it will be resolved by court action.

The most interesting statistic on procedural investigations was the number of times (more than 1 in 4) that 'alleged offender cautioned, and/or breach rectified' was the basis for a decision not to prosecute.

Discussion

The 'procedural' data makes it clear that simply obtaining maximum numbers of prosecutions was not the Division's first priority. It would be incorrect, however, to argue from this that it is gratuitously lenient toward corporate offenders.

A more plausible explanation is that the low penalties generally imposed often made a prosecution, with the administrative work this entails, hardly worthwhile. As appendix IV has shown, procedural offences rarely incurred fines in excess of $500, and in many instances $50, or a dismissal under S.556A of the Crimes Act, was the only penalty imposed.

Support for this explanation comes from overseas studies of agencies enforcing business law. An analysis of records from Britain's Inspectorate of Factories* for example, showed that although inspectors discovered frequent violations of the law (among 200 firms sampled, 3,800 offences had been detected over a period of four and a half years) prosecution had taken place in only 1.5 percent of cases. The most frequent action was to notify the proprietor that an item required attention. Although inspectors were strongly committed to securing compliance with the law, court proceedings tended to hamper, not assist, this objective. Even if an employer was convicted, the fine imposed would be trivial (50 pounds on average) and the inspector lost valuable time in preparing the case.

The British data is confirmed by two U.S. studies, one of a Federal Agency's implementing labour legislation**, the other documenting efforts to enforce World War II black-market laws*** Both reported that frequent violations were detected but few were prosecuted.

It must be acknowledged, however, that there is not a complete parallel between our data and the studies cited. In the British and U.S. agencies, a high rate of prosecutions was traded off for vigorous inspection programs aimed at ensuring strict compliance with the law. The Division does not have any corresponding policy. It seems reasonable to suggest, therefore, that consideration should be given to implementing a pattern of inspections or to taking other measures (such as publishing the names of companies warned) that would compensate for the lack of prosecutions. If neither of these alternatives is acceptable, then consideration should be given to providing heavier penalties for procedural breaches so that it is worthwile for the Division to press charges.

Earlier discussions emphasised that there are 'blind spots' in the Division's field of vision of the corporate sector. One aspect of the procedural data reinforces this point.

In every instance where it was established that a director was an undischarged bankrupt or that he had a relevant previous conviction, the Division went ahead with a prosecution. Although the penalties imposed usually were low, (see Appendix IV) prosecution enabled the defendant to be removed from a company's board, thus eliminating a potential trouble-source.

Despite the high priority given to 'weeding out' undischarged bankrupts and persons with relevant convictions, the Commission has no systematic*** way for preventing individuals in these categories from becoming or remaining as directors. Most investigations which resulted in a prosecution for this offence arose out of a complaint from a member of the public. A more satisfactory solution would be regularly to screen the current list of

* W.C. Carson, 'White-Collar Crime and the Enforcement of Factory Legislation' (British Journal of Criminology, Vol 10, No. 4, pp 383-397)

** P. Blau 'The Dynamics of Bureaucracy' (Chicago: Univ. of Chicago Press) 1955.

*** M.B. Clinard,. 'The Black Market: A Study of White-Collar Crime' (New Jersey: Patterson Smith) 1969.

*** The C.A.C. does check relevant company documents against the Bankruptcy Register and its own 'recorded officer register' when staff are available. This provides some initial check and continuing sample checks. However, such intermittent searches can never have the 100 percent effectiveness which computerised files would allow.

company directors against up-to-date files on undischarged bankrupts* and persons with relevant convictions. This would make it impossible for persons in either category to become or remain directors. Such an automatic screening process would only be possible if there were computerised files on directors and the companies with which they were associated. However, as argued earlier, readily accessible information in these areas is an essential first step for combating any form of corporate crime.

* It is acknowledged that bankruptcy is a matter for federal jurisdiction; nonetheless it should not be impossible to obtain this data.

8. CONCLUSIONS AND SUMMARY OF PROPOSALS

Listed below are proposals and points for discussion which have emerged from the analysis.

The need for an integrated data system and the organizational changes needed to administer it (Proposals 1-8)

A major point to have emerged from the data on all types of investigations is that the Commission needs more comprehensive and accessible files on companies and their directors. Another is that compiling and verifying this information is 'per se' a legitimate objective for the Commission. Before enunciating in detail the proposals relating to such a system it is useful, briefly, to bring together the arguments supporting our conclusion.

Under Australian law it is a basic right for businesses to incorporate, for the companies thus formed to be largely self-governing, and for their members' liability to be limited. However, all of these features have been inherited from mid-nineteenth century British law, and history shows that none were granted without prolonged debate. The condition on which they were finally conceded was that there should be a compensatory duty on directors to provide full and accurate disclosure about their companies' affairs.

During the 20th Century, Australia has seen an explosion in the number of companies (especially private companies) operating, and relationships between companies have become more and more complex. Although the number of public companies has not increased at the same rate as private concerns, there has been a growing separation between ownership and control in large corporations.

Investors and creditors of modern companies therefore need more and better quality information than did their counterparts last century. Moreover, often this information needs to be analysed and made coherent, by some disinterested party, before it can be used.

Despite this need, and although developments in information-processing in the last few decades have made the task technically possible, the extent and quality of information presently available is more consistent with 19th than with 20th century conditions.

As well as continuing to investigate specific instances of possible corporate crime, therefore, the Commission should move towards developing systems which could make possible the storage and immediate retrieval of data on the backgrounds of directors, including their past and present associations with other companies and also such information on companies as the asset/debt ratio, its records in civil claims courts, and its precise pattern of ownership. Such information should be integrated with confidential data listing complaints received concerning each company and the progress of investigations.

The Commission should develop a multi-file data system, the main files (or modes of access to information) relating to: companies, directors, investigations and prosecutions. Chief responsibility for the different files could lie with different Divisions e.g. the Registration Division could conveniently expand its computer storage of information on companies, and the current manual files on directors and prosecutions maintained by the Investigation Division could be maintained on computer. This arrangement would facilitate ready access to up-to-date information, and the possibility of linking the files for interrogation. The diagram in Appendix VI gives a schematic idea of how this data system could function.

Maintaining such a system should be one of the Commission's major functions. Such a development could mean a degree of restructuring within the Commission, with areas such as the Corporate Finance and Accounting Division, which now have the bulk of responsibility for applied research, becoming more closely integrated with the Investigation Division. The Investigation Division would no longer confine itself simply to following up specific suspected offences, but would increase its role in preventive activity by maintaining and verifying information.

The specific proposals are:-

1. The Commission should establish and maintain comprehensive computer files on companies and directors and on complaints received or investigations undertaken. These files should form an integrated data system. For instance, when investigators receive a complaint they should be able immediately to search the complaints file and retrieve details of other complaints made about the same company. Then they could search the companies file, and gain access to incorporation details and to data on the interrelationship between that company and others. Finally, they could search the directors file for information about its directors and their associations with other companies. The system should be designed in close consultation with a body such as the N.S.W. Privacy Committee.

See: Chapter 6 - Detailed discussion of the receipt stage

Chapter 7 - Detailed discussion of investigations

Appendix VI - Diagram of data systems.

p.15: the 1977 revisions; also Appendix II: the 1977 forms and Appendix III: the accompanying manual.

