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# **Serious Fraud in Australia and New Zealand**



# Serious Fraud in Australia and New Zealand

*PRICEWATERHOUSECOOPERS* 



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# Foreword

Fraud is one of the principal crime concerns of the twenty-first century that affects both businesses and individuals alike. Financial crimes committed through dishonesty create anxiety in the community and have the capacity to retard legitimate business development, as we have seen in the case of electronic commerce where security risks have slowed the implementation of online business models. Losses can result in increased costs for consumers or depleted return on investments. Although an enduring problem in all developed nations, responding effectively to fraud represents a major challenge for business and the professions with considerable resources being devoted annually to fraud risk management and loss prevention.

The use of the criminal justice system to deal with fraud involves numerous challenges as cases are invariably difficult to investigate and costly to prosecute. Although those accused often plead guilty, where trials are conducted they can be prohibitively expensive with victims often having to bear a proportion of the costs involved. Offenders are also sometimes able to secure relatively low penalties by reason of their advantageous personal circumstances and good prospects of rehabilitation. Nonetheless, it is important that cases of fraud are dealt with in the courts and sanctions imposed in order to show that fraud is taken seriously and to obtain any deterrent effects that are available.

To date, most of the research that has been conducted into fraud has entailed surveys of previous corporate and individual victims in an attempt to find out the nature and extent of their victimisation and how instances have been dealt with. Research using official statistics has been problematic as various types of fraud are not separately recorded by police, the courts and correctional agencies. This makes it difficult to disaggregate instances of dishonesty from other property offences. Making comparisons between jurisdictions is also complicated because of the many different types of offences which may be charged in different places.

In an attempt to improve the level of information about the manner in which fraud cases are prosecuted in the courts in Australia and New Zealand, the present study was undertaken in which a sample of completed cases was explored in much greater depth than normally possible.

This report provides the primary statistical findings of the study undertaken by research staff of the Australian Institute of Criminology assisted by professional staff of PricewaterhouseCoopers located throughout Australia and New Zealand. It is the product of over four years' negotiation, research and analysis, and provides a benchmark against which further studies of this nature can be assessed. More detailed analysis of specific topics will be presented in subsequent publications enabling the data to be explored in greater depth.

Both the Australian Institute of Criminology and PricewaterhouseCoopers are proud to have collaborated in this innovative project that should provide information not only for those seeking to minimise the risk of fraud victimisation but also those seeking to improve the judicial process in these cases. We wish to thank all those associated with the project including the many individuals and agencies listed in the acknowledgments, particularly Dr Russell G. Smith, the principal researcher and instigator of the project, and Dr Yuka Sakurai who conducted most of the data analysis, both of the AIC, and Mr Robert Kus and Ms Claire Witherick of PricewaterhouseCoopers who provided guidance and support throughout.

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**27 March 2003**

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The principal author of the report is Dr Russell G. Smith, Deputy Director of Research, and Head of the Sophisticated Crime, Regulation and Business Program at the AIC. Data coding and analysis was undertaken principally by Dr Yuka Sakurai, Research Analyst, at the AIC. Additional research assistance was undertaken by Mr Jason Payne and Mr Stuart Candy, both Research Assistants at the AIC.

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## **Disclaimer**

This research report does not necessarily reflect the policy position of the Commonwealth Government.

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# Summary of Research Findings

This report presents the principal findings of a study undertaken by the Australian Institute of Criminology in conjunction with PricewaterhouseCoopers, of a sample of serious fraud prosecutions completed in 1998 and 1999 throughout Australia and New Zealand.

The study focuses on serious fraud. Fraud is a generic category of conduct that involves the use of dishonest or deceitful means in order to obtain some unjust advantage over another. Seriousness was defined on the basis of the following criteria:

- financial loss (generally over \$100,000<sup>1</sup> unless other factors made the case unusually serious or complex); or
- sophistication in the planning and/or execution of the offence (such as through the use of computers, electronic transfers of funds, forged instruments, multiple false identities); or
- organisation of the offender(s) (such as the presence of multiple offenders, cross-border activities relating to the movement of individuals or funds, large numbers of victims); or
- fraud offences committed by professionals such as solicitors, accountants, financial advisers, mortgage brokers and so on, who carry out serious offences involving breach of trust concerning clients' funds.

The findings provide an indication of how serious fraud is committed, the characteristics of offenders and victims, how much loss was suffered, and certain key indicators relating to the judicial processing of cases, including how cases were discovered, the length of investigations, and the sentences imposed on offenders. The results also provide unique information concerning the motivations behind the commission of crimes, the rationalisations offered by offenders, and mitigating factors raised at the time of sentencing. Finally, the study identifies certain key risk factors behind the commission of the crimes.

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<sup>1</sup> Currency is quoted in Australian dollars throughout this report, at the rate of NZ\$1 = A\$0.885.

The research involved examination of 155 files from police and prosecution agencies in each state and territory in Australia, the Commonwealth of Australia and from the Serious Fraud Office in New Zealand. They involved 208 accused persons (165 males and 43 females), 183 of whom were convicted of offences.

Some of the principal findings were as follows.

## The Nature of Serious Fraud

- The most common type of fraud involved obtaining finance or credit by deception (21% of offence types) followed by fraud involving cheques (15%). A large number of cases involving cheques were prosecuted in Victoria. Dishonesty in obtaining government benefits occurred frequently in Commonwealth matters.
- Most files involved fraud perpetrated against organisations rather than individuals. By far the largest number of cases involved the victimisation of organisations in the financial services sector (36% of victims), followed by offences perpetrated against Commonwealth public sector agencies (13%). The financial services sector was the most victimised group largely because the most frequently occurring type of fraud involved abuse of credit and financial products.
- Computers were used in the commission of offences in only 20 per cent of files (31 cases). The relatively low incidence of the use of computers could be explained by the fact that some of these offences took place several years before being dealt with in the courts in 1998–99. Indeed, some cases involved incidents perpetrated in the early 1980s when computers were a much less central part of business than they are today.
- False documents were used in the vast majority of cases (69%, or 107 cases). False documents were used to provide evidence of a false or stolen identity, or with respect to false accounting practices such as the use of false entries in ledgers or forged cheques.
- Fictitious identities (involving the creation and use of an entirely fabricated new identity) were used in approximately one-quarter of files, and stolen identities (involving the use, without authorisation, of a real person's name or other identifying information) in 13 per cent of 152 files where information on false identity was available. Of the 152 files examined, 54 (36%) involved the misuse of identity in some way. The majority of files in which false names or identities were used entailed the

use of one or two false names or identities, although one file involved an offender using 116 different names or identities.

- In 97 per cent of files, offences were committed within a single jurisdiction; that is, they were perpetrated by an offender against a victim located in the same jurisdiction.

## The Cost of Serious Fraud

- Three measures of cost were calculated for each case:
  - the maximum amount included in final charges in respect of which the offender was sentenced, including sums taken into consideration for sentencing (*amount sentenced*);
  - the amount of money the offender (or others on behalf of the offender) had repaid prior to the date of sentencing (*amount of restitution*); and
  - the maximum amount in respect of which the offender was sentenced, less any sums repaid by way of restitution (as explained above) or recovered by the victim through other forms of compensation, insurance or professional indemnity payments made prior to sentencing, but excluding any indirect losses suffered by victims and losses incurred in prosecuting the case (*actual loss*).
- Over the two years in question, the 155 files involved \$260.5 million in respect of the total amount sentenced, \$13.5 million recovered as restitution prior to sentencing, and \$143.9 million suffered as the total amount of actual loss. The largest loss was sustained in New Zealand, with the Commonwealth, New South Wales and Queensland all involving losses in excess of \$20 million.
- The mean amount sentenced was \$1.7 million for each file, offenders paid approximately \$100,000 in restitution per file on average, and victims suffered a mean actual loss of some \$941,000 per file. The maximum amount sentenced in any one case was \$80 million.
- The most frequent way in which offenders disposed of the proceeds of their crimes was by purchasing luxurious goods and services such as motor vehicles or travel. The second largest categories (equally) involved expenditure on gambling and personal living expenses. The high incidence of expenditure on luxury items and gambling reflects the fact that greed was the most prevalent motivation of offenders (27% of offenders) followed by gambling (16%).



## Offender Characteristics

- Those accused of the offences in this study had a mean age in their early 40s at the time the factual decision was made, with mean ages of 42 years for females and 43 years for males.
- Approximately one-fifth of those accused were female, with females tending to be grouped in the younger age categories. In the Northern Territory, some 60 per cent of those accused were female.
- Two-thirds of accused persons for whom information on place of birth was recorded, were born in Australia or New Zealand. Of the remaining one-third born in other countries, the largest number were born in South East Asia or Southern Europe.
- Relatively high proportions of offenders had completed secondary education or had an undergraduate tertiary degree, and the largest occupational categories were “director” and “accounting duties”. Five per cent of accused persons were legal professionals. A high proportion of accused persons were at top management level with similarly large numbers having professional registration or membership of a professional association. Professionals tended to have been in long-term employment (in four cases for over 20 years at the time the last offence was committed). Non-professional employees tended to have been employed for shorter periods, but still for a number of years on average.
- A high proportion of accused persons stood in a professional relationship with their victim, with almost one-third (30%) of accused persons having some form of employment relationship. This is an important finding in view of these relationships being ongoing and having an element of trust.
- Eighty-two individuals had some criminal record (44% of those with relevant information recorded) and 49 accused persons had prior fraud offences (27%). Interestingly, almost one-third of those with a prior criminal history had some indictable offences recorded, indicating that prior exposure to the criminal justice system had not acted as a complete deterrent. Over half had no prior criminal offences recorded which confirms prior research showing that white-collar criminals are often first-time offenders. The mean age at which offenders were first sentenced by a court was 38 years for those with a known criminal history and 42 years for those whose criminal history was not known.
- Of the 155 files examined, 84 per cent had only one person accused. In only 11 files were more than two persons involved. This tends to go

against the view held in some circles that a high proportion of financial crime involves criminal organisations. Of course, it may also reflect the greater difficulties encountered in detection and prosecution of highly sophisticated crime operations.

## Motivations and Mitigation

- As already noted, greed (that is, obtaining money for personal advancement without any other motivation) and gambling were the two most frequently identified motivations of accused persons. Financial strain associated with business or personal matters was also frequently recorded and, in fact, business-related motivations were present with 42 accused (20% of all accused persons).
- Thirty-one of those accused offered some form of rationalisation for the commission of their activities. The most frequently occurring rationalisation was an intention to conduct a legitimate business. This was followed by an intention to repay the sums stolen. Such rationalisations were often present where professional advisers misappropriated client funds for investment purposes in the hope that they could realise a profit and repay the amount taken without being discovered. Invariably, the expected profits were not realised.
- The most frequently raised mitigating factors were that the offender had pleaded guilty and had cooperated with authorities. Previous good character, the absence of a criminal history and remorse were also frequently raised in mitigation.

## The Judicial Process

- Internal audit was the means by which the greatest number of cases were first detected. Simple default by offenders under credit or finance agreements provided the second most numerous means of detection. A number of other cases were discovered during police or law enforcement investigations, while victims were responsible for detecting fraud in further instances. Interestingly, anonymous reporting by whistleblowers occurred in only five cases. It is apparent that a large number of offenders failed to take effective measures to conceal their conduct; indeed, in some of these cases the court noted that the conduct was simple, obvious and bound to be discovered.

- Although cases tended to be dealt with relatively promptly once listed for hearing in the courts, lengthy delays occurred during the investigatory phase. On average, cases took over four years between the commencement of the illegal conduct and sentencing. The mean period of offending (first to last offence) was slightly under two years, and the mean period of detection (last offence to date of detection) was an additional 10 months. It took almost five more months to report the matter to the police, and police investigations and interlocutory proceedings up to the date of factual determination occupied some 20 months, on average. An average of three months occurred between the date of the factual determination and sentencing. One Commonwealth case occupied a period of approximately 16 years between the commission of the first offence and final judicial determination of the case, although the period of offending itself lasted almost 13 years with the illegal conduct being discovered only seven months prior to the final offence being committed.
- In only seven per cent of cases, private sector organisations, such as forensic accounting practices, were involved in investigations. Police services were the principal investigatory agencies involved.
- Some 72 per cent of accused persons pleaded guilty, with half pleading guilty at the earliest available opportunity. Those charged in respect of Commonwealth and New Zealand matters tended to plead not guilty much more often than those in other jurisdictions.
- Three-quarters of accused persons were on bail throughout the proceedings, with a further 13 per cent being granted bail for at least some of the period prior to sentencing. Bail was denied to only 14 per cent of accused persons.
- Some 70 per cent of cases involved a plea hearing following a guilty plea. The remaining 30 per cent of accused were tried by judge and jury. It appears that accused persons charged in both Commonwealth and New Zealand matters were tried by judge and jury more frequently than those in the other jurisdictions.
- Of the sentences imposed, full-time custodial sentences were given to three-quarters of those sentenced. Various forms of periodic detention, supervised release and unsupervised release were used in other cases. Only three offenders received just a fine and two offenders received compensation orders as their most serious sanction. In a number of cases, compensation or confiscation orders were made in addition to custodial terms.

- Males received proportionally more full-time custodial orders than females. Both males and females received suspended sentences in similar proportions. Females, however, received higher proportions than males of other forms of supervised and unsupervised release. This does not necessarily reflect leniency toward female offenders in sentencing but rather is indicative of the nature of the offences committed, the amount of money involved and other aggravating and mitigating factors.
- The mean maximum term of custodial sentences awarded was approximately 3.4 years, while the mean minimum custodial term awarded was almost 2.3 years. The longest custodial sentence was 11 years maximum with a non-parole period of eight years, awarded by the District Court of New South Wales following a trial of more than four weeks. The case involved the investment of over \$10.3 million, a proportion of which had been fraudulently obtained from almost 300 victims.
- Community service was awarded by courts as the most serious sanction in respect of only five offenders, often co-offenders. The amount of fines tended to be relatively low, although in one case the offender was fined \$100,000 for fraudulently obtaining over \$200,000 in nursing home payments from the Commonwealth. Awards of compensation ranged from \$219 to \$2,361,777. Most offenders who were ordered to pay compensation had orders made for sums between \$10,000 and \$100,000. In five cases, confiscation orders were noted ranging from \$2,100 to \$333,394, while in a further four files confiscation of other property was ordered including, in one case, all the equity in the offender's home.
- In determining sentence, courts not only take into consideration the factors raised by the offender in mitigation, but also a range of so-called aggravating factors. A breach of trust was the most frequently reported factor for both male and female offenders. Male offenders tended to have a higher proportion of prior convictions than females, females tended to have longer periods of criminality and repeated acts of criminality, and females tended to be more remorseful and cooperative with the authorities than males.
- In terms of judicial review, the Crown appealed against the leniency of sentences given to 20 offenders. In 11 of those cases (55%) the appeal was allowed and the sentence was increased. There were 69 applications by accused or convicted offenders for judicial review or to the appeal courts. These applications were for a variety of orders. Orders were made in favour of the defendant in 41 per cent of those applications or appeals (27

out of 66—in three cases the outcome was not known at the time of writing). Four convictions were set aside, five retrials ordered and, in one case, proceedings were stayed on the application of the accused. Seventeen offenders had their sentences reduced on appeal. These statistics confirm that it is generally difficult to succeed on appeal, particularly where the appeal relates to sentence only.

## Risk Analysis

- The study analysed the circumstances that enabled the offence to take place, whether by reason of inadequate external regulatory controls or due to poor internal business practices. Poor business practices could permit offenders to exploit weaknesses in fraud control systems and make use of opportunities for fraud within organisations.
- Overall, prudential failures to do with the provision of finance and credit, and the verification of the backgrounds of applicants for finance, were the highest areas of risk, followed by personnel failures and inadequate supervision and control of staff within organisations. Accounting and auditing failures were also frequently present and arose in almost one-quarter of cases.
- Interestingly, in the public sector accounting and auditing failures represented the highest risk category while in the private sector prudential factors presented the greatest risk. Both the public and private sectors had similar proportions of cases involving security failures.

