Curtin Law School
Faculty of Business and Law

Battling the Dark Arts: Combating Stock Market Manipulation in Australia – From the Early Days of Share Trading to 1990

Paul Phillip Constable
0000-0001-8779-199X

This thesis is presented for the Degree of
Doctor of Philosophy
of
Curtin University

February 2022

Declaration

To the best of my knowledge and belief, this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university.

Human Ethics

The research presented and reported in this thesis was conducted in accordance with the National Health and Medical Research Council National Statement on Ethical Conduct in Human Research (2007) – updated March 2014. The proposed research study received human research ethics approval from the Curtin University Human Research Ethics Committee (EC00262), Approval Number HRE2017-0237.

Signature:

Date: 17 February 2022

Abstract

Using both doctrinal and empirical research methodologies, this thesis traces the historical roots of stock market manipulation (or rigging) in the domestic context, from the early days of share trading to 1990—the year of the first successful prosecution for market rigging in Australia. A particular species of financial market misconduct, market manipulation involves malefactors intentionally interfering with the forces of genuine supply and demand in share markets. This is typically done to obtain a financial benefit at the expense of other participants in those markets.

Market manipulation causes real damage to the integrity and reputation of Australia's capital markets. This, in turn, can adversely affect not only the participants in those markets, but also companies seeking to raise capital, members of the community whose superannuation and financial well-being are linked to share market investments, and ultimately the national economy, which impacts all Australians. Although now proscribed in Australia, it was not until the early 1970s that four states enacted laws that explicitly criminalised this insidious activity.

A review of the legal literature on stock market manipulation would lead one to reasonably conclude that it has only plagued domestic share markets since the mining and minerals boom in the latter part of the 1960s. Yet, as this thesis will argue, the manipulation of share markets has a much longer history in Australia. It will also be argued that market manipulation did not become an area of focus for governments or the stock exchanges until over 100 years after share trading first began on the streets of gold mining towns across the Australian colonies. The subsequent and very considerable advances in combating stock market manipulation in Australia that occurred between the early 1970s and 1990, and beyond, were ultimately the result of this long overdue focus.

Dedication

To my amazing and loving wife, Lucy. Thank you so much for everything you have done for me on 'our' PhD journey and for showing me that anything is possible. Thank you also to our beloved daughters, Georgia and Isabella, and my Mum and Dad, Kathleen and Kenneth, for their never-ending love and support.

Preface

I have long been fascinated with the financial markets and have spent most of my professional life working in roles that have a connection with them. This includes roles with the domestic futures exchange and stock exchange (Sydney Futures Exchange (as it then was) and Australian Stock Exchange (as it then was), respectively), the national markets regulator (ASIC) and several international and domestic banks as a compliance professional supporting their financial markets businesses.

My interest in the subject of misconduct on financial markets was initially piqued whilst I was employed by the SFE where, at the time, bids and offers were made and trades still executed through the 'open outcry' system on a trading floor. On 29 March 1996, I was present on the SFE's trading floor during the frenzied trading activity leading into the market close in the pit where Share Price Index futures were traded, much of which, I would later discover, was related to a stock index arbitrage transaction executed by Nomura International PLC. The national regulator subsequently commenced civil proceedings against Nomura in the Federal Court of Australia and was successful in obtaining declaratory and injunctive relief against Nomura for manipulative activities in both the futures market and the stock market.

For the next few years, my work included the investigation of allegations of market misconduct on the SFE and ASX, including suspected instances of market manipulation. During this time, I became increasingly interested in the history of local share trading and the growing body of literature and case law on stock market manipulation, none of which appeared to contemplate the historical roots of this particular species of market misconduct in the domestic context. Indeed, it was the recognition of this potential gap in the literature that ultimately led me to commence my PhD journey.

I have many people to thank.

I would first like to thank my principal supervisor, Professor Gabriël Moens, who has not only shared his expertise and wise counsel throughout my research and thesis writing but has steadfastly supported and encouraged me at every step. I will be eternally grateful.

I would like to thank Dr Rocco Loiacono for his support in helping me prepare for the final stages of my research journey. I would also like to thank Curtin University for allowing me to pursue my PhD dreams, something I once never believed I could do.

I would like to give a special thanks to Jaya Ralph and Kitty Delaney, the library dream team, who always made themselves available to assist me with even the most obscure research requests and exceeded my expectations every time. You are both a credit to Curtin University and your profession. Special thanks also to Sarah Lethbridge and the team of archivists at the Noel Butlin Archive Centre at the Australian National University for their help and kindness.

I would like to express my sincere thanks to Jim Berry, who kindly agreed to allow me to interview him. Jim shared his considerable expertise, thoughts, and insights on his time as Head of the ASX Surveillance Department, which added an important perspective to my research.

Finally, although I have specifically dedicated my thesis to my wife Lucy, our daughters and my Mum and Dad, I would like to thank them once again for all their love and support during my life generally and my PhD journey in particular. I would also like to thank Lucy’s parents (my in-laws), Shirley and Tom, for their encouragement and support.

Table of Contents

Abstract ... iii

Dedication ... iv

Preface ... v

List of Abbreviations ... 3

PART ONE: THE OPENING BELL – Setting the Context ... 6

CHAPTER 1: Combating Stock Market Manipulation in Australia – Introduction ... 7

1.1 Introduction ... 7
1.2 Background ... 11
1.3 The Purpose of this Thesis ... 12
1.4 Period Covered by the Research ... 13
1.5 Contribution of this Thesis to the Literature ... 13
1.6 Research Questions ... 16
1.7 Methodology ... 16
1.8 Limitations and Opportunities for Future Research ... 22
1.9 Organisation of this Thesis ... 24

CHAPTER 2: Literature Review ... 27

2.1 Introduction ... 27
2.2 Overview ... 28
2.3 Summary of the Results of the Literature Review ... 29
2.4 The Overseas Experience ... 30
2.5 The Australian Experience ... 40
2.6 Conclusion ... 65

CHAPTER 3: A Primer on Stock Market Manipulation in Australia ... 66

3.1 Introduction ... 66
3.2 What is stock market manipulation? ... 67
3.3 Is stock market manipulation occurring in Australia? ... 72
3.4 Why do we need to be concerned about stock market manipulation in Australia? ... 73
3.5 Why and how do people manipulate share prices? ... 82
3.6 Information based manipulation ... 85
3.7 Trading based manipulation ... 93
3.8 Market Power Manipulation ... 106
3.9 Conclusion ... 110

PART TWO: THE EARLY DAYS - Mid-1800s to 1900 ... 111

CHAPTER 4: The Early Days - Part 1 ... 112

4.1 Introduction ... 112
4.2 Setting the context ... 113
4.3 The genesis of market rigging? ... 122
4.4 Market manipulation and 'bubble' companies ... 126
4.5 A 'rascally' means of rigging the market ... 130
4.6 Combating market manipulation not prioritised? ... 131
4.7 Court cases ... 133
4.8 Conclusion ... 151

CHAPTER 5: The Early Days - Part 2 152
5.1 Introduction 152
5.2 A very concerning allegation 152
5.3 An early example of ‘rumourtrage’? 153
5.4 Mount Victoria Gold Mining Shares 156
5.5 Forged telegram 159
5.6 Corners 160
5.7 Market rigging using telegrams 183
5.8 What action was being taken to combat stock market manipulation? 190
5.9 Conclusion 202
PART THREE: INTO THE TWENTIETH CENTURY – Dawn of a new era or more of the same? 203
CHAPTER 6: 1900 to 1960 204
6.1 Introduction 204
6.2 The Early 1900s 204
6.3 Legislation 214
6.4 *Vickery v Taylor* (1910) 217
6.5 The Great Chaffinch Case 222
6.6 Rumourtrage hits the news again 237
6.7 ‘Corners’ in the spotlight once again 240
6.8 The Federation and Mount Owen ‘corner’ – a ‘gambling “sensation”’ 244
6.9 The ‘bullfighter’ admits rigging the share market 248
6.10 Conclusion 252
CHAPTER 7: 1960 to 1990 - Part 1 253
7.1 Introduction 253
7.2 Setting the scene 254
7.3 Action taken by Government to combat stock market manipulation 261
7.4 Legislation that explicitly criminalised stock market manipulation 273
7.5 The Rae Committee 282
7.6 Enforcement action ramps up, slowly 291
7.7 The first successful domestic prosecution for market rigging 294
7.8 Non-criminal matters 298
7.9 Conclusion 299
CHAPTER 8: 1960 to 1990 - Part 2 300
8.1 Introduction 300
8.2 Implementing explicit rules to prohibit manipulative activities 301
8.3 Market surveillance 304
8.4 Disciplinary action for manipulative activities 329
8.5 Farewell to the ‘corner’ in Australia 333
8.6 Conclusion 336
PART FOUR: THE CLOSING BELL 337
CHAPTER 9: Conclusion 338
Bibliography 341

List of Abbreviations

AASE	Australian Associated Stock Exchanges
AAT	Administrative Appeals Tribunal
ACT	Australian Capital Territory
AJCH	AJ Chown Holdings Limited
ANU	Australian National University
AOI	All Ordinaries Index
ANZ	Australia and New Zealand Banking Group
ASC	Australian Securities Commission
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange (1 April 1987 - 4 December 2006)
ASX	Australian Securities Exchange (5 December 2006 - Present)
AUSTRAC	Australian Transaction Reports and Analysis Centre
BBSW	Bank Bill Swap Rate
BHGMC	Bear Hill Gold Mining Company NL
CAC	Corporate Affairs Commission (State based)
CBAL	Cox Brothers (Australia) Ltd
CEGD	Cocks Eldorado Gold Dredging NL
Cth	Commonwealth of Australia
DEIC	Dutch East India Company
DPP	Director of Public Prosecutions
EOFY	End of Financial Year
FCA	Financial Conduct Authority (United Kingdom) – Successor of the FSA
FGMC	Franklyn Gold Mining Company

FMOGM	Federation and Mount Owen Gold Mines NL
FSA	Financial Services Authority (United Kingdom) – Replaced by the FCA
FX	Foreign Exchange
GMK	Gold Mines of Kalgoorlie (Aust) Ltd
GSET Ltd	Golden Sovereign Extended Tribute Gold Mining Company (Limited)
H&M	Hattersley Maxwell Noall Ltd
IICL	Imperial Insurance Company of London
IOSCO	International Organization of Securities Commissions
JP	Justice of the Peace
LSE	London Stock Exchange
MBA	Melbourne Brokers Association
MDP	Markets Disciplinary Panel
MEGM	Mount Eba Gold Mines Limited
MSAL	Mineral Securities Australia Ltd
MSIPL	Mineral Securities Investments Pty Ltd
NAB	National Australia Bank
NASD	National Association of Securities Dealers (US)
NAT	National Adjudicatory Tribunal (ASX), superseded by the ASX Disciplinary Tribunal
NBAC	Noel Butlin Archives Centre, Australian National University
NCQMC	North Cornish Quartz Mining Company (Registered)
NCSC	National Companies and Securities Commission
NL	No Liability
NSW	State of New South Wales
NT	Northern Territory

NYSE	New York Stock Exchange
OTC	Over the Counter
QAL	Qintex Australia Ltd
Qld	State of Queensland
QMPI	Queensland Mining, Pastoral, and Investment Company
PPL	Potter Partners Limited
PROV	Public Records Office Victoria
RRL	Robe River Ltd
RTG	Roach Tilley Grice & Co Ltd
SA	State of South Australia
SEATS	Stock Exchange Automated Trading System
SEC	Securities and Exchange Commission (United States)
SEM	Stock Exchange of Melbourne
SFE	Sydney Futures Exchange
SOMA	Surveillance of Market Activity
SPI	Share Price Index
SROWA	State Records Office of Western Australia
SSE	Sydney Stock Exchange
Tas	State of Tasmania
TFM	Trading Floor Manager
UK	United Kingdom
US/USA	United States of America
Vic	State of Victoria
WA	State of Western Australia
WGGM	Wattle Gully Gold Mines NL

PART ONE: THE OPENING BELL – Setting the Context

CHAPTER 1: Combating Stock Market Manipulation in Australia – Introduction

> . . . so far from being a fair field in which the stakes are left to the disposal of fortune, the arena of the Stock Exchange is open to every species of craft and falsehood, abetted by the lowest cunning and the most reckless audacity . . . As a rule, the outside public would prefer that the wares of the stockmarket, like other marketable goods, should be left to the natural influence of time and circumstance, and not be artificially hoisted or depressed by the arts of interested schemers . . .[1]

1.1 Introduction*

Reports of misconduct in financial markets have over recent times been a regular occurrence in the media, both internationally and locally, with 'new scandals emerging with monotonous regularity.'[2] Interest rate rigging, fraud by rogue traders, manipulation of key foreign exchange (FX) and other benchmarks, as well as insider trading, are but a few examples of the types of misconduct perpetrated on global financial markets that seem to recur time after time. Although misconduct in financial markets is not a recent phenomenon, the financial payments made by recalcitrant banks and other financial service organisations by way of plea agreements, settlements and fines have continued to increase significantly and are now in the many hundreds of millions and, in some cases, multiples of billions of dollars.[3]

---

* Note: Section 1.1 of this chapter is a modified version of section 'I Introduction' in Paul Constable, 'Tracing the Historical Roots of Share Price Manipulation in Australia: *Rerum Cognoscere Causas*' (2019) 22 *International Trade and Business Law Review* 69, 70-72 ('Tracing the Historical Roots'). Copyright in the article is held by the author.

[1] 'Bears, Bulls, Brokers, &c.', *The Sydney Morning Herald*, (Sydney, 9 October 1866) 2.

[2] Stephen Platt, *Criminal Capital: How the Finance Industry Facilitates Crime* (Palgrave Macmillan, 2015) 188 ('*Criminal Capital*').

[3] There are many examples, including the USD$2.6 billion plea agreement between Credit Suisse and US authorities following its guilty plea to conspiring to aid and assist US taxpayers in filing false income tax returns and other documents with the Internal Revenue Service (The United States Department of Justice, 'Credit Suisse Pleads Guilty to Conspiracy to Aid and Assist U.S. Taxpayers in Filing False Returns' (Web Page, 19 May 2014) <https://www.justice.gov/opa/pr/credit-suisse-pleads-guilty-conspiracy-aid-and-assist-us-taxpayers-filing-false-returns>) and the 'historic' USD$16.5 billion settlement between Bank of America Corporation and the US Department of Justice for financial fraud in the lead up to, and during, the global financial crisis: The United States Department of Justice, 'Bank of America to Pay $16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis' (Web Page, 21 August 2014) <https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>.

Indeed, it is claimed that misconduct in financial markets by banks globally has cost them collectively in excess of USD$320 billion dollars since the global financial crisis.[4] This figure would, presumably, be accounted for not only by the considerable financial sanctions imposed by global regulators and other law enforcement agencies, but also the legal, management and remediation costs associated with responding to regulatory enforcement actions and litigation.

Criminal breaches, bad behaviour, misconduct and sharp practices would appear to be endemic in an industry that is supposedly built on trust, epitomised in the motto of the London Stock Exchange (LSE), *Dictum meum pactum*, my word is my bond.[5] An industry characterised by Platt as a:

> sick patient whose symptoms range from excessive risk taking, rate fixing, and mis-selling financial products to breaching sanctions laws, laundering money and facilitating crime.[6]

Following the global financial crisis, the target of regulatory enforcement action has to a large extent been financial markets, instruments and activities that have traditionally operated or occurred outside, or on the fringes of, the 'regulatory perimeter'.[7] Examples include spot FX trading and financial benchmark submissions, such as the London Interbank Offered Rate

---

[4] According to Hong Kong consultancy firm Quinlan & Associates, 'US and EU authorities alone [have levied] USD 342 billion in fines on the largest 50 banks since 2009, a number we expect to top USD 400 billion by 2020': Benjamin Quinlan, Yvette Kwan and Hugo Cheng, *Value at Risk: A look at banking's USD 850 billion behavioural problem*, Quinlan & Associates, September 2017, 4 <https://www.quinlanandassociates.com/wp-content/uploads/2017/09/Quinlan_Associates-Value-At-Risk.pdf>. Boston Consulting Group have estimated that since the 2007-2008 financial crisis up until the end of 2016, cumulative financial penalties are in the region of '$321 billion (through the end of 2016)': Gerold Grasshoff et al, The Boston Consulting Group, *Global Risk 2017: Staying the Course in Banking*, March 2017, 5, 16 <https://image-src.bcg.com/BCG_COM/BCG-Staying-the-Course-in-Banking-Mar-2017_tcm9-146794.pdf>.

[5] The motto on the Coat of Arms given to the London Stock Exchange in 1923 was *Dictum Meum Pactum* (my word is my bond): London Stock Exchange, *Our History* (Web Page) <http://www.londonstockexchange.com/about-the-exchange/company-overview/our-history/our-history.htm>; Stuart Fraser, 'Reform banking by putting capitalism back at the heart of capitalism', *The Guardian* (online, 5 July 2012) <http://www.theguardian.com/commentisfree/2012/jul/05/reform-banking-culture>.

[6] Platt, *Criminal Capital* (n 2) 2.

[7] This is essentially the division between 'which activities are regulated, and which are not': HM Treasury, *A New Approach to Financial Regulation: Building a Stronger System*, February 2011, Presented to Parliament by the Financial Secretary to the Treasury by Command of Her Majesty, 22 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/81411/consult_newfinancial_regulation170211.pdf>. An example is given by Schooling Latter: '. . . spot FX sits in an interesting place on what we call our regulatory perimeter. Spot FX trading is only within the perimeter in certain circumstances, for example where a spot trade is ancillary to a transaction in a regulated 'financial instrument' (for example, when buying currency to purchase a bond), or where manipulation of prices on spot FX markets impacts the prices on regulated markets such as those for FX derivatives or impacts on a benchmark. Most other FX trading is, in formal terms, outside our perimeter': Edwin Schooling Latter, 'Conduct Risk in FX Markets' (Speech delivered at FX Week Europe, London, 30 November 2016) <https://www.fca.org.uk/news/speeches/conduct-risk-fx-markets>.

(LIBOR),[8] the 4pm London 'fix', a key reference rate in the spot FX market published by WM/Reuters,[9] and, closer to home, the Bank Bill Swap Rate (BBSW).[10] The manipulation of BBSW by two of Australia's largest domestic banks resulted in Australia and New Zealand Banking Group (ANZ) and National Australia Bank (NAB) receiving what has been described by one journalist as a 'savaging'[11] from Jagot J in the Federal Court of Australia.

> That any employee performing these kinds of functions within a bank, let alone two pillars of Australia's banking system, could have conceived of manipulating the BBSW, and in fact attempted to do so repeatedly over such periods of time bespeaks fundamental failings in the culture, training, governance and regulatory systems of both NAB and ANZ. The public should be shocked, dismayed and indeed disgusted that conduct of this kind could have occurred. The conduct involved attempts to corrupt a fundamental component of the entire Australian financial system for mere short term commercial advantage. The conduct involved a repeated failure to fulfil what would generally be perceived as the most basic standards of honesty, fairness and commercial decency, let alone the standards that would properly be expected of these two banks. The conduct tends to undermine public confidence in the entirety of the Australian financial system.[12]

---

[8] The LIBOR 'scandal' has been described as the 'greatest banking scandal in history' (Alexis Stenfors, *Barometer of Fear: An Insider's Account of Rogue Trading and the Greatest Banking Scandal in History* (Zed Books Ltd, 2017)) and a financial scandal that 'dwarfs by orders of magnitude any financial scam in the history of markets': Quote attributed to Professor Andrew Lo in Matt Taibbi, 'Everything is Rigged: The Biggest Price-Fixing Scandal Ever', *Rolling Stone* (Web Page, 25 April 2013) <http://www.rollingstone.com/politics/news/everything-is-rigged-the-biggest-financial-scandal-yet-20130425>. See also Christopher Matthews, 'LIBOR Scandal: The Crime of the Century?', *TIME* (online, 9 July 2012) <http://business.time.com/2012/07/09/libor-scandal-the-crime-of-the-century/>

[9] Guy Debelle, 'FX Benchmarks', (Address to the FX Week Australia Conference, Sydney, 12 February 2015) <https://www.rba.gov.au/speeches/2015/sp-ag-2015-02-12.html>.

[10] According to the ASX, which took over the administration of BBSW on 1 January 2017, BBSW is 'a short-term money market benchmark interest rate', which, in general terms, is the 'average mid-rate at approximately 10.00am for Prime Bank Eligible Securities with tenors of 1 to 6 months on a Sydney business day. Prime Bank Eligible Securities comprise bank accepted bills and negotiable certificates of deposit issued by banks that have met the eligibility criteria and conditions required to be a Prime Bank.' BBSW is used to 'provide reference interest rates for the pricing and revaluation of Australian dollar derivatives and securities such as floating rate bonds': ASX, 'Frequently Asked Questions – BBSW' (Web Page, 2016) <https://www.asx.com.au/documents/products/bbsw-frequently-asked-questions.pdf>.

[11] Stephen Letts, 'ANZ, NAB agree to $100 million settlement of swap rate rigging case', *ABC News* (Web Page, 10 November 2017) <http://www.abc.net.au/news/2017-11-10/anz-nab-agree-to-$100m-settlement-of-swap-rate-fixing-case/9138796>.

[12] *Australian Securities and Investments Commission v National Australia Bank Limited* [2017] FCA 1338 [115] (Jagot J). Following admissions from ANZ and NAB, the Federal Court of Australia made declarations that both banks had each attempted to manipulate Australia's LIBOR equivalent, BBSW, to their own advantage and to the detriment of counterparties and 'thereby attempted to engage in unconscionable conduct in connection with the supply of financial services'. The Court imposed pecuniary penalties of $10 million each on both ANZ and NAB in respect of their identified misconduct in the BBSW market. In addition, both ANZ and NAB gave enforceable undertakings to ASIC that required them to each pay $20 million to be applied for the 'benefit of the community' and $20 million towards 'ASIC's investigation and other costs': Australian Securities &

Historically, however, financial market regulators globally, including the Australian Securities and Investments Commission (ASIC), have generally tended to focus their efforts on misconduct on stock markets, where corporations raise capital and the shares of publicly-listed companies are traded by institutional and professional investors, as well as retail, or 'Mum and Dad', investors.[13] Insider trading, market manipulation (or rigging), false or misleading statements, dishonest conduct and other abuses have been the traditional fare of those responsible for the supervision and regulation of stock exchanges across the globe.

In this thesis, I will seek to trace the historical roots in Australia of one particular type of market misconduct or abuse,[14] stock market manipulation. Unlike the manipulation of key financial benchmarks, such as LIBOR, the 4pm London fix and BBSW, which are relative newcomers to the rogues gallery of scandals that have plagued financial markets across the centuries, the manipulation of share prices has occurred over a much longer period of time. Yet, as will be discussed in Chapter 2, the history of this particular species of market misconduct in Australia appears to be incomplete given the dearth of literature available that documents the incidence of stock market manipulation and efforts to prevent, detect and punish those who engaged in this insidious activity, particularly prior to the late 1960s.

In this chapter, I will introduce my thesis topic, set out the purpose of my thesis and its contribution to the literature, articulate the research questions, describe the methodology that I

Investments Commission, 'ASIC accepts enforceable undertakings from ANZ and NAB to address conduct relating to BBSW' (Media Release 17-393, 20 November 2017). The Federal Court also made findings against the other two of the big four Australian banks, Commonwealth Bank of Australia and Westpac Banking Corporation, with respect to their activities and conduct in the BBSW market: see, for example, Australian Securities & Investments Commission, 'ASIC Enforcement Outcomes: January to June 2018, Report 585' (Web Page, 9 August 2018) 16-17 <https://asic.gov.au/media/4841269/rep-585-published-9-august-2018.pdf>.

[13] 'Mum and dad investors' is a term that is used often in the Australian media to mean, generally speaking, retail, non-professional or less sophisticated investors. In the context of share trading, they have been referred to as 'relatively unsophisticated investors trading regularly, but investing very modest sums – the familiar "mums & dads" of Australian investment': Tim Phillipps (Australian Securities Commission, Director, Electronic Enforcement), 'Avoiding Share Scams in Cyberspace' (Address delivered at The Australian Financial Review "Online Broking – Opportunity or Threat" conference, Sydney, 20 and 21 September 1999) <https://asic.gov.au/media/1327364/conference.pdf>.

[14] The terms 'market misconduct' and 'market abuse' will be used interchangeably. The former is used more widely in the Australian context to refer to financial market offences, such as market manipulation and insider trading (it is the name of the chapter in the *Corporations Act 2001* (Cth) that deals with the key market offences, such as market manipulation – Part 7.10 of Chapter 7), whereas the latter is a term that tends to be more apposite in the United Kingdom and Europe: see, for example, Financial Conduct Authority, 'Market Abuse' (Web Page, 20 December 2017) <https://www.fca.org.uk/markets/market-abuse>; Karen Harrison and Nicholas Ryder, *The Law Relating to Financial Crime in the United Kingdom* (Routledge, 2nd ed, 2017) ch 6. From a UK and European perspective, Avgouleas states that market abuse predominantly takes the form of market manipulation and insider trading: Emilios Avgouleas, *The Mechanics and Regulation of Market Abuse: A legal and economic analysis* (Oxford University Press, 2005) 4 ('*Regulation of Market Abuse*').

adopted when conducting my research and provide an overview of the organisation of my thesis.

1.2 Background

Stock market manipulation usually occurs where the prices of shares listed on stock exchanges are set by artificial forces, rather than the unfettered interplay of genuine supply and demand.[15] It is widely documented that the distortion of prices through manipulative activities harms innocent investors, the reputation, fairness and integrity of a country's financial markets and, ultimately, can adversely impact the health and wellbeing of a nation's economy.[16] Stock market manipulation has been described as 'an art form which strikes at the heart of the pricing system on which all investors rely'[17] and its 'insidious and widespread effects' have for a long time 'been thought to strike at the heart of the integrity of security markets.'[18] Malins VC in *Rubery v Grant*,[19] for example, described it almost 150 years ago as one of 'the most dishonest practices to which men can possibly resort' and little more than an 'abominable fraud'.[20] There can be little doubt that stock market manipulation, like its 'evil twin' insider trading,[21] has 'utterly no place in any fair minded law-abiding economy'.[22]

It is no surprise then that this particular form of financial market misconduct constitutes a criminal offence in most developed countries, including Australia where it has been the subject of specific criminal sanction, initially only in four states, since the early 1970s.[23] Whilst

---

[15] Holley refers to this as the 'unfettered chancering of supply and demand': Dean Holley, 'Market Manipulation – The Focus on Prevention' (1993) 19(4) *Commonwealth Law Bulletin* 1927, 1927. The High Court of Australia discussed what constitutes the forces of genuine supply and demand in *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30, [71]-[74] (French CJ, Hayne, Crennan, Kiefel, Bell, Gageler, Kean JJ).
[16] See, for example, Janet Austin, *Insider Trading and Market Manipulation: Investigating and Prosecuting Across Borders* (Edward Elgar Publishing, 2017) 14-21.
[17] Vivien R Goldwasser, 'Regulating Manipulation in Securities Markets: Historical Perspectives and Policy Rationales' (1999) 5 *Australian Journal of Legal History* 149, 149 ('Regulating Manipulation').
[18] Vivien Goldwasser, *Stock Market Manipulation and Short Selling* (CCH Australia Limited and Centre for Corporate Law and Securities Regulation, 1999) 44 ('*Stock Market Manipulation*').
[19] (1872) 13 LR Eq 443.
[20] *Rubery v Grant* (1872) 13 LR Eq 443, 448 (Malins VC); Paul Constable, 'Ferocious Beast or Toothless Tiger? The Regulation of Stock Market Manipulation in Australia' (2011) 8 *Macquarie Journal of Business Law* 54, 77 ('Ferocious Beast or Toothless Tiger?').
[21] This is a variation of Loss' term 'manipulation's twin evil, insider trading': Louis Loss, 'Disclosure as Preventive Enforcement' in Klaus J Hopt and Gunther Teubner (eds), *Corporate Governance and Directors' Liabilities: Legal, Economic and Sociological Analyses on Corporate and Social Responsibility* (Walter de Gruyter, 1985) 330.
[22] Arthur Levitt, 'A question of investor integrity: Promoting investor confidence by fighting insider trading' (Speech delivered at the 'SEC Speaks Conference, Washington DC, 27 February 1998) <https://www.sec.gov/news/speech/speecharchive/1998/spch202.txt>; Constable, 'Ferocious Beast or Toothless Tiger?' (n 20) 54.
[23] This will be discussed in more detail in chapter 7.

legislation explicitly outlawing financial market misconduct, such as stock market manipulation, is a relatively recent development in Australia,[24] the manipulation of share prices through artificial transactions or the spreading of false information has, according to Avgouleas, 'for a long time been perceived as a species of fraud' under the common law.[25] Indeed, it is not difficult to see how, at its most basic, stock market manipulation is a form of cheating that misleads the public and investors and causes real harm.[26]

This particular form of market misconduct has a very long history, with many authors agreeing that the manipulation of share prices on stock markets around the world has existed since share trading first began.[27] However, despite what seems to be a veritable abundance of literature on stock market manipulation, both domestic and international, its history in Australia appears to be incomplete. This thesis will make a contribution to the literature on the incidence of stock market manipulation on domestic share markets and address some of the apparent gaps that are discussed in section 1.5 below.

1.3 The Purpose of this Thesis

My purpose in undertaking this thesis is to trace the historical roots of stock market manipulation in Australia and to investigate how domestic governments (colonial, state and federal) and stock exchanges have grappled with this insidious activity over the years and what action, if any, they have taken to combat its occurrence on domestic share markets.

---

[24] According to Avgouleas, certain types of market manipulation such as 'corners' and 'pools' were the subject of legislation as far back as the seventeenth and eighteenth century in England: Avgouleas, *Regulation of Market Abuse* (n 14) 314.

[25] Ibid 114. Note, however, that Avgouleas subsequently acknowledges that 'trade-based price manipulations, such as large-scale trading structured to bring about a price change, cannot be classified as frauds, at least in the absence of a general duty not to mislead the market through trading': at 115. Goldwasser has also asserted that the manipulation of share prices has 'long been a concern of the common law, which imposed well-recognised rules relating to fraud upon the securities markets': Goldwasser, 'Regulating Manipulation' (n 17) 150.

[26] See, for example, *Scott v Brown, Doering, McNab & Co* [1892] 2 QB 724, 728-729 (Lindley LJ); 'The Recent Share "Rigging" Case. A Disputed Transaction', *The Age* (Melbourne, 29 October 1886) 5

[27] According to Goldwasser, for example, market manipulation is considered to be one of the 'oldest and most widely recognised practices in global capital markets': Goldwasser, 'Regulating Manipulation' (n 17) 198. Professor Loss assert that market manipulation is 'probably as old as the securities markets' themselves: Louis Loss, *Fundamentals of Securities Regulation* (Little, Brown & Company, 1988) 844 ('*Fundamentals of Securities Regulation*'). Similarly, Siering et al consider that '[a]s long as financial markets have existed, fraudulent market participants have tried to profit by manipulating markets and deceiving others': Michael Siering et al, 'A taxonomy of financial market manipulations: establishing trust and market integrity in the financialized economy through automated fraud detection' (2017) 32 *Journal of Information Technology* 251, 266.

1.4 Period Covered by the Research

The period under consideration commences around the latter half of the 1800s, when stock market manipulation was the subject of increasing commentary in domestic newspapers, up until 1990, the year that the first conviction for stock market rigging was secured in Australia.[28] There are two reasons why I chose 1990 as the ending point for my research. Firstly, the period from 1990 to date would have quite possibly consumed several theses given the myriad changes that have occurred over the circa thirty years since then. Secondly, I wanted to pinpoint a key milestone in the history of domestic stock market manipulation on which to close my research.

In my view, the first domestic conviction of an individual for stock market rigging in 1990,[29] just over a year prior to the first domestic conviction of an individual for insider trading,[30] was a good place to do that. Although there had been other responses to identified instances of stock market manipulation from the stock exchanges and regulators, those who engaged in manipulative conduct prior to the inaugural conviction in 1990 appear to have eluded the reach of domestic laws that specifically proscribed this insidious activity, which had by then been in force in some states for around twenty tears.[31]

1.5 Contribution of this Thesis to the Literature

For the reasons set out below, this thesis seeks to make an original contribution to the study of one of the most damaging types of market misconduct perpetrated on local and global stock exchanges, stock market manipulation, as well as to the literature on the history of Australian securities market regulation.

As this thesis will highlight, the manipulation of share prices by malefactors intent on unjustly enriching themselves at the expense of others is not new in Australia. Indeed, it would seem

[28] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/687, Z718/381, Australian Stock Exchange Limited, 'News Release, Headline: Market Rigging – s.124(2) Securities Industry Act 1980 Moage Limited', 1 August 1990, attached to which is a document titled 'advice from Mr AJ Pascoe, Acting Commissioner, ACT Corporate Affairs Commission'; *Mark Richard Howard v Bruce Emerton Miles* (ACT Magistrates Court, Dainer SM, 30 July 1990, unreported) referred to in Goldwasser, *Stock Market Manipulation* (n 18) 76 n 93.

[29] Ibid.

[30] According to Overland, the first conviction for insider trading in Australia did not occur until 1991 in *R v Teh* (District Court of Victoria, Kelly DCJ, 2 September 1991): Juliette Overland, 'The Criminal Liability of Corporations for Insider Trading in Australia: Proposals for Reform' (PhD Thesis, Australian National University, 2015) 5-6.

[31] As will be discussed in later chapters, securities industry laws explicitly proscribing market manipulation were only initially enacted in four states (of six) in Australia in 1970 and 1971—this also did not include the Australian Capital Territory and the Northern Territory.

that for as long as people have been able to buy and sell shares in Australia, there have been those seeking nefarious ways to tip the scales in their favour,[32] including through the manipulation of the prices at which shares were bought and sold—whether jostling shoulder to shoulder around a 'pavement stock-broker' on the footpath of a small gold mining town in the eastern gold fields of Western Australia in the late 1800s,[33] gathered in a 'ramshackle, dark stuffy room' at the rear of a 'tumble-down building' to participate in one of the stock exchange sessions held in Melbourne in the late 1880s[34] or using the very latest technology to trade shares anywhere in the world at a speed measured in units beyond human perception (milliseconds (a thousandth of a second), microseconds (a millionth of a second) and even nanoseconds (a billionth of a second)).[35]

As will be discussed in the literature review in Chapter 2, there is a considerable body of literature on stock market manipulation, both in Australia and internationally,[36] an examination of which would lead one to reasonably conclude that the history of its incidence in the domestic context really only commenced in the late 1960s following the mining and mineral boom. Yet, as this thesis will reveal, conduct and activities aimed at distorting share prices to benefit malefactors at the expense of others has a much longer history than the literature, particularly the legal literature, would otherwise suggest.

Indeed, a review of the non-legal literature, newspaper articles and other sources indicates that there are examples of conduct and activities intended to interfere with the forces of genuine supply and demand on Australia's formal and informal share markets as long ago as the 1860s, and possibly earlier.[37] There are a number of reports contained in newspapers published across the Australian colonies in the latter half of the 1800s, for example, that describe conduct that would today constitute what is known in modern parlance as 'rumourtrage',[38] a type of market manipulation that involves the spreading of false rumours or misleading information to distort

---

[32] As Loss notes, 'the laying of hands on the scales': Loss, *Fundamentals of Securities Regulation* (n 27) 845.
[33] Albert F Calvert, *My fourth tour in Western Australia* (William Heinemann, 1897) 126.
[34] George Meudell, *The Pleasant Career of a Spendthrift* (George Routledge & Sons, 1929) 82-83.
[35] Walter Mattli, 'A New Capital Market Reality' in Walter Mattli (ed), *Global Algorithmic Capital Markets: High Frequency Trading, Dark Pools and Regulatory Challenges* (Oxford University Press, 2019) 1.
[36] According to Loss, for example, there is 'a substantial literature on the classic manipulation techniques': Loss, *Fundamentals of Securities Regulation* (n 27) 844.
[37] This will be discussed in more detail in Chapter 2.
[38] The meaning of this term was noted by ASIC in Australian Securities & Investments Commission, *Consultation Paper 118: Responsible handling of rumours*, September 2009, 7 <https://download.asic.gov.au/media/1331012/cp118.pdf>.

a company's share price.[39] The use of telegrams to spread false rumours and misleading information about mining companies, for example, appears to have been a popular means of manipulating domestic share prices in the latter half of the 1800s, as does the purported execution of 'fictitious sales'.[40] Although the tools used to perpetrate this form of misconduct may have changed significantly, the motivations and objectives of those responsible would appear to be broadly the same.

The lack of a comprehensive analysis of the existence in Australia of this particular species of market misconduct prior to the late 1960s represents a significant gap in the literature. A further gap arises by virtue of the fact that there is no literature currently available that attempts to provide a historical account of the manipulation of domestic share prices in Australia from the early days of share trading through to modern times. This thesis will make a contribution to the advancement of knowledge in both of these areas.

Once share trading moved from the footpaths of regional mining towns across Australia onto formalised and centralised stock exchanges around the country, the history of stock market manipulation became intricately linked with the development of share trading on domestic stock exchanges across the decades. The local stock exchanges should, therefore, have played a key role in combating the manipulation of share prices on their respective markets. Yet, there is a dearth of literature on the role that domestic stock exchanges have played in dealing with manipulative activities over the last circa 150 years since they first commenced operating in various Australian colonies. This is somewhat surprising given the stock exchanges were primarily responsible for the supervision of trading and other activities occurring on their respective markets for many decades before ASIC took over responsibility for the supervision of real-time trading in August 2010.[41] This represents a further gap in the literature and this thesis will make a contribution to the advancement of knowledge in this area.

---

[39] This type of activity is today proscribed in Australia under s.1041E of the *Corporations Act 2001* (Cth) and is discussed in more detail in Chapter 3.
[40] Fictitious transactions are discussed in Chapter 3.
[41] ASIC took over responsibility for the supervision of real-time trading on the nation's stock exchanges on 1 August 2010: Australian Securities & Investments Commission, 'ASIC Market Supervision Update: Issue 1' <https://asic.gov.au/about-asic/corporate-publications/newsletters/asic-market-supervision-update/asic-market-supervision-update-previous-issues/asic-market-supervision-update-issue-1/>; The Treasury (Cth), 'Reforms to the Supervision of Australia's Financial Markets' (Media Release, No.013, 24 August 2009).

1.6 Research Questions

The specific research questions that this thesis seeks to address are set out below.

(a) What are the historical roots of activities targeted at the manipulation of share prices on domestic share markets?

(b) What role have domestic governments (colonial, state and federal) and stock exchanges played in combating this insidious activity during the period covered by this research?

These research questions have been addressed using the methodology described in section 1.7 below.

In the course of addressing the research questions, it will be argued that whilst action was sometimes taken in response to some identified instances of market manipulation on local share markets over the decades, combating this insidious activity does not appear to have been a priority for domestic governments and stock exchanges for a very long time. Indeed, it was not until around the time of the mining and minerals boom in the late 1960s that decisive steps were finally taken to combat stock market manipulation and other forms of market misconduct on the nation's stock exchanges.

1.7 Methodology

Both doctrinal[42] and empirical[43] research methodologies were used during the research for this thesis to answer the above research questions and reach the conclusions set out in Chapter 9. In terms of the doctrinal methodology, this was library-based and focused on the reading and analysis of primary materials (legislation and case law) and secondary materials (commentary

---

[42] It is acknowledged that there have been 'overwhelming criticisms' made about the doctrinal methodology. It is said to be 'too theoretical, too technical, uncritical [and] trivial' (Terry Hutchinson, *Researching and Writing in Law* (Lawbook Co, 3rd ed, 2010) 22 ('*Researching and Writing*') and 'intellectually rigid, inflexible and inward-looking' (Douglas W Wick, 'Interdisciplinarity and the Discipline of Law' (2004) 31(2) *Journal of Law and Society* 163, 164). However, Hutchinson and Duncan assert that the doctrinal research method 'lies at the basis of the common law and is the core legal research method': Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, 85 ('Defining and Describing What We Do'). Moreover, Hutchinson and Duncan assert that most commentators agree that '[s]ome element of doctrinal analysis will be found in all but the most radical forms of legal research': at 105, quoting Paul Chynoweth, 'Legal Research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell, 2008) 31.

[43] See, for example, Anna Green and Kathleen Troup, *The Houses of History: A Critical Reader in Twentieth-Century History and Theory* (Manchester University Press, 1999) 1 ('*The Houses of History*').

on the law found in, for example, textbooks and legal journals).[44] According to the Pearce Committee, doctrinal research is research that provides a:

> systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments.[45]

Put simply, it asks, 'what the law is in a particular area' and is aimed at describing 'a body of law and how it applies'.[46] Whilst these questions informed part of my research, the methodology I used did stray beyond the strict doctrinal boundaries at various times by drawing upon a 'non-doctrinal' methodology to assist in presenting a more complete and accurate account of the subject matter.

To supplement the doctrinal analysis, an empirical methodology was adopted, which included a qualitative approach to the collection and analysis of data to assist in piecing together the history of stock market manipulation in the domestic context. This approach was particularly apposite for the early years of domestic share trading where records typically used in doctrinal research were either not available or could not be located. The objective of using this approach was to seek to 'add to our understanding of individuals' experiences and behavior, or of structures and organizations, or of other social phenomena',[47] in particular, the genesis of manipulative practices in connection with share trading in Australia and the action taken, if any, by governments and stock exchanges to combat its occurrence. The data collected and analysed included archival material, books from other disciplines, such as history and financial markets, government reports, speeches, court transcripts, court registers, and newspapers from the latter half of the 1800s to 1990.

For the period prior to the 1970s, the doctrinal approach to data collection yielded much less in the way of readily available data for the purposes of tracing the historical roots of stock market manipulation in Australia. This is not altogether surprising given that stock market manipulation does not appear to have been a key priority for the colonial, state or federal

---

[44] Hutchinson, *Researching and Writing* (n 42) 7.
[45] Dennis Pearce, Enid Campbell and Don Harding*, Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987) ('Pearce Report') cited in Hutchinson, *Researching and Writing* (n 42) 7; Hutchinson and Duncan, 'Defining and Describing What We Do' (n 42) 101.
[46] Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press, 2nd ed, 2017) 20-21 ('*Research Methods for Law*').
[47] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Cane, Peter and Herbert M Kritzer (eds), *Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2010) 936.

governments or domestic stock exchanges until almost a century after the stock exchanges began to be established across the Australian colonies. As such, a qualitative approach to the collection of data was used to assist in piecing together the history of this insidious activity in the domestic context.

The archival material analysed consisted of: (i) a small number of records from the Public Records Office Victoria and the State Records Office of Western Australia; and (ii) a donation from the Australian Securities Exchange (ASX) to the Noel Butlin Archives Centre at the Australian National University (ANU) of records from a number of the domestic stock exchanges from the 1870s to the mid-1990s.[48] The records do not appear to be an exhaustive collection of all records maintained by the relevant exchanges, but they have provided an important insight into the role of some of Australia's stock exchanges over the period covered by this research. Some data from Australian regulators, for example, the State Corporate Affairs Commissions (CACs) and the National Companies and Securities Commission (NCSC), were included in the collection. This data provided insight on dealings between the regulators and the stock exchanges from the 1960s onwards, a period in which significant changes to the securities market regulation paradigm occurred in Australia (discussed in Chapters 7 and 8). These data assisted in trying to understand the extent to which stock market manipulation was a particular concern for the exchanges and regulators and what action, if any, they took in order to deal with identified instances. It also assisted in corroborating several of the stories reported in the newspaper articles that were reviewed.

Given that there are reported instances of manipulative activities with respect to the buying and selling of shares having occurred prior to the establishment of many of the more formalised stock exchanges in Australia, newspaper articles from the colonial press were an invaluable source of information in trying to 'illuminate the past'.[49] In many cases, however, a lot of the data and information could not be validated as corroborating data were not available or could not be located. Indeed, newspaper articles were the predominant source of data for the period preceding the 1970s, going back to around the mid-1800s and they form an important part of the empirical data set for this research.