2. The files on companies (which should attempt to specify the relationships between companies) and directors should be publicly available. Such data would provide an effective basis for creditors and investors to protect themselves from exploitation (as would improved public information on other aspects of companies' performance cf. point 10, on the need for uniform accounting standards).

See p. 59 - 'management' investigations

p. 62 - 'trading' investigations

p. 63 - 'fraud' investigations

p. 63 - 'procedural' investigations

3. Directors should have access to files concerning themselves and their companies and should be able to challenge the accuracy of any item.

See p. 62: discussion of trading investigations.

4. Data of complaints made and investigations undertaken should not be publicly available. It should be stored 'on line' and used to assist Division inspectors to arrive at decisions on particular matters. It would also allow for periodic reviews of progress made, both in particular investigations and by the Division as a whole.

See p. 33: discussion of 'receipt' stage - and whole of chapters 5-7.

5. Registration data, integrated with the new data system, should be used more effectively to provide statistical background on the total population of companies. At present, such statistics are completely lacking, yet without them there can be no useful research concerning the types of companies 'at risk' of becoming involved in corporate offences.

See pp. 16 - 28: overall outline of data.

6. The possibility should be explored for government bodies which constantly provide services for the private sector to be educated to recognise signs of financial instability and to remit such information to the Commission. In doing this, the government would be acting in the same way as a private credit rating agency; this suggestion would need very careful investigation before being implemented.

See p. 33: discussion of the 'receipt' stage: p. 62: discussion of 'trading' investigations.

7. The Commission could make greater use of judgements of civil claims courts in New South Wales. For example, the data could automatically be incorporated in the Division's files and could even be made available to the public.

See p.62: discussion of 'trading' investigations.

8. If the integrated data system were established, the gathering and verifying of data on companies and their directors would have to be seen as a 'bonafide' and important objective for the Division. Inspectors' powers would need to be expanded to allow them to inspect and/or copy relevant company documents, even when no specific offence is alleged.

See p. 36:discussion of 'receipt' stage.

Points for Discussion (Points 9-15)

9. Consideration should be given to rethinking the convention of limited liability, and the scope of its exemptions particularly for small private companies of the owner-director type.

See p.62: discussion of 'trading' offences.

10. This report highlights the importance of devising accounting standards which would ensure that corporate financial reports are clear and unequivocal. Some moves have been made (see e.g. p.35). Consideration could be given to establishing an independent tribunal to which auditors can appeal if they consider they have been unjustly dismissed.

See p.35: receipt stage

p.59:'management' investigations

p.61:'market' investigations

11. Consideration could be given to laying down rudimentary standards of knowledge of company law and bookkeeping for attainment by all Company controllers.

See p.63:'trading' investigations.

12. Consideration could be given to the further breaking down of the distinction between civil and criminal matters which the Investigation Division presently observes.

See p.36: the 'receipt' stage,

p. 59: 'management' investigations

13. Consideration could be given to abolishing the 'exempt proprietary' category of companies as was done in England in 1968.

See p. 63: 'trading' investigations.

14. Consideration could be given to altering the law on some corporate offences, so that proof need be established 'on the balance of probabilities' rather than 'beyond reasonable doubt'.

See p. 59: 'management' investigations.

15. If the Investigation Division continues merely to warn directors for minor procedural breaches, consideration could be given to implementing a pattern of inspections or to taking other measures (such as publishing the names of companies warned) that would compensate for the lack of prosecutions.

If neither of these alternatives is acceptable, then consideration should be given to

providing heavier penalties for procedural breaches, so that it is worthwhile for the division to press charges.

See p.64: 'procedural' investigations.

APPENDIX I - 1975 DATA COLLECTION FORM

NAME OF COMPANY.....

FILE NUMBER.....

SERIAL NUMBER.....

TEAR OFF

STATISTICAL REPORT OF MATTER RECEIVED BY CORPORATE AFFAIRS COMMISSION

1. Serial Number.....

STAGE I - RECEIPT OF MATTER

2. Date Received.....

3. Source of Matter (enter code: Yes 1, No 2).

Representation from Member of Parliament.....

From member/s of the Public.....

Survey of stock market/newspaper/own investigation.....

306(3) report.....

Referred by other department/s.....

Review of lodged documents.....

Other (specify).....

4. General nature of matter (enter code: Yes 1, No 2)

1. Mismanagement of company (offence alleged).....
2. Report (S.306(3)).....
3. Stock market activity.....
4. Civil dispute (e.g. debt owing, etc.).....
5. Not specific.....
6. Other (specify).....

5. Action recommended after receipt of matter (enter code).....

1. Further investigation
2. No further investigation

If no further investigation, go to question 27.

STAGE II - PRELIMINARY INVESTIGATION

6. Company is (enter code).....

1. Proprietary (non exempt)
2. Public
3. Exempt Proprietary

7. Company type (enter code)..... __

   1. Limited by shares
   2. Limited by guarantee
   3. No liability company
   4. Limited by shares and guarantee
   5. Unlimited liability

8. Status of Company (enter code)..... __

   1. Apparently operating
   2. In liquidation
   3. Receiver appointed
   4. Under official management
   5. Other (specify).....

9. If company in liquidation, size of deficiency. (Enter code)..... __

   1. Under $50,000
   2. $50,000 less $100,000
   3. $100,000 less $500,000
   4. $1 million plus

10. Date of incorporation/registration..... _____

11. Place where company registered/incorporated (enter code)..... __

   1. New South Wales
   2. Victoria
   3. South Australia
   4. Queensland
   5. Tasmania
   6. Western Australia
   7. Australia Capital Territory
   8. Northern Territory
   9. Overseas

12. Field of activity company involved in (enter code)..... ___

13. Paid up capital of company (enter code)..... __

   1. $1 - $50
   2. $50 - $1,000
   3. $1,000 - $10,000
   4. $10,000 plus

14. Has there been any significant change in nature of business during past five years. Yes 1, No 2, Not known 3..... __

15. Amount of money subject of preliminary investigation (enter code)..... __

    1. Under $500
    2. $500 less than $1,000
    3. $1,000 less than $100,000
    4. $100,000 plus
    5. Not known/stated
    6. Not applicable

16. Classification of aggrieved party (enter code)..... __

    1. Officer of company
    2. Shareholder/debenture holder
    3. Outside creditor
    4. Other (specify)

17. Principal offence under investigation (enter code)..... _____

18. Number of people under investigation..... __

19. Date preliminary investigation completed..... _____

20. Action recommended after preliminary investigation (enter code)..... __

    1. No further investigation
    2. Further investigation

    If no further investigation go to question 27.