## Conclusions

Although some of the incidents that gave rise to the prosecutions analysed in this report took place many years ago—even as far back as the early 1980s—this study provides some important new information on how serious fraud is perpetrated, how much money is at risk, who the offenders and victims are, and the manner in which cases are dealt with in the courts. Clearly these cases are complex, with some trends requiring further analysis and interpretation. Subsequent reports will examine a number of issues in greater depth about the nature of the offences and how they were handled in the judicial system.

The present findings confirm, however, that serious fraud in Australia and New Zealand is both prevalent and costly, while the application of criminal justice responses raises many challenging investigatory, legal and practical issues. Being better informed with respect to the nature and extent of the problem will help those involved in dealing with such cases to plan their responses better and, hopefully, also assist those at risk of victimisation from falling prey to offenders.

# 1 Introduction

## Background to the Study

In November 1998, the Fraud Advisory Council of the Institute of Chartered Accountants in Australia published its report *Taking Fraud Seriously*. One recommendation was that:

*...steps should be taken by agencies throughout Australia to improve the collection of information with respect to fraud through the use of systematic fraud victimisation surveys as well as comprehensive and uniform official data collection practices.*

(Smith & Grabosky 1998, p. 57)

In furtherance of this recommendation, in March 1999, discussions were held between the Australian Institute of Criminology (Dr Russell Smith) and PricewaterhouseCoopers (Mr Robert Kus), concerning the possibility of conducting a joint study of investigations of serious fraud handled by official agencies in Australia and New Zealand. The intention of the project, which builds on some pilot research undertaken by Dr Smith at the Victoria Police Major Fraud Group in 1997, was to provide a snapshot or “stocktake” of a sample of serious fraud investigations finalised by police and prosecution agencies throughout Australia and New Zealand in the calendar years 1998 and 1999.

Fraud is a generic category of conduct that involves the use of dishonest or deceitful means in order to obtain some unjust advantage over another. Dishonesty is the key attribute that distinguishes fraudulent from innocent conduct and, rather than defining dishonesty in legislation, it is usually a matter of fact for juries to determine in criminal cases. The present study focuses on “serious fraud” with the following factors being relevant to the determination of seriousness:

- financial loss (generally over \$100,000 unless other factors made the case unusually serious or complex); or
- sophistication in the planning and/or execution of the offence (such as through the use of computers, electronic transfers of funds, forged instruments, multiple false identities); or

- organisation of the offender(s) (such as the presence of multiple offenders, cross-border activities relating to the movement of individuals or funds, large numbers of victims); or
- fraud offences committed by professionals such as solicitors, accountants, financial advisers, mortgage brokers and so on, who carry out serious offences involving breach of trust concerning clients' funds.

Through the detailed analysis of completed files, it was anticipated that quantitative and qualitative data could be obtained with respect to:

- the types of fraudulent activity perpetrated (such as identity-related fraud and the use of computers);
- financial losses reported and prosecuted;
- demographic characteristics of offenders and victims;
- motivations of offenders (such as the need to support an addiction to gambling);
- how cases were discovered and investigated (including the use of outsourced private sector investigatory services); and
- aspects of the judicial process such as procedural delay and sentencing outcomes in cases.

The advantage of obtaining highly detailed information of this nature was seen to be in providing a set of indicators for use in fraud prevention strategies as well as improving the allocation of resources for risk management, policing and prosecution. The study was also designed to provide benchmarked data on the nature and extent of fraud in Australia and New Zealand against which future developments could be evaluated and trends analysed.

## Prior Research

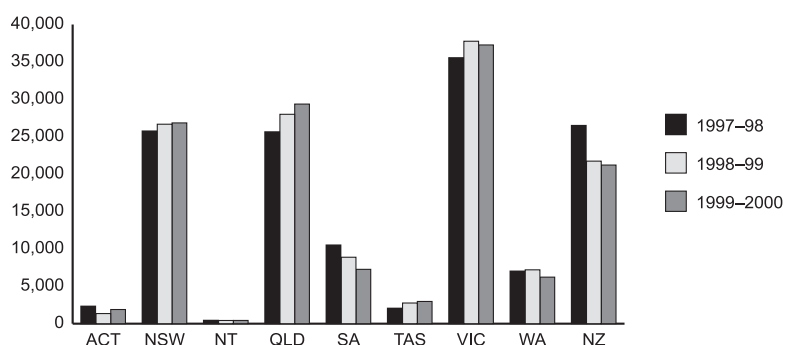
Data on the nature and extent of fraud come from official statistical sources (police, courts and correctional agencies) and various business fraud victimisation surveys undertaken in the private sector.

Reliance on official police statistics in this area is problematic because fraud can entail many different types of criminal activity. In Victoria alone, for example, there are 137 offence descriptions currently in use that are explicitly categorised in police statistics as deception offences, and many more also contain some component of dishonesty (Victoria Police 2002).



Comparison between various jurisdictions is difficult not only because of differences in relevant offence definitions and recording practices, but also due to the limited availability of comparable statistics. Figure 1 gives an indication of differences between jurisdictions for the financial years 1997–98 to 1999–2000. During this time, the number of fraud offences recorded by police varied enormously, from a low of 429 offences in the Northern Territory in 1998–99, to a high in Victoria of 37,764 offences in the same year. The most minor of these offences involved the dishonest appropriation of relatively petty sums; the largest were massive frauds running into many millions of dollars.

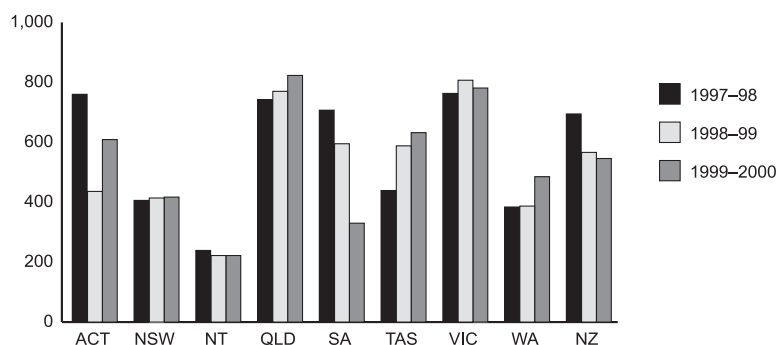
**Figure 1: Number of fraud offences recorded by police, 1997–98 to 1999–2000**



Source: AFP 1998–2000; New South Wales Bureau of Crime Statistics and Research 1997–2000; Northern Territory Police, Fire & Emergency Services 1998–2000; Queensland Police Service 1998–2000; South Australia Police 1998–2000; Tasmania Police 1998–2000; Victoria Police 1998–2000; Western Australia Police Service 1998–2000; New Zealand Police 1998–2000.

Comparison between jurisdictions becomes more instructive when rates of fraud offences per 100,000 population are examined. Figure 2 shows data on the rate of offending per 100,000 population in the various jurisdictions. The lowest incidence was recorded in the Northern Territory in the years 1998–2000 (222 fraud offences per 100,000 population each year); the highest was in Queensland in 1999–2000 (823 fraud offences per 100,000 population). To some extent these differences reflect differences in the activity of police and prosecution agencies that deal with these matters. In the larger jurisdictions such as New South Wales, Victoria and Western Australia, police major fraud squads have far greater resources available to them than in the other

**Figure 2: Rate of fraud offences recorded by police 1997–98 to 1999–2000 per 100,000 population**

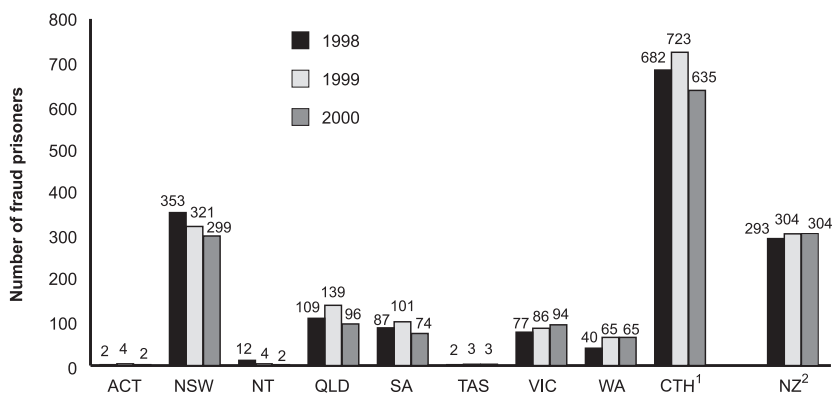


Source: AFP 1998–2000; New South Wales Bureau of Crime Statistics and Research 1997–2000; Northern Territory Police, Fire & Emergency Services 1998–2000; Queensland Police Service 1998–2000; South Australia Police 1998–2000; Tasmania Police 1998–2000; Victoria Police 1998–2000; Western Australia Police Service 1998–2000; New Zealand Police 1998–2000.

jurisdictions. This enables them to deal with a higher proportion of cases. In New Zealand, the Serious Fraud Office is a dedicated agency with responsibility for investigating and prosecuting serious financial crime and has resources that enable it to handle a relatively large caseload.

An indication of the extent of serious fraud can be obtained by examining the number of offenders serving terms of imprisonment for relevant offences. Comparable data for all jurisdictions only exist in respect of the number of prisoners held in Australian prisons on 30 June each year.

Figure 3 shows data on the number of sentenced prisoners in Australia whose most serious offence was fraud and misappropriation, from 1998 to 2000, and the number of New Zealand defendants convicted of fraud and given custodial sentences in the same period. Australian and New Zealand data are not directly comparable as the Australian data represent a “snapshot” of the number of persons in prison on 30 June each year, while the New Zealand data relate instead to the number of new offenders processed each year. Also, Australian data relate to “most serious offence” only, while the New Zealand data are not labelled in this way. Finally, definitions of the relevant offences vary between jurisdictions, making comparisons problematic even between jurisdictions within Australia.

**Figure 3: Number of fraud prisoners, 1998–2000**

Notes: 1 Number of sentenced prisoners in Australia whose most serious offence was fraud and misappropriation, 1998–2000

2 Number of New Zealand defendants convicted of fraud and given custodial sentence, 1998–2000

Sources: 1 ABS 1999, Table 6, p. 23; ABS 2000, Table 6, p. 23; ABS 2001, Table 11, p. 15

2 Derived from New Zealand Ministry of Justice 2001 (figures given were obtained by combination of Tables 3.18 and 3.19, page 50—number of convicted cases involving fraud, times percentage resulting in a custodial sentence).

**Table 1: Australian Federal Police number and value of economic crime cases referred for investigation, 1997–2000**

Case type		1997–98	1998–99	1999–00
Fraud	Number	360	308	312
	\$'000	125,970	104,410	207,269
Corporate, bankruptcy, intellectual property	Number	83	87	53
	\$'000	4,807	7,756	14,298
Computer/telecommunications	Number	163	250	69
	\$'000	229	3,215	1,101
Money laundering (Financial Transaction Reports Act 1988)	Number	384	275	410
	\$'000	101,578	70,751	60,358
Counterfeiting currency	Number	180	146	95
	\$'000	13,446	903	2,373
Environmental	Number	5	2	4
	\$'000	–	–	–
Other	Number	47	28	–
	\$'000	40,837	84	–
Total	Number	1,222	1,069	943
	\$'000	286,868	187,012	285,399

Source: AFP 1998–2000

Fraud affects not only states and territories, but also the Commonwealth. An indication of the size of the problem of fraud dealt with by the Australian Federal Police (AFP), which has responsibility for prosecuting crimes against the Commonwealth, is set out in Table 1. This shows the number of economic crime cases referred to the AFP for investigation between 1997–98 and 1999–2000.

A further indication of the extent to which fraud has affected Australian public sector agencies in recent times may be gleaned from an examination of the results of an audit undertaken in June 2000 by the Australian National Audit Office (ANAO) on the fraud control arrangements in the Commonwealth Public Service. Of the 150 Commonwealth agencies surveyed, 106 responded to a question about the extent of fraud experienced in the two years preceding the survey. Details of the extent of fraud reported are set out in Table 2.

**Table 2: Extent of fraud reported by surveyed Australian Public Service agencies**

	No. of fraud allegations		No. of fraud cases		Value of fraud cases (\$'000)	
	1997–98	1998–99	1997–98	1998–99	1997–98	1998–99
Internal	1,310	1,220	352	348	1,039	9,289
External	5,775	5,257	3,510	3,702	152,137	136,573
Total	7,085	6,477	3,862	4,050	153,176	145,862

Source: Australian National Audit Office 2000, p. 29

Forty per cent of these 106 agencies reported that they had experienced some fraud in the preceding two years, while more than 85 per cent of the frauds reported were committed against fewer than 10 per cent of the agencies. The greatest proportion related to external fraud; that is, perpetrated by people not employed by the Commonwealth. The agencies reporting fraud tended to be those with comprehensive fraud control systems in place, thus making fraud more likely to be detected.

A number of problems were encountered by the ANAO in measuring the extent of fraud in its survey. Seventeen per cent of agencies did not respond to the survey, two agencies were able to provide data only for the financial year 1998–99, and one agency provided information on external fraud alone. Ninety-nine of the agencies were able to provide data on the value of fraud, but they differed in their definitions of fraud, making comparisons of the given figures difficult.

## Data Sources and Sample

Although these statistics provide some general indication of the extent of reported fraud in Australia and New Zealand, it is only through the examination of case files in detail that a clearer picture emerges. In order to limit the scope of the present study and to permit more intensive analysis to be conducted, the current research focused on the most serious fraud cases dealt with by police and prosecution agencies. Few studies in the past have attempted this type of research. The most relevant comparable study was undertaken in 2001 with a sample of 50 completed files handled by the Major Fraud Group of the Victoria Police between January 1990 and October 1994 (Krambia-Kapardis 2001). The methodology in that study was similar to the one used here, save that only police files were examined by Krambia-Kapardis rather than prosecution and court files. Krambia-Kapardis also interviewed police investigators involved in the subject cases.

### Years

The present study examined cases of serious fraud that resulted in a court determination in the calendar years 1998 and 1999, as well as cases in which an appeal was lodged during those years, even if the appeal was not heard until later. This meant that the incidents that were involved took place some considerable time earlier. For example, in one Commonwealth case heard in Victoria, the incident occurred as far back as December 1983.

1998 and 1999 were chosen in order for any appeals resulting from court decisions to have been disposed of (some of which took a number of years to be concluded) as it was important for the judicial process to have been finalised as much as possible. Where appeals had taken place, data were recorded on the basis of appeal decisions rather than first instance trial decisions.

### Serious Fraud

The present study examined cases involving serious fraud, as defined above, that were prosecuted throughout Australia and New Zealand. Cases were included if they involved fraud or dishonesty-related offences such as obtaining property by deception and obtaining financial advantage by deception, even if the case also included other charges such as conspiracy,

theft, forgery or computer-related offences. Cases involving theft of Commonwealth funds and benefits through dishonest means were also included.

## Responsible Agencies

Obtaining data from official documentary sources with respect to each of the 60 data collection fields presented some practical difficulties. The relevant facts were usually contained in documents in police briefs and prosecution files, although these sometimes failed to have the trial judge's sentencing remarks; these sentencing remarks had to be obtained from court registries and reporting agencies on some occasions. Information concerning appeals was also often located in separate files, although decisions were usually available from online databases. The key documents within official files were the police charge documents, witness statements, pre-sentence reports, offenders' prior criminal history transcripts, trial judges' sentencing remarks, and appeal decisions. In addition, important facts relating to key dates in the court process were sometimes located on the covers of files.