---

[48] ASX Limited, Australian Securities Exchange, 'ASX Archives Collection 1875-1987. ASX Publications Collection 1916-1996', January 2009, Noel Butlin Archives Centre, Australian National University, Canberra.
[49] Arthur Marwick, *The New Nature of History: Knowledge, Evidence, Language* (Palgrave Macmillan, 2001) 168.

There are a very large number of newspaper articles that report on activities and conduct that would either be classified as stock market manipulation under the relevant provisions in today's *Corporations Act* or which essentially had the same effect, that is, distorting the price of shares to benefit malefactors at the expense of others, sometimes in what could be described as novel, unusual or possibly ingenious ways. Unsurprisingly, the further back in time one goes, the scarcer become the sources available to corroborate the stories being reported in the press.

For the early part of the period under review, newspaper articles appear to represent the only record of what occurred in many court hearings as corresponding official records could not be located. Nonetheless, in the absence of other historical records, the newspaper reports of the time provide us with some considerable insight on the types of conduct being perpetrated by those engaged in stock market manipulation, the action taken in response, journalist and community attitudes to this type of activity and its apparent prevalence. Fortunately, the task of the researcher using this form of historical primary source[50] is made infinitely easier by the digitisation of newspapers that are available via Trove, an Australian online resource that represents a collaboration between the National Library of Australia, State and Territory libraries and many other cultural and research institutions.[51]

The period covered by the research, the latter half of the 1800s to 1990, is significant. Whilst the doctrinal methodology was utilised for both data collection and analysis for a large part of the research of this period, a historical analysis was necessarily required in order to 'construct a picture of the past from the indirect or second hand evidence that is available.'[52] In this regard, an empirical approach to the historical analysis was adopted, which focused on indirectly reconstructing events of the past from the 'traces' left by those who lived through the relevant period.[53] To understand the empirical approach to this type of endeavour, it is important to understand the nature of empiricism, which has been described as a 'theory of knowledge, an epistemology, and a method of historical enquiry'.[54] More specifically:

---

[50] See, for example, ibid, where Marwick's taxonomy of primary sources includes newspapers, located under the heading 'Media of communication and artefacts of popular culture'. However, note the criticism of newspapers as a historical source in Joseph Baumgartner, 'Newspapers as Historical Sources' (1981) 9(3) *Philippine Quarterly of Culture and Society* 256.
[51] National Library of Australia, *About Trove* (Web Page) <https://trove.nla.gov.au/about>.
[52] Stephen Davies, '*Empiricism and History* (Palgrave Macmillan, 2003) 6 ('*Empiricism and History*').
[53] Ibid 111.
[54] Green and Troup, *The Houses of History* (n 43) 1.

> our knowledge of the world depends upon, and is derived from, experience or observation; that is, the evidence of the senses.[55]

Callum goes further and defines empiricism as:

> a simple, common sense method of objectivity and fact-collection in which all knowledge has to be proven before it can be accepted. It rejects *a priori* knowledge (that is, knowledge that is assumed to exist without any proof being required). It relies solely on experience (or observation or reading) of knowledge. When combined with inductive reasoning, it allows the scholar to move from particular bits of knowledge (cases) to generalisations (conclusions).[56]

According to Epstein and King's relatively liberal definition, empirical research is:

> based on observations of the world, in other words, data, which is just a term for facts about the world. These facts may be historical or contemporary, or based on legislation or case law, the results of interviews or surveys, or the outcomes of secondary archival research or primary data collection . . . As long as the facts have something to do with the world, they are data, and as long as research involves data that is observed or desired, it is empirical.[57]

Whilst McConville and Chui assert that this 'is an extremely broad definition and arguably perhaps too broad',[58] Epstein and King's point that a great deal of 'legal scholarship makes at least some claims about the world based on observation or experience' has some considerable merit.[59] Indeed, they argue that in terms of legal scholarship 'it is only the purely normative or theoretical that is *not* empirical'.[60]

Having now experienced the practical difficulties of trying to apply a doctrinal methodology to a research project that necessarily also requires a non-doctrinal approach to investigate the research questions, the arguments of commentators such as Epstein and King[61] and Bell[62] regarding the shortcomings of a legal education that only includes training on doctrinal research methodology resonate strongly. It became apparent very quickly that the doctrinal research

---

[55] Davies, *Empiricism and History* (n 52) 1.
[56] Callum G Brown, *Postmodernism for Historians* (Routledge, 2013) 16-17 ('*Postmodernism for Historians*').
[57] Lee Epstein and Gary King, 'The Rules of Inference' (2002) 69(1) *University of Chicago Law Review* 1, 2-3 ('The Rules of Inference').
[58] McConville and Chui, *Research Methods for Law* (n 46) 20.
[59] Epstein and King, 'The Rules of Inference' (n 57) 3.
[60] Ibid.
[61] Ibid.
[62] Felicity Bell, 'Empirical Research in Law' (2016) 25(2) *Griffith Law Review* 262.

skills acquired at an Australian law school did not adequately equip me for a research endeavour that also required an historical research approach to the research questions, essentially performing the work of an archaeologist, 'unearthing the past and attempting to describe it for the present.'[63] Although the research undertaken for this thesis involved an historical research methodology in order to understand events of the past, it is not merely the musing of 'an antiquarian looking at the past for its own sake'.[64] Rather, it is an attempt to address the gaps in the literature that will be discussed in Chapter 2 and make a contribution to the advancement of knowledge in this particular area.

In addition to the above, I conducted one interview as part of my research following approval from the Curtin University Human Research Ethics Committee. I was privileged to interview the former Head of the Surveillance Division at the Australian Stock Exchange (as it then was) (ASX), who was one of the key actors involved in setting up the ASX's market surveillance capability to detect market misconduct in the late 1980s. As will be discussed in Chapter 8, market surveillance was, and remains, a crucial means of combating (preventing and detecting) stock market manipulation on domestic and global share markets. This interview provided a unique insight into the creation and work of the ASX's Surveillance Division and its important contribution to combating stock market manipulation and preserving the integrity and reputation of a key component of the nation's capital markets and overall economy.

Finally, a key tool utilised during my research was a basic chronology, in which I documented in summary form all the data I could locate relating to the manipulation of share prices on domestic share markets for the period covered by my research. This data derived from numerous sources, including legislation, legal cases, archival material, government reports, books (from multiple disciplines, including law, history, financial markets/economics, regulation and criminology), newspapers, journals (again, interdisciplinary in nature), criminal case files, bench notes, regulatory and stock exchange media releases, annual reports, speeches, stock exchange rules and guidance notes, regulatory guidance, and industry presentations. By recording the details of relevant events and developments in chronological order, including the date of occurrence, a summary of the relevant event/development and the source of the data, I was able to place each event/development into a historical context. This helped shed some light

[63] David Ibbetson, 'Historical Research in Law' in Mark Tushnet and Peter Cane, *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005) 864.
[64] Ibid.

on how stock market manipulation and efforts to combat its occurrence developed in Australia during the period the subject of my research.

Notwithstanding the research methodology adopted, however, my thesis will unavoidably include my personal observations on the data I have collected and analysed and, like all researchers, subjectivity and bias would necessarily have been exercised in terms of not only selecting historical events and the sources to study, but also in interpreting, analysing, evaluating and using the data, as well as synthesising and writing up the research results.[65]

1.8 Limitations and Opportunities for Future Research

Whilst this thesis will cover a considerable period of Australia's legal, regulatory and stock market history, there are a number of limitations that should be highlighted in the spirit of full and frank disclosure. This thesis is not, nor does it contain, a comprehensive comparative analysis of the history of stock market manipulation in different countries. Its focus is on tracing the historical roots of stock market manipulation in the domestic context and investigating what action, if any, was taken to combat its occurrence on local stock markets over a period in excess of 100 years. This does not mean that reference is not made to developments in other countries to assist with the historical context where required, but the focus is domestic.

Despite the time spent in archives and libraries in the pursuit of facts to piece together a history of the manipulation of share prices in Australia and efforts to combat this particular species of market misconduct in the domestic context, it is not, nor does it purport to be, an exhaustive account of every development in this field that has occurred over the period covered by my research. This is not only due to the constraints of time,[66] but also by the non-availability of many of the records required to complete such an undertaking. By way of example, whilst there are many thousands of old newspaper articles and other digital resources being continuously made available online by Trove, I have only been able to utilise the material that was available at the time when conducting that particular stage of my research. New articles are being

[65] Brown, *Postmodernism for Historians* (n 56) 17-18.

[66] The constraints of time have meant, amongst other things, that hard copy records that may have been available at state libraries and public records offices around Australia could not be viewed to determine whether they were relevant to my research. Additionally, even when relevant archival material was located, not every document in every archive box was able to be reviewed due to the volume of documents, illegibility of some of the records and considerable time constraints.

continually added and may provide an opportunity for further research and discoveries in relation to this area in the future.

There is a considerable amount of archival material held by state libraries and some universities relating to Australia's stock exchanges, including the Noel Butlin Archives Centre at the ANU, which, as noted in section 1.7 above, holds a large amount of material donated by the Australian Securities Exchange. This collection includes material from the stock exchanges that were established in Melbourne, Sydney, Perth, Adelaide, Hobart and Brisbane, as well as the Australian Stock Exchange,[67] covering the period 1875 to 1996. As Salsbury and Sweeney note, however, '[h]istorians are always a prisoner of the available records'[68] and this material collectively would most likely only represent a very small collection of the records actually maintained in connection with the operation of all the state and regional stock exchanges across Australia from the 1860s. Moreover, as Hall observes, the availability of official stock exchange data prior to, for example, the 1884 foundation of the Stock Exchange of Melbourne (SEM) is 'negligible'.[69]

Nonetheless, in the absence of a central repository of material relating to my specific research topic, like other researchers, many precious hours have been spent wading through mountains of archival material looking for very specific data that would shed some light on my research, but which has yielded small pieces of a very large puzzle. Given the large number of archive boxes and the substantial volume of material in many of the boxes, not all the records were able to be reviewed in the time available. This means there could be information contained in the records not reviewed that may shed a different light on my observations and conclusions.

The fact that there have been a number of state and regional stock exchanges over the course of the last 150 years has also presented a challenge for research purposes as it necessarily means records are disparate and difficult to access as they are often only hard copy documents retained in different states across the country.[70] Other challenges have included, amongst others, the fact

---

[67] The Australian Stock Exchange was formed on 1 April 1987 as a result of the 'amalgamation of the six independent stock exchanges that had operated in the states' capital cities' (Sydney, Melbourne, Brisbane, Perth, Hobart, Adelaide): ASX, *ASX Story: History* (Web Page) <https://www2.asx.com.au/about/asx-story>.
[68] Stephen Salsbury and Kay Sweeney, *The Bull, the Bear & the Kangaroo: The History of the Sydney Stock Exchange* (Allen & Unwin, 1988) 2.
[69] AR Hall, *The Stock Exchange of Melbourne and the Victorian Economy 1852-1900* (Australian National University Press, 1968) vii.
[70] Another challenge for prospective researchers is that the minutes of various committee meetings for the early years of operation, for example, are handwritten, often in a style that is illegible.

that the early committee meeting minutes and other documents from several stock exchanges located during the research were handwritten, which rendered a lot of the information contained therein unusable as it could not be deciphered. All of the aforementioned provide further opportunities for research in this area.

Lastly, due to the private, confidential and commercially sensitive nature of much of the information held by the ASX, access is not typically provided to postgraduate students, notwithstanding the cogency of their many requests. This means that future research, rather than mine, will have to consider this material should it become available for public consumption. Moreover, I have no doubt that, in the future, other researchers and writers will continue to uncover more data, interpret existing data in different ways and fill in the gaps in my research and this thesis to form a more complete account of what were important events in the history of securities market regulation in Australia.

1.9 Organisation of this Thesis

This thesis is comprised of nine chapters. In this chapter, I have introduced my thesis topic, set out the purpose of my thesis and its contribution to the literature, articulated the research questions, described the methodology I adopted when conducting my research and highlighted some of the limitations of my research, as well as some opportunities for future research. The remaining chapters of this thesis are organised as set out below.

In Chapter 2,[71] I conduct a review of the literature on stock market manipulation and its historical roots in Australia. The legal literature on domestic stock market manipulation, in particular, appears to have only really begun to emerge following the mining and minerals boom in the late 1960s, which precipitated the very significant changes to local securities market regulation in the following decades. These changes include the work of the Senate Select Committee on Securities and Exchange (Rae Committee)[72] and subsequent publication of its report in 1974 (Rae Report),[73] as well the criminalisation of market manipulation and other

---

[71] The literature review in Chapter 2 is a modified version of Paul Constable, 'Tracing the Historical Roots of Share Price Manipulation in Australia: *Rerum Cognoscere Causas*' (2019) 22 *International Trade and Business Law Review* 69.

[72] The Senate Select Committee on Securities and Exchange was named the 'Rae Committee', after its Chair, Senator Peter Rae (who replaced Sir Magnus Cormack as Chair in 1971) and its report is commonly referred to as the 'Rae Report': see, for example, Australian Senate, 'Navigate Senate Committees', *1970-75. Securities and Exchange. Select Committee on Securities and Exchange* (Web Page) <http://navigatesenatecommittees.senate.gov.au/events/select-committee-on-securities-and-exchange/14>.

[73] Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (Report, Volume 1, 1974).

types of market misconduct in four states in Australia in 1970 and 1971. Although these events would appear to have acted as a catalyst for the commencement of the legal and other literature on stock market manipulation from a local perspective, there is a distinct paucity of literature that considers the historical roots of this insidious activity in Australia prior to this time.

Chapter 3 provides a primer[74] on stock market manipulation in the Australian context to equip the reader with an awareness of the fundamentals of this particular species of market misconduct. This chapter will consider what is meant by the term stock market manipulation, why and how malefactors manipulate share prices and why it is prohibited and subject to sanction under the criminal law in many advanced economies around the world, including Australia.

Chapter 4 will essentially set the scene for the chapters that follow by broadly sketching the domestic context for the early trading of shares in some of the Australian colonies, initially at informal gatherings on street corners and later at formalised stock exchanges that became established over time. Through a review of local colonial newspaper articles from the latter half of the 1800s, this chapter will start to trace the historical roots of stock market manipulation in the domestic context. Consideration will also be given to two early court cases where the misconduct in question appears to have been directed at interfering with the forces of genuine supply and demand on the share markets of the day.

Chapter 5 will continue to trace the historical roots of stock market manipulation in the domestic context throughout the latter half of the 1800s. Matters reported in the colonial press, including court cases, that appear to have involved the use of manipulative devices to distort share prices, including 'rumourtrage' and establishing 'corners', will be discussed. Consideration will also be given to what the governments and stock exchanges were doing, if anything, to combat this insidious activity during the period under review.

---

[74] The word 'primer' is defined in the Cambridge English Dictionary to mean 'a small book containing basic facts about a subject, used especially when you are beginning to learn about that subject' and 'a basic text for teaching something': *Cambridge Dictionary* (online at 30 January 2022) 'primer' (def 3) <https://dictionary.cambridge.org/dictionary/english/primer>. In *Australian Securities and Investments Commission v Whitebox Trading Pty Ltd (No 7)* [2019] FCA 849, a case concerning alleged market manipulation in the context of 'securities index arbitrage', Yates J made orders to 'facilitate the preparation by the parties of an agreed primer, including a glossary of terms, which would provide a basic description of securities index arbitrage trading': [55].

Chapter 6 will focus on the first half of the new century, where the manipulation of share prices seemingly continued to occur across domestic share markets. Although action was taken by some state governments to introduce laws that should have acted as a deterrent to those intent on rigging share markets, there was much more that needed to be done by governments and the stock exchanges in order to effectively combat the ongoing incidence of this insidious activity.

Chapters 7 and 8 will shine a light on the period from 1960 to 1990, the year of the first successful criminal prosecution in Australia for share market rigging. In stark contrast to the prior 100 years, this was a period where there appears to have been the most intense focus by federal and state governments and the stock exchanges on addressing activities like market manipulation that caused significant harm to the integrity, fairness and global reputation of Australia's share markets—combating stock market manipulation had finally become a priority for Government and the stock exchanges. The changes that took place during this period fundamentally changed the securities market regulation paradigm in Australia, forever. Yet, as this thesis will highlight, it took a very long time and a lot of manipulative trading activities on domestic share markets to get to this point.

Finally, in Chapter 9 I will summarise the conclusions of my research.

CHAPTER 2: Literature Review*

> As has been very pertinently remarked, was there ever a more flagrant attempt to rig the market and to rob the public, than in the attempt of a number of men to meet and make collusive sales to each other, and then quote these prices as being the legitimate price of the day, and as the only true reflex of the Ballarat market.[1]

2.1 Introduction

A review of the literature relating to stock market manipulation, particularly the legal literature, would lead one to reasonably conclude that the historical roots of this particular form of market misconduct in Australia only really stretch back in time to the late 1960s in the wake of the mining and mineral boom, which, according to Sykes, saw the volume of shares traded in Sydney increase to three times the amount being handled by the New York Stock Exchange.[2] What ensued were the historic and desperately needed changes to the domestic securities market regulation paradigm.

Indeed, one could be forgiven for reaching this conclusion based on, for example, the below comment made by Warren CJ in *Director of Public Prosecutions (Cth) v JM*[3] when considering the legislative history of the market manipulation offences in Australia.

> The type of mischief that the offences in ss 1041A, 1041B and 1041C are attempting to remedy first arose in Australia in the 1960s. As a result, some States enacted their own, although mostly uniform, legislation to address these problems in the securities industry.[4]

Yet, as will be discussed in this chapter, and highlighted throughout this thesis, there is information available to suggest that share prices were being distorted by those intent on unfairly benefitting themselves at the expense of others as far back as the latter half of the 1800s. This chapter reviews the literature relating to the historical roots of stock market

---

* Note: This chapter is a modified version of Paul Constable, 'Tracing the Historical Roots of Share Price Manipulation in Australia: *Rerum Cognoscere Causas*' (2019) 22 *International Trade and Business Law Review* 69. Copyright in the article is held by the author.

[1] 'Mining Investors v Mining Jobbers: To the Editors of the Star', *The Ballarat Star* (Victoria, 24 July 1868) 2.

[2] Trevor Sykes, *Two Centuries of Panic: A History of Corporate Collapses in Australia* (Allen & Unwin, 2003), 398.

[3] [2012] VSCA 21.

[4] *Director of Public Prosecutions (Cth) v JM* [2012] VSCA 21 [187] (Warren CJ).

manipulation in Australia and argues that despite the growing body of academic and non-academic work in this area, it remains largely incomplete due to the absence of literature that traces the historical roots of this illicit activity back beyond the late 1960s.

2.2 Overview

Much of the legal literature on the manipulation of share prices in Australia typically commences with a discussion of the mining and minerals boom in the late 1960s, the *Securities Industry Acts* that came into force in the early 1970s in New South Wales (NSW), Victoria, Queensland and Western Australia (WA)[5] and the establishment of the Rae Committee,[6] which investigated a broad range of misconduct perpetrated across the domestic securities industry, including stock market manipulation.[7] Even where there is no substantive discussion of these events, they are still often used as the starting point for situating market misconduct generally, and stock market manipulation more specifically, in a historical context in Australia.[8] It is extremely rare for commentators to venture further back in time to consider what may have occurred over the prior 100 years when share trading was being conducted across the Australia colonies, albeit in a much more rudimentary form.[9] This is by no means a criticism and, indeed, these events are a very logical place to commence documenting a history of financial market misconduct and securities market regulation in Australia.[10] As will be discussed below, however, there is data available to suggest that the manipulation of share prices was being

---

[5] New South Wales (*Securities Industry Act* 1970 (NSW)), Queensland (*Securities Industry Act* 1971 (QLD)), Victoria (*Securities Industry Act* 1970 (VIC)) and Western Australia (*Securities Industry Act* 1970 (WA)):
[6] Examples include Stephen Bottomley et al, *Contemporary Australian Corporate Law* (Cambridge University Press, 2nd ed, 2021) 21-23; Roman Tomasic, Stephen Bottomley and Rob McQueen, *Corporations Law in Australia* (Federation Press, 2nd ed, 2002) ch 1, ch 20 ('*Corporations Law in Australia*'); Vivien Goldwasser, *Stock Market Manipulation and Short Selling* (CCH Australia and Centre for Corporate Law and Securities Regulation, 1999) 39-40 ('*Stock Market Manipulation*'); Robert Baxt, HAJ Ford and Ashley Black, *Securities Industry Law* (Butterworths, 4th ed, 1993) ch 11 ('*Securities Industry Law*'); Ray Schoer, 'Self-Regulation and the Australian Stock Exchange' in Peter Grabosky and John Braithwaite (eds), *Business Regulation and Australia's Future* (Australian Institute of Criminology, 1993) 107.
[7] Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (Report, Part 1, Volume 1, 1974) ('*Australian Securities Markets and their Regulation*').
[8] See, for example, Vivien Goldwasser, 'The Regulation of Stock Market Manipulation and Short Selling in Australia' in Gordon Walker and Brent Fisse (eds), *Securities Regulation in Australia and New Zealand* (LBC Information Services, 1998) 516 ('*Securities Regulation in Australia and New Zealand*').
[9] One of the few located was Dr Howard Chitimira, whose work will be discussed briefly below: H Chitimira, 'The Regulation of Market Manipulation in Australia: A Historical Comparative Perspective' (2015) 8(2) *Potchefstroom Electronic Law Journal* 111, 113 ('Market Manipulation in Australia'). See also, for example, Loke's consideration of the limitations of the common law in protecting investors against share price manipulation: Alexander FH Loke, 'The investors' protected interest against market manipulation in the United Kingdom, Australia and Singapore' (2007) 21 *Australian Journal of Corporate Law* 22.
[10] These events will be discussed in more detail in Chapter 7.

perpetrated on Australia's formal and informal securities markets as long ago as the 1860s, and possibly earlier.[11]

2.3 Summary of the Results of the Literature Review

A review of the published and unpublished literature relating to the historical roots of share price manipulation in Australia suggests that there are several research gaps, which have not yet been explored or which require further exploration.

Firstly, there appears to be no single book, journal article or other resource that seeks to document the history of stock market manipulation in Australia, from the very early days of share trading through to modern times.[12] Secondly, there is a distinct paucity of literature, particularly legal literature, on this particular species of market misconduct and its occurrence in Australia in the period prior to the late 1960s. Lastly, once share trading moved from the footpaths of regional mining towns across Australia in the second half of the 1800s onto more formalised stock exchanges, the history of stock market manipulation became intrinsically entwined with the development and operation of the stock exchanges themselves.

To the extent that shares listed and traded on the several stock exchanges that operated across the Australian colonies over the decades were being manipulated, it would not be unreasonable to expect that the stock exchanges and their governing committees would have played a key role in combating this insidious activity. This is particularly so given they were responsible for 'regulating' their members and supervising their markets for the overwhelming majority of their existence.[13] According to Geddes, for example, the stock exchanges have 'historically been largely self-regulating'[14] and prior to 1970 'were seen as self-regulating units'.[15] This is

---

[11] See Paul Constable, 'Psst . . . Want to Hear a Rumour? Rumourtrage May Have Been Occurring in Australia For Longer Than We Thought' (2016) 19 *International Trade and Business Law Review* 48 ('Want to Hear a Rumour'). A review of the many newspaper articles of the time that record numerous instances of people allegedly rigging share markets across the Australian colonies lends support to this view.

[12] Interestingly, this appears to be the case for other forms of market misconduct, such as insider trading. Generally speaking, the key forms of market misconduct are often considered together in the literature, particularly in textbooks, and a similar approach is used when considering their historical roots, which is discussed below.

[13] According to the Rae Report, issued in 1974, '[t]here has, for a long time, been an assumption on the part of some governments, company registrars or commissioners, law reformers and others that general responsibility for regulation of the securities market rests with the stock exchanges and more particularly with their committee, and that, having regard to their performance and expertise, it is best left to them. That assumption is not warranted': Senate Select Committee, *Australian Securities Markets and their Regulation* (n 7) 15.4.

[14] David Geddes, 'Systems of Securities Regulation: A Comparative Study with Recommendations for Australia' (PhD Thesis, University of New South Wales, 1975) 14 ('Systems of Securities Regulation').

[15] Ibid 564.

consistent with the High Court of Australia's observation in *Director of Public Prosecutions (Cth) v JM* that '[f]or many years, transactions on Australian stock exchanges were chiefly regulated by the relevant exchange or exchanges'.[16]

Yet, there appears to be a dearth of literature in Australia on the role that domestic stock exchanges have played in dealing with manipulative activities and other types of market misconduct over the course of the last 100 plus years, notwithstanding they were primarily responsible for the supervision of the activities on their respective markets for a very considerable period of time.[17] This suggests that there is presently little known about the historical roots in Australia of an activity that has been referred to as a 'suspect form of human ingenuity'[18] and which appears to have been occurring for considerably longer than the literature, particularly the legal literature, would otherwise suggest.[19]

2.4 The Overseas Experience

It appears that the position in Australia is quite different from that in other countries, where there is a relatively rich documented history on the operation of the very early securities markets and the misconduct that was perpetrated by participants, including the manipulation of share prices.

Before discussing the legal and non-legal literature on stock market manipulation from a domestic perspective, consideration will be given briefly to some of the literature available that considers the historical roots of this nefarious activity in the Netherlands, England and the United States (US), for broad comparative purposes. England and the US were chosen on the basis that they have for many decades been, and remain today, key global financial centres, whereas Amsterdam (the capital of the Netherlands) is currently not a key global financial

---

[16] *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30 [45] (French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ) ('*DPP v JM*').

[17] ASIC took over responsibility for the supervision of real-time trading on Australia's domestic licensed markets on 1 August 2010, including the ASX: Australian Securities & Investments Commission, *Supervision* (Web Page) <http://asic.gov.au/regulatory-resources/markets/supervision/>; The Treasury (Cth), *Reforms to the Supervision of Australia's Financial Markets* (Media Release, No.013, 24 August 2009).

[18] Jack Hodder, Roger Wallis and Tim Smith, 'Brief Counsel. New Zealand', *Market manipulation – a suspect form of human ingenuity* (Web Page, 7 August 2013) <https://www.mondaq.com/newzealand/corporate-crime/256424/market-manipulation-a-suspect-form-of-human-ingenuity>.

[19] See, for example, Constable, 'Want to Hear a Rumour' (n 11).

centre, but is claimed to have previously been the world's leading financial centre in the seventeenth century.[20]

2.4.1 The Netherlands

One of the earliest and perhaps most famous examples of literature relating to the historical roots of stock market manipulation is that of Joseph de la Vega, who, in his book *Confusion de Confusiones*,[21] recounts the practices of the stock exchange in Amsterdam in the 1680s, which, at the time, is said to have been home to the world's first stock exchange.[22] According to Corzo, Prat and Vaquero, de la Vega's book:

> is not a work on stock exchanges or economics, nor is it a legal analysis. It acts more as a description of the beginning of the activities and games of the stock exchange. Nobody by that time had tried to understand and describe this activity. Even in Amsterdam, there was no technical work about this frantic activity.[23]

Around 100 years before Australia was first established as a British 'convict colony' in NSW,[24] 171 years before Australia had its first stock exchange,[25] and 282 years before Australia had specific laws criminalising stock market manipulation, de la Vega describes the 'gambling hell' frequented by brokers, speculators, city merchants and money lenders and the techniques they employed to unjustly enrich themselves at the expense of other investors.[26] One such technique involved the spreading of rumours to manipulate the price of shares traded on the exchange.

---

[20] 'By the seventeenth century Amsterdam had become the principal centre for securities trading, with considerable activity in both domestic and foreign stocks': Ranald C Michie, *The Global Securities Market: A History* (Oxford University Press, 2006) 9 ('*Global Securities Market*'). According to Cole, in his Foreword to *Confusion de Confusiones,* Amsterdam 'was still the leading financial center of the world' in 1688: Arthur H Cole, 'Foreword' in Josef de La Vega, *Confusion de Confusiones* (Martino Publishing, 2013) v ('*Confusion de Confusiones*').

[21] de la Vega, *Confusion de Confusiones* (n 20).

[22] Petram refers to it as 'the world's oldest stock exchange' and 'the world's first stock exchange': Lodewijk, Petram, *The World's First Stock Exchange* (Columbia University Press, 2014) 3, 6 ('*World's First Stock Exchange*'); cf Michie, who states that instead of Amsterdam 'it was in Paris in 1724 that a formal stock exchange was first established': Michie, *Global Securities Market* (n 20) 9.

[23] Teresa Corzo, Margarita Prat and Esther Vaquero, 'Behavioral Finance in Joseph de la Vega's Confusion de Confusiones' (2014) 15(4) *Journal of Behavioral Finance* 341, 341.

[24] See, for example, David Hill, *Convict Colony: The remarkable story of a fledgling settlement that survived against the odds* (Allen & Unwin, 2019) ch 1-3. According to Blainey, this was the time when 'Great Britain dumped convicts and guards at Sydney in 1788': Geoffrey Blainey, *The Rush That Never Ended: A History of Australian Mining* (Melbourne University Press, 5th ed, 2003) 5 ('*The Rush That Never Ended*').

[25] There is some ambiguity in the literature as to when the first stock exchange was established in Australia, with dates ranging from the early 1850s to the early 1860s. This will be discussed further in Chapter 4.

[26] de la Vega, *Confusion de Confusiones* (n 20) 12.

> The bulls spread a thousand rumors about the stocks, of which one would be enough to force up the prices. A thousand stratagems of the Contremine are launched in an effort to cause ill-temper on the exchange.[27]

The bears, on the other hand:

> crowded together and, in order not to let the bulls take breath, spread the rumour that a war would break out. [They said that] they knew of so many secret preparatory measures that no doubt could be entertained. Then the taxes would increase like an avalanche, the burdens would grow immeasurably, the whole of Europe would be set ablaze, and misery, terror and ruin would be found everywhere . . . [Consequently], the bears were able exclusively to control the market prices.[28]

Yet, it appears that the manipulation of share prices on the Amsterdam Stock Exchange by the spreading of false rumours was occurring much earlier than de la Vega's account in *Confusion de Confusiones.* According to Hellenbenz, in 1608 a group of speculators led by Isaac Le Maire sought to manipulate the price of Dutch East India Company (DEIC)[29] shares traded on the Amsterdam Stock Exchange through a combination of 'short' selling large blocks of shares and 'spreading rumours that were unfavourable' to the DEIC.[30] As a consequence of the 'grave damage and harm' visited upon widows, orphans and other investors in the company, as well as the company itself, an 'edict banning naked short selling was promulgated' on 27 February 1610, which, Petram asserts, was 'the first [such ban] in the history of the world'.[31] Petram, in his 2014 book, *The World's First Stock Exchange,* not only highlights the important contribution that events in seventeenth-century Amsterdam made to the development of securities markets globally, he also describes the 'tricks and deceptions' that participants had to 'watch out for if they enter the fray',[32] including the manipulation of share prices through spreading false rumours, as de la Vega had done over 320 years earlier.

---

[27] Ibid 37.
[28] Ibid 40. As will be highlighted in subsequent chapters of this thesis, the spreading of false rumours and misleading information to interfere with the unfettered interplay of genuine supply and demand in the share market appears to have been a method relied upon regularly over the years in the domestic context.
[29] Petram, *World's First Stock Exchange* (n 22) 1.
[30] Hermann Kellenbenz, 'Introduction' in de la Vega, *Confusion de Confusiones* (n 20) xiii; Petram, *World's First Stock Exchange* (n 22) ch 4.
[31] Petram, *World's First Stock Exchange* (n 22) 65-66.
[32] Ibid 3.

2.4.2 England

There is a considerable body of literature that traces the history of market misconduct generally, and stock market manipulation specifically, back to the very early days of securities trading in England. Indeed, there is contemporary literature from the late 1600s that documents efforts to interfere with the forces of genuine supply and demand in the share markets of the time. Defoe, for example, in *Essays Upon Several Projects*, recounts the spreading of false information to illicitly affect share prices thus:

> So have I seen shares in joint-stocks, patents, engines, and undertakings, blown up by the air of great words . . .[33]

Defoe argued that 'stock-jobbing brokers' could not only determine the number of buyers and sellers in the market, which was 'in their power to make and manage at will', but also make the prices of stock:

> . . . dance attendance on their designs, and rise and fall as they please, without any regard to the intrinsick worth of the stock'.[34]

Similarly, according to Houghton in *A Collection for the Improvement of Husbandry and Trade*, printed in 1694:

> in small stocks 'tis possible to have shares rise or fall by the contrivances of a few men in confederacy.[35]

In *The Anatomy of Exchange Alley*, Defoe provides his observations on those who used the financial markets in the late seventeenth and early eighteenth century as being engaged in:

> a trade found in fraud, born of deceit, and nourished by trick, cheat, wheedle, forgeries, falshoods and all sorts of delusions; Coining false news, this way good, that way bad; whispering imaginary terrors, frights, hopes, expectations, and then preying upon the

[33] Daniel Defoe, *Essays Upon Several Projects: or, Effectual Ways for Advancing the Interest of the Nation* (1702) 12-13. For secondary source commentary see, for example, Stuart Banner, *Anglo-American Securities Regulation: Cultural and Political Roots, 1690-1980* (Cambridge University Press, 1998) ch 1 ('*Anglo-American Securities Regulation*').
[34] Daniel Defoe, *The Villainy of Stock-Jobbers Detected, and the Causes of the Late Run Upon the Bank and Bankers Discovered and Considered* (1701) 5 ('*Villiany of Stock-Jobbers*').
[35] John Houghton, *A Collection for the Improvement of Husbandry and Trade*, 6 July 1694, quoted in Banner, *Anglo-American Securities Regulation* (n 33) 30.

> weakness of those whose imaginations they have wrought upon, whom they have either elevated or depressed.[36]

Yet, there are those who have challenged contemporary accounts like those of Houghton and Defoe. Writing in the early 1960s, Morgan and Thomas, for example, argue that:

> As for the charge that brokers "confederated themselves together" to influence prices there is, in the nature of things, no real evidence. There probably were attempts to rig the market, by outsiders as well as by brokers, but such attempts are nearly always exaggerated by report and dealers are blamed for price fluctuations, which are really due to the normal interplay of supply and demand.[37]

Similarly, Murphy more recently observed that:

> although the precise complaints raised by contemporary critics may not have been entirely justified, the arguments offered did reflect genuine concerns. They also constituted the dominant view of the market and thus inevitably impacted upon the actions of investors.[38]

Over the years, however, there has been an ever-increasing amount of literature on the history of illicit activities perpetrated on the earliest securities markets in England, including market manipulation, as well as the associated legislative and regulatory developments that have taken place over almost three centuries to combat them. This includes Banner's *Anglo-American Securities Regulation: Cultural and Political Roots, 1690-1980,* for example, which, in examining the regulation of England's and America's earliest securities markets, provides plenty of evidence to suggest that the manipulation of the price of securities was common during the period covered by his review.[39]

Through an analysis of a considerably broad range of contemporary material, including poetry, ballads, letters and plays, as well as the more traditional legal material, such as statutes, case

---

[36] Daniel Defoe, *The Anatomy of Exchange Alley: or, A System of Stock Jobbing* (2nd ed, 1719) 3-4. See also Defoe, *Villainy of Stock-Jobbers* (n 34).

[37] However, Morgan and Thomas then immediately refer to John Houghton's 'admirably objective view', which commenced with the words 'Some abuses may probably have been committed . . .': E Victor Morgan and WA Thomas, *The Stock Exchange: Its History and Functions* (Elek Books, 1962) 25-26.

[38] Anne L Murphy, *The Origins of English Financial Markets: Investment and Speculation Before the South Sea Bubble* (Cambridge University Press, 2012) 72 ('*Origins of English Financial Markets*').

[39] Banner, *Anglo-American Securities Regulation* (n 33). See also, for example, Anne L Murphy, *Society, Knowledge and the Behaviour of English Investors, 1688-1702* (PhD Thesis, University of Leicester, 2005); Philip Rawlings, 'A Compleat System of Knavery: Folk Devils, Moral Panics and the Origins of Financial Regulation' (2008) 61(1) *Current Legal Problems* 325.

law and legal treatises, Banner highlights how the spreading of false rumours was used to artificially push the price of securities up or down to unjustly benefit the person spreading the rumours at the expense of other investors. According to Banner, speculation 'caused men to be deceitful, as they discovered they could profit from spreading misinformation about market conditions'[40] and that by:

> spreading false news as to the value of a stock, speculators discovered that they could shift demand for the stock dramatically in either direction. Although lying was nothing new, the stock market opened up unprecedented opportunities to gain from it.[41]

In *The Origins of English Financial Markets: Investment and Speculation Before the South Sea Bubble*, Murphy provides a comprehensive account of the activities of speculators and investors in the securities markets in England from the late seventeenth century, including stock-jobbers, who manipulated the prices of securities for their own advantage.[42] According to Murphy, distorting share prices during this period may have been easier due to the 'limited capitalisation of many of the smaller companies', which meant 'they were dangerously exposed to concerted attacks on their share price'.[43]

Although acknowledging the argument that stock jobbers may have benefited the market by adding liquidity and serving as a 'rudimentary market-making function',[44] Murphy goes on to provide a number of examples where they and other market participants engaged in manipulative activities in the securities markets that operated from the 1690s to the early part of the 1700s.[45] Indeed, whilst Murphy concedes that stock-jobbers in particular 'did not always deserve' their contemporary reputation as abusing their privileged position 'to manipulate share prices and dupe inexperienced investors',[46] she asserts that they could use their superior

---

[40] Banner, *Anglo-American Securities Regulation* (n 33) 16.
[41] Ibid 30. Notwithstanding the considerable number of examples of manipulative practices littered throughout Banner's account of share trading over a two hundred year period in England, he is circumspect in estimating the prevalence of this illicit activity: 'How often this sort of manipulation actually occurred is another question, but the fact that contemporaries thought it happened frequently suggests that it happened at least occasionally': at 56.
[42] Murphy, *Origins of English Financial Markets* (n 38).
[43] Ibid 71.
[44] Ibid 172.
[45] Other actors in the securities markets referred to by Murphy include investors, brokers and groups of speculators. But, whatever their ilk, it was 'insiders', that is, those people 'who had regular access to the places where news circulated' who 'gained superior information and were in the best position to take advantage of that information': ibid 221.
[46] Ibid 178

knowledge to manipulate the market and 'it is clear that in some cases they did so.'[47] Moreover, insiders also reaped the rewards from pushing around the prices of smaller stocks, which, according to Murphy were 'certainly manipulated'.[48]

Other authors have also included coverage of the history of stock market manipulation in their work, although often not to the same level of detail as the likes of Banner and Murphy. In his work on the history of financial speculation, *Devil Take the Hindmost*, for example, Chancellor provides a brief account of some of the early instances of share price manipulation, and he devotes a chapter to discussing the shenanigans that occurred in Exchange Alley in the City of London in the 1690s.[49]

> In the stock market of the 1690s, the line between commendable self-interest and arrant fraud was frequently crossed: sham companies were launched for the enrichment of projectors, share prices were manipulated, and false rumours were circulated.[50]

Avgouleas' book, *The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis*, provides a comprehensive interdisciplinary account of market abuse, including market manipulation, in the UK and Europe from an economic and legal perspective.[51] Unlike Banner and Murphy, however, Avgouleas does not dwell on the historical roots of market abuse and its regulation. Nonetheless, he does provide a brief account of its prohibition and punishment in the UK by way of general historical context.[52] Like many other authors before and since, including many Australian authors and academics,[53] Avgouleas, not surprisingly, includes reference in his work to *R v De Berenger*,[54] which is typically the starting point for many authors when considering how manipulative activity on financial markets was dealt with by the common law. This is, arguably, the most famous case in the history of market

---

[47] Ibid 222.

[48] Ibid. Like Banner, Murphy appears circumspect in her view of the pervasiveness of market manipulation during the period of her analysis: 'Whether or not manipulation was widespread, this did come to be the dominant perception of the financial market at this time': at 223.

[49] Edward Chancellor, *Devil Take the Hindmost: A History of Financial Speculation* (Plume, 2000) ch 2.

[50] Ibid 48.

[51] Emilios Avgouleas, *The Mechanics and Regulation of Market Abuse: A legal and economic analysis* (Oxford University Press, 2005) ('*Regulation of Market Abuse*'). Avgouleas' text was referred to by the High Court of Australia in its judgment in *DPP v JM* (n 16) [66] n 69, [71] n 74 and by Beach J in the Federal Court of Australia in *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* [2018] FCA 751 (24 May 2018) [1892], [1895], [1897], [1899], [1901].

[52] See, for example, Avgouleas, *Regulation of Market Abuse* (n 51) chs 4 and 7.

[53] Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis, 10th ed, 2021), 671 ('*Securities and Financial Services Law*').

[54] (1814) 3 M&S 67 (KB), 105 Eng Rep 536.

manipulation,[55] a case variously described as 'a classic',[56] 'a landmark'[57] and '[t]he classic illustration of stock market manipulation',[58] the underlying circumstances of which have been characterised as a 'spectacular early stock exchange scam'.[59]

In that case, the common law offence of conspiracy to defraud was relied upon to prosecute the joint perpetrators of an elaborate hoax that was designed and effected to manipulate the price of government securities to benefit themselves at the expense of other investors.[60] Whilst described by Loss as the 'first English manipulation case',[61] as Banner, Murphy and others have highlighted, the history of this type of misconduct being perpetrated on England's financial markets can be traced back considerably further than the prosecution of the conspirators in *R v De Berenger*.

