



# CORPORATE CRIME

*A Consideration of Crime  
Corporations and Commercial  
Morality in Australia*

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## *Foreword*

Corporate crime is a subject far more discussed than documented. It is an area of crime which has long been beyond many of the traditional criminal justice services and even now presents the police, the courts and corrections with some very serious problems. Even legal drafting to prevent corporate crime serves to institutionalise preventative methods in a way which can be avoided either substantively or procedurally by the brilliant legal minds which corporate offenders can afford to engage.

In this area of new crime, which extends far beyond Australia and involves politics as well as practical crime prevention, we are all neophytes. The best corporate offenders have transnationalised, but the national legal systems are still far from transnationalised, so that the laws of one country can be used against another and in Australia it is appalling that it has not been possible yet to obtain the agreement of all States and the Federation to a common penal system which would avoid liability changing when borders are crossed and the need for formal extradition to take offenders from one State to another. This is federalism at its worst and is a godsend to offenders who are not only mobile, but legally astute.

In this situation we need as much information as possible and I am delighted to have this opportunity of introducing this work by Rodney Purvis. No-one is better qualified to provide an account of corporate crime at the practitioners level; no-one is better qualified to document the work which is now going on and the efforts which are being made, especially in New South Wales, to improve our ways of dealing with corporate crime. Having been associated with Mr Purvis for the last five years, I have been able to appreciate the skill and integrity of his work in the courts and I am happy to see that this has now been translated into book form.

W CLIFFORD

Director,  
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## *Preface*

Identification of corporate crime, the persons who are likely to be involved in it, and the process whereby such persons are brought before the Courts and their guilt or otherwise determined, is central to the theme of this book.

The sanctions imposed by the Companies Act, the Securities Industry Act, the Trade Practices Act, the Income Tax Legislation and the Crimes Acts of New South Wales, Victoria and the Commonwealth, and the Criminal Code of Queensland, are instanced and dealt with in detail.

Decisions of various Courts, both in Australia and elsewhere, are referred to as they illustrate corporate criminal activity, principles referable to the application of the commercial and criminal statutes, and the availability of Common Law offences.

The Accountant and corporate crime, from the point of view of professional responsibility and prospective liability, are considered. The Securities Industry and the Stock Exchange are both the subject of discussion, and it is hoped, constructive comment. The corporation itself as an entity which can be charged with the commission of an offence as a conspirator or as a sole accused is considered in the context of the Criminal Law and Company legislation. The computer as an instrument, or as a victim of crime, whilst not as yet presenting itself in significant crime statistics in Australia, has done so in other countries. The text makes mention of examples of computer crime and precautions that might be taken to minimise its prospective incidence.

The work endeavours to assist the professional adviser and/or his client in an understanding of the judicial process, and the part played by the Police and the Corporate Affairs Commission in the investigation and prosecution of corporate offences. It endeavours to give a reader a conspectus of acts considered to be in breach of commercial morality, and instances such of these acts as are regarded by the Legislature and the Courts to be criminal activities subject on conviction to a penalty by way of fine or imprisonment.

'Corporate Crime' endeavours to deal with this facet of crime within the parameters of the commercial community. It seeks to provide the reader with a self-contained volume on the identification, treatment and prevention of commercial criminality.

The provisions of the Companies Act and the Securities Industry Act, where set forth in the text, are those of the New South Wales legislation. Where there is a significant variance between these Acts and the Acts of Victoria, Queensland, and the Ordinance of the Australian Capital Territory, mention is made of such differences. The provisions of the Crimes Act, where set forth in the text, are those of the New South Wales legislation. Reference is made in all instances to the comparable provisions of the Victorian and Commonwealth Acts, and the Queensland Criminal Code, such provisions being set forth in the appropriate Appendices.

In portions of the text it was found more convenient to paraphrase or

slightly alter the words of the legislation. Unfortunately, as inevitably happens, progressive legislation has overtaken publication. The introduction of amendments to the Victorian Crimes Act, the New South Wales Crimes (Amendment) Act, and the Bail Acts of Victoria and of New South Wales, have occurred during the writing of this work. The amendments made to the Crimes Act of Victoria and of New South Wales are incorporated in the text. The Bail Act of New South Wales has not as yet been promulgated. Comparisons between the Victorian Bail Act and the proposed New South Wales provisions are instanced in [1979] 3 Crim LJ 142. If and when the New South Wales Bail Act is proclaimed, it will codify bail and provide guidelines upon which the extension of liberty might be granted to defendants and accused.

The book collects together concepts, extracts from or references to previously published works, references to legislative provisions and case law, and is in no small part a consequence of the encouragement and support that I have received from many sources. The Premier of New South Wales in his own capacity and as Minister responsible for the Police in that State, enabled me to discuss with members of the Fraud Squad the awareness of corporate crime to the Police, and the manner in which investigations are conducted and provision made for the apprehension of suspects.

The Attorney-General and Minister for Justice (New South Wales) kindly permitted me to have extensive contact with the Corporate Affairs Commission of that State, with whom I not only had numerous discussions but to whom I exposed the manuscript at an early stage.

The Attorney-General for the Commonwealth and the Minister for Business and Consumer Affairs permitted me to discuss the work, its concepts and presentation with Departmental officers. The officers, especially those of the Department of Business and Consumer Affairs, were more than helpful in their consideration of the manuscript and the constructive comments made by them. Their provision of authoritative support for some of the propositions expounded in the text is much appreciated.

Personnel of the Universities and the Colleges of Advanced Education have been extremely helpful in their observations. I would also record my appreciation to the Minister for Business and Consumer Affairs, the Federal Attorney-General, the Premier of New South Wales, and the Attorneys-General for the States of New South Wales, Victoria and Queensland for their kind permission to reprint portions of Federal and State legislation.

The collation of relevant material and the clarification of thought sufficient to express in writing the concept of commercial criminality, and the matters relating to it, have taken a long time. The work as it now is bears witness to the patience of my dear wife Marian, my Publishers Butterworths Pty Ltd, and the untiring application of my diligent and faithful Secretary, Mrs Noni Miller.

RODNEY N PURVIS

Chambers  
Sydney  
27 July 1979

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