Originally, the sample was to include all completed matters that fulfilled the above criteria of date, seriousness, and nature of offence. It transpired, however, that some files failed to contain essential documents necessary to complete the data collection process while other files could not be located by the agencies in question. This meant that a form of quota sampling was employed—cases were included when files were available for inspection and when the bulk of the data fields could be satisfied. Inevitably, some data remained missing.

The selection of files was largely undertaken by officers within the agencies concerned who located cases that fulfilled the above criteria. This sometimes required police services to notify prosecution agencies of relevant cases, or individual investigators to identify appropriate cases for inclusion in the sample. The sample could, arguably, have been distorted by agencies failing to produce certain files for inspection, although there was no indication that any conscious or organised attempt to manipulate the sample in this way was undertaken by the agencies involved. Agencies cooperated with the study throughout, although were sometimes hampered by limitations in staff and resources.

In most jurisdictions, the office of the Director of Public Prosecutions (DPP) was able to provide the necessary files. Where this was not possible, police or court files were examined. Often the files held by these different agencies contained copies of the same documents.

In New Zealand, access to relevant files proved to be considerably more straightforward than in Australia. The Serious Fraud Office deals principally with fraud cases and has joint investigatory and prosecutorial functions. All the necessary documents were therefore able to be found within the files.

## Data Collection

Data were collected by the principal researcher (from the AIC) visiting each jurisdiction, with assistance in some places by a local staff member of PricewaterhouseCoopers. Data collection generally took five days in each jurisdiction and occurred between 23 July 2000 and 12 September 2002. For Commonwealth matters, privacy considerations meant that certain data had to be extracted from files held by the Commonwealth DPP by agency personnel—AIC and PricewaterhouseCoopers staff had access only to public source documents such as trial and appeal decisions.

## Ethical Considerations

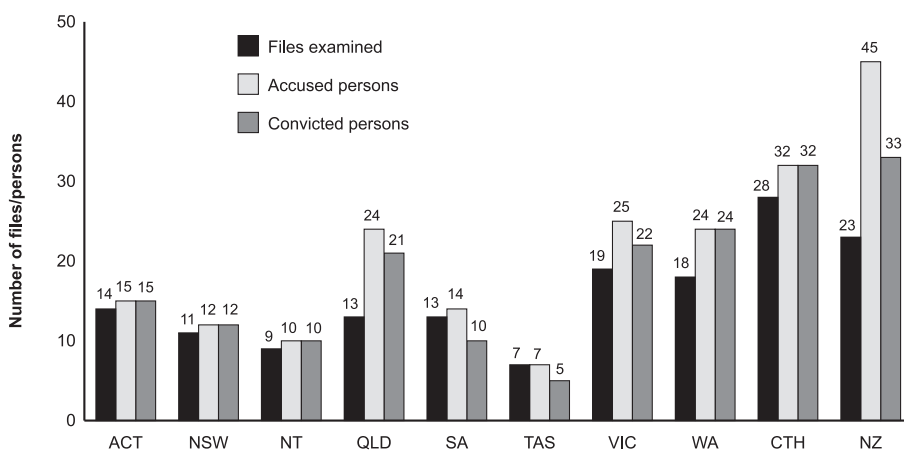
The study was approved by an institutional human research ethics committee originally on 10 February 2000 and subsequently (in respect of the revised methodology concerning Commonwealth matters) on 21 August 2001. In order for Commonwealth information to be provided, a Public Interest Determination (No. 8 of 22 March 2002) was obtained from the Commonwealth Privacy Commissioner which took effect on 26 August 2002 ([http://www.privacy.gov.au/act/public\\_interest/index.html#4](http://www.privacy.gov.au/act/public_interest/index.html#4)). This enabled the Commonwealth DPP to disclose personal information that might otherwise have infringed Commonwealth Information Privacy Principle No. 11. Personal undertakings were also given by the AIC and PricewaterhouseCoopers staff not to divulge confidential information contained in official files nor to name individuals or organisations in any report of the study.

## Sample Description

The present study involved the inspection of 155 files relating to 208 accused persons from the 10 jurisdictions as set out in Figure 4. A “file” was defined as the documents relating to legal proceedings that involved charges against one or more accused persons that were heard by one judge in a single sentencing hearing. Accordingly, some individuals were involved in a number of files in some jurisdictions and some files had more than one accused (see discussion of co-accused below). In addition, the number of “files” inspected did not necessarily coincide with the number of agency files, separately numbered, as in some cases various agency files involving the same offender were dealt with by a single judge during the one hearing. One-hundred and eighty-three persons were convicted of some or all charges (88% per cent of the total number of accused persons). The reason for this high conviction rate is partly due to the fact that the files made available for inclusion in the study tended to be those in which a conviction had been obtained, as these were more easily locatable.

In the following analyses, some tables and figures relate to files examined while others deal with individuals accused. Each indicates the total number of each type considered.

**Figure 4: Number of files examined and persons accused and convicted in each jurisdiction**



Note: The category of convicted persons excludes those accused who were acquitted (7), or in respect of whom charges were dismissed (7), or a *nolle prosequi* entered (1), or proceedings stayed (1), or where information concerning the conviction was unavailable (9).

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]



In the Northern Territory and Tasmania, the least number of files were examined because the serious fraud case load in these jurisdictions was relatively small. Commonwealth files were drawn from the regional offices of the Commonwealth DPP in various jurisdictions as these matters were heard by the relevant state or territory court. In addition, the number of files inspected in each jurisdiction did not necessarily reflect the case load of the agency in various jurisdictions. Rather, the files inspected were simply those that were available and fulfilled the sampling criteria described above.

Finally, it should be emphasised that the present study dealt only with cases of serious fraud reported to the police and proceeded with by prosecution agencies. Excluded are unreported matters and those that did not satisfy prosecution policy criteria. Nonetheless, the present sample includes some of the most serious cases dealt with in recent years in which the evidence was sufficient to warrant a prosecution.

## 2 The Nature of Serious Fraud

This chapter considers the way in which crimes of dishonesty took place by analysing the nature of the activities involved, what type of victims were targeted, the extent to which computers and false identities were used, and whether cross-border activities were involved. Other more specific information about the amount of money stolen and the characteristics of offenders is presented in later chapters.

In each of the following tables, a blank cell indicates a zero record. Percentages are rounded to one decimal point, therefore totals may not always sum to 100.

### Offence Categorisation

Fraudulent and dishonest conduct often involves a complex range of activities that cross traditional criminal offence classifications. Offenders may, for example, use computers when creating false invoices and, in order to do so, they may commit an offence of unauthorised access to a computer although the underlying nature and motivation of that offence is fraud. As such, it is sometimes difficult to categorise the range of activities involved in complex crimes of dishonesty. Rather than attempting to identify the number of offence counts charged by police, the following classification is based on the general nature of the criminal conduct that occurred. On a number of occasions the course of action involved multiple offence categories, hence the total number exceeds the total number of files examined. Table 3 sets out the number of offence types within each category for each jurisdiction.

The most common type of fraud involved obtaining finance or credit by deception. Examples of such conduct included obtaining loans for clients in order to increase sales, and abuse of credit facilities, mortgages and credit card accounts through failure to make repayments. The ACT and New Zealand had relatively large numbers of such cases.

Cheque fraud was the second largest offence category, with a large number of these cases prosecuted in Victoria. Included here were instances of unauthorised use of company cheques, passing valueless cheques, overdrawing cheque accounts, and passing stolen cheques.

**Table 3: Category of offence by jurisdiction (number of offence types)**

Offence category	Jurisdiction									Total	
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH		NZ
Obtaining finance/credit by deception	9	2		4	3	2	7	2	4	9	42
Cheque fraud	4	5	1	2	3	2	10	2	1	1	31
Dishonestly obtaining government benefits			1					1	21	3	26
Investment/trust account fraud	1	4	1	4	4		2	3	2	4	25
Misappropriation of funds in the private sector	1	2	4	2	2	3	2	3	1	3	23
Obtaining goods/services by deception		2	1	1		1	5	5			15
False accounting		1		2	2		1	3			9
Dishonestly using government funds			3	1		1			3	1	9
Dishonest sale of goods			2	1			2			2	7
Dishonestly obtaining commission (excluding share market fraud)				2				1		2	5
Administration of justice offences					2			1		1	4
Insurance fraud				1	1			1			3
Theft of inventory/stock by employees		1		1							2
Share market fraud								1			1
Extortion of funds from employees										1	1

Note: Multiple offences occurred in some jurisdictions (n=203).

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

The dishonest obtaining of government benefits by individuals occurred frequently in Commonwealth matters. This category also included the avoidance of liabilities such as taxation or customs duties. A number of Commonwealth and Northern Territory files also involved dishonestly using government funds, such as individuals misappropriating public sector funds or misusing travel allowances or expense accounts.

Significant losses also occurred through the misappropriation of funds in the private sector:

- withdrawals of funds by bank staff;
- withdrawals of funds from joint accounts by a joint signatory;
- theft from corporations by employees;
- payroll padding;
- theft of petty cash;

- the unauthorised use of client trust or investment funds by professionals (including accountants, investment advisors and solicitors) or persons posing as such; and
- aiding and abetting the commission of these offences.

Relatively small numbers of matters occurred in the remaining categories. These were:

- obtaining goods and services by deception (which included the use of forged credit cards and entering into contractual arrangements without sufficient funds);
- false accounting (which included the giving of false invoices or placing false orders to obtain benefits);
- dishonest sale of goods (which included the sale of property that the offender did not own or have authority to sell, forgery of motor vehicle inspection certificates and rewinding odometers, and the use of false sales arrangements to receive a deposit without delivering goods);
- dishonestly obtaining commissions (excluding share market fraud but involving the inflation of property values to financial institutions to obtain sales commissions);
- share market fraud (which involved the misappropriation of funds in connection with share trading); and
- administration of justice offences (perjury and perverting the course of justice) and the remaining categories that are self-explanatory.

## Victim Categorisation

Table 4 presents data on the type of victim involved in the files examined and, in the case of organisations, the relevant industry group. “Victim” refers to the entity that sustained the loss rather than the entity that was named as complainant (although the complainant was almost always the same entity that suffered the loss). Most files involved fraud perpetrated against organisations rather than individuals. By far the largest number of cases involved organisations in the financial services sector, followed by offences perpetrated against Commonwealth public sector agencies. The financial services sector was the most victimised group largely because the most frequently occurring type of fraud involved abuse of credit and financial products (see Table 3 above).

**Table 4: Victim categorisation**

Victim category	Number of files	Percentage
Individual	38	20.2
Non-individual (subtotal 150)		79.8
Financial services	68	36.2
Commonwealth public sector	24	12.8
Retail	11	5.9
State/territory public sector	6	3.1
Insurance	6	3.1
Manufacturing	5	2.7
NZ public sector	3	1.6
Wholesale	3	1.6
Construction	3	1.6
Telecommunication	3	1.6
Casino/TAB	2	1.1
Real estate/property management	2	1.1
Service	2	1.1
Primary	2	1.1
Trading	2	1.1
Airline	2	1.1
Technology	1	0.5
Public utility firm	1	0.5
Education	1	0.5
Church	1	0.5
Legal profession	1	0.5
Community organisation	1	0.5
<b>Total</b>	<b>188</b>	<b>100.0</b>

Note: N=188 victims. Some files involved multiple victims.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

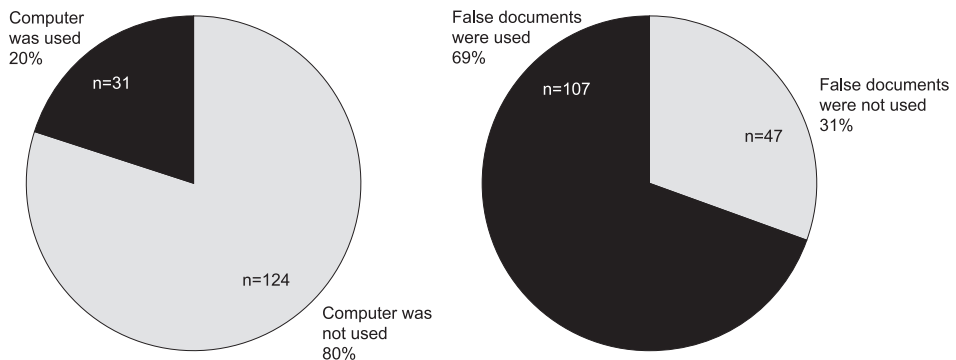
## Computers and False Documentation

Much has been written in recent times about the role of computers in financial crime (see, for example, Grabosky, Smith & Dempsey 2001). As shown in Figure 5, computers were used in only 20 per cent of files (31 cases). For this analysis, the use of computers was defined broadly to include any use of a computer as the instrument in the commission of the offence, however central or peripheral that might be. This could, for example, have entailed the use of computers to counterfeit or to alter documents or to alter accounting records or the movement of funds from bank accounts electronically.

The relatively low incidence of computer use could be explained by the fact that some of these offences took place several years before being dealt with in the courts in 1998–99. Indeed, some cases involved incidents perpetrated in the early 1980s when computers were a much less central part of business than they are today. Presumably, a study conducted of crimes taking place at present would show a much higher incidence of computer involvement.

As one might expect, false documents were used in the vast majority of cases (69%, or 107 cases). False documents were used to provide evidence of a false or stolen identity, or with respect to false accounting practices such as the use of false entries in ledgers or forged cheques.

**Figure 5: Use of computers and false documentation in the commission of crimes**



Note: N=155 files (use of computers), N=154 files (false documentation).

Source: Australian Institute of Criminology and PricewaterhouseCoopers, *Serious Fraud in Australia and New Zealand, 2003* [computer file]

## False Identities

Fraud often involves the misrepresentation of one's identity in order for the offence to be committed without the offender being located by the police or creditors. For present purposes, three categories of identity-related fraud are relevant:

- A "fictitious identity" involves the creation and use of an entirely new identity in the commission or concealment of the illegal activity in question. This could, for example, have involved the use of a name other than the person's usual name for the purposes of the illegal act, or the assumption of an identity by some means other than through the use of a name (for example, title, qualification, spelling).

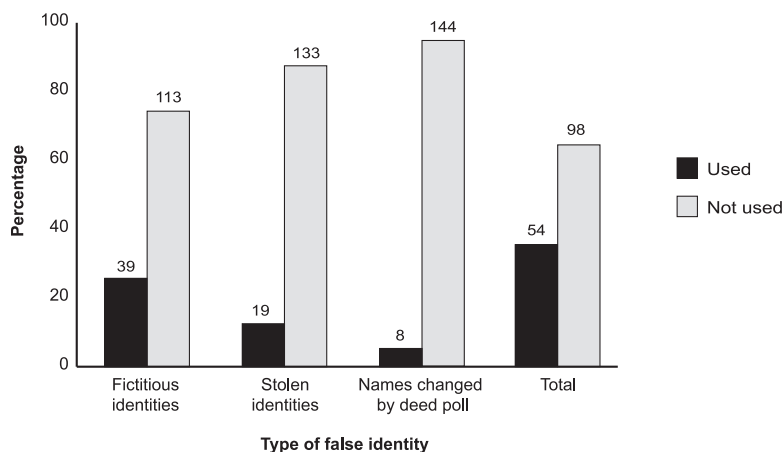
- A “stolen identity”, entails the use without authorisation of a real person’s name or other identifying information, such as a person’s bank account details or other personal information.
- Finally, a number of cases involved individuals who had changed their name through the use of a deed poll (a declaration of change of name) and committed crimes in their former or changed names.

From Figure 6 it is apparent that fictitious identities were used in approximately one-quarter of files. Stolen identities were used in 13 per cent of files where information on false identity was available. Surprisingly, deed poll name changes were present in some five per cent of files.

Although these data show a much lower incidence of false identities than has been discussed in recent times in the media, the present data reflect conduct that took place some years ago when misuse of identity was less prevalent due to the limited availability of computers. Computers are now of central importance in the fabrication of false proof-of-identity documents.