STAGE III DETAILED INVESTIGATION

21. Amount of money subject to intensive investigation (enter code: see question 9 for code)..... __

22. Principal offence pursued (enter code)..... _____

23. Number of alleged offenders on principal offence (enter number)..... __

24. Date detailed investigation completed..... _____

25. Action recommended after detailed investigation (enter code) ..... __

    1. Further pursuance
    2. No further pursuance

    If no further pursuance go to question 27

STAGE IV REVIEW

26. Action taken after review (enter code)..... __

    1. Proceed with principal offence pursued in Q.24.

2. Principal charge varied before legal review

3. Principal charge varied after legal review

4. No further action

If question 26 equals 1 go to 29; otherwise go to 27

27. Reason for discontinuing action or varying offence pursued (Enter code Yes 1, No 2)

1. Lack of evidence to establish commission of offence ..... —
2. Lack of evidence to establish identify of offender..... —
3. Witness/es unable/unwilling to testify..... —
4. Too great a time elapsed..... —
5. Offence, but not sufficiently serious..... —
6. Alleged offender cannot be located..... —
7. Alleged offender cautioned - given period of grace..... —
8. No jurisdiction - referred on..... —
9. Breach rectified..... —
10. Civil matter only..... —
11. No offence committed..... —
12. Lack of resources to further pursue matter..... —
13. Other (specify)..... —

28. If principal offence varied at review stage code new principal offence.... ____

29. Date review stage completed..... ____

STAGE V - SUBSEQUENT COURT ACTION

30. Court of Petty Sessions (includes committal proceedings)

(a) Action taken on Principal Charge (see q.22 or q.28 for principal charge) (enter code)..... ____

(b) If relevant, fine (enter amount)..... $ ____

(c) If relevant, compensation awarded (enter amount)..... $ ____

31. IF RELEVANT, DISTRICT COURT

(a) Action taken (enter code)..... ____

(b) Fine (enter amount)..... $ ____

(c) Compensation awarded..... $ ____

Final hearing date, District Court..... ____

32. IF PRINCIPAL CHARGE VARIED OR DISMISSED AT COURT

(a) Offence which attracted most severe penalty,(enter code)..... ____

(b) Action taken on this offence (enter code)..... ___

(c) Fine (if relevant) (enter amount)..... _____

(d) Compensation awarded..... _____

33. APPEAL LODGED No 1; Yes by offender 2; Yes by Crown 3..... _

34. Outcome: Allowed 1; Dismissed - withdrawn by appellant 2; Dismissed without variation 3; Dismissed with variation 4;..... _

35. If action varied, new action (enter code)..... _

(a) If relevant, fine (enter amount)..... $_____

(b) If relevant compensation awarded (enter amount)..... $_____

36. Date appeal determined..... _____

Appendix II 1977 Data Collection Forms.

CORPORATE AFFAIRS COMMISSION: INVESTIGATION RECORD

STAGE 1 - RECEIPT OF MATTER

Statistical No. ☐☐☐☐☐

Stage [1]

Section No. ☐☐☐

COMPANY NAME..... File No. ☐☐☐☐☐-☐☐

1. Date Received..... ☐☐/☐☐/☐☐

2. Source of Matter (enter code)..... ☐

Member of Parliament.....1	Own Investigation.....5
Member of Public.....2	306 (3) Report.....6
Survey of Stock Market.....3	Referred by other Government Department.....7
Review of Newspapers.....4	Review of lodged documents.....8
	Other (specify).....9

3. General Nature of Matter (enter code)..... ☐

Mismanagement of Company (offence alleged).....1	Civil Dispute.....4
Report 306 (3).....2	Not Specific.....5
Stock Market Activity.....3	Other (specify).....6

Act Section Code

4. If Offence Alleged, Enter Code..... ☐☐☐☐

5. Action Approved After Receipt (enter code)..... ☐

No further action.....1

Further action:

Referred to investigation which is already in progress.....2

Further investigation of specific allegation.....3

Further investigation - Section 7 (6) inspection.....4

Further investigation - other inspection.....5

6. If N.F.A., Give Reason..... ☐☐

Insufficient evidence to establish commission of offence.....Ø1

Insufficient evidence to establish identity of offender.....Ø2

Witness (es) unable/unwilling to testify.....Ø3

Statute barred.....Ø4

Insufficiently serious to warrant action.....Ø5

Alleged offender cannot be located.....Ø6

Alleged offender cautioned, given period of grace and/or breach rectified.....Ø7

No Jurisdiction, referred on.....Ø8

Civil matter only.....Ø9

No apparent offence.....10

Lack of resources to further pursue.....11

Other (specify).....12

CORPORATE AFFAIRS COMMISSION: INVESTIGATION RECORD

STAGE 2 - PRELIMINARY ENQUIRY

Statistical No. ☐☐☐☐

Stage 2

Section No. ☐☐

COMPANY NAME.....

7. Date Preliminary Enquiry Commenced..... ☐☐/☐☐/☐☐

8. Inspections carried out (enter code)..... ☐

Section 7(6) Companies 1 None 3

Other (specify) 2

9. If relevant, party pressing for investigation..... ☐

Officer of company	1	Outside creditor	4
Shareholder	2	Liquidator	5
Debenture holder	3	Other (specify)	6

10. If relevant and disclosed, amount of money subject to preliminary enquiry (enter amounts where relevant)

(a) Deficiency reported by liquidator $ ☐☐☐,☐☐☐,☐☐☐

(b) Money allegedly misappropriated $ ☐☐☐,☐☐☐,☐☐☐

(c) Other (specify) $ ☐☐☐,☐☐☐,☐☐☐

11. Possible offences under investigation or disclosed during preliminary enquiry (enter in order of importance)

	Act	Section	Code
Offence 1			☐☐☐☐
Offence 2			☐☐☐☐
Offence 3			☐☐☐☐

12. Total possible offences under investigation or disclosed (enter number; count offences not listed in question 11)..... ☐☐

13. Total possible defendants (enter number, if not known, code 99)..... ☐☐

14. Date Preliminary Enquiry completed..... ☐☐/☐☐/☐☐

15. Action approved after preliminary enquiry (enter code)..... ☐

No further action.....1

Further Action:

Detailed investigation of specific offence..2

Special investigation.....3

Hold, re-open at later date.....4

Refer to investigation already in progress..5

16. If no further action - give reason (enter code)..... ☐☐

Insufficient evidence to establish commission of offence.. Ø1
Insufficient evidence to establish identity of offender... Ø2
Witnesses unable/unwilling to testify..... Ø3
Statute barred..... Ø4
Insufficiently serious to warrant further action..... Ø5
Alleged offender cannot be located..... Ø6
Alleged offender cautioned, given period of grace and/or breach rectified..... Ø7
No jurisdiction - referred on..... Ø8
Civil only..... Ø9
No apparent offence..... 10
Lack of resources to further pursue..... 11
Other (specify)..... 12

CORPORATE AFFAIRS COMMISSION: INVESTIGATION RECORD

STAGE 3 - DETAILED INVESTIGATION

Statistical No. [| | | |]

Stage [3]

Section No. [| |]

COMPANY NAME.....

17. Date Detailed Investigation commenced..... [| | / | | / | |]

18. If relevant, amounts involved in detailed investigation:

(a) Deficiency reported by liquidator $ [| | |], [| | |], [| | |]
(b) Money allegedly misappropriated $ [| | |], [| | |], [| | |]
(c) Other (specify) $ [| | |], [| | |], [| | |]

19. Possible offences disclosed from detailed investigation (enter in order of importance)

	Act	Section	Code
Offence 1			[					]
Number of possible charges			
Offence 2			[					]
Number of possible charges			
Offence 3			[					]
Number of possible charges			

20. Total number of charges recommended after detailed investigation..... [| |]
(Include all charges, not simply those under offence 1 mentioned in question 19).

