RESEARCH NOTE: CORRUPTION ALLEGATIONS AND AUSTRALIAN BUSINESS REGULATION

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Corruption in public life has, mostly in the minds of the Australian public, been a matter of police and political payoffs. Australia has not seen the prominence that has been given in other countries to corruption in business regulatory agencies. Perhaps the reason is that Australian business regulation is in fact relatively clean. It seems likely, for example, with pharmaceuticals regulation, where bribery has been widely documented and researched, that Australia may be one of the very few countries which has not had serious problems of regulatory corruption by pharmaceutical companies (Australian Federation of Consumer Organizations, 1985).

Cynics might contend that Australian business regulatory enforcement is so permissive that there is hardly any need to pay bribes to secure governmental leniency. Despite the availability of penal clauses in all Australian regulatory statutes relevant to this study, prosecution is used infrequently, if at all. Moreover, for more than half Australian business regulatory agencies, the average fines imposed from the convictions which they do secure are under $200 (Grabosky and Braithwaite, 1986). In these conditions, it may be only the economically irrational businessperson who would pay a bribe — such as the car dealer who offered a consumer affairs investigator $1000 to drop his investigation; the investigator ignored the offer and the dealer was fined $200 for the original offence (Grabosky and Braithwaite, 1986: 87). Whether bribes are rational or not in the Australian regulatory context, the purpose of this note is to take us one very small step beyond speculation and anecdote on the extent and conditions of Australian regulatory corruption.

The Study

This note reports a serendipitous finding from a major study of the enforcement strategies of Australian business regulatory agencies (Grabosky and Braithwaite, 1986). A business regulatory agency was defined as a government department, a subunit of a government department, a statutory authority or a commission established independently of the corporate sector with significant responsibilities for regulating the activities of commercial companies which might run counter to what the legislature determines to be broader community interests.

We approached each of the State, Territory and Commonwealth agencies with responsibilities for environmental protection, corporate affairs, consumer affairs, food standards, human rights and equal opportunity, occupational health and safety (including mine safety), radiation control, pharmaceuticals and medical devices, building regulation, fraud against the government, tax, and transport safety, among others. A 95% response rate was obtained from the regulatory agencies approached,

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and a total of 96 agencies co-operated with interviews and other forms of data collection. A list of agencies surveyed appears in the Appendix. A more detailed account of the sampling and the variables coded is available in the book which reports the major findings of the study (Grabosky and Braithwaite, 1986). The study represents the first systematic investigation of the major business regulatory agencies in one country.

The Typology of Agencies

Data from interviews, questionnaires, and agency records were used to code 127 variables. The variables addressed the following domains:

1. Structural variables relating to the agency, eg,
   - size of staff
   - percentage of staff in enforcement roles
   - centralization of decision-making

2. Structural variables relating to the industry regulated by the agency, eg,
   - number of firms
   - size of firms
   - diversity of firms

3. Policy variables, eg,
   - agency functions accorded greatest importance
   - extent of reliance on industry self-regulation
   - encouragement of private civil litigation

4. Behavioural variables, eg,
   - use of prosecution
   - use of licence revocation
   - targeting of repeat offenders

5. Statutory Powers, eg,
   - imprisonment
   - search without warrant
   - maximum fine available

6. Miscellaneous variables, eg,
   - date of agency's founding

7. Attitudinal variables, eg,
   - strict legalism preferable to flexibility
   - companies regarded as socially responsible

A variety of multivariate techniques, but principally hierarchical clustering techniques, were used to generate a typology of regulatory agencies based on their regulatory practices and policies (ie excluding attitudinal variables). This work has also been described in greater detail elsewhere (Braithwaite, Walker and Grabosky, 1986). All agencies in the study were classified into seven types which proved relatively robust across different kinds of analyses and sets of variables. Confidence in the validity of the classification was further reinforced by a discriminant analysis (Nie et al., 1975: 434-62), which indicated that only three of the agencies had a probability of being misclassified which exceeded 1%. Indeed, only 14 agencies had a probability of misclassification exceeding one in ten thousand.
higher fines. They also make greater use of alternative means of enforcement — licence suspension, shutting down production, injunctions and adverse publicity. Typical of this group are corporate affairs bodies, and the environmental protection agencies of New South Wales and Victoria. The "Token Enforcers" and "Modest Enforcers" groups may be distinguished from the "detached" categories in that they place greater emphasis on maintaining co-operative relationships with industry so that self-regulation might be fostered. Unlike the "Detached" or "Modest Enforcers", the "Modest Enforcers" tend to reject the notion that an arms-length relationship with industry is necessary to sustain a moderately punitive stance.

The Corruption Questionnaire: A study of compliance and corruption in the public sector in Australia. The interviews were conducted with the head, or with the second in command of the agency, supported by one or two, but sometimes as many as seven, additional staff. One of the questions we had submitted in writing prior to the interview was:

Does the agency have any policies either about keeping industry at arms length or to ensure that co-operative relationships are maintained with industry? Are there any safeguards to protect against adopting the business point of view to too great an extent? Are there any policies to weed out officers who refuse to be reasonable and sensible in their dealings with industry?