2.4.3 United States

Given it was not even founded for almost another 80 years after the writing of Defoe's observations, the history of stock market manipulation in the US commenced much later than in England.[62] According to Markham in *Law Enforcement and the History of Financial Market Manipulation*,[63] an early attempt to deal with abusive and manipulative practices on the New York Stock Exchange (NYSE) involved the prohibition of 'fictitious' sales in 1817[64] and he goes on to outline the role that the courts and governments have played in trying to combat this

---

[55] Avgouleas, *Regulation of Market Abuse* (n 51) 328.
[56] R Tomasic, et al, *Corporation Law: Principles, Policy and Process* (Butterworths, 1990) 486 ('*Corporation Law: Principles, Policy and Process*').
[57] Avgouleas, *Regulation of Market Abuse* (n 51)113.
[58] Goldwasser (n 8) 535. Tomasic, Bottomley and McQueen use the same terminology when referring to this case ('A classic illustration of stock market manipulation . . .'): Tomasic, Bottomley, and McQueen, *Corporations Law in Australia* (n 6) 621.
[59] This comment is contained on the inner front dust jacket of Richard Dale's account of the events that led to trial and conviction of the co-conspirators in *R v De Berenger,* with a particular focus on Lord Cochrane: Richard Dale, *Napoleon is Dead: Lord Cochrane and the Great Stock Exchange Scandal* (Sutton Publishing, 2006).
[60] Avgouleas, *Regulation of Market Abuse* (n 51) 328.
[61] Louis Loss, *Fundamentals of Securities Regulation* (Little, Brown & Company, 2nd ed, 1988), 845 ('*Fundamentals of Securities Regulation*'). According to Loke, this case 'did not establish the crime of market manipulation': Alexander FH Loke, 'The Investors' Protected Interest Against Market Manipulation in the United Kingdom, Australia and Singapore' (2007) 21 *Australian Journal of Corporate Law* 22, 24 ('The Investors' Protected Interests').
[62] For an account of the development of securities trading in America prior to its founding in 1776, see Banner, *Anglo-American Securities Regulation* (n 33) ch 4.
[63] Jerry W Markham, *Law Enforcement and the History of Financial Market Manipulation* (ME Sharpe, 2014) ('*History of Financial Market Manipulation*').
[64] Ibid 14.

pernicious activity in the US over the 200 years that have followed.[65]

Both Markham[66] and Banner[67] provide numerous examples of the methods used by those engaged in the manipulation or rigging of share prices in the years prior to the enactment of the *Securities Exchange Act* of 1934,[68] which specifically outlawed stock market manipulation at the Federal level and, along with the *Securities Act* of 1933, constituted part of President Franklin D Roosevelt's response to the Great Depression, excessive speculation and the stock market crash of 1929.[69] Examples include 'corners',[70] 'matched trades',[71] 'pools',[72] 'wash sales' or 'fictitious sales',[73] artificially raising or lowering share prices 'through the concentration of buying or selling orders'[74] and spreading 'rumours and fictitious stories' in order to induce people to buy or sell certain shares.[75] According to Banner, quoting from contemporary material from 1791:

> [s]tockjobbers preyed on the public by manipulating stock prices. Although price fluctuations were "injurious to the people in general", a correspondent to the *Gazette of the United States* charged, "[s]peculators will aim to keep up a fluctuation, as their trade depends on *ups* and *downs*." The New York lawyer Robert Troup admitted as much. "The

---

[65] Ibid 66.
[66] Ibid; Jerry Markham, *A Financial History of the United States, Volume 1: From Christopher Columbus to the Robber Barons (1492 -1900)* (ME Sharp, 2002).
[67] Banner, *Anglo-American Securities Regulation* (n 33); Stuart Banner, 'The Origins of the New York Stock Exchange, 1791-1860' (1998) 27(1) *Journal of Legal Studies* 113.
[68] According to Galbraith, in 'the wake of the 1929 crash, and with a view to preventing another runaway boom and the associated abuse, the Congress passed some tolerably astringent legislation' that included the *Securities Exchange Act* of 1934: John Kenneth Galbraith, *The Great Crash 1929* (Penguin Books, 2009) 9 ('*The Great Crash*').
[69] See, for example, Markham, *History of Financial Market Manipulation* (n 63) ch 2; Franklin Allen and Douglas Gale, 'Stock-Price Manipulation' (1992) 5(3) *Review of Financial Studies* 503, 503-505; 'Regulation of Stock Market Manipulation' (1947) 56(3) *Yale Law Journal* 509. According to Fischel and Ross, '[m]uch of the regulation of financial markets seeks to prevent manipulation. The drafters of the Securities Act of 1933 and the Securities Exchange of 1934, for example, were convinced that there was a direct link between excessive speculation, the stock market crash of 1929, and the Great Depression of the 1920s': Daniel R Fischel and David J Ross, 'Should the Law Prohibit "Manipulation" in Financial Markets?' (1991) 105(2) *Harvard Law Review* 503, 503. This article is famous (or infamous) for its 'sharp departure from current law and commentary' in concluding that 'the concept of manipulation should be abandoned altogether', [f]ictitious trades should be analysed as a species of fraud' and '[a]ctual trades should not be prohibited as manipulative regardless of the intent of the trader': at 507; cf Steve Thel, '$850,000 in Six Minutes – the Mechanics of Securities Manipulation' (1994) 74 *Cornell Law Review* 219 ('$850,000 in Six Minutes').
[70] Markham, *History of Financial Market Manipulation* (n 63) 14-15, 27-28; Banner, *Anglo-American Securities Regulation* (n 33) 142-143, 265. See also Loss, *Fundamentals of Securities Regulation* (n 61) 849.
[71] Markham, *History of Financial Market Manipulation* (n 63) 31.
[72] Ibid 31-32, 62-65. See also Loss, *Fundamentals of Securities Regulation* (n 61) 844-845.
[73] Markham, *History of Financial Market Manipulation* (n 63) 34; Banner, *Anglo-American Securities Regulation* (n 33) 278-279; Loss, *Fundamentals of Securities Regulation* (n 61) 849.
[74] Markham, *History of Financial Market Manipulation* (n 63) 34.
[75] Banner, *Anglo-American Securities Regulation* (n 33) 148, 202.

> truth" he informed the Secretary of the Treasury, "is that the fluctuations are principally owing to the arts & contrivances of mere jobbers".[76]

Nearly 140 years later, John Kenneth Galbraith in his 'classic' account of the US stock market crash of 1929, *The Great Crash 1929*,[77] recounts the 'period of exceedingly active pool and syndicate operations – in short, of manipulation.'[78]

> During 1928 more than a hundred issues on the New York Stock Exchange were subject to manipulative operations, in which members of the Exchange or their partners had participated.[79]

Indeed, the extent of the perpetration of manipulative practices on the various stock exchanges in the US is evident from the findings contained in the US Senate Committee on Banking and Currency's 1934 report concerning stock exchange practices, which included the below comment.

> The exposure of the extent and effect of manipulative practices upon organized exchanges was one of the most salutary and important accomplishments of the investigation. Stock exchange representatives have consistently minimized the extent of manipulative activities upon exchanges and, provided there were no technical wash sales or matched orders, they have not regarded manipulative devices in general use as pernicious or violative of the principles of fair, free and open trading. The tendency has been to belittle reports of manipulative activities as unfounded rumors, unworthy of serious attention. The evidence adduced before the subcommittee has thoroughly discredited this attitude.[80]

Over the years, there has been a very significant amount of literature published on stock market manipulation in the US,[81] particularly at around the time of the lead up to, and following, the

---

[76] Ibid 148.
[77] Galbraith, *The Great Crash* (n 68) 90.
[78] Ibid 103.
[79] Ibid. See also Loss, *Fundamentals of Securities Regulation* (n 61) 844-845.
[80] US Senate Committee on Banking and Currency, Report of the Committee on Banking and Currency, 'Stock Exchange Practices', Senate Report No. 1455, 73D Congress, 2D Session (1934) 30. See also generally Michael Perino, *The Hellhound of Wall Street: How Ferdinand Pecora's Investigation of the Great Crash Forever Changed American Finance* (Penguin Books, 2010).
[81] See, for example, Markham, *History of Financial Market Manipulation* (n 63); Loss, *Fundamentals of Securities Regulation* (n 61); 'Regulation of Stock Market Manipulation' (1947) 56 *The Yale Law Journal* 508; Norman S Poser, 'Stock Market Manipulation and Corporate Control Transactions' (1986) 40(3) *University of Miami Law Review* 671; Lawrence Damian McCabe, 'Puppet Masters or Marionettes: Is Program Trading Manipulative as Defined by the Securities Exchange Act of 1934?' (1993) 61 *Fordham Law Review* S207; Lewis D Lowenfels, 'Sections 9(a)(1) and 9(a)(2) of the Securities Exchange Act of 1934: An Analysis of Two Important Anti-Manipulative Provisions Under the Federal Securities Laws' (1991) 85 *Northwestern University*

enactment of the *Securities Act* and *Securities Exchange Act* in the 1930s.[82] Eminent legal authors such as Professor Louis Loss,[83] 'widely viewed as the father of [US] securities law',[84] Professor Adolf A Berle[85] and Professor Steve Thel,[86] amongst many others, have made a significant and valuable contribution to the considerable body of knowledge relating to stock market manipulation in the US, including its historical roots. Unlike the Netherlands, the US and England, where there is literature available that traces the historical roots of stock market manipulation from a domestic perspective, the position in Australia appears to be quite different.

2.5 The Australian Experience

The apparent disparity between the relatively lower volume of literature documenting the history of stock market manipulation in Australia as compared to other countries, including the Netherlands, the UK and the US, could be attributed to it being a product of social and economic history. According to Rae, for example, the development of the Australian securities industry has been:

> later in point of time for when the 24 brokers met under the buttonwood tree in Manhattan in 1792 to found what has become the New York Stock Exchange, Australia was a four-year old new settlement struggling to survive.[87]

Law Review 698; 'Expulsion from Stock Exchanges as a Check to Matched Orders and Other Manipulation' (1940) 49(8) *Yale Law Journal* 1469; 'Illegality of Stock Market Manipulation' (1934) 34(3) *Columbia Law Review* 500; Paul L Porterfield, 'Securities: Stock Market Manipulation at Common Law and Under Recent Federal Securities Legislation' (1940) 28(3) *California Law Review* 378; WJS, 'Corporations: Stock Market Manipulation: Rescission for Fraud' (1935) 34(2) *Michigan Law Review* 268; Robert J Hutcheon, 'Speculation, Legitimate and Illegitimate' (1922) 32(3) *International Journal of Ethics* 289; James William Moore and Frank M Wiseman, 'Market Manipulation and the Exchange Act' (1934) 2 *University of Chicago Law Review* 46, and many others.

[82] According to Loss, writing in 1988, 'there is a substantial literature on the classic manipulation techniques': Loss, *Fundamentals of Securities Regulation* (n 61) 844.

[83] See, for example, ibid.

[84] Floyd Norris, 'Louis Loss, 83, Dies; Harvard Professor Defined and Interpreted Field of Securities Law', *The New York Times* (online, 16 December 1997) <https://www.nytimes.com/1997/12/16/business/louis-loss-83-dies-harvard-professor-defined-interpreted-field-securities-law.html>.

[85] AA Berle, 'Liability for Stock Market Manipulation' (1931) 31(2) *Columbia Law Review* 264; AA Berle, 'Stock Market Manipulation' (1938) 38(3) *Columbia Law Review* 393.

[86] Steve Thel, 'Taking Section 10(B) Seriously: Criminal Enforcement of SEC Rules' (2014) 1 *Columbia Business Law Review* 1; Thel, '$850,000 in Six Minutes' (n 69); Steve Thel, 'The Original Conception of Section 10(b) of the Securities Exchange Act' (1990) 42 Stanford Law Review 385; Steve Thel, 'Regulation of Manipulation under Section 10(b): Security Prices and the Text of the Securities Exchange Act of 1934' (1988) 2 *Columbia Business Law Review* 359.

[87] Peter Rae, 'Moulding the Securities Industry for Tomorrow', *Australian Accountant*, December 1971, 484.

Indeed, Australia did not even have its first stock exchange until around the 1860s,[88] whereas Amsterdam had one in the 1600s,[89] London had one in 1773[90] and the US followed in 1790.[91]

However, this does not account for what appears to be a significant gap in the literature on the local history of stock market manipulation, particularly given that share trading is claimed to have begun in Sydney in the late 1820s,[92] around 150 years before the manipulation of share prices was first criminalised in four states in Australia. It would seem unusual that domestic share trading over such a significant period of time had somehow avoided the attention of less scrupulous members of the community who had arrived from distant shores looking for ways to make money quickly on domestic share markets. Why would Australia be immune from this type of nefarious activity, which had been taking place in the 'mother country'[93] and elsewhere for well over 100 years prior?

2.5.1 Domestic Legal Literature - The 1970s

Much of the literature reviewed on the history of securities market regulation in the domestic context includes the period following the mining and minerals boom in the late 1960s as the starting point for discussing the history of financial market misconduct in Australia. According to Redmond, for example, concern with 'abusive trading activities' that became apparent in the aftermath of the mining boom that occurred in Australia in the late 1960s 'provided the impetus for the introduction of legislation to regulate Australian securities markets'.[94] Indeed, it is easy

---

[88] The ambiguity in the literature concerning when the first stock exchange was established in Australia will be discussed in Chapter 4.

[89] Petram, *World's First Stock Exchange* (n 22) ch 6. According to Michie, there were permanent markets established much earlier across Europe on which securities could be traded, with Bourses or exchanges built in Cologne in 1553, Paris in 1563 and London in 1571: Michie, *Global Securities Market* (n 20) 23.

[90] Michie, *Global Securities Market* (n 20) 45-46.

[91] Domenic Vitiello and George E Thomas, *The Philadelphia Stock Exchange and the City it Made* (University of Pennsylvania Press, 2010) 26. According to the authors, this was America's first stock exchange.

[92] See, for example, Peter Marshman and Peter Davies, 'The Role of the Stock Exchange and the Financial Characteristics of Australian Companies' in Robert Bruce et al (eds), *Handbook of Australian Corporate Finance* (University of Hawaii Press, 2nd ed, 1986) 52 ('*Handbook of Australian Corporate Finance*'); Tomasic, Bottomley, and McQueen, *Corporations Law in Australia* (n 6) 555.

[93] Blackstone, for example, used the term 'mother country' to refer to Britain when summarising the principles that guided the application of English law to the settled British colonies: Alex C Castles, 'The Reception and Status of English Law in Australia' (1963) 2(1) *Adelaide Law Review* 1, 4.

[94] Paul Redmond, 'A Short History of Securities Regulation in Australia' in Gordon Walker and Brent Fisse (eds), *Securities Regulation in Australia and New Zealand* (Oxford University Press, 1994) 90, 98. Redmond elsewhere refers to September 1969 as being the beginning of 'the most spectacular stock market boom in Australian history': Paul Redmond, Don Harding and Ian Cameron, *Companies and Securities Law: Commentary and Materials* (The Law Book Company, 1988) 33 ('*Companies and Securities Law*'). Moreover, according to Redmond, the 'dramatic events of 1969-1975' were a 'watershed period in Australian company law': Paul Redmond, *Corporations and Financial Markets Law* (Lawbook Co, 7th ed, 2017) 43 ('*Financial Markets Law*').

to understand why many authors, including Goldwasser,[95] Hart[96] and Meyer,[97] use the post-mining boom developments as the starting point for their consideration of the history of market misconduct, including stock market manipulation, in Australia.[98] It is most certainly a logical reference point for any consideration of the domestic history of financial market misconduct given the very significant changes to the domestic regulatory paradigm that followed this event. But what about the circa 100 years prior, particularly during the early years of the mining booms and gold rushes where fraudulent activities are claimed to have been rampant?[99] Although there may not have been legislation specifically outlawing stock market manipulation prior to the 1970s,[100] that does not necessarily mean it was not occurring.

One of the early pieces of literature located on securities market regulation in Australia is Sawer's article, 'Australian Securities Markets and Their Regulation', published in 1975.[101] Whilst there is a specific, albeit very brief, reference to the manipulative practice of 'cornering a market' being one of the 'principal forms of undesirable activity'[102] identified in the Rae Report,[103] the article does not dwell specifically on stock market manipulation.[104] Rather, like Bell in his article, 'The Securities Market – National Control or Self-Regulation?'[105] published in the same edition of *The Economic Record*, Sawer provides his general observations on the Rae Report.[106] While criticising the Committee for recommending 'so momentous a change in

[95] Goldwasser, *Stock Market Manipulation* (n 6).
[96] Geoffrey Hart, 'The Regulation of Stock Market Manipulation' (1979) 7 *Australian Business Law Review* 139 ('The Regulation of SMM').
[97] Peter W R Meyer, 'Fraud and Manipulation in Securities Markets: A Critical Analysis of Sections 123 to 127 of the Securities Industry Codes' (1986) *Company and Securities Law Journal* 92 ('Fraud and Manipulation').
[98] This is sometimes the case with non-legal literature also. See, for example, PJ Drake, 'Stock exchange reforms in Australia' (1985) 294 *The Round Table* 114, 114.
[99] See, for example, Blainey, *The Rush That Never Ended* (n 24) 98, 99, 202-203, 205, 223, 236,
[100] Note, however, the discussion in Chapter 6 regarding the Queensland and WA Criminal Code Acts that were enacted in early 1900.
[101] Geoffrey Sawer, 'Australian Securities Markets and Their Regulation' (1975) 51(3) *Economic Record* 379 ('Securities Markets and Their Regulation').
[102] Ibid 383.
[103] Senate Select Committee, *Australian Securities Markets and Their Regulation* (n 7).
[104] Whilst *The Economic Record* is not a legal journal and, therefore, not strictly 'legal literature', this article has been included in this section as Professor Geoffrey Sawer was a Professor of Law at the Australian National University (the first Professor of Law at the ANU College of Law) at the time he wrote it: Australian National University, 'Annual Geoffrey Sawer Lecture', <https://law.anu.edu.au/news-and-events/event-series/annual-geoffrey-sawer-lecture>. It is also one of the earliest articles located on the regulation of securities markets in Australia. Moreover, given Sawer's article is a review of the Rae Report and purports to consider regulation, a very liberal interpretation of 'legal literature' has been adopted for the purposes of this section of this paper and it has been included in the legal literature section. See also n 106 below.
[105] Harold F Bell, 'The Securities Market – National Control or Self-Regulation?' (1975) 51(3) *Economic Record* 372 ('National Control or Self-Regulation').
[106] Whilst this article is not contained in a legal journal, it has, nonetheless, been included in the legal literature section for the same reasons outlined in n 104 above. In the footnote attached to the main heading of Bell's article and Sawer's article, each author refers to the other's article.

the legal and political structure of and regulatory policy for the securities industry' based merely on an 'examination of the stock exchanges at a particular phase of a particular investment and speculative boom, that occurring from 1962 to 1972', Sawer notes that:

> no thorough long-term examination of the investment and exchange of securities in Australia had previously been made; a few detailed cases had been investigated and still fewer reports of such inquiries published . . .[107]

Hart appears to agree and although acknowledging in his 1979 commentary that there had been 'a number of articles published in Anglo Australian law journals on the law with respect to insider trading', he states the following:

> Apart from the commentary in Professor Baxt's works there has been almost no treatment of the law with respect to other aspects of the securities industry. No doubt this is partially attributable to the fact that there is a dearth of decided cases in the area which makes academic treatment of the Australian law quite difficult . . .[108]

Indeed, Hart's reference to the 'dearth of decided cases in this area' is consistent with the following comment made in the Rae Report:

> . . . we cannot point to any successful prosecutions of individuals concerned in these practices, and the rare attempts which have been made to initiate legal proceedings in this area have been abortive.[109]

Against this backdrop, it is perhaps easier to understand why there has been an apparent paucity of literature in Australia concerning the misconduct associated with trading on local stock exchanges, including stock market manipulation, prior to the 1970s.

Bell's 1975 article on securities regulation does little to further an understanding of stock market manipulation in Australia, including the tracing of its historical roots. The closest he comes to explicitly recognising this particular form of market misconduct is by way of the

---

[107] Sawer, 'Securities Markets and Their Regulation' (n 101) 380. Sawer notes, however, that a 'thorough long-term survey would have involved a much larger staff and taken an even longer time than this inquiry did'. Tomasic et al made a similar observation two decades later: 'Despite its importance to the overall structure of Australian capitalism, there is relatively little formal legal analysis of the operation of securities laws in Australia': Tomasic et al, *Corporation Law: Principles, Policy and Process* (n 56) 445.
[108] Hart, 'The Regulation of SMM' (n 96) 139. Geddes, in his 1975 PhD Thesis on a comparative study of systems of securities regulation, does not dwell on stock market manipulation, but he devotes an entire chapter to insider trading: Geddes, 'Systems of Securities Regulation' (n 14) ch 8.
[109] Senate Select Committee *Australian Securities Markets and Their Regulation* (n 7) 8.14-8.15.

following observation, which appears to be an oblique reference to the manipulation of share prices through the spreading of false rumours:

> Every boom brings out its pundits and booms and boomlets have over the centuries been puffed up on the basis of 'information' found later to be less than justified by the facts.[110]

Hart, on the other hand, provides a comparatively comprehensive account of stock market manipulation in his 1979 article 'The Regulation of Stock Market Manipulation', which was one of the earliest local journal articles located that focuses specifically on this topic.[111] This article considers a number of aspects of stock market manipulation, including the objectives of securities legislation in this area, the different types of manipulative activities, the legislative position in Australia and its nexus with the securities laws in the US, as well as the civil and common law remedies then available to those adversely impacted by manipulative activities. However, other than a brief summary of the events that led to the publication of the Rae Report and the enactment of the *Securities Industry Act* in four Australian States,[112] there is no mention of the legal position prior to 1970 or whether or not the manipulation of share prices was occurring in the period leading up to the minerals boom that precipitated the significant changes to the regulation of local securities markets.

Although Hart is clear on the scope of his article when he states that his purpose is to 'examine the market manipulation provisions as they have evolved since 1970',[113] as with other authors of the time he does little to elucidate whether or not the manipulation of share prices on local markets was merely a product of the mining and minerals boom in Australia in the late 1960s or whether it was occurring previously, how it was perpetrated, for how long and what action had been taken to combat identified instances, including how the law had dealt with it. Moreover, given that stock market manipulation was intrinsically linked with share trading on Australia's stock exchanges, there is no information provided on what action, if any, the exchanges were taking to deal with its occurrence. Was it being perpetrated on the nation's share markets, how often was it occurring, what impact was this activity having on the market and what action were the exchanges and others, including the State/Territory and Federal

[110] Bell, 'National Control or Self-Regulation' (n 105) 375.
[111] Hart, 'The Regulation of SMM' (n 96).
[112] Ibid 139-141.
[113] Ibid 140.

Governments, taking to deter, detect and punish malefactors engaging in this type of misconduct?

Whilst Baxt's commentary is specifically referred to by Hart and Thomas, unfortunately, the texts that he authored and co-authored during the 1970s do little to help in answering these questions. For example, although Baxt's 1971 text *The Rae Report – Quo Vadis?* provides a good analysis of the key areas covered by the Rae Committee's report, including two chapters dedicated to manipulative practices identified by the Committee,[114] there is no information on how these practices had developed in the domestic context in the years preceding the events that were the subject of his analysis. Instead, Baxt makes passing reference to 'pools' in the US having been one of the 'major abuses uncovered by the Senate Committee on Banking and Currency appointed in 1932' and, like many local and overseas authors since,[115] he makes brief references to the seminal English authorities in this area, *R v De Berenger*[116] and *Scott v Brown Doering MacNab and Co*.[117] Similarly, Baxt and Afterman's *Casebook on Companies and Securities*, published in 1976, provides comprehensive commentary on trading in shares and other securities and the law that governed those activities.[118] Other than brief comments on the offences provided for in the *Securities Industry Acts* of the four Australian states, however, there is little in the way of a historical analysis of the genesis of the legislation or the manipulative activities it specifically proscribed.[119]

In *An Introduction to the Securities Industry Acts,* published in 1977, Baxt, Ford and Samuel once again use the *Securities Industry Acts* enacted in four States in the early 1970s and the Rae Report as the starting point for their consideration of domestic securities regulation generally, and stock market manipulation in particular. Disappointingly, discussion of the former commences with the following, which does little to shine a light on the history prior to 1970:

---

[114] Robert Baxt, *The Rae Report – Quo Vadis?* (Butterworths, 1974) ch 8, ch 16 ('*The Rae Report – Quo Vadis*').
[115] See, for example, Avgouleas *Regulation of Market Abuse* (n 51) 113-114.
[116] (1814) 3 M&S 67; 105 ER 536.
[117] *Scott v Brown, Doering, MacNab and Co* [1892] 2 QB 724. Baxt, *The Rae Report – Quo Vadis?* (n 114) 116.
[118] Robert Baxt and Allen B Afterman, *Casebook on Companies and Securities* (Butterworths, 1976) ('*Casebook on Companies and Securities*').
[119] This is apparent in other texts written during this period. See, for example, CCH Australia, *A Guide to Australian Securities Industry Law and Stock Exchange Control* (CCH Australia, 1971) ('*Guide to Australian Securities Industry Law*'); WE Paterson and HH Ednie, *Aspects of the Corporations and Securities Industry Bill 1974* (Butterworths, 1975).

> In 1970, as a result of a period of discussion and co-operative research by the various States, legislation was introduced in four Australian jurisdictions – New South Wales, Victoria, Queensland and Western Australia – to regulate the affairs of the securities markets.[120]

The provision of additional detail on the 'discussion and co-operative' research that precipitated the introduction of this legislation may have assisted in understanding the background to what would turn out to be a ground-breaking decade in the history and development of securities market regulation in Australia.[121]

2.5.2 The stock exchanges

Baxt, Ford and Samuel's 1977 text includes a chapter on the internal regulation of the stock exchanges,[122] which is one of the earliest Australian textbooks located that includes coverage of this particular subject from a legal perspective.[123] Although stock market manipulation is intrinsically linked with share trading on domestic stock exchanges, there is no information in this book that provides a clear account of how this type of misconduct was dealt with by the stock exchanges. For example, were there any specific stock exchange rules that explicitly proscribed manipulative activities (in whatever form), how were they dealt with and what sanctions, if any, would apply in identified instances? What action did the exchanges take to prevent, detect and punish this type of activity? Did it ever occur? Was it even an issue of pressing concern for the stock exchanges?

Whilst there is no specific reference in this book to stock exchange rules that explicitly proscribed, for example, fictitious transactions or other types of manipulative activities, there are rules mentioned that could have captured identified instances of market manipulation. By way of example, the authors refer to SSE article 83, which provides that a member may be expelled if they were found to be 'guilty of conduct unworthy of a member'.[124] There is also reference to SSE by-law 8(1), which provides that members may be expelled if they engage in

---

[120] R Baxt, HAJ Ford and GJ Samuel, *An Introduction to the Securities Industry Acts* (Butterworths, 1977) 26 ('*Introduction to the Securities Industry Acts*').

[121] One of the earlier pieces of literature, published on 30 June 1970, noted that 'Bills for a *Securities Industry Act* were introduced in New South Wales and Victoria in March and, with amendments in both States, have become law': 'A Face Lift for The Companies Act' in 'Current Topics' (1970) 44(6) *Australia Law Journal* 245, 246. A brief description of the offences created by the Act relating to stock market manipulation is provided at 247.

[122] Baxt, Ford and Samuel, *Introduction to the Securities Industry Acts* (n 120) ch 6.

[123] However, CCH Australia's 1971 book is the earliest legal text relating to the regulation of the Australian securities markets and stock exchanges located by the author: CCH Australia, *Guide to Australian Securities Industry Law* (n 119).

[124] Baxt, Ford and Samuel, *Introduction to the Securities Industry Acts* (n 120) 45.

conduct that was prohibited by the *Securities Industry Act*, which would have included false trading and market rigging transactions.[125] SSE by-law 8(2) prohibited:

> . . . any act which is intended to disrupt the orderly marketing of securities on the exchange, or engages in activities to affect the price of securities quoted on the exchange so that that price does not represent a fair market value . . .[126]

In the chapter titled 'Shortselling, False Trading and Fraudulent Dealing',[127] Baxt, Ford and Samuel briefly discuss 'corners', referred to by Goldwasser as a 'recognised manipulative device'.[128] The authors refer to rule 3.7 of the 'uniform rules' of the SEM and SSE, which provided the Sydney and Melbourne stock exchanges with certain powers to ensure an equitable settlement was effected where 'in the opinion of the committee, a corner exists'.[129] There is, however, no further information provided on this activity from the perspective of the stock exchanges. For example, were corners prohibited by the stock exchanges and what action, if any, would be taken against members who had established (or participated in establishing) a corner and manipulated share prices while doing so? Similarly, the second, third and fourth editions of this book do not address these issues.[130]

This is unfortunate, particularly given that the question of whether this species of manipulative conduct was considered to be illegal or problematic from a regulatory perspective in Australia and in what particular circumstances appears to remain unresolved. As will be discussed in later chapters, notwithstanding the incidence of several corners in Australia there does not appear to

---

[125] Baxt, Ford and Samuel, *Introduction to the Securities Industry Acts* (n 120) 45. The specific provisions in the Securities Industry Acts dealing with manipulative activities are discussed at 192-198.

[126] Ibid 45. SSE by-laws 8(1) and 8(2) appear to have been added to the SSE's rules in February 1977. The February 1977 'Amendment List 1/77' records that SSE by-law 8 was a new by-law that became effective on 7 February 1977: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-48, The Sydney Stock Exchange Limited, *Memorandum & Articles of Association By-Laws & Regulations*, February 1977.

[127] Baxt, Ford and Samuel, *Introduction to the Securities Industry Acts* (n 120) ch 13 'Shortselling, False Trading and Fraudulent Dealing'. The section dealing with 'Corners' appears between the sections on 'False Trading and Fraudulent Practices' and 'Statutory Control of Market Manipulation'.

[128] Goldwasser, *Stock Market Manipulation* (n 6) 144.

[129] Baxt, Ford and Samuel, *Introduction to the Securities Industry Acts* (n 120) 195.

[130] These are, respectively: R Baxt et al, *An Introduction to the Securities Industry Codes* (Butterworths, 2nd ed, 1982) ('*Introduction to the Securities Industry Codes*'); Robert Baxt, Christopher Maxwell and Selwyn Bajada, *Stock Markets and the Securities Industry: Law and Practice* (Butterworths, 3rd ed, 1988) ('*Stock Markets and the Securities Industry*'); Baxt, Ford and Black, *Securities Industry Law* (n 6). Unlike the first edition, however, which states that corners 'would not be covered' by s.109 of the *Securities Industry Act*, which proscribed false trading and market rigging transactions, the second, third and fourth editions all state that corners 'could be covered' by the market manipulation provisions in the legislation in force around the time of each book's publication. For example, the fourth edition refers to s.997 of the *Corporations Law* 1989 (Cth), titled 'Stock market manipulation'.

have been an authoritative pronouncement that confirms whether and in what circumstances this particular activity would be contrary to the law. Given the comments of the High Court in *Director of Public Prosecutions (Cth) v JM***,** however, this is most likely now a moot point in the domestic context.[131]

Published in 1971, *A Guide to Australian Securities Industry Law and Stock Exchange Control*, the earliest text located that specifically considers the law relating to the securities markets in Australia and the operation and regulation of domestic stock exchanges, essentially adopts the same approach in two key respects. Firstly, chapter one covers the background to the securities industry and notes that 'the securities industry in Australia has always been a rather mysterious and aloof part of the Australian commercial scene'.[132] Yet, like other literature of the time, and since, the starting point in terms of a historical context is essentially the 1960s Australian mining boom and the appointment of the Rae Committee. Secondly, whilst explicitly acknowledging upfront 'the important role played by the stock exchanges of Australia',[133] and containing equally comprehensive information on their organisation, there is no information provided on the specific forms of market misconduct that were proscribed under the rules of the exchange, if any, including market manipulation. In Chapter XII, titled 'Conduct of Securities Businesses', for example, there is a section headed 'The regulations of the stock exchanges', which discusses the different areas covered by the 'regulations of the Stock Exchange of Melbourne'.[134] These include, amongst others, brokerage, advertising, contract notes and marketable parcels. There is, however, no reference to any 'regulations' that proscribed market misconduct of any kind, including fictitious transactions or other types of manipulative activities.[135]

If there were no specific exchange rules proscribing such activity, or if the rules mentioned above were, in fact, relied on to deal with this type of misconduct, it is unfortunate from a securities market regulation and historical perspective that this type of detail is not discussed. Similarly, even if the stock exchanges were then waiting for either the enactment of the *Securities Industry Acts* or the publication of the Rae Report, or both, before drafting and implementing rules to specifically combat market manipulation and other market misconduct,

---

[131] 'Given the provisions of Ch 6, it may be unlikely that any buyer or seller can, in any practical sense, "corner" or "squeeze" the market for listed shares': *DPP v JM* (n 16) [65].
[132] CCH Australia, *Guide to Australian Securities Industry Law* (n 119) 1.
[133] Ibid 'Foreword'.
[134] Ibid 172-181.
[135] Ibid.

this information would have been invaluable for those conducting research in this area. It is also unfortunate that there appears to be nothing in the literature reviewed that identifies how the stock exchanges specifically responded to the occurrence of manipulative activities, when they first occurred and how, their prevalence, how their rules developed and what action was taken to prevent, detect and punish those found to have engaged in this type of market misconduct.

A cautionary note

When attempting to place domestic share trading in its historical context, it is worth acknowledging some of the challenges facing those reviewing the literature on the establishment of the formalised stock exchanges and less formal share markets where trafficking in shares has occurred over the last circa 160 years. Firstly, there has been a relatively large number of 'stock exchanges' established at various times across the Australian continent. By way of example, in addition to the six stock exchanges that were eventually established in the capital cities of each of the Australian States[136] between 1871 and 1889,[137] the following stock exchanges, amongst several others, have a place in the history of Australian share trading.[138]

Year	Stock Exchange
1872	Knipe's Night Share and Stock Exchange[139]
1881	Victorian Stock Exchange[140]
1881	Launceston Stock Exchange[141]

[136] Sydney, Hobart Melbourne, Brisbane, Adelaide, and Perth.
[137] These dates appear on the ASX's website - 1871 was when the Sydney Stock Exchange was established, 1889 was when the Stock Exchange of Perth 'opened its doors for trading', with the other four exchanges having been established between these dates. 1884 is recorded as the date that the Stock Exchange of Melbourne was formed, with the ASX adding the following comment: 'The Stock Exchange of Melbourne was formed by a small number of sharebrokers following a number of attempts to form a lasting stock exchange over the previous 32 years': ASX, *ASX Story: History* <https://www2.asx.com.au/about/asx-story> ('*ASX Story*'). See also, for example, Black and Hanrahan, *Securities and Financial Services Law* (n 53) 33.
[138] These stock exchanges have been named in order of their establishment according to the ASX's website: ASX, *ASX Story* (n 137).
[139] Admission was free to 'all respectable persons (both sexes)': 'The News of the Day', *The Age* (Melbourne, 16 January 1872) 2
[140] A R Hall, *The Stock Exchange of Melbourne and the Victorian Economy: 1852-1900* (Australian National University Press, 1968) 104 ('*Stock Exchange of Melbourne*').
[141] University of Tasmania, 'The Companion to Tasmanian History. Stock Exchanges' (Web Page) <https://www.utas.edu.au/library/companion_to_tasmanian_history/S/Stock%20exchanges.htm>.

1881	Royal Exchange[142]
1884	Gympie Stock Exchange[143]
1885	Charters Towers Stock Exchange[144]
1887	NSW Mining and Stock Exchange[145]
1888	The Federal Stock Exchange[146]
1888	Australasian Mining Exchange[147]
1890	Stock Exchange of NSW[148]
1890	Newcastle Stock Exchange[149]
1890	Sydney Open Call Stock Exchange[150]
1894	Coolgardie Stock Exchange[151]
1895	Kalgoorlie Stock Exchange[152]
1898	Queenstown Stock Exchange[153]
1906	Cairns Stock Exchange[154]

[142] Rival to the Ballarat Stock Exchange: William Bramwell Withers, *The History of Ballarat, from the First Pastoral Settlement to the Present Time* (F. W. Niven and Co, 2nd rev ed, 1887) 237 (‘*History of Ballarat*’).
[143] A L Lougheed, *The Brisbane Stock Exchange 1884-1984* (Boolarong Publications, 1984) 27 (‘*Brisbane Stock Exchange*’). A review of the newspapers (including advertisements) available on Trove indicate that the first meeting of the Gympie Stock Exchange took place on 10 July 1884: ‘Gympie’, *The Maryborough Chronicle, Wide Bay and Burnett Advertiser* (Queensland, 14 July 1884) 3.
[144] Lougheed, *Brisbane Stock Exchange* (n 143) 27. According to Roderick, in 1885 “the Mining Agents formed themselves into a “Mining Exchange”’: Don Roderick, *Charters Towers and its Stock Exchange* (The National Trust of Queensland, 1977) 10.
[145] *The Age* newspaper reported the ‘opening transactions to-day recorded in the newly established New South Wales Mining and Stock Exchange’: ‘Commercial Telegrams’, *The Age* (Melbourne, 28 June 1887) 4.
[146] J.B. Were & Son, *The House of Were, 1839-1854: The History of J.B. Were & Son and its Founder, Jonathan Binns Were* (J.B. Were & Son, 1954) 138 (‘*House of Were*’); ‘The Opening of the Federal Stock Exchange’, *The Herald* (Melbourne, 30 May 1888) 3
[147] The Australasian Mining Exchange was opened on 13 February 1888, described as ‘a rendezvous for mining brokers, holders of mining scrip, owners of mines, mining managers and mining men generally: ‘The New Mining Exchange’, *The Daily Telegraph* (Sydney, 13 February 1888) 4; ‘Mining Intelligence’, *The Sydney Morning Herald* (Sydney, 14 February 1888) 5
[148] ‘A New Stock Exchange’, *The Herald*, (Melbourne, 7 January 1890) 1; ‘The Stock Exchange of New South Wales. Successfully Started’, *The Australian Star* (Sydney, 11 January 1890) 3.
[149] ‘Newcastle Stock Exchange. Opening Proceedings’, *Newcastle Morning Herald and Miners’ Advocate* (NSW 10 September 1890) 6; ‘In Newcastle’, *The Australian Star* (Sydney, 10 September 1890) 5.
[150] ‘Mining Intelligence’, *The Sydney Morning Herald* (Sydney, 13 January 1890) 9.
[151] ‘The West Australian Goldfields. Lord Sudeley Has An Unpleasant Experience. Opening of the Coolgardie Stock Exchange’, *The Daily Telegraph*, 24 August 1894, 5.
[152] ‘Kalgoorlie Stock Exchange’, *The Southern Times*, 24 August 1895, 3; ‘Stock Exchange for Kalgoorlie’, *The Golden Age*, 24 August 1895, 3.
[153] ‘Queenstown Stock Exchange’, *The Daily Telegraph*, 14 January 1898, 3; ‘Inauguration of the Queenstown Stock Exchange’, *The Mount Lyell Standard and Strahan Gazette*, 15 January 1898, 3.
[154] ‘Stock Exchange at Cairns’, *The Sydney Morning Herald*, 3 May 1906, 7.

However, it is not only the number of exchanges that were established across the Australian colonies, most of which did not endure, that presents the researcher with several challenges in terms of locating relevant and accurate data. Firstly, the records for many of these stock exchanges do not appear to exist and the only data that is available in most cases are the reports of local journalists in the colonial newspapers of the time.

Secondly, even where information is located, it can be ambiguous. Attempting to identify the date that the first stock exchange was established in Australia, for example, is illustrative of this particular challenge. Carew, in her history of the formation of the Australian Stock Exchange, refers to 'Melbourne's first official stock exchange' having been formed in 1857 'at a meeting of stockbrokers in the city's Criterion Hotel'.[155] Yet, in her 'Chronology of Key Events' at the start of her book, Carew states that 'Melbourne's first stock exchange' was formed in 1861.[156]

Both of these dates are inconsistent with the year 1859, which is the year in which the National Museum of Australia's website claims that Australia's first stock exchange was established in Melbourne.[157] However, a book published in 1954 that documents the history of local stockbroker J.B Were & Son appears to agree that 1859 was the correct year.[158] This, it is said, was when a group of brokers, headed by Mr Jonathan Binns Were himself, established 'what was actually Melbourne's first regular Stock Exchange', which 'devoted its attention wholly to stocks and shares and held regular calls daily'.[159]

Whilst documenting the twists and turns that occurred over the 25 or so years between the establishment of Melbourne's first stock exchange (circa 1859) and the establishment of the SEM in 1884, Hall's history of the SEM does not appear to provide a definitive answer to the question of when Australia's first stock exchange was established. Instead, one is left to essentially fill in the blanks. According to Hall:

---

[155] Edna Carew, *National Market National Interest: The drive to unify Australia's securities markets* (Allen & Unwin, 2007) 26.

[156] Ibid xxi. The difference between the two is the use of the word 'official' in the former, which does not appear to be explained in the book.

[157] National Museum of Australia, '20 Years 2021. Defining Moments. First Stock Exchange. 1859: Establishment of Australia's first stock exchange' (Web Page) <https://www.nma.gov.au/defining-moments/resources/first-stock-exchange> ('Defining Moments. First Stock Exchange').

[158] J.B. Were & Son, *House of Were* (n 146) 77.

[159] Ibid. According to *Were's Stock Exchange Handbook*: 'in 1859 the brokers formed what actually was the first Melbourne Stock Exchange, with Jonathan Binns Were as chairman': J.B. Were & Son, *Were's Stock Exchange Handbook* (J.B. Were & Son, 2nd ed, 1951) 14.

> Tradition has in fact located the beginning of a stock exchange in Melbourne to October 1859 but this is one of those occasions when tradition is not firmly based unless one equates 'a stock exchange' with 'attempts to form a stock exchange'.[160]

In the context of discussing the 'ambitious proposals' for the formation of a stock exchange around this time, Hall mentions the 'Melbourne Brokers' Association' (MBA), which he describes as being 'composed of the newer entrants to the profession' who did not have 'established investor clienteles like the older ones' and who 'hoped to offset the disadvantage of their newness by operating as an exchange'.[161] Hall then explains that the established firms, 'apparently under the leadership' of stockbroking firm Baillie and Butters, took steps to establish a stock exchange,[162] their efforts to do so being described in Bailie and Butters' weekly share market commentary of 22 October 1859.[163] However, whilst their plans were 'still under consideration', the MBA 'finally became established' and 'buying and selling operations were conducted at regular meetings' and 'weekly market reports and details of sales were released to the daily press'.[164] According to Hall, by March 1860, these reports 'were described as being 'published under the authority of the Committee of the Stock Exchange.'[165]

Unfortunately, however, Hall does not provide the exact date that the MBA 'finally became established' as a stock exchange, although it would appear from the abovementioned dates to have been some time after 22 October 1859 and some time prior to March 1860. So, it could have been 1859 or 1860. However, Hall's assertion that 'after 26 May 1860' there were no 'further reports published 'under the authority of the Committee of the Stock Exchange" could be read to suggest that the stock exchange established under the auspices of the MBA had only survived a mere two months, particularly as he appears to make no further mention of the MBA. Yet, this is inconsistent with the National Museum of Australia's website, which appears to suggest that the MBA was around until at least 1880 and possibly 1891.[166] Unfortunately, the National Museum of Australia does not reference any of the claims it makes on the relevant page on its website, which makes the job of the researcher that bit harder.

---

[160] Hall, *Stock Exchange of Melbourne* (n 140) 23.
[161] Ibid.
[162] Ibid.
[163] Ibid.
[164] Ibid 24.
[165] Ibid.
[166] National Museum of Australia, 'Defining Moments. First Stock Exchange' (n 157).

Similarly, the exact date of the establishment of Australia's first stock exchange is further complicated by an 'account of the origin and development of the Sydney Stock Exchange' (SSE) attributed to the former Secretary (and subsequently, General Manager) of the SSE, Mr D. M. Butcher[167] in a 1963 pamphlet issued by the SSE's 'Education Service'.[168] According to Mr Butcher's account, the 'first Australian Stock Exchange was established' sometime around 1837 by:

> Isaac Simmons and Co., who established a "Chamber of Commerce" where a list of share prices was maintained as a basis for dealings by the general public who were permitted to trade there.
>
> Prices fluctuated violently but progress was quite rapid . . .[169]

According to Salsbury and Sweeney, however, although several 'commentators have suggested that this marked the beginning of an embryo stock exchange', it would be a 'mistake to attach much significance to Simmons' action'.[170] Perhaps a reminder that one should exercise a degree of caution as they navigate their way through the historiography relating to the evolution of share trading in the domestic context.