21. Number of possible defendants after detailed investigation (enter number, if not known code 99)..... [|]

22. Date Detailed Investigation Programme completed..... [| | / | | / | |]

23. Action approved after detailed investigation (enter code)..... [ ]

No further action 1

Further action:

Submit prosecution brief to legal section.....2
Special Investigation.....3

24. If no further action - reason (enter code)..... [|]

Insufficient evidence to establish commission of offence.....Ø1

Insufficient evidence to establish identity of offender.....Ø2

Witness(es) unable/unwilling to testify.....Ø3

Statute barred.....Ø4

Insufficiently serious to warrant further action.....Ø5

Alleged offender cannot be located.....Ø6

Alleged offender cautioned, given period of grace and/or breach rectified.....Ø7

No jurisdiction - referred on.....Ø8

Civil only.....Ø9

No apparent offence.....10

Lack of resources to further pursue.....11

7(6) of other companies.....12

Other (specify).....13

CORPORATE AFFAIRS COMMISSION

SEARCH REPORT

Statistical No. ☐☐☐☐

Stage 9

Date ☐☐/☐☐/☐☐

COMPANY NAME ..... File No. ☐☐☐☐☐-☐☐

REGISTERED OFFICE.....

.....

Company is: (enter code) (Prop. Non Exempt 1; Prop. Exempt 2; Public 3) ..... ☐

Company type: (enter code: Ltd. by shares 1, Ltd by guarantee 2, N.L.3, Ltd. by shares and guarantee 4, Other (specify) 5)..... ☐

Date of incorporation/registration:..... ☐☐/☐☐/☐☐

Authorised capital..... $ ☐☐☐,☐☐☐,☐☐☐

Place registered (enter code: N.S.W. 1 Other Aust. 2 Overseas 3)..... ☐

Field of activity (use Standard National Industries Classification Code)..... ☐☐

OFFICERS DURING PAST 3 YEARS: (i.e. Directors, Managers, Principal Accounting Officers).

NAME	POSITION	FROM	TO	SHAREHOLDING

Present number of Directors (enter number)..... ☐☐

Other shareholders (Show only major shareholders where appropriate)

Paid up capital: $ ☐☐☐,☐☐☐,☐☐☐ Issued capital:_____

Auditor (s):

Date last annual return lodged: Made up to: Date last document lodged:

Present status of company (enter code)..... ☐

Apparently operating 1 Receiver appointed 3
In liquidation 2 Other (specify) 4

Deficiencies reported by Liquidator (if relevant):..... $ ☐☐☐,☐☐☐,☐☐☐

If in liquidation, type: Court Order 1, Voluntary 2, Creditors Voluntary 3..... ☐

Registered charges: (S 100)

Index - Security industry licenses

Register of Directors and other officers:

Name Company Matter and Result

Bankruptcy records

Name S/O No. Date Remarks

Other relevant information (e.g., CIB: indices; District Court; etc.).

CORPORATE AFFAIRS COMMISSION : INVESTIGATION RECORD
PROSECUTION MEMO - CHARGE HEARD AT DISTRICT COURT

Statistical No. [ ][ ][ ][ ][ ]
Stage [7]
Information No. [ ][ ][ ][ ][ ]
Section from which prosecution issued [ ][ ][ ]
COMPANY NAME ..... No. [ ][ ][ ][ ][ ][ ]-[ ]
DEFENDANT NAME.....Number.. [ ][ ][ ][ ][ ]
Act Section Code
Charge..... [ ][ ][ ][ ][ ]

Date* Information laid ..... [ ][ ]/[ ][ ]/[ ][ ]
* Warrant issued
Informant/Inspector:.....
Arresting Officer.....Prosecutor.....
Date listed for committal hearing..... [ ][ ]/[ ][ ]/[ ][ ]
Committal Hearing did not proceed on because -
*(a) Summons not served
*(b) No return of service
*(c) Other reason.....
.....
Adjourned to.....
Date of Committal hearing..... [ ][ ]/[ ][ ]/[ ][ ]
Plea (Guilty 1, Not Guilty 2, No Plea 3, Ex-parte 4)..... [ ]
Adjudication (Prima Facie 1, No Prima Facie 2;)..... [ ]
Date Committed for trial..... [ ][ ]/[ ][ ]/[ ][ ]
Trial listed for hearing on.....
Trial did not proceed because.....
.....
Trial adjourned to.....
Trial heard on..... [ ][ ]/[ ][ ]/[ ][ ]
Judge.....
Plea: (Guilty 1; Not Guilty 2; No Plea 3; ExParte 4)..... [ ]
Outcome:(see outcome codes)..... [ ][ ][ ]
If offender gaoled,was sentence to be served concurrently with another arising from same investigation (enter code, Yes 1, No 2)..... [ ]
If relevant, amount of fine..... $[ ][ ][ ],[ ][ ][ ]
Costs.....
Investigation Register Noted:
Recorded Officers Register Noted

_____
Inspector

* Cross out whichever inapplicable.

CORPORATE AFFAIRS COMMISSION: INVESTIGATION RECORD

STAGE 4 - LEGAL REVIEW

Statistical No. ☐☐☐☐

Stage 4

Section No. ☐☐☐

COMPANY NAME .....

Note: This form is to be filled in by an Inspector after the documents are returned from Legal Review Section.

Actions recommended on principal offences

(see Q.19 for Principal Offences) Act Section Code

25 Offence 1 ..... ☐☐☐☐☐

a. Action recommended (enter code) ..... ☐

Proceed immediately, all charges	1	Proceed with all charges after requisitions	3
Proceed immediately, some charges	2	Proceed with some charges after requisitions	4
		No further action	5

b. If N.F.A., reason (enter code) ..... ☐☐

Insufficient evidence to establish commission of offence	Ø1	Offender cannot be located	Ø7
Insufficient evidence to establish identity of offender	Ø2	Offender cautioned, period grace and/or breach rectified	Ø8
Witness (es) unable to testify	Ø3	No jurisdiction - referred on	Ø9
Witness (es) unwilling to testify	Ø4	Civil only	10
Statute barred	Ø5	No apparent offence	11
Insufficiently serious to warrant further action	Ø6	Other (specify)	12

Act Section Code

26 Offence 2 ..... ☐☐☐☐☐

a. Action recommended (enter code) (see 25a for code) ..... ☐

b. If N.F.A., reason (enter code) (see 25b for code) ..... ☐☐

27 Offence 3 ..... ☐☐☐☐☐

a. Action recommended (enter code) (see 25a for code) ..... ☐

b. N.F.A., reason (enter code) (see 25b for code) ..... ☐☐

28 New offences to be prosecuted on suggestion of Legal Section (code in order of importance.)

Act Section Code

First new offence ..... ☐☐☐☐☐
Number of charges .....

Second new offence..... ☐☐☐☐☐
Number of charges .....

Third new offence ..... ☐☐☐☐☐
Number of charges .....

29 TOTAL NUMBER OF CHARGES TO BE PROSECUTED. ..... ☐☐

30 DATE BRIEF RETURNED FROM LEGAL DIVISION..... ☐☐/☐☐/☐☐

CORPORATE AFFAIRS COMMISSION : INVESTIGATION RECORD

STAGE 5 - PROSECUTION

SUMMARY OF CHARGES

Fill out a separate form for each defendant charged

STATISTICAL NO. [ ][ ][ ][ ][ ]

STAGE [5]

SECTION FROM WHICH PROSECUTION(S) ISSUED [ ][ ]

COMPANY NAME/S.....