In the course of answering this question — a process that normally lasted 10 or 15 minutes — we seized a comfortable moment to ask whether the agency had ever had to deal with serious allegations that officers had taken bribes. We then asked if the agency had any administrative countermeasures to reduce the risks of corruption.

Serious recent bribery allegations were admitted to have been directed against officers at 19 of the agencies. All of the cases discussed fell within the past decade. In a few cases, such as the 1981 meat substitution scandal in the Commonwealth Department of Primary Industry, they had become public. But, most of them had not, and typically agencies asked us to treat their comments on the corruption question as "off the record". In most cases, the allegations were dealt with quietly by an internal investigation in which sometimes led to an officer resigning but which also sometimes proved to be inconclusive. While all the cases were of agencies which took the corruption allegations seriously as matters of concern, in most cases it could not be confidently asserted that there definitely was corruption.

Thus, the variable coded here is doubtless prone to considerable error. Where there is smoke, there is not always fire; and where there is no smoke, corruption may still occur unnoticed or even with the complicity of top management of the organization.

Error notwithstanding, we feel it important to report these findings since systematic data on corruption are, because of the secretive and consensual nature of the phenomenon, almost impossible to obtain. Criminologists will continue to write about corruption, and royal commissions will continue to make recommendations about how to deal with it, so it is better to introduce some imperfect data into the debate than to continue to rely on the accounts of journalists and others who claim to be "in the know" about where corruption exists in Australian society.

Non-detached Enforcer Agencies as Locations of Corruption Allegations

When we looked at the characteristics of agencies which reported recent corruption allegations, we found that they were concentrated in the "Token
first is that one disadvantage of a more punitive as opposed to a more diagnostic or persuasion-oriented regulatory regime may be that it creates new opportunities for crime in the form of corruption (Vaughan, 1983: 109). Secondly, a disadvantage of a close co-operative relationship with industry, at least for more punitive agencies, may also be greater risks of corruption.

An understanding of the latter risk seemed to underpin the administrative countermeasures against corruption adopted by the 23 agencies which could describe themselves as having such countermeasures. Mostly these consisted of rules that certain types of meetings with business require two officers to be present or that staff be rotated geographically (or into a different type of work) at regular intervals to ensure that ongoing relationships could not develop with companies, or an agency with a tiny internal affairs unit having the specific function of guarding against corruption. Interestingly, 13 of the 23 agencies which could report some sort of administrative countermeasure against corruption were in one of the two non-detached enforce groups where most of the corruption allegations occurred. The hypothesis suggested by these novel data is therefore that when regulating business, deterrence tends to corrupt and fraternal deterrence corrupts absolutely!

REFERENCES


Braithwaite, John, Wilson, John and Grabosky, Peter (1986) "A Taxonomy of Regulatory Agencies", prepared, Australian National University, Canberra.


APPENDIX

Regulatory Agencies Included in the Study

Corporate Affairs
New South Wales, Corporate Affairs Commission
Victoria, Corporate Affairs Office
Western Australia, Corporate Affairs Office
South Australia, Corporate Affairs Commission
Tasmania, Corporate Affairs Office
Australian Capital Territory, Corporate Affairs Commission
National Companies and Securities Commission

Environmental Protection
New South Wales, State Pollution Control Commission
New South Wales, Maritime Services Board
New South Wales, Department of Environment and Planning
New South Wales, Metropolitan Waste Disposal Authority
Victoria, Environment Protection Authority

C 0 R R U P T I O N  A L L E G A T I O N S &  A U S T R A L I A N  B U S I N E S S  R E G U L A T I O N

Table 1

| Agencies Which Had Experienced Recent Corruption Allegations By Type of Agency | Conditioned | Benign | Big Games | Diagnostic | Token Environments | Detached | Token Environments | Detached | Modest Environments | Token Environments | Modest Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Yes | 1 | 1 | 1 | 0 | 1 | 10 | 5 | 19 |
| No | 6 | 10 | 10 | 8 | 6 | 7 | 9 | 56 |
| No Answer | 2 | 6 | 0 | 1 | 0 | 8 | 5 | 21 |

In short, the data suggest that corruption allegations are likely to occur in regulatory agencies with a more punitive orientation, yet which at the same time believe that they have close co-operative relationships with the industry. They rarely occur in non-punitive agencies, in more punitive agencies which believe in keeping industry at arms length.

To test the punishment hypothesis more explicitly, we can compare with other agencies the mean and median number of convictions for the 19 agencies which were the subject of corruption allegations. The median number of convictions for the three years 1981-84 was 49 for agencies which had had corruption allegations, and two for those which had not. The mean numbers of convictions were 283 and 58 respectively.

It came as no surprise that corruption allegations were more common in the more prosecutorial agencies we surveyed. Those agencies less reliant on the criminal process as a means of securing compliance could be expected to be more amenable to informal means of accommodation with industry. By contrast, an enforcement orientation on the part of a regulatory agency provides the corporate criminal with the opportunity, if not also the necessity, to offer financial inducements for favourable treatment.

