

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
 - targetting 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.

1. *Conciliators*

The first group includes such agencies as the Commonwealth Human Rights Commission, the various State anti-discrimination bodies, and a number of consumer affairs agencies. The distinguishing characteristics of these agencies is their use of conciliation to resolve disputes between conflicting parties. The penal provisions of the Acts which these agencies administer tend to be weak; agency officials in any event regard them as irrelevant.

2. *Benign Big Guns*

A second group of agencies is distinctive for the very formidable powers which they have, but never (or hardly ever) use. Under their respective Acts, the Reserve Bank of Australia may take control of a trading bank; the Australian Broadcasting Tribunal may remove the licence of a television station; the Petroleum Division of the Western Australian Mines Department may shut down a drilling rig, at immense daily cost. Like the conciliators, these agencies do not regard themselves as law enforcers. Rather, the style of the Broadcasting Tribunal has been characterized as “regulation by raised eyebrows” (Blakeney, 1985), that of the Reserve Bank as “regulation by vice-regal suasion” (Livingstone, 1984: 22).

3. *Diagnostic Inspectorates*

A third group of agencies consists primarily of mines inspectorates and radiation safety agencies. These are decentralized inspectorates where most decision-making authority rests with very well qualified inspectors who are trained to diagnose problems which could jeopardize safety. This group places greater emphasis on fostering industry self-regulation and providing technical assistance on a “professional to professional” basis. Prosecution is rarely used; when they do prosecute, diagnostic inspectors tend to charge individual managers rather than the company.

4. *Detached Token Enforcers*

A fourth group adopts a more detached posture vis-a-vis the companies which they regulate. By detached we mean that they do not place so much store as other agencies in maintaining co-operative relationships with industry, in negotiating agreements with industry, and in fostering industry self-regulation. Detached token enforcers are somewhat more inclined to prosecute than those mentioned above. Among the agencies in this category are the occupational health and safety inspectorates of Western Australia, Victoria and the ACT.

5. *Detached Modest Enforcers*

A fifth group shares the same arms-length approach to business as the previous category. Its agencies tend to be a bit more “rule book” oriented, and more likely to provide criminal investigation training for their staff.

6. *Token Enforcers*

The sixth group reflects the predominant style of Australian regulatory enforcement. Its members are more inclined to seek out regulatory violations than are agencies in the foregoing groups — they are proactive rather than reactive. Their prosecutions tend to be rule book oriented rather than diagnostic. They prosecute, but not aggressively or in great numbers; the penalties which result tend to be insignificant. Included in this group are a number of consumer affairs agencies and state food inspectorates.

7. *Modest Enforcers*

The seventh and final category is more enforcement oriented than any of the preceding groups. These agencies undertake more prosecutions, which result in

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 Enforcer” and “Modest Enforcer” 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 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 Question

Most 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, mostly, they 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 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

Enforcer” and “Modest Enforcer” groups of our typology of agencies. Table 1 shows that 15 of the 19 agencies where corruption allegations had occurred were in one of these two groups. Indeed, 48% of the agencies in these two non-detached enforcer groups (for which the question was answered) had had a recent serious corruption allegation. This compared with 10% for the remaining five types of agencies.

TABLE 1
Agencies Which Had Experienced Recent Corruption Allegations By Type of Agency

	<i>Conciliators</i>	<i>Benign Big Guns</i>	<i>Diagnostic Inspect-orates</i>	<i>Detached Token Enforcers</i>	<i>Detached Modest Enforcers</i>	<i>Token Enforcers</i>	<i>Modest Enforcers</i>	<i>Total</i>	
Corruption Allegations	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	4	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 should have close co-operative relationships with the industry. They rarely occur in non-punitive agencies, or in more punitive agencies which believe in keeping industry at arms length.

To test the punitiveness 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 strive to work hand in hand with industry have more corruption problems, some clear policy concerns seem to follow. The

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 they consisted of spot audits or inspections. The Customs Service was the only agency with a tiny internal affairs unit having the specific function of guarding against corruption. Interestingly, 15 of the 23 agencies which could report some sort of administrative countermeasure against corruption were in one of the two non-detached enforcer 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!

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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

Queensland, Beach Protection Authority
 Western Australia, Department of Marine and Harbours, Shipping and Navigation Division
 Western Australia, Department of Health and Medical Services, Clean Air Section
 Western Australia, Department of Fisheries and Wildlife, Wildlife Conservator
 South Australia, Department of Engineering and Water Supply, Water Quality Section
 South Australia, Department of Marine and Harbours, Ports and Marine Operations
 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 Minerals 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 Factories and Shops
 Inspectorate
 Queensland, Chief Inspector of Coal 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
 Tasmania, Department of Mines
 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

New South Wales, Department of Consumer Affairs
 Victoria, Ministry of Consumer Affairs
 Queensland, Consumer Affairs Bureau
 Western Australia, Department of Consumer Affairs
 South Australia, Department of Public and Consumer Affairs
 Tasmania, Consumer Affairs Council
 Northern Territory, Commissioner 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
 South Australian Health Commission, Chief Inspector of Food

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