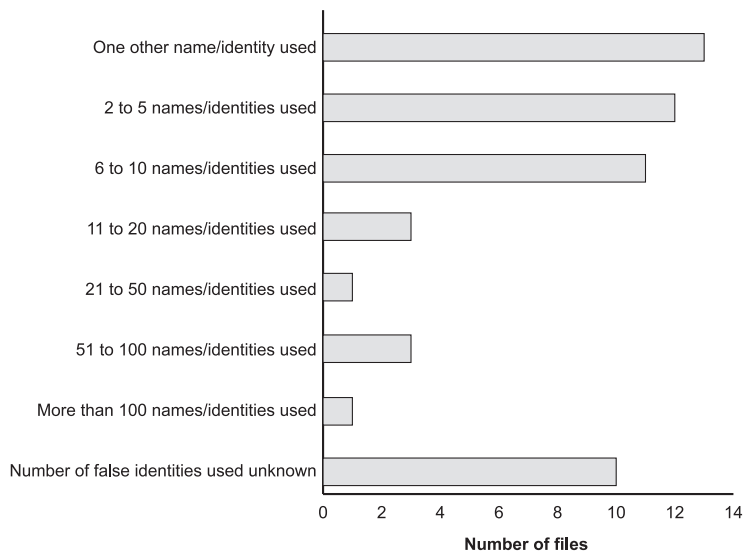
Arguably of greater concern, however, is the use of multiple false identities by offenders. Of the 155 files examined, information on use of false identities was available in 152 files. Fifty-four (36%) involved the misuse of identity in some way. Ten of these 54 files did not have information recorded on the number of false names or identities used by offenders. Of the remaining 44 files, offenders used various numbers of false names or identities as shown in Figure 7. The majority of files in which false names or identities were

**Figure 6: Use of false identities**



Note: Information on use of false identities was available in 152 of the 155 files. Numbers indicated on bars are values (number of files), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 7: Number of multiple identities used in each file**

Note: N=54 files

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

used entailed the use of one or two false names or identities, although one file involved an offender using 116 different names or identities. It can be expected that as the use of desktop publishing equipment increases, the use of large numbers of false identities will also increase. This is because it is just as simple to fabricate one as to fabricate many false documents to misrepresent one's identity.

## Cross-border Activities

In 97 per cent of files (150 out of 155), offences were committed within a single jurisdiction; that is, they were perpetrated by an offender against a victim located in the same jurisdiction. In a small number of files, however, cross-border activities were involved. Three files involved offences that took place in a different jurisdiction from the one in which the accused was arrested and tried. In one file, two other jurisdictions were involved and in one other file, four other jurisdictions were involved. In no files were international cross-border activities involved, although in three files offenders were born and raised in other countries prior to committing their offences in Australia or New Zealand, as shown in Chapter 4.



### 3 The Cost of Serious Fraud

One of the most sought-after statistics concerning fraud is the amount of money stolen by offenders. Determining this deceptively simple figure is, however, a matter of some complexity. Criminal courts are often unwilling and ill-equipped to conduct the detailed analysis of financial losses which often takes place in civil proceedings. In some cases, victims were unaware of how much had been stolen and unable to calculate the losses with certainty. On other occasions, even the perpetrators of the fraud had simply lost track of how much they had taken, and were themselves surprised to learn the full extent of their dishonesty.

The analysis of financial losses in the current study was, therefore, difficult and complex. Some assumptions had to be made about the likely amounts lost in certain cases.

Three primary analyses were undertaken. First, the "amount sentenced" was ascertained. This was defined as the maximum amount included in final charges in respect of which the offender was sentenced. In cases with more than one offender, the amount sentenced was the aggregate of sums stolen by each offender where these related to separate counts of dishonesty. This amount included sums taken into consideration for sentencing; that is, charges that the accused admitted and wished to be taken into account by the court when determining sentence but which had not formally been charged. The amount involved in charges that alleged attempted fraud were also included in the amount sentenced, where allegations of attempted offences were proved. The amount sentenced did not, however, include sums involved in charges which had been withdrawn or which were not proceeded with by the prosecution. Where an offender had obtained finance by dishonestly making representations concerning securities offered, the amount sentenced included the amount of finance obtained, even if the lender had not suffered any actual loss.

Second, information concerning the "amount of restitution" actually made was recorded. This was defined as the amount of money the offender (or

others on behalf of the offender) had repaid prior to the date of sentencing. In some cases, sums were repaid following sentencing, although information about this was rarely recorded, and in the majority of cases the offender sought to make restitution prior to sentencing in order to claim any benefits that this might attract in terms of a reduced sentence. It can be assumed, therefore, that sums repaid prior to sentencing represented the full extent of restitution made in almost all cases. The amount of restitution did not include any sums recovered by victims through insurance or professional indemnity payments as these do not come from the offender. Similarly, any sums recovered by way of civil action were excluded. In cases with more than one offender, the amount of restitution was the aggregate of sums repaid by each offender where these related to separate counts of dishonesty.

Third, a calculation was made of the “actual loss” suffered by the victim. This was defined as the maximum amount in respect of which the offender was sentenced, less any sums repaid by way of restitution (as explained above) or recovered by the victim through other forms of compensation, insurance or professional indemnity payments made prior to sentencing, but excluding any indirect losses suffered by victims and losses incurred in prosecuting the case. Where multiple victims were involved, the actual loss was the total of sums lost by all the victims that related to separate counts of dishonesty. In some cases, victims were able to indicate to the court the amounts they claimed to have lost which were in excess of the amounts charged and the amount sentenced. This usually occurred in cases where victims made submissions supporting claims for compensation.

In order to make the sums involved comparable, New Zealand dollars were converted to Australian dollars at the rate of NZ\$1 = A\$0.885.

## Amounts Involved by Jurisdiction

In all, the 155 files examined involved \$260.5 million in respect of the total amount sentenced, \$13.5 million recovered as restitution prior to sentencing, and \$143.9 million suffered as the total amount of actual loss. Details for each jurisdiction are set out in Table 5. It appears that the largest loss was sustained in New Zealand, with the Commonwealth, New South Wales and Queensland all involving losses in excess of \$20 million.

Table 6 sets out details of the mean amounts involved in each jurisdiction in respect of amount sentenced, amount of restitution and amount of actual loss. It appears that, on average:

- \$1.7 million was the mean amount sentenced in each file;
- offenders paid approximately \$100,000 in restitution per file; and
- victims suffered a mean actual loss of some \$941,000 per file.

Largest average actual losses were sustained in New South Wales, followed by New Zealand, Queensland and the Commonwealth.

**Table 5: Total amounts involved in each jurisdiction**

Jurisdiction	Total amount sentenced (\$)	Total amount of restitution (\$)	Total amount of actual loss (\$)
ACT	1,621,881	556,402	894,734
NSW	21,289,832	791,404	26,147,717
NT	916,574	38,000	809,418
QLD	12,100,701	409,087	21,078,328
SA	9,587,973	274,871	5,040,417
TAS	2,257,254	664,975	1,193,116
VIC	16,548,264	712,970	7,158,284
WA	23,860,747	571,858	7,083,446
CTH	106,914,474	4,837,294	29,731,639
NZ	65,413,747	4,690,800	44,824,415
All jurisdictions	260,511,447	13,547,661	143,961,514

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Table 6: Mean amounts involved in files in each jurisdiction**

Jurisdiction	Mean amount sentenced (\$)	Mean amount of restitution (\$)	Mean amount of actual loss (\$)
ACT	115,849	46,367	63,910
NSW	1,935,439	71,946	2,377,065
NT	101,842	7,600	89,935
QLD	930,823	34,091	1,621,410
SA	737,536	22,906	420,035
TAS	322,465	94,996	170,445
VIC	870,961	37,525	376,752
WA	1,325,597	47,655	416,673
CTH	3,818,374	210,317	1,061,844
NZ	2,973,352	203,948	1,948,888
All jurisdictions	1,691,633	99,615	940,925

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Categories of Amounts Involved

Details of the mean, median and maximum amounts involved in the 155 files examined are set out in Table 7, while Figure 8 shows the number of files in which information was recorded concerning the amounts sentenced, amount of restitution made and actual loss incurred. Approximately one-quarter (26%) of these files involved sums sentenced of less than \$100,000 with a further one-quarter of files (24%) involving sums sentenced of more than \$1 million. The maximum amount sentenced in any one case was \$80 million.

More than half these files involved payments of restitution of less than \$10,000. Only about two per cent of files involved restitution payments in excess of \$1 million.

In 14 per cent of these files, the actual loss suffered was in excess of \$1 million, while almost half of the files (47%) involved actual losses of less than \$100,000.

**Table 7: Mean/median/maximum amounts sentenced, restitution and actual loss**

	Amount sentenced (\$)	Amount of restitution (\$)	Amount of actual loss (\$)
Number of files with information	154	136	153
Mean amount	1,691,632.77	99,615.15	940,924.93
Median amount	399,462.50	n/a	125,633.00
Maximum amount	80,000,000	3,678,600	30,227,700

Note: A median amount of restitution is not shown owing to the large number of cases in which no restitution was ordered.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 8: Categories of amounts sentenced, amount of restitution and amount of actual loss**



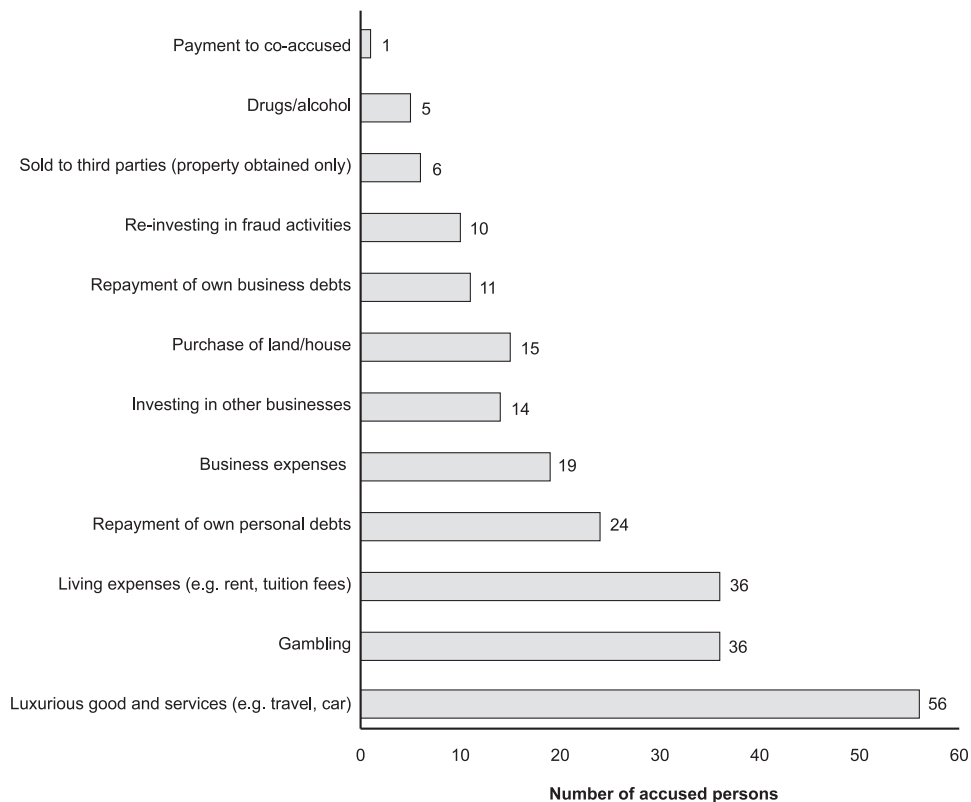
Note: 154 files had information on amounts sentenced; 136 files had information on amounts of restitution; and 153 files had information on amounts of actual loss. Numbers indicated on bars are values (number of files), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Disposal of Proceeds

Information was recorded in 133 files concerning the manner in which the offender(s) had spent or otherwise disposed of the money that had been stolen. In some files offenders spent the proceeds of their criminal activities in multiple ways. From Figure 9 it is apparent that the most frequent way in which offenders disposed of the proceeds of their crimes was by purchasing luxurious goods and services such as motor vehicles or travel. The second largest categories (equally) involved expenditure on gambling and personal living expenses. The high incidence of expenditure on luxury items and gambling reflects the fact that greed was the most prevalent motivation of offenders, followed by gambling (see Figure 20).

**Figure 9: Manner in which proceeds of fraud were disposed**



Note: In some files offenders spent the proceeds of their crimes in multiple ways. Information was available for 167 of the 208 accused persons.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## 4 Offender Characteristics

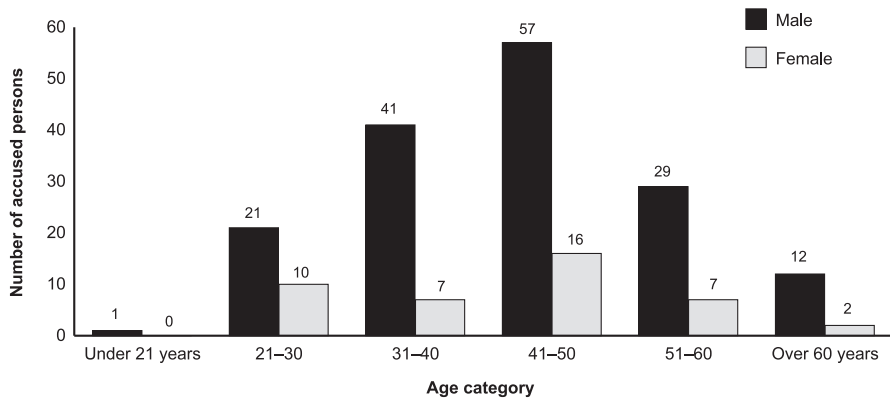
This chapter examines the demographic and personal characteristics of those who were alleged to have perpetrated the fraud offences. Having information about the type of individuals who perpetrate crimes of dishonesty is important not only for the identification of likely risk factors which have relevance to fraud prevention and risk minimisation strategies, but also for assessing the effectiveness of the judicial process in terms of specific deterrence—namely, whether those who have committed crimes have done so in the past and have undergone judicial punishment.

### Age and Gender

Those accused of the offences in this study had a mean age in their early 40s at the time the factual decision was made (in the case of those acquitted or where charges were dismissed) or at the time of sentencing (in the case of those convicted). This was considerably older than the average age of convicted offenders in Australia and New Zealand. Minimum ages were 20 for males and 22 for females, while oldest ages were 75 for males and 68 for females. Mean ages were 42 for females and 43 for males. This predominance of older offenders is understandable, as opportunities for committing offences of this nature generally only arise after individuals have been in the workplace for some time and have acquired some experience and trust (Figure 10).

Approximately one-fifth of those accused were female, with females tending to be grouped in the younger age categories. Some jurisdictions had much higher proportions of females accused than others, particularly the Northern Territory where 60 per cent of those accused were female (Figure 11).

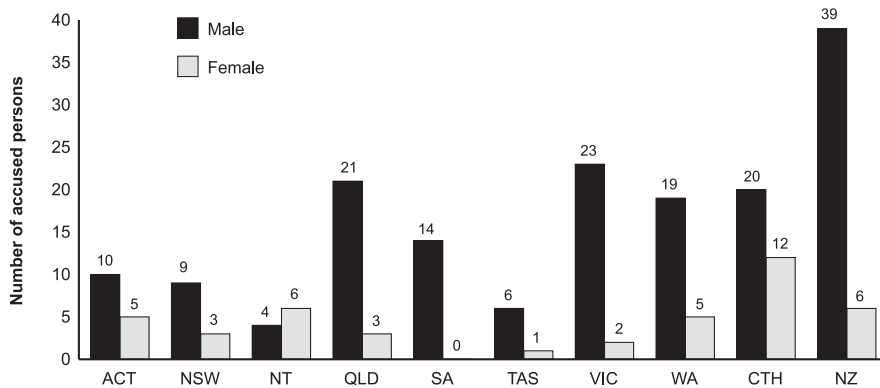
**Figure 10: Age and gender of accused persons**



Note: Information on age was available for 203 of the 208 accused persons (161 males and 42 females). Age was calculated at the time the factual decision was made (in the case of those acquitted or where charges were dismissed) or at the time of sentencing (in the case of those convicted).