2.5.3 Domestic Legal Literature – From 1980 to date

From the 1970s to date, it appears that the overwhelming majority of the literature concerning market manipulation has related to the manipulation of the price of shares listed on stock exchanges.[171] This is certainly the case in Australia, where, following the publication of the Rae Report, academics, legal practitioners, regulators and others have developed an increasingly detailed body of knowledge on share price manipulation. Indeed, it is fair to say

---

[167] David Maynard Butcher: Stephen Salsbury and Kay Sweeney, *The Bull, the Bear & the Kangaroo: The History of the Sydney Stock Exchange* (Allen & Unwin, 1988) 493 ('*The Bull, the Bear & the Kangaroo*').
[168] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), Sydney Stock Exchange Education Service, 'The Practices & Procedures of The Stock Exchange', Volume 1, Pamphlet 1, 1967, 6-8.
[169] Ibid 7.
[170] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 167) 17.
[171] This is starting to change, however, and there is a growing body of international (non-Australian) literature on the manipulation of financial instruments and benchmarks that are not traded on a stock exchange, for example, manipulation of the London Inter-Bank Offered Rate (LIBOR): see, for example, Liam Vaughan, *The Fix: How Bankers Lied, Cheated and Colluded to Rig the World's Most Important Number* (Bloomberg, 2016), David Enrich, *The Spider Network: The Wild Story of a Math Genius, a Gang of Backstabbing Bankers, and One of the Greatest Scams in Financial History* (Custom House, 2017), Erin Arvedlund, *Open Secret: The Global Banking Conspiracy That Swindled Investors Out of Billions* (Portfolio, 2014)). There is also literature that considers the manipulation of other assets that can be traded on financial markets, such as commodities and foreign exchange: Markham, *History of Financial Market Manipulation* (n 63).

that the literature on securities regulation generally, and stock market manipulation specifically, from an Australian perspective, has expanded very significantly over the decades since the 1970s. It now includes a wide range of journals, containing legal and other analyses on market manipulation in Australia[172] (some focusing purely on domestic issues, while others include Australia as part of an international analysis), a large number of text and other books on securities markets regulation with sections on stock market manipulation and other types of market misconduct,[173] as well as a variety of postgraduate theses that consider the manipulation of domestic share markets.[174]

However, the approach taken in the legal/securities regulation literature of the 1970s appears to have been largely adopted by authors of the literature that has been produced in the period since then. That is, the starting point for considering securities market regulation in Australia generally, and stock market manipulation specifically, is typically a combination of: (i) the treatment of manipulative transactions under the common law in England in the 1800s;[175] (ii)

---

[172] See, for example, Emma Armson, 'False Trading and Market Rigging in Australia' (2009) 27 *Company and Securities Law Journal* 411 ('False Trading and Market Rigging'); Janet Austin, 'A Rapid Response to Questionable Trading – moving towards better enforcement of Australia's securities laws' (2009) 27 *Companies and Securities Law Journal* 1; Janet Austin, 'Government to the rescue: ASIC takes the reins of the stock markets' (2010) 28 *Companies and Securities Law Journal* 444; Ashley Black, 'Regulating market manipulation: sections 997-999 of the Corporations Law' (1996) 70 *Australian Law Journal* 95; Lev Bromberg, George Gilligan and Ian Ramsay, 'Financial Market Manipulation and Insider Trading: An International Study of Enforcement Approaches' [2017] 8 *Journal of Business Law* 652; Carol Comerton-Forde and James Rydge, 'Market Integrity and Surveillance Effort' (2006) 29 *Journal of Financial Services Research* 149 ('Market Integrity and Surveillance Effort'); Vivien R Goldwasser, 'The Regulation of Stock Market Manipulation – A Blue Print for Reform' (1998) 9(2) *Australian Journal of Corporate Law* 109 ('Blue Print for Reform'); Vivien R Goldwasser, 'Regulating Manipulation in Securities Markets: Historical Perspectives and Policy Rationales' (1999) 5 *Australian Journal of Legal History* 149 ('Regulating Manipulation'); Goldwasswer, *Stock Market Manipulation* (n 6); Hart, 'The Regulation of SMM' (n 96); Paul Latimer, 'False trading and market rigging on the Stock Exchange' (1999) 7(2) *Asia Pacific Law Review* 247 ('False trading and market rigging'); Loke, 'The Investors' Protected Interests' (n 61); Meyer, 'Fraud and Manipulation' (n 97); Anton Trichardt, 'Australian Greenshoes, Price Stabilisation and IPOs – Part 1' (2003) 21 *Company and Securities Law Journal* 26; Anton Trichardt, 'Australian Greenshoes, Price Stabilisation and IPOs – Part 2' (2003) 21 *Company and Securities Law Journal* 75; Hui Huang, 'Redefining Market Manipulation in Australia: The Role of an Implied Intent element' (2009) 27 *Company and Securities Law Journal* 8.

[173] See, for example, Baxt, *The Rae Report – Quo Vadis?* (n 114); Baxt and Afterman, *Casebook on Companies and Securities* (n 118); Baxt et al, *Introduction to the Securities Industry Codes* (n 130); CCH Australia, *Guide to Australian Securities Industry Law* (n 119); Redmond, Harding and Cameron, *Companies and Securities Law* (n 94); Tomasic, Bottomley and McQueen, *Corporations Law in Australia* (n 6).

[174] See, for example, Geddes, 'Systems of Securities Regulation' (n 14); Vivien Ruth Goldwasser, 'The Regulation of Stock Market Manipulation' (Thesis for Doctor of Juridical Science, The University of Melbourne, 1997); Talis J Putnins, 'Closing price manipulation and the integrity of stock exchanges' (PhD Thesis, University of Sydney, 2009); Janet Elizabeth Austin, 'When Insider Trading and Market Manipulation Cross Jurisdictions: What Are the Challenges For Securities Regulators and How Can they Best Preserve the Integrity of Markets?' (PhD Thesis, Osgoode Hall Law School of York University, 2016). An example of a non-postgraduate thesis in this area is Graeme McIntyre, 'Reforming the Regulation of Financial Market Manipulation' (Honours Program Thesis, University of Sydney, Faculty of Law, 2014).

[175] The key authorities cited are usually *R v De Berenger* (1814) 3 M&S 67; 105 ER 536; *Scott v Brown, Doering, MacNab and Co* [1892] 2 QB 724; *R v Aspinall* (1875) 1 LR 730 (QBD), (1876) 2 LR 48 (QBD).

the late 1960s minerals boom that occurred in Australia, which preceded the enactment of the *Securities Industry Acts* in four Australian States in the early 1970s; (iii) the Rae Committee's report that highlighted the 'notorious trading abuses'[176] perpetrated during the minerals boom on domestic stock exchanges; (iv) consideration of the law in the US that formed the basis for local securities markets regulation; and (v) then generally fast-forward to the position as at the time the work was written and published. This is broadly the approach taken by many authors, including Armson,[177] Baxt et al,[178] Meyer,[179] Goldwasser,[180] Redmond et al,[181] Tomasic et al[182] and, most recently, Black and Hanrahan.[183]

There are a few exceptions, however, including, for example, Redmond's commentary on the history of securities regulation in Australia, which provides a very brief background to legislative developments that preceded the 'most spectacular stock-market boom in Australian history' that began in September 1969.[184] According to Redmond, that boom was, itself, precipitated by a mining boom in the same year of 'unprecedented proportions' that 'disclosed weaknesses in the regulation of securities markets'.[185] There is, however, no substantive discussion of the rationale behind the introduction of the *Securities Industry Acts* in the four States. This is disappointing for securities market regulation scholars and historians alike given that this legislation 'established the first general control over the securities industry',[186] 'enacted provisions to prohibit various forms of abuse in trading in securities'[187] and was essentially the genesis of the very significant changes to the regulation of domestic stock exchanges that began to take place during the 1970s.

As the years progressed and manipulative activities began to be criminally prosecuted by Australian regulators in the courts and became the subject of other legal proceedings,[188] the

---

[176] Redmond, Harding and Cameron, *Companies and Securities Law*' (n 94) 90.
[177] Armson, 'False Trading and Market Rigging' (n 172).
[178] See, for example, Baxt, *The Rae Report – Quo Vadis?* (n 114); Baxt and Afterman, *Casebook on Companies and Securities* (n 118); Baxt, Ford, and Samuel, *Introduction to the Securities Industry Acts* (n 120).
[179] Meyer, 'Fraud and Manipulation' (n 97).
[180] See, for example, Goldwasser (n 8); Goldwasswer, *Stock Market Manipulation* (n 6).
[181] Redmond, Harding and Cameron, *Companies and Securities Law*' (n 94).
[182] Tomasic et al, *Corporation Law: Principles, Policy and Process* (n 56).
[183] Black and Hanrahan, *Securities and Financial Services Law* (n 53) 31-36, 666-671.
[184] Redmond (n 94) 93.
[185] Ibid.
[186] Ibid 96.
[187] Ibid.
[188] According to Goldwasser, for example, the first criminal conviction for stock market manipulation in Australia occurred in mid-1990, reported as *Mark Richard Howard v Bruce Emerton Miles* (Unreported, ACT Magistrates Court, Dainer SM, 30 July 1990): Goldwasser, Vivien R, 'The Enforcement Dilemma in Australian Securities Regulation' (1999) 27 *Australian Business Law Review* 482, 484 ('The Enforcement Dilemma'). See

literature, unsurprisingly, began to include consideration of, and commentary on, the case law that very slowly began to build in number and which has contributed to an increasing body of domestic law on stock market manipulation.[189] In addition, whilst there is a growing body of literature that considers the role of Australian stock exchanges in the local securities regulation paradigm,[190] there is, nonetheless, a distinct paucity of detailed commentary on how the stock exchanges have dealt with market manipulation and other types of market misconduct over their many years of operation.

Baxt's *Stock Markets and the Securities Industry: Law and Practice*, published in 1988, adopts much the same approach as that described above in relation to the legal literature dealing with stock exchanges published in the 1970s.[191] There is, for example, a comprehensive account of the regulatory paradigm in which the exchanges operated, how they were established and internally governed, membership requirements, disciplinary powers vis à vis their members, and the sanctions that could have been imposed for breaches of the exchanges' rules.

However, given that it would appear their markets have from the very early days been subject to the manipulative activities of their members and outsiders alike, there is a surprising lack of information on this subject. Unfortunately, Baxt's text does not break the mould in this regard. Whilst he discusses the relevant provisions of the *Securities Industry Acts* that proscribed manipulative activities,[192] he does not provide any insight on whether or not there were any rules in the exchanges' rulebooks that specifically prohibited the manipulation of listed securities, when they were introduced and why, whether there had been any identified breaches of those rules and what action the exchanges had taken to detect and punish those who had failed to comply with the rules.[193]

---

section 7.7 where this matter is discussed in more detail.

[189] In his 1986 article, Meyer includes commentary on some of the early non-criminal cases in Australia where share price manipulation was the subject of proceedings, for example, *R v M* (1979) CCH *Australian Securities Law Cases* 85; *North v Marra Developments Ltd* (1982) 56 *Australian Law Journal Reports* 106: Meyer, 'Fraud and Manipulation' (n 97) 94, 96. Over time, the literature has continued to include insightful commentary on a growing body of Australian case law in this area: see, for example, Chapter 13 'Market Misconduct, Prohibited Conduct and Short Selling' in Black and Hanrahan, *Securities and Financial Services Law* (n 53).

[190] See, for example, Comerton-Forde and Rydge, 'Market Integrity and Surveillance Effort'; Latimer 'False trading and market rigging' (n 172); Paul Latimer, 'Legal Enforcement of Stock Exchange Rules' (1995) 7(2) *Bond Law Review* 1; Baxt, Maxwell and Bajada, *Stock Markets and the Securities Industry* (n 130); Tomasic, Bottomley and McQueen, *Corporations Law in Australia* (n 6).

[191] Baxt, Maxwell and Bajada, *Stock Markets and the Securities Industry* (n 130).

[192] Chapter 13 'Shortselling, False Trading and Fraudulent Dealing' in ibid.

[193] However, see the discussion in section 2.5.2 above.

Other authors appear to have adopted a similar approach. In their 1988 text *Companies and Securities Law: Commentary and Materials*, for example, Redmond, Harding and Cameron briefly consider the 'business rules' of the ASX, described as a 'body of regulations governing the conduct of securities business by members'.[194] However, there is no reference to, or discussion of, any specific rules that deal with market misconduct, including market manipulation, which is only mentioned in the context of the legislation.[195] Instead, it appears that the closest one gets to any discussion of how the stock exchanges dealt with identified instances of market manipulation in the literature reviewed is a brief reference to a Circular issued by the ASX on 21 June 1990 to its Member Organisations that identifies some of the key techniques used to manipulate share prices and their 'Runyonesque labels'.[196]

Although the non-legal literature considered below, which includes detailed histories of Australia's key exchanges, does touch on instances of market misconduct, including stock market manipulation, this is generally only ever peripheral in nature or in the context of the Rae Committee's report. Not unexpectedly, that literature does not dwell to any significant extent on how the exchanges regulated specific types of market misconduct over the course of their existence, including what specific rules governed and proscribed such activities, if any.

Of all the authors whose literature was reviewed for the purposes of this research, Dr Vivien Goldwasser appears to be one of the most prolific academic writers on stock market manipulation in Australia. Through her Doctoral Thesis, published in 1997,[197] and numerous articles published in books and legal journals, she has made an enormous contribution to our understanding of this particular type of market misconduct from a local perspective.[198] Whilst Goldwasser has often adopted a similar approach to the authors referred to above, for example, commencing her consideration of the historical context of share price manipulation in Australia

---

[194] See Redmond, Harding and Cameron, *Companies and Securities Law*' (n 94) 605.
[195] Ibid 616.
[196] Redmond (n 94) 98; Redmond, *Financial Markets Law* (n 94) 884. See also Goldwasser (n 8) 528 n 55.
[197] Goldwasser, 'The Regulation of Stock Market Manipulation' above n 162.
[198] Ibid; Goldwasser, 'Regulating Manipulation in Securities Markets', above n 23; Goldwasser, 'Market Rigging after Nomura' in Ann O'Connell (ed), 'Securities Industry and Managed Investments' (1999) 17 *Company and Securities Law Journal* 38; Goldwasswer, *Stock Market Manipulation*, above n 24; Goldwasser, 'The Regulation of Stock Market Manipulation in Australia' in Walker and Fisse (eds), above n 36; Goldwasser, 'The Enforcement Dilemma in Australian Securities Regulation', above n 175; Goldwasser, Vivien R, 'CLERP 6 – Implications and Ramifications for the Regulation of Australian Financial Markets' (1999) 17 *Company and Securities Law Journal.*

by reference to the key English authorities from the 1800s,[199] the regulatory developments in the US and the Rae Report,[200] she has, nonetheless, made an important contribution to the literature in this area in several respects.

By way of example, whilst many commentators have included observations on the reported and better known cases in Australia, such as Tomasic et al,[201] Tomasic, Bottomley and McQueen,[202] and Black and Hanrahan,[203] Goldwasser is one of the few (if not the only) commentators who has attempted to piece together an inventory (albeit small) of the early unreported cases in Australia that involved charges relating to stock market manipulation.[204] This has assisted greatly when attempting to trace the historical roots of this particular species of market misconduct in Australia and understanding the response of governments and regulators. In addition, the results of her interviews with regulators[205] and key stock exchange officials, for example, Jim Berry who was the Head of the ASX Surveillance Division,[206] have added an alternative perspective to that of the academic lawyer on the regulation of stock market manipulation in the domestic context. However, whilst Goldwasser's contribution to the literature on this topic has been invaluable in helping to piece together the historical roots of this insidious activity, as with the other commentators previously discussed her work has not addressed the apparent gap in the literature with respect to the historical roots of stock market manipulation in Australia prior to the 1970s.[207]

Nonetheless, there is some legal literature that touches on the historical origins of stock market manipulation in Australia before the starting point used by many of the authors in the literature reviewed. In his 2015 article comparing the market manipulation regimes in South Africa and Australia, for example, Chitimira is one of the few legal authors whose work was reviewed who

---

[199] The key authorities, some or all of which are typically referred to, are *R v De Berenger* (1814) 3 M&S 67 (KB), 105 Eng Rep 536; *Scott v Brown, Doering, MacNab and Co* [1892] 2 QB 724; *R v Aspinall* (1875) 1 LR 730 (QBD), (1876) 2 LR 48 (QBD).
[200] See, for example, Goldwasser, *Stock Market Manipulation* (n 6) ch 2.
[201] Tomasic et al, *Corporation Law: Principles, Policy and Process* (n 56) ch 10 'Securities Regulation'.
[202] Tomasic, Bottomley and McQueen, *Corporations Law in Australia* (n 6) ch 20 'Securities Regulation'.
[203] Black and Hanrahan, *Securities and Financial Services Law* (n 53) ch 13 'Market Misconduct, Prohibited Conduct and Short Selling'.
[204] See, for example, Goldwasser, 'Blue Print for Reform' (n 172) 111 n 10; Goldwasser, *Stock Market Manipulation* (n 6) 76 n 93; Goldwasser (n 8) 535 n 92.
[205] See, for example, Goldwasser, 'Blue Print for Reform' (n 172); Goldwasser, 'The Enforcement Dilemma' (n 188) 482 n 1 and 483 n 5.
[206] See, for example, Goldwasser, 'Regulating Manipulation' (n 172) 190 n 144.
[207] For example, in the section titled 'The Australian Historical Context', Goldwasser commences her discussion by reference to the 1969 share boom and the Rae Report: ibid 162. See also Goldwasser, *Stock Market Manipulation* (n 6) 39.

looks back beyond the late 1960s or early 1970s to a much earlier time in Australia's history when commenting on the historical roots of stock market manipulation on local markets, albeit very briefly.[208] According to Chitimira:

> . . . [i]t is generally accepted that market manipulation activities were outlawed under common law in the years prior to 1899 and later codified in 1899 in Australia. Therefore, like the United Kingdom (UK), Australia primarily prohibited market manipulation through common law principles.[209]

Although potentially acting as a road sign on the research journey, Chitimira's article does not, unfortunately, provide any additional substantive content on the history of stock market manipulation in Australia. There are, for example, no additional details on which particular legislation 'codified' the proscription of market manipulation in Australia in 1899 or the basis for claiming this to be 'generally accepted'.[210] However, unlike many other authors who have contributed to the body of literature on stock market manipulation in Australia, Chitimira, a non-Australian academic, acknowledges that market manipulation had occurred in the domestic context a very considerable period prior to the typical starting point of the late 1960s or early 1970s.

According to an article written by the author of this thesis in 2016, 'Psst Want to Hear a Rumour: Rumourtrage May Have Been Occurring in Australia for Longer than We Thought', a number of articles that appeared in various newspapers published across the Australian colonies from the latter half of the 1800s suggest that the manipulation of share prices by spreading false rumours has 'been perpetrated in Australia for much longer than may have been thought'.[211] According to the article, 'Rumourtrage',[212] a particular form of stock market manipulation that involves the spreading of false rumours or misleading information about

---

[208] Chitimira, 'Market Manipulation in Australia' (n 9).
[209] Ibid 113.
[210] But see the discussion in ibid n 10.
[211] Constable, 'Want to Hear a Rumour' (n 11).
[212] This meaning of this term was noted by ASIC in Australian Securities and investments Commission, *Consultation Paper 118: Responsible handling of rumours*, September 2009, 7. This type of activity is currently proscribed in Australia under s.1041E of the *Corporations Act* 2001 (Cth). As noted by ASIC in CP118, '[i]n some circumstances the communication of rumours could breach the prohibitions on communicating inside information (s1043A) and trading following communication of rumours could breach the prohibitions on insider trading (s1043A), possibly the prohibition against market manipulation (s1041A) and also the general prohibition against misleading or deceptive conduct in trade or commerce (s12DA of the Australian Securities and Investments Commission Act 2001)': at 10. See also Black and Hanrahan, *Securities and Financial Services Law* (n 53) 695-696; Ashley Black, 'Rumourtrage and the Responsible Handling of Rumours' in Juliette Overland (ed), *The Many Aspects of Market Integrity* (Australian Scholarly Publishing, 2010).

companies in order to take advantage of the consequent impact on their share prices,[213] appears to have been occurring for around 100 years prior to this activity being explicitly outlawed in some states in Australia in 1970.[214] The substantive content of the article that deals with stock market manipulation in Australia in the 1800s is relatively brief and contains only a limited number of examples. The author has, however, highlighted that the historical roots of stock market manipulation appear to stretch back almost a century prior to the typical starting point for most of the legal literature on this particular form of market misconduct.

Whilst the currently available legal literature is an invaluable resource in piecing together the history of stock market manipulation from the 1970s to date, it does little to further one's understanding of the historical roots of this insidious activity prior to the 1970s and what action, if any, was taken by governments (colonial, state, federal) and stock exchanges to combat its occurrence. As such, non-legal literature was also reviewed to identify any information that could assist in tracing the history of the manipulation of share prices on domestic share markets in the period leading up to the 1970s.

2.5.4 Non-legal literature

Given that the history of domestic stock market manipulation is inextricably entwined with the history of gold mining and the stock exchanges, literature relating to both of these subjects is invaluable in trying to understand the historical context in this area.[215] Yet, whilst the non-legal literature, particularly the literature of a historical nature, is helpful in tracing the historical roots of stock market manipulation in Australia, it is fragmented, with many sources often only yielding useful information tangentially.[216]

---

[213] Rumourtrage is discussed in more detail in Chapter 3.
[214] See, for example, s.73 of the *Securities Industry Act* 1970 (NSW) (False or misleading statements about marketable securities).
[215] Literature from the financial markets and economics disciplines is helpful in providing information on the operations of the stock exchange. For example, RR Hirst and RH Wallace (eds), *Studies in the Australian Capital Market* (FW Cheshire, 1964); RR Hirst and RH Wallace (eds), *The Australian Capital Market* (Cheshire, 1974); MK Lewis and RH Wallace (eds), *Australia's Financial Institutions and Markets* (Longman Cheshire, 1987) (see, in particular, P. J. Drake, 'Stock and Share Markets' in ch 6). To the extent that there is any information in this type of literature concerning the history of Australia's stock exchanges, it is brief. In discussing the role of the stock exchange in *The Handbook of Corporate Finance*, for example, Marshman and Davies provide a history of the stock exchanges in Australia from 1828 to 1986 in five short paragraphs: Peter Marshman and Peter Davies, 'The Role of the Stock Exchange and the Financial Characteristics of Australian Companies' in Bruce et al (eds), *Handbook of Australian Corporate Finance* (n 92) 52.
[216] Examples include: Withers, *History of Ballarat* (n 142); Frank Cusack, *Bendigo: A History* (Lerk & McClure, 2002) ('*Bendigo: A History*').

Whilst focused on the history of mining in Australia, Blainey, in his book *The Rush That Never Ended: A History of Australian Mining*, provides information on certain manipulative activities that were occurring at the time of the various domestic mining booms, including those in the 1880s and 1890s.[217]

> The chance of a quick profit on the stock exchange spurred them on, and promoters continued to float their companies, paying trusted newspapers to puff shares and hush news.[218]

Moreover, according to Blainey, the shenanigans employed by those intent on benefitting themselves at the expense of investors through distorting share prices included the following:

> mining speculators were fascinated by share prices rather than mines. Their ignorance of mining was preyed on by directors. Men fired gold from a shotgun into a barren reef to inflate shares. Directors erected crushing machinery on poor reefs to persuade investors that the reef was rich. Managers for months hoarded rich stone in dark corners and then extracted all the gold in one week and sent shares soaring. Directors of rich mines sometimes spread gloomy reports, made bear raids on the shares, and then bought them cheaply from the shareholders they had deceived.[219]

According to Cusack, similar rumour-mongering occurred in the early 1870s at the Beehive or Sandhurst Mining Exchange in Pall Mall, Bendigo, which was the 'hub of Sandhurst's share-trading'.

> Its brokers had not the highest reputation for integrity, tammany rings flourished, jobbing the share market was rife and brokers' stooges plied a busy and profitable trade initiating tips and disseminating rumours at the Shamrock bar.[220]

Other literature detailing the history of share trading does contain information that suggests share prices were manipulated in Australia long before the 1970s. In his analysis of the first major share market boom in Gympie, Queensland, in 1881, Lougheed alludes to the possibility that the 'importance of new discoveries was grossly magnified, undoubtedly to enhance the

---

[217] Blainey, *The Rush That Never Ended* (n 24)
[218] Ibid 188.
[219] Ibid 99.
[220] Cusack, *Bendigo: A History* (n 216) 162.

value of the shares of the relevant companies'.[221] Blackley, writing in 1889, is more explicit in his observations and criticisms of stockbrokers of the time, who he refers to as 'unprincipled' and who he believed were:

> nothing more or less than associates in, and promoters of, the greatest swindles in the form of companies, going hand in hand with directors and rings to issue fictitious reports for the purpose of 'bearing and bulling' the markets to suit their own interests. By such practices an important industry is prejudiced, the public victimised, and, as a necessary consequence, brokers, instead of holding an honorable position, are viewed with suspicion.[222]

Blackley also criticised the stockbrokers for their 'injudicious practices' and 'secrecy of transactions' that he believes afforded 'opportunities for abuses and fraud', and which he argues could be remedied by the creation of an 'Exchange'.[223]

Whilst the history of some of Australia's key stock exchanges has been comprehensively documented, the literature does not dwell to any great extent on the subject of stock market manipulation or even how the exchanges responded to its occurrence, for example, by way of disciplinary action, if any.[224] There are, however, limited references to people trying to 'corner' the shares of certain stocks on domestic stock exchanges.[225] According to Salsbury and Sweeney, for example:

> This 'manoeuvre was practised routinely on the exchanges of both Melbourne and Sydney during the 'silver flutter' of 1887-88.[226]

---

[221] Lougheed, AL, 'The First Major Share Market Boom in Queensland – Gympie, 1881', Working Paper Number Forty-Six, July 1984, 22.
[222] Frank Blackley, *Notes of Interest: 'On Change'* (Frank Blackley, 1889) 4-5.
[223] Ibid 5.
[224] See, for example, Hall, *Stock Exchange of Melbourne* (n 140); Lougheed, *Brisbane Stock Exchange* (n 143); Graeme Adamson, *Miners and Millionaires: The First Hundred Years of the People, Markets and Companies of the Stock Exchange in Perth, 1889-1989* (Australian Stock Exchange (Perth) Limited, 1989) ('*Miners and Millionaires*'), RM Gibbs, *Bulls, Bears and Wildcats: A Centenary History of the Stock Exchange of Adelaide* (Peacock Publications, 1998) and Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 167). Other literature in this area includes Gordon R Bruns, *The Stock Exchange* (Gordon R Bruns, 4th ed 1962) ('*The Stock Exchange*'), William Judd, *The Stock Exchange: Its Organization and Functions* (Sydney Stock Exchange, 2nd ed, 1955), PJ Rose, *Australian Securities Markets* (FW Cheshire, 1969), Keith Sharp, *The House of Mammon: The Stock Exchange at Work* (Hicks Smith & Sons, 1971), FO Steel, *Short Sketch of the Early History of the Sydney Stock Exchange: And Some Particulars About the Working Systems of the London and New York Stock Exchanges* (Publisher unknown, 1939).
[225] Hall, *Stock Exchange of Melbourne* (n 140) 190-191; Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 167), 150-151. See also, for example, the reference to 'corners' in Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (Report, Volume 1, 1974) 15.11.
[226] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 167) 150.

Hall, in *The Stock Exchange of Melbourne and the Victorian Economy 1852-1900,* provides an example of an attempt to corner the shares in the Round Hill mining company by a member of the SEM in 1889.[227] However, there is, for example, no reference to the relevant exchange rules that may have been contravened by this activity or relied upon to deal with the matter, if any, or whether this was the first occasion that such conduct had been identified and what action the exchange took in response.[228] According to Hall, whilst this attempted 'corner' was 'the most dramatic expression of speculative activity in the boom period it was by no means the only one.'[229] Although Rydge's 1939 book, *The Australian Stock Exchange*, focuses on the functions of domestic stock exchanges, it also provides information on 'corners', which he characterises as a 'type of manipulation', including the object of 'corners' and why a 'squeeze' is applied to the 'bears'.[230]

There are other passing references in some of the literature on the history of Australia's stock exchanges to 'scams and sharp practices aplenty'[231] and, more specifically to manipulative practices. Adamson, for example, includes comments from the press in 1889 in relation to a particular gold float, which was believed to have involved a 'pool to exercise an arbitrary and unauthorised control over the price of the stock'.[232] Moreover, it was said that:

> [n]othing could be more objectionable than the creation of rings or pools to inflate or drag down, or in more technical language to bull or bear, stock independent of the ordinary fluctuations of demand and supply.[233]

Sources containing the first-hand recollections of people who lived through the early mining booms in Australia also assist in understanding the general historical context by describing how

---

[227] Hall, *Stock Exchange of Melbourne* (n 140) 190-191. This matter is discussed in section 5.6.1.
[228] According to Hall, this 'attempt to corner a well-known mining security' was 'by no means the only one': Ibid 191.
[229] Ibid.
[230] Norman Bede Rydge, *The Australian Stock Exchange* (Rydge's Business Journal, 1939) 115, 124. Similarly, Bruns' 1962 book, *The Stock Exchange*, provides a comprehensive account of the operations of several of Australia's stock exchanges, but also provides relevant and useful information on Stock Exchange of Melbourne Rule 59, which addressed concerns around the creation of false markets, as well as one of the earliest rules of the New York Stock Exchange that prohibited fictitious transactions and the penalty for non-compliance: Bruns, *The Stock Exchange* (n 224) 17.
[231] Adamson, *Miners and Millionaires* (n 224) 54.
[232] *The West Australian* newspaper article is quoted in ibid 7.
[233] Ibid.

share trading was conducted in the very early days of Australia's history.[234] Meudell, for example, reveals his involvement in four 'corners' in the late 1800s.[235]

> Amongst the New South Wales gold companies were two in which we had "corners" – Bear Hill, Hillgrove and Earl of Hopetoun. A "corner" is a most amusing and highly exciting event in a Stock Exchange. I took part in four of them, the other two being Round Hill Silver Company at Broken Hill and Duke of York Company at Meredith . . .[236]

This type of literature not only tends to corroborate other information that suggests stock market manipulation was occurring in Australia in the late 1800s, but it also provides insight into how it was perpetrated and the attitudes of those engaged in this type of activity. Indeed, according to Meudell:

> A "corner" is not played like golf, or Mah Jong, or croquet, or rounders, it is not nearly as simple and stupid as these games, but vastly funnier.[237]

There is also a small amount of more recent literature that purports to document the history of the local stock exchanges and the experiences of stockbrokers during the nineteenth century gold rushes.[238] However, whilst these works are most welcome additions to the ever growing literature on the history of the stock markets in Australia, which enhance our understanding of the development of the domestic markets over the last 100 years or so, they do little to elaborate materially on the historical roots of stock market manipulation or efforts to combat its occurrence from a domestic perspective.[239]

---

[234] As was the case with much of the other literature reviewed, this type of data may not yield much in the way of direct evidence of share price manipulation and how identified instances were dealt with, but it is, nonetheless, useful both in terms of historical context and potentially corroborating data from other sources with respect to the activities undertaken by those engaged in the buying and selling of shares in Australia in the latter part of the 19th century. See, for example, Tilley Wilberton, *The Wild West of Tasmania: Being a Description of the silver fields of Zeehan and Dundas (1891)* (Evershed, 1891) 36; Withers, *The History of Ballarat* (n 142); Cusack, *Bendigo: A History* (n 216); John McIlwraith, *A Century of Scripping: The first 100 years of Eyres Reed Limited Stock Broker* (Eyres Reed, 1996); WA Bate, *The Lucky City, The First Generations at Ballarat* (Melbourne University Press, 1978).

[235] George Meudell, *The Pleasant Career of a Spendthrift* (George Routledge & Sons, 1929) 87.

[236] Ibid 87.

[237] Ibid.

[238] See, for example, Julie Kincade, *To the Miner Born: A Stockbroker's Life in the Ballarat Gold Rush* (JI Kincade, 2015) and John Tilston, *Bull Market: The Rise and Eclipse of Australian Stock Exchanges* (The Yellow Sail Company, 2016).

[239] In addition, whilst Kincade's and Tilston's books contain a list of sources/references they have relied upon in completing their respective publications, and whilst much of the information appears to be consistent with that contained in other literature reviewed, there is no referencing (for example, footnotes or endnotes) throughout to confirm the sources.

2.6 Conclusion

As is apparent from the above discussion, whilst there is a large number of high-quality journal articles and books that document the development of local securities market regulation from the 1970s (with some earlier non-legal literature also being available), there appears to be no single source that comprehensively documents the history of stock market manipulation in Australia, from its origins to its many and varied contemporary manifestations. In addition, the publication of literature on this particular form of market misconduct appears to have only really started to gain traction in the 1970s, following the criminalisation of, relevantly, market manipulation under the *Securities Industry Act* 1970 in four Australian States and the publication of the Rae Report, as well as the consequent reforms that were implemented domestically in its wake.

Yet, there is a distinct paucity of literature on stock market manipulation and the action taken, if any, by governments and stock exchanges to combat its occurrence prior to the late 1960s. This is surprising given that there is information available to suggest that the historical roots of manipulative activities on domestic share markets stretch back as far as the latter half of the 1800s and, in some cases, almost a century before it became the focus of state and federal government attention. Moreover, even though stock market manipulation has been, and continues to be, intrinsically linked with the markets for share trading operated by the stock exchanges in Australia, there appears to be comparatively little written on their role in combating this insidious activity. As noted in Chapter 1, this thesis seeks to address these apparent gaps in the literature, thereby contributing to the advancement of knowledge on the history of securities market regulation in Australia.

CHAPTER 3: A Primer on Stock Market Manipulation in Australia

> Testimony given by witnesses with a close knowledge and experience of the share market, together with our own investigations has convinced the Committee that the deliberate manipulation of the market for listed shares on the organised exchanges has at times been widely practised in Australia. Although this manipulation has been known to prominent market traders, the practices have seldom been exposed publicly. They have not been effectively regulated.[1]

> Market manipulation is an enduring priority for ASIC. Market manipulation undermines the integrity of, and diminishes consumer confidence in, Australia's financial markets.[2]

3.1 Introduction

The literature makes it clear that the manipulation of share prices has plagued securities markets around the world for many hundreds of years and has taken a variety of different forms.[3] Yet, despite tougher regulation, higher penalties and longer jail time, share markets in Australia and elsewhere continue to be the target of those intent on interfering with the open market forces of genuine supply and demand to unjustly and illicitly benefit themselves at the expense of others who participate in local share markets. Those adversely impacted by the manipulation of share prices include ordinary members of the community who hold shares directly and indirectly through, for example, superannuation funds and other investment funds.[4]

Indeed, there would seem to be no 'magic bullet' for eliminating this insidious activity from Australia's share markets or share markets elsewhere.[5] Notwithstanding the very significant improvements since the 1970s (when stock market manipulation was first criminalised) in detecting, investigating and prosecuting those who distort share prices and corrupt domestic

---

[1] Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (Report, Volume 1, 1974) 8.1 ('*Australian Securities Markets and their Regulation*').
[2] Australian Securities and Investments Commission, 'ASIC bans former dealer and portfolio manager Dylan Rands for market manipulation' (Media Release 21-253, 22 September 2021).
[3] Paul Constable, 'Ferocious Beast or Toothless Tiger? The Regulation of Stock Market Manipulation in Australia' (2011) 8 *Macquarie Journal of Business Law* 54, 109 ('Ferocious Beast or Toothless Tiger?').
[4] A 2017 investor study conducted by ASX found that 31% of Australian adults hold shares: Deloitte Access Economics, ASX Australian Investor Study 2017 <https://www.asx.com.au/documents/resources/2017-asx-investor-study.pdf>.
[5] Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 109.

share markets, it would be difficult to argue with Loss' assertion over 25 years ago that 'manipulation seems no more capable of total eradication than its first cousin, "fraud"'.[6]

This chapter will provide an overview of stock market manipulation in the more recent Australian context to equip the reader with an awareness of the fundamentals of this particular species of market misconduct and address some of the principal questions that arise with respect to the body of knowledge in this area. Consideration will be given to what is meant by the term stock market manipulation, whether it is occurring on local share markets, why it is prohibited and subject to sanction under the criminal law in many advanced economies around the world, including Australia, and why it should have 'utterly no place in any fair minded law-abiding economy'.[7] The rest of this chapter will investigate why and how people manipulate share prices.

3.2 What is stock market manipulation?

Prior to 1970, and for 'many years', transactions executed on domestic stock exchanges were 'chiefly regulated' by the exchanges themselves.[8] As noted by the Federal Court in *Australian Securities and Investments Commission, in the matter of Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd*,[9] with respect to NSW specifically, the:

> lack of specific market manipulation provisions was addressed by the introduction of Part VIII of the *Securities Industry Act* 1970 (NSW), which dealt with trading in securities.[10]

Just over half a century later, the manipulation or rigging of the price of shares listed on stock exchanges in Australia is prohibited by the provisions set out in Division 2 of Part 7.10 of the *Corporations Act 2001* (Cth) ('the Act'), which is titled 'Market Misconduct and Other

---

[6] Louis Loss and Joel Seligman, *Fundamentals of Securities Regulation* (Little, Brown and Company, 3rd ed, 1995) 945. See also Goldwasser, 'The Regulation of Stock Market Manipulation - A Blue Print for Reform' (1998) 9(2) *Australian Journal of Corporate Law* 109, 158; Goldwasser, Vivien R, *Stock Market Manipulation and Short Selling* (CCH Australia and Centre for Corporate Law and Securities Regulation, 1999) 38 ('*Stock Market Manipulation*').

[7] Arthur Levitt, 'A question of investor integrity: Promoting investor confidence by fighting insider trading' (Speech delivered at the 'SEC Speaks Conference, Washington DC, 27 February 1998) https://www.sec.gov/news/speech/speecharchive/1998/spch202.txt; Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 54.

[8] *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30 [45] (French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ) ('*DPP v JM*').

[9] [2017] FCAFC 100.

[10] *Australian Securities and Investments Commission, in the matter of Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd* [2017] FCAFC 100, [40] (Allsop CJ, Middleton and Bromwich JJ).

Prohibited Conduct Relating to Financial Products and Financial Services'.[11] As that term suggests, Part 7.10 is concerned with delinquent activities that have the capacity to undermine the integrity and wellbeing of Australia's financial markets.[12] Indeed, conduct that is prohibited under Part 7.10 is broadly split into two areas: (i) insider trading under Division 3 ('The insider trading prohibitions');[13] and (ii) everything else under Division 2 ('The prohibited conduct (other than insider trading prohibitions)'), which includes market manipulation,[14] market rigging[15] and false or misleading statements[16]

The provisions in Division 2 of Part 7.10 can be grouped together in several ways.[17] For example, Longo talks about the 'market manipulation and related provisions' being comprised of 'a general market manipulation provision' in s.1041A, and the false trading and market rigging provisions in ss.1041B (creating a false or misleading appearance of active trading, etc) and 1041C (artificially maintaining, etc, trading price).[18] According to O'Connell, ss.1041A to 1041D are 'concerned with 'transactions' on a financial market', whereas ss.1041E to 1041H are 'concerned with statements or other conduct not necessarily on the market'.[19] Baxt, Black and Hanrahan refer to ss.1041E (false or misleading statements), 1041F (inducing persons to

---

[11] As noted in Chapter 1, the term 'market misconduct' appears to be Australia's equivalent to the term 'market abuse', which is used in the United Kingdom and Europe, for example, to refer to market manipulation and insider trading.

[12] Division 2 of Part 7.10 is comprised of market manipulation (s.1041A), false trading and market rigging – creating a false or misleading appearance of active trading (s.1041B), false trading and market rigging – artificially maintaining a trading price (s.1041C), dissemination about illegal transactions (s.1041D), false or misleading statements (s.1041E), inducing persons to deal (s.1041F), dishonest conduct (s.1041G) and misleading or deceptive conduct (s.1041H).

[13] According to Allsop P in *Joffe v R; Stromer v R*, '[i]nsider trading has a division of its own. That can be understood as reflecting its importance and the need for coherent, comprehensive definition': *Joffe v R; Stromer v R* (2012) 82 NSWLR 510, 521 [52] (Allsop P).

[14] Section 1041A.

[15] Section 1041B and s.1041C.

[16] Section 1041E.

[17] Part 7.10 is comprised of ss.1041A to 1041H, which set out the relevant prohibited conduct, as well as ss.1041I (civil action for loss or damage for contravention of ss.1041E to 1041H), 1041J (sections of Division 7.2 have effect independently of each other) and 1041K (Division 7.2 applies to certain conduct to the exclusion of State Fair Trading Acts provisions).

[18] Joe Longo, 'Market Misconduct Provisions of the Financial Services Reform Act: Challenges for Market Regulation' (Paper presented at Centre for Corporate Law and Securities Regulation seminar on Market Misconduct and the Financial Services Reform Bill, Melbourne, 25 July 2001 and Sydney, 14 August 2001), 24 <https://law.unimelb.edu.au/__data/assets/pdf_file/0007/1710088/116-mkt-misconduct1.pdf>.

[19] Professor Ann O'Connell, 'Protecting the Integrity of Securities Markets — What is an 'Artificial Price'?: DPP (Cth) v JM', Opinions on High, 1 August 2013 <https://blogs.unimelb.edu.au/opinionsonhigh/2013/08/01/o-connell-jm/#more-1608>.

deal) and 1041G (dishonest conduct) as the 'information offences.'[20] But, what is stock market manipulation?

Stock market manipulation has been described over the years in a myriad of ways, including market misconduct,[21] market abuse, an 'unfair trading practice',[22] a financial crime,[23] a 'serious crime',[24] a 'sophisticated form of financial crime',[25] fraud,[26] 'the most guilty form of illegitimate speculation',[27] 'insidious',[28] cheating,[29] 'artificial trading',[30] one of the 'most abhorrent offences in global capital markets',[31] and 'dishonesty'.[32] Yet, despite the ever growing body of law concerning stock market manipulation in Australia and internationally, there appears to be no single, authoritative and widely accepted definition of what it means in the domestic context or the broader global context.[33] A recent article in the *Yale Journal on Regulation*, for example, asserts that 'manipulation may be the most controversial concept in [US] securities law' given that 'surprisingly little progress has been made' on defining the term 'manipulative' in s.10(b) of the US *Securities Exchange Act* of 1934 'more than eighty years after federal law first addressed stock market manipulation'.[34]

---

[20] They are referred to as such 'for convenience': Robert Baxt, Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis Butterworths, 9th ed, 2017), 327. This reference is not used in the subsequent edition of this text: Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis, 10th ed, 2021) ('*Securities and Financial Services Law*').
[21] Note the discussion in Chapter 2 concerning the use of the terms market misconduct and market abuse in Australia and the UK/Europe, respectively.
[22] International Organization of Securities Commissions, *Objectives and Principles of Securities Regulation* (May 2017), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD82.pdf> 12.
[23] International Monetary Fund, *Financial System Abuse, Financial Crime and Money Laundering—Background Paper*, Washington DC, 2001, <https://www.imf.org/external/np/ml/2001/eng/021201.pdf>, 4.
[24] Ibid 734.
[25] Australian Criminal Intelligence Commission, *Financial Crime* (Web Page) <https://www.acic.gov.au/about-crime/crime-types/financial-crimes>.
[26] Lord Ellenborough CJ in *R v De Berenger* (1814) 3 M & S 67; 105 ER 536, 538.
[27] Robert J Hutcheon, 'Speculation, Legitimate and Illegitimate' (1992) 32(3) *International Journal of Ethics* 289, 299.
[28] Norman Poser, 'Stock-Market Manipulation and Corporate Control Transactions' (1986) 40(3) *University of Miami Law Review* 671, 735.
[29] *Scott v Brown, Doering, McNab & Co* [1892] 2 QB 724, 728-729 (Lindley LJ); 'The Recent Share "Rigging" Case. A Disputed Transaction', *The Age* (Melbourne, 29 October 1886) 5.
[30] *Morgan Stanley Wealth Management Australia Pty Ltd v Detata [No 3]* [2018] WASC 32, [99] (Banks-Smith J) (*'Morgan Stanley v Detata*').
[31] Dean Holley, 'Market Manipulation – The Focus on Prevention' (1993) 19(4) *Commonwealth Law Bulletin* 1927, 1927 ('Market Manipulation – Focus on Prevention').
[32] *Controlled Consultants Pty Ltd v Commissioner for Corporate Affairs* [1984] VR 137, 153 (Marks J).
[33] According to Fischel and Ross, commenting around 30 years ago, 'no satisfactory definition of the term exists': Daniel R Fischel and David J Ross, 'Should the Law Prohibit 'Manipulation' in Financial Markets?' (1991) 105 *Harvard Law Review* 503, 506, 507, 553 ('Should the Law Prohibit Manipulation?').
[34] The authors assert that the federal courts in the US 'remain fractured by disagreement and confusion about manipulation law's most foundational questions': Merritt B Fox, Lawrence R Glosten and Gabriel V

Instead, in Australia, we have several sections of the law that proscribe certain activities deemed by the legislature to constitute manipulation and the judicial interpretation that has accompanied the various iterations of the legislation since this particular species of market misconduct was first explicitly criminalised in certain States in Australia in the early 1970s. Even what is, arguably, the leading academic text on securities and financial service law in Australia does not point to such a definition and instead refers to a number of 'characteristics' and 'elements' of a definition of market manipulation that largely derive from overseas academics.[35] This may not be altogether unexpected, however, given it has been claimed that '[t]he methods and techniques of manipulation are limited only by the ingenuity of man',[36] which would tend to suggest that attempts to define it exhaustively may be both elusive and futile.

