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**Private sector fraud in
New South Wales: incidence
and regulation**

by

Rachel Simpson

Briefing Paper No 18/97

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CONTENTS

EXECUTIVE SUMMARY

1.0	INTRODUCTION	1
2.0	FRAUD DEFINED	2
2.1	Deception	3
2.2	Dishonesty	4
2.3	New South Wales legislative regime	5
	Bribery	5
	Conflict of interest	6
	False statements and false claims	7
	Extortion	7
	Fraudulent conversion	8
	Embezzlement	9
2.4	Proceeds of Crimes	10
3.0	COST OF FRAUD	10
4.0	FRAUD BY INDUSTRY	12
4.1	Insurance Fraud	12
4.2	Banking/Credit Card fraud	13
4.3	Health Care Fraud	16
4.4	Superannuation fraud	17
4.5	Welfare fraud	20
4.6	Computer/Internet fraud	20
5.0	REGULATION OF FRAUD	24
5.1	Corporate regulation	25
5.2	Banking industry regulation	26
5.3	Insurance industry regulation	27
5.4	Commercial Crime Agency	28
6.0	VICTORIAN RESPONSE TO FRAUD ENFORCEMENT	30
7.0	INTERNATIONAL RESPONSES TO FRAUD ENFORCEMENT	31
7.1	United Kingdom	31
7.2	Canada	32
7.3	United States	33
8.0	CONCLUSION	33
	APPENDIX 1 - Fraud offences under the NSW <i>Crimes Act 1900</i> 1990-1996	35
	APPENDIX 2 - Fraud offences under the Commonwealth <i>Crimes Act 1914</i> 1990-1996	37
	APPENDIX 3 - Common law fraud offences 1990-1996	37

EXECUTIVE SUMMARY

The cost to the Australian economy of fraud in the private sector has reached an estimated \$15-\$20 billion per annum. A survey by accounting firm Ernst & Young found that 85% of companies suffered fraud related crime between 1991 and 1996. These figures indicate a more serious problem than the incidence and cost of public sector fraud, which is approximately \$9 billion per annum. Public sector fraud, however, continues to receive greater attention and consequently more resources are dedicated towards its reduction. The ICAC and the Royal Commission into the NSW Police Force are two recent examples.

“Fraud” has not been defined in the courts, except to the extent that to constitute fraud, the conduct in question must be “seriously dishonest”. The notions of deception and dishonesty are discussed in Parts 2.1 and 2.2 (pp 3-5). Similarly, “fraud” is not defined in the *Crimes Act 1900* (NSW). Instead, the *Crimes Act 1900* contains a number of groups of offences that come under the umbrella of being “fraudulent”. These groups of offences are: bribery; conflict of interest; false statements and false claims; extortion; fraudulent conversion, and embezzlement (pp 6-10). Other legislation that deals with fraud is proceeds of crime legislation, which provides for the forfeiture or confiscation of tainted property as well as for pecuniary penalties in some circumstances (pp .10-11).

A common way of classifying fraud is on an industry by industry basis. While there are fraud offences occurring across all industries, the level of occurrence and the manifestation of those offences may differ across industries. As examples, the incidence of fraud in the following industries is examined in Part 4 - Fraud by Industry: insurance; banking/credit card; health care; superannuation; welfare, and computer/Internet fraud (pp 13-25).

The Commercial Crime Agency is the group within the NSW Police Force that investigates allegations of large-scale or sophisticated corporate crime (pp 28-30). However, the responsibility for regulating fraud is not that of the police alone. In fact, the NSW Police Commissioner, Mr Peter Ryan, has stressed the need for industry and law enforcement agencies to work together to combat fraud which he says has become “almost unstoppable”. To this end, certain industry bodies have established anti-fraud groups. The Insurance Council of Australia is an example of an industry association which actively investigates allegations of fraud within a particular industry. Cardlink Services Limited, established by the banking industry to manage the banks’ credit card operations is another example (pp 26-27).

The Victorian Major Fraud Group operates along similar lines to the Commercial Crime Agency in NSW, investigating fraud which is of a complexity which takes it beyond the capacity of existing Divisional resources (pp 30-31). In 1987 the Serious Fraud Office was established in the United Kingdom. Although the function of the SFO is similar to that of the Australian organisations, the structure is not. The SFO is a government department, distinct from the Fraud Squad which is part of the police service. As such, it enjoys an autonomy not experienced by other agencies (pp 31-32). The Canadian and US responses to fraud enforcement are slightly different again and are also examined briefly to provide further comparison (pp 32-33).

1.0 INTRODUCTION

There has been increasing public interest in fraud and/or corruption in the public sector in New South Wales. The Independent Commission Against Corruption (ICAC) and the Royal Commission into the NSW Police Service are just two of the most recent examples of measures to identify and prevent such public sector fraud. Little public attention has been given to fraud in the private sector, however, despite estimates that criminal activity of this type is costing the Australian economy as much as \$20 billion every year¹.

The regulation of fraud appears to operate on a remarkably ad-hoc basis. There are a multitude of private companies, industry bodies and government organisations whose job it is to detect and investigate fraud in the private sector. This is all in addition to the NSW Police Service's Commercial Crime Agency, the official law-enforcement body concerned with private sector or corporate fraud. Possibly, this lack of cohesion reflects the nature of the legislation regulating fraud. There is no separate offence of fraud in NSW, fraud instead forming important components of other offences such as misrepresentation, extortion and bribery. The Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (MCCOC), in its final report, *Theft, Fraud, Bribery and Related Offences*, found that "the substantive law in areas such as theft, fraud, secret commissions and bribery [is] fragmented and complex...NSW contains a multitude of offences relating to theft and fraud. Often the choices involve excessively difficult technical distinctions about which offence is the correct one to choose".² Another explanation can be found in the sheer enormity of the problem posed by fraud. In fact, the NSW Assistant Commissioner of Police, Mr Jeff Jarrett has been reported as saying that the problem of fraud is so huge that the police are unable to deal with it alone.³ This view was reiterated by the NSW Police Commissioner, Mr Peter Ryan in May 1997, saying that the problem of fraud had become "almost unstoppable".⁴

This paper does not discuss the proposals of the MCCOC to reform and consolidate the law relating to theft, fraud and bribery. It looks at NSW legislation simply in order to examine the nature of fraud offences for definitional purposes. Nor does this paper attempt to answer any of the questions raised by the Australian Institute of Judicial Administration's 1992 report *Managing Complex Commercial Trials: Reform of the Rules of Evidence and Procedure*.⁵ This paper instead concentrates on firstly defining fraud and surveying the

¹ J Macleay, 'Company fraud 'costs up to \$20bn a year'', *The Australian*, 23 July 1997.

² Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, *Model Criminal Code: Chapter 3, Theft, Fraud, Bribery and Related Offences*, December 1995, p. v.

³ L Lamont, 'Fraud so huge we need help, say police', *The Sydney Morning Herald*, 29 January 1997.

⁴ J. Ellicott, 'Police want business to help uncover fraud', *The Australian*, 12 May 1997.

⁵ The Report rejected the notion of having separate rules of evidence and procedure for complex and serious fraud trials: M Aronson, 'Complex Criminal Trials: AIJA Report', *The Australian Law Journal*, Vol 66, December 1992, p. 826. This is the type of scheme operating in the United Kingdom. See part 6.1 for more detail.

extent and types of fraud across industry, and secondly, examining the methods by which fraud is detected, investigated and prosecuted in NSW. Finally, other Australian and overseas jurisdictions are looked at briefly to gain an understanding of what other approaches are being adopted in response to fraud in the private sector.

2.0 FRAUD DEFINED

Fraud is not, itself, an offence in NSW. Rather, there are many offences which contain elements of fraud. Fraud as a crime is, therefore, most often understood in terms of the offences in which it is a key component, such as bribery, misrepresentation, extortion etc.⁶ The courts have never defined "fraud", however, to amount to fraud the courts have held that the conduct in question must be "seriously dishonest".⁷ Fraud contains elements from criminal law and civil law, particularly that relating to tort law. Fraud has been defined as:

Obtaining a material advantage by unfair or wrongful means. In civil law it is proved when it is shown that a false representation has been made: knowingly, or without belief in its truth, or recklessly, ie not caring whether it be true or false ... In criminal law, fraud is an ingredient in a number of offences, eg obtaining property by false pretences. Fraud encompasses a myriad of forms - valueless cheques, solicitors' Trust Account defalcations, credit card fraud, crooked company directors, tax evaders, over-servicing medical practitioners etc.⁸

Other definitions of fraud include:

... deceit, trickery, sharp practice or breach of confidence, by which it is sought to gain some unfair or dishonest advantage⁹

and

... a deliberate and premeditated turn of events which involves the use of deception to gain advantage from a position of trust and authority. The type of events include: acts of omission, theft, making of false statements, evasion, manipulation of information and numerous other acts of deception...¹⁰

⁶ I have adopted this approach in part 2.3 of this paper, in which the different offences which are identified as containing elements of fraud are examined in the context of NSW legislation. When talking about the *occurrence* of fraud, it is most often in terms of the industry in which it occurred. This approach has been employed in Part 4 of this paper - 'Fraud by industry'.

⁷ R v Sinclair [1968] 3 All ER 241

⁸ L Flemming, 'Serious fraud', *Australian Police Journal*, December 1993, p. 217.

⁹ D McKenzie, 'Fraud investigation - credit cards', *Policing issues and practice journal*, Vol 5 No 1, January 1997, p.38.

¹⁰ Ibid.

The question of what constitutes fraud was examined in detail by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General (MCCOC). The committee identified a basic fraud offence as containing the following elements:

1. By any deception
2. Dishonestly
3. Obtains
4. Property
5. Belonging to another
6. Intent to permanently deprive.¹¹

Fraud need not always involve the notion of monetary gain, and can encompass a wide variety of corrupt, deceptive, dishonest or unethical behaviours. However, it is often for financial or some other material gains that fraud is committed. The result of fraudulent activity is, most often, a financial gain of some sort, whether direct or indirect. For example, individual fraud can result in the individual receiving a promotion, bonuses, increased power or influence, all of which provide a material gain of some kind to that individual.

Fraud in the private sector is usually identified according to the industry in which it occurred. Examples include insurance fraud, medical fraud, superannuation fraud, etc. There is also the ever-increasing problem of computer fraud, which occurs across industries, assisted greatly by the increasing use of the Internet for banking, commerce and trade etc. Fraud by industry is examined in Part 4 of this paper. Fraud is not limited to big business or the commercial world, although this is where the primary focus of fraud enforcement and forensic accounting is directed, primarily because the quantum of the loss suffered is greater. Despite this focus on large-scale commercial fraud, if it is accepted that fraud is simply using wrongful or unfair means to obtain a material advantage, then the scope for what can be categorised as fraud is mind boggling. The AIC has used the fishing industry as an example. Understating catches, substituting inferior products and over fishing beyond what is licenced are all examples of fraud.¹²

2.1 Deception

Central to an understanding of fraud is an understanding of the notion of deception. Deception is defined in section 178BA(2) of the *Crimes Act 1900* (NSW) to be:

“... deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:

- a) a deception as to the present intentions of the person using the deception or of any other person; and
- b) an act or thing done or omitted to be done with the intention of causing:

¹¹ MCCOC, n 2, p.137.

¹² P Grabosky & R G Smith, 'Fraud: an overview of current and emerging risks' *Trends and Issues*, Australian Institute of Criminology No. 62, November 1996, p. 2

-
- (i) a computer system; or
 - (ii) a machine that is designed to operate by means of payment or identification

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to do.”