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 11: Gender of accused persons by jurisdiction**



Note: N=208 accused persons

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]



## Place of Birth

Two-thirds (66%) of accused persons for whom information on place of birth was recorded, were born in Australia or New Zealand. Of the remaining one-third who were born in other countries, the largest number were born in South East Asia and Southern Europe (Table 8). Of those accused born in Australia, the highest proportions came from New South Wales, Victoria and Queensland. This diverges somewhat from the sample distribution in which Western Australia had the second largest percentage of accused persons. This may indicate that some offenders who were born in the eastern states had moved to Western Australia by the time they became involved in offending.

**Table 8: Place of birth of accused persons**

Place of birth	Number of accused	Percentage*
<b>Australia</b>	<b>73 (subtotal)</b>	<b>42.9 (subtotal)</b>
ACT	0	0
NSW	19	11.2
NT	2	1.2
QLD	12	7.1
SA	2	1.2
VIC	14	8.2
WA	6	3.5
TAS	7	4.1
State unspecified	11	6.5
<b>New Zealand</b>	<b>39 (subtotal)</b>	<b>22.9 (subtotal)</b>
<b>Overseas</b>	<b>58 (subtotal)</b>	<b>34.1 (subtotal)</b>
Oceania (excluding Australia & New Zealand)	7	4.1
UK & Ireland	6	3.5
Southern Europe	9	5.3
Western Europe	2	1.2
Northern Europe	1	0.6
Eastern Europe	2	1.2
Former Soviet Union & Baltic States	2	1.2
Middle East & North Africa	2	1.2
Southeast Asia	17	10.0
Northeast Asia	2	1.2
Southern Asia	5	2.9
North America	1	0.6
Africa (excluding North Africa)	2	1.2
<b>Total with information</b>	<b>170</b>	<b>100.0</b>
No information recorded	38	

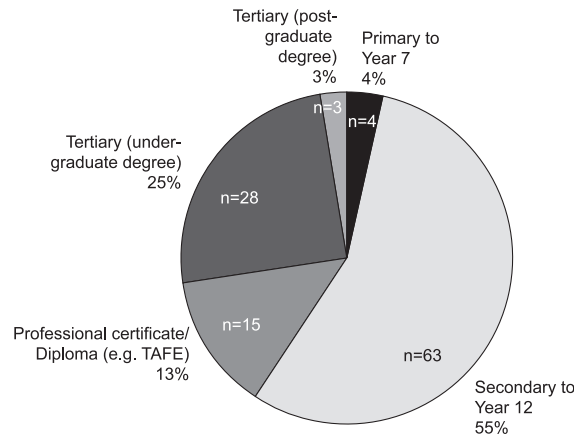
Note: N=208 accused persons. Percentages are out of the total of all accused persons with information on place of birth available (n=170).

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Education

From Figure 12 it is apparent that of those accused for which information about education was recorded, the largest proportions had completed secondary education or had an undergraduate tertiary degree.

**Figure 12: Highest level of education completed by accused**



Note: Information on education was available for 113 of the 208 accused persons.

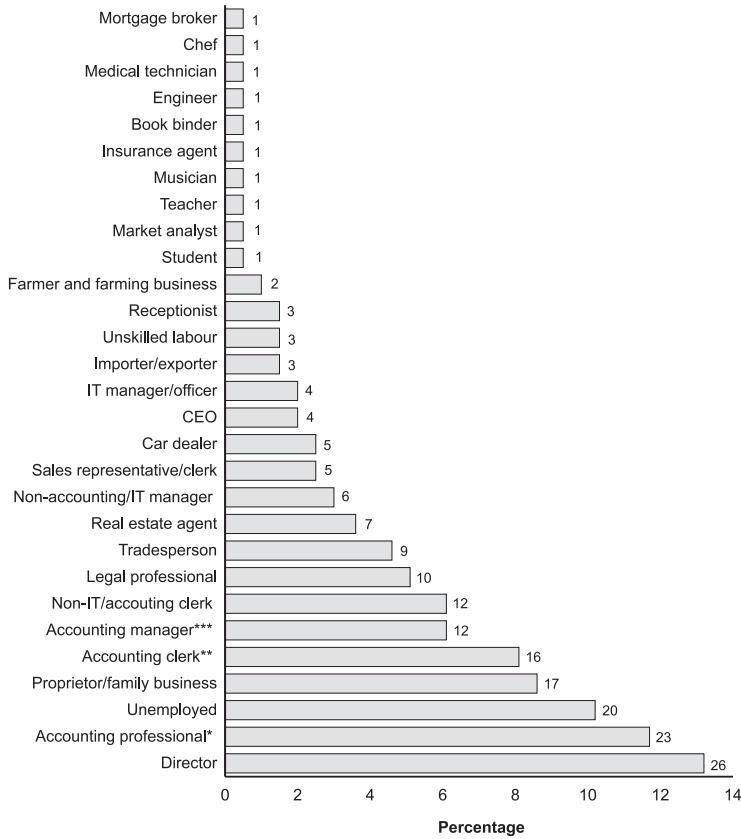
Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Occupation

Figure 13 presents data on the occupation of accused persons at the time their last offence (for which they were sentenced) was committed. The largest categories were “director” and “accounting duties” – persons who would be well placed to misappropriate funds from their employers. There were also large numbers of unemployed persons, including many who had lengthy periods without work and others whose businesses collapsed at the time of the commission of the offences.

Figure 14 presents data on the professional and managerial qualifications of accused persons. A relatively high proportion were at top management level, with similarly large numbers having professional registration (such as in medicine or law) or membership of a professional association (such as accountancy).

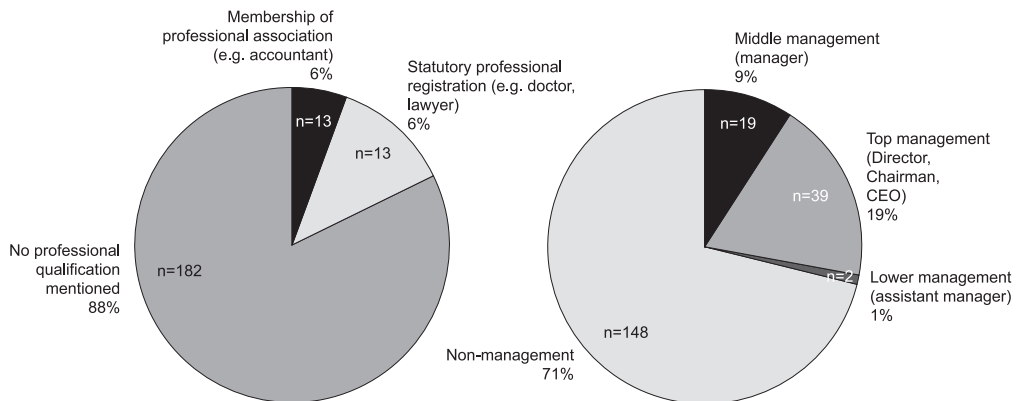
**Figure 13: Occupation of accused persons**



Note: Information on occupation was available for 195 of the 208 accused persons. \* Accounting professional includes accountant, tax agent and investment advisor. \*\* Accounting clerk includes bank clerk. \*\*\* Accounting manager includes bank branch manager. Numbers on bars are values (number of accused persons) not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 14: Professional and managerial qualifications of accused persons**



Note: N=208 accused persons

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Years in Position

Some previous studies of fraud victimisation have found that offences were committed by those who had been in relatively stable employment and had obtained a degree of trust that facilitated the commission of the offence.

Table 9 shows the period of time that accused persons had worked with the same employer at the time their last offence was committed (if offences were committed by internal staff against their employer, or professionals against their clients or their legitimate business partners). Some 78 accused persons were in employment at the time their offence was committed. Professionals tended to have been in long-term employment (in four cases for over 20 years at the time the last offence was committed). Non-professional employees tended to have been employed for shorter periods, but still for a number of years on average.

**Table 9: Length of employment of accused persons**

Period of time in position	Employer–employee			Client–professional	Business partner/agent
	(top managerial staff)	(middle managerial staff)	(lower or non-managerial staff)		
6 months or less	2	3	2		2
Over 6 months to 1 year		3	1		1
Over 1 year to 5 years	3	4	5	2	
Over 5 years to 10 years		1	2	4	
Over 10 years to 15 years	1	3	3		
Over 15 years to 20 years			1	4	
Over 20 years			1	4	1
No information provided	1	4	6	12	2
<b>Total</b>	<b>7</b>	<b>18</b>	<b>21</b>	<b>26</b>	<b>6</b>

Note: N=208 accused persons

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Relationship to Victim

Figure 15 shows the nature of the relationship between the principal accused person and their victim. In most cases, non-principal offenders had no prior relationship with their victims and were, accordingly, excluded from this analysis. Of the 155 relevant accused persons, the largest category stood in a professional relationship. This was followed by an employment relationship involving non-managerial staff. Almost one-third (30%) of accused persons

had some employment relationship. While this may account for a minority of cases in the sample, it is worthy of particular scrutiny in view of these relationships being ongoing and having an element of trust. This stands in contrast to the more ad hoc and arm’s length nature of the typical “consumer–business” or “claimant–government agency” relationship.

**Figure 15: Relationship between victim and primary accused**



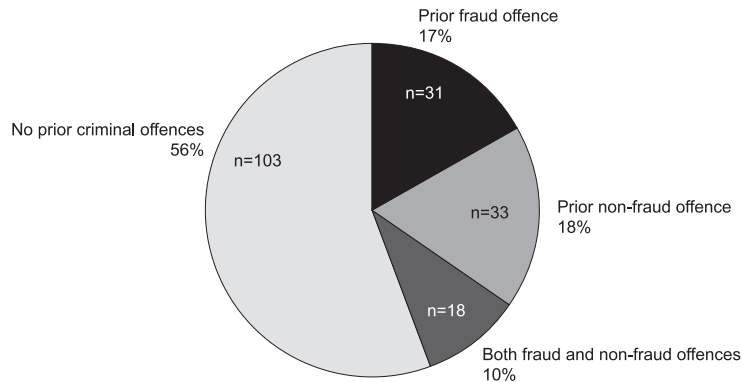
Note: N=155 files. Due to the presence of multiple victims in some cases, the total percentage exceeds 100. Numbers indicated on bars are values (number of files), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Type of Prior Criminal History

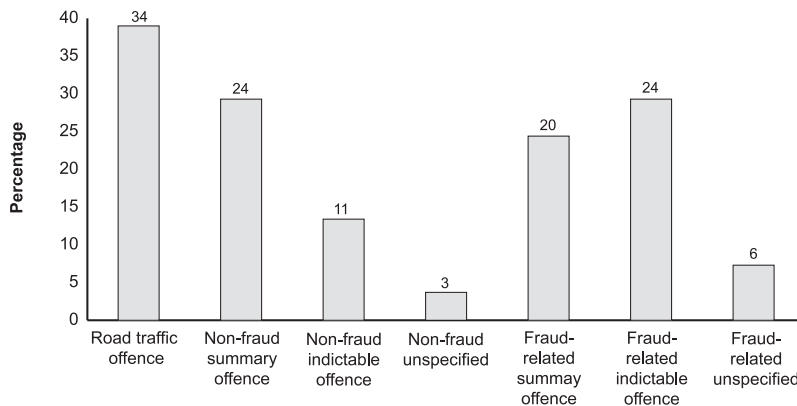
Information on prior criminal history was available for 185 of the 208 accused persons. From Figures 16 and 17 it is apparent that 82 individuals had some criminal record (44% of those with relevant information recorded) and that 49 accused persons had prior fraud offences (27%). Interestingly, almost one-third of those with a prior criminal history had some indictable offences recorded, indicating that prior exposure to the criminal justice system had not acted as a complete deterrent. Over half (103 accused persons) had no prior criminal offences recorded (56% of those with relevant information recorded) which confirms prior research showing that white-collar criminals are often first-time offenders.

**Figure 16: Type of prior criminal history (1)**



Notes: Information on prior criminal history was available for 185 of the 208 accused persons.  
 Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 17: Type of prior criminal history (2)**

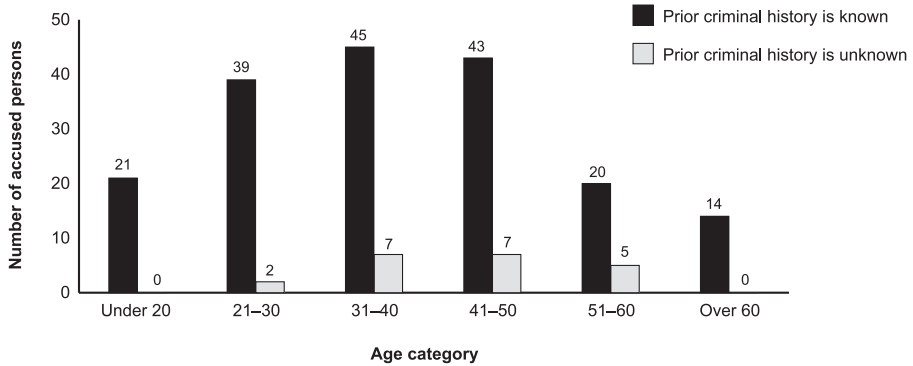


Notes: These categories are not mutually exclusive. Some offenders had a criminal history with offences in multiple categories. Percentage of offenders is out of the total number of offenders with any criminal offence (that is, 82 accused persons). Numbers indicated on bars are values (number of accused persons), not percentages.  
 Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Age When First Sentenced

Figure 18 records information about the age of accused persons at the time they were first sentenced by a court on any criminal charge. In the case of those accused of current offences whose prior criminal history was known, the age of first appearance is the date at which they were first sentenced by any criminal court during their entire criminal history (including non-fraud offences). For those whose prior criminal history was unknown, the date of

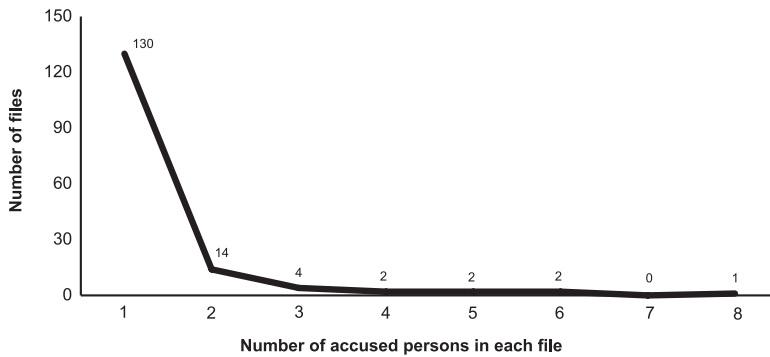
**Figure 18: Age of accused when first appeared before a court**



Note: N=203. For five persons accused of current fraud offences, information on their age at the time of factual decision/sentencing was unknown and it was not known if they had any prior criminal history. Total number of accused persons whose prior criminal history is known is 182. Ages vary from 26 to 75 years. The average age is 38 years. Total number of accused whose prior criminal history is unknown is 21. In this group, ages vary from 26 to 58 years. The average age is 42 years.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 19: Number of accused persons in each file**



Note: N=155 files

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Table 10: Number of accused persons in each file by jurisdiction**

Jurisdiction	Number of accused persons in each file								Total
	1	2	3	4	5	6	7	8	
ACT	13	1							14
NSW	10	1							11
NT	8	1							9
QLD	9		3			1			13
SA	12	1							13
TAS	7								7
VIC	15	3		1					19
WA	16	1				1			18
CTH	24	4							28
NZ	15	3	1	2	1			1	23
<b>Total</b>	<b>129</b>	<b>15</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>155</b>

Note: N=155 files

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

their first appearance is the date they were sentenced by the court in relation to the current fraud offence. Details were available for 203 individuals, with ages varying from 26 to 75 years. The mean age at which these individuals were first sentenced by a court was 38 years for those with a known criminal history and 42 years for those whose criminal history was not known.