Nonetheless, in the absence of a single, authoritative and widely accepted definition, we can understand the nature of stock market manipulation in the domestic context by reference to certain key attributes, which have been described by Black and Hanrahan as the 'essential characteristics of market manipulation'.[37] According to these authors, the first attribute is an interference with 'supply and demand in the market for securities.'[38] The importance of this attribute was recognised by Mason J around forty years ago in *North v Marra Developments Ltd*,[39] where His Honour made the following comments when discussing the object of s.70 of the *Securities Industry Act* 1970 (NSW),[40] which, at the relevant time, prohibited 'False trading and markets':

> It seems to me that the object of the section is to protect the market for securities against activities which will result in artificial or managed manipulation. The section seeks to

---

Rauterberg, 'Stock Market Manipulation and its Regulation' (2018) 35 *Yale Journal on Regulation* 67, 67, 69-70.

[35] Black and Hanrahan, *Securities and Financial Services Law* (n 20) 666. Similarly, Redmond does not appear to attempt to define share price manipulation: Paul Redmond, *Corporations and Financial Markets Law* (Lawbook Co, 7th ed, 2017) 883-897 ('*Corporations and Financial Markets Law*').

[36] *Cargill, Incorporated v Hardin* 452 F.2d 1154 (8th Cir. 1971) 1163 ('*Cargill Inc v Hardin*').

[37] Black and Hanrahan, *Securities and Financial Services Law* (n 20) 666.

[38] Ibid.

[39] *North v Marra Developments Limited* (1981) 148 CLR 42 ('*North v Marra*').

[40] Whilst Mason J's comments are extensively quoted and referenced in the case law and literature dealing with market manipulation, it is noteworthy that this case was not a criminal prosecution for market manipulation. Rather, common law illegality and a breach of s.70 of the *Securities Industry Act* 1970 (NSW) were successfully pleaded by Marra Developments Ltd 'as a shield in defence of a claim for payment of a stockbroker's fees in circumstances in which the share purchases in question had taken place for the purpose of securing the success of a takeover by maintaining the market price of [Marra's] shares': *Australian Securities and Investments Commission v Whitebox Trading Pty Ltd* [2017] FCAFC 100, [41] (Allsop CJ, Middleton and Bromwich JJ).

> ensure that the market reflects the forces of genuine supply and demand. By "genuine supply and demand" I exclude buyers and sellers whose transactions are undertaken for the sole or primary purpose of setting or maintaining the market price. It is in the interests of the community that the market for securities should be real and genuine, free from manipulation. The section is a legislative measure designed to ensure such a market and it should be interpreted accordingly.[41]

The second attribute referred to by Baxt, Black and Hanrahan[42] has been described previously by Thel, for example, a US academic who, in a 1990 *Stanford Law Review* article, stated that if 'securities manipulation means anything in particular', it means conduct that is 'intended to induce people to trade a security or force its price to an artificial level'.[43] Essentially, the intention of the manipulator is to: (i) induce people to buy or sell shares when they otherwise may not have, but for the inducement provided by the manipulator (directly or indirectly); or (ii) push the price of shares to a level, or maintain it at a level, that is not the product of the interplay of the forces of genuine supply and demand in the market for that security, but, instead, is the result of the manipulator's conduct or activities. Those engaging in this illicit activity will typically look for ways to manipulate the price of a security to benefit themselves unfairly and illicitly from the consequent price change.[44]

Whilst not an authoritative definition, prosecuting counsel's attempt to explain market manipulation to the jury in *R v Tuckwell*[45] almost thirty years ago is a reasonable starting point:

---

[41] *North v Marra* (n 39) 59 (Mason J).

[42] Black and Hanrahan, *Securities and Financial Services Law* (n 20) 666. Black and Hanrahan also refer to 'additional elements of a definition of market manipulation' identified by another academic, Emilios Avgouleas: ibid 666. The specific reference made by Black and Hanrahan to Avgouleas' work is essentially the formulation of a new definition of market manipulation posited by Avgouleas (covered in detail in chapter 4 of Avgouleas' text), which he states is based on 'an extensive review of the letter and the spirit of past and present definitions of market manipulation found in relevant legal and regulatory prohibitions and in relevant academic works . . .': Emilios Avgouleas, *The Mechanics and Regulation of Market Abuse: A legal and economic analysis* (Oxford University Press, 2005) 12-13 ('*Regulation of Market Abuse*').

[43] Steve Thel, 'The Original Conception of Section 10(b) of the Securities Exchange Act' (1990) 42 *Stanford Law Review* 385, 393. Thel refers to US literature going back to the 1920s in support of this comment: ibid, n 36. Black and Hanrahan refer to 'the inducement of persons to trade in a particular security or the attempt to force a security's price to an artificial level': Black and Hanrahan, *Securities and Financial Services Law* (n 20) 666.

[44] Russell G Smith and Peter N Grabosky, 'Online Securities Fraud' (2001) 9(1) *Journal of Financial Crime* 54, 55; Holley, 'Market Manipulation – Focus on Prevention' (n 31) 1927.

[45] Transcript of Proceedings, *R v Tuckwell* (Central District Criminal Court, Adelaide, 2045/91, Judge Russell, 18 March 1992) ('*R v Tuckwell* Transcript of Proceedings').

> Illegal market manipulations can take many forms but, the simple definition, simple working definition is; an intentional interference with the free forces of supply and demand.[46]

Over twenty years later, and somewhat more authoritatively, the High Court of Australia in *Director of Public Prosecutions (Cth) v JM*[47] observed that:

> market manipulation is centrally concerned with conduct, intentionally engaged in, which has resulted in a price which does not reflect the forces of supply and demand.[48]

But why do we need to be concerned about stock market manipulation occurring in Australia and why is it criminalised under the law?

3.3 Is stock market manipulation occurring in Australia?

The short answer is most definitely in the affirmative. Notwithstanding the 'complexity and subtlety of manipulative strategies', the 'secrecy in which they are conducted'[49] and assertions that manipulative trades are 'difficult, perhaps impossible to identify',[50] what we know with a high degree of certainty is that it still occurs on local and international share markets.[51] This is substantiated by numerous data sources, including, amongst others, ASIC publications,[52] decided cases,[53] academic literature[54] and newspapers.[55]

---

[46] Mr D Chapman for the Commonwealth Director of Public Prosecutions: ibid 90.

[47] *DPP v JM* (n 8).

[48] According to the Court, this is the 'fundamental point that should be taken from the decision' in *Cargill Inc v Hardin* 452 F 2d 1154 (1971) (a market manipulation case relating to the futures, not share, market): *DPP v JM* (n 8) [70].

[49] Vivien R Goldwasser, 'The Enforcement Dilemma in Australian Securities Regulation' (1999) 27 *Australian Business Law Review* 482, 484.

[50] Fischel and Ross, 'Should the Law Prohibit Manipulation?' (n 33) 519.

[51] Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 82.

[52] These include Media Releases, Enforcement Updates and Market Integrity Updates, which provide information with respect to enforcement action taken by ASIC.

[53] There was for many years in Australia a dearth of successful criminal prosecutions and other enforcement action taken with respect to share price manipulation in the domestic context, as well as decided cases, where this type of activity was considered by the courts. Yet, as noted in Chapter 2, for some time now there has been a growing body of case law and administrative law decisions, as well as enforcement action, in Australia concerning manipulative activities on local share markets.

[54] There is now a considerable body of domestic literature that describes the types, causes and consequences of share price manipulation in the Australian context.

[55] A recent example is an article in the 9 February 2021 edition of *The Australian*, which reported on the sentencing of a Perth, WA, corporate finance director, who had been convicted for conspiring to manipulate the share price of Radar Iron Limited in 2016: Neale Prior, 'Ananda Kathiravelu spared jail over explorer's ramp up ahead of capital raising', *The West Australian* (online, 9 February 2021) <https://thewest.com.au/business/asic/ananda-kathiravelu-spared-jail-over-explorers-ramp-up-ahead-of-capital-raising-ng-b881791085z>.

For those who remain unconvinced that stock market manipulation continues to occur on domestic share markets, a report published in July 2017 by the Commonwealth Government's anti-money laundering and counter-terrorism financing agency, the Australian Transaction Reports and Analysis Centre ('AUSTRAC'), makes for sober reading. AUSTRAC found that 21% of Suspicious Matter Reports submitted to AUSTRAC in the period 1 April 2014 to 31 March 2016 related to suspected cases of market manipulation and insider trading.[56] These reports contained information concerning individuals and entities who were believed to have employed a 'range of tactics to manipulate share prices'.[57] AUSTRAC's report also notes that it had received intelligence from a 'partner agency' indicating that 'online trading platforms are increasingly being used by overseas-based entities to manipulate the market.'[58]

More recently, and equally as worrying, is a Media Release issued by ASIC on 23 September 2021, in which it noted 'a concerning trend of social media posts being used to co-ordinate 'pump and dump' activity in listed shares'.[59] It would appear that stock market manipulation is alive and well on the nation's share markets and, as this thesis will highlight, it has plagued them for a very long time.

3.4 Why do we need to be concerned about stock market manipulation in Australia?

3.4.1 Introduction

The stock exchanges in Australia perform two key roles in the domestic economy: (i) their 'fundamental role in capital formation'; and (ii) 'the allocation of savings to their most productive uses'.[60] As such, 'stock market activity is an important driver of overall economic activity.'[61] The local equity market is said to be one of 'Australia's largest and most high-profile financial markets',[62] with the total capitalisation of companies listed on Australian

---

[56] Australian Transaction Reports Analysis Centre, *Australia's Securities and Derivatives Sector: Money Laundering and Terrorism Financing Risk Assessment*, July 2017, 4 <http://www.austrac.gov.au/sites/default/files/securities-and-derivitives-ra-FINAL-2.pdf>.

[57] Ibid.

[58] Ibid.

[59] Australian Securities and Investments Commission, 'ASIC warns of social media led 'pump and dump' campaigns' (Media Release 21-256, 23 September 2021).

[60] Senate Economics Reference Committee, Parliament of Australia, *Inquiry into the Framework for the Market Supervision of Australia's Stock Exchanges* (2002) 1 ('*Market Supervision of Australia's Stock Exchanges*').

[61] Ibid.

[62] Thomas Matthews, 'A History of Australian Equities', Reserve Bank of Australia Research Discussion Paper RDP 2019-04, June 2019, 1 <https://www.rba.gov.au/publications/rdp/2019/pdf/rdp2019-04.pdf> ('History of Australian Equities').

exchanges amounting to almost '$2 trillion' and 'around $5 billion in shares [being] traded every day'.[63] Moreover:

> [m]ost large well-known companies in Australia, such as the major banks and resources companies, are listed; these account for a large part of Australian output and employ a significant number of people. And households are quite exposed to movements in share prices; if not directly, then through their superannuation, which is typically heavily invested in Australian equities.[64]

According to the *ASX Australian Investor Study 2020*, 'Australia continues to be a nation of investors'.[65] This claim is substantiated by the contents of ASX's study, which found that:

(a) 46% (or 9 million) of the total adult population of Australia (19.4 million) hold investments outside of their primary residence and superannuation;

(b) of those who invest (35% of 19.4 million people), 74% (or 6.6 million people) hold listed investments (ie listed on the securities exchange); and

(c) of those who invest, 'more than half invest in direct shares'.[66]

In addition, 74% of 'High Value Investors', defined by the ASX as people 'in the top 20% of investors by both wealth and trading value', hold 'direct Australian shares'.[67] These figures do not account for the numerous Australians, many of whom would most likely be 'retail "mum and dad" type investors'.[68] As noted above, such investors have indirect exposure to movements in the prices of shares listed on the stock exchanges through their superannuation accounts, which are 'typically heavily invested in Australian equities'.[69]

---

[63] Ibid.
[64] Ibid.
[65] ASX, ASX Australian Investor Study 2020, August 2020 < https://www2.asx.com.au/blog/australian-investor-study>.
[66] Ibid.
[67] Ibid.
[68] This term was used by Janet Austin in her article: Janet Austin, 'A rapid response to questionable trading: Moving towards better enforcement of Australia's securities laws' (2009) 27 Companies and Securities Law Journal 203, 203 ('Rapid Response to Questionable Trading'). 'Mum and dad investors' is a term that is used often in the Australian media to mean, generally speaking, retail, non-professional or less sophisticated investors. In the context of share trading, they have been referred to as 'relatively unsophisticated investors trading regularly, but investing very modest sums – the familiar "mums & dads" of Australian investment': Tim Phillipps (Australian Securities Commission, Director, Electronic Enforcement), 'Avoiding Share Scams in Cyberspace' (Address delivered at The Australian Financial Review "Online Broking – Opportunity or Threat" conference, Sydney, 20 and 21 September 1999) <https://asic.gov.au/media/1327364/conference.pdf>.
[69] Matthews, 'History of Australian Equities' (n 62).

As is apparent, the stock market is important to both the Australian population and the national economy, both having considerable 'skin in the game'. Yet, notwithstanding the key roles played by the stock exchanges and the large number of share owners in Australia, many people not working in, or otherwise associated with, the financial markets may shrug their shoulders when asked why they should be concerned about stock market manipulation. As will be discussed below, however, the adverse impact of malefactors intentionally distorting the prices of shares on domestic stock exchanges is not an abstract notion that exists only in the academic literature and legal textbooks. Rather, it is a significant issue of concern that has the capacity to adversely affect the country's economy and, therefore, its population as a whole, even those who do not invest or have any interest in the share market.

3.4.2 The problem

Market misconduct, such as stock market manipulation, has been said to make the securities markets look like a 'crooked crap game'.[70] As noted recently by ASIC Commissioner, Cathie Armour, '[m]arket manipulation erodes public confidence in the fair, orderly and transparent operation of the market.'[71] Indeed, the risk of harm posed to domestic share markets by the occurrence of stock market manipulation was recognised in the 'Replacement Explanatory Memorandum to the Corporations Amendment (No.1) Bill 2010 (Cth)', which, amongst other things, increased the size of the penalties that can be imposed for contraventions of the market manipulation and insider trading provisions in Part 7.10 of the Act.

> Insider trading and market manipulation offences cause serious harm to the fair and efficient functioning of Australia's financial markets. These markets function best when information is widely dispersed and investors have confidence in the fairness of markets. It is essential that the penalties associated with these offences reflect the serious impact that a breach can have on Australia's financial markets.[72]

Those markets that are perceived to be rife with abuse, where timely and robust enforcement action is not taken to combat its occurrence, are likely to suffer a variety of harms.[73] Investor

---

[70] Avgouleas, *Regulation of Market Abuse* (n 42) 5.
[71] Australian Securities and Investments Commission, 'Corporate finance director sentenced for conspiring to manipulate market' (Media Release 21-020, 10 February 2021).
[72] Replacement Explanatory Memorandum, Corporations Amendment (No.1) Bill 2010 (Cth) 15 [3.4].
[73] See, for example, Utpal Bhattacharya and Hazem Daouk, 'The World Price of Insider Trading' (2002) 57(1) *Journal of Finance* 75, 76-78; Janet Austin, *Insider Trading and Market Manipulation: Investigating and Prosecuting Across Borders* (Edward Elgar Publishing, 2017) 29-31 ('*Insider Trading and Market Manipulation*').

confidence and the international reputation and credibility of the local securities markets, for example, are likely to be undermined.[74] Moreover, the cost of capital will increase, prospective investors will be deterred, and the depth and liquidity of the markets, the ability of the market to mobilise savings and the efficient allocation of resources, are all likely to be adversely impacted.[75] In addition, it is claimed that stock market manipulation poses a significant risk to listed companies, the share prices of which may be the target of manipulative activities.[76]

One of the more obvious harmful effects of stock market manipulation is that those who trade in shares, directly or indirectly, potentially end up buying or selling at worse prices than they may have otherwise obtained as a result of manipulators artificially inflating or depressing share prices.[77] In explaining the harm that share price manipulation causes to individual investors, as well as the pricing function of the market, the Crown Prosecutor in *R v Tuckwell* in 1992 provided the following explanation:

> . . . in addition to threatening the integrity of the stock market, stock market manipulation really also acts as a fraud on individual investors. Because market manipulators are really deceiving individual investors by leading them to believe that an artificially created market price reflects the true unimpeded forces of supply and demand.
>
> The investor who is buying a share or selling a share on the market assumes that the prices, be it the price at which it was traded or the highest BID that is currently available, or the lowest ASK that is currently available, is simply and accurately reflecting supply and demand . . . it is essentially an auction system and if by manipulation and artificial means those real forces of real supply and real demand have been interfered with, then the investor is being fooled, is being tricked. So that manipulation really is altering the independent trading and pricing mechanisms of the market place and it turns the thing into a stage-

[74] See, for example, Technical Committee of the International Organization of Securities Commissions, ‘Investigating and Prosecuting Market Manipulation’, May 2000, 2 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD103.pdf> (‘Investigating and Prosecuting Market Manipulation’); Avgouleas, *Regulation of Market Abuse* (n 42) 5.
[75] See, for example, IOSCO, ‘Investigating and Prosecuting Market Manipulation’ (n 74) 2; Avgouleas, *Regulation of Market Abuse* (n 42) 5.
[76] According to Tomasic, Bottomley and McQueen, stock market manipulation has, from time to time, resulted in their ‘collapse’. Tomasic et al cite Trevor Sykes’ book, *Two Centuries of Panic: A History of Corporate Collapses in Australia*, as being the source for this information, although no examples are provided: Roman Tomasic, Stephen Bottomley and Rob McQueen, *Corporations Law in Australia* (Federation Press, 2nd ed, 2002) 620; Constable, ‘Ferocious Beast or Toothless Tiger?’ (n 3) 79.
[77] Gregory J Durston and Ailsa McKeon, *The Little Book of Market Manipulation: An Essential Guide to the Law* (Waterside Press, 2020) 17.

> managed performance, a theatrical production, rather than a real auction system that the investors are legitimately assuming the system to be.[78]

Similarly, as noted in a recent Final Notice issued by the UK Financial Conduct Authority (FCA) in connection with a matter involving wash trades, this misconduct 'increased the end of day trading volume reported to the market', 'created false and misleading signals regarding the true supply of and demand' for the shares and other 'market participants may have made decisions to buy or sell' the relevant shares, or other related companies, 'based on the artificially high volume of trades reported due to the wash trades'.[79]

An equally harmful, but perhaps not so obvious, effect of this particular type of market misconduct is the harm that can be caused to the integrity, efficiency, fairness and reputation of the domestic share markets by share prices being manipulated.[80] People and companies invest in domestic and international securities markets expecting that share prices reflect the operation of market forces (genuine supply and demand), not the conduct of those intent on distorting those prices to illicitly and unfairly benefit themselves at the expense of other investors.[81] As such, confidence in the integrity of share markets is critical to their ongoing success and ability to attract capital and investors, both local and offshore.[82] This is particularly important in a world that is becoming increasingly interdependent, where '[c]ompetition for capital is global and investors are sensitive to a range of factors' that will determine whether or not they will invest in Australia or somewhere else.[83]

> High on their agenda is confidence that markets are conducted with integrity and fairness and in a manner that provides confidence in the security of the transaction. Investors are

---

[78] Mr D Chapman for the Commonwealth Director of Public Prosecutions: '*R v Tuckwell* Transcript of Proceedings' (n 45) 91-92.

[79] In the period July 2018 to May 2019, the trader was found by the FCA to have intentionally executed 129 wash trades involving 520,435 shares of a commercial property investment company (accounting for 39.4% of the total market volume of the shares in question) over the course of 68 trading days: Financial Conduct Authority, 'Final Notice: Mr Adrian Geoffrey Horn', 3 March 2021, 8 <https://www.fca.org.uk/publication/final-notices/adrian-horn.pdf>.

[80] See generally Constable, 'Ferocious Beast or Toothless Tiger?' (n 3).

[81] Ashley Black, 'Regulating Market Manipulation: Sections 997-999 of the Corporations Law' (1996) 70 *Australian Law Journal* 987, 988 ('Regulating Market Manipulation').

[82] See generally Austin, *Insider Trading and Market Manipulation* (n 73) ch 2; Senate Economics Reference Committee, *Market Supervision of Australia's Stock Exchanges* (n 60) ch 1 [1.4].

[83] Senate Economics Reference Committee, *Market Supervision of Australia's Stock Exchanges* (n 60) ch 1 [1.4].

> also cost sensitive and accordingly markets also have to focus on providing their services efficiently while not compromising on integrity.[84]

Yet, that confidence can be seriously undermined by stock market manipulation and other market misconduct, which, in turn, can adversely impact the ability of the market to raise capital and mobilise savings.[85] Indeed, it has been said that stock market manipulation 'strikes at the heart of the pricing process on which all investors rely' and 'attacks the very foundation and integrity of the free market system'.[86] According to Avgouleas, for example, 'no behaviour is a more potent enemy of market efficiency and bigger destroyer of investor confidence than market abuse'.[87] This sentiment is consistent with the below judicial observations in the domestic context on the pernicious nature of stock market manipulationand the consequent damage it can cause to the integrity of the market and, in turn, the general community and the national economy.[88]

According to T Forrest J when sentencing the defendant in *R v Chan*[89] to 20 months' imprisonment for manipulating the share price of Bill Express Limited, where the markets 'lack integrity, public confidence in them is necessarily eroded'.[90] Noting the objective of s.1041A of the *Corporations Act* is 'to protect the securities market from "artificial or managed manipulation"', His Honour observed that the impact of the defendant's conduct is not just felt by, for example, those 'tempted to purchase Bill Express shares in an artificial market', rather it is 'felt by the entire securities market'.[91]

According to Kaye J in *R v Jacobson*,[92] the 'express objective of s1041A' is to 'promote a fair, orderly and transparent market for registered securities.'[93] As part of that objective, His Honour

---

[84] Ibid.
[85] House of Representatives Standing Committee on Legal and Constitutional Affairs, 1989, *Fair Shares for All: Insider Trading in Australia* (October 1989), 3.3.6.
[86] *In the Matter of L.C. Wegard & Co., Inc. and Leonard B. Greer*, 29 May 1998, Securities and Exchange Commission, Washington, D.C., Admin. Proc. File No. 3-8533, 10 <https://www.sec.gov/litigation/opinions/3440046.txt>.
[87] Avgouleas, *Regulation of Market Abuse* (n 42) 4.
[88] These comments are consistent with the comments of the International Organization of Securities Commissions: '[p]ublic confidence in the fairness of markets enhances their liquidity and efficiency. Market manipulation harms the integrity of, and thereby undermines public confidence in, securities and derivatives markets by distorting prices, harming the hedging functions of these markets, and creating an artificial appearance of market activity': IOSCO, 'Investigating and prosecuting market manipulation' (n 74) 2.
[89] *R v Chan* [2010] VSC 312 ('*R v Chan*').
[90] Ibid [22] (T Forrest J). See also Australian Securities and Investments Commission, 'Former broker sentenced to jail for market manipulation' (Media Release 10-156, 12 May 2010).
[91] *R v Chan* (n 89) [22] (T Forrest J).
[92] *R v Jacobson* [2014] VSC 592 ('*R v Jacobson*').
[93] Ibid [41] (Kaye J).

stated that s.1041A is directed at:

> ensuring that the market price for registered securities truly reflects the genuine interaction of the forces of supply and demand for those securities on a free market. The conduct, in which you indulged, and to which you were a party, was calculated to undermine that objective. In that way, your conduct had the capacity to erode the integrity of, and public confidence in, the securities market, and thereby to cause damage to members of the community, who have invested their savings in that market.[94]

Similarly, Murray J made the below observation in *R v Lloyd.*[95]

> I take it to be an essential feature of a system of trading in securities in listed corporations by bidding for stock at centralised stock exchanges that the system does reflect the interplay of the market forces of supply and demand. So much would seem to be essential to the health of the market and, at least to a degree, to the wider economic health of the business community which utilises it and which by that means invests in listed corporations which are to a substantial degree the vehicles of commercial life and its capacity to generate wealth in our community. Investor confidence is the quality which the market must be able to maintain. If investors become suspicious that the values of securities which the market reflects do not provide a measure of the worth of the stock then it seems obvious that they will be reluctant to invest.[96]

The maintenance of market integrity is important and one way it is achieved is through the enforcement of the laws and regulations that govern the share markets in Australia. Indeed, although stock market manipulation is unlikely to be completely eradicated from domestic and international markets, it is critical that timely and robust enforcement action is taken to minimise the risk of public confidence in the integrity of the nation's share markets being undermined. As Austin observes:

> . . . the enforcement of securities laws is critical to market integrity. A number of studies have shown that effective enforcement of securities laws is fundamental to market integrity and that markets which lack integrity have a higher cost of capital for their participants. A lack of market integrity reduces investor confidence in the market, investors being wary of investing in a market which is not considered fair for all participants or where investors

---

[94] Ibid.
[95] (1996) 19 ACSR 528.
[96] *R v Lloyd* (1996) 19 ACSR 528, 548 (Murray J). See also *R v Jacobson* (n 92) [41] (Kaye J); R *v Kathiravelu* [2021] WASCSR 6 [54] (Derrick J).

> may lose their investment to unscrupulous operators. Effective enforcement may also result in more dispersed equity ownership, greater stock price accuracy and greater liquidity.[97]

According to Black, where investor confidence in the integrity of a securities market or any financial market is impugned owing to concerns about the incidence of manipulative practices and other types of market misconduct:

> investors would arguably look to other investment avenues, or would demand higher risk premiums, in either event increasing the cost of capital to listed companies.[98]

In his 1990 autobiography, *The Workings of a Watchdog*, Henry Bosch, the former chairman of the NCSC, recounted the following comment by William J Brodsky, President of the Chicago Mercantile Exchange, which is highly apposite in this context.

> If you think money migrates away from excessively regulated markets, watch it flee from unsafe ones . . . a market that lacks integrity will not be used. It will ultimately fail.[99]

Whilst the loss suffered by an individual, a class of persons or the community more broadly as a result of share prices and markets being manipulated may be impossible to quantify, that does not mean that there is no harm caused.[100] Although the average person in the street may not typically be familiar with, or concerned about, stock market manipulation being perpetrated on the nation's stock exchanges, as is apparent from the above discussion, the damage that can be caused by those intent on interfering with the forces of genuine supply and demand in the markets for listed shares is significant and has the capacity to adversely impact many in the community.[101] As Mason J articulated almost 40 years ago in the seminal case *North v Marra*

---

[97] Austin 'Rapid Response to Questionable Trading' (n 68) 209-210.
[98] Black, 'Regulating Market Manipulation' (n 81) 988.
[99] Henry Bosch, *The Workings of a Watchdog* (William Heinemann Australia, 1990), 26.
[100] According to former Chief Judge at Common Law, Supreme Court of NSW, Peter McClellan, '[w]hen a market is manipulated, the loss to a particular individual may be impossible to identify.': McClellan, Peter, 'White Collar Crime: Perpetrators and Penalties' (Keynote Address delivered at the Fraud and Corruption in Government Seminar, University of NSW Sydney, 24 November 2011) 7 <http://www.austlii.edu.au/au/journals/NSWJSchol/2011/39.pdf>.
[101] Moreover, white collar crime, including market-related offences, 'may affect the Australian economic "brand" and its desirability as a place to invest' and the harm inflicted 'will be greater both in absolute terms and in respect of the number of victims than many other white-collar crimes and the more common offences': ibid.

Developments Ltd,[102] '[i]t is in the interests of the community that the market for securities should be real and genuine, free from manipulation.'[103]

3.4.3 The harm caused by stock market manipulation has been recognised for a long time

The adverse impact of stock market manipulation, not just on individual investors, but on the economy and wellbeing of the community more generally, appears to have been recognised reasonably early on in the newspapers published across the Australian colonies in the 1800s. This is apparent, for example, from an article in the 23 March 1863 edition of *The Mount Alexander Mail*, which described the 'goings-on' at the Melbourne Stock Exchange.[104] The 'injurious effect' on capitalists, miners and the general public of the 'whispers' heard from time to time concerning the 'unfair manipulation of mining shares and Gas and Water Companies' was claimed to be 'incalculable' as it created distrust, prohibited enterprise, crippled trade and effectively extinguished:

> that healthy speculative spirit which, if wisely dealt with, would lead to the opening up of the countless rich reefs, which now remain untouched for the want of capital to commence the works.[105]

The article warned that if the public were 'led to fear' that by becoming shareholders they would be subject to 'the plots and counterplots of an organised swindle', then 'prudent men [would] naturally retreat, and button their pockets'.[106] The article suggests that this may, in part, explain 'the paucity of enterprise displayed in even the most promising fields' at the time.[107]

A sentiment along the same lines was expressed by the author of an article in the 19 November 1870 edition of *The Ballarat Star*:

> Although the market has greatly improved, and has become much more buoyant, it is very evident that it will soon take a downward turn if many more attempts are made to rush stocks up or force them down. Every time the market is rigged serious injury is done not

---

[102] (1981) 148 CLR 42.
[103] *North v Marra* (n 39) 59 (Mason J).
[104] 'The Melbourne Stock Exchange', *The Mount Alexander Mail* (Victoria, 23 March 1863) 2
[105] Ibid.
[106] Ibid.
[107] Ibid.

> only to the market but to mining generally, and these attempts at manipulating stocks gradually but surely frighten investors away, and hence outside capital is frightened off.[108]

Similarly, an article in the 25 May 1872 edition of *The Leader* included the below comments following the acquittal of three defendants charged with conspiring to raise the price of shares in a company 'by means of fictitious sales'.

> Unless [brokers are licensed and bubble companies are refused quotation] the public will lose all confidence in mining, and capital which might be profitably expended in developing our mineral resources will be driven into other channels. The mischief done by such transactions as those to which we have just alluded is incalculable.[109]

The above articles not only suggest that stock market manipulation was occurring on domestic share markets as long ago as 1863, but they also indicate that the significant harm caused by this insidious activity to its many 'victims' is not something that has only recently been understood. Rather, the adverse impact not just to individual investors, but more broadly to the 'public at large', appears to have been recognised for a very long time.

But why do people manipulate the prices of shares listed on Australia's stock exchanges and how do they do it?

3.5 Why and how do people manipulate share prices?

3.5.1 The 'why'

There are many reasons as to why a person would choose to manipulate the price of shares listed on a stock exchange. As noted earlier, the rationale or motivation will, in the overwhelming majority of cases, be to make money or obtain some other benefit from the changes to the price of shares that result from their manipulative activities, whether directly or indirectly.[110] According to the ASX, in an attachment to a circular issued to its member organisations over 30 years ago, 'motives for manipulation' include, amongst others, the following:

- to decrease the price of securities ahead of making a takeover or privatisation bid.

---

[108] 'Mining Intelligence', *The Ballarat Star* (Victoria, 19 November 1870) 2.
[109] 'Making a Market', *The Leader* (Melbourne, 25 May 1872) 17.
[110] cf *R v Moylan* [2014] NSWSC 944 where the defendant's objective was not to make money – as Davies J noted, the 'offence did not involve personal financial gain': [59] (Davies J).

- to create a false appearance of activity in a stock, thereby inducing other buyers to enter the market.

- to support the price of securities so as not to breach an existing legal contract such as a scrip[111] takeover or underwriting agreement.[112]

Black and Hanrahan list several similar '[m]otivations for market manipulation' in the latest edition of their securities and financial services law textbook.[113]

3.5.2 The 'how'

Similarly, there are a number of different ways to categorise the various techniques or 'strategies'[114] that have been used to manipulate share markets in Australia over the last century, some of which overlap.[115] For example, for the purpose of this thesis, domestic stock market manipulation during the period covered by this research (the latter half of the 1800s to 1990) has, broadly speaking, been perpetrated by:

(a) the dissemination of false rumours or misleading information in conjunction with trading activity to capitalise on market movements caused by the spreading of the information (information-based manipulation);[116]

---

[111] According to Rydge, the term 'scrip' is 'generally used to designate a share certificate. The practice is to treat the share certificate endorsed in blank as being transferable by mere delivery': Norman Bede Rydge, *The Australian Stock Exchange: Being an Explanation of the Australian Stock Exchanges, a Consideration of the Principles Involved in Speculation and Investment, and a Commentary Upon the Essential Features Involved in the Selection of Sound Investments* (Rydge's Business Journal, 1939) 128 ('*The Australian Stock Exchange*').

[112] The others referred to are: 'to increase the price of securities for the purpose of maintaining an artificial price level at which new shares are to be issued'; 'to increase or maintain the price, in circumstances where there exists a direct financial interest in a rise or price maintenance, due to an existing long position in either equities or options'; 'to increase the price of securities in order to lend a fictitious appearance of worth to the stock, either to attract genuine investors or to boost the asset value of the holding company or major shareholder'; 'to raise or maintain the price of securities to discourage other investors selling out to maintain confidence in the company': ASX, 'Circular to Member Organisations Number 306/90: Sections 123 and 124 of the Securities Industry Code', 21 June 1990, Attachment marked 'B', 6 ('Circular to Member Organisations Number 306/90'). A list of 'motivations for market manipulation' is also contained in Black and Hanrahan, *Securities and Financial Services Law* (n 20) 667-668.

[113] Ibid.

[114] Tālis J Putniņš, 'Closing price manipulation and the integrity of stock exchanges' (PhD Thesis, The University of Sydney, 2009) 12 ('Closing Price Manipulation').

[115] See, for example, Avgouleas *Regulation of Market Abuse* (n 42) 118-119; Anton Trichardt, 'Australian Greenshoes, Price Stabilisation and IPOs – Part 1' (2003) 21 *Company and Securities Law Journal* 26, 30-32 ('Australian Greenshoes'); Putniņš' and Diaz's classifications of the various manipulative strategies: Putniņš, 'Closing price manipulation' (n 114) 12; David Diaz, 'Financial Market Monitoring and Surveillance Systems Framework: A Service Systems and Business Intelligence Approach' (PhD Thesis, The University of Manchester, 2011) 43 ('Financial Market Monitoring and Surveillance Systems').

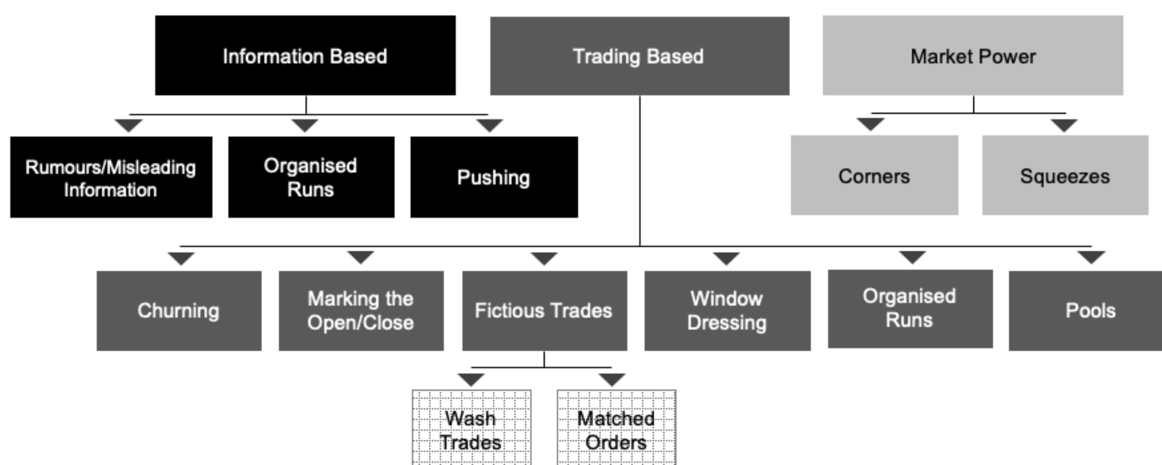
[116] See, for example, Tālis J Putniņš, 'An Overview of Market Manipulation' in Carol Alexander and Douglas Cumming (eds) *Corruption and Fraud in Financial Markets: Malpractice, Misconduct and Manipulation* (Wiley, 2020), 21-23.

(b) trading activity or the placing of orders to distort the market by forcing share prices in a particular direction (up or down) or maintaining the price at a particular level for the purposes of achieving a certain outcome that is related to the price of that security (trading based manipulation); and

(c) the misuse of monopoly or dominant market power (market power manipulation).[117]

The above categorisation can be useful when considering the many different techniques and methods that have been (and continue to be) used by malefactors to intentionally distort the price of listed shares. This categorisation, in conjunction with the basic taxonomy set out in figure 1 below,[118] will be used as the basis for the discussion in this chapter.

Figure 1: Taxonomy of domestic manipulative techniques that appear to have been utilised during the period covered by this research



Source: Author

There are many other techniques used to manipulate or rig share markets that have evolved since 1990, the end of the period covered by this research. These have developed as a result of the advent of, for example, better technology, the increasing fragmentation and complexity of modern share markets and new ways of trading shares, such as algorithmic and high

[117] This is the term used by the Court of Appeal in *DPP (Cth) v JM* (2012) 267 FLR 238 (331) Nettle and Hansen JJA.
[118] There are a number of different ways that a taxonomy of manipulative techniques can be 'sliced and diced' and presented to capture the variety of ways share price manipulation can be perpetrated. See, for example, Putniņš (n 116) 19-26; Diaz, 'Financial Market Monitoring and Surveillance Systems' (n 115) 43; Douglas Cumming and Sofia Johan, 'Global Market Surveillance' (2008) 10(2) *American Law and Economics Review* 454, 462-3.

frequency trading. These techniques have given rise to a 'somewhat esoteric vocabulary'[119] with many of them having what Redmond has termed 'Runyonesque labels',[120] including 'pinging' and 'phishing',[121] 'pegging and capping'[122] 'spoofing',[123] 'phantom orders'[124] and 'quote stuffing.'[125]

The remainder of this chapter will consider some examples of stock market manipulation in the domestic context, including 'why' the market was manipulated and 'how' it was done.

3.6. Information based manipulation

3.6.1 Spreading false rumours/misleading information

The spreading of false rumours or dissemination of misleading information in securities markets to distort share prices to benefit the unscrupulous at the expense of unsuspecting investors has a long history that stretches way back to the early days of securities trading, as discussed in Chapter 2. Indeed, this is apparent from the following excerpt from a report published in 1815 by the Sub-Committee of the Stock Exchange in London following its own investigation into the 'disgraceful and dishonourable transaction'[126] that was considered by the Court in *R v De Berenger*:

> The Sub-Committee at the same time wish it to be understood, that it is not solely to persons interested in the public funds (who, however, it is well known embrace a very considerable class of the community) that an essential service has been rendered by this investigation,

---

[119] Annie Mills and Peter Haines, *Essential Strategies for Financial Services Compliance* (Wiley, 2nd ed, 2015) 167.
[120] Redmond, *Corporations and Financial Markets Law* (n 35) 884.
[121] Also referred to as 'abusive liquidity detection', involve submitting 'small probing orders' to detect hidden or latent liquidity to gather information about other participants' trading intentions, which is then exploited: Putniņš (n 116), 26.
[122] Placing orders to prevent a price from moving up or down beyond a particular threshold (effectively setting a floor or ceiling on the share price). This can be done to ensure that a: (i) reference rate or benchmark does not move in a direction that is unfavourable to the malefactor; or (ii) derivative contract settles either in or out of the money: Putniņš (n 116) 24.
[123] 'The entry of large volumes of orders at best bid or offer price, which are then deleted within seconds of entry': Australian Securities & Investments Commission, 'Consultation Paper 202: Dark liquidity and high-frequency trading: Proposals', March 2013 <https://www.asic.gov.au/media/1335404/cp202-published-18-March-2013.pdf> 52 ('Dark liquidity and high-frequency trading: Proposals').
[124] ASIC defines 'phantom orders' to mean '[o]rders that appear to be available which suddenly disappear. This can induce others to trade at prices that might not otherwise have existed or enable the provider of the 'phantom' orders to infer the trading intentions of investors': Australian Securities & Investments Commission, 'Report 452: Review of high-frequency trading and dark liquidity', October 2015, 28 <https://download.asic.gov.au/media/3444836/rep452-published-26-october-2015.pdf>.
[125] A 'strategy to impede the processing of markets, or participant processes, by overloading an order book with trading messages': ASIC, 'Dark liquidity and high-frequency trading: Proposals' (n 123) 52.
[126] *Report of the Sub-Committee of the Stock Exchange, Relative to the Late Fraud*, London, 1814, 5.

> since many other markets, besides that in the Stock Exchange, are materially affected by news of a political nature and are thus made the theatre where the fraudulent and avaricious may impose upon the credulity of the innocent and unwary.[127]

Whether spreading untrue rumours verbally amidst the hustle and bustle of a crowded gathering of the daily call in a colonial stock exchange or sending telegrams across the colonies to trigger panic buying or selling of shares as a means of generating illicit profits, as will be discussed in subsequent chapters, the dissemination of false rumours and misleading information on domestic share markets to distort share prices appears to have been one of the more popular techniques employed over the years by those seeking to unjustly benefit themselves. That this was the case is not surprising, however, as reliable and accurate information is essential to participants in share markets. Indeed, as Schindler observes:

> Rumors have a long history [and] [f]inancial markets have always had a flair for rumors, because on the trading floor all action is based on news. Knowing more than other market participants can lead to real money profits.[128]

According to D'Aloisio, confidence in the integrity of the share markets can be damaged if investors believe that false and misleading information in the form of rumours is being spread in order to 'distort proper price discovery.'[129] This is consistent with the below comments from ASIC's Consultation Paper 118, 'Responsible handling of rumours', which was issued by ASIC to address its concerns during the global financial crisis (GFC) that 'long buyers' were not participating in the market and share prices were 'falling further than would ordinarily have been the case fuelled by false rumours.'[130]

> In an efficient market, participants rely on the flow of reliable information to establish prices for securities. The price of a security should reflect all facts available to the market

---

[127] Ibid.

[128] Mark Schindler, *Rumors in Financial Markets: Insights into Behavioural Finance* (Wiley, 2007) 19. Schindler's book is based on his PhD thesis on rumours in financial markets.

[129] Tony D'Aloisio, 'ASIC's approach to market integrity' (Notes used in a speech delivered at the Monash Centre for Regulatory Studies and Clayton Utz Luncheon Lecture, 11 March 2010) <https://download.asic.gov.au/media/1316137/ASICs-approach-to-market-integrity.pdf> 12.

[130] According to ASIC, it took two 'decisive steps' to address these concerns 'followed up with a third': (i) a ban on short selling as a 'circuit breaker'; and (ii) investigations into the rumours to determine if they were 'false and actionable.' The third 'decisive step' was the issuance of Consultation Paper 118: Australian Securities & Investments Commission, Consultation Paper 118: Responsible handling of rumours', September 2009, 6 <https://download.asic.gov.au/media/1331012/cp118.pdf> ('Consultation Paper 118).