This definition of deception is virtually identical to that proposed by the MCCOC.¹³ Deception has been defined by the courts as the intentional inducing in another of a state of mind which the accused knows does not accord with fact.¹⁴ Deception may be by words or conduct. The accepted acts which may constitute deception are greatly varying. For example, the presentation of a credit card on which the limit has been surpassed has been held to be a false representation¹⁵, and obtaining a meal from a restaurant without having the means to pay for it has been held to be obtaining a meal by deception¹⁶.

The definition of deception was substantially amended in 1989 to include scope for computer-related fraud.¹⁷ Prior to these amendments it was uncertain whether deception applied to the manipulation of machines and computers, since computers could not, by their nature, be deceived. While it was an offence to obtain money, a valuable thing or financial advantage by deception, if a computer was manipulated so as to provide the thing obtained by deception, no offence had been committed.¹⁸ The Crimes (Computer and Forgery) Amendment Bill 1989 amended the *Crimes Act 1900* to rectify this deficiency in the law relating to fraud.

2.2 Dishonesty

Deliberate deception has been called one of the two most obvious forms of dishonesty.¹⁹ In *R v Glenister* [1980] it was held that the term “fraudulently” used in section 173 of the *Crimes Act 1900* (directors etc fraudulently appropriating etc property) was interchangeable with the word “dishonestly”. Thus, through an understanding of what constitutes dishonesty, we can, again, better understand what constitutes fraud. There is controversy in the courts over what actually constitutes dishonesty - are ordinary standards sufficient to prove dishonesty, or is a higher standard required? The leading decision is the English Court of

¹³ Ibid, p. 136.

¹⁴ *Corporate Affairs Commission v Papoulias* (1989) 20 NSWLR 503 at 506B, in Watson, Blackmore & Hosking, *Criminal Law (NSW)*, vol 3, para 2.25180.

¹⁵ *R v Lambie* [1981] 3 WLR 88, Ibid, para 2.25180

¹⁶ *DPP v Ray* [1974] AC 370 at 385, Ibid, para 2.25180

¹⁷ *Crimes (Computers and Forgery) Amendment Act 1989*, No 71 of 1989, S 3, Sch 1(2). The Act also provided for specific criminal offences in relation to computers, based on computer hacking, inserting into the *Crimes Act 1900* Part 6 - Offences Relating to Computers.

¹⁸ Second Reading Speech, 3 May 1989, Assembly. Hansard p. 7326.

¹⁹ *R v Ghosh* [1982] QB 1053 at 1060, Ibid, para 2.25180

Appeal's case *R v Ghosh* [1982] 1 QB 1053. The Court ruled at 1064:

“In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether, according to the ordinary standards of reasonable and honest people, what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fail.

If it was dishonest by these standards, then the jury must consider whether the defendant himself must have realised that what he was found was by those standards dishonest”.

The MCCOC Report defines dishonesty as “dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.”²⁰

2.3 New South Wales legislative regime

New South Wales is one of only two states that retain the common law approach to fraud regulation. South Australia is the other state. This common law approach relies on the basic offence of larceny, modified and supplemented by a large number of statutory offences.²¹ The New South Wales *Crimes Act 1900* alone contains approximately 150 offences dealing with theft, fraud or related offences. In addition, many other acts contain provisions prohibiting specific behaviour of a fraudulent nature. The MCCOC states that often these offences have nothing to do with the essential nature of the conduct, but depend instead on the nature of the object taken resulting in artificial distinctions between offences which are essentially the same. The result is a very complicated and often overly technical law,²² as becomes evident from the survey of fraud-related provisions in selected NSW Acts that follows.

Six broad categories of crimes have been identified as falling under the umbrella of fraud:

1. Bribery

Bribery is the giving, receiving, offering or soliciting of any thing of value to

²⁰ MCCOC, n 2, p. 140.

²¹ The common law approach is contained in the *Griffiths Code*, in which the various forms of stealing were combined into one offence of stealing. Stealing is defined to include fraudulent taking and fraudulent conversion. The code draws a distinction between stealing and other forms of fraud eg false pretences, so its value as a simplifying mechanism for the common law is limited (MCCOC, n 2, p. 2). The *Griffiths Code* was replaced in England by the *Theft Act 1968* which was based on three main offences: theft, obtaining property by deception and obtaining a financial advantage by deception. Victoria, the Australian Capital Territory and the Northern Territory all follow the *Theft Act* model. The other states all follow the *Griffiths Code* model, although only New South Wales and South Australia retain the common law.

²² MCCOC, n 2, p. 1.

influence an official in the performance of, or failure to perform, his or her lawful duties. Bribery usually only refers to the corruption of public officials - offering money or other benefits to induce them to depart from their public duty.²³ However, the notion of bribery also is being applied increasingly to the private sector. Commercial bribery has been defined as the giving, receiving, offering or soliciting of any thing of value to influence a business decision without the victim's (usually a business organisation's) knowledge or consent.²⁴ The MCCOC terms private sector bribery "secret commissions", where an agent dishonestly gives or receives money or other benefits to depart from the duty owed to his or her principal.²⁵ Bribery is regulated in the *Crimes Act 1900* by Part 4A - *Corruptly receiving commissions and other corrupt practices*.

Under the classification of "bribery", for the purposes of this paper, is also included the giving or receiving of illegal gratuities. Illegal gratuities differ from bribes because they are given or received *after* an official act that has taken place, rather than as an inducement *before* the act has been committed.

The Courts may, as well as imposing a penalty for the offences in Part 4, order the person to repay the whole or part of the amount or value of any benefit received by the person. In addition, the person is disqualified from holding civic office for seven years or such lesser periods as specified by the court. It is not a defence to bribery that the receiving, soliciting, giving or offering of any benefit is customary in any trade, business, profession or calling. Besides the *Crimes Act 1900*, various other NSW statutes contain bribery provisions, including the *Casino Control Act 1992* (sec 150), the *Liquor (Referendum) Act 1969* (sec 37), the *Motor Dealers Act 1974* (sec 53), the *Meat Industry Act 1978* (sec 75) and the *Parliamentary Electorates and Elections Act 1912* (sec 147 and 164).

2. Conflict of interest

A conflict of interest occurs when a person or organisation acts on the behalf of another individual or organisation and has, or appears to have, a hidden bias or self-interest in the activity undertaken. This bias must be actually or potentially adverse to the interests of the individual or organisation being represented, and it cannot be made known to that individual or organisation. When a person's conflict of interest results in economic or financial loss to the individual or organisation, fraud has occurred.²⁶ Conflict of interest can exist on its own, but is more likely to occur as part of other fraudulent practices such as bribery or illegal gratuities. As such, it is not regulated specifically.

²³ Ibid, p. 259.

²⁴ M Simmons, *Recognizing the elements of fraud*, <http://www.echotech.com/elfraud.html>, p.2.

²⁵ MCCOC, n 2, p. 259.

²⁶ Simmons, n 24, p. 3.

3. False statements and false claims

False statement and false claim fraud occur whenever anyone knowingly and willfully falsifies a material fact, makes a false or fictitious representation or files a false or fictitious claim that results in economic or financial loss to the party to whom they have made the false representation.²⁷ An example of false statements and claims fraud includes submitting a monthly payroll time report that contains false information, such as not reporting unpaid leave taken. Another example is submitting a travel voucher reporting expenses that were not actually incurred. Credit card fraud is another example of this type of fraud, such as where an unauthorised person signs a credit card voucher or where a person authorises a credit card transaction knowing there are insufficient funds available. Cheque fraud is a further example, whether it occurs by knowingly signing a cheque for which there are insufficient available funds, or forging someone's signature on a cheque.

It is not a common law crime to deceive another into parting with his or her goods. This position was based on the premise that while the law ought to protect people against forcible deprivations of their property, whereas they should protect themselves against breaches of trust and deception. The first legislation to prohibit this behaviour was enacted in England in 1757.²⁸ In New South Wales, false statements and claims offences primarily are regulated by the following sections of the *Crimes Act 1900*:

- Sec 158 - Destruction, falsification of accounts etc by clerk or servant
- Sec 174 - 176 - Directors etc omitting certain entries and related offences
- Sec 178B - Valueless cheques
- Sec 178BA - Obtaining money etc by deception
- Sec 178BB - Obtaining money etc by false or misleading statements
- Sec 178C - Obtaining credit by fraud
- Sec 179 - False pretences
- Sec 300 - Making or Using False Instruments
- Sec 302 - Custody of False Instruments

Other Acts that regulate false statements or claims include (but are not limited to) the *Business Names Act 1962* (sec 17), the *Chiropractors and Osteopaths Act 1991* (sec 56), the *Dentists Act 1989* (sec 58), the *Dog Act 1966* (sec 17), the *Housing Act 1912* (sec 48), the *Insurance Act 1902* (sec 18A), the *Property, Stock and Business Agents Act 1941* (sec 48, 84B), and the *Valuers Registration Act 1975* (sec 25).

4. Extortion

Extortion occurs when a person or organisation uses their office to demand money

²⁷ Ibid, p. 4.

²⁸ D Lanham et al, *Criminal Fraud*, Sydney 1987, p. 64.

not due to them or more money than is due to them, usually by using actual or threatened force or fear, including fear of economic or fiscal loss.²⁹ At common law, extortion is “the taking of money by any officer by virtue of his office either where none at all is due, or not so much is due, or it is not yet due.” Common law requires that an improper motive exists in order that the offence of extortion be proved.³⁰ Extortion is most often associated with governments or government organisations, but it also occurs in the private sector, to individuals or to corporations.

New South Wales retains the offence of extortion. It is covered by sections 99 to 105 of the *Crimes Act 1900*, which fall under the heading ‘Extortion &c., by menace or threat’. The United Kingdom abolished the offence of extortion by the *Theft Act 1968* on the recommendation of the English Criminal Law Revision Committee in its Report on *Theft and Related Offences*. While no explanation was given for the change, provisions of the *Theft Act 1968*, most notably sec 21 that deals with unwarranted demands and menaces (bribery), are essentially the same as those repealed. Victoria followed the UK’s lead adopting a *Theft Act* model in 1973.

5. Fraudulent conversion

Fraudulent conversion is the statutory offence most closely related to the common law offence of larceny. What differentiates these offences from common larceny is the dishonest nature of the acts in question (see Part 2.0 - fraud defined). Traditionally, there are five major categories of fraudulent conversion into which offences may fall. These are:

- a) larceny by finding - a form of common law larceny in which a person who finds property of another may be convicted of larceny by dishonestly converting that property.
- b) larceny as a bailee - where the possession of goods is transferred to the *bailee* while the *bailor* retains ownership (for example where goods are lent, pawned, pledged or leased) and the bailee dishonestly takes or converts the goods, or the proceeds of sale of the goods, for his or her own purpose or the purpose of any person other than the owner³¹.
- c) larceny by a clerk or a servant - this is a form of simply larceny and occurs where a clerk or servant steals the property of his or her employer. The goods in question may be owned by the employer, or simply in the employer’s possession or power.³² Note that in this situation the clerk or servant in fact obtain possession of the goods placed in their care, merely

²⁹ MCCOC, n 2, p. 263; Simmons, n 6, p.5.

³⁰ *Mason v New South Wales* (1959) 102 CLR 108, per Windyler J, in MCCOC, n 2, p. 263.