DEFENDANT'S NAME..... NUMBER* [ ][ ][ ][ ]

	Act	Section	Code
Offence A			[ ][ ][ ][ ]
No. of charges laid			[ ][ ]
No. of charges for which convicted			[ ][ ]
Offence B			[ ][ ][ ][ ]
No. of charges laid			[ ][ ]
No. of charges for which convicted			[ ][ ]
Offence C			[ ][ ][ ][ ]
No. of charges laid			[ ][ ]
No. of charges for which convicted			[ ][ ]
Offence D			[ ][ ][ ][ ]
No. of charges laid			[ ][ ]
No. of charges for which convicted			[ ][ ]
Offence E			[ ][ ][ ][ ]
No. of charges laid			[ ][ ]
No. of charges for which convicted			[ ][ ]
Offence F			[ ][ ][ ][ ]
No. of charges laid			[ ][ ]
No of charges for which convicted			[ ][ ]

FINAL OUTCOME FOR THIS DEFENDANT (WHEN ALL CHARGES TAKEN INTO ACCOUNT)
(Enter code, for codes see 'outcome' table)..... [ ][ ]

IF DEFENDANT IMPRISONED, NON-PAROLE PERIOD (ALL CHARGES)..... [ ][ ]

IF DEFENDANT FINED, TOTAL FINE (ALL CHARGES).....$[ ][ ], [ ][ ]

Inspector.....

Date final charge determined by Court.. [ ][ ]/[ ][ ]/[ ][ ]

*Assign a separate number for each individual prosecuted.

CORPORATE AFFAIRS COMMISSION: INVESTIGATION RECORD
PROSECUTION MEMO - CHARGE HEARD AT COURT OF PETTY SESSIONS

Statistical No. [ ][ ][ ][ ][ ]
Stage [6]
Information No. [ ][ ][ ][ ]
Section from which prosecution issued [ ][ ]
No. [ ][ ][ ][ ][ ][ ]-[ ][ ]

COMPANY NAME .....Number [ ][ ][ ][ ][ ]
DEFENDANT NAME.....
Act Section Code
Charge..... [ ][ ][ ][ ][ ]

Date Information Laid:.....
Informant.....
Date Listed for Hearing..... [ ][ ]/[ ][ ]/[ ][ ]
Case did not proceed on because -
*(a) Summons not served .....
*(b) No return of service.....
*(c) Other reason.....
.....
Case adjourned to.....
.....
..... [ ][ ]/[ ][ ]/[ ][ ]
Case heard on.....
Name of Magistrate.....
.....
Legal Officer for Commission.....
for Defendant..... [ ]
Plea (guilty 1; not guilty 2; no plea 3; ex-parte 4)..... [ ][ ][ ]
Outcome (see 'outcome' codes)..... [ ][ ][ ]
If offender gaoled, was sentence to be served concurrently with any other arising out of same investigation (enter code; Yes 1, No 2)..... [ ]
Fine..... [ ], [ ][ ][ ]
Costs.....
Court order other than fine.....
Investigation Register Noted:.....
Recorded Officers Register Noted:.....

_____
Inspector

* Cross out whichever is not applicable.

APPENDIX III

MANUAL FOR 1977 DATA COLLECTION FORMS

OFFENCES CODES (as at January, 1977)

COMPANIES ACT

PART II

Section	Code
7(8)	10010
7(9)	10020
7(9A)	10030
7(9B)	10040
7(9C)	10050
7(10)	10060
7(10A)	10070
9(11)	10080

PART III Division 1

18	10090

Division 2

21 (2)	10100
23 (2)	10110
27 (6)	10120
27 (7)	10130
27 (8)	10140
28 (2)	10150
28 (6)	10160
28 (9)	10170
29 (6)	10180
34	10190
36	10200

PART IV Division 1

37 (1)	10210
38 (9)	10220
39 (4)	10230
40 (6)	10240
40 (7)	10250
40A(5)	10260
40A(6)	10270
40B(4)	10280
41 (1)	10290
41 (2)	10300
42 (3)	10400
42 (4)	10410
44 (7)	10420
44 (8)	10430
44 (9)(a)	10440
44 (9)(b)	10450
45 (2)	10460
47 (1)	10470

PART IV Division 2

Section	Code
48(6)	10480
48(8)	10490
49(2)	10500
50(2)	10510
51(3)	10520
52(6)	10530
53	10540
54(7)	10550
57	10560
58(5)	10570
59(7)	10580
61	10590
62(5)	10600
64(10)(a)	10610
64(10)(b)	10620
64(10)(c)	10630
64A(2)	10640
65(5)	10650
66(2)	10660
67(3)	10670

Division 3A

69D	10680
69F	10690
69K(5)	10700
69L	10710
69N(10)	10720
69N(11)	10730

Division 4

70(7)	10740
74(6)	10750
74A(6)	10760
74B(2)	10770
74F(1)	10780
74F(4)	10790
74F(6)	10800
74F(7)	10810
74G(2)	10820

Division 5

81	10830
83	10840
84(1)	10850
84(1B)	10860
86(1)(a)	10870
86(1)(b)	10880
87	10890

Division 6

Section	Code
91	10900
92(4)	10910
95(1)	10920
97(2)	10930
99(2)	10940

Division 7

101(1)	10950
102(2)	10960
102A(2)	10970
104(3)	10980
107(4)	10990

PART V Division 1

111(2)	11000
112(2)	11010
113(3)	11020

Division 2

114(4)	11030
115(4)	11040
116(3)	11050
117(1)	11060
122(1)	11070
122(2)	11080
123	11090
124(3)	11100
125(4)	11110
125(8)	11120
126(15)	11130
127(1)	11140
127(2)	11150
127(3)	11160
128(4)	11170
129(1)	11180
129(3)	11190
131(2)	11200
132(6)	11210
134(7)	11220

Division 3

135(10)	11230
136(4)	11240
141(3)	11250
141(4)	11260
143(7)	11270
146(3)	11280
146(4)	11290

PART V Division 3

Section	Code
148(4)	11300
149(3)	11310

Division 4

151(7)	11320
152(3)	11330
153(1)	11340
153(2)	11350
153(4)	11360
157(9)	11370

Division 5

158(5)	11380
159(3)	11390
159A(3)	11400
160(3)	11410

PART VI Division 2

161A(9)	11420
161A(10)	11430
161B(1)	11440
161B(2)	11450
162(1)	11460
162(3)	11470
162(4)	11475
162(7)	11480
162(8)	11490
162(9)	11500
162(10	11510
162(11)	11520
162(12)	11530
162A(1)	11540
162A(2)	11550
162A(5)	11560
162A(6)	11570
162A(8)	11580
162A(9)	11590
162B(1)	11600
162B(2)	11610
162B(4)	11620
162B(7)	11630
163(1)	11640
163(3)	11650
164(3)	11660

