

FOREWORD

PETER CHALK*

White collar and corporate crime represent, to some extent, the "new wave" of crime. Whilst some of the issues relating to this field are by no means new ones, the focus on these types of crime has intensified as society has been more willing to examine and question the activities of large corporations, public servants and politicians. The growth of consumer awareness and the environmental movement are no doubt interrelated trends. The degradation of the environment, danger to physical well-being and entrenched and subversive corruption are no longer considered to be acceptable costs of economic and societal expansion. Concomitant to this, the legal and political systems have been called upon to deal with such problems, and have at times been found lacking.

Failure to deal effectively with white collar and corporate crime cannot simply be put down to ignorance or lack of action (although no doubt at times these factors can be blamed). Real impediments exist, such as that referred to by Ian Temby Q.C. in his article on dealing with corruption. White collar and corporate crime is perceived as being less serious, or "nicer" than offences against the person or property: this is the "pleasing juxtaposition of business being refined and crime being brutal". Yet what objective difference is there between a corporation being responsible for deformities in infants caused by an ill-researched pharmaceutical product, and a knife-wielding violent offender? The contradiction is enormous: politicians take great delight in "law and order" and "making the streets safer" as electoral issues, but eschew "getting tough" with corporate offenders. Likewise, a corporation convicted of a criminal offence may receive a pecuniary penalty and continue "living". A natural

* B. Com., LL.B. (N.S.W.)

offender on the other hand may be deprived of his or her liberty for a lengthy period of time depending on the offence of which he or she is convicted. Criminality is equivalent, punishment is disparate. Professor Brent Fisse explores in detail some of these issues in his review of recent developments in corporate criminal law and corporate liability to monetary penalties. Professor Duncan Chappell and Ms Jennifer Norberry also review the approach of the law and the legislature in relation to polluting offenders.

White collar crime, in the financial sense, represents another significant problem with significant social costs. Ian Temby Q.C. reflects on a means of dealing with corruption in the public sector. Dr Anthony Moore alerts us to the need for effective regulation of those in business entrusted to deal with people's assets. Law-makers should be particularly mindful of Dr Moore's analysis, especially when one considers the enormous personal and collective hardships suffered in other Australian states in recent times. An appropriate complement to Dr Moore's article in this regard is Dr Peter Grabosky's examination of professional advisers and white collar illegality. Mr Michael Bersten's sophisticated analysis of managerialism and major crime adds much to both the white collar and corporate crime limbs of the title, and demonstrates how the teachings of a discipline hitherto unused in a legal context can be profitably applied to a problem. The approach discussed by Bersten should give policy makers much food for thought. A practitioner's approach to white collar and corporate crime has been considered by Mr Grahame Delaney, and points out some of the difficulties of conducting such prosecutions.

This collection of writings on white collar and corporate crime is an eclectic mix of academically and professionally oriented material. It is hoped that this issue of the Journal will encourage both comment and criticism from a wide range of legal and extra-legal sources. By going beyond a bland dissemination of information on the topic, the authors have made important contributions to a difficult and by no means insignificant branch of the criminal law.