With only 19 agencies having reported corruption allegations, there is simply not enough leverage in the data to test whether this relationship holds after controlling for other variables. Thus, we have imperfect measurement involving high risk of both false positives and false negatives on a small number of cases with no scope for controls. On the positive side, it can be said that the tiny sample does not constitute a classic problem of statistical inference because we are not dealing with a finite sample from an infinite population; arguably almost all of the important business regulatory agencies in Australia are included in the study. Needless to say, however, all this adds up to counsel for extreme caution in drawing lessons from the data.

Possible Implications

If it is true that punitive agencies which strike to work hand in hand with industry have more corruption problems, some clear policy concerns seem to follow. The
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Queensland, Health Protection Authority
Western Australia, Department of Mines and Energy, Mines Division
Western Australia, Department of Health and Medical Services, Child Health Section
Western Australia, Department of Fisheries and Wildlife, Wildlife Conservation
South Australia, Department of Engineering and Water Supply, Water Quality Section
South Australia, Department of Mines and Energy, Oil and Gas Division
South Australia, Department of Environment and Planning
Tasmania, Department of the Environment
Northern Territory, Conservation Commission
Northern Territory, Department of Transport and Works, Water Division
Department of Territories, Environment Protection Section (Australian Capital Territory)
Office of the Supervising Scientist for the Alligator Rivers Region
Commonwealth Department of Transport, Safety Operations and Pollution Branch
Great Barrier Reef Marine Park Authority

Occupational Health and Safety
Victoria, Ministry of Employment and Training
Victoria, Department of Minerals and Energy, Mines Division
Victoria, Department of Mines and Energy, Oil and Gas Division
Queensland, Department of Employment and Industrial Affairs, Occupational Safety Division
Queensland, Department of Employment and Industrial Affairs, Industrial and Factory Inspectors
Queensland, Chief Inspector of Mines
Queensland, Chief Inspector of Explosives
Queensland, Chief Inspector of Metalliferous Mines
Queensland, Department of Health and Medical Services, Division of Public Health Supervision
Western Australia, Department of Industrial Affairs
Western Australia, Department of Mines, Petroleum Division
Western Australia, Department of Mines, State Mining Engineer
South Australia, Department of Labour, Industrial Safety Division
South Australia, Department of Mines and Energy
Tasmania, Department of Labour and Industry
Northern Territory, Department of Mines and Energy, Industrial Safety Division
Northern Territory, Department of Mines and Energy, Mining Division
Department of Territories, Technical Services Branch (Australian Capital Territory)

Radiation Control
New South Wales, Department of Health, Radiation Health Services Branch
Victoria, Health Commission
South Australia, Health Commission
Tasmania, Department of Health Services

Consumer Affairs
Queensland, Department of Consumer Affairs
South Australia, Department of Consumer Affairs
Western Australia, Department of Consumer Affairs
Tasmania, Department of Consumer Affairs
Northern Territory, Department of Consumer Affairs
Queensland, Chief Inspector of Weights and Measures
Australian Capital Territory, Consumer Affairs Bureau
Trade Practices Commission
Prices Surveillance Authority

Food Standards
New South Wales, Department of Health, Chief Food Inspector
Victoria, Health Commission
Queensland, Department of Health and Medical Services, Chief Inspector of Food
Western Australia, Department of Health and Medical Services, Chief Inspector of Food
South Australian Health Commission, Chief Inspector of Food

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Tasmania, Department of Health Services, Chief Inspector of Food
Northern Territory, Department of Health, Chief Inspector of Food
Australian Capital Territory Health Authority, Chief Inspector of Food
Melbourne City Council, Chief Health Surveyor
Gold Coast City Council, Health Surveyor
Commonwealth Department of Primary Industry, Export Inspection Service

Drug and Medical Device Regulation
National Biological Standards Laboratory
Commonwealth Department of Health, Therapeutic Goods Branch
Commonwealth Department of Health, Pharmaceutical Benefits Branch

Transport Safety
Commonwealth Department of Transport, Office of Road Safety
Commonwealth Department of Transport, Ship Safety Branch
Commonwealth Department of Aviation, Flight Standards Division

Prudential Regulation
Reserve Bank of Australia
Insurance Commissioner
Life Insurance Commissioner

Anti-Discrimination Policy
New South Wales, Anti-Discrimination Board
Victoria, Commissioner for Equal Opportunity
South Australia, Commissioner for Equal Opportunity
Commonwealth Human Rights Commission

Fraud Against the Government
Australian Taxation Office
Australian Customs Service
Commonwealth Department of Health, Surveillance and Investigation Division

Miscellaneous Regulatory Regimes
Australian Broadcasting Tribunal
Western Australia, Department of Fisheries and Wildlife, Chief Fisheries Officer
South Australia, Department of Fisheries
Brisbane City Council, Building Surveyor
Gold Coast City Council, Surveyor of Buildings
Melbourne City Council, Buildings Division
Sydney City Council, Building Surveyor
Commonwealth Department of Employment and Industrial Relations, Arbitration Inspectorate
Commonwealth Patent, Trademarks, and Designs Office