## Number of Co-accused

Of the 155 files examined, 84 per cent had only one person accused. From Figure 19 it can be seen that files only rarely involved multiple accused. In only 11 files (7%) were more than two persons involved. This tends to go against the view held in some circles that a high proportion of financial crime involves criminal organisations. Of course, it may also reflect the greater difficulties encountered in detection and prosecution of highly sophisticated crime operations.

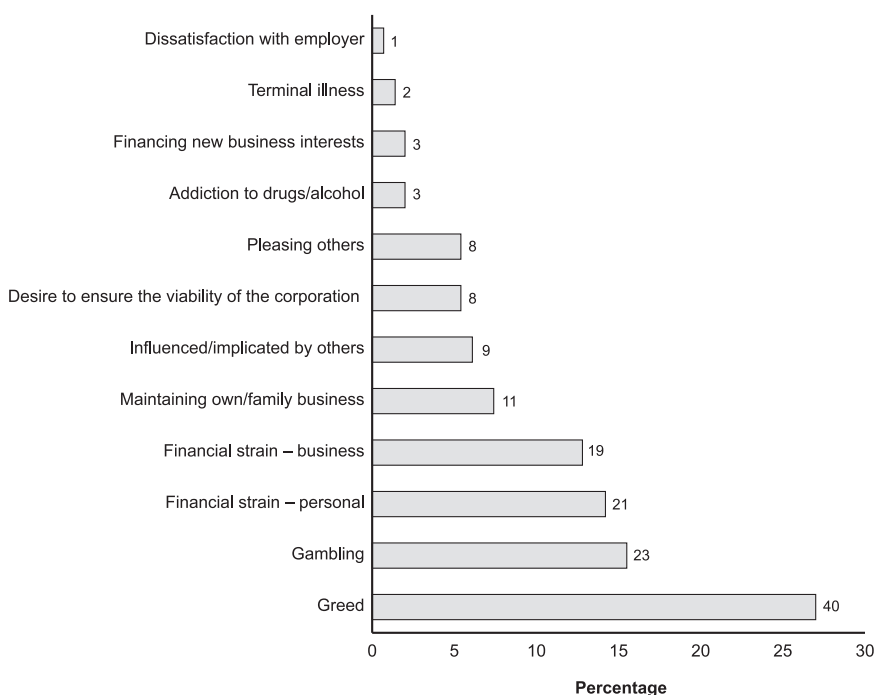
Table 10 shows that cases including multiple defendants tended to be concentrated in certain jurisdictions, notably New Zealand (which had a much higher incidence of multiple offenders than other jurisdictions). Further research with a larger sample size would be required in order to test this hypothesis effectively.



# 5 Motivations and Mitigation

This chapter examines the motivation of those accused of serious fraud, how they explained or rationalised their activities, and the nature of the mitigating factors raised in their defence at the time of sentencing. This information was usually available from the trial judge's sentencing remarks, the submissions of defence counsel prior to sentencing, pre-sentence reports prepared on behalf of offenders, or in submissions made on behalf of victims or prosecutors.

**Figure 20: Primary motivation of accused**



Note: Information on motivation was available for 148 of the 208 accused persons. Numbers indicated on bars are values (number of accused persons), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

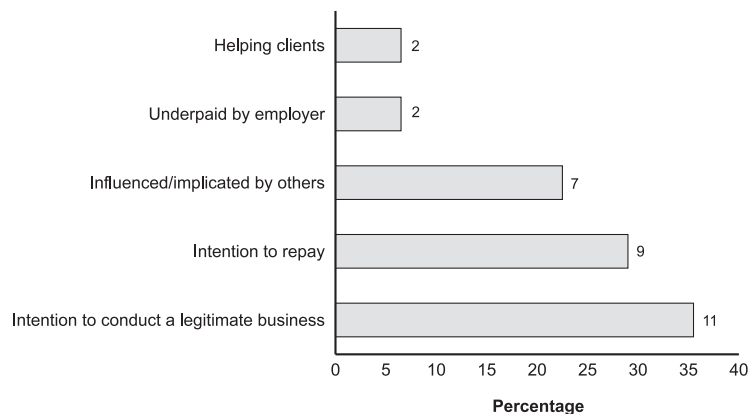
## Primary Motivation

Figure 20 sets out information on the primary motivation that each accused person had for the commission of the offence. Information on motivation was obtained for 148 accused persons. Greed (that is, obtaining money for personal advancement without any other motivation) and gambling were the two most frequently identified motivations of accused persons. Financial strain associated with business or personal matters was also frequently recorded and, in fact, business-related motivations were present with 42 accused (20% of all accused persons).

## Rationalisations

Thirty-one of those accused offered some form of rationalisation for the commission of their activities (Figure 21). The most frequently occurring rationalisation was an intention to conduct a legitimate business. This was followed by an intention to repay the sums stolen. Such rationalisations were often present where professional advisers misappropriated client funds for investment purposes in the hope that they could realise a profit and repay the amount taken without being discovered. Invariably, the expected profits were not realised.

**Figure 21: Primary rationalisation of accused**



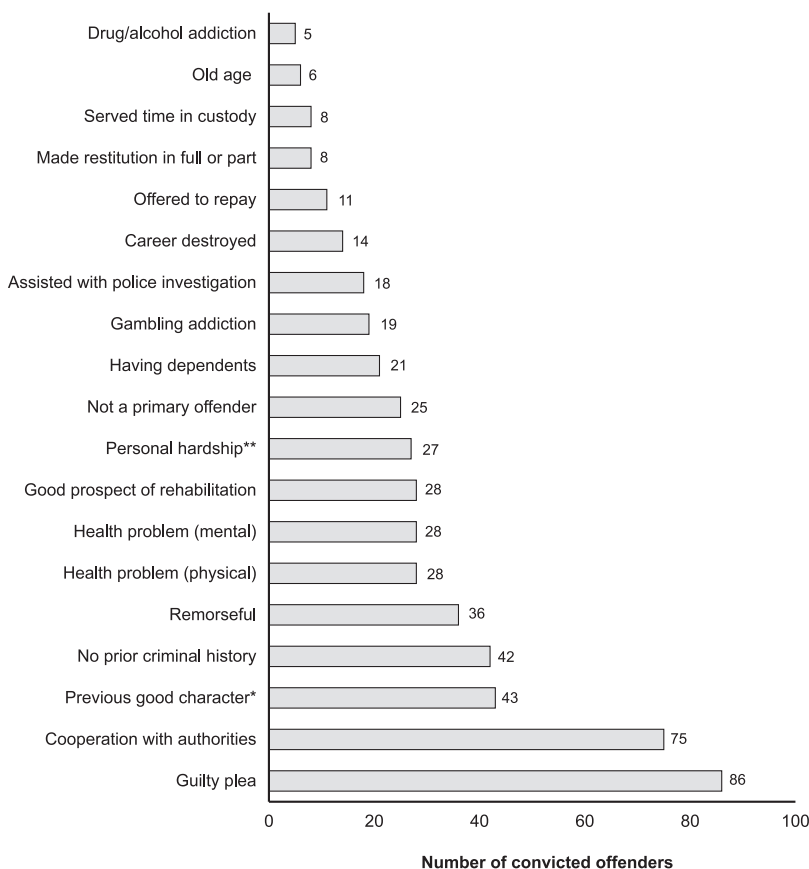
Note: N=31. Numbers indicated on bars are values (number of accused persons), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Mitigating Factors

Finally, those convicted of offences raised a wide range of factors that they wished to be taken into account at the time of sentencing. The factors shown in Figure 22 include only those that were accepted in full or in part by the judge. In one case, for example, an offender claimed to have committed the offence in order to pay a blackmailer, but the judge dismissed this as being totally unsupported by the evidence. The most frequently raised mitigating factors were that the offender had pleaded guilty and had cooperated with authorities. Previous good character, the absence of a criminal history and remorse were also frequently raised in mitigation.

**Figure 22: Mitigating factors raised by convicted offenders at the time of sentencing**



Note: N=183 convicted offenders. These categories are not mutually exclusive as offenders raised a number of mitigating factors (eight raised one factor only). \* Previous good character includes contribution to community. \*\* Personal hardship includes traumatic experiences and family break-up.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

# 6 The Judicial Process

The investigation and judicial processing of cases of serious fraud is complex, difficult and invariably slow and costly. This chapter examines some of the key factors associated with the processing of cases by the police, prosecutors and the courts, and considers questions such as the manner in which cases were detected, how long proceedings took, whether investigations were outsourced to private-sector investigators, whether accused persons were granted bail, what decisions were made in the courts (particularly concerning sentencing), and whether appeals were undertaken by the Crown or the defence (and what the outcome of any appeal process was). The statistics provided here are largely descriptive of outcomes. More complex multivariate analyses are yet to be undertaken. The data do, however, provide some important new insights into the judicial process in financial crime cases.

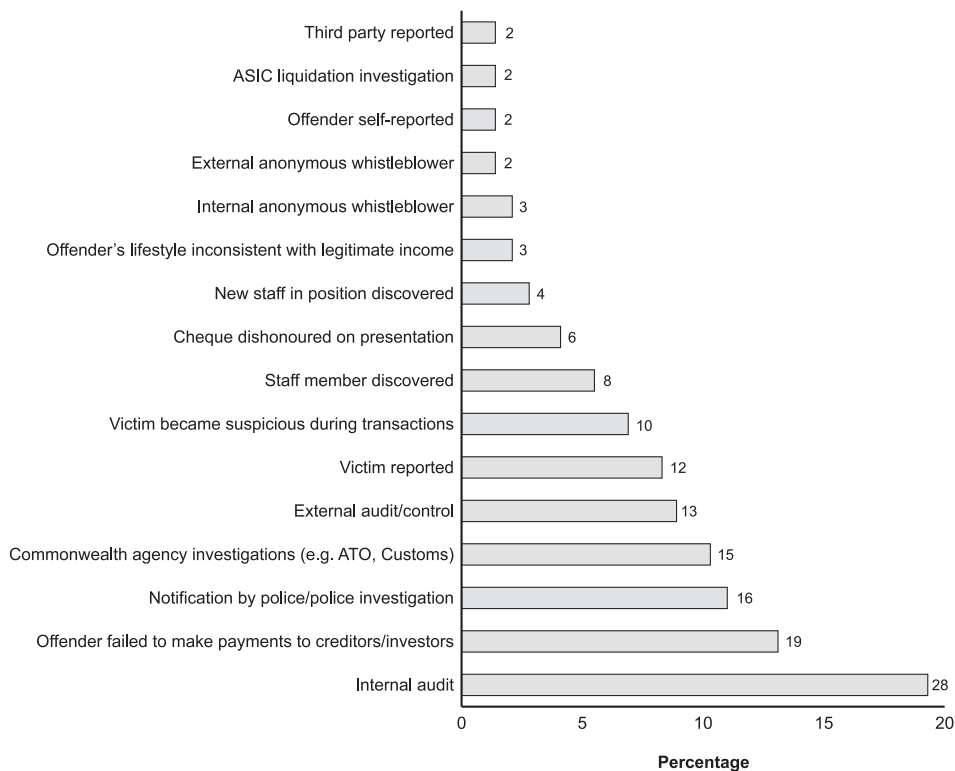
## Manner of Detection

Figure 23 shows how incidents were detected for the 145 files in which such information was recorded. Internal audit was the means by which the greatest number of cases were first detected. Simple default by offenders under credit or finance agreements provided the second most numerous means of detection. A number of other cases were discovered during police or law enforcement investigations, while victims were responsible for detecting fraud in further instances. Interestingly, anonymous reporting by whistleblowers occurred in only five cases. It is apparent that a large number of offenders failed to take effective measures to conceal their conduct; indeed, in some of these cases the court noted that the conduct was simple, obvious and bound to be discovered.

## Delay

One of the key performance indicators of the judicial system is the speed that cases are dealt with. Although cases tended to be dealt with relatively promptly once listed for hearing in the courts, lengthy delays occurred during the investigatory phase.

**Figure 23: Manner in which incident was detected**



Note: Information on the way in which the incident was detected was available for 145 of the 155 files. Numbers indicated on bars are values (number of files), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

Information was extracted from files concerning certain key dates in proceedings. These were:

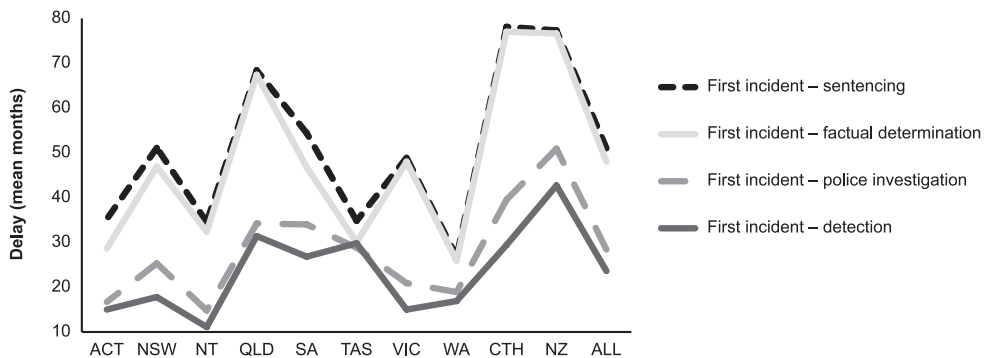
- the date the earliest incident was committed;
- the date the latest incident was committed;
- the date the offences were first detected by the victim;
- the date the police investigation commenced (usually the date the accused person was arrested and/or interviewed);
- the date of the court's factual determination (that is, the date the offender pleaded guilty or the date the offender was found guilty by a jury);
- the date the offender was sentenced; and
- the date of the appeal decision, or the date leave to appeal was refused, where applicable.

In certain files this information was unavailable, but in cases relating to 128 accused persons, all the above dates were recorded. Figure 24 sets out the mean time taken in each jurisdiction.

On average, cases took over four years between the commencement of the illegal conduct and sentencing. The mean period of offending (first to last offence) was slightly under two years, and the mean period of detection (last offence to date of detection) was an additional 10 months. It took almost five more months to report the matter to the police, and police investigations and interlocutory proceedings up to the date of factual determination occupied some 20 months, on average. An average of three months occurred between the date of the factual determination and sentencing.

Differences between jurisdictions do not necessarily indicate a lack of celerity by the authorities in question; some cases were much more complex and extensive than others and some accused persons applied for interlocutory orders prior to sentencing which increased the overall duration of cases.