> and all opinions of market participants as to value, based on their understanding of those publicly available facts.
>
> A rumour can damage the market by creating inefficiencies in this pricing mechanism. Rumours may introduce information into the market that distorts the market by suggesting there is relevant information affecting price that is not in the public domain.
>
> Rumours therefore undermine confidence in the integrity of markets and, in a volatile market, the dissemination of rumours has the potential to further destabilise markets.[131]

Whilst there are currently several provisions in the law that can apply to those who engage in this type of conduct,[132] as noted by Justice Black, 'information-based market manipulations' that involve the making of misleading statements or false rumours are 'primarily addressed by s.1041E' of the Act.[133]

This type of activity is known in modern parlance as 'rumourtrage',[134] which occurs where false rumours or misleading information are disseminated to, for example, drive up the price of a company's shares before selling them at an artificially inflated price and making an illicit profit.[135] The converse is also true. It has been defined broadly as 'the creation or dissemination of rumours to influence the price of financial products'.[136] It has also been described as deliberately manufacturing and spreading rumours to make a profit:

---

[131] Ibid.
[132] For example, s.1041F (inducing persons to deal), s.1041G (dishonest conduct) and s.1041H (misleading or deceptive conduct). Sections 1041E, 1041F and 1041G are referred to by Black and Hanrahan as 'information offences': Black and Hanrahan, *Securities and Financial Services Law* (n 20) 352-360.
[133] Justice Ashley Black, 'Market Manipulation – Incentives and Enforcement', Ross Parsons Law and Business Seminar Series, 20 February 2014, 1 <http://classic.austlii.edu.au/au/journals/NSWJSchol/2014/3.pdf> ('Market Manipulation – Incentives and Enforcement'). Section 1041E prohibits the spreading of false rumours or misleading information where it is: (i) likely to induce people in Australia to apply for, acquire or dispose of financial products; and (ii) have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market operated in Australia.
[134] According to Main, 'rumourtrage' is 'an ugly word': Andrew Main, 'Don't humour the rumour mongers', *The Australian* (Sydney, 7 July 2015) 26.
[135] Emma Armson, 'False Trading and Market Rigging in Australia' (2009) 27 *Company and Securities Law Journal* 11, 411. The term 'rumourtrage' was used during the global financial crisis in the context of the prohibition imposed by numerous national regulators of short selling. 'Project Mint' was the name given to ASIC's investigation into the impact of false and misleading rumours on the integrity of the Australian markets: Australian Securities and Investments Commission, 'Enquiries into Market Manipulation' (Media Release, 08-202, 17 September 2008).
[136] Ashley Black, 'Rumourtrage and the Responsible Handling of Rumours' in Juliette Overland (ed), *The Many Aspects of Market Integrity* (Australian Scholarly Publishing, 2010) 10. In its 2009 consultation paper, ASIC proposed to define the term 'rumour' as a statement containing 'unverified information, purporting to be fact, that a reasonable person would expect to have a material effect on the price of a security if it were widely

> a strategy that usually involves selling shares you do not own (shorting), spreading the rumour of impending disaster, and then buying the same shares for substantially less than you sold them for. Ka-ching![137]

Whilst the nomenclature has been modernised, the essence of the misconduct remains the same, that is, spreading false rumours or misleading information to distort share prices and corrupt the markets on which they are traded.

According to McCarthy, it is nothing more than a 'game of moving share prices on whispers without real data'.[138] McIlwraith, writing 2010, asserted that the word 'rumourtrage':

> seems to have surfaced in the heady mid-1980s when markets were booming ahead of a crash, resurfacing a couple of years back when the market was crashing after a boom.[139]

There have been several domestic court cases since the late 1970s where the courts have had to determine whether people have spread false rumours or misleading information to interfere with the forces of genuine supply and demand on local share markets.[140]

One such example is *National Companies and Securities Commission v Monarch Petroleum NL and Others*,[141] where a forged letter was delivered to the Perth Stock Exchange on 14 March 1984 claiming to be from the Magnet Group of Companies (of which the first respondent was a member) to their shareholders, purportedly signed by the chairman of directors.[142] A similar letter was delivered the evening prior to the communications manager of the Australian Associated Press in Perth, requesting that the information be disseminated to the Perth Stock Exchange, all Australian brokers and the main media outlets 'through your Reuters system and telex'.[143] The letter claimed that directors of the group were negotiating

---

circulated': Australian Securities and Investments Commission, *Responsible Handling of Rumours*, Consultation Paper 118, September 2009, [30], 12.

137 Ian McIlwraith, 'Rumourtrage: the art of walking a very fine line', *The Sydney Morning Herald* (online, 14 May 2010) <https://www.smh.com.au/business/rumourtrage-the-art-of-walking-a-very-fine-line-20100513-v1tq.html> ('Rumourtrage: the art of walking a very fine line').

138 Phillip McCarthy, 'Hype and 'Rumourtrage' Overwhelm Wall Street', *The Sydney Morning Herald* (Sydney, 24 June 1989) 41. This is one of the earlier references to this term, which was used regularly during the course of the global financial crisis both domestically and overseas.

139 McIlwraith, 'Rumourtrage: the art of walking a very fine line' (n 137)

140 See, for example, *R v M* (1979) 4 ACLR 610; *R v Wright* [1980] VR 593, *Endresz v Whitehouse* [1998] 3 VR 461; *R v Moylan* [2014] NSWSC 944.

141 [1984] VR 733.

142 *National Companies and Securities Commission v Monarch Petroleum NL and Others* [1984] VR 733, 735-736 (Nicholson J).

143 Ibid 735 (Nicholson J).

with a 'large Australian company who are interested in acquiring a percentage of the Magnet Group of companies' and that the group had acquired a '4 per centum interest in the potentially very valuable Jabiru oil discovery'.[144]

Shortly after the letter was received by the Perth Stock Exchange, and in accordance with the Exchange's usual practice, relevant parts of the letter were broadcast to the trading floors of all of the domestic stock exchanges.[145] In response to the announcement, the prices of the shares in the companies that comprised the Magnet Group rose, with 'the most dramatic increase both as to volume and price' occurring in Monarch's shares.[146] In the 30 minutes prior to trading being suspended, its share price rose from 21 to 41 cents and traded 1,526,000 in 117 transactions.[147] According to Nicholson J:

> [t]he fraud involved was an ingenious one the magnitude of which can be judged by the fact that over 1.5 million Monarch shares changed hands in less than 30 minutes. Had trading continued for very much longer, as no doubt would have been the case but for the fortuitous chance that the group had no account with Australian Associated Press, then the situation would have been much worse.[148]

However, in the words of His Honour:

> In fact, the letters delivered to Australian Associated Press and to the Perth Stock Exchange and the purported letter to shareholders were all bogus, the information contained therein was false, and the signature of Mr Gascoine[149] was a forgery.[150]

The Court granted the orders sought by the NCSC: (i) to restrain the companies in the Magnet Group from registering the transfer of shares in their capital pursuant to any trades executed from the time of the announcement until the suspension of trading; and (ii) that all contracts in relation to the sale and purchase of such shares effected in Victoria during the same period be declared void. Nicholson J made the following comments:

---

[144] Ibid 735-736 (Nicholson J).
[145] '. . . the relevant parts of it were read out over a loudspeaker system on the floor of the Exchange. Simultaneously, the broadcast announcement was carried to and was heard on the floors of all other Australian stock exchanges and by member brokers who participated in the system': ibid 736 (Nicholson J).
[146] Ibid.
[147] Ibid.
[148] Ibid 737 (Nicholson J).
[149] Mr D R Gascoin was the Chairman of the Magnet Group of Companies: ibid 735 (Nicholson J).
[150] Ibid 737 (Nicholson J).

> . . . I regard it as being very much in the public interest that persons engaged in a fraud of this type should be prevented from profiting by it. As far as the question of interference with a free market is concerned, the original interference in the present case was not, of course, that of the commission or the Court, but that of the fraudulent perpetrators of the scheme. Thereafter, the market was not a free market in any real sense. It is often extremely difficult to identify, let alone prosecute to conviction, the perpetrators of this type of fraud. However, any law which operates to render their efforts fruitless might be thought to constitute a very real deterrent to such persons' activities.[151]

Other cases involving this type of market misconduct include *Corporate Affairs Commission (NSW) v Walker*[152] and, more recently, *R v Moylan.*[153]

The considerable and continued advancements in electronic communications technology, as well as the proliferation of social media, means that today false rumours and misleading information in relation to listed companies and the price of their securities can be disseminated almost instantaneously across the world to a vast number of people.[154] This, in turn, has increased the ability of malefactors to undermine and harm the integrity of both domestic and global share markets.[155]

A local example where this is evident is the prosecution by ASIC of Mr Stephen Hourmouzis and Mr Wayne Loughnan in 2000 for making a statement or disseminating information that was false or misleading and likely to induce the purchase of shares of a United States company, Rentech Inc., a technology company listed on the NASDAQ in the United States.[156] Its

---

[151] Ibid 741 (Nicholson J).
[152] (1987) 11 ACLR 884.
[153] [2014] NSWSC 944.
[154] Paul Constable, 'Psst . . . Want to Hear a Rumour? Rumourtrage May Have Been Occurring in Australia for Longer Than We Thought' (2016) 19 *International Trade and Business Law Review* 48, 52 ('Want to Hear a Rumour?'). According to Edgar: 'Social media can affect a company's securities. For example, research has shown that stock markets are likely to be sensitive to online message board activities. In particular, messages on internet discussion sites can affect stock volatility and increase trading volume. Information distributed on social media can also impact share price. Just one tweet posted on Twitter can have the power to substantially influence share price': Lynsey Edgar, 'Market manipulation through false or misleading statements on social media: Enforcement issues' (2018) 33 *Australian Journal of Corporate Law* 166, 167.
[155] Constable, 'Want to Hear a Rumour? (n 154) 52; Lynsey Edgar, 'Market manipulation through false or misleading statements on social media: Enforcement issues' (2018) 33 *Australian Journal of Corporate Law* 166.
[156] See Australian Securities & Investments Commission, 'ASIC Charges Two Over Spam E-Mail and Internet Web Board Postings' (Media Release 00/193, 2 May 2000) ('ASIC Charges Two Over Spam E-Mail'); United States Securities and Exchange Commission, 'Securities and Exchange Commission v. Stephen Hourmouzis and Wayne Loughnan, (Civ. No. 00-N-905 USDC D. Colo.)', (Litigation Release No. 16535, 3 May 2000), <http://www.sec.gov/litigation/litreleases/lr16535.htm>; Australian Securities & Investments Commission, 'Internet 'Spammer' Pleads Guilty to ASIC Charges' (Media Release 00/306, 14 July 2000); Australian

investigation and criminal prosecution was claimed by ASIC to have been 'one of the first in the world involving the transmission on the internet of spam messages and the posting of messages on web boards'.[157]

Messrs Hourmouzis and Loughnan were found to have posted messages relating to Rentech shares on internet web boards in the US, including those operated by Yahoo! and Raging Bull, in May 1999, which stated that Rentech's share price would increase from the then price of US$0.33 to US$3 or more 'once pending patents were released by the company'.[158] Around the same time, up to four million spam emails were received by addressees in the US, Australia and other countries that also stated that the price of Rentech's shares would increase by up to 900% in the next few months.[159] These statements, 'made to appear as though written by analysts', were false.[160]

Following the transmission of the false web board postings and spam emails, Rentech's share price doubled 'on trading volume that was more than 10 times the previous months average trading volume'[161] before NASDAQ halted trading.[162] On the same day, Mr Hourmouzis sold 'into the inflated market'[163] the 65,000 Rentech shares he had purchased through a stockbroker in Canada a few days before he transmitted the spam emails and arranged for the web board postings, thereby realising a profit of approximately $17,000.[164]

Messrs Hourmouzis and Loughnan were convicted in the County Court of Victoria for, relevantly, making a statement or disseminating information that was false or misleading and likely to induce the purchase of Rentech shares by way of spam email and posting electronic

---

Securities & Investments Commission, 'Internet 'Spammer' Gaoled' (Media Release 00/445, 30 October 2000) ('Internet Spammer Gaoled'); Australian Securities & Investments Commission, 'Queensland Man Appears on Spam Charges' (Media Release 00/457, 3 November 2000); Australian Securities & Investments Commission, 'Two Years Jail – Suspended – For Internet Spammer' (Media Release 01/166, 22 May 2001) ('Two Years Jail – Suspended').

[157] ASIC, 'ASIC Charges Two Over Spam E-Mail' (n 156).

[158] Ibid.

[159] ASIC, 'Two Years Jail – Suspended' (n 156).

[160] US Securities and Exchange Commission, 'Civil Action Against Stephen Hourmouzis and Wayne Loughnan' in *SEC News Digest*, Issue 2000-85, 4 May 2000, 5 <https://www.sec.gov/news/digest/2000/dig050400.pdf>.

[161] ASIC, 'Internet 'Spammer' Gaoled' (n 156).

[162] US Securities and Exchange Commission, 'Litigation Release No. 16705', Securities and Exchange Commission v Stephen Hourmouzis and Wayne Loughnan, No. 00-N-905 (D. Colo.)', 15 September 2000 <https://www.sec.gov/litigation/litreleases/lr16705.htm> ('SEC v Hourmouzis and Loughnan').

[163] Ibid.

[164] ASIC, 'Internet 'Spammer' Gaoled' (n 156).

messages on internet bulletin boards.[165] In sentencing Mr Hourmouzis, Stott J stated that the internet was a 'powerful tool with global application' and its misuse 'had the potential to cause immense harm'.[166] The US Securities and Exchange Commission (SEC) also took enforcement action against Messrs Hourmouzis and Loughnan in respect of the harm caused to US investors by their misconduct.[167]

Although this type of technology was not available for most of the period covered by this research, the same harm was caused to investors and the markets on which they bought and sold shares by much cruder means, such as the spreading of false rumours and misleading information by telegrams and word of mouth.

3.6.2 Organised Runs

An 'organised run'[168] was described by the Rae Committee in the following terms:

> These runs involved groups of people creating activity in a share either by their own buying or by the dissemination of rumours in order to bring about a sharp increase in prices of the shares. This in turn attracted further buyers and so higher prices. The purpose of attracting buyers into the market at rising prices was to enable the organisers of the run to sell their shares for a quick profit. [169]

This particular species of stock market manipulation appears to have been a regular occurrence on domestic share markets in the years leading up to the Rae Committee's examination of certain aspects of the operations of Australia's stock exchanges in the first half of the 1970s. In

---

[165] Mr Hourmouzis was sentenced to two years imprisonment, with 21 months suspended: ibid. Mr Loughnan was sentenced to two years imprisonment, wholly suspended: ASIC, 'Two Years Jail – Suspended' (n 156).
[166] 'Shares scam spammer jailed', *BBC News* (online, 30 October 2000) <http://news.bbc.co.uk/2/hi/asia-pacific/998626.stm>.
[167] The SEC obtained a default judgment in the United States District Court for the District of Colorado that: 'permanently enjoined Hourmouzis and Loughnan from violating the antifraud provisions of the federal securities laws [Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder]. The Court also ordered Hourmouzis and Loughnan jointly and severally to pay disgorgement of $14,256.25, prejudgment interest of $1,537.50, and postjudgment interest from the date of judgment until they have fully disgorged their ill-gotten profits': SEC, 'SEC v Hourmouzis and Loughnan' (n 162).
[168] This particular technique/strategy has been considered in the context of 'information based manipulation' for the purposes of this discussion. However, as noted in the taxonomy in figure 1, it can fall under 'information based manipulation' or 'trading based manipulation', depending on whether or not information was disseminated in conjunction with the trading activity in question. This is apparent from the description of 'organised runs' used by the Rae Committee where reference was made to 'runs' involving: 'groups of people creating activity in a share either': (a) 'by their own buying'; or (b) 'by the dissemination of rumours' in order to achieve their objective: Senate Select Committee*, Australian Securities Markets and their Regulation* (n 1) 8.6.
[169] Ibid. See also Vivien Goldwasser, 'The Regulation of Stock Market Manipulation and Short Selling in Australia' in Gordon Walker, Brent Fisse and Ian Ramsay (eds), *Securities Regulation in Australia and New Zealand* (LBC Information Services, 2nd ed, 1998) 519.

response to being asked whether he had ever heard that a 'particular share was going to run at a certain time and subsequently noticed that it had in fact run', for example, one broker with a large Australian and international business who gave evidence before the Committee *in camera* replied '[y]es, this is going on all the time'.[170] Indeed, the evidence received by the Rae Committee during its hearings led it to conclude that 'the 'run' type of manipulation has been practiced to an appreciable extent' in Australia 'in recent years'.[171]

3.6.3 Pushing

Another 'manipulative device' that was considered during the course of the Rae Committee hearings was 'brokers 'pushing' shares', which was described by one experienced investor as:

> Ringing up people and saying that we think these shares should be bought or being party to a rumour going around so that people are encouraged to make up their own mind or think that they are making up their own mind'.[172]

The object of this activity was to bring about a 'run' in the target share (section 3.6.2 above).[173]

3.7 Trading based manipulation

In this type of market manipulation, malefactors typically try to artificially influence a share price by buying or selling shares or placing orders to buy or sell shares to benefit themselves in some way, whether directly or indirectly. This can include, but is not limited to, the examples set out below.[174]

3.7.1 To benefit the malefactor's long or short position

One of the more basic or 'vanilla' methods of manipulating share prices is where a person who has a bought (long) or sold (short)[175] position in a particular company's shares buys or sells (or

---

[170] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 1) 8.6.
[171] Ibid 8.14. Testimony from one witness at the Rae Committee on the 'run' in Tasminex NL shares is illustrative of how rumours spread in the market and resulted in a 'run': 'One of the classics was Tasminex. I do not know how organized the run was . . . one got information from Kalgoorlie because some drillers were drunk in the hotel and saying that they had a major discovery and so on. We picked up some thousands of shares and then the word came quickly across from the West and others bought in. The charts would have looked good and the end result is that with further dissemination of this information the run started. That one got completely out of hand': at 8.12.
[172] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 1) 8.6-8.7.
[173] Ibid 8.7.
[174] There is some crossover with 'information based' manipulative techniques, which, typically, involve trading in conjunction with the dissemination of false rumours or misleading information to assist in achieving the desired outcome. However, this section will consider circumstances where trading alone is used to achieve the manipulator's objective.
[175] According to ASIC, a short sale occurs where '[p]eople sometimes sell (short sell) financial products that they do not own with a view to repurchasing them later at a lower price': Australian Securities & Investments

bids or offers) aggressively in the market with the intention of forcing the share price to a level that will allow them to close out that position to their financial advantage. In a 1990 circular to its members regarding the market manipulation provisions in the 'Securities Industry Code', the ASX referred to activity of this type as 'supply side manipulation' or 'demand side manipulation'. 'Supply side manipulation', for example, is described as:

> any manipulative technique used to decrease the price of securities. The falling price induces others to sell, including short sellers. The resultant market price bears no relation to the merits of the investment.[176]

By way of example, a person who holds shares in a particular company (a bought or long position) will aggressively bid for, or buy, more of the same shares to force the price up, after which they will seek to sell their position at a profit. The converse is true for a person who holds a short position. The former is illustrated in *Brown v R*,[177] an appeal against the sentence imposed for four convictions of 'making offers in relation to certain shares which were likely to create a false or misleading appearance with respect to the market for those shares.'[178] Wheeler JA referred to the findings of the sentencing judge, who had made the following comment when sentencing the appellant:

> [you were] interested in creating a particular appearance in the market which would ultimately be of some form of benefit to you . . . by bidding up the market on various occasions in the manner that you did.[179]

According to Wheeler JA, the sentencing judge concluded 'that at least part of the appellant's motivation was greed' and his 'course of conduct appeared to him to have been an easy manner in which to increase the value of his holdings' in the relevant shares.[180]

It would appear, however, that this particular method will usually only succeed where the shares in question are not actively traded and liquidity is low. In *Fame Decorator Agencies*

Commission, 'Regulatory Guide 196: Short Selling', October 1998, <https://download.asic.gov.au/media/4896780/rg196-published-8-october-2018.pdf> [196.1].

[176] 'Demand side manipulation' is essentially the opposite. That is: 'any manipulative technique used to increase the price of the securities. The rising price often leads other buyers into the market. The resultant market price bears no relation to the merits of the investment': ASX, 'Circular to Member Organisations Number 306/90' (n 112) Attachment marked 'B', 1.

[177] *Brown v R* [2006] WASCA 145 ('*Brown v R*').

[178] At the relevant time, this was contrary to s.998(1) of the *Corporations Act*: ibid [3] (Wheeler JA).

[179] Ibid [11] (Wheeler JA), quoting Deane DCJ's comments when sentencing Gavin William Brown in the District Court of Western Australia.

[180] Ibid.

Pty Ltd v Jeffries Industries Ltd,[181] for example, Gleeson CJ noted that where shares are thinly traded and sales are infrequent, this renders the market 'susceptible to manipulation.'[182] Indeed, as Wheeler JA observed in *Brown v R*, the conduct engaged in by the appellant gave 'an appearance of active competition in a thinly-traded stock'.[183]

3.7.2 To affect the price of futures and other derivatives

Stock market manipulation may allow a person to derive profits from the futures market in circumstances where, for example, the settlement price of futures contracts is based on the price of individual shares or a share price index.[184] This type of activity was considered by the Federal Court of Australia in *Australian Securities Commission v Nomura International PLC*.[185] The Court found that Nomura, a stock index arbitrageur,[186] had 'aggressively' sold a basket of securities worth approximately $600 million that almost exactly replicated the composition of the All Ordinaries Index (AOI) on the ASX[187] near the close of trading on 29 March 1996.[188] At the relevant time, Nomura also held a large short position in the Share Price Index (SPI) futures contract, which was traded on the Sydney Futures Exchange, the cash settlement price for which was determined by reference to the closing price of the AOI on that day.[189]

According to Sackville J, the 'central object' of Nomura's trading on 29 March 1996 had been to 'produce a fall in the [AOI] near the close of trading on the ASX'.[190] His Honour found that Nomura had been 'seeking to set [the] closing prices of securities in the [AOI] *at depressed levels*' knowing and intending that the closing prices of the securities within the AOI would 'depress' the AOI and, as a consequence, 'the cash settlement price of the March SPI contracts'.[191] His Honour also found that:

---

[181] (1998) 28 ACSR 58.
[182] *Fame Decorator Agencies Pty Ltd v Jeffries Industries Ltd* (1998) 28 ACSR 58, 59 (Gleeson CJ) ('*Fame Decorator Agencies v Jeffries*').
[183] *Brown v R* (n 177) [6] (Wheeler JA).
[184] *Australian Securities Commission v Nomura International PLC* (1998) 160 ALR 246 ('*ASC v Nomura*'); Kumar, Praveen and Seppi, Duane T, 'Futures Manipulation with "Cash Settlement"' (1992) 47(4) *Journal of Finance* 1485.
[185] (1998) 160 ALR 246. This case is discussed in Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 68-69.
[186] Arbitrage transactions in general and stock index arbitrage transactions more specifically are discussed by Sackville J in his judgment: *ASC v Nomura* (n 184) 274-280 (Sackville J).
[187] Ibid 256-257 (Sackville J).
[188] Ibid 248 (Sackville J).
[189] Ibid 350 (Sackville J).
[190] Ibid 353 (Sackville J).
[191] Ibid 351 (Sackville J).

> Nomura's motivation was to obtain "speculative" profits from the expected and intended fall in the price of securities and the consequent fall in the [AOI] and the expiry price of SPI contracts.[192]

3.7.3 To artificially influence the closing price

Another example of manipulative trading is 'ramping' or 'marking the close'. Here a person places a series of orders or buys/sells a parcel of shares just before the close of trading, which has the effect of altering the closing price of the stock in question[193] or pushing 'it to an artificial level.'[194] 'Marking the close' has been defined by the ASX as an indicator of manipulative trading to mean 'purchases or sales' of small volumes of shares 'at or near the close which fix, or attempt to fix, a higher or lower closing price'.[195]

There have been a number of identified instances of 'marking the close' in the domestic context.[196] The Federal Court of Australia considered an example of this type of market misconduct in *Donald v Australian Securities and Investments Commission*.[197] This case involved an appeal by Mr Andrew Donald, a former representative of ABN-AMRO Equities Australia Limited ('ABN-AMRO'), against a decision of the Administrative Appeals Tribunal (AAT). The AAT had heard Mr Donald's appeal against the finding of an ASIC delegate that he had contravened s.998(1) of the *Corporations Law* when handling a client's instructions to buy Burswood Limited shares on 29 May 1998.[198]

---

[192] Ibid 357 (Sackville J).
[193] Trichardt, 'Australian Greenshoes' (n 115) 32; Pierre Hillion and Matti, Suominen 'The Manipulation of Closing Prices' (2004) 7 *Journal of Financial Markets* 351.
[194] Carole Comerton-Forde and Talis J. Putniņš, 'Measuring closing price manipulation' (2011) 20 *Journal of Financial Intermediation* 135, 135 ('Measuring closing price manipulation').
[195] ASX, 'Business Rule Guidance Note 8/00: Trading Practices. Business Rule 2.2.4 – Prevention of Manipulative Trading. Business Rule 1.2.1 – Order Records', 13 November 2000, 13 ('Business Rule 2.2.4 – Prevention of Manipulative Trading'). Similarly, 'Ramping' has been defined by the ASX to mean: '"marking (up) the close" either by placing bid or purchasing parcel at or near the close which changes the closing price (bid often dropped next morning or day only bid used). Also called "painting the tape" or "window dressing". Can also be used to push share price lower': ASX, 'Circular to Member Organisations Number 306/90' (n 112) Attachment marked 'B', 2.
[196] Examples from when ASX was responsible for the supervision of trading activities on its markets include: ASX, 'Disciplinary Matters: Tolhurst Noall Limited', ASX Participant Circular 653/03, 17 December 2003, 3; ASX, 'Disciplinary Matters: ABN AMRO Morgans Limited', ASX Participant Circular 138/08, 18 March 2008, 2; ASX, 'Disciplinary Matters: ETRADE Australia Securities Limited', ASX Participant Circular 186/02, 16 April 2002, 1.
[197] [2000] FCA 1142. This case is discussed in Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 69-71.
[198] The ASIC delegate had banned Mr Donald from acting as a representative of a dealer for four years: Australian Securities and Investments Commission, 'ABN AMRO Securities Representative Banned for Four Years' (Media Release 99-246, 21 July 1999).

However, based on the evidence submitted by ASIC, including extracts from the telephone transcripts[199] and Mr Donald's written statement, Heerey J determined that Mr Donald's actions were 'plainly an artificial or managed manipulation' of the price of Burswood shares on 29 May 1998.[200] Moreover, Heerey J stated that:

> In his own words, [Mr Donald] wanted to give the Burswood shares "a bit of a nudge upwards" so that the price appeared higher than it would if the market had operated in accordance with the normal expectations of participants, with buyers buying for the lowest price obtainable and sellers selling for the highest.[201]

3.7.4 Window dressing

A variation on the same theme of marking up the close is 'window dressing', which ASX has described as '"ramping" by institutional investors to allow valuation at desired prices'.[202] According to ASIC:

> [w]indow dressing is a form of market manipulation conducted by parties who have a financial incentive to influence share prices around key reporting dates. These parties include directors, large shareholders and fund managers who periodically report to clients about investment performance.[203]

Put simply, 'window dressing' can be effected by placing orders at or near the close of trading on days leading up to the end of a calendar year, financial year or quarter for the purposes of increasing the closing price of a particular share, portfolio of shares or fund to a particular level to essentially inflate their value before a year end or quarter end valuation.[204] Fund managers

---

[199] In the course of its investigation, the evidence obtained by ASIC included transcripts of certain telephone conversations between Mr Donald and his client, on whose behalf he had purchased the Burswood shares, and the ABN-AMRO representative who was responsible for placing orders onto SEATS, ASX's trading platform: The ASX's trading platform was known at the time as the Stock Exchange Automated Trading System (SEATS): *Donald v Australian Securities and Investments Commission* [2000] FCA 1142 [6] (Heerey J).
[200] Ibid [21]-[22] (Heerey J).
[201] Ibid [22] (Heerey J).
[202] ASX, 'Circular to Member Organisations Number 306/90' (n 112) Attachment marked 'B', 3. The following example is provided by the ASX: 'Orders placed by a large holder of a particular security who may have an interest in inflating the value of that holding (eg window dressing for investment performance purposes) . . .': ASX, 'Business Rule 2.2.4 – Prevention of Manipulative Trading' (n 195) 8.
[203] Australian Securities and Investments Commission, 'End of financial year 'window dressing'' in 'Market Integrity Update - Issue 83 - June 2017', <https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-issue-83-june-2017/>.
[204] Australian Securities and Investments Commission, 'ASIC on Alert for Window Dressing' (Media Release 10-139, 29 June 2010) ('ASIC on Alert for Window Dressing'); ASX, 'Trading Near Financial Year End', ASX Circular 206/09, 19 June 2009 ('Trading Near Financial Year End'); Chris Zappone, 'Window dressing tipped to lift stocks', *The Sydney Morning Herald* (online, 9 June 2009) <https://www.smh.com.au/business/markets/window-dressing-tipped-to-lift-stocks-20090628-d14z.html>.

and others who ‘periodically report to clients about investment performance’[205] may engage in this type of activity to establish a:

> higher closing price of a stock on or around a reporting date so that the value of a holding in the stock, or a portfolio which includes that stock, is increased.[206]

The higher the closing price of the shares on the valuation date, the higher the value of the fund or portfolio, which may result in a higher performance or management fee for the fund or investment manager.[207] This type of market manipulation not only ‘distorts a portfolio valuation at a time that may benefit a fund manager to the detriment of unit holders’, but it can also result in investors paying higher performance or management fees, which, in turn, can result in a corresponding reduction in superannuation or investment fund benefits.[208]

‘Window dressing’, as with other types of ‘price support’, will commonly involve the purchase of comparatively small volumes of stock, usually just enough to achieve the desired price impact.[209] In addition, the trading is most likely to be conducted late in the trading day to ‘maximise the chances of setting [the] closing price’ and tends to generate a ‘disproportionate level of price impact’ when compared with the larger volume and value of trading by the relevant party at other times.[210]

---

[205] Australian Securities & Investments Commission, ‘Market Integrity Update – Issue 105’, June 2019 <https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-issue-105-june-2019/>.

[206] ASX, ‘Trading Near Financial Year End’ (n 204) 1; Constable, ‘Ferocious Beast or Toothless Tiger?’ (n 3) 71. See also Comerton-Forde and Putnins, ‘Measuring closing price manipulation’ (n 194) 5.

[207] ASX, ‘Trading Near Financial Year End’ (n 204) 1.

[208] Belinda Gibson, ASIC Deputy Chairman, quoted in ASIC, ‘ASIC on Alert for Window Dressing’ (n 204); Constable, ‘Ferocious Beast or Toothless Tiger?’ (n 3) 72. In April 2014, *The Sydney Morning Herald* published an article that referred to a claim by Australia’s leading market researchers (Capital Markets Co-operative Research Centre) that market manipulation appeared to be ‘rife’ on Australia’s share market when compared to other major markets around the world. According to the article, dramatic ‘price spikes’ occur just prior to the close of trading each month, quarter and end of financial year, which are said to be ‘the strongest proxy of market manipulation’ and which, the article claims, are being used to ‘boost bonuses for rogue fund managers’: Patrick Durkin, ‘Australian Shares are Being Manipulated, Say Researchers’, *The Sydney Morning Herald* (online, 14 April 2014) <http://www.smh.com.au/business/ markets/australian-shares-are-being-manipulated-say-researchers-20140414-36m8p.html>.

[209] ASX, ‘Trading Near Financial Year End’ (n 204) 1; Constable, ‘Ferocious Beast or Toothless Tiger?’ (n 3) 72.

[210] ASX, ‘Trading Near Financial Year End’ (n 204) 1; Constable, ‘Ferocious Beast or Toothless Tiger? (n 3) 72.

3.7.5 Pools

Pools[211] are a 'manipulative device' considered in the Rae Report in the context of the mining share boom of 1968-1970,[212] a period described by John Valder, the then Chairman of the SSE, as the 'most exceptional three or four year period ever experienced on Australian stock markets.'[213] According to the Rae Committee, these devices were:

> designed to stimulate artificially market turnover and share prices for the purpose of profiting, at the general public's expense, from the distortions inflicted on the market.[214]

'Pools' were said to have been organised by groups of usually four[215] or more wealthy investors who would each agree to contribute money, for example $100,000, in order to establish a 'substantial pool of funds' that would be managed by a broker or a person with 'a close knowledge of the market'.[216] The members of the 'pool' would agree to buy the shares of a particular company at the discretion of the manager, after which they would be:

> sold successively from one member of the pool to another member through the broker in order to artificially stimulate activity and encourage the purchase of the shares by the public to boost reported turnover and price, so long as the total outstanding commitment of each member did not exceed the $100,000.[217]

The purpose and effect of this concerted trading activity was to raise the price of the shares in question so that the members of the 'pool' could sell their respective share holdings at a profit.[218] As the Rae Committee noted, 'pools' were 'one of the major abuses uncovered and

---

[211] According to Buss JA in *Braysich v R*, the manipulative 'device of "pooling" was similar to (if not identical with) "matched orders" as defined in s 9(a)(1)(B) - (C) of the [US *Securities Exchange Act* of 1934]': *Braysich v R* [2009] WASCA 178 [28] (Buss JA) ('*Braysich v R*').
[212] Senate Select Committee, *Australian Securities Markets and Their Regulation* (n 1) 3.1.
[213] John Valder, 'Can the Community Afford This Bill?' in Australian Associated Stock Exchanges (1975) 4(2) *Australian Stock Exchange Journal* 14, 15. The other 'manipulative devices' referred to by the Rae Committee were 'churning' in shares and organised 'runs': Senate Select Committee, *Australian Securities Markets and Their Regulation* (n 1) 8.1.
[214] Ibid.
[215] According to an official of the New York Stock Exchange, the number of people usually involved in a 'pool' was three: US Senate Committee on Banking and Currency, Report of the Committee on Banking and Currency, 'Stock Exchange Practices', Senate Report No. 1455, 73D Congress, 2D Session (1934) 31 ('Stock Exchange Practices').
[216] Senate Select Committee, *Australian Securities Markets and Their Regulation* (n 1) 8.1.
[217] Ibid. US Senate Committee on Banking and Currency, 'Stock Exchange Practices' (n 215) 36. Similarly, the ASX defined the 'manipulative technique' of a 'pool' as involving a 'a group of manipulators who trade shares back and forth between themselves, usually through one broker, thereby raising volumes and creating other investor interest': ASX, 'Circular to Member Organisations Number 306/90' (n 112) 3.
[218] Senate Select Committee, *Australian Securities Markets and Their Regulation* (n 1) 8.2.

severely criticised' by the US Senate Committee on Banking and Currency (SCBC) in 1932.[219] In its 1934 Report, the SCBC stated that 'pools' are 'incompatible with the maintenance of a free and uncontrolled market'.[220]

3.7.6 Churning

Churning',[221] which the Rae Committee described as a practice 'similar to that of a pool', was said to occur where share traders acquire a holding in a particular share and then proceed to place buy and sell orders for the share in question, 'usually at about the same price, or at slightly rising prices, in order to build up the turnover.'[222] This particular 'manipulative device' was usually carried out through a number of different brokers, some who knew, and some who had no idea, that they were being used to perpetrate market manipulation.[223]

Once the trading activity generated by the 'churning' was reported to the stock exchanges, it would be interpreted by 'unsuspecting investors' as reflecting genuine interest by the market in the share in question and they would be 'induced to buy the shares'.[224] The appearance of increased market activity would also mislead some investment advisers who would recommend the purchase of shares to the readers of their 'investment newsletters' based on their analysis of what was, in fact, artificial or 'meaningless'[225] information given that the trading activity was not genuine.[226] As the process gathered pace, the price and turnover of the shares in question would increase further, thereby 'providing the opportunity for the organisers of the "churning" to sell the shares they had originally acquired at a profit'.[227] One Australian stockbroker with a significant business at the time gave evidence to the Committee *in camera* that his firm had been used by an 'Australian share-trading group' in this type of manipulative scheme.[228]

---

[219] The Committee noted, however, that the 'the pools in the United States appear to have been different from the Australian variety of the late 1960s and early 1970s': ibid.
[220] US Senate Committee on Banking and Currency, 'Stock Exchange Practices' (n 215) 31.
[221] According to Buss JA in *Braysich v R*, the manipulative 'device of "churning" was similar to (if not identical with) "wash sales" as defined in s 9(a)(1)(A)' of the US *Securities Exchange Act* of 1934: *Braysich v R* (n 211) [28] (Buss JA).
[222] Senate Select Committee*, Australian Securities Markets and Their Regulation* (n 1) 8.2.
[223] Ibid.
[224] Ibid 8.3.
[225] Oral evidence given to the Rae Committee by the managing director of Mineral Securities Australia Ltd: ibid 8.4.
[226] Ibid 8.3.
[227] Ibid.
[228] Ibid.

3.7.7 Contract-based manipulation

According to Fischel and Ross, '[c]ontract-based manipulations are schemes in which the trader's profit results from his ability to trigger a contractual right or benefit by trading',[229] an example being:

> purchases by a corporate officer that raise the price of his firm's shares by an amount sufficient to trigger a bonus clause in his compensation package based on the firm's stock price.[230]

Avgouleas appears to agree and asserts that:

> [a]greements in the context of the market for corporate control and employee compensation contracts are another category of commercial agreements whose outcome or profitability is based on reported prices.[231]

This type of market manipulation essentially involves influencing the value of financial contracts or commercial deals whose outcome or profitability is dependent on the reported market price of an individual share, a portfolio of shares or a share index.[232] In other words, the benefit that arises from manipulating a share price is not merely a product of the trading activity itself, but rather from the completion of an 'agreement or advantageous settlement of contracts influenced by the manipulated price'.[233]

In *North v Marra Developments Limited*,[234] a seminal case in the development of the growing body of domestic law concerning stock market manipulation, the High Court considered a 'scheme' agreed to between J & J North, a stockbroking firm (North), and the directors of Marra Developments Limited (Marra) regarding Marra's share price. This was in the context of North having been engaged by Marra to provide advice in connection with a reconstruction

---

[229] Fischel and Ross, 'Should the Law Prohibit Manipulation?' (n 33) 523. In what the authors themselves call 'a sharp departure from current law and commentary' they 'conclude that the concept of manipulation should be abandoned altogether. Fictitious trades should be analyzed as a species of fraud. Actual trades should not be prohibited as manipulative regardless of the intent of the trader': at 507. See generally, Avgouleas, *Regulation of Market Abuse* (n 42) 143-147.

[230] Fischel and Ross, 'Should the Law Prohibit Manipulation?' (n 33) 523.

[231] Avgouleas, *Regulation of Market Abuse* (n 42) 144.

[232] Ibid 143-144; Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 73.

[233] Avgouleas, *Regulation of Market Abuse* (n 42) 144; Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 73. Trading activity conducted to artificially influence the price of derivative contracts that derive their value from an individual share, a portfolio of shares or a share index could also be considered under this classification.

[234] (1981) 148 CLR 42. This case is discussed in Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 73-74

of Marra's capital and its takeover of Scottish Australian Holdings Limited (SAHL).[235] The essence of the scheme was that transactions executed by North on the SSE would 'establish a market' for Marra's shares at '$16.50 or thereabouts' to facilitate a takeover proposal in which Marra's shares were to be exchanged for those of SAHL.[236] The target price of $16.50 was significantly higher than the last traded price for Marra's shares, which, in the preceding 14 months, had traded between $2.60 and $7.80.[237]

North sued Marra for fees in the amount of $140,000 in respect of which it claimed it was entitled for: (i) providing advice to Marra in relation to the reconstruction of Marra's capital; and (ii) initiating and introducing the proposal to merge Marra and SAHL.[238] North's claim against Marra failed on the basis that the agreement between the two parties concerning Marra's share price was illegal as it was in breach of s.70 of the *Securities Industry Act* 1970 (NSW), the object of which, according to Mason J, was to 'protect the market for securities against activities which will result in artificial or managed manipulation'.[239]

Mason J made reference in his judgment to the general principle that a claim for payment for fraudulent conduct is defeated by the 'illegality principle' and quoted from the decision of Lindley LJ in *Scott v Brown, Doering, McNab & Co*.[240]

> . . . the correspondence put in evidence by the plaintiff in support of the claim he made at the trial shews conclusively that the sole object of the plaintiff in ordering shares to be bought for him at a premium was to impose upon and to deceive the public by leading the public to suppose that there were buyers of such shares at a premium on the Stock Exchange, when in fact there were none but himself. The plaintiff's purchase was an actual purchase, not a sham purchase; that is true, but it is also true that the sole object of the purchase was to cheat and mislead the public.[241]

---

[235] Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 73.
[236] *North v Marra* (n 39) 55 (Mason J).
[237] Ibid 51 (Mason J).
[238] North was suing Marra for $140,000, Marra having only paid $35,000 of North's original claim for $175,000: ibid 52.
[239] Ibid 59; Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 73-74.
[240] [1892] 2 QB 724.
[241] According to Lindley J, '[u]nder these circumstances, the plaintiff must look elsewhere than to a court of justice for such assistance as he may require against the persons he employed to assist him in his fraud, if the claim to such assistance is based on his illegal contract': *Scott v Brown, Doering, McNab & Co* [1892] 2 QB 724, 728-729 (Lindley LJ) quoted in *North v Marra* (n 39) 60 (Mason J).

Lindley LJ's comments were not only entirely pertinent to the case in question but were also an acute observation on the insidious nature of stock market manipulation that still resonates strongly almost 130 years later.[242]

3.7.8 Manipulation based on fictitious transactions

'Fictitious trades', according to Avgouleas, primarily consist of 'wash trades' and 'matched orders'.[243] Both types of transaction are typically undertaken in order to create the appearance of activity in a listed company's shares that is intended to convey the impression that there is buying or selling interest in the shares when, in fact, there is none.[244] Bell J commented in *Braysich v R*[245] that 'certain classes of transaction are well recognised as being carried out for the purpose of market manipulation', which include 'wash sales' and 'matched orders'.[246] As will be discussed in subsequent chapters, and as a review of the newspaper articles published during the early period covered by this research has revealed, the purported execution of 'fictitious sales' was referred to in the colonial press on many occasions,[247] with one article exclaiming that '[f]ictitious sales especially are the most fashionable means of making money'.[248]

3.7.8.1 Wash Trades

A 'wash sale' or 'wash trade'[249] is an on-market transaction where a person enters into, or carries out, either directly or indirectly, a purchase or sale of a company's shares that does not involve any change in the beneficial ownership of the shares in question.[250] A person who today executes a 'wash trade' in a listed company's shares on a domestic stock exchange is deemed under s.1041B(2)(a) of the Act to have created a false or misleading appearance of active

---

[242] Other examples of contract-based manipulation include *Fenwick v Jeffries Industries Ltd* (1995) 13 ACLC 1334 (decision upheld by the Court of Appeal in *Fame Decorator Agencies v Jeffries* (n 182)) and *Australian Securities and Investments Commission v Soust* [2010] FCA 68.
[243] Avgouleas, *Regulation of Market Abuse* (n 42) 129. Wash trades and matched orders are discussed in Constable, 'Ferocious Beast or Toothless Tiger?' (n 3) 76.
[244] Ibid.
[245] [2011] HCA 14.
[246] *Braysich v R* [2011] HCA 14 [97] Bell J.
[247] See, for example, 'Melbourne, Tuesday, August 23rd, 1859', *The Age* (Melbourne, 23 August 1859) 4; 'Monday, January 14, 1861', *The Argus* (Melbourne, 14 January 1861) 5; 'Charge of rigging the Share Market', *The Age* (Melbourne, 25 April 1872) 3; 'The Stock Exchange of Melbourne', *Table Talk* (Melbourne, 13 November 1891) 8.
[248] 'The "Bus" Papers', *The Weekly Times* (Melbourne, 27 July 1872) 8.
[249] These terms are used interchangeably in this paper.
[250] Section 1041B(2)(a) of the Act. See *Scook v The Queen* [2008] WASCA 114, [7] (McLure JA); *Braysich v R* [2011] HCA 14 [97] Bell J. Section 1041B(3) of the *Corporations Act* sets out the circumstances in which an acquisition or disposal of financial products does not involve a change in beneficial ownership.

trading in the relevant shares. That is, they are deemed to have engaged in stock market manipulation.