PART VI Division 3

Section	Code
165(1)	11670
165(9)	11680
165(14)(a)	11690
165(14)(b)	11700
166(3)	11710
166(9)	11720
166(16)	11730
166A(2)	11740
166B(2)	11750
166B(6)	11760
166B(12)	11770
167(1)	11780
167(2)	11790
167(3)	11800
167(6)	11810
167(8)	11820
167(9)	11830
167(10	11840
167A(1)	11850
167A(2)	11860

PART VI A

174(1) (a)	11870
174(1) (b)	11880
174(1)(c)(i)	11890
174(1)(c)(ii)	11900
176(6)	11910
176(7)	11920
179A(1)(a)	11930
179A(1)(b)	11940
179B(5)	11960
179B(6)	11970

PART VI B

180C(1)	11980
180C(3)	11990

PART VI C

180C(5)	12000
180F(3)	12010
180F(4)	12020
180G(1)	12030
180G(3)	12040
180H(1)	12050
180j(1)(a)	12060
180J(1)(b)	12070
180J(1A)(a)	12080
180J(1A)(b)	12090
180L(5)	12100
180M(1)	12110
180Q(1)	12120
180Q(2)	12130
180Q(3)	12140
180Q(4)	12150
180R(2)	12160
180W(1)	12170
180W(2)	12180

PART VI C

Section	Code
180W(3)	12190
180X(9)	12200
180X(10)	12210
180X(12)	12220
180X(13)	12230
180X(14)	12240
180Y(2)	12250
180Y(4)(a)	12260
180Y(4)(b)	12270

PART VII

181(8)	12280
182(5)	12290
183(3)	12300
185(6)	12310
185(7)	12320
185(8)	12330
185(9)	12340
186(6)	12350

PART VIII

191(3)	12350
192(2)	12370
193(4)	12380
194(4)	12390
195(4)	12400

PART IX

199(2)	12310
199(8)	12420
199(11)	12430
200(4)	12440
202(3)	12450
202(7)	12460
202B(3)	12470
203A(10)	12480
203C(1)	12490
203C(2)	12500
203C(3)	12510
203C(4)	12520
206(10)	12530
208(5)	12540
208(6)	12550
211A(4)	12560
212(1)	12570
212(2)	12580
212(3)	12590
212(4)	12600
212(5)	12610
212(5A)	12620
212(11)	12630
213(2)	12640
214(3)	12650
214(3A)	12660

PART X Division 2

Section	Code
Subdivision (1)	
230(5)	12670
Subdivision (2)	
233(3)	12690
234(5)	12700
240(6)	12710
Subdivision (4)	
243(3)	12720
250(4)	12730
250(5)	12740
250(6)	12750
Division 3	
Subdivision (1)	
254(3)	12760
257(4)	12770
Subdivision (2)	
259(4)	12780
Subdivision (3)	
260(10)	12790
Subdivision (4)	
271(3)	12800
272(3)	12810
272(7)	12820
272(8)	12830
Division 4	
Subdivision (1)	
277A(1)	12840
277A(1A)(b)	12860
277A(4)	12870
280(3)	12880
281(1)	12890
283(2)	12900
284(2)	12910
286(1)	12920
Subdivision (5)	
307(2)	12930

PART XI Division 1

323(4)	12940
329	12950
330(1)	12960
330(2)	12970

Division 2

343(1)	12980

Division 2A

243E(3)	12990
243F(3)	13000
343I(3)	13010
343Q	13020

Division 3

350(3)	13030
353(4)	13040
354(3)	13050

PART XII Division 1

369(2)	13060
370(2)	13070

Division 2

374(8)	13080
374A(1)(a)	13090
374A(b)	13100
374A(1)(c)	13110
374A(1)(d)	13120
374A(1)(e)	13130
374A(1)(f)	13140
374A(1)(g)	13150
374A(1)(h)	13160
374A(3)	13170
374B	13180
374C(1)	13190
374C(2)	13200
374F(1)	13210
374F(2)	13220
374G(a)	13230
374G(b)	13240
374G(c)	13250
374H(3)	13260
375(1)	13270
375(2)(a)	13280
375(2)(b)	13290
375A(a)	13300
375A(b)	13310
375A(c)	13320
376(2)	13330
377	13340
378(2)	13350

Section	Code
PART II - Division 1	
8(5)	30010
9	30020
12(6)(a)	30030
12(6)(b)	30040
13(1)	30050
14(1)	30060
15(2)	30070
Division 2	
18(3)(a)	30080
18(3)(b)	30090
18(3)(c)	30100
18(9)(b)	30110
19(6)	30120
25(1(a)	30130
25(1)(b)	30140
PART III	
27	30160
30(4)	30170
32	30180
33	30190
34	30200
35	30210
46(4)	30220
PART V	
51(3)	30230
52(1)	30240
52(3)	30250
52(4)	30260
52(5)	30270
52(6)	30280
52(8)	30290
52(9)	30300
53(6)	30310
54(1)	30320
54(5)	30330
PART VI	
57(1)	30340
58(1)	30350
58(2)(a)	30360
58(2)(b)	30370
58(3)	30380
58(4)	30390
59(7)	30400
60(1)	30410
60(6)	30420
61(6)	30430

Section	Code
...Part VI	
61(7)(a)	30440
61(7)(b)	30450
61(9)	30460
61(11)	30470
61(12)	30480
61(13)	30490
62(7)	30500
64(2)	30510
64(4)	30520
65(1)	30530
66(1)	30540
69	30550
70(a)	30560
70(b)	30570
PART VII	
75(1)	30580
75(2)	30590
75(3)	30600
75(4)	30610
76(2)	30620
76(3)	30630
76(5)(a)	30640
76(5)(b)	30640
78(2)	30660
79(2)	30670
PART VIII	
81(4)	30680
83(1)	30690
83(6)	30710
84(1)	30720
84(2)	30730
84(3)	30740
84(4)	30750
PART IX	
86(1)	30760
86(2)	30770
88	30780
90(1)	30790
90(2)	30800
90(3)	30810
90(4)	30820
PART X	
109(1)	30830
109(2)	30840
110	30850

Section	Code
...Part X	
111(a)	30860
111(b)	30870
111(c)	30880
112(1)	30890
112(2)	30900
112(3)	30910
112(4)	30920
112(5)	30930
112(6)	30940
115(1)	30950
116(1)	30960
116(2)	30970
116(3)	30980
116(4)(a)	30990
116(4)(b)	31000
116(5)(a)	31010
116(6)(a)	31030
116(6)(b)	31040
116(7)	31050
PART XI	
117	31060
119(1)	31070
119(2)	31080
120(1)	31090
121(1)(a)	31100
121(1)(b)	31110
122(a)	31120
122(b)	31130
122(c)	31140
124(a)	31150
125(b)	31160
124(c)	31170

CRIMES ACT OFFENCES

Section	Code
117	20010
124	20020
134	20030
158	20040
165	20050
173	20060
174	20070
175	20090
176	20090
178A	20010
178B	20110
178C	20120
179	20130
185A	20140

Section	Code
...Crimes Act Off.	
252	20150
273	20160
274	20170

COMMON LAW OFFENCES

Conspiracy to Cheat and Defraud	40010
Conspiracy to contravene S.176 Crimes-Act - publish false document	40020
Conspiracy to contravene S. 47. Companies Act - false statement in prospectus	40030
Conspiracy to contravene S.73 Securities Industry Act - false statement re marketable securities	40040
Intimidation of witness(es)	40050

OUTCOME CODES: CORPORATE AFFAIRS COMMISSION

I and P Statistical Project

Non Convictions

001 Offender Absconded

002 Recognizance Forfeited (not relisted)

003 Charge/information dismissed for want of prosecution

004 Defendant found not guilty

005 Charge/information not proceeded with in view of death of defendant

Convictions

007 Offence proved, dismissed under S.556A

008 Offence proved, recognizance under S.556A

009 Recognizance (bond) only

010 Recognizance plus Fine

011 Fine only

012 Fine, in default sentenced to rising of court

013 Admonished and discharged

014 Periodic detention

Prison sentences, enter actual period

e.g. 01Y = 1 year

01W = 1 week

06M = 6 months

10D = 10 days

Note: If an offender incurs both a fine and a prison sentence, put the period of imprisonment in the 'outcome' boxes and enter the amount of fine in the 'fine' boxes below.

