CORPORATE AND WHITE-COLLAR CRIME

INTRODUCTION

At no period in Australia's history has there been more concern about the social control of corporate and white-collar crime. At the same time it is increasingly apparent that the legal means of control available are often inadequate or, if adequate, are rarely backed with the enforcement resources needed to make an impact. Another emerging area of difficulty is the challenge of devising powers of investigation that are responsive to the needs of enforcement in a modern corporate society. The papers published in this issue are therefore timely and represent a welcome addition to the literature.

The papers have been written by persons who have contributed actively to the work of the Institute in this area. Gilbert Geis, a leading American criminologist and a pre-eminent commentator on corporate crime, has visited the Institute on several occasions and has played a useful role as an overseas correspondent. Michael Hains, Arthur McHugh, and Michael Bersten have all presented papers in the public seminar series run by the Institute. Michael Hill QC, who has recently spent a period of leave with us, has contributed a number of in-house seminars, one fruit of which is the commentary included in the present issue.

The introductory paper by Gilbert Geis reviews the nature and definition of white-collar crime. Much confusion still surrounds this question, which perenenially diverts creative minds away from more important issues. As Geis concludes, the challenge ahead is not semantic refinement but improvement of the methods we have available to control abuse of power. This was the real significance of Sutherland's work on white-collar crime, a point that has been lost on some critics.

The second contribution, by Michael Bersten, comprehensively reviews the law relating to the investigative powers of the New South Wales Independent Commission Against Corruption. The powers possessed by this new enforcement agency are both extensive and often broadly defined. Bersten has provided a thorough analysis which will be invaluable to anyone concerned with this key aspect of the ICAC regime.

Thirdly, Arthur McHugh and Steven Stern have agreed to the reproduction of a paper, prepared in April 1990, which compares the investigative powers under the former Co-operative Scheme of company regulation with those under the *Corporations Act*. This sets out incisively much of the background which is critical to an understanding of the new set of investigative powers. It will therefore be essential reading for commercial lawyers as well as for those interested in the corporate policing function now performed by the Australian Securities Commission.

Fourthly, Michael Hains explores the world of bucketing, which is the main form of off-market fraud in the futures industry. He provides a devastating exposé of the problem and details the steps, including prosecution, which have been taken to counter it. He concludes with the recommendation that the focus should now switch to on-market fraud but observes that bucketing may still continue because some of the main players have not been prosecuted and there are serious gaps in the supposedly international system of enforcement.

Finally, Michael Hill canvasses recent developments in corporate criminal liability in Engand. The *Tesco* principle, under which corporations are personally liable for the fault or conduct of directing minds, has come under increasing scrutiny. Another vexed issue that has come to the fore is the extent to which corporate criminal liability should be used in lieu of individual criminal liability. There is also the fundamental problem of attributing serious offences to corporations on the basis of corporate intentionality, the nature and limits of which remain obscure. Hill's incisive reflections on recent major corporate prosecutions in England are highly instructive, all the more so given that Australian courts and enforcement agencies are increasingly obliged to grapple with the same difficult issues.

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