Trades that involve no change in beneficial ownership have been described as a 'deceit' on the basis that they 'broadcast the fact that a buyer and seller have agreed to exchange shares at the published price, when they have not done so.'[251] According to Sackville J in *Australian Securities Commission v Nomura International PLC*:[252]

> The effect of the self-trades . . . was to create the appearance that genuine sales had occurred in each of those securities between a willing buyer and a willing seller. That appearance was false, since Nomura had simply traded with itself, by causing its own Bid Basket to be hit . . . to the extent that the turnover recorded in a particular security is based on self-trades, an observer of the market would be misled.[253]
>
> Nomura's intention was to effect self-trades through the Bid Basket at depressed prices. The prices would not have reflected the forces of genuine supply and demand, but would have been unilaterally determined by Nomura.[254]

Not only are buyers and sellers in the market misled as a result of 'wash trades' being executed in the share market, which can adversely impact their decision making and the value of their investments, but they can also affect 'value-weighted average prices which are used for many other trading purposes'.[255] This includes providing investors with an understanding of the trend and value of a security or portfolio of securities.[256] According to ASIC, wash trades are 'a significant obstacle in maintaining fair and orderly markets.'[257]

---

[251] *United States v Brown* (1935) 79 F 2d 321, 325 cited in *Braysich v R* (n 211) [26] (Buss JA).
[252] (1998) 160 ALR 246.
[253] *ASC v Nomura* (n 184) 341 (Sackville J).
[254] Ibid 346 (Sackville J).
[255] See Australian Securities and Investments Commission, 'Report 425: ASIC supervision of markets and participants: July to December 2014', March 2015, 5.
[256] Ibid.
[257] Australian Securities & Investments Commission, 'Report 327: ASIC supervision of markets and participants: July to December 2012', February 2013, 5 <https://download.asic.gov.au/media/1344158/rep327-published-26-February-2013.pdf>.

Over the years, there have been several domestic cases involving 'wash trades' that were the subject of judicial consideration in the domestic context, including *Endresz v Whitehouse*,[258] *Australian Securities Commission v Nomura International PLC*[259] and *Manasseh v R*.[260]

3.7.8.2 Matched Orders

'Matched orders', which have been referred to as a form of 'artificial trading'[261] and a 'type of artificial transaction',[262] are deemed under s.1041B(2)(b) to have created a false or misleading appearance of active trading in financial products. In *Braysich v R*,[263] Bell J described 'matched orders' as follows:

> "Matched orders" are transactions in which a person making an offer to buy or sell securities knows that an associate has made, or will make, a corresponding offer to sell or buy the same number of securities at the same price.[264]

Buss JA in *Braysich v R*[265] described both wash sales and matched orders as being:

> ordinarily and of their nature, pernicious practices, which will, invariably, have the purpose and, often, the effect of interfering with the integrity of a stock market.[266] The interference will arise from the creation of the false or misleading appearance of trading between unassociated sellers and buyers who do not intend, by their dealings, to create an artificial market or price.[267]

According to His Honour, 'wash sales' and 'matched orders' are 'devices' used to create or maintain an appearance of 'market activity or a price'.[268] In His Honour's view, there is no

---

[258] (1997) 24 ACSR 208.
[259] (1998) 160 ALR 246.
[260] (2002) 40 ACSR 593.
[261] *Morgan Stanley v Detata* (n 30) [99] (Banks-Smith J). See also *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* [2018] FCA 751 where Beach J referred to matched orders as a 'type of artificial transaction': [1897] (Beach J) ('*ASIC v Westpac*').
[262] *ASIC v Westpac* (n 261) [1897] (Beach J).
[263] [2011] HCA 14.
[264] *Braysich v The Queen* [2011] HCA 14, [97] (Bell J). Similarly, according to a circular published by the Australian Stock Exchange in November 2000, 'matched orders' arise in circumstances where 'a person makes, or causes to be made, an offer to sell or purchase securities when that person has made, or proposes to make, or knows that an associate has made or proposes to make, a corresponding offer to purchase or sell the same securities on substantially the same terms': ASX, 'Business Rule 2.2.4 – Prevention of Manipulative Trading' (n 195) 14. An ASX Circular published in 1990 defines 'matched orders' as 'pre-arranged trades', that is, 'associated parties entered purchase or sale orders knowing associate has entered corresponding order': ASX, 'Circular to Member Organisations Number 306/90' (n 112).
[265] [2009] WASCA 178.
[266] *Braysich v R* (n 211) [77] (Buss JA).
[267] Ibid.
[268] Ibid.

doubt that the insidious features of 'wash sales' and 'matched orders' explain why Parliament enacted the deeming provisions in what is now s.1041B(2) of the Act.[269]

3.8 Market Power Manipulation

Those intent on misusing their monopoly or dominant market power with respect to a particular financial market to manipulate the prices of shares can do so through 'cornering' and 'squeezing', which are described in the Explanatory Memorandum for the *Futures Industry Bill 1986* (Cth) in the following terms:

> The two main forms of manipulation are "squeezing" and "cornering" which involve attempts to manipulate futures prices by manipulating supply and demand for the physical commodities that are deliverable under futures contracts so that available supply is exceeded and artificial prices are created.[270]

In *Director of Public Prosecutions (Cth) v JM*,[271] the High Court unanimously determined that the majority of the Court of Appeal in *Director of Public Prosecutions (Cth) v JM* [2012] VSCA 21 was wrong to conclude that:

> s1041A should be construed as directed to "market manipulation by conduct of the kind typified by American jurisprudential conceptions of 'cornering' and 'squeezing'". Contrary to the conclusion of the majority of the Court of Appeal, s 1041A is not confined in its application to the creation or maintenance of an artificial price by a dominant market participant exercising that participant's market power.[272]

According to the High Court, the takeover provisions contained in Chapter 6 of the Act mean that 'monopoly of, or dominance over,' the market for a particular company's shares listed on the ASX can only be achieved by 'making a successful takeover for that company.'[273] Given the effect of the takeover provisions the Court considered that 'it may be unlikely that any buyer or seller can, in any practical sense, "corner" or "squeeze" the market for listed shares.'[274]

---

[269] The actual provision considered by His Honour was s.998(5) of the *Corporations Act 2001* (Cth): ibid.
[270] Explanatory Memorandum, Futures Industry Bill 1986 (Cth) [285]. According to the High Court in *DPP v JM* (n 8), the terms 'cornering' and 'squeezing' were used in the EM for the Futures Industry Bill (and *Cargill Inc v Hardin* 452 F 2d 1154 (1971)) 'to refer to attempts to manipulate futures prices by manipulating supply and demand for the physical commodities that were deliverable under the futures contracts. For the reasons that have been given, those terms can have no direct application to the market for listed shares . . .' [67].
[271] *DPP v JM* (n 8).
[272] Ibid [77].
[273] Ibid [65].
[274] Ibid.

Writing in 1977, Baxt, Ford and Samuel asserted that 'now that there is statutory regulation of shortselling, corners are likely to be infrequent.'[275]

But their Honours in *Director of Public Prosecutions (Cth) v JM* appear to have gone further. The terms 'cornering' and 'squeezing' were said to have been used in *Cargill, Incorporated v Hardin* 452 F.2d 1154 (8th Cir. 1971)[276] and the Explanatory Memorandum for the *Futures Industry Bill 1986* (Cth) to describe a particular type of conduct in the futures market, that is, 'attempts to manipulate futures prices by manipulating supply and demand' for the underlying physical commodities that require delivery under the futures contracts.[277] As such, their Honours asserted that the terms 'cornering' and 'squeezing' 'can have no direct application to the market for listed shares.'[278]

Given the High Court's comments, this begs the question: why have 'corners' and 'squeezes' been included in a thesis on stock market manipulation? Although the High Court's view in *Director of Public Prosecutions (Cth) v JM* is entirely apposite in the context of today's highly regulated domestic securities markets, as will be shown in the following chapters, activities and conduct similar in nature to 'corners' and 'squeezes' appear to have occurred on domestic share markets on a number of occasions over the course of the period covered by this research. As such, these concepts are discussed in this section to assist in understanding the historical examples that are referred to in subsequent chapters.

Although Warren CJ in the Court of Appeal in *Director of Public Prosecutions (Cth) v JM* [2012] VSCA 21 stated that there 'does not appear to be any widely adopted definitions' for the terms 'cornering' and 'squeezing',[279] each of them will be discussed below.

---

[275] R Baxt, HAJ Ford and GJ Samuel, *An Introduction to the Securities Industry Acts* (Butterworths, 1977), 195 ('*Introduction to the Securities Industry Acts*').
[276] According to the US Court of Appeals, Eighth Circuit, in *Cargill Inc v Hardin* (n 36) a 'corner' in its most extreme form means a near monopoly of a cash commodity, 'coupled with the ownership of long futures contracts in excess of the amount of that commodity, so that shorts — who because of the monopoly cannot obtain the cash commodity to deliver on their contracts — are forced to offset their contract with the long at a price which he dictates, which of course is as high as he can prudently make it': [1162].
[277] *DPP v JM* (n 8) [67].
[278] Ibid. Justice Ashley Black of the Supreme Court of NSW in a 2014 seminar paper made a similar point when he stated the following: 'I will also not address manipulation involving market power, such as the "squeeze" which has historically been seen in commodity markets, which would be difficult to implement unless a financial product has limited liquidity': Justice Ashley Black, 'Market Manipulation – Incentives and Enforcement' (n 133) 1.
[279] *Director of Public Prosecutions (Cth) v JM* [2012] VSCA 21 at 284 [212] n 159.

3.8.1 Corners

'Corners' have been likened to 'a conspiracy to extort money'.[280] It has been claimed that 'corners' are as 'old as the stock markets themselves'[281] and the history of 'corners' has been characterised as 'notorious' in 'share and commodity markets around the world'.[282] Baxt, Ford and Samuel have described a 'corner' as arising in the following circumstances:

> when a buyer or a combination of co-operating buyers purchase more than the available supply of a security with the intention of forcing shortsellers to settle on terms dictated by the purchaser or combination of purchasers. Such over-buying is possible only if there are shortsellers and the issuer of the security has a small issued capital.[283]

A contemporaneous explanation of how 'corners' were operated is provided by Meudell in his 'rambling, idiosyncratic and uninhibited autobiography'.[284]

> The plan is to form a syndicate to buy, take off the market and put in a Safe Deposit box all the scrip possible up to more than half the register. Then the market price is put up and down and sometimes over sideways to encourage the innocent to "spec-sell" or "bear" them. When the mug speculators (the world is full of them, for they are born at the rate of ten a minute all the time) are well and truly over-sold and the last scrip certificate has been imprisoned, the price is steadily bid up to an impossible and false value and held there. Notices to deliver scrip at once are sent to every broker who is over sold and he has to go to the syndicate, confess he has sinned, and pay whatever the syndicate chooses to exact.[285]

Although stock exchanges in Australia have had rules relating to 'corners' over the years, there appears to be no formal definition provided in any of the exchanges' rule books that were reviewed for the purposes of this research. However, some guidance is provided in the wording

---

[280] 'Intricacies of the share market', *Daily Telegraph* (Sydney, 8 March 1890) 6.
[281] Edward Chancellor, *Devil Take the Hindmost: A History of Financial Speculation* (Plume, 2000), 156. On 13 October 1868, the Chicago Board of Trade adopted a rule banning 'corners', which is claimed to be the 'first known regulatory attempt to deter manipulation': US Commodity Futures Trading Commission, 'History of the CFTC', <https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html> ('History of the CFTC'); Jerry W Markham, *Law Enforcement and the History of Financial Market Manipulation* (ME Sharpe, 2014) 20.
[282] Senate Select Committee*, Australian Securities Markets and Their Regulation* (n 1) 15.11.
[283] Baxt, Ford and Samuel, *Introduction to the Securities Industry Acts* (n 275) 195. According to Loss, a 'corner is a purchase of more than the available supply of [shares] with the intention of forcing settlement from short sellers at the purchaser's figure': Louis Louis, *Fundamentals of Securities Regulation* (Little, Brown & Company, 2nd ed, 1988) 849 n 12.
[284] According to the *Australian Dictionary of Biography*, George Dick Meudell (1860–1936) became a member of the Stock Exchange of Melbourne in January 1890: Diane Langmore, 'Meudell, George Dick (1860-1936)', *Australian Dictionary of Biography* <http://adb.anu.edu.au/biography/meudell-george-dick-7564>.
[285] George Meudell, *The Pleasant Career of a Spendthrift* (George Routledge & Sons Ltd, 1929) 87.

of Regulation 73 of the 1971 version of the *Regulations* of the Brisbane Stock Exchange, for example, which provided the Committee with power to deal with the delivery and settlement of securities in the event of a 'corner'.[286] Additionally, no domestic stock exchange rules were located that explicitly prohibited 'corners'. Moreover, even though there have been a number of 'corners' established on domestic share markets over the years and 'imposing a corner' on a security is claimed to be a 'recognised manipulative device',[287] there does not appear to have been any disciplinary action taken by domestic stock exchanges or any kind of regulatory/government intervention of any kind in connection with identified instances.

3.8.2 Squeezes

According to Goldwasser, 'imposing' a 'squeeze on a security' is a recognised manipulative device.[288] Similarly, Ji asserts that the market squeeze is a traditional form of securities market manipulation.[289] Yet, there was not much information located in connection with this particular species of stock market manipulation in the domestic context. According to Black, 'manipulation involving market power, such as the "squeeze"' have 'historically been seen in commodity markets'.[290] That being said, however, the terms 'squeeze' or 'short squeeze' were defined by the ASX in a 1990 circular to its member organisations as involving the following:

> purchasing significant amount of stock ie 'cornering' the market, in order to force short sellers to purchase shares to cover their short positions at successively higher prices, thereby increasing the price.[291]

It would appear that a 'squeeze' is a strategy used in conjunction with a 'corner' to 'forcefully shift the equilibrium price by gaining dominant control over the supply of a security'[292]—or,

---

[286] The regulations provide as follows: 'a person or company or two or more persons and/or companies acting in concert have acquired such control of a security admitted to quotation by the Exchange that the same cannot be obtained for delivery on existing contracts except at prices or on terms arbitrarily dictated by such persons': Regulation 73, The Brisbane Stock Exchange, *Regulations*, Reprinted 1971. Further guidance on how the stock exchange may have construed the term 'cornering' is provided by a circular issued by the Australian Stock Exchange to its member organisations on 21 June 1990: '"Domination and control of markets" – Most forms of market manipulation involve gaining control of the market by purchasing significant volumes at artificially set prices. Also called "cornering". This can be followed by increasing or decreasing prices to desired levels. The more illiquid the stock, the easier to gain control and therefore the easier to manipulate': ASX, 'Circular to Member Organisations Number 306/90' (n 112).

[287] Goldwasser, *Stock Market Manipulation* (n 6) 144.

[288] Ibid.

[289] Shan Ji, 'Security Market Manipulations and the Assurance of Market Integrity' (PhD Thesis, University of New South Wales, 2009) 7 ('Assurance of Market Integrity').

[290] Black, 'Market manipulation – Incentives and enforcement' (n 133) 1.

[291] ASX, 'Circular to Member Organisations Number 306/90' (n 112). See also Goldwasser, *Stock Market Manipulation* (n 6) 162; Redmond, *Corporations and Financial Markets Law* (n 35) 884.

[292] Ji, 'Assurance of Market Integrity' (n 289) 7.

put another way, to essentially ‘extort’ money from short sellers who are contractually obligated to cover their short sales, or buy the relevant shares back, in order to deliver them to the buyer to whom they originally sold the shares.[293] The short sellers may be under particular pressure (hence the term ‘squeeze’)[294] to cover their short positions where there are sharp price increases or they cannot borrow the shares needed to close out their short positions by the relevant settlement date, but, instead, have to repurchase shares in the open market.[295] According to Rydge, writing in 1939:

> The object of cornering the shares of a company is to prevent bears obtaining the scrip. A “squeeze” is applied and the bears, who are unable to obtain scrip, must buy it from those who have it at any sort of arbitrary price.[296]

Where there is a rush by short sellers to cover their short sales, additional upward pressure is applied to the price of the relevant shares, which exacerbates the problem and forces the price even higher.[297] It may well be the case that the difficulties experienced by short sellers in trying to buy shares to fulfil their contractual obligations are attributable to measures taken by those responsible for the ‘corner’ in their efforts to ‘squeeze’ the sellers and ‘render it impossible’ for them to do so.[298] Even where they are able to buy the shares to cover their short position/s by the relevant time, the price they end up paying will most likely be considerably higher than would otherwise have been the case.

3.9 Conclusion

Whilst the tools used to perpetrate this form of financial market misconduct may have changed significantly over the 100 or so years covered by this research, as will become apparent from the chapters that follow, the methods employed to distort share prices and the motivations of those responsible would appear, nonetheless, to be broadly the same.

---

[293] CFTC, ‘History of the CFTC’ (n 281).
[294] Securities and Exchange Commission, ‘Amendments to Regulation SHO, 17 CFR Part 242, [Release No. 34-56212; File No. S7-12-06]’ 10 n 34 <https://www.sec.gov/rules/final/2007/34-56212.pdf> (‘Amendments to Regulation SHO’); Ji, ‘Assurance of Market Integrity’ (n 289) 7.
[295] See generally John D Finnerty, ‘Short Selling, Death Spiral Convertibles, and the Profitability of Stock Manipulation’, March 2005, 11 <https://www.sec.gov/comments/s7-08-08/s70808-318.pdf>.
[296] Rydge, *The Australian Stock Exchange* (n 111) 115.
[297] SEC, ‘Amendments to Regulation SHO’ (n 294) 10 n 34.
[298] CFTC, ‘History of the CFTC’ (n 281). As noted by the SEC, ‘some short squeezes may occur naturally in the market’, however, a ‘scheme to manipulate the price or availability of a stock in order to cause a short squeeze is illegal’: SEC, ‘Amendments to Regulation SHO’ (n 294) 10 n 34.

PART TWO: THE EARLY DAYS - Mid-1800s to 1900

CHAPTER 4: The Early Days - Part 1

> '. . . people who are successful in mining . . . know that shares can be, and are frequently, *pooled,* and that, therefore, being subject to the manipulation of one man only, they can be raised just as quickly or as slowly as the operator wishes. To them tape quotations for shares of this description carry no meaning . . .'[1]

4.1 Introduction

As alluded to in Chapter 2, and as will be discussed in this and subsequent chapters, the trafficking in shares during the early years of domestic share trading appears to have been plagued by those intent on unjustly enriching themselves at the expense of others by intentionally distorting the prices at which shares were traded. This was brought about by a variety of different methods, some of which, if the newspaper reports of the time are accurate, could be described as quite ingenious. [2]

This chapter will broadly sketch the domestic context for the early trading of shares in some of the Australian colonies, initially at informal gatherings on street corners and later formalised stock exchanges that became established over time. It will then commence tracing the historical roots of stock market manipulation in Australia. This will be done through a review of the numerous domestic newspaper articles from the latter half of the 1800s that contained reports describing conduct and activities that, whilst not initially explicitly proscribed by legislation, would today appear to fall within the purview of the current market rigging/manipulation provisions in Division 2 of Part 7.10 of the *Corporations Act*. Alternatively, they may be caught

---

[1] Curle, JH, *The Gold Mines of the World Containing Concise and Practical Advice for Investors Gathered From A Personal Inspection of the Mines of Transvaal, India, West Australia, Queensland, New Zealand, British Columbia and Rhodesia* (Waterlow and Sons, 1899), 14.

[2] Indeed, there are plenty of instances peppered throughout the numerous domestic newspaper articles from the 1860s onwards. By way of example, one matter, referred to variously as 'a clever scheme', 'a remarkable swindle', 'ingenious share speculating' and 'extraordinary share dealing', involved two brothers who sent telegrams to sharebrokers purporting to be from 'well-known gentlemen' instructing the brokers to purchase various shares. The shares would rise in value and the brothers would send a subsequent telegram to the brokers 'instructing them to take advantage of the rise in the stock, sell and post cheque' to a specified address where on at least one occasion a boy collected the proceeds by producing an order bearing the name of the person who had purportedly given the instructions to the sharebrokers. Articles on this story were contained in at least 12 different domestic newspapers: see, for example: 'Victimising Sharebrokers. Alleged Forgery of Telegrams. A Clever Scheme. Arrest of the Principal', *The Express and Telegraph* (Adelaide, 9 January 1897) 4; 'Alleged Forgery of a Telegram', *The South Australian Register*, 9 January 1897, 5; 'Mining Frauds. Victimizing Sharebrokers. Serious Allegations of Leakage', *The Evening Journal* (Adelaide, 11 January 1897) 3; 'A Second Case. Two Arrests Made', *The Chronicle* (Adelaide, 16 January 1897) 19.

more broadly by the dictionary definitions of: (i) 'rigging', which includes to 'manipulate or manage in a fraudulent or underhand manner' and to 'manipulate (the stock market) causing prices to rise or fall through illegal, improper or contrived methods';[3] and/or (ii) 'manipulate', which includes to 'manage, control, or influence in a subtle, devious, or underhand manner'.[4]

4.2 Setting the context

4.2.1 Early share trading in the Australian colonies

The historical roots of share trading in Australia appear to have been established as long ago as the latter part of the 1820s, around 40 years after Captain Arthur Phillip and his officers rowed ashore at Sydney Cove, the 'site where the British would begin their occupation of Australia' on 26 January 1788 by claiming possession on behalf of His Majesty King George III.[5] This was the beginnings of a plan that was approved by the King for convicts to be 'sent to establish a [convict or penal] colony in New South Wales'.[6]

The first person in Australia to sell shares by way of auction is said to have 'most probably' been Samuel Lyons, described as 'one of Sydney's most successful and long-serving auctioneers', who, in May 1827, sold 'two small lots of shares in the Bank of New South Wales'.[7] Although he never claimed to be a sharebroker, one of the earliest people to 'trade in shares' was Matthew Gregson, whose business activities included, amongst others, customs house agent, bill and discount broker, loan arranger and accountant.[8] On 1 September 1829, Mr Gregson advertised in *The Sydney Gazette* that he had 'received permission from the colony's two banks, the Australia and the New South Wales, to trade in their shares'.[9] Indeed, according to the ASX, '[e]arly share trading began with Matthew Gregson (1828) and William Barton (1835), the father of Australia's first Prime Minister, acting as share brokers'.[10] According to Salsbury and Sweeney, Mr Barton was 'Sydney's first sharebroker'.[11]

---

[3] *Oxford English Dictionary* (online at 13 February 2022) 'rigging' (def 5).
[4] *Oxford English Dictionary* (online at 13 February 2022) 'manipulate' (def 3).
[5] David Hill, *Convict Colony: The remarkable story of the fledgling settlement that survived against the odds* (Allen & Unwin, 2019), 83-84 ('*Convict Colony*').
[6] Ibid 15.
[7] Stephen Salsbury and Kay Sweeney, *The Bull, the Bear & the Kangaroo: The History of the Sydney Stock Exchange* (Allen & Unwin, 1988), 14 ('*The Bull, the Bear & the Kangaroo*').
[8] Ibid 15.
[9] Ibid. Like many others at the time, Messrs Lyons and Gregson had been transported to the penal colony of New South Wales as a result of their convictions in Britain: at 14-15.
[10] ASX, *ASX Story: History* <https://www2.asx.com.au/about/asx-story>.
[11] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 83.

Edward Khull, who described himself as a 'Stock and Share Broker', reportedly listed 14 companies in which investors could buy shares in the 18 October 1852 edition of *The Argus* newspaper.[12] This is said to have been the first stock listing in Australia, which reportedly led to the formation of a group that described itself as the Melbourne Brokers Association (MBA).[13] According to Hall, Khull 'has the distinction of being Melbourne's first broker'.[14] Hall also asserts that Khull's first share price list marked 'the beginning of a share market in Victoria.'[15] Later editions of *The Argus* and *The Age* contained advertisements for 'Khull's Stock Exchange—Stock and Shares for Sale', which listed names of the relevant shares, and what appears to be the volume on offer.[16]

Khull's stock and share list was replaced in 1859 by a list issued by the MBA, whose brokers are said to have traded in 'Australia's first stock exchange' from a rented space in the Hall of Commerce on Collins Street in Melbourne.[17] According to Hall:

> Buying and selling operations were conducted at regular meetings and, in emulation of the then practice of the leading firms, weekly market reports and details of sales were released to the daily press. By March 1860 these reports were described as being 'published under the authority of the Committee of the Stock Exchange'.[18]

---

[12] National Museum of Australia, '20 Years 2021. Defining Moments. First Stock Exchange. 1859: Establishment of Australia's first stock exchange' <https://www.nma.gov.au/defining-moments/resources/first-stock-exchange> ('Defining Moments. First Stock Exchange. 1859').

[13] A R Hall, *The Stock Exchange of Melbourne and the Victorian Economy: 1852-1900* (Australian National University Press, 1968) 24 ('*Stock Exchange of Melbourne*'); NMA, 'Defining Moments. First Stock Exchange. 1859' (n 12).

[14] Hall, *The Stock Exchange of Melbourne* (n 13) 3. The 28 October 1852 edition of *The Argus* contained an advertisement stating the following: 'STOCK AND SHARE BROKER. The undersigned begs to intimate that he has commenced the business of stock and share broker, and is prepared to effect the sale or purchase of shares of the various banks and joint stock companies of Melbourne. Stock registered for sale or purchase free of charge. EDWARD KHULL. 12856. Stock and Share Broker': 'Stock and Share Broker', *The Argus* (Melbourne, 28 October 1852) 7. An Edward Khull also regularly advertised in *The Argus* newspaper that he was a purchaser of gold and referred to himself as a 'Bullion Broker': see for example, 'Gold', *The Argus* (Melbourne, 21 June 1852) 2.

[15] A R Hall, 'Khull, Edward (1805-1884)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University <https://adb.anu.edu.au/biography/khull-edward-3949/text6223>, published first in hardcopy in 1974.

[16] See, for example: 'Khull's Stock Exchange – Stock and Shares for Sale', *The Argus* (Melbourne, 9 March 1857) 7

[17] NMA, 'Defining Moments. First Stock Exchange. 1859' (n 12); Hall, *The Stock Exchange of Melbourne* (n 13) 22-24.

[18] Hall, *The Stock Exchange of Melbourne* (n 13) 24.

The MBA subsequently moved to several different locations around Melbourne until 1891, when the 'official Stock Exchange of Melbourne (established in 1884) moved into its own purpose-built premises' in Collins Street.[19]

According to Hall, prior to Victoria's first mining company boom in 1859,[20] there is '[n]o doubt Bendigo, and especially Ballarat, had seen brokers operating well before 1859' and '[e]vidence of their operations, even on some of the smaller fields, dates at least to 1855'.[21] It was only from 1859, however, that Hall asserts 'they became a much more prominent feature of the goldfields economic landscape.'[22]

4.2.2 Gold mining and share trading

As would become apparent to those enquiring into the development of share trading in the domestic context, the history of gold mining across the Australian colonies, informal share trafficking in towns that grew up alongside the gold mines and the establishment of some of the formalised stock exchanges were long-time bedfellows. In Victoria, for example, the development of colonial share trading and the establishment of the domestic stock exchanges were inextricably linked with the discovery of gold and the frenzied mining activities that followed. Indeed, according to Hall, throughout most of the period between 1850 and 1900, the principal business of the Melbourne share market was in mining securities.[23]

Following the discovery of gold in 1851 and the consequent gold rushes, initially in NSW and then Victoria,[24] the literature reviewed suggests that 'primitive stock markets' began to develop from the mid-1850s alongside the gold fields.[25] Ballarat and Bendigo in Victoria are two examples of where this occurred.[26] Even though gold was discovered in NSW prior to Victoria,

---

[19] NMA, 'Defining Moments. First Stock Exchange. 1859' (n 12). Hall provides a detailed account of the various developments that led to the establishment of stock exchanges in Melbourne in Chapter 2 of his history of the Stock Exchange of Melbourne: Hall, *The Stock Exchange of Melbourne* (n 13) 13-47.
[20] Ibid18-22.
[21] Ibid 22-23.
[22] Ibid 23.
[23] Ibid 57-59.
[24] See Geoffrey Blainey, *The Rush That Never Ended: A History of Australian Mining* (Melbourne University Press, 2003) chs 2, 3 ('*The Rush That Never Ended*'); David Hill, *The Gold Rush: The Fever That Forever Changed Australia* (William Heinemann, 2010) chs 1-3.
[25] Ralph W Birrell, *Staking a Claim: Gold and the Development of Victorian Mining Law* (Melbourne University Press, 1998) 64 ('*Staking a Claim*'). The discovery of gold in February of 1851 in Bathurst, New South Wales triggered gold rushes in New South Wales and later Victoria that 'quickly altered the economies of the two colonies': Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 23.
[26] Birrell, *Staking a Claim* (n 25) 64.

however, the ‘yellow metal had only a minimal impact in the Sydney share market’.[27] Indeed, it is claimed that:

> New South Wales lagged behind Victoria, where the gold-rush resulted in the formation of stock exchanges in at least three cities: Melbourne, Ballarat and Bendigo. By 1860 no less than ten specialised brokerage houses had sprung up in Melbourne . . .[28]

By contrast, for most of the 1850s Sydney ‘had only two specialised stockbrokers’[29] and the SSE was not established until May 1871,[30] around ten years after the first exchange appears to have been established in Melbourne.[31]

There appear to be several reasons for ‘Melbourne’s priority over Sydney in the formation of a stock exchange as distinct from a share market’, including ‘the southern colony’s gold production’ having been ‘massively larger than that of New South Wales’.[32] According to Salsbury and Sweeney, during the period 1851 to 1860 ‘Victoria led its northern rival in gold production by a ratio or more than eight to one’.[33] In fact, it is claimed that ‘[i]n ten years gold had transformed Victoria from a minor pastoral settlement to the most celebrated British colony’, a colony that in the 1850s was responsible for ‘supplying one-third of the world’s gold production’.[34]

Differences in the development or evolution of mining methods in the two colonies appear to have been a key factor that ‘encouraged company formation on the Victorian fields’.[35] This, in turn, may explain why Victoria was able to edge ahead of its northern neighbour in terms of establishing an environment that was conducive to the rapid growth of share trading on a much larger scale than had hitherto been the case. During the course of the first phase of the gold rush in NSW and Victoria, for example, the miners in both colonies exploited alluvial deposits, which occurred in areas where prospectors could readily extract gold using ‘three primitive

---

[27] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 26.
[28] Ibid 24; Hall, *The Stock Exchange of Melbourne* (n 13) 24-25.
[29] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 24-25.
[30] Ibid 108.
[31] According to Sharp, ‘Sydney brokers have not always been so quick off the mark. The first move to form an organised group did not occur until 1871—ten full years after the formation of the Melbourne Stock Exchange’: Keith Sharp, *The House of Mammon: The Stock Exchange at Work* (Hicks Smith & Sons, 1972) 72.
[32] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 24-25.
[33] Ibid.
[34] Geoffrey Serle, *The Golden Age. A History of the Colony of Victoria: 1851-1861* (Melbourne University Press, 1968) 369 (‘*The Golden Age*’).
[35] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 25.

and inexpensive tools: the pick, the shovel and the washpan'.[36] People would essentially dig only superficially and wash out the surface gravel that was 'found immediately below a scanty top soil', although by the time of the visit of the Gold Fields' Commission of Enquiry ('the Commission') to the Ballarat gold fields in late 1854[37] this method had been generally 'given up'.[38] However, this particular method of mining was not as productive as later methods used and 'did not encourage company formation'.[39]

Over time, mining conditions changed in the southern colony, particularly at Ballarat where the miners discovered that by 'sinking deep shafts they could tap ancient subterranean river beds, rich in gold'.[40]

> Parties sank fifty and sixty feet and found rich gold; neighbours sank deeper and found gold; and Ballarat diggers became deep miners. They had found the amazing systems of deep leads, the buried rivers of gold.[41]

As the mining shafts went deeper, however, the expense of 'sinking below the alluvial bottoms to the deep leads and quartz reefs' was 'beyond the financial [and physical] resources of the individual digger.'[42]

> Deep sinking became quite common in Ballarat in 1855 when shafts went down to 200 feet and had to be timbered; consequently, the diggers found themselves under the necessity of seeking outside help to finance growing expenditure.[43]

As noted in the report published by the Commission in 1855 ('the Report'), challenges such as these had:

---

[36] Ibid.
[37] The Commission conducted a 'personal inspection' of the gold fields of the colony of Victoria (Ballarat, Creswick's Creek, Castlemaine and Sandhurst (Bendigo)) over a three week period following its appointment on 7 December 1854: *Gold Fields' Commission of Enquiry: Commission Appointed to Inquire into the Condition of the Gold Fields of Victoria* (Report, 1854-1855) vii <https://www.vgls.vic.gov.au/client/en_AU/search/asset/1286493/0> ('*Gold Fields' Commission of Inquiry*').
[38] Ibid xxxv.
[39] Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 25.
[40] Ibid; Blainey, *The Rush That Never Ended* (n 24) 50-51.
[41] Blainey, *The Rush That Never Ended* (n 24) 46.
[42] J.B. Were & Son, *The House of Were 1839-1954: The History of J.B. Were & Son and its Founder, Jonathan Binns Were* (J.B. Were & Son, 1954) 70 ('*The History of J.B. Were & Son*').
[43] Ibid.

gradually worked their own cure by the co-operating arrangements they have called forth among the miners. The superfluous capital of one party has thus been directed to aid the poverty of another, whose industry eventually gave profit to both.[44]

Indeed, this system, or 'cure', is described in the Report as an 'interesting exemplification of the ameliorative measures naturally springing up to suit local circumstances'.[45] Moreover:

> [t]he practice at Ballarat, when it is proposed to sink a shaft, has been to form a copartnery with so many shares. A part of these shares is retained, of course, by the originators, who, being generally poor, dispose of the rest in order to raise the capital necessary for the undertaking. This share dealing has become a multifarious business, giving great facilities to the body of poor but industrious miners without which they must, in many instances, have been unable to carry through their undertakings.[46]

The Report goes on to state that the 'whole body of miners may be said, without exception, to conduct their operations under a copartnery system', the partners in which grew in number once 'deep sinking' began and incurred its associated complexity, expense, and delay.[47] According to the Report:

> [t]hese undertakings soon assumed the form of companies, with a "stock" consisting, besides the chance of gold, of some little plant, as slabs, windlass, &c, and divisible into a fixed number of shares. These shares were transferable, and to meet the circumstances of all, were subdivisible. As the sinking proceeded the stock gradually acquired value, and, becoming marketable, was the subject of constant traffic.[48]

These 'co-partneries', which were 'brought forth' as a result of the type of mining that 'emphasised co-operative rather than individual effort', are said to have 'assumed the characteristics of small companies.'[49] According to Blainey, '[i]imperceptibly company mining was becoming normal at Ballarat.'[50] Indeed, it was 'not long before active share trading began

---

[44] *Gold Fields' Commission of Inquiry* (n 37) xxxvii.
[45] Ibid.
[46] Ibid.
[47] Ibid xlvi.
[48] Ibid.
[49] Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 7) 25. According to Salsbury and Sweeney, the 'Victorian government encouraged this kind of co-operative effort through mining companies acts', the first of which was enacted in 1855 and revised in 1858. Salsbury and Sweeney refer to the further revision of the act in 1860 as the 'cornerstone for gold-mining company organisation in Victoria until the passage of the famed No Liability Mining Act of 1871': at 25. See also Hall, *The Stock Exchange of Melbourne* (n 13) 15-18.
[50] Blainey, *The Rush That Never Ended* (n 24) 50.

in these enterprises' and by the mid-1850s there were a number of 'stockbrokers' in Ballarat trading in mining company shares.[51] The history of J.B. Were & Son notes that gradually:

> the general public were admitted to partnership through the purchase of shares in mining syndicates or companies. Before long a new class arose whose source of livelihood was the buying and selling of shares in claims, and out of this grew the meeting of share dealers at the famous "Corner" in Ballarat. From this, the Ballarat Stock Exchange ultimately developed . . .[52]

The 'Corner' was 'originally an informal meeting place front in of Stallard and Goujon, the first stockbrokers to set up shop on this corner', but prior to that it is claimed that the:

> first official stock exchange was a shed over a mineshaft on the site now occupied by Her Majesty's Theatre. This was followed by a larger exchange occupying the Unicorn Hotel and Ballarat Mechanics' Institute, before the bigger Ballarat Mining Exchange was built in 1887.[53]

A large wooden building at the corner of Sturt and Lydiard Streets in Ballarat, the 'Corner' has been described as a 'notable institution' where 'brokers, jobbers and others congregated for the exchange of information and the conduct of share transactions.[54] According to Kincade, for example, miners would gather daily in the dusty road in front of the Unicorn Hotel in Sturt Street to not only 'exchange their gold claims for cash', but also discuss 'the latest news on diggings' and 'connect with the capital they needed to develop their claims'.[55] Here, mining

---

[51] According to Salsbury and Sweeney, the 'Victorian government encouraged this kind of co-operative effort through mining companies acts', the first of which was enacted in 1855 and revised in 1858. Salsbury and Sweeney refer to the further revision of the act in 1860 as the 'cornerstone for gold-mining company organisation in Victoria until the passage of the famed No Liability Mining Act of 1871': Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 7) 25. See also Hall, *The Stock Exchange of Melbourne* (n 13) 15-18.

[52] J.B. Were & Son, *The History of J.B. Were & Son* (n 42) 70-71. Moreover, the 'government of the recently constituted colony of Victoria' required capital to finance the building of key infrastructure, such as roads, railways and telegraph and other services 'whilst the municipalities and other public bodies' were struggling to 'meet the requirements of the increasing population'. The eventual 'establishment of public organised dealings in stocks and shares' is claimed to have been: 'the logical outcome of the increasing demands for finance by the government, municipalities, the gold mines and trade and industry, but it was some years before such dealings were regularised and became an accepted feature of the financial economy of Victoria': at 71-73.

[53] City of Ballarat, Heritage Weekend, 'The Corner: Corner of Sturt and Lydiard Street' (Web Page, 2018) <https://ballaratrevealed.com/tour.php?action=view_tour&tour_id=12> ('The Corner'). It is claimed that groups of people traded in shares in several of the mining towns located near the gold fields, the most famous of which, according to Birrell, was the group of brokers who traded at the 'Corner' in Ballarat and those who operated 'under the verandahs along the Mall in Bendigo': Birrell, *Staking a Claim* (n 25) 112.

[54] J.B. Were & Son, *The History of J.B. Were & Son* (n 42) 99; Salsbury and Sweeney, *The Bull, the Bear & the Kangaroo* (n 7) 25.

[55] Julie Kincade, *To the Miner Born: A Stockbroker's Life in the Ballarat Gold Rush* (J I Kincade, 2015) 21.

deals are said to have been 'done on a handshake and anyone could participate'.[56] Not only was this the venue where money was invested, but it is said to have been the place:

> where the first news of gold finds was hollered out to clustered groups of miners and speculators amidst robust questions and discussions of the quality of the finds.[57]

Patterson described the spectacle in the following terms:

> Stock-jobbers and brokers had established themselves in excited rivalry at the corner of Lydiard and Sturt streets, and crowds of claim-owners haunted the Stock Exchange, watching the variations of the market. Good news sent the price of scrip flying up, and reports of doubtful character again depressed them.[58]

Moreover, it is claimed that this was the place where:

> [s]pecimens of gold-bearing quartz are shown, shares are bought and sold, new schemes are ventilated, and old ones revived. Many fortunes have been lost and won on that bit of pavement.[59]

When describing the features of Ballarat that most struck him during his visit in 1868-69, Smiles refers to it as the 'famous "Corner"', before likening it to its more well-known ancestors.

> What the bourse is in Paris, Wall Street in New York, and the Exchange in London – that is the "Corner" at Ballarat. Under the verandah of the Unicorn Hotel, and close to the Exchange Buildings, there is a continual swarm of speculators, managers of companies, and mining men, standing about in groups, very like so many circles of betting-men on a race course.[60]

It is claimed that during the 1860s, 'this corner ranked among the world's busiest financial hubs', where 'hundreds of gold speculators, dealers and agents would cluster' and 'vigorously engage in the business of trading in mining stocks and ventures.[61]

---

[56] Ibid.
[57] City of Ballarat, 'The Corner' (n 53).
[58] J.A. Patterson, *The Goldfields of Victoria in 1862* (Wilson & Mackinnon, 1862) 186.
[59] Samuel Smiles (ed), *A Boy's Voyage Round the World; Including a Residence in Victoria, and a Journey by Rail Across North America* (John Murray, 1871) 168 ('*A Boy's Voyage Round the World*').
[60] Ibid.
[61] City of Ballarat, 'The Corner' (n 53).

4.2.3 An inauspicious backdrop to early domestic share trading?

According to Smiles, in Victoria in the period 1868-69 during 'the times of the early rushes to the gold-fields there was, as might be expected, a good deal of disorder and lawlessness'.[62] This included the spreading of rumours regarding new gold-fields and the exaggeration of their 'richness', 'invariably reputed the richest that had yet been discovered', which prompted 'men of all classes' to rush 'from far and near to the new diggings'.[63] This, in turn, resulted in:

> Melbourne [being] half emptied of its labouring population; sailors deserted their ships; shepherds left their flock, and stockmen their cattle; and, worst of all, there also came the pouring into Victoria the looser part of the convict population of the adjoining colonies.[64]

The colonial goldfields have been described by one author in less than flattering terms as:

> breeding grounds for crimes of every description—bushranging, hotel hold-ups, burglary, thuggery, murder and even blatant and successful confidence tricks. Of course the goldfields drew diggers from all over the world and it was not surprising that this vast migration of men also brought certain criminal elements.[65]

According to Matthews, those who encountered difficulty making a living on the goldfields 'turned instead to a life of crime and subterfuge.'[66] Unsurprisingly then, it appears that people engaged in a variety of fraudulent and deceptive practices to take advantage of the many speculators who had money to invest (and invested) in the mining companies operating across the gold fields. This included the 'salting' of a claim, described by Trollope as occurring when 'gold is surreptitiously introduced, is then taken out, and made the base of a fictitious prosperity'.[67] An example provided by Blainey involved gold being fired from a shotgun into a 'barren reef' in order to provide the appearance of a prosperous mine and artificially inflate the price of its shares.[68] Sykes provides a more detailed description of this activity, which he refers to as the 'art of mine salting'.[69]

---

[62] Smiles, *A Boy's Voyage Round the World* (n 59) 153.
[63] Ibid.
[64] Ibid.
[65] Tony Matthews, *Gold, Graves and Gallows: Crimes and Calamities on the Colonial Goldfields* (Central Queensland University Press, 2002) 73.
[66] Ibid.
[67] Hume Dow (ed), *Trollope's Australia* (Thomas Nelson, 1966) 129.
[68] Blainey, *The Rush That Never Ended* (n 24) 99.
[69] The term 'art of mine salting' is borrowed from the title of a section ('Digression 1: The Art of Mine Salting') in Trevor Sykes' book on what is described on the back cover as 'the wildest stock market boom the nation has

> A prospector would buy or otherwise obtain some gold dust, a shotgun and some cartridges. He would remove the buckshot from the cartridges and substitute the gold. When fired at a stope (face) underground the gold would splatter widely, embedding itself as fine particles in the rock.[70]

The 'salting of samples' is claimed by Bedford to have been 'common' around this time.[71]

A review of the non-legal literature suggests that activities that would today most likely fall within the purview of the criminal law, as well as sharp practices and outright fraud, do not appear to have been uncommon occurrences in the early days of share trading in the Australian colonies. According to Blainey, for example, mine managers 'hoarded rich stone in dark corners' for months and then 'extracted all the gold in one week and sent shares soaring'.[72] Moreover, directors of rich mines are claimed to have:

> sometimes spread gloomy reports, made bear raids on the shares, and then bought them cheaply from the shareholders they had deceived.[73]

Such inauspicious conditions appear to have provided the backdrop to the development of share trading in the Australian colonies.[74] Indeed, as will be discussed in this and subsequent chapters, the trafficking in shares of gold mining companies in the latter half of the 1800s appears to have been a popular target for the less scrupulous members of early Australian colonial society.

4.3 The genesis of market rigging?

Given the apparent paucity of available literature on the incidence of stock market manipulation in a domestic context in the early years of share trading, a reasonable starting point for those seeking to trace the historical roots of this insidious activity is the commentary contained in newspapers of the period that were published throughout the various Australian colonies. As those who conduct research in this area will discover, there is a very considerable number of newspaper articles that contain an abundance of substantive commentary on the incidence of conduct and activities aimed at distorting share prices both prior to, and following,

---

ever seen' that occurred in Australia in the late 1960s: Trevor Sykes, *The Money Miners: The Great Australian Mining Boom* (Allen & Unwin, 1995) 35.