³¹ L Waller & C Williams, *Criminal Law Text and Cases* (8th ed), Sydney, 1997, paras 7.21-7.28.

³² Watson, n 14, para 2.22240.

custody.

- d) embezzlement - (see 6 below)
- e) fraudulent conversion - where ownership and also possession and control have passed, the accused cannot be convicted of any of the offences based on larceny, however they can be convicted of the statutory offence of fraudulent conversion of the property or its proceeds.³³

In New South Wales, the main offences under the *Crimes Act 1900* which relate to fraudulent conversion are:

- Sec 124 - Fraudulent appropriation
- Sec 125 - Larceny by bailee
- Sec 156 - Larceny by clerk or servant
- Sec 169 - Larceny by persons in Public Service
- Sec 165 - Agent misappropriating money etc entrusted to him
- Sec 173 - Directors etc fraudulently appropriating etc property

6. Embezzlement

Embezzlement occurs when a clerk or servant receives property for or on the behalf of his or her employer and fraudulently appropriates it before it is reduced into the possession of the employer.³⁴

Two of the most common forms of embezzlement are kiting and lapping. **Kiting** occurs when a bank allows withdrawals to be made on cheques deposited by a customer but for which the actual funds have not yet been collected from the bank on which the cheque is drawn. The money could either be in transit or nonexistent. Fraud occurs when goods or services are purchased or cheques are cashed against nonexistent account balances. **Lapping** is the use of funds received from payment of accounts receivable to cover a theft of cash. The perpetrator initially steals cash tendered in payment of an outstanding receivable. To cover this initial theft, the money received from a second customer is charged against the first receivable and so on, thus "lapping" the two accounts.³⁵

The following sections of the *Crimes Act 1900* are concerned specifically with embezzlement:

- Sec 157 - Embezzlement by clerks or servants
- Sec 160 - Embezzlement by persons in Public Service.

³³ Lanham, n 28, p. 91-92

³⁴ Waler, n 31, para 7.92.

³⁵ Simmons, n 24, p. 7.

Statistics compiled by the Judicial Commission of NSW record sentences handed down in NSW courts for convictions under various sections of a particular Act or a common law offence. From 1990-96, there were a total of 4,891 convictions under the sections of the *Crimes Act 1900* (NSW) discussed above in NSW courts (Higher Courts and Local Courts). There were an additional 865 convictions for common law offences or offences under the *Crimes Act 1914* (Cth). The sentences received varied greatly from a warning to a fine to a custodial sentence. See Appendixes 1-3 for detailed graphs illustrating the breakdown of these offences.

2.4 Proceeds of Crimes

There are four pieces of legislation operating in NSW which deal with the proceeds of crime. Commonwealth legislation allows for confiscation of the proceeds of federal offences: the *Proceeds of Crimes Act 1987* (Cth), as administered by the Commonwealth DPP and the *Customs Act 1901* (Cth). The NSW legislation is the *Confiscation of the Proceeds of Crime Act 1989* (NSW) ("the COPOC Act") and the *Drug Trafficking (Civil Proceedings) Act 1989*.

The *Proceeds of Crime Act* provides, upon conviction under a Federal law, for the forfeiture of tainted property and for the making of pecuniary penalty orders. The act also provides for forfeiture of all assets of a person convicted of a serious crime (including organised fraud, or money laundering in relation to the proceeds of narcotics sales). The COPOC Act allows for the confiscation of tainted property upon conviction of a person for a serious offence, as well as for pecuniary penalties for non-drug offences. The COPOC is administered by the NSW DPP, although under the act's regulations the NSW Crime Commission is able to initiate proceedings in respect of tainted property. In contrast, the *Customs Act 1901* (Cth) and the *Drug Trafficking (Civil Proceedings) Act 1990* (NSW) only require proof that certain event took place, and do not require a conviction as a prerequisite for confiscation.

The theory underpinning legislation of this type is that, given that the motivation for commercial crime is greed and the aim is profit, then if the profit is removed, the motivation is reduced.³⁶ Ostensibly, most of the legislation is aimed at organised crime and the confiscation of proceeds from the sale of drugs, but it is also used against profits from other types of serious crime. The legislation is based on the *Racketeer Influenced and Corrupt Organisations Act 1970* in the United States which was originally used against organised crime but is now frequently used in fraud cases, most particularly bank fraud and fraud in relation to the stock-market.³⁷

3.0 COST OF FRAUD

A report by the Australian Institute of Criminology (AIC) estimates that the total cost of

³⁶ Fleming, n 8, p. 220.

³⁷ Ibid.

crime is about \$18 billion per year. This includes approximately \$6.3 billion to run the criminal justice system, and represents more than 4% of gross domestic product each year.³⁸ The KPMG 1997 *Fraud Survey* reported more than \$104 million as having been lost to fraud. This represents the amount of money lost to fraud by 480 respondents to their fraud survey, which was delivered to more than 1,800 of Australia's largest companies. The survey included organisations with annual gross revenue from less than \$10 million to more than \$10 billion. More than half the organisations which responded to the survey had a gross revenue of between \$50 million and \$200 million.³⁹ The results, therefore, do not represent the extent of fraud in the small business sector. In addition, 13% of respondents to the KPMG survey declined to disclose the extent of their loss to fraud, suggesting that the problem is far greater than reported.⁴⁰

Based on the responses to their survey, the KPMG forensic accounting unit has estimated total cost to the economy of corporate fraud is between \$15 billion and \$20 billion per year.⁴¹ The average cost of fraud per respondent organisation that reported one or more occurrences of fraud was \$450,000, and twenty-seven per cent of respondents to the KPMG survey lost between \$10,000 and \$500,000 to fraud. In 1996 a different survey by another large accounting firm, Ernst & Young, found that 95% of companies had suffered fraud-related crime in the past five years. Thirty-nine per cent had experienced more than five frauds in that time, and 52% had each lost more than \$1 million in that time. Of the respondents to the survey that were prepared to discuss their largest fraud, the average amount lost was \$3 million.⁴²

In an article on credit card fraud, the Fraud Enforcement Agency⁴³, stated that "it has been estimated that fraud in Australia may amount to approximately \$13 billion every year", accounting for nearly half the financial cost of crime.⁴⁴ The value of charges made relating to fraud during 1995/96 was \$162,800,030.⁴⁵ Other statistics describing the cost of fraud

³⁸ J Walker, 'Estimates of the Costs of Crime in Australia in 1996', *Trends and Issues*, Australian Institute of Criminology, No. 72, August 1997, pp. 3-4. Despite putting a figure on the cost of fraud and white collar crime in Australia, the author also noted that fraud and misappropriation are "without doubt the most difficult type of crime to assess".

³⁹ KPMG Forensic Accounting, *1997 Fraud Survey*, p.4.

⁴⁰ *Ibid*, p.8

⁴¹ M Lawson, 'Fraud costs one in two companies \$450,000', *The Australian*, 23 July 1997.

⁴² Ernst & Young, *Fraud, the Unmanaged Risk*, 1996, p. 3.

⁴³ Now the Commercial Crime Agency.

⁴⁴ D McKenzie, n 9, p. 36. The most common type of fraud examined by the Commercial Crime Agency (the CCA) include defrauding payroll systems, frauds involving suppliers of goods, false invoicing, falsifying cheque details, fraud by purchasing officers, falsifying principal's signature to obtain goods, unauthorised use of trust fund monies by authorised professionals, and the submission of false claims to insurance companies (at p. 38).

⁴⁵ Fraud Enforcement Agency, *1995/96 Annual Report*, p. 1. This report forms part of a submission by the FEA to the Parliamentary Estimates Committee, May 1997.

include:

- counterfeit credit cards were estimated to cost Australian banks between \$5 and \$6 million in 1996, and up to \$2 billion a year internationally;⁴⁶
- the approximate cost of insurance fraud is \$1.4 billion per year, with an estimate in 1992 that approximately \$1700 million is paid out annually for fraudulent claims. This translates to an additional approximate cost of \$70 per policy,⁴⁷ and
- superannuation fraud in Australia has been approximated at \$17 million over the past eight years.⁴⁸

It is worthwhile noting that while private sector fraud is estimated at \$13 billion each year in Australia, the yearly cost of public sector fraud is estimated at about \$9 billion.⁴⁹

4.0 FRAUD BY INDUSTRY

4.1 Insurance Fraud

The KPMG Survey reported that 54% of respondents from the insurance industry had experienced fraud.⁵⁰ The Insurance Council of Australia (ICA) estimates that up to 10 per cent of all premiums paid are lost to fraud, with payments being made to policy holders who, according to the ICA, have inflated or fabricated their claim. The total amount paid out in fraudulent claims each year is \$1.4 billion, which adds an extra \$70 to every policy issued in Australia. The ICA estimates insurance fraud costs the average family in excess of \$400 annually to cover the cost of fraudulent claims.⁵¹

Figures released by the ICA in 1994 show a wide variation in incidence of insurance fraud according to type of insurance.⁵² The greatest incidence of fraud occurred in relation to travel insurance, the least in relation to professional indemnity insurance:

⁴⁶ R Smith, 'Internet Piracy', *Trends and Issues*, Australian Institute of Criminology No 65, January 1997, p. 2.

⁴⁷ T Baldock, 'Insurance Fraud', *Trends and Issues*, Australian Institute of Criminology No. 66, February 1997, p. 1.

⁴⁸ A Graycar, 'Introduction', *Protecting Superannuation from Criminal Exploitation*, Australian Institute of Criminology Research and Public Policy Series No.5, June 1996, p. vii.

⁴⁹ Mckenzie, n 9, p. 38.

⁵⁰ KPMG, n 39, p. 9.

⁵¹ Baldock, n 47, p. 1. The Insurance Council of Australia has undertaken research into the incidence of fraud in the insurance industry, which was hoped to be published in September 1997. Due to the complexity of the information received, however, the publication date has been postponed, with release of the statistics most likely in December 1997.

⁵² *Ibid*, p. 3.

Type of insurance	Percentage of claims believed to be fraudulent
Travel	20%
Household contents	15%
Motor vehicle	15%
Workers compensation	10%
Compulsory third party	10%
Public liability	10%
Household building	10%
Marine	5%
Professional indemnity	<2%

The response to fraud by the insurance industry is examined at 5.3.

4.2 Banking/Credit Card fraud

By 1992 there were almost 10 million major credit cards in use in Australia, and an excess of 25,000 fraudulent credit card transactions reported annually. It is suspected that credit card fraud is grossly under-reported, so the real figure is likely much higher than that.⁵³ The NSW Bureau of Crime Statistics and Research released a *Crime and Justice Bulletin* in September 1992⁵⁴ in which the following conclusions were drawn:

- Of all fraud incidents recorded by the police, credit card fraud represented 63% in 1989, 60.1% in 1990 and 59.0% in 1991.
- The average dollar value per fraudulent transaction was \$89.
- Department stores were the most common locations for fraudulent credit card transactions (35.9%), followed by shops (22.8%), chain stores (19.9%), liquor shops (9.2%) and restaurants (5.8%).
- Of the 60% of purchases where the type of purchase could be identified, 18.7% was clothing, 9.2% was alcohol, 7.1% was food and 3.4% was hardware. 1.6% of transactions were obtaining money directly as a cash advance on the credit card. While this percentage is low, there were usually large sums of money involved: \$5,000, \$3,000 or \$2,000 were reported. In slightly more than one third of the cases

⁵³ Fleming, n 8, p.41.