Description of Activity	Code to be used
Agriculture, Forestry, Fishing and Hunting	
Agriculture	Ø1
Services to Agriculture	Ø2
Forestry and Logging	Ø3
Fishing and Hunting	Ø4
Mining	
Metallic Minerals	11
Coal	12
Crude Petroleum (including Natural Gas)	13
Other Non-Metallic Minerals	15
Services to Mining	16
Manufacturing	
Food, Beverages and Tobacco	21
Textiles	23
Clothing and Footwear (including Knitting Mills)	24
Wood, Wood Products and Furniture (except sheet, metal)	25
Paper and Paper Products, Printing and Publishing	26
Chemical, Petroleum and Coal Products	27
Glass, Clay and other Non-Metallic Products	28
Basic Metal Products	29
Fabricated Metal Products	31
Transport Equipment	32
Other Industrial Machinery and Equipment and Household Appliances	33
Leather, Rubber and Plastic Products and Manufacturing, n.e.c.	34
Electricity, Gas and Water	
Electricity and Gas	36
Water, Sewerage and Drainage	37

Description of Activity	Code to be used
Construction	
General Construction	41
Special - Trade Contracting	42
Wholesale and Retail Trade	
Wholesale Trade	46
Retail Trade	48
Transport and Storage	
Road Transport	51
Railway Transport	52
Water Transport	53
Air Transport	54
Other Transport and Storage	55
Communications	
Communication	56
Finance, Insurance, Real Estate and Business Services	
Finance and Investment	61
Insurance	62
Real Estate and Business Services	63
Public Administration and Defence	
Public Administration	71
Defence	72
Community Services	
Health	81
Education, Libraries, Museum and Art Galleries	82
Other Community Services	84

Description of Activity	Code to be used
Entertainment, Recreation Restaurants, Hotels and Personal Services	
Entertainment and Recreational Services	91
Restaurants, Hotels and Clubs	92
Personal Services	93
Miscellaneous (ie. two or more of above)	98
Non-classifiable Establishments	99

OUTCOME CODES:CORPORATE AFFAIRS COMMISSION

I and P Statistical Project

Non-Convictions

001 Offender Absconded
002 Recognizance Forfeited (not relisted)
003 Charge/information dismissed for want of prosecution
004 Defendant found not guilty
005 Charge/information not proceeded with in view of death of defendant
006 No bill filed

Convictions

007 Offence proved, dismissed under S.556A
008 Offence proved, recognizance under S.556A
009 Recognizance (bond) only
010 Recognizance plus Fine
011 Fine only
012 Fine, in default sentenced to rising of court
013 Admonished and discharged
014 Periodic detention

Prison sentences, enter actual period

e.g. 01Y = 1 year
01W = 1 week
06M = 6 months
10D = 10 days

Note: If an offender incurs both a fine and a prison sentence, put the period of imprisonment in the 'outcome' boxes and enter the amount of fine in the 'fine' boxes below.

APPENDIX IV - PROSECUTIONS

DECIDED IN COURTS OF PETTY SESSIONS

Name of Company	Charges Laid	Number persons involved	Date of hearing	Time elapsed Receipt to Date of Determination	Outcome
Bruce Development Corporation Pty. Ltd.	Fail to submit statement of affairs to liquidator	1	17/4/75	2 months	Guilty:Fined $500+costs
Corporate Mining Investments of Australia Ltd.	Company with share capital fail to lodge annual return	N/R	2/5/75	4 months	Guilty: Fined $30+costs
Bee Cee Group	Company with share capital, fail to lodge proper annual return	1	20/5/75	3 months	Guilty, Fined $30+ costs
Justaco No.30 Pty. Ltd. Hexapool Aust. Pty. Ltd. Hexapool Sales Pty. Ltd. Hexapool marketing Co. Pty. Ltd.	Person with relevant conviction, direct company	2	22/9/75	7 months	Guilty, both persons Fined $250+costs (each person, each company)
Matson Fairweather Hldgs. Pty.Ltd. Tiger Timbers Pty. Ltd. Roger Matson Hldgs. Pty. LTd. Golden Nugget Holiday Camps Pty.Ltd. Denman Motels Pty.Ltd. Boyd River Land Sales Pty. Ltd. Denman Indust. Estate Pty. Ltd.	Person with relevant conviction, direct company	1	9/3/76	10 months	Guilty, fine $50 + costs (each company)
Waymar Manor Pty. Ltd	Undischarged bankrupt, direct company	1	29/1/76	3 months	Guilty, fined $300 + costs
Mr. Freedom Boutiques Pty. Ltd.	Fail to keep proper books (2 charges)	1	Not recorded	Not recorded	Guilty on 1 charge, S.556A - other withdrawn
Mr. Freedom Boutiques (Newport) Pty.Ltd.	Fail to keep proper books (10 charges)	1	25/5/76	Not recorded	Guilty on 3 charges S.556A other 7 charges withdrawn

Name of Company	Charges Laid	Number persons involved	Date of hearing	Time elapsed Receipt to Date of Determination	Outcome
Intercontinental Development Corp. P/L Liberty Mortgage Underwriting P/L.	Concealment of Property from Liquidator (2 charges)	1	25/5/76	Not recorded	Guilty on 1 charge,S.556A - other charges withdrawn
Bridge Oil Ltd.	Company deal in own shares	1	26/8/76	11 months	Guilty; 556A dismissal
Profile Kitchens	Director, fail to submit statement of affairs to liquidator	1	5/8/76	1 year 7 months	Guilty, fined $200 + costs
Marulan Forestry Ltd.	Issue shares on state prospectus - 2 charges Sharebanking	2	28/8/76	1 year 5 months	4 charges withdrawn, Proven, defendant given 556A dismissal + $100 professional costs
Clarence Oil and Mining Pty. Ltd.	Loan to director:	1	12/10/76	1 year 9 months	Guilty, fined $100 + costs Guilty, fined $200 (on first charge; other 2 charges withdrawn)
J.R. Tower and Sons Pty. Ltd.	Person with relevant convictions direct company	1	21/10/76	5 months	Guilty; fined $100 + costs
B.G.H. Engineering Pty. Ltd.	Failure to keep proper books 2 Charges 6 Charges	2	2/11/76	1 year	Both fined $400 + costs 3 charges withdrawn (each person)
Modern Trend Pty. Ltd.	Company fail to keep register of shareholders, directors, etc.	1	24/3/77	1 year 11 months	Guilty, fined $510
Intercontinental Dev. Corp. Pty. Ltd. Liberty Mortgage Underwriters P/L	Conceal company property	1	9/4/76	11 months	Guilty; 8 months imprisonment on each count (2 counts)