[70] Ibid.

[71] Randolph Bedford, *Naught to Thirty-three* (Melbourne University Press, 1976) 119.

[72] Blainey, *The Rush That Never Ended* (n 24) 99.

[73] Ibid.

[74] See, for example, ibid 98, 99; cf Geoffrey Serle, who refers to the 'wide discrepancy of opinion about the behaviours of the diggers' and provides examples of those who 'strongly defended the great mass of diggers from the wild charges current at the time': Serle, *The Golden Age* (n 34) 81.

the establishment of the various formalised stock exchanges that began to operate across the Australian colonies from around the 1860s.[75]

Although it is difficult to locate formal evidence of activities that took place at the ‘Corner’ and other comparatively rudimentary[76] domestic markets where shares were trafficked that may today constitute misconduct, such as market rigging, there is anecdotal evidence, at least, that suggests this was occurring, some of which was discussed in Chapter 2. Smiles himself, for example, states that the ‘Corner’ is where ‘all the mining swindles originate’.[77] Unfortunately, however, he does not elaborate any further on what those swindles were, how they were effected and by whom.

Although it has not been possible to pinpoint when stock market manipulation was first perpetrated on a domestic share market, there is commentary in the newspapers of the time that suggests such conduct was occurring. By way of example, a letter purportedly from “You Can Never Tell” published in the 27 September 1866 edition of *The Ballarat Star* recounts the experience of the intrepid author who, thinking to try his luck, ‘ventured amongst’ the gamblers at The Corner ‘for the purpose of investing a few hundred pounds’.[78] Their account of what happened is illuminating.

> . . . for the life of me I could not see the way in which the thing was "worked", and consequently lost my money. I could see that the market was "rigged", false quotations given, and others withheld, and all to suit their own purposes. One or two appear to have a sort of control over the market, and unless you are in their confidence it is no use attempting to make a living there. They know even the night before what particular scrip is to rise.[79]

According to the author, ‘the Corner’ was an ‘established place of business on Ballarat’ where ‘some hundreds of thousands of pounds change hands every week’.[80] Yet, the trafficking of shares ‘in the day-time at the Corner and in the evening at the café’ was said not to be ‘what it should be in a town like this.’[81] Indeed, similar to commentary in many other domestic

---

[75] It would seem that stock markets, as opposed to more formalised stock exchanges, may have been operating before the 1860s. See, for example, Hall, *The Stock Exchange of Melbourne* (n 13) 24.
[76] According to Withers, it was at the ‘Corner’ in the early 1860s that the ‘previously unorganised business of share dealing began to assume a regular form’: William Bramwell Withers, *The History of Ballarat, From the First Pastoral Settlement to the Present Time* (FW Niven, 2nd rev ed, 1887) 236.
[77] Smiles, *A Boy’s Voyage Round the World* (n 59) 168.
[78] ‘Share Jobbing in Ballarat’, *The Ballarat Star* (Victoria, 27 September 1866) 3.
[79] Ibid.
[80] Ibid.
[81] Ibid.

newspapers of the time, a market in mining shares (or scrip) described by the author as 'rotten to the core', where 'no one is safe under the present system', would, according to the author, have a damaging impact on the capital raising efforts of those engaged in mining activities in the town of Ballarat and surrounding areas.[82]

Similarly, a letter from an 'investor' in mining shares in the Ballarat district to the 'Editors' of *The Ballarat Star*, published in the 24 July 1868 edition, bemoans the influence of 'the nest of jobbers that have so long controlled the Stock Exchange' and who had 'done so much to damage Ballarat as a field of investment for the spare capital of the colony'.[83] They also refer to the importance of ensuring that investors have confidence that business is carried on in Ballarat in 'a straightforward, honest way' and that any losses suffered are:

> such only as are inseparable from the chances of mining, and are not due to the skilfully laid schemes, and subtle dodges to inveigle investors into what are known by the initiated to be arrant swindles.[84]

Moreover, the author was blunt in their disdain for the way in which the share market was operating in Ballarat.

> As has been very pertinently remarked, was there ever a more flagrant attempt to rig the market and to rob the public than in the attempt of a number of men to meet and make collusive sales to each other, and then quote these prices as being the legitimate price of the day, and as the only true reflex of the Ballarat market.[85]

A review of the colonial newspapers of the time reveals similar comments in relation to the way the share market was operating at the 'Corner' in Ballarat, a small selection of which is set out below.

---

[82] Indeed, the author asserts that '[i]f well conducted, capital would directly come in from all parts of the colony to work the mines, but unless some proper system is established the residents in Melbourne and Geelong who contribute greatly to them, will cease to have much confidence, and eventually withdraw the money they have already invested': ibid.
[83] 'Mining Investors v Mining Jobbers: To the Editors of the Star', *The Ballarat Star* (Victoria, 24 July 1868) 2.
[84] Ibid.
[85] Ibid.

> Beyond question, the revelations which have been made from time to time of the fantastic tricks played in Ballarat in the rigging of the share market and the management of mining companies have had a very bad effect in Melbourne . . .[86]
>
> [And]
>
> [Mr WC Smith himself] deprecated the tricks played at the Corner to run shares up and down . . . He will be obliged to confess that quotations are framed by men jobbing in shares, and that a combination of a few men is able at times to rule the local market.[87]
>
> [And]
>
> With what intention the jobbers combined to run up New Mair-street stock on this occasion did not appear in the course of the trial, but it seemed from the remarks of counsel and witnesses that "rigging" the share market is a common practice among the corner men.[88]

Things were not much better under the 'Verandah', an apparent reference to the verandah of the Hall of Commerce building in Collins Street, Melbourne, where the call room for the Melbourne Stock Exchange was located, under which, according to Hall, a 'good deal of Melbourne's share transactions took place' in the period 1862 to 1880.[89]

> Will there ever be an end of all these scandals under the Verandah both in town and country? . . . Fictitious sales especially are the most fashionable means of making money, and they are so cleverly managed that it is difficult to sheet home the offence to any one person. If a case is made out against any one, there are generally found to be three or four others in the "swindle," and so every one gets off scot-free.[90]

In noting that the 'morality of "the Verandah"' had certainly not improved, the 30 August 1876 edition of *The Hamilton Spectator* observed it was there that:

---

[86] 'Daily Issue. Saturday, 23rd January, 1869', *The Ballarat Star* (Victoria, 23 January 1869) 2.
[87] Ibid.
[88] This statement appears in an article containing a report of the case '*Stewart v H Copeland*, for £100 money lent and received', which was said to reflect 'some light on the mysteries of the "Corner": 'Tuesday, June 9, 1868', *The Argus* (Melbourne, 9 June 1868) 4.
[89] Hall, *The Stock Exchange of Melbourne* (n 13) 102. Tilston asserts that during 'the 1870s mining-led boom in Victoria', crowds 'thronged ['under the verandah' in] Collins Street and similar locations in Ballarat and Bendigo': John Tilston, *Bull Market: The rise and eclipse of Australian stock exchanges* (The Yellow Sail Company, 2016) 40.
[90] 'The "Bus" Papers', *The Weekly Times* (Melbourne, 27 July 1872) 8.

> little rings of operators are always to be seen at talk, if not at work, and fictitious sales are constantly going on, to excite the interest and the cupidity of any unwary passer by who may have money in his pocket.[91]

Once the informal trading of mining scrip and shares moved from street corners onto more formalised exchanges, there were some who appear to have believed, naively as it turned out, that 'the bare faced manipulation of the numerous mining and other speculations' that had 'despoiled the public' would come to an end.[92] Indeed, when the Melbourne Stock Exchange was established in April 1861,[93] the author of an article in the 6 March 1863 edition of *The Herald* stated that it was:

> hoped that business would be transacted upon a better principle, and that the practises of rigging the market, and manipulating the shares of the various companies would be discontinued.[94]

This statement suggests that market manipulation was not only occurring, but the reference to it being a 'practise' implies that it was occurring regularly. Unfortunately, however, the 'practises' appear to have continued and the 'evils complained of so far from being destroyed reappeared with intensified virulence.'[95] Indeed, as history has shown, the establishment of stock exchanges in Australia and globally, even those with the best surveillance arrangements and the most robust oversight and enforcement programs, continue to be frequented by those intent on manipulating share prices.

4.4 Market manipulation and 'bubble' companies

Share 'rigging' appears to have been one method used by malefactors to boost the perceived value of what have been referred to in many domestic nineteenth century newspapers as 'bubble companies', the floating of which was described by one particular newspaper as a facility that 'exists for the perpetration of legalised swindling'.[96] A review of the newspaper articles around this time, and subsequently, indicates that attempts to 'get up a bubble company,

---

[91] 'Melbourne. (From Our Own Correspondent). August 28', *The Hamilton Spectator* (Victoria, 30 August 1876) 3.
[92] Untitled article, *The Herald* (Melbourne, 6 March 1863) 4.
[93] Ibid.
[94] Ibid.
[95] Ibid.
[96] 'Bubble Companies. To the Editor of the Brisbane Courier', *The Brisbane Courier* (Queensland, 23 August 1872) 2; 'Bubble Companies', *The Maryborough Chronicle, Wide Bay and Burnett Advertiser* (Queensland, 31 August 1872) 4.

and to rig the share market' were not uncommon.[97] These types of companies appear to have been formed mainly for speculative purposes, many associated initially with gold mining across Australia.[98]

An article in the 14 January 1861 edition of *The Argus* newspaper, for example, bemoaned the 'gross amount of money irrevocably sunk in bubble mining companies' in the colony of Victoria over the 18 months prior to its publication.[99] According to the article, these 'delusive schemes' were:

> one of the most infamous systems of plunder, veiled in the garb and dignified by the name of speculation, which was ever devised in order to ease the unwary of their money for the benefit of an astute and unscrupulous few.[100]

The publication of a 'lying prospectus' promoting an 'utterly rotten enterprise', as well as recommendations from share brokers to their clients to invest in what were referred to as 'fallacious undertakings' were said to result in nothing more than 'disappointment and disaster' to those who had the 'misfortune to be the holders of the shares when the bubbles collapse'.[101] Moreover, the blame was levelled not just at the promoters, but also the 'share-jobbers', who were said to 'control the market for this description of *in*securities'.[102]

In addition to the 'nefarious character' of the relevant projects and their 'inevitable failure' being 'carefully withheld from those who became the ultimate victims' of what is described as a 'fraud', the article then proceeds to target the local share market and those 'who combine the functions of brokers and jobbers'.[103] The role of 'jobbers', those who bought and sold shares for their own account, and 'brokers', those who acted as agent for the public in buying and selling shares, was performed simultaneously in 'freewheeling Sydney' and elsewhere, and this combination and the associated conflict of interest became the focus of much criticism over the course of the nineteenth century.[104]

---

[97] 'Topics of the Week', *The South Australian Weekly Chronicle* (Adelaide, 28 March 1863) 5; 'Bubble Companies', *The Sydney Morning Herald* (Sydney, 20 March 1854) 4.
[98] 'Wednesday, March 13, 1872', *The Brisbane Courier*, 13 March 1872, 2.
[99] 'Monday, January 14, 1861', *The Argus*, 14 January 1861, 5 ('Monday, January 14, 1861').
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] See Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 7) 109-110; Hall, *The Stock Exchange of Melbourne* (n 13) 27-29. According to one newspaper, for example, a 'man has only to change chameleon-like

The contempt in which stock-jobbers appear to have been held around this time is apparent from their description in one newspaper as 'that "smart" class who live by their wits, and are deep in the mysteries of "rigging the market" and "*making* the prices."[105] Indeed, it was a practice described by one newspaper as being 'highly reprehensible',[106] yet, it does not appear to have been uncommon. According to the 1 July 1865 edition of *The Age*, for example, it was 'well known' that there were few, if any, brokers on the goldfields who did 'not "job" on their own account'.[107]

It was claimed in the 14 January 1861 edition of *The Argus* that the public were 'completely at the mercy' of this 'little knot of individuals' who performed both functions and who:

> "bull" or "bear" mining securities just as it suits their own interests, and who really determine the nominal value of all descriptions of shares, without the slightest reference to their intrinsic worth.[108]

This seems to suggest that the prices of shares being traded in the market were not determined by the forces of genuine supply and demand,[109] but rather were determined artificially by people with a vested interest in raising or lowering the prices to suit their own purposes.[110] The

---

from a broker to a dealer, and in place of charging the person for whom he is acting an ordinary commission he is able to pocket as much as he can get, and to resort to extraordinary and not very straightforward shifts to increase his profits.' The article noted that in the case of a broker, they act as agent in buying and selling for another, and in the case of a dealer (or jobber) they buy or sell what really belongs to them at their own risk. In terms of the latter, their remuneration is whatever they can 'manage to squeeze out of a confiding dupe': 'Stockjobbers and Stockbrokers', *The South Australian Register* (South Australia, 11 December 1878) 4.

[105] 'The Melbourne Stock Exchange', *The Mount Alexander Mail* (Victoria, 23 March 1863) 2 ('The Melbourne Stock Exchange').

[106] 'Monday, January 14, 1861' (n 99). An article in *The Mount Alexander Mail* claimed that the formal dissolution in February 1862 of the association that was the Melbourne Stock Exchange, less than a year after it was formed in April 1861, was largely attributable to the 'whole tribe of sham agents and impecunious brokers, who like vampires drew the blood from their clients by various ingenious modes only known to the professional stock-jobber': 'The Melbourne Stock Exchange' (n 105). As noted by Michie, the conventional position on the London Stock Exchange was that members acted as either brokers or jobbers, with the division between the two roles being formally enshrined in the 1847, 1877 and 1903 rules: Ranald Michie, *The London Stock Exchange: A History* (Oxford University Press, 1999) 113.

[107] 'The News of the Day', *The Age* (Melbourne, 1 July 1865) 5.

[108] 'Monday, January 14, 1861' (n 99).

[109] As the High Court noted over 150 years later, the 'forces of "genuine supply and demand" are those forces which are created in a market by buyers whose purpose is to acquire at the lowest available price and sellers whose purpose is to sell at the highest realisable price': *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30 [71] (French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ) ('*DPP v JM*').

[110] The High Court has described the term 'artificial price' in the following manner: 'The price that results from a transaction in which one party has the sole or dominant purpose of setting or maintaining the price at a particular level is not a price which reflects the forces of genuine supply and demand in an open, informed and efficient market. It is, within the meaning of s 1041A, an "artificial price"': ibid [72].

below description of the method used by the individuals concerned tends to support such a characterisation.

> If, for example, this compact body of manipulators have received intelligence that a bubble company is on the eve of bursting, a number of shares change hands among themselves at continually rising prices. These transactions are purely fictitious; but they produce the desired effect. The public, observing the rapid rise which is daily taking place in the quoted prices of the shares referred to, and believing that the rise is attributable to the improved prospects of the company, immediately buy in, and are, of course, warmly urged to do so by the jobbing brokers. As soon as the latter have disencumbered themselves of the shares, at a good premium, events are left to take their own course, an explosion occurs, the worthlessness of the enterprise is made manifest, and the shares decline in value to nil.[111]

The article also describes what happens in the converse situation, where 'some exceptionally genius and honestly-devised scheme promises to become remunerative':

> the information of this fact no sooner reaches the jobbing-brokers than they operate for a fall. Fictitious sales are made at steadily declining rates, which are quoted in the published lists. Outsiders, holding shares, become alarmed; their apprehensions are strengthened by the discouraging tenor of the brokers' remarks; and shares are flung into the market, and sacrificed at prices far below their real value, much more that to which they attain when the subsequent re-action occurs.[112]

The trading of shares between each other ('among themselves') at continually rising or declining prices in the above circumstances suggests that the 'compact body of manipulators' referred to by the article's author may have been engaging in what is known in modern parlance as 'wash trades' and/or 'matched orders', both of which today are prohibited under the *Corporations Act*. There was, however, no explicit corresponding legislative prohibition in place at the time of this article. In fact, as noted previously, it would take over 100 years for this type of activity to be specifically outlawed in Australia.[113] Yet, as becomes clear from a review of the numerous articles published in the newspapers over the circa 160 years since the publication of the above article, this insidious activity has continued to plague domestic share

---

[111] 'Monday, January 14, 1861' (n 99).
[112] Ibid.
[113] According to Redmond, financial markets in Australia were not regulated by statute until 1970: Paul Redmond, *Corporations and Financial Markets Law* (Thomson Reuters, 7th ed, 2017) 831.

markets right up to the present day. Indeed, its prevention, detection and investigation continues to challenge those responsible for policing misconduct on the nation's stock markets.

4.5 A 'rascally' means of rigging the market

Some of the methods used to rig the share markets of the time were very creative. For example, described as 'rascally' and 'a unique trick' perpetrated by 'some speculators in Daylesford shares', one of the more unusual means of interfering with the forces of genuine supply and demand in the local share market reportedly occurred in Victoria in 1871.[114] It involved what was claimed to be the cutting of telegraph wires that were used to convey the news of mining and share price developments between various towns across the colony.[115]

According to the 27 July 1871 edition of *The Argus*, 'large yields' from the Cornish and North Cornish Companies' claims resulted in 'unusual excitement in the local share market' as the shares of both companies experienced a significant rise in price.[116] Cornish shares had 'rapidly advanced from £80 to £200 and North Cornish shares from 38s to 50s'.[117] Following news that between 600-700 ounces of amalgam had 'been taken away from the plates of the Cornish Company', the value of the scrip of both companies immediately rose.[118] The shares of the Cornish Company took 'a sudden jump upward to £220, and North Cornish to £4.'[119]

A large number of shares were said to be owned in Melbourne and some in Ballarat and 'the wires to each place were in constant requisition'.[120] Some time after 8pm on Friday evening, however, the telegraph connection between both towns was 'suddenly suspended', which left the post and telegraph master 'in despair' as 'nearly thirty important share messages had accumulated in his office, and he could not detect any fault in his instrument'.[121] A line repairer was dispatched the following day and, about six miles from the town of Daylesford, he discovered that the telegraph wire had been 'cut through the evening before by a large file'.[122]

---

[114] 'Mining Speculators' Roguery', *The Ballarat Courier* (Victoria, 26 July 1871) 3 ('Mining Speculators' Roguery'); 'Thursday, July 27, 1871', *The Argus* (Melbourne, 27 July 1871) 4 ('Thursday, July 27, 1871').
[115] 'Mining Speculators' Roguery' (n 114); 'Thursday, July 27, 1871' (n 114).
[116] 'Mining Speculators' Roguery' (n 114); 'Thursday, July 27, 1871' (n 114).
[117] 'Mining Speculators' Roguery' (n 114).
[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] Ibid.
[122] Ibid.

The line was eventually repaired and, after seventeen hours' delay, communication was 'reopened'.[123]

There was, however, more bad news to come when it was subsequently discovered on Sunday that the wire of another telegraph line to the town of Castlemaine had been 'filed through, also about the same distance from Daylesford as on the Ballarat line'.[124] According to the 26 July 1871 edition of *The Brisbane Courier*:

> [i]t is evident, therefore, that one, or more probably two rascally speculators had adopted this means of preventing the favorable news becoming known in Melbourne and Ballarat, and of thus being able to purchase shares at those prices early on Saturday.[125]

This would, presumably, have provided speculators with the opportunity to buy Cornish and North Cornish shares in Melbourne and Ballarat at lower prices that did not yet reflect the 'favourable news', anticipating that once the positive news eventually became known in those cities the price of the shares they had purchased would increase.[126]

Whilst cutting telegraph wires is an unusual means of artificially interfering with the forces of genuine supply and demand in the markets for Cornish and North Cornish shares, it highlights the accuracy of the statement of the United States Court of Appeals, Eighth Circuit, in *Cargill Inc v Hardin*[127] around 100 years later that '[t]he methods and techniques of [market] manipulation are limited only by the ingenuity of man'.[128]

4.6 Combating market manipulation not prioritised?

Despite what could be characterised as the 'monotonous regularity'[129] of newspaper reports describing the rigging of domestic share markets throughout the latter half of the 1800s, it would be almost a century before domestic governments and the stock exchanges appear to have made combating stock market manipulation a priority.

---

[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Ibid.
[127] [1971] USCA8 443; 452 F 2d 1154, 1163 (1971).
[128] *Cargill Inc v Hardin* [1971] USCA8 443; 452 F 2d 1154, 1163 (1971).
[129] Stephen Platt, *Criminal Capital: How the Finance Industry Facilitates Crime* (Palgrave Macmillan, 2015) 188.

As noted in Chapter 3, the damage that can be caused by stock market manipulation and other forms of market misconduct to individual investors, the public at large, companies seeking to finance their activities through the capital markets and Australia's reputation as a place to invest global capital, as well as to the economy more generally, appear to have been widely recognised for some considerable time. These types of considerations would, presumably, have been equally important, if not more so, to a young and growing country (initially a collection of penal colonies) with an expanding economy, where local and international capital could have helped considerably with the job of building much needed roads, railways and communication facilities, as well as other public utilities and infrastructure.[130]

Given this is a sentiment that appears to have been regularly referred to in the domestic press, it is unclear why the governments across the Australian colonies did not do more when it came to policing the share market, particularly in the early days of share trading when raising capital was so imperative to the growth and prosperity of the colonies and, over time, the nation as a whole. Yet, the enactment, administration and enforcement of laws aimed at protecting the integrity, fairness, and efficiency of early share markets (and later the more formalised stock exchanges) operating in Australia do not appear to have been a priority for the governments of the day. This may not be surprising, however, having regard to Chief Justice Bathurst's observation that 'as a penal settlement, commercial development was not a top priority in the earliest years of the colony'.[131] Although not specifically directed towards combating market manipulation and other market misconduct, the point is, nonetheless apposite given that by the mid-to-late-1850s, when share trading appears to have started to become more organised in some of the colonies, the First Fleet had only landed in what was to be the first permanent European colony on the Australian continent a mere 70 years earlier.[132] Moreover, as noted previously, oversight of the stock exchanges was for a very long time left in the hands of the exchanges themselves, with little, if any, government interference.[133]

---

[130] David E Spray (ed), *The Principal Stock Exchanges of the World: Their Operation Structure and Development* (International Economic Publishers, 1964) 351.
[131] The Hon TF Bathurst, Chief Justice of New South Wales, Sydney, 'The Historical Development of Corporations Law', Francis Forbes Society for Australian Legal History, Introduction to Australian Legal History Tutorials (3 September 2013) 13.
[132] Hill, *Convict Colony* (n 5).
[133] According to the High Court, '[f]or many years, transactions on Australian stock exchanges were chiefly regulated by the relevant exchange or exchanges': *DPP v JM* (n 109) [45]. See also David Geddes, Systems of Securities Regulation: A Comparative Study with Recommendations for Australia' (PhD Thesis, University of New South Wales, 1975) 564.

Yet, while this may explain why the regulation of share markets and combating market manipulation were not a priority in the early decades of share trading, it does not shed any light on why it took another circa 100 years to become a key focus of Government and the stock exchanges. It would be incorrect, however, to say that nothing was done at all. As will be discussed below and in subsequent chapters, there are examples littered throughout newspaper reports of action being taken against some who rigged share prices and corrupted the markets on which they were traded to benefit themselves at the expense of others.

4.7 Court cases

The newspapers of the time also contained reports of court cases where the conduct the subject of the proceedings involved attempts to interfere with the natural forces of genuine supply and demand on local share markets. Two examples are discussed below.

4.7.1 The North Cornish Conspiracy Case

According to the 31 July 1871 edition of *The Ballarat Star*:

> [q]uite a panic occurred in the share market yesterday, caused by a rumor that early got abroad that something was wrong with the title of the North Cornish claim, and, in fact, that a portion of their ground had been jumped. The excitement amongst local holders was intense, and denunciations loud and deep were uttered against the supposed authors of the mischief. One or two Ballarat speculators, who appeared on the street and were believed to have a 'finger in the pie', were addressed in anything but complimentary terms, and were advised more than once to clear out of the township. Of course this had the effect of lowering this stock, some timid holders rushing their scrip into the market, and shares rapidly declined to about £2 15s.[134]

Claim 'jumping' was a term, or 'goldfield phraseology',[135] used to describe circumstances where a person took 'forcible possession' of another person's claim rather than establishing

[134] 'Mining Intelligence', *The Ballarat Star* (Victoria, 31 July 1871) 2. This article attributed the information to 'Saturday's *Mercury*'. The relevant edition of the *Mercury* newspaper could not be located.
[135] R Brough Smyth, *The Gold Fields and Mineral Districts of Victoria* (Queensberry Hill Press, 1979) 386 ('*The Gold Fields and Mineral Districts of Victoria*').

any right they may have had to that claim 'by legal process'.[136] According to Brough Smyth, the 'Jumping' of claims was a 'common practice' on the early Victorian goldfields.[137]

An article in *The Ballarat Star* on 23 August 1871 concerning scrip in the North Cornish claim, which appears to be related to the above excerpt, was to be one of the first of many articles over the ensuing months that reported on an allegation that several persons had conspired to defraud the shareholders of the North Cornish Quartz Mining Company (Registered) (NCQMC) by manipulating the company's shares.[138] The article referred to an announcement that the North Cornish claim had been 'jumped' as part of a 'speculative manoeuvre' by certain persons who had sold to deliver the scrip 'at a much lower price than the then market value' by resorting to 'the expedient of raising doubts as to the title of the company.'[139] In other words, the alleged malefactors may have short sold NCQMC scrip, raised doubts about the title of the company to artificially depress the value of the scrip intending to re-purchase that scrip at a lower value, thereby locking in a profit for themselves at the expense of other holders of the company's scrip.

However, Stawell CJ, in a subsequent related legal action, provided a different explanation to the above description provided by *The Ballarat Star* of the method employed by the two alleged perpetrators to benefit from the consequent depreciation in the share price.

> In this case the information against the Plaintiff was for conspiring by means of false reports to depreciate the value of the shares. The object of spreading such reports is apparent; the person who spreads them is enabled to buy shares at a low value so as to make a profit by selling them when the price is high.[140]

---

[136] A 'claim' is defined by Brough Smyth as '[a] portion of ground marked off in accordance with the mining bye-laws of the district, and held by virtue of miners' rights': ibid 386, 607; Sumner La Croix, 'Property Rights and Institutional Change during Australia's Gold Rush' (1992) 29 *Explorations in Economic History* 204-227, 217 n 31 ('Property Rights and Institutional Change').

[137] R Brough Smyth, *The Gold Fields and Mineral Districts of Victoria* (n 135) 386. See also La Croix, 'Property Rights and Institutional Change' (n 136) 217 n 31. There are records of proceedings before Gold Commissioners in New South Wales for 'claim jumping' contained in the Tambaroora Bench Books from 1863 and the Hill End Bench Books from 1871-1872: see John P Hamilton, *Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century* (Federation Press, 2015) 4. Examples are contained in Appendix II.

[138] 'Mining Intelligence', *The Ballarat Star* (Victoria, 23 August 1871) 4.

[139] Ibid.

[140] *Thurling v The North Cornish Quartz Mining Company, Registered, and Joseph Beckett* [1872] VicWABWRp 127; (1872) 3 Webb A'B & W 236 (2 December 1872) 238 (Stawell CJ) ('*Thurling v North Cornish Quartz Mining*'). Other than the 23 August 1871 edition of The Ballarat Star referred to above, which referred to the 'speculative manoeuvre' on the part of those concerned, the newspapers that reported on this matter that were reviewed did not provide any information on the specific trading strategy employed in order to take

According to an article in the 3 October 1871 edition of *The Ballarat Star*, the result of the defendant's actions was 'that within a few days the shares depreciated over 50 per cent' and that 'many persons lost heavily by the doubt created as to the title'.[141] Indeed, the 23 August 1871 edition of *The Ballarat Star* contained the following comment:

> The shareholders here are exceedingly angry at the trick that has been played upon them, especially at the depreciation in the value of the stock, caused by a few unscrupulous operators, is equal to £5000.[142]

The legal action, which was known as 'the North Cornish conspiracy case',[143] was initiated by way of a summons 'issued at the instance of the directors of the company.'[144] It was heard at the Daylesford Police Court on 13 October 1871 before Mr Webster, Police Magistrate (PM), and Mr Stillings, Justice of the Peace (JP).[145] The defendants, Robert Thurling and William Luplau, were charged with having conspired to defraud NCQMC shareholders on the information of Joseph Beckett, the company's registered manager.[146] Put another way, the defendants were 'summoned before the Police Court for conspiring . . . by false and malicious reports to depreciate the value of the company's shares.'[147]

Just prior to the case commencing, the 12 October 1871 edition of *The Ballarat Star* reported that:

> [t]he law, it seems, is about to be put in force against those persons who are alleged to have jumped the North Cornish Company's ground, or a portion of it, at Daylesford, for the purpose of operating on the market only, and not with any legitimate intention whatever to have possession of the ground.[148]

---

advantage of the depreciation of the share price. That is, for example: (i) short selling shares and then buying them back at a lower price once the price had fallen; or (ii) buying the shares at the artificially depressed price and then selling them at a higher price when the share price recovered.

[141] 'News and Notes', *The Ballarat Star* (Victoria, 3 October 1871) 2.

[142] 'Mining Intelligence', *The Ballarat Star* (Victoria, 23 August 1871) 4 ('Mining Intelligence').

[143] 'North Cornish Conspiracy Case', *The Argus* (Melbourne, 16 October 1871) 6 ('North Cornish Conspiracy Case'); 'North Cornish Conspiracy Case', *The Kyneton Guardian* (Victoria, 18 October 1871) 3 ('North Cornish Conspiracy'); 'The North Cornish Conspiracy Case', *The Ballarat Star* (Victoria, 25 November 1871) 4.

[144] *Thurling v North Cornish Quartz Mining Company* (n 140) 328 (Stawell CJ).

[145] 'North Cornish Conspiracy', *The Ballarat Star* (Victoria, 14 October 1871) 2 ('North Cornish Conspiracy, Ballarat Star').

[146] Ibid.

[147] *Thurling v North Cornish Quartz Mining Company* (n 140) 238 (Stawell CJ).

[148] 'Melbourne. 11th October', *The Ballarat Star* (Victoria, 12 October 1871) 2.

According to this article, '[s]o carefully has the prosecution gone to work, that the summons occupies more than two pages of foolscap' and contained passages such as the following:

> [t]hat the persons herein named, being of evil mind and disposition, did unlawfully, wickedly, falsely, and maliciously conspire, confederate, and agree together by means of false reports, rumors, acts, and contrivances, make and propagate, and cause the same to be propagated with a view of injuring certain of her Majesty's subjects.[149]

In opening the case for the prosecution, Mr J.H. Dunne is reported as having cited certain English cases to 'show that it was only necessary to prove the conspiracy, and that it was unnecessary to show who benefitted by such a conspiracy'.[150] This, he believed, was a 'good thing in the interest of justice' given that the 'manner in which the share market was manipulated' would render it next to impossible to 'prove benefit by the conspiracy on the part of the defendants'.[151]

It appears from several newspaper reports of the time that on 4 August 1871, Messrs Luplau and Thurling 'laid a complaint' in the Warden's Court in Daylesford, Victoria, against the NCQMC for 'being in illegal possession of certain ground'.[152] The complaint was not made 'returnable until the 21st of the same month', which was claimed by the prosecution to have been done to give the defendants time to 'spread false and scandalous reports about the claim, to manipulate the stock' and also to 'attempt to extort money from the company'.[153] The prosecution asserted that if the application had been bona fide, Messrs Luplau and Thurling would have been 'eager to get possession of the claim'.[154] The defendants did not put in an appearance on 21 August 1872.[155] After stating that in his opinion the 'suit was a speculative one', the Mining Warden referred to the losses as having been occasioned by 'an improper use of the machinery of the law' and 'dismissed the complaint' made by Messrs Luplau and Thurling 'with £12 12s costs'.[156]

---

[149] 'Melbourne. 11th October', *The Ballarat Star*, 12 October 1871, 2.
[150] 'North Cornish Conspiracy, Ballarat Star' (n 145).
[151] Ibid.
[152] 'North Cornish Conspiracy Case' (n 143).
[153] Ibid.
[154] 'North Cornish Conspiracy, Ballarat Star' (n 145).
[155] 'North Cornish Conspiracy Case' (n 143).
[156] 'Mining Intelligence' (n 142).

The prosecution claimed that Mr Luplau was 'under the Verandah'[157] in Melbourne on 5 August 1871, 'in the most likely place to injure the stock' where he was saying that 'the company's title was rotten'.[158] According to the 14 October 1871 edition of *The Ballarat Star*, which contained the depositions of a number of witnesses, Mr Beckett, the legal manager of the NCQMC, gave evidence that on 4 August 1871[159] he was taken into a private room by Mr Luplau where the following conversation reportedly took place:

> Luplau said, "You know I don't want to injure the North Cornish Company." We had talked about the same matter previously under the Verandah in the presence of half a dozen brokers and others. Luplau said "I am very hard up, and I have been employed by others. The best thing will be for you to see the directors and try to settle the matter by paying expenses, &c." I got up and said "If that is what you have to say Mr Luplau, I would rather have you kicked down the shaft."[160]

John Hardy, a miner who knew Messrs Luplau and Thurling, deposed that on the evening of 4 August 1871 he saw Mr Thurling in the street.

> He wanted to bet a new hat, or £50, that the case would never come into court. He said "It's just done to get the shares down." He said the people of Daylesford were easily frightened.[161]

The defendants were committed for trial 'and the case left for a jury to determine upon' and Messrs Luplau and Thurling were 'admitted to bail in two sureties of £100 each.'[162]

The following statement reported to have been made by Mr Finlayson, the legal representative who appeared for Mr Thurling during the above hearing in the Daylesford Police Court, is worthy of note: 'There was nothing unlawful in doing anything that might interfere with the

---

[157] As noted earlier, the 'Verandah' is a reference to the verandah of the Hall of Commerce building in Collins Street in Melbourne, under which, according to Hall, a 'good deal of Melbourne's share transactions took place' in the period 1862 to 1880: Hall, *The Stock Exchange of Melbourne* (n 13) 81, 102.
[158] 'North Cornish Conspiracy, Ballarat Star' (n 145). See also 'North Cornish Conspiracy Case' (n 143).
[159] There appears to be a discrepancy between the date that Mr Beckett is recorded as having stated the relevant conversation took place with Mr Luplau in his deposition, being 4 August, and the date of 5 August reported in *The Argus* ('North Cornish Conspiracy Case' (n 143)) and *The Kyneton Guardian* ('North Cornish Conspiracy' (n 143))
[160] 'North Cornish Conspiracy, Ballarat Star' (n 145). There are also discrepancies in how this conversation between Messrs Beckett and Luplau was recorded in the *Argus* ('North Cornish Conspiracy Case' (n 143)) and *The Kyneton Guardian* ('North Cornish Conspiracy' (n 143)).
[161] 'North Cornish Conspiracy, Ballarat Star' (n 145).
[162] Ibid. According to *The Tasmanian* newspaper, Messrs Luplau and Thurling were 'committed for trial on the charge of conspiring to depress the North Cornish shares': 'Mr Luplau Committed for Trial', *The Tasmanian* (Launceston, 28 October 1871) 14 ('Mr Luplau Committed for Trial').

price of shares as stock'.[163] Even if there was no explicit legislation at the time that proscribed market manipulation, however, the prosecution could, presumably, have challenged Mr Finlayson's assertion on the basis of the decision in *R v De Berenger*,[164] where Le Blanc J stated that:

> if a number of persons conspire by false rumours to raise the funds on a particular day, that is an offence; and the offence is, not in raising the funds simply, but in conspiring by false rumours to raise them on that particular day.[165]

Whilst the spreading of 'false and scandalous reports about the claim, to manipulate the stock'[166] by the accused was allegedly undertaken to depress the price of NCQMC shares rather than raise the price (as was the case in *R v De Berenger*), the same principle could, presumably, have applied given the allegation in question. The Court's decision in *R v De Berenger* was not only contained in *Russell on Crime*,[167] a book that appears to have been referred to during many court cases reported across the Australian colonies from the 1830s onwards,[168] but the case had also been referred to in several domestic newspaper articles over the years.[169]

A reasonably optimistic article in the 21 October 1871 edition of *The Weekly Times* exalted the 'prompt action' taken in connection with the 'North Cornish conspiracy case', which it claimed 'would not be without its effect in checking over-smart attempts.'[170]

> The effort to rig the market by a sham onslaught on the title of the North Cornish Company was not much worse than many of the unnoticed dodges of past times. The alleged

---

[163] 'North Cornish Conspiracy, Ballarat Star' (n 145).
[164] (1814) 3 M & S 67; 105 ER 536.
[165] *R v De Berenger* (1814) 3 M & S 67; 105 ER 536, 539 (Le Blanc J).
[166] 'North Cornish Conspiracy Case' (n 143).
[167] See, for example, William Oldnall Russell, *A Treatise on Crimes and Misdemeanors* (Stevens, Volume III, 1865) 116 n (c), 122-123, 522 ('*Treatise on Crimes and Misdemeanors*'). The Magistrate in the *R v Barnard & Others* (1872), referred to in section 4.7.2 is reported as having had specific regard to cases referred to in *Russell on Crime*.
[168] See, for example, 'Supreme Court. Friday, July 2', *The Sydney Gazette and New South Wales Advertiser* (NSW, 3 July 1830) 3; 'Domestic Intelligence [Continued]. Supreme Court. Monday, 8th May, 1837', *The Colonist* (Sydney, 18 May 1837) 6; 'Police Court', *The Adelaide Times* (South Australia, 12 October 1850) 3; 'Supreme Court, Brisbane — August 21, Criminal Sittings', *The Ipswich Herald and General Advertiser* (Queensland, 23 August 1861) 3; 'Parramatta Quarter Sessions', *The Evening News* (Sydney, 20 February 1871) 4.
[169] See, for example, 'To the Editor of the Sydney Morning Herald', *The Sydney Morning Herald* (Sydney, 4 April 1854) 5; 'Metropolitan Gossip', *The Sydney Morning Herald* (Sydney, 3 January 1855) 3; 'Lord Dundonald', *The Sydney Morning Herald* (Sydney, 18 October 1855) 3; 'Lord Dundonald's Autobiography', *The Herald* (Melbourne, 1 February 1861) 6; 'Old Stories Re-Told', *The Sydney Morning Herald* (Sydney, 15 May 1868) 3.
[170] 'Auri Sacra Fames', *The Weekly Times* (Melbourne, 21 October 1871) 8.

perpetrators of this fraud, however, have found themselves brought face to face with a police magistrate, and now stand committed to take their trial before a jury. The law is thus shown to be operative in an arena where it has, too often, been treated as powerless, and the result can hardly fail of being beneficial.[171]

The 28 October 1871 edition of *The Tasmanian* reported that Messrs Luplau and Thurling were unable to 'give the required bail' and had been kept in custody from 'Friday until Sunday', after which time sureties were obtained and they were released.[172] According to the 12 October 1872 edition of *The Bacchus Marsh Express*, the offence for which Messrs Luplau and Thurling were charged was 'a far too common occurrence in this district',[173] possibly suggesting that activities to rig domestic share markets in the colonies occurred more often than may previously have been thought. Indeed, this type of comment was made many times in various articles in the colonial press over the years, which could indicate that the incidence of stock market manipulation was not just limited to those instances reported in the newspapers.

This case, as well as several derivative legal proceedings, was reported in a large number of articles in domestic newspapers throughout the period July 1871 to December 1873.[174] This included coverage of the action for 'wilful and corrupt perjury' initiated by Mr Luplau against John Luce, a director of the NCQMC, who had given evidence against Messrs Luplau and Thurling during the hearing at the Daylesford Police Court in October 1871.[175] The outcome of the prosecution of Messrs Luplau and Thurling for conspiring to defraud NCQMC shareholders by manipulating the company's shares does not, however, appear to have been as comprehensively covered. This is surprising, particularly given the assertion referred to in the 3 October 1871 edition of *The Ballarat Star* that given 'many persons lost heavily by the doubt created as to the title' the prosecution would 'be vigorously followed up'.[176] Indeed, a comprehensive account of why the prosecution was not completed could not be located.

---

[171] According to the article: 'Even in the height of golden fever there need be no exhibition of dishonest dodges or legal laxity': ibid.
[172] 'Mr Luplau Committed for Trial' (n 162).
[173] 'Finlay's Case', *The Bacchus Marsh Express* (Victoria, 12 October 1872) 3.
[174] For example, 'Mining Intelligence' (n 142); 'Ballarat Circuit Court. Nisi Prius Sittings', *Ballarat Courier* (Victoria, 8 October 1872) 2; 'Law Report. Supreme Court', *The Argus* (Melbourne, 2 December 1872) 1; 'Intercolonial News', *The Brisbane Courier* (Queensland, 18 December 1872) 3.
[175] 'Melbourne', *The Ballarat Star* (Victoria, 17 November 1871) 3; 'The North Cornish Conspiracy Case', *The Herald* (Melbourne, 25 November 1871) 3. According to the 27 November 1871 edition of *The Age*, the 'bench, after a patient hearing, considered there was nothing to support the charge of willful false swearing, and dismissed the summons': 'The News of the Day', *The Age* (Melbourne, 27 November 1871) 2 ('News of the Day').
[176] 'News and Notes, *The Ballarat Star* (Victoria, 3 October 1871) 2.

Unfortunately, the single sentence explanations contained in various newspapers, such as '[t]he case broke down, and a *nolle prosequi* was entered',[177] '[t]he Attorney-General subsequently declined to proceed with the charge against them',[178] '[t]he Attorney-General did not proceed with the case',[179] 'the Attorney-General decided that those men should not be placed upon their trial'[180] and '[t]he prosecution having been abandoned by the Crown'[181] do little to further the analysis.[182] Nonetheless, this is one of the earlier domestic court proceedings located where an allegation was made concerning the creation of an artificial price for trading in the shares of a domestic company.

As developments in the NCQMC conspiracy case were being reported in newspapers across the Australian colonies, the 19 April 1872 edition of *The Argus* newspaper contained a report on how the 'rigging of the Magdala shares' on 17 April 1872 by the spreading of false information relating to the bad prospects of the mine[183] had 'induced a few gentlemen' to seek a 'legal opinion as to the best means of suppressing the disreputable system.'[184] The result of their enquiries was that those who indulged in similar practices in future 'may be brought under the heel of the law on a charge of conspiracy to damage the value of property'.[185] The dissatisfaction with continued instances of stock market manipulation being discovered and its detrimental impact is apparent. Yet, as history has shown, not even the possibility of significant jail time and very substantial financial penalties have acted as an effective deterrent to those intent on benefitting themselves by manipulating share prices.

---

[177] Untitled article, *The Kyneton Observer* (Victoria, 11 May 1872) 2 ('Untitled article, Kyneton Observer').
[178] 'Circuit Court. Nisi Prius', *The Ballarat Star* (Victoria, 8 October 1872) 3.
[179] 'Circuit Court. Nisis Prius', *The Ballarat Star* (Victoria, 9 October 1872) 3.
[180] 'A Big Jumping Case', *The Mercury* (Tasmania, 12 October 1872) 3.
[181] 'News and Notes', *The Ballarat Star* (Victoria, 2 December 1872) 2.
[182] Messrs Luplau and Thurling were reported to have issued writs against 'the directors and manager of the North Cornish Company for malicious prosecution. Mr Thurling claims damages to £1500 and Mr Luplau to £1700': 'Untitled article, Kyneton Observer' (n 177). The law report for the malicious prosecution action initiated by Mr Thurling against the company and its legal manager states that: 'the Attorney-General declined to file any information against the Plaintiff in respect of the charge, and gave him notice that he declined to file an information . . .': *Thurling v North Cornish Quartz Mining Company* (n 140) 236.
[183] 'Ballarat', *The Argus* (Melbourne, 19 April 1872) 6.
[184] Ibid.
[185] According to *The Ballarat Star*, '[i]f the Magdala directors or shareholders should be able to prove that any person had spread a false and malicious report about the mine, we