⁵⁴ Rosanne Bonney, *Preventing Credit Card Fraud*, NSW Bureau of Crime Statistics and research, Crime and Justice Bulletin Number 17, September 1992.

(36.9%) the fraudulent activity occurred during one day. A further 38.2% took place in periods ranging from two to seven days, and in 19.1% cards were used for between one and three weeks. The longest reported period for which a card was being used illegally was 114 days.

- In 65% of cases sampled fewer than 10 transactions were involved and on more than 80% of cases there were fewer than 20 transactions involved. On average there were 12 transactions per case.
- 40.8% of the sample involved total purchases which cost less than \$500. For 67.5% of cards misused, the average value of transactions was less than \$100. In 17.8% of the sample the value of transactions was greater than \$2,000 and in 5.1% of the sample the value was greater than \$3,500.
- Merchants did not seek authorisation for 90% of transaction costing less than \$100. 91.7% of transactions between \$301 and \$500 received authorisation. However, for transactions more than \$1,000 in value, only 80% received authorisation.

Credit card fraud can take the following form:

- Possession of a stolen credit card;
- Using a stolen credit card;
- Using a cancelled credit card;
- Falsifying particulars in an application form for a credit card.⁵⁵

As well as through use of the actual card, credit card fraud can occur through the use of the credit card account details. These details are obtained in a number of ways:

- with the help of collusive merchants or retail staff;
- from used credit card vouchers;
- by corrupt or intimidated bank staff;
- at ATM machines;
- by reading details listed on the magnetic stripe of valid cards using an encoding machine;
- details being stolen when in transit from the bank;
- details being stolen by corrupt postal staff; or

⁵⁵

Mckenzie, n 9, p.48.

-
- accessing information on the Internet supplied by computer users, eg bulletin boards⁵⁶

Credit card fraud can be committed by virtually anyone: bank staff, personal credit card users, corporate credit card users and also by retailers and their staff (credit card merchants).

Merchant fraud is that credit card fraud carried out by the merchant or their staff. It can take the following forms:

- telemarketing, in which the consumer may pay for merchandise they will never receive or is of an inferior quality to that represented. The credit card number may be further used in other transactions not authorised by the consumer;
- laundered sales vouchers (where the merchant uses or passes on the information imprinted on the sales voucher to purchase additional, unauthorised, goods);
- unauthorised imprinting of multiple sales vouchers;
- altering the amount on the sales voucher;
- knowingly accepting lost, stolen or counterfeit credit cards, or
- opening a merchant facility with false information, where the merchant may or may not operate a legitimate business (this is usually undertaken with the intention of undertaking mail or telemarketing fraud).⁵⁷

Michael McNamara, from Cardlink Services Limited (see 5.2 below) cited the following as the biggest problems facing credit card providers (the banks):

- false application fraud with forged means of identification. This is the biggest problem facing the banks, in particular;
- stolen cards, from home invasions, cars or through the mail system (this is not as significant as it once was), and
- use of card numbers, from vouchers which have been discarded, for mail/phone order fraud. Goods are ordered over the phone using stolen information, then someone is sent in to pick up the goods. The Internet is providing increased avenues for obtaining credit card numbers, as there is no security on the Internet at the moment.⁵⁸

The response to credit card fraud by the banking industry is discussed at 5.2.

⁵⁶ Ibid, p.40.

⁵⁷ Ibid, p. 41.

⁵⁸ Michael McNamara, interview July 1997.

4.3 Health Care Fraud

The average number of Medicare services processed per Australian resident from 1 July 1995 to 30 June 1996 was 10.71.⁵⁹ The average value of benefits processed per service for the same period was \$30.81⁶⁰. During this period, \$1,098,131.76 was recovered or was in the process of being recovered from providers and the public. This includes money paid as benefits to illegal immigrants, duplicate payment of benefits and recoveries in respect of successful prosecutions.⁶¹ This figure represents just over 0.18% of the \$6,038,381,504 in benefits paid out during the period.

Health care fraud is committed by both patients and providers. An accusation of fraud can destroy a health care provider's reputation and hence livelihood. The most common forms of health care fraud are:

- prescription fraud when the prescription is not necessary or writing a prescription for a particular brand of drug instead of another because of incentives offered to the provider (this type of fraud is often committed in conjunction with a pharmaceutical company);
- billing for services not rendered, or for a more complex or time-consuming service than was necessary;
- accident scams, where patients and/or doctors are involved in "diagnosing" and "treating" false injuries for the purpose of receiving compensation or insurance payments;
- false cost reports;
- joint ventures and self referrals, where doctors act in collusion with each other and refer patients for unnecessary treatment or where a doctor "refers" a patient to him or herself in instances where a referral is necessary to claim a benefit;
- pharmaceutical fraud;
- providing unnecessary services or not providing necessary services⁶²;

⁵⁹ Health Insurance Commission *Annual Report 1995-1996*, Table 13, p.116.

⁶⁰ *Ibid*, Table 5, p. 108.

⁶¹ *Ibid*, p. 49. Not all of this amount was recovered as a result of uncovering fraud, however, it does give an indication of the extent of the known problem in the health care industry.

⁶² A sensational example is a psychiatrist who claimed for \$115,000 in one year from Medicare for one patient. Given that the scheduled fee was \$128.50 per consultation, the doctor would have needed to see the patient 900 times (or two to three times daily) during that year: M Franklin, 'Patient on couch 900 times in a year', *Daily Telegraph*, 25 October 1996.

- psychiatric hospital fraud, and
- price fixing and other antitrust practices.⁶³

Regulation is predominantly within the industry, with industry bodies such as the Australian Medical Association and the Health Insurance Commission (HIC) playing active roles. The HIC operates a Fraud and Audit Service Committee which has two areas of responsibility - internal audit and the professional review division (PRD). The primary focus of the PRD is external threats directed towards the programmes administered by the Commission (of which Medicare, the pharmaceutical benefits scheme and Medibank Private are examples). In particular, the PRD is responsible for preventing, detecting and investigating fraud and inappropriate practice by service providers and the public.⁶⁴ A new electronic programming technique called Neural Net has been implemented by the Health Insurance Commission. This program applies artificial intelligence techniques to analyse a huge amount of claims data from health care providers looking for inconsistent claims data and other patterns of behaviour which may indicate fraudulent practices.⁶⁵ Punishment for fraud can include: exclusion from Medicare; suspension of payment; loss of hospital admitting privileges as well as criminal sanctions.

4.4 Superannuation fraud

The Australian Institute of Criminology, in a June 1996 report stated that Australian superannuation funds and approved deposit funds had approximately A\$188.7 billion invested. By the year 2000, it is approximated that this figure will have reached A\$600 billion.⁶⁶ This same AIC report stated that 43% of this pool was held by retail funds, 26% by public funds, 18% by corporate funds, 8% by excluded funds and 5% by industry funds. The pool was invested in the following way: 34% of assets were placed with an external investment manager, 38% were used to purchase life insurance policies and 28% were directly invested. The distribution of assets among the funds is markedly skewed: as at June 1995 more than 76% of funds had less than A\$250,000 in assets. Fewer than 4.2% had assets over A\$1 million and only 9.3% of funds (approximately 1,000 funds) control approximately 85% of the industry's assets.⁶⁷ Over \$17 million has been lost to fraud over the last eight years.⁶⁸

⁶³ P H Bucy, Health Care Fraud, http://www.ljextra.com/NYLP/pages/bucy_health.html.

⁶⁴ Health Insurance Commission, n 59, p. 10.

⁶⁵ C Jay, 'Neural Net ready to close in on over-providers', *The Australian Financial Review*, 29 May 1997.

⁶⁶ A Frieberg, 'Superannuation Crime in the 1990's', *Protecting Superannuation from Criminal Exploitation*, Australian Institute of Criminology Research and Public Policy Series No. 5, June 1996, p. 1.

⁶⁷ *Ibid*, p. 2, (based on results of an ISC survey undertaken in cooperation with the Australian Bureau of Statistics).

⁶⁸ Graycar, n 48, p. vii.

The challenge that has been identified as facing regulators is to determine whether any real or potential shortfall is due to criminal activity or poor practice. Regulators argue that the dividing line between the two is not as clear as might be imagined.⁶⁹ There are more than 125,000 superannuation funds in Australia, with the bulk of money and investors concentrated in a small number of large funds. Around 120,000 funds exist with less than five members, and it is here that the line between criminality and poor practice is most closely scrutinised.⁷⁰ It has been noted that although the \$17 million lost to fraud over the past eight years is a sizeable amount of money, it represents less than one hundredth of a percent of the current total assets in superannuation funds.

Superannuation funds are most vulnerable to the following fraudulent practices:

- improper registration and use of fund assets;
- collusion between trustees and fund managers improperly to divert assets;
- collusion between trustees and managers in overcharging fees or paying unauthorised expenses;
- falsification of records;
- misappropriation of assets;
- improper or bogus loans to interested parties, and
- failure to pay benefits.⁷¹

There are few documented cases of fraud in the Australian superannuation industry. The industry is regulated by Commonwealth legislation, the most notable being the *Superannuation Industry (Supervision) Act 1991* (SIS Act) which regulates the operation and administration of superannuation funds. The SIS Act contains a variety of civil and criminal offences which relate to dishonest conduct, conduct which fails to conform to prudential standards of operating and reporting requirements.⁷² The industry is further regulated by the *Income Tax Assessment Act 1936* which regulates the concessional status of fund contribution and status and the *Corporations Law*, which regulates trustee corporations. The Insurance and Superannuation Commission (ISC), established in 1987, is the regulatory body overseeing the industry.

In addition to being regulated by specific Commonwealth legislation, the superannuation industry is also subject to state criminal law in the state in which the funds are operating.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Frieberg, n 66, p. 8.

⁷² Ibid.

The ISC is, like the ASC, reluctant to pursue criminal prosecution or civil legal action, preferring instead to inflict administrative sanctions against the trustee in question. This most commonly takes the form of suspending or removing trustees, imposing stop orders or appointing investigators. The ISC believes this to be a more effective means of protecting members' interests than taking punitive action.⁷³ However, in extreme cases punitive action is undertaken where the ISC believes that the public interest would be best served and there would be sufficient admissible evidence to support a prosecution.⁷⁴ As is apparent from the table below, the main types of criminal activity that are prosecuted are theft, fraud, conspiracy and payments of secret commissions or inducements.⁷⁵ Criminal activity is investigated by police where alleged criminal conduct has resulted in losses to beneficiaries. Where, in NSW, the CCA does investigate, the investigation is usually undertaken independently of any other regulatory agency such as the ISC.⁷⁶

There has been statistical analysis of 21 cases of superannuation fraud. Nearly all of these cases occurred prior to July 1994, which is when much of the SIS Act became operational. The break down of offences by alleged perpetrator and offence is as follows:⁷⁷

Alleged perpetrator	No of examples
Trustee	11
Fund manager	6
Employer/trustee	4
Accountant	2
Auditor	2
Superannuation product vendor	2

⁷³ R Brown, 'The regulator's view', *Protecting Superannuation from Criminal Exploitation* Australian Institute of Criminology Research and Public Policy Series No. 5, p. 56.

⁷⁴ Ibid.

⁷⁵ Ibid, p. 50.

⁷⁶ D Hellings, 'Assessment of potential for fraud', *Protecting Superannuation from Criminal Exploitation*, Australian Institute of Criminology Research and Public Policy Series No. 5, p. 39.