Name of Company	Charges Laid	Number persons involved	Date of hearing	Date of Determination	Outcome
Tacticair Pty. Ltd.	Conceal papers relating to property affairs of company	1	3/5/76	16 months	Guilty, fined $500+costs
Stonecham Pty. Ltd.	Company in share capital, fail to lodge annual return	1	7/5/76	6 months	Guilty; fined $50 + costs
Brentwood Honeywell Page and Associates Pty. Ltd.	Fail to keep proper books		25/1/76	29 months	Guilty; fined $400 +costs
Brentwood Honeywell Page and Associates Pty. Ltd.	Undischarged bankrupt direct company		25/1/76	35 months	Guilty; 556A dismissal $250 bond of Good Behaviour

DECIDED IN A DISTRICT COURT

Name of Company	Charges laid	Number persons involved	Time Elapsed Date of hearing	Receipt - Date of determination	Outcome
Intercontinental Development Corp. Pty. Ltd. Liberty Mortgage Underwriters (ACT)P/L Liberty Mortgage Underwriters (ACT)P/L	Publish false document:16 Charges Take and apply property:43 charges Fraudulent arrangement: 14 charges	1	4/8/76	1 year 3 months	Guilty:14 years hard labour

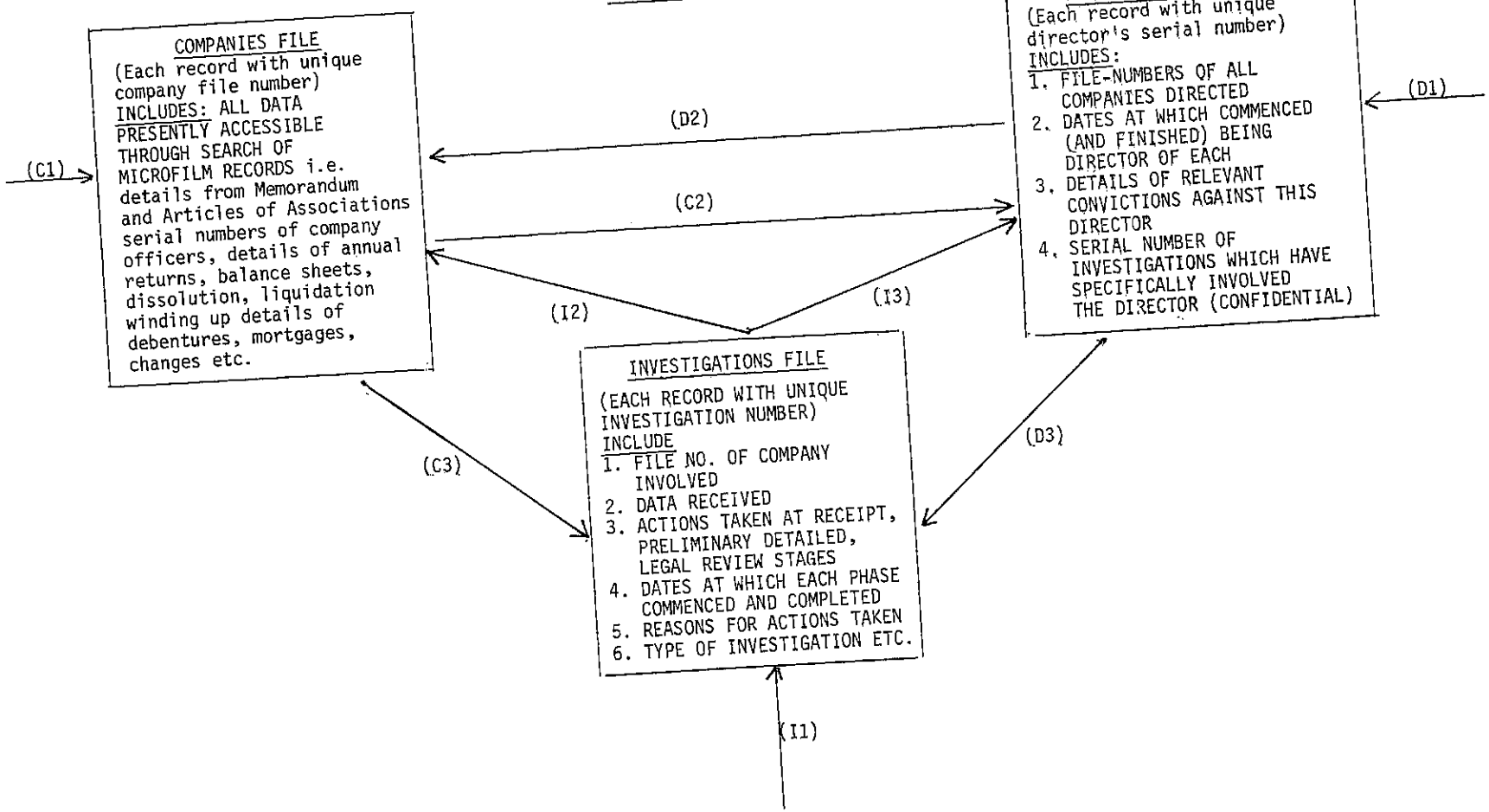
APPENDIX V

NUMBER OF COMPANIES, BY CLASS, ON THE REGISTER OF THE NEW SOUTH WALES CORPORATE AFFAIRS COMMISSION, AND THE NUMBER OF COMPANIES RECOGNISED BY THE COMMISSION AS AT 31ST DECEMBER, 1975 AND 1976
(TAKEN FROM THE REPORT OF THE CORPORATE AFFAIRS COMMISSION FOR 1976, p.43)

Class	1975		1976	
	Number	Per cent	Number	Per cent
Local:				
Unlimited	..	..	7	0.01
Limited by shares—				
(i) Public	1 894	1.38	1 985	1.37
(ii) Proprietary—exempt	105 776	77.17	111 378	77.12
(iii) Proprietary—non-exempt	12 848	9.37	12 269	8.49
(iv) No liability	162	0.12	142	0.10
(v) In liquidation	3 181	2.32	3 258	2.26
(vi) Subject to action for removal from register—s. 308	2 397	1.75	3 559	2.46
Limited by guarantee	2 240	1.64	2 346	1.62
Section 24 companies	645	0.47	638	0.44
TOTAL LOCAL	129 143	94.22	135 582	93.86
Foreign:				
Operating	4 092	2.99	4 384	3.04
In liquidation	140	0.10	154	0.11
Subject to action for removal from register—s. 352	220	0.16	308	0.21
TOTAL FOREIGN	4 452	3.25	4 846	3.36
Total on register	133 595	97.47	140 428	97.22
Recognised	3 468	2.53	4 020	2.78
TOTAL REGISTERED AND RECOGNISED COMPANIES	137 063	100.00	144 448	100.00

DIAGRAM A

PROPOSED INTEGRATED DATA SYSTEM FOR CORPORATE AFFAIRS COMMISSION



518334H D.WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978