**Figure 24: Delay in proceedings for accused persons/offenders by jurisdiction**

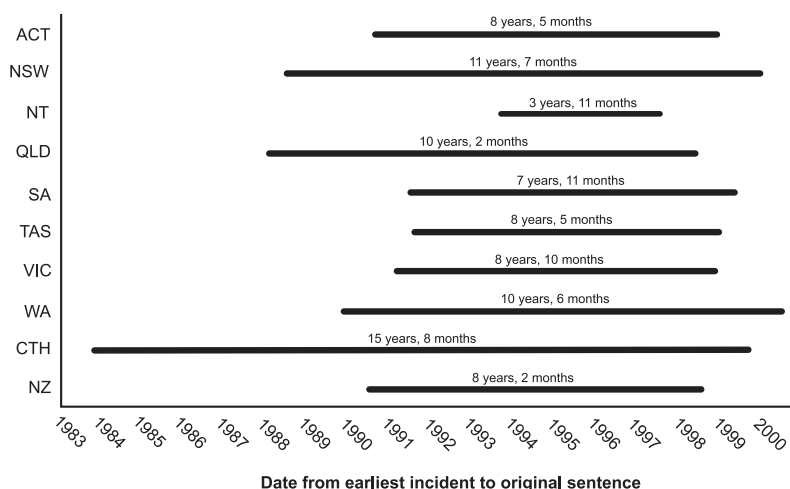


Note: N=128 accused persons/offenders

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

Figure 25 shows the overall time taken prior to sentencing for the case that took the longest time in each jurisdiction. The earliest incident investigated in all jurisdictions occurred in a Commonwealth matter on 1 December 1983 and this offender was sentenced in the Victorian County Court on 15 July 1999. An appeal was dismissed by the Victorian Court of Criminal Appeal on 7 September 1999, resulting in a period of approximately 16 years between the commission of the first offence and final judicial determination of the case. The main reason for this lengthy timeframe was the fact that the

**Figure 25: Duration of the most lengthy proceedings by jurisdiction**



Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

offences were committed over almost 13 years with the illegal conduct being discovered only seven months prior to the final offence being committed. The case did, however, take some four years between the commencement of the investigation and sentencing.

## Outsourced Investigations

Financial crime investigations in recent times have sometimes entailed the use of investigators other than those employed by police services. Table 11 shows the extent of these outsourced investigations. Over one-third of cases had some part of the investigation undertaken by complainants such as financial institutions, while 17 per cent of cases were investigated by Commonwealth agencies as required by the Commonwealth Attorney-General's Department (2002) Fraud Control Guidelines. These were, of course, principally Commonwealth matters. A further three per cent of cases had some other public sector agency investigation, such as the Australian Securities and Investments Commission.

In seven per cent of cases, private sector organisations, such as forensic accounting practices, were involved in investigations.

It appears, therefore, that police services are still the principal investigatory agency for cases involving serious fraud.

**Table 11: Number of files with outsourced investigation by jurisdiction**

Outsource investigation category	Jurisdiction										Total	%
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH	NZ		
None (investigation by police only)	7	3	6	4	6	1	4	11	3	10	55	36.7
Complainant involvement (e.g. bank)	7	6	2	4	4	5	13	4		8	53	35.3
Commonwealth agency investigation (e.g. ATO)									23	2	25	16.7
Private sector investigation (e.g. forensic accountants)		1	1	1	1	1	1	2	1	1	10	6.7
Public sector investigation (e.g. ASIC)		1		2					1		4	2.6
Professional registrar involvement (e.g. Law Society)				1			1			1	3	2.0
<b>Total with information</b>	<b>14</b>	<b>11</b>	<b>9</b>	<b>12</b>	<b>11</b>	<b>7</b>	<b>19</b>	<b>17</b>	<b>28</b>	<b>22</b>	<b>150</b>	<b>100.0</b>
No information recorded				1	2			1		1	5	

Note: N=155 files

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Guilty Pleas

The present study confirms the conventional wisdom that fraud offenders frequently plead guilty to charges. From Table 12 it can be seen that only 28 per cent of accused persons pleaded not guilty, with one-half of accused persons pleading guilty at the earliest available opportunity. This, of course, attracts a considerable benefit for offenders in terms of reduction in sentence (up to one-third of a recommended term of imprisonment in some jurisdictions). Those charged in respect of Commonwealth and New Zealand matters tended to plead not guilty much more often than those in other jurisdictions.

**Table 12: Guilty pleas of accused by jurisdiction**

Guilty plea category	Jurisdiction										Total	%
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH	NZ		
Early guilty plea to all charges	11	7	5	14	6	2	14	16	9	17	101	50.0
Pleaded not guilty		3	1	6	5		5	6	13	16	56	27.7
Late guilty plea to all charges	1	1	3	1	3	3	5	2	8	7	36	17.8
Early guilty plea to some charges	3		1	1					2	1	5	2.5
Late guilty plea to some charges		1		1			1			1	4	2.0
<b>Total with information</b>	<b>15</b>	<b>12</b>	<b>10</b>	<b>23</b>	<b>14</b>	<b>5</b>	<b>25</b>	<b>24</b>	<b>32</b>	<b>42</b>	<b>202</b>	<b>100.0</b>
No information recorded				1		2				3	6	

Note: N=208 accused persons

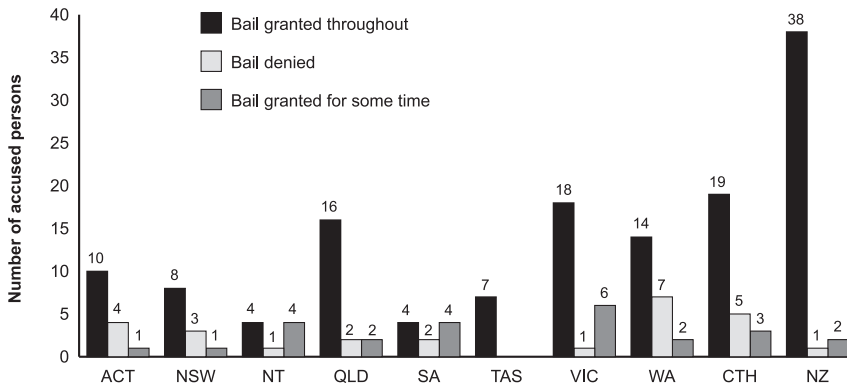
Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]



# Bail

The present study has confirmed the results of prior research into white-collar crime showing that most accused persons were granted bail pending trial. Figure 26 shows that of the 189 accused persons for whom relevant information was recorded, some three-quarters were on bail throughout. A further 13 per cent (25 accused persons) were granted bail for at least some of the period prior to sentencing. Bail was denied for only 14 per cent of accused persons (n=26).

**Figure 26: Outcome of bail application by jurisdiction**

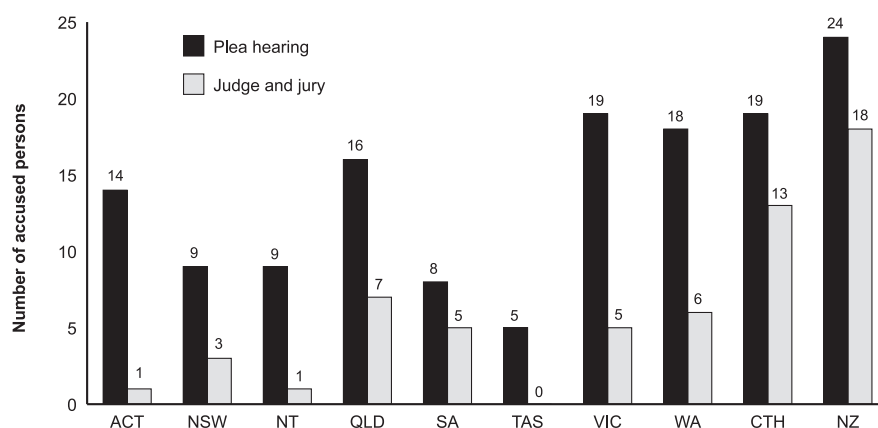


Note: Information on outcome of bail application was available for 189 of the 208 accused persons. Included among the cases where information was not recorded were accused persons in custody for other offences.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

# Nature of Proceedings

Figure 27 presents data on the nature of the proceedings conducted in respect of 200 accused persons for whom information was available. Some 70 per cent of cases involved a plea hearing following a guilty plea. The remaining 30 per cent of accused were tried by judge and jury. It appears that accused persons charged in both Commonwealth and New Zealand matters were tried by judge and jury more frequently than those charged in the other jurisdictions.

**Figure 27: Nature of proceedings by jurisdiction**

Note: Information concerning the nature of the proceedings was available in respect of 200 out of the 208 accused persons. 141 accused persons had a plea hearing, while 59 were tried by judge and jury.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## Factual Decision

Table 13 sets out information on how the factual decision in cases was arrived at for 199 accused persons in respect of whom details were available. In the largest number of cases, all the facts alleged were admitted, although sometimes this occurred rather late in the proceedings (see Table 12 concerning late guilty pleas). In about 12 per cent of cases, some or all of the facts were proved. In eight per cent of cases those accused were either

**Table 13: Factual decision by jurisdiction**

Factual decision category	Jurisdiction										Total	%	
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH	NZ			
All facts admitted	14	8	9	16	8	5	19	17	19	21	136	68.3	
All facts proved	1	3		2				3	10	5	24	12.1	
Some facts proved			1	3	2		3	3	3	7	22	11.1	
Charges dismissed					1		2				4	7	3.5
Acquitted				1	1						5	7	3.5
Some facts admitted		1									1	0.5	
Proceeding stayed								1			1	0.5	
<i>Nolle prosequi</i> entered				1							1	0.5	
<b>Total with information</b>	<b>15</b>	<b>12</b>	<b>10</b>	<b>23</b>	<b>12</b>	<b>5</b>	<b>24</b>	<b>24</b>	<b>32</b>	<b>42</b>	<b>199</b>	<b>100.0</b>	
No information recorded				1	2	2	1				3	9	

Note: N=208 accused persons

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

acquitted by a jury, had charges dismissed or proceedings stayed, or the prosecution entered a *nolle prosequi*. As noted above, this high rate of success is largely an artefact of the type of files examined in the sample.

## Sentencing

Information was available with respect to 183 offenders who were convicted of offences and sentenced in the courts. Details of the most serious sentence awarded to each individual are shown in Table 14 (seriousness of sentence is ranked from most serious to least serious in the rows of the table). Of the sentences imposed, full-time custodial sentences were given to three-quarters of those sentenced. Various forms of periodic detention, supervised release and unsupervised release were used in other cases. Only three offenders received just a fine and two offenders received compensation orders as their most serious sanction. This reflects the seriousness of the cases included in the sample and also the fact that Table 14 records only the most serious sanction imposed. In a number of cases, compensation or confiscation orders were made in addition to custodial terms—only the latter are recorded here.

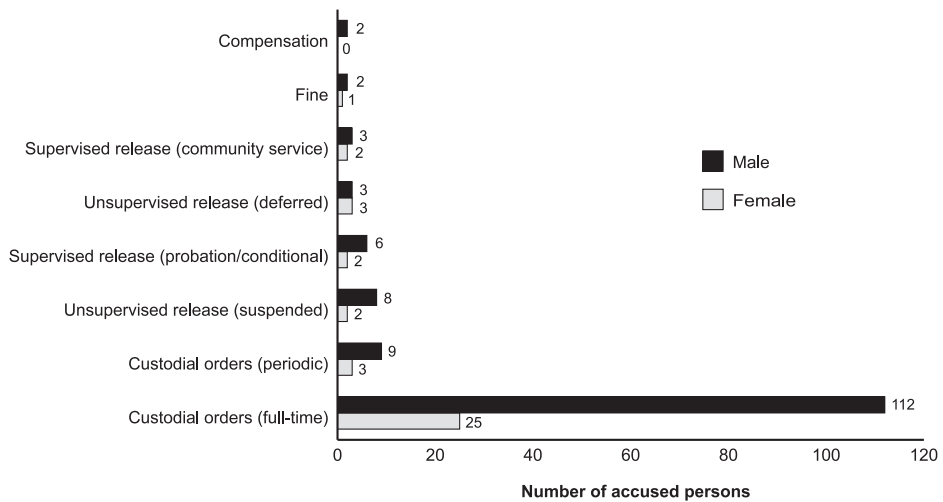
**Table 14: Most serious sentence for offenders by jurisdiction**

Sentence category	Jurisdiction										Total	%
	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	CTH	NZ		
Custodial orders (full-time)	6	11	8	19	10	4	13	17	26	23	137	74.9
Custodial orders (periodic)	2	1							2	7	12	6.6
Unsupervised release (suspended)	1		1			1	4	1	2		10	5.5
Supervised release (probation/conditional)				1	2		1	3	1		8	4.4
Unsupervised release (deferred)	4						2				6	3.2
Supervised release (community service)	2						1			2	5	2.7
Fine							1	2			3	1.6
Compensation									1	1	2	1.1
<b>Total sentenced</b>	<b>15</b>	<b>12</b>	<b>10</b>	<b>21</b>	<b>10</b>	<b>5</b>	<b>22</b>	<b>24</b>	<b>32</b>	<b>33</b>	<b>183</b>	<b>100.0</b>
Charges not proved				2	2		2				9	15
No information recorded				1	2	2	1				3	10

Note: N=208 accused persons. Percentages are out of the total number of offenders sentenced (n=183). One accused person whose charges were dismissed was ordered to pay a victims' compensation levy (recorded as a compensation order). In one other case, the type of sentence imposed was not recorded.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, *Serious Fraud in Australia and New Zealand, 2003* [computer file]

**Figure 28: Most serious sentence for accused persons/offenders by gender**



Note: Information on sentencing was available in respect of 183 (145 males and 38 females) of the 208 accused persons. This excludes 15 accused persons whose charges were not proved, but includes one accused person whose charges were dismissed but who was ordered to pay a victims' compensation levy (recorded as a compensation order). In 10 cases sentencing information was not recorded.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, *Serious Fraud in Australia and New Zealand*, 2003 [computer file]

In terms of the gender of sentenced offenders, it is apparent from Figure 28 that males received proportionally more full-time custodial orders than females. Both males and females received suspended sentences in similar proportions. Females, however, received higher proportions than males of other forms of supervised and unsupervised release. This does not necessarily reflect leniency toward female offenders in sentencing but rather is indicative of the nature of the offences committed, the amount of money involved and other aggravating and mitigating factors.

Few sentencing trends are evident in terms of the type of offence committed. An exception is that non-custodial orders were used more often for the offences of obtaining finance or credit by deception and cheque fraud. For other offence types, custodial sentences were used in the majority of cases (Table 15).

From Figure 29 it is apparent that the mean maximum term of custodial sentences awarded (both full-time and periodic) was approximately 3.4 years (41 months), while the mean minimum custodial term awarded was almost 2.3 years (28 months). The longest mean maximum term was in South Australia, approaching 5.5 years, while the shortest mean maximum

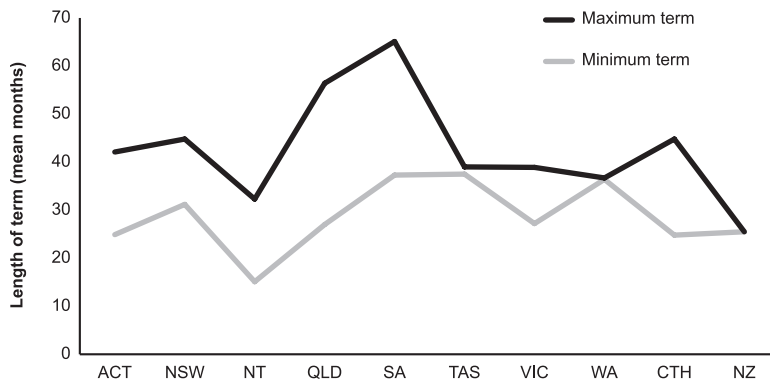
term was in New Zealand at slightly over two years. The longest custodial sentence was 11 years maximum, with a non-parole period of eight years, awarded by the District Court of New South Wales following a trial of more than four weeks. The case involved the investment of over \$10.3 million, a proportion of which had been fraudulently obtained from almost 300 victims.