⁷⁷ Ibid, p. 41.

Nature of offence	No of examples
Fraudulent conversion	5
Theft of employee contributions	4
Overpayment of benefits	2
Excessive charges	2
Extortion	1
Secret commissions	2
Unlawful conduct	6

4.5 Welfare fraud

Welfare fraud is included as an example of private sector fraud, because although the fraud is perpetrated against a government department, it is carried out by individuals who (largely) are not employees of the Department and therefore can not be characterised properly as public sector fraud. Examples of this type of fraud are claiming unemployment benefits while employed, understating income from investments, or claiming social security benefits in the name of a fictitious person. As an indication of the extent of welfare fraud, a crackdown by the Department of Social Security has resulted in savings of \$19 million a week. In the first nine months of the 1997/97 financial year a total of \$264.5 million was recovered. This represented an increase of 46.1% over the same period in the 1995/96 financial year.⁷⁸

Social security fraud is specifically provided for in the *Social Security Act 1991* (Cth) and is dealt with by the Department, in the Social Security Appeals Tribunal, the Administrative Appeals Tribunal and, in exceptional cases, the Federal Court. There are cases where appeals are lodged in state Supreme Courts, and are therefore decided according to state law, however this is in a small minority of cases.

4.6 Computer/Internet fraud

It has been estimated that computer fraud amounts to between \$300 and \$700 million each year in Australia. This takes the form of fraudulent use of credit cards and electronic banking facilities, cheque frauds, unauthorised access/use of computer facilities, sabotage, electronic diversions of funds and pirating of software.⁷⁹ Australia has the highest incidence of software piracy in the developed world, with personal computer users and educational institutions being the prime offenders.⁸⁰ It has been further estimated that between 85-90% of computer

⁷⁸ C Dore, 'Welfare purge hits', *The Australian*, 26 June 1997.

⁷⁹ Flemming, n 8, p. 218.

⁸⁰ Smith, n 46, p. 3.

crime goes unreported, no doubt due in part to the difficulties in detection.⁸¹ Four reasons have been identified for this:

1. sophisticated technology, the immense storage capacity of computers and the speed with which a computer functions make computer crime difficult to detect;
2. investigating officials often do not have the specialist training necessary to detect computer crime;
3. many victims of computer fraud do not have a contingency plan for responding to computer crime, with many even failing to acknowledge that a security problem exists, and⁸²
4. most computer crime is committed by inexperienced operators who leave behind a trail of evidence, according to computer forensics expert Edward Wilding. However, often the PC support teams who are brought in to investigate the fraud may inadvertently destroy the evidence, which makes it difficult to proceed with any prosecution and may discourage the victims reporting the fraud to the police.⁸³

It is estimated that 90% of computer crime resulting in economic loss is committed by employees of the victim company. Another survey in North America and Europe estimated that 73% of the risk to computer security was internal with only 23% attributable to external sources.⁸⁴ The risk from external sources will continue to grow as systems become more interconnected and the use of technology such as the Internet becomes more widespread. Intellectual property law⁸⁵, trade practice law as well as criminal law is used to regulate computer fraud. For example, the definition of deception was amended in 1989 to include an act or thing done with the intention of causing a computer system to “make a response

⁸¹ In their Fraud Survey, KPMG found that only 7% of the 480 respondent companies had reported experiencing computer fraud.

⁸² International review of criminal policy - United Nations Manual on the prevention and control of computer-related crime, para 30.

⁸³ J Davidson, 'Detectives may destroy signs of PC fraud', *Australian Financial Review*, 7 August 1997.

⁸⁴ *International review of criminal policy - United Nations Manual on the prevention and control of computer-related crime*, <http://www.ifs.univie.ac.at/~pr2gq1/rev4344.html>, para 35.

⁸⁵ Smith, n 46, p. 2. The manner in which copyright is created and infringed on the Internet has been the subject of much debate. Even the fundamental question of who created the work is problematic, as works on the Internet can be created/adapted by a number of different contributors who are incapable of being differentiated. Digitally designed and transmitted works also present problems, as does the question of whether merely viewing a document on screen without downloading it infringes copyright. The Copyright Law Review is in the process of simplifying copyright legislation, which will enhance the range of protection for works on the Internet, particularly for digital works through a new, broadly based, technology neutral right of transmission to the public which would replace the existing communications rights. See: Copyright Review Committee, *Copyright Reform: A Consideration of Rationales, Interests and Objectives*, AGPS, Canberra 1996.

that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to do” (see Part 2.1 for more detail).

Common types of computer crime include:

- **Fraud by computer manipulation**

Computer fraud by input manipulation is the most common type of computer crime. Often referred to as “data dipping” it is easily perpetrated and difficult to detect. It does not require any specialised knowledge and can be perpetrated by anyone at the data-processing and data-input stages.

Program manipulation involves changing existing programs or inserting new programs into the computer system. A common example is the “Trojan horse” where computer instructions are placed covertly into a computer program so that it will perform unauthorised functions concurrently with its normal functions. A Trojan horse can be programmed to self-destruct leaving no evidence of its existence other than the damage it caused.

Output manipulation occurs at the output stage. An example is cash dispenser fraud where instructions at the input stage are falsified. Increasingly, falsified electronic information is being encoded on the magnetic strips of bank cards and credit cards to allow for unauthorised transaction.⁸⁶

- **Computer forgery**

Where data is altered in respect of documents stored in computerised form, forgery has been committed. Computers are also the tools by which forgery can be committed, with increased ability to copy and reproduce images and documents. The widespread use of high-tech laser copiers has added to the ease by which forgery can be committed.⁸⁷

- **Damage to or modification of computer data or programs**

Commonly referred to as computer sabotage, viruses, “worms” or logic bombs are the weapons of this type of computer crime. Bulletin boards which support user groups, general information, matchmaking and games, for example, are the most common sources of viruses and worms.⁸⁸

A virus is a series of program codes that has the ability to attach itself to legitimate programs and propagate itself to other computer programs. The damage caused by viruses is varied, from harmlessly displaying a message on a computer screen to the

⁸⁶ International review, n 84, paras 62-66.

⁸⁷ *Ibid*, para 67.

⁸⁸ D Stern, *Preventing Computer Fraud*, New York, 1993, pp. 232-3.

irreversible destruction of all data on a computer system. Europe first experienced a computer virus in 1990, when a virus was introduced into the medical research community. The virus threatened to destroy increasing amounts of data unless a ransom was paid for the “cure”. A significant amount of valuable medical research data was lost.⁸⁹

A worm is similar to a virus but does not have the ability to replicate itself. The consequences, however, can be just as dramatic. An example of a worm attack is an attack on a bank computer instructing the computer to continually divert money to an illicit account. Once the instructions have been relayed, the worm will self-destruct.

A logic bomb programs a computer to destroy or modify data at a specific time in the future. Logic bombs are very difficult to detect before they blow up. Detonation is often timed to occur long after the departure of the perpetrator. Extortion may ensue, with a ransom being demanded for disclosure of the location of the bomb.⁹⁰

- **Unauthorised access to computer systems**

Unauthorised access creates the opportunity to cause intentional or unintentional damage to data, systems crashes or impediments to legitimate users as a result of negligence, as well as theft of data. There are three main methods by which a “hacker” can circumvent any protection offered by password protection: (1) if a hacker can discover one password, he or she can use a Trojan horse program to capture other passwords of legitimate users; (2) password cracking routines can use encryption processes to capture some or all of the data on a system, creating a dictionary of data which can be compared against cracker software to identify common passwords and thus gaining access to the system, and (3) unauthorised access can be achieved through access points or “trapdoors” created for legitimate purposes such as maintenance of the system.⁹¹

- **Unauthorised reproduction of legally protected computer programs**

Unauthorised reproduction of computer programs can result in substantial economic loss to the rightful owners. Trafficking of these unauthorised reproductions has reached transnational proportions by utilising modern telecommunication networks.⁹²

Not all computer crime constitutes fraud. A hacker who hacks into a computer system and modifies data without any intention of gain can not be said to have committed a fraud,

⁸⁹ International review, n 84, para 70.

⁹⁰ Stern, n 88, p. 236.

⁹¹ International Review, n 84, paras 74-82.

⁹² Ibid, para 83.

despite having committed a crime under Part 6 of the *Crimes Act 1900*. Most often, however, computer crime is perpetrated with the notion of some sort of gain in mind, whether this be direct gain such as that gained through unauthorised access to an automatic teller machine, or indirect gain, for example as a result of gaining access to privileged information. Computers and their associated technologies have become the tools of fraudsters. In order to combat fraud of any kind, therefore, it becomes necessary to be able to detect, circumvent and prevent computer crime of all kinds.

5.0 REGULATION OF FRAUD

Unincorporated businesses, for example sole traders or partnerships, are governed by state law. Incorporated companies in NSW are regulated by the Commonwealth *Corporations Law*⁹³ and the *Corporations Act 1990* (NSW), as administered by the Australian Securities Commission (ASC). Any prosecution under the Corporations Law is undertaken by the Commonwealth Director of Public Prosecutions (DPP). The Commonwealth DPP has also had conferred on it functions under the NSW *Corporations Act* in relation to the prosecution of offences against cooperative scheme laws and national scheme laws, such as the *Corporations Law*. The ASC has been criticised for its attitude to corporate crime, which is that by imposing a financial penalty through civil action, the corporate criminal will be sufficiently deterred.⁹⁴ Criminal prosecution is seen as a last resort. However, it is argued that the only effective deterrent is the possibility of being sent to gaol. The corporate criminal should be treated the same as any other criminal, and that the ASC is promoting one law for the rich and one for the poor. The example of a bank robber is cited, and argues that no one would suggest that suitable punishment for such a criminal would be to simply repay any money stolen, if caught.⁹⁵

In the US particularly, there is specific legislation concerning fraud as a criminal offence. For example, thirty-five US states specifically recognise insurance fraud as a separate offence. Fraud as a separate offence does not exist in NSW, where there is no specific fraud legislation (see Part 2.3 for more detail). Companies who wish to prosecute fraudulent behaviour frequently use such sections as section 178BA (obtaining money by deception), section 187BB (obtaining money by false or misleading statements) or section 179 (false pretences), although from the discussion of the *Crimes Act 1900* (NSW) and other NSW legislation above, it is apparent that there are many avenues for prosecution of fraudulent

⁹³ In particular section 262 makes it an offence for an "officer of a corporation" to fail to act honestly or make improper use of his or her position to gain an advantage for him or herself or any other person. There are also provisions relating to fraudulently obtaining credit (sec 596), false or misleading conduct (sec 998) and insider trading (Div 2A, Part 7.11). Section 1317 establishes a civil penalty regime by which a person who acts knowingly, intentionally or recklessly and either knowingly intends to defraud someone or dishonestly intends to gain from someone is liable to a fine of \$200,000 and/or imprisonment of five years. It also provides for criminal prosecution (sec 1317FB). There are limitations on the courts exercising this civil penalty power: see P Shaw, "Investigative powers of the Australian Securities Commission and significant offence provisions of the *Corporations Law*", in Legal and Accounting Management Seminars Ltd, *Business Crimes*, pp. 1-8 of Paper 4.

⁹⁴ Fleming, n 8, p.219.

⁹⁵ *Ibid.*

activity.

Regulation in New South Wales is not a simple matter. Where appropriate, Commonwealth bodies such as the Australian Securities Commission, the Insurance and Superannuation Commission and the Health Insurance Commission investigate and take responsibility for prosecuting fraud. The New South Wales Police also have a special investigation unit devoted to investigating and prosecuting fraud as it contravenes NSW law - the Commercial Crime Agency. In addition to these government bodies, there are a number of private organisations dedicated to investigating and preventing fraud. The largest of these are the industry bodies such as the Insurance Council of Australia (see 5.3, below). Many private firms take responsibility for investigating fraud internally, with the large insurance companies maintaining in-house fraud investigation units. As well, accounting firms may specialise in fraud detection services, calling them "forensic accounting". In many cases these services focus on implementing fraud prevention practices in businesses. Most industry groups also undertake fraud investigation for member companies. The Commissioner for Police, Mr Peter Ryan, has supported these industry-based practices. The incidence of fraud, he believes, is so great, that it is beyond the resources of the police to regulate alone.⁹⁶ In addition to industry-wide fraud control practices, the Deputy Commissioner of Police, Mr Jarrett, launched a program in January 1997 aimed at educating businesses to protect themselves against fraud.⁹⁷ Some examples of industry regulation follow in Part 5.2.

5.1 Corporate regulation

The 1997 KPMG *Fraud Survey* found that 49.8% of frauds were detected as a result of internal controls, 42.1% by notification by an employee, 37.3% by management investigation and 32.6% by an internal audit review.⁹⁸ Where fraud is detected, the following actions were most commonly reported as having been taken:

- internal investigation (76.4%)
- report to the police (68.7%)
- immediate dismissal (60.9%)
- permitted to resign (23.2%)
- reviewed by audit committee (22.7%)
- external investigation (22.3%)

⁹⁶ Ellicott, n 4.

⁹⁷ Lammont, n 3.

⁹⁸ KPMG, n 39, p. 13. Note that in many cases respondents to the survey indicated that frauds were detected by more than one method.

- civil action (20.6%)⁹⁹

For a review of what actions are taken once an alleged fraud is reported to the police, see Part 5.4 - Commercial Crime Agency.

5.2 Banking industry regulation

Cardlink Services Limited was established and is owned by a number of the big banks which issue and accept Bankcard, Mastercard and Visa cards (see below). Cardlink has two main services:

1. Cardlink operates a centralised voice entry system to enable merchants to register transaction details and have the credit card accounts adjusted quickly and efficiently; and
2. Cardlink operates centralised fraud control procedures. Fraud control operates in two ways:
 - a) When Cardlink receives requests from participating banks to investigate fraudulent use of stolen or illegally obtained credit cards. The investigation is undertaken as far as obtaining statements and putting together a detailed brief which is then handed over to the police for prosecution. Cardlink's Michael McNamara said in a telephone interview that Cardlink has a strict prosecution policy, which serves as a deterrent to others who may attempt credit card-based fraud.¹⁰⁰
 - b) Cardlink operates a database which is able to link perpetrators of credit card fraud who may be multiple offenders. The database also enables Cardlink to depict trends and patterns in fraud offences.

The following banks are part of the group that uses Cardlink Services: ANZ Banking Group; Commonwealth Bank of Australia; National Australia Bank; State Bank of NSW; Bank of Queensland; Trust Bank of Queensland; Trust Bank of Tasmania; Bank of South Australia; St George; Barclays Bank, and in respect of Credit Union issued visa cards. In addition, Cardlink Services Limited operates as the contact point for credit cards from overseas issuing banks. The banks that don't use Cardlink generally follow their own fraud detection and enforcement procedures.¹⁰¹ Most of the larger banks (Westpac, Chase/AMP and Advance) have their own internal fraud investigation units, as does American Express and Diners Club.

⁹⁹ *Ibid*, p.15. Note that in many cases respondents to the survey indicated that more than one course of action was taken against perpetrators of fraud.

¹⁰⁰ McNamara, n 58. This policy differs from that of the ASC and ISC who prosecute only in extreme cases, preferring instead to impose financial or some other type of pecuniary penalty.

¹⁰¹ *Ibid*.

5.3 Insurance industry regulation

The **Insurance Council of Australia (ICA)** operates an independent federal anti-fraud task force. A similar task force also operates in each state. The role of the task force is to investigate fraud within the insurance industry, compile a brief and then hand it over to the **Commercial Crime Agency** who will then prosecute the offender. Peter Eagle of the ICA believes, however, that in some cases the CCA undertakes an investigation in addition to that undertaken by the ICA which can result in inefficiency due to a doubling-up of work.¹⁰² As is the case with the CCA, the ICA taskforces respond to complaints or referrals from member companies and do not “look” for occurrences of fraud.

The ICA also administers a **fraud reward scheme** in conjunction with the police service. The scheme was introduced in 1996 and offers rewards of up to \$25,000 for information leading to the conviction of a person committing fraud against a particular insurer. The purpose of the scheme has been described as threefold: 1) to deter fraud, 2) to provide information for investigations, and 3) to assist insurers in denial of liability or reducing payouts where fraud is involved.¹⁰³

In 1991 the **Insurance Reference Service (IRS)** was established. This is a database to which 39 insurance companies and approximately 400 loss adjusters subscribe. The IRS is owned by the member insurance companies and consists of more than 13 million individual insurance claim records, in addition to publicly available information relating to bankruptcy and debtor judgements.¹⁰⁴ Member insurance companies make more than 50,000 enquiries each month. A study conducted by the IRS of 8,000 insurance proposal forms showed that 9% of people did not fully disclose their claims history and a further 2.5% had adverse credit and public record information on file. Since the establishment of the IRS, the insurance industry has focussed more on fraud control by prevention. More emphasis is being placed on ensuring that a policy is not issued to a bad risk than attempting to recover money paid out as a result of a fraudulent claim.¹⁰⁵

In addition to the ICA, most of the bigger insurance companies have their own anti-fraud investigation units who operate independently from the Council. These units mostly consist of ex-policemen who are experienced in fraud detection and investigation. Many large companies also have their own in-house legal departments. These units operate in much the same manner as the ICA’s units, however in some cases they will report directly to the DPP instead of the CCA in the first instance.¹⁰⁶

¹⁰² Peter Eagle, Insurance Council of Australia, interview with author July 1997.

¹⁰³ Baldock, n 47, p. 4.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Eagle, n 102.

5.4 Commercial Crime Agency

The Commercial Crime Agency (CCA) commenced operation as the Fraud Enforcement Agency in July 1994, in response to a perceived need to establish an agency specifically to deal with more complex fraud. Consequently, only complex matters are investigated by the CCA, and those less so are referred to Local Police Patrols. The CCA consists of two sections: the Investigation Unit which comprises four teams employing a total of 48 specialist investigators and administrative support staff, and the Support Unit, comprising an education and prevention team, an assessment team, a policy officer, financial analyst, accountant, legal officer, intelligence analysts, a systems support officer and administrative support staff. The investigation teams also have access to specialists such as accountants, computer analysts etc, to assist in investigating complex fraud matters. The CCA also coordinates a number of committees, including the:

- Fraud Prevention Committee, established to provide non-law enforcement bodies with the opportunity to discuss fraud issues, educational packages and other relevant topics. The Committee is chaired by the Commander, CCA and includes representatives from the insurance industry, chamber of commerce, Cardlink services, the banking industry and Sate Rail, and the
- Inter-Agency Fraud Committee, which is aimed at law enforcement agencies which investigate fraud matters. This Committee includes representatives from the AFP, the NSWCC, the ASC, AUSTRAC and the DPP.

Additionally, the CCA is a contributor to a number of other committees, including the:

- NSW Public Sector Corruption Prevention Committee;
- Joint Banks Fraud Committee;
- Commonwealth Law Enforcement Board, and the
- Insurance Council of Australia (NSW) Anti-Fraud Taskforce.¹⁰⁷

Since its inception, the CCA has made 205 arrests and 2090 charges in the period to the end of March 1997. Of these arrests, 18% involved misappropriation of funds, 15% involved loan application fraud, 12% involved cheque fraud, 10% involved insurance fraud, 9% involved tobacco licence fee evasion, 5% involved credit card fraud and the remaining 31% involved some other type of fraud.¹⁰⁸ The estimate total value of those offences is \$78,521,475,562. This value included one arrest involving \$79 billion. If that arrest is excluded, the average arrest made involved fraud to a value of \$1,843,751. Of those arrested, 35% were involved in managerial roles.¹⁰⁹ This data is consistent with the results of surveys conducted by KPMG and Ernst & Young. It must also be remembered that this only represents 16% of reported fraud offences. The rest of these alleged fraud offences

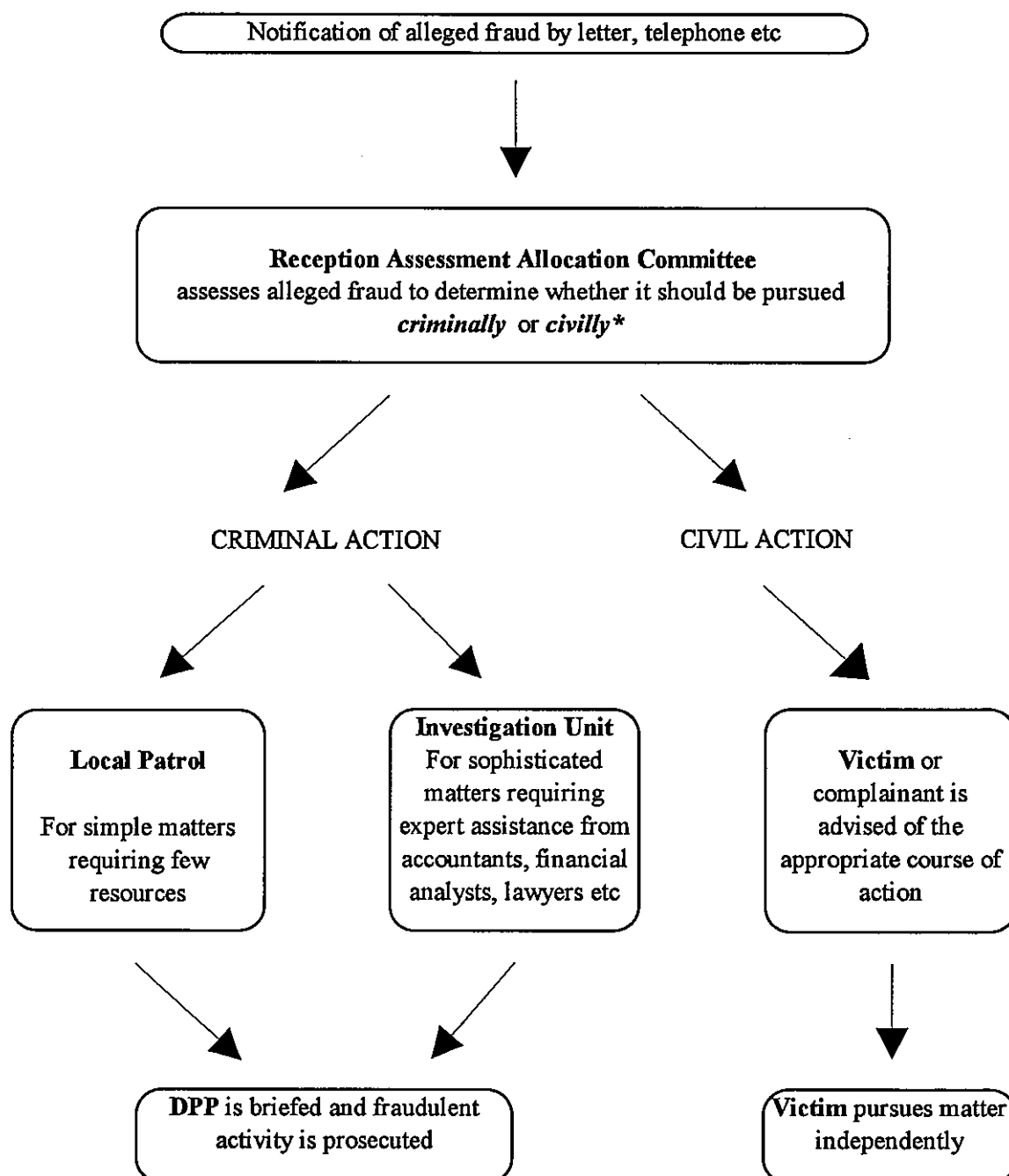
¹⁰⁷ Fraud Enforcement Agency Intelligence Unit *Fraud Enforcement Agency report to the Parliamentary Estimates Committee 1997*, May 1997, pp 17-18.