**Table 15: Offence type by most serious sentence for accused persons/offenders**

Offence category	Fine	Comp	Susp	Defer	Prob	Comm serv	Cust per	Cust F/T	Not proved	No info
Dishonestly obtaining government benefits		1	2		1	1	2	24	1	1
Dishonestly using government funds			1		1		1	8	2	
Misappropriation of funds in the private sector				2	1		1	19		1
Obtaining finance/credit by deception	1		3	4	1	3	3	36	4	5
Investment/trust account fraud			1		2			21	1	1
Cheque fraud	2		4		1	1	2	24		
Obtaining goods/services by deception	1		2		2			10	1	1
False accounting	1		1	1	1			10		
Dishonest sale of goods		1						8	3	1
Dishonestly obtaining commission (excluding share market fraud)								7	3	
Share market fraud								3	1	
Extortion of funds from employees									1	
Administration of justice offences									2	
Insurance fraud	1								4	
Theft of inventory/stock by employees									2	
Abbreviations	Fine – Fine				Prob – Supervised release(probation/condition)					
	Comp – Compensation				Comm serv – Supervised release (community service)					
	Forf – Forfeiture				Cust period – Custodial orders (periodic)					
	Conf – Confiscation				Custody F/T – Custodial orders (full-time)					
	Susp – Unsupervised release (suspended)				Not proved – Charges not proved, acquitted or <i>nolle prosequi</i> entered					
	Defer – Unsupervised release (deferred)				No inf – No information recorded					

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

**Figure 29: Period of custodial sentences**

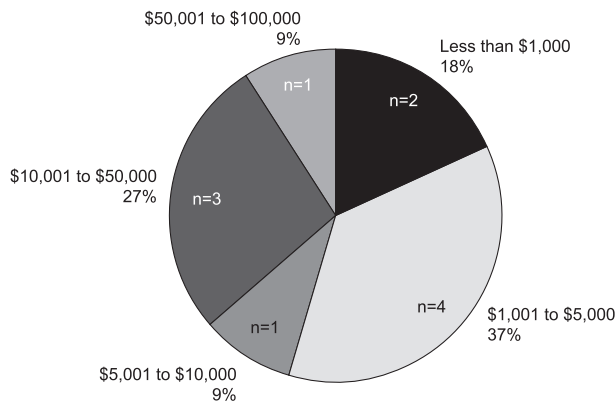


Note: N=149 offenders. This chart includes both full-time and periodic custodial terms.  
 Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

Community service was awarded by courts as the most serious sanction to only five offenders, often co-offenders. In Victoria, community service of 400 hours was given to one co-offender. In New Zealand, periods of 120 and 200 hours were awarded. In the ACT, 104 hours were awarded to two offenders. Community service was not given in the other jurisdictions.

Only 11 offenders received fines as their most serious sanction, details of which are set out in Figure 30. The amount of fines tended to be relatively low, although in one case the offender was fined \$100,000 for fraudulently

**Figure 30: Categories of amounts of fines awarded**

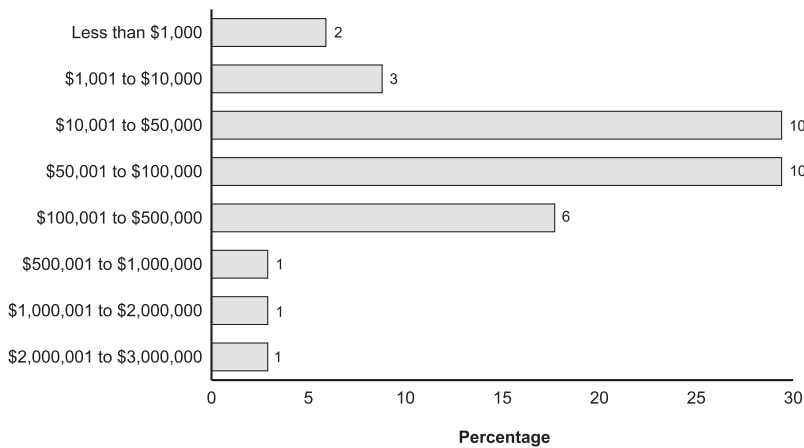


Note: N=11 offenders  
 Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

obtaining over \$200,000 in nursing home payments from the Commonwealth. This was the largest fine imposed in any of the cases in the sample.

Awards of compensation ranged from \$219 to \$2,361,777. Most offenders who were ordered to pay compensation had orders made for sums between \$10,000 and \$100,000 (Figure 31). However, awards of compensation were only made in a relatively small number of cases because courts are reluctant to order compensation if an offender is without the means to make payment, as often occurs.

**Figure 31: Categories of amounts of compensation awarded**



Note: N=34 offenders. Numbers indicated on bars are values (number of convicted offenders), not percentages.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

Information on the use of confiscation orders was rarely indicated in the files. Only nine files mentioned such orders. In five cases, confiscation orders were noted ranging from \$2,100 to \$333,394, while in a further four files confiscation of other property was ordered including, in one case, all the equity in the offender’s home.

## Aggravating Factors

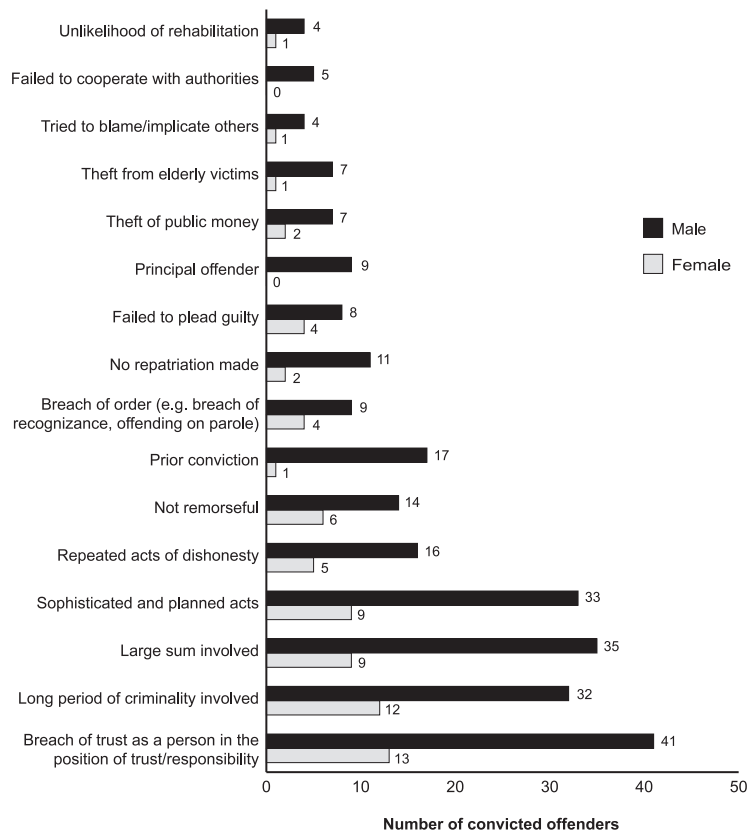
In determining sentence, courts not only take into consideration the factors raised by the offender in mitigation, but also a range of so-called aggravating factors. Figure 32 sets out details of the extent to which various aggravating factors were noted by judges in their sentencing remarks for both male and

female offenders. Information was recorded for 162 convicted offenders. Aggravating factors were noted by judges in respect of 127 offenders, with some cases involving multiple aggravating factors.

Generally, similar proportions of aggravating factors were taken into account by courts for both male and female offenders—the presence of a breach of trust was the most frequently reported factor for both genders. Some differences between the genders were noted:

- males had a higher proportion of prior convictions than females;
- females tended to have longer periods of criminality and repeated acts of criminality; and
- females tended to be more remorseful and cooperative with the authorities than males.

**Figure 32: Aggravating factors noted during sentencing by gender of offender**



Note: Information on aggravating factors was mentioned in respect of 127 (98 males and 29 females) out of 162 offenders. Some cases involved multiple aggravating factors.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]



## Judicial Review/Appeals

The Crown appealed against the leniency of sentences given to 20 offenders. In 11 of those cases (55%) the appeal was allowed and the sentence was increased.

There were 69 applications by accused or convicted offenders for judicial review or to the appeal courts. These applications were for a variety of orders, as shown in Table 16. Orders were made in favour of the defendant in 41 per cent of those applications or appeals (27 out of 66—in three cases the outcome was not known at the time of writing). Four convictions were set aside, five retrials ordered and, in one case, proceedings were stayed on the application of the accused. Seventeen offenders had their sentences reduced on appeal. These statistics confirm that it is generally difficult to succeed on appeal, particularly where the appeal relates to sentence only.

**Table 16: Defence appeals/applications by outcome**

Defence appeal/application outcome	Number of accused/offenders
<i>Appeal category</i>	
Leave to appeal/appeal against sentence/application to vary sentence only	46
Leave to appeal/appeal against conviction only	7
Leave to appeal/appeal against both sentence and conviction	10
No defence appeal	97
No information on appeal available	33
<i>Appeal outcome category</i>	
Leave to appeal/appeal against sentence refused/dismissed	37
Leave to appeal/appeal against sentence/application to vary sentence allowed—sentence reduced	17
Leave to appeal/appeal against conviction refused/dismissed	7
Leave to appeal/appeal against conviction allowed—conviction set aside	4
Leave to appeal/appeal against conviction allowed—re-trial ordered	5
Outcome of appeals against sentence or conviction unknown	3
<i>Interlocutory applications</i>	
Application to stay proceedings	5
– dismissed	4
– allowed	1
Application to discharge jury	1
– dismissed	1
– allowed	0

Note: Excluding interlocutory applications, n=208 accused persons. Charges against 16 accused were not proved and 183 persons were convicted. Information on factual decision was not available in respect of nine accused persons. Information on appeals was not available in respect of 33 persons.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

# 7 Risk Analysis

This chapter provides some insight into the circumstances that enabled the offences to take place, whether by reason of inadequate external regulatory controls or due to poor internal business practices. Poor business practices could permit offenders to exploit weaknesses in fraud control systems and make use of opportunities for fraud existing within organisations.

A wide range of factors were identified from the material contained in official files and these were grouped into five categories. Some cases had evidence of a number of factors being responsible for the commission of the crime, hence the total in Figure 33 is greater than the 155 files examined. Figure 33 also provides an insight into whether the relevant risk factors arose in cases involving either public- or private-sector victims.

The five categories, and some examples of the kinds of factors identified in each, are as follows:

## **Regulatory Failures**

- Failure to comply with legislative requirements
- Professional regulatory failures

## **Accounting/Auditing Failures**

- Internal auditing failures
- External auditing failures
- Unusual patterns in financial transactions
- Failure to analyse loss of profit
- Use of unusual payment methods

## **Security Failures**

- Inadequate computer access controls (including password security)
- Inadequate cash security practices
- Inadequate card security controls (card counterfeiting)
- Failure to secure personal identification documents

## **Prudential Failures**

- Poor investment controls
- Poor cheque control procedures (including failure to clear cheques prior to payment)
- Failure to verify identification evidence
- Failure to verify ownership of property
- Failure to verify credit worthiness of applicants for credit
- Providing credit without any security or with inadequate security
- Failure to verify insurance claims
- Inadequate purchasing/procurement controls

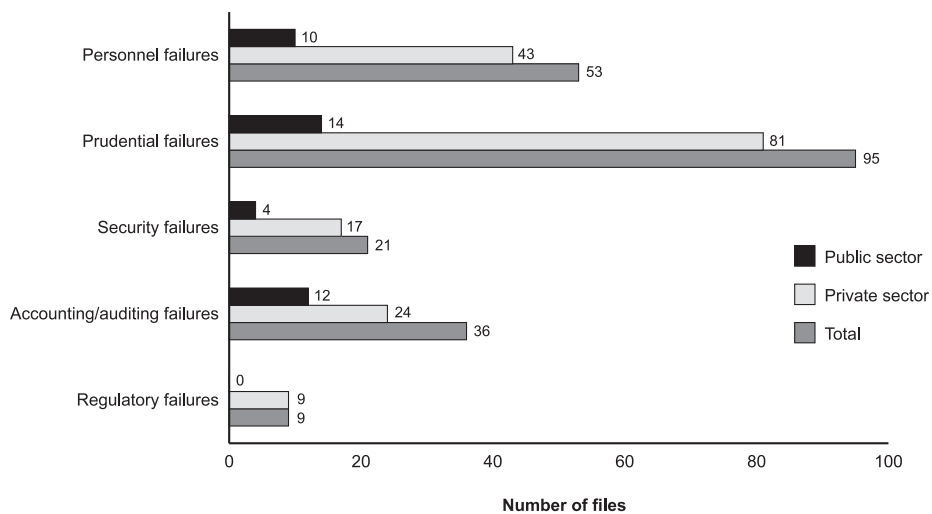
## **Personnel Failures**

- Inadequate staff employment screening
- Inadequate supervision of staff
- Failure to segregate staff duties
- Staffing changes/new auditors
- Living beyond one's means
- Staff not taking leave/working after hours
- Failure to monitor offender on bail/in custody

Overall, prudential failures to do with the provision of finance and credit, and the verification of the backgrounds of applicants for finance, were the highest areas of risk, followed by personnel failures and inadequate supervision and control of staff within organisations. Accounting and auditing failures were also frequently present and arose in almost one-quarter of cases.

Interestingly, in the public sector accounting and auditing failures represented the highest risk category while in the private sector prudential factors presented the greatest risk. Both the public and private sectors had similar proportions of cases involving security failures.

**Figure 33: Categories of risk factors**



Note: Total number of files = 155. Thirty-one files concerned public sector risks and 124 concerned the private sector.

Source: Australian Institute of Criminology and PricewaterhouseCoopers, Serious Fraud in Australia and New Zealand, 2003 [computer file]

## 8 Conclusions

This report provides a brief statistical review of a sample of Australia and New Zealand's most serious fraud cases dealt with in the courts in 1998 and 1999. Although some of the incidents that gave rise to these prosecutions took place many years ago—even as far back as the early 1980s—the study provides some important new information on how serious fraud is perpetrated, how much money is at risk, who the offenders and victims are, and the manner in which cases are dealt with in the courts.

The study has confirmed some conventionally held views about fraud and criminal prosecution, but also highlighted some differences from trends evident in previous research.

With respect to the characteristics of accused persons, it was found that they tended to:

- be in their mid-40s;
- be male;
- have been born in Australia;
- have completed secondary education or have some professional qualification;
- be a director of a company or involved in accounting duties within an organisation;
- have relatively stable employment with the victim organisation;
- have no prior criminal record; and
- act alone in the commission of the offence.

The desire for personal advancement in the form of greed and gambling-related factors were the primary motivations for the commission of offences. Financial strain in individuals' personal and business lives also provided strong motivations for offending. The most frequently identified rationalisations offered related to the intention to conduct a business legitimately in the future and the desire to repay the sums stolen. Admitting guilt, being remorseful and cooperating with the police were regularly identified factors raised in mitigation by offenders.

As might be expected, the present study found that investigations took a number of years to be completed, even where offenders had pleaded guilty and cooperated with the authorities (which took place in most cases). Few investigations were outsourced to the private sector. The majority were conducted by police fraud squads, or the Serious Fraud Office in New Zealand. Cases most often came to light through some form of internal audit, although in many cases the mere fact of default in repaying loans led to the fraud being discovered. Offenders usually pleaded guilty and full-time custodial sanctions were most often employed in sentencing. Appeals were infrequently made and relatively few were successful, although where the Crown appealed against sentences because of leniency, these appeals were often allowed.

The present study also identified some important failures in administrative and business practices that led to the commission of the offences. Risk factors tended to be different in relation to victim organisations within the public and private sectors, with the highest risks for the public sector involving accounting and auditing failures, while in the private sector prudential factors presented the greatest risk.

This report has provided a brief overview of some of the statistical findings of the study. Clearly these cases are complex, with some trends requiring further analysis and interpretation. Subsequent reports will examine a number of issues in greater depth about the nature of the offences and how they were handled in the judicial system. The present findings confirm, however, that serious fraud in Australia and New Zealand is both prevalent and costly, while the application of criminal justice responses raises many challenging investigatory, legal and practical issues. Being better informed with respect to the nature and extent of the problem will help those involved in dealing with such cases to plan their responses better and, hopefully, also assist those at risk of victimisation from falling prey to offenders.

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