¹⁰⁸ *Ibid*, p. 25.

¹⁰⁹ *Ibid*, p. 7.

were investigated by other agencies.

The KPMG Fraud Survey found that 68.7% of respondents reported fraud to the police once detected. Of those, 57% resulted in charges being laid. The procedure undertaken by the CCA following an allegation of fraud is as follows:



* When deciding whether the CCA should investigate a complaint of fraud, the complaint must have at least one of the following characteristics:

- there is a high degree of investigative difficulty, requiring the gathering and collation

of a large quantity of evidence or investigative expertise for financial analysis and/or reconstruction;

- the investigation requires detailed accounting or financial expertise or financial reconstruction;
- the matter requires the gathering of evidence from locations across Regions, interstate or overseas;
- the matter contains an element of computer related criminal activity, necessitating computer expertise; or
- the alleged offence/s have a large money value AND contain a component of the above characteristics, or the matter was directed by the Commander, Special Agencies.¹¹⁰

Since its inception, until the end of March 1997, the CCA received 1750 fraud complaints. Of these complaints, 1140 were referred by the Reception Assessment Allocation Committee for investigation. The manner in which these referrals were investigated is as follows:

- 66% were referred to Patrols
- 16% were retained by the CCA
- 9% were referred to the Major Crime Squads, and
- 9% were referred to external agencies.¹¹¹

6.0 VICTORIAN RESPONSE TO FRAUD ENFORCEMENT

The incidence of reported fraud in Victoria grew more than many other types of crime, with just under 100 cases of fraud per 10,000 population being reported in 1992/93, compared with less than 60 cases per 10,000 population in 1984/85.¹¹² In the five years to 1996, the Major Fraud Group (MFG) charged 964 offenders with 21,225 offences totalling \$667 million.¹¹³ Victoria did follow the United Kingdom's lead (see 7.1, below), maintaining two fraud enforcement agencies, the Fraud Squad and the Corporate Crime Group¹¹⁴, until April 1994 when the Fraud Group, the Corporate Crime Group and the Debt Recovery Group

¹¹⁰ Mckenzie, n 9, p.37.

¹¹¹ Fraud Enforcement Agency Intelligence Unit, n 28, p. 4.

¹¹² R Haldane, *The People's Force: A history of the Victoria Police* (2nd ed.), Melbourne, 1995, p. 252.

¹¹³ A Bowles, 'Seminar of "Corporate Fraud", Summary of Address by Commander Allen Bowles, Victoria Police - Major Fraud Group', material supplied to author by Victoria Police Major Fraud Group, September 1997.

¹¹⁴ The Fraud Squad was originally called the Company Squad and was formed in 1932. The Corporate Crime Group was formed in May 1991.

amalgamating to form the MFG. It is the intention that the MFG investigate the following types of allegations of fraud:

- all matters referred by the Assistant Commissioner (Crime);
- all offences allegedly committed by solicitors that involve trust accounts or breaches of the *Legal Profession Practice Act*;
- all matters involving allegations of corruption and offences of secret commission involving public officials, referred by the Government, for investigation by police;
- matters of fraud involving high levels of complexity or practical considerations that would be beyond the capacity of existing Divisional resources. When deciding on complexity, regard will be given to the technicality, volume and timing of the allegation.¹¹⁵

The MFG is divided into five Divisions: the Initial Action/Assessment Division; the Asset Recovery Division, and three Investigation Divisions. It is staffed by 136 personnel, including 108 detectives, five solicitors seven accountants and 16 support staff. The MFG, like the NSW Police Commissioner (see Introduction, footnote 4), Allan Bowles believes that fraud has potential to "seriously threaten the financial system in Australia" and stressed the importance of close liaison between police and the business community in order to focus on prevention, rather than a completely reactive response to the problems posed by fraud.¹¹⁶

7.0 INTERNATIONAL RESPONSES TO FRAUD ENFORCEMENT

7.1 United Kingdom

A survey of 120 of the largest firms in the United Kingdom estimates that fraud costs \$8-10 billion per annum, or \$40 million per day. Detected fraud amounts to between 1% and 3% of revenue.¹¹⁷

The Serious Fraud Office ("the SFO") was established by the *Criminal Justice Act 1987* on the recommendation of the Fraud Trials Committee. The function of the SFO is to "investigate any suspected offence which appears on reasonable grounds to involve serious or complex fraud".¹¹⁸ The SFO concentrates on large-scale and complex fraud, and was established in an effort to combine in the one organisation the roles of investigator and prosecutor.¹¹⁹ The SFO has the power to bypass committal hearings and take the cases

¹¹⁵ Bowles, n 113, p. 3.

¹¹⁶ Ibid, p. 10, 3.

¹¹⁷ M Phillips, 'Corporate body snatchers', *The Bulletin*, 25 March 1997, p. 38.

¹¹⁸ *Criminal Justice Act 1987* (UK) sec 1(3).

¹¹⁹ Aronson, n 5, p. 826-7.

directly to the court for trial.¹²⁰ The *Criminal Justice Act 1987* thus established a separate scheme of evidentiary and procedural rules for the prosecution of serious fraud trials. In addition, the SFO maintains a strict limit on the number of cases it handles - a maximum of 60 matters at any one time, and can pick which cases it is interested in taking on.

The SFO is a government department, distinct from the Fraud Squad which was established in 1946 and is run jointly by the Metropolitan Police and the City of London Police. The *Criminal Justice Act 1987* (UK) (section 2) confers on the Director of the SFO extensive powers of investigation. It is an offence for a person to fail without reasonable notice, to comply with a request under section 2. It is also an offence to knowingly or recklessly provide a statement that is false or misleading in complying with such a request.

7.2 Canada

Prior to 1948 there was no specific law of fraud in Canada. Until that time, frauds were only punished if they were part of a conspiracy to defraud. In 1948 section 444 of the Canadian Criminal Code was amended (Conspiracy to defraud) creating the offence of fraud. After this amendment, all forms of trickery, deceit and guile face criminal sanctions.¹²¹

The Royal Canadian Mounted Police (RCMP) (the Canadian federal police service) maintains the **Economic Crime Branch**. This branch is responsible for all activities relating to the RCMP's Economic Crime Program. The stated objective of the Economic Crime Program is to "reduce, control and prevent business related or white-collar crimes such as fraud and false pretences, the insolvency process, securities fraud...".¹²² The branch operates 34 field units across Canada with a total staff of over 450. The units are staffed by investigators coming from the fields of accounting, law, economics, computer science and business administration. The main duties of the investigators are to gather evidence, examine witnesses and suspects, compile court briefs and reports and recommend necessary courses of action. Where the decision is made to prosecute, the investigators assist in the presentation of evidence and the prosecution of offenders.¹²³ The RCMP also maintains a Proceeds of Crime Unit which is directed at "identifying, assessing, restraining and forfeiting illicit and/or unreported wealth accumulated through criminal activities".¹²⁴ Since the Proceeds of Crime legislation (Bill C-61) was passed in January 1989, the RCMP has seized approximately CA\$158 million worth of assets.¹²⁵

¹²⁰ Ibid, p. 827. Where this occurs, there is a series of preparatory hearings, presided over by the trial judge, which are supposed to take the place of committal hearings. The Victorian Attorney-General exposed for comment a Crimes (Fraud) Bill 1992 in August 1992. This bill was limited to serious and complex fraud trials and essentially modelled on the English system. This Bill was never passed by Parliament.

¹²¹ History of the fraud squad, <http://www.mtps.on.ca/frd/history.htm>, p. 1

¹²² 'Economic crime', <http://www.rcmp-grc.ca/html/commerce.htm>, p. 1.

¹²³ Ibid, p. 2.

¹²⁴ 'Proceeds of crime', <http://www.rcmp.grc.ca/html/proceed.html>, p. 1.

¹²⁵ Ibid.

There are also various state and city fraud agencies. An example is the **City of Vancouver Commercial Crime Unit**. This unit has two main components: the Cheque Squad and the Fraud Squad. The Cheque Squad investigates provisions of the Criminal Code of Canada that deal with offences in which cheques are used to commit forgery, personation, fraud or false pretences. The squad also investigates automated teller machine fraud, fraudulent refunds for travellers cheques and money orders at “kiting” operations, in which money is manipulated through the simultaneous operation of several bank accounts where the user takes advantage of uncleared funds to write cheques for larger amounts than are actually available. The Fraud Squad investigates more complex frauds in the areas of welfare fraud, insurance fraud, corporate fraud, thefts, embezzlements, computer crime, bigamy, perjury and credit card crime. The fraud squad also investigates false pretences, forgeries and counterfeit-related offences, but only where cheques are not involved. In addition, the fraud squad investigates complaints of fraud arising under the Medical Practitioner’s Act, the Legal Profession Act and the Dental and Denturists Act.

7.3 United States

A report by the Association of Certified Fraud Examiners claims fraud costs the United States more than US\$400 billion (A\$506 billion) a year. This represents US\$9 per day per employee. The average organisation is estimated to lose about 6% of its total revenue annually to fraud and abuse committed by its own employees.¹²⁶

Fraud in the US is regulated at both the national and state level. The Federal Bureau of Investigation (FBI) **Financial Crimes Section** is responsible for investigating fraud at the federal level. Bank fraud and embezzlement, fraud against the government, corruption of public officials and health care fraud are some examples given by the FBI of investigative areas within the financial crimes section.¹²⁷ In addition, there are a number of specialised crime squads within the FBI, including the **National Computer Crime Squad**, which investigates violation of the *Federal Computer Fraud and Abuse Act 1986*.¹²⁸ **Operation Rogue Brokers** is another example, investigating securities and commodities fraud in conjunction with the Department of Justice criminal division - fraud section and the Securities and Exchange Commission.¹²⁹

8.0 CONCLUSION

Fraud in the private sector is an increasingly important problem, as evidenced by the NSW Police Commissioner’s plea that industry work together with the police to prevent and detect fraud. By looking at the offences which are categorised as “fraud”, and the incidence of fraud within certain industries, this paper has tried to untangle the complex web that is private sector fraud. Looking briefly at the many different organisations and groups fighting

¹²⁶ Phillips, n 117.

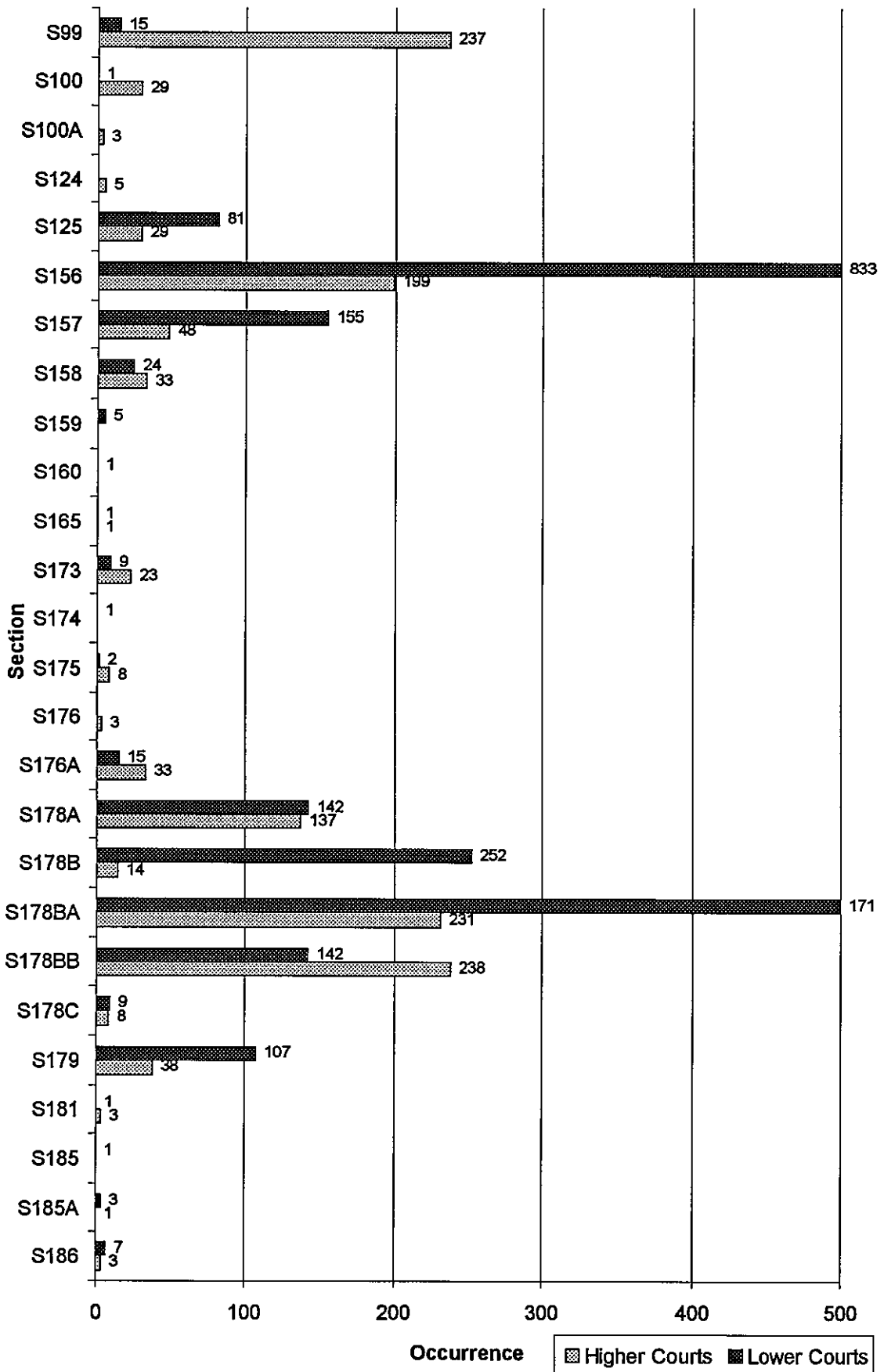
¹²⁷ ‘FBI Investigative Responsibilities’, <http://www.fbi.gov.over.invest.htm>

¹²⁸ The United States has passed a number of specific acts targeting fraud at the Federal level. Other examples include acts prohibiting mail fraud and wire fraud.

¹²⁹ ‘Operation Rogue Brokers’, <http://www.fbi.gov/majcases/rogue/rogue.htm>

fraud can give the impression that fraud is out of control, and is costing billions of dollars annually. There are no answers to the question of what is the best way to fight fraud. However clues can be found by looking at the approaches taken by other Australian and overseas jurisdictions to the investigation and regulation of fraud. In fact, the only consistency to be found is that fraud prevention is vital, as is co-operation between the police and the private sector, if the threat posed by fraud is to be combatted effectively.

APPENDIX 1 - Fraud offences under the NSW *Crimes Act 1900* 1990-1996



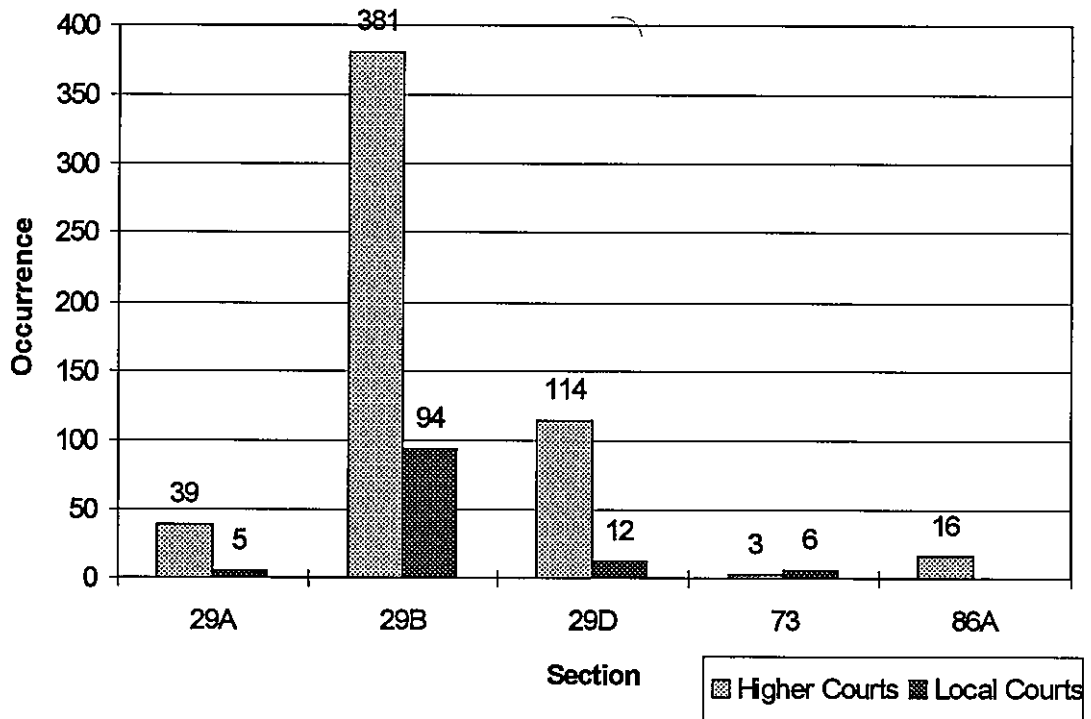
Crimes Act 1900 (NSW): legend- previous page**Section**

S 124	Fraudulent appropriation
S 125	Larceny by bailee
S 156	Larceny by clerks or servants
S 157	Embezzlement by clerks or servants
S 158	Destruction, falsification of accounts etc. by clerk or servant
S 159	Larceny etc by persons in Public Service
S 160	Embezzlement etc. by persons in the Public Service
S 165	Agent misappropriating money etc. trusted to him
S 173	Directors etc. fraudulently appropriating etc. property
S 174	Directors etc. omitting certain entries
S 175	Director etc. wilfully destroying etc. books of company etc.
S 176	Director of officer publishing fraudulent statements
S 176A	Directors etc. cheating or defrauding
S 178A	Fraudulent misappropriation of monies collected or received
S 178B	Valueless cheques
S 178BA	Obtaining money etc. by deception
S 178BB	Obtaining money etc. by false or misleading statements
S 178C	Obtaining credit by fraud
S 179	False pretences etc.
S 181	False pretence of title
S 185	Inducing persons by fraud to execute instruments
S 185A	Inducing persons to enter into certain arrangements etc. by misleading etc. statements etc.
S 186	Taking reward for helping to recover stolen property

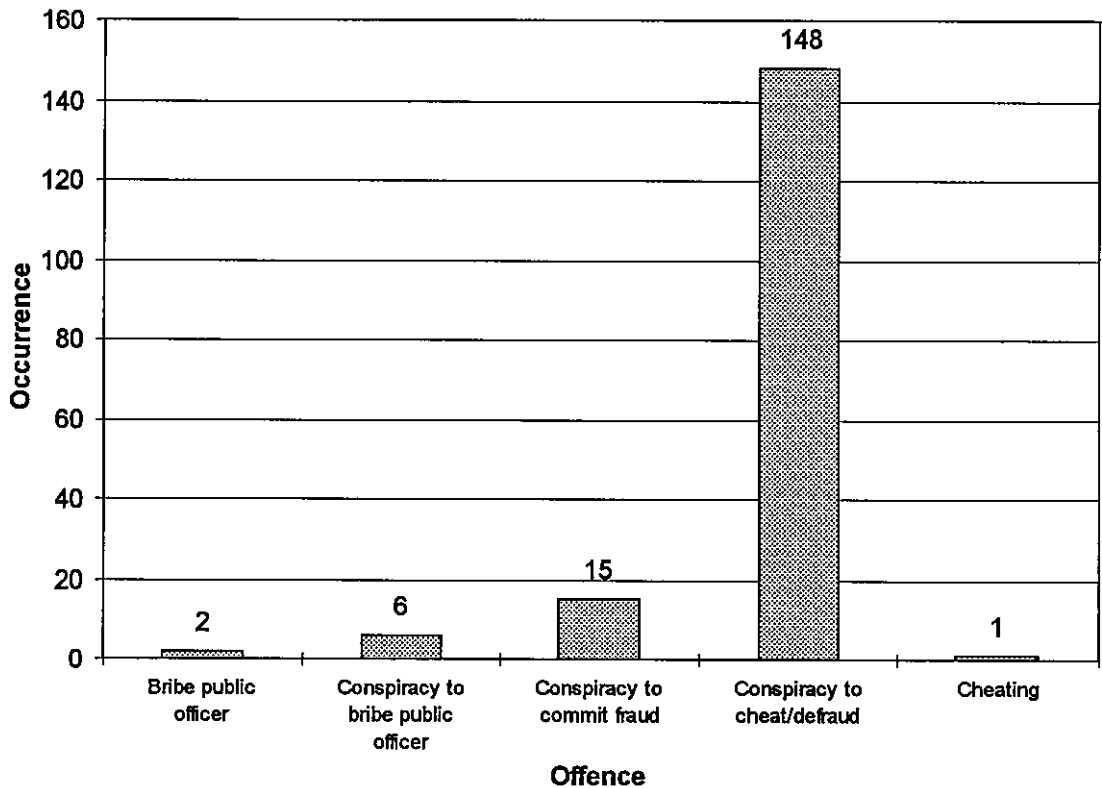
Crimes Act 1914 (Cth): legend - following page**Section**

S 29A	False pretences
S 29B	False representation
S 29D	Defraud the Commonwealth

APPENDIX 2 - Fraud offences under the Commonwealth *Crimes Act 1914* 1990-1996



APPENDIX 3 - Common law fraud offences: Higher Courts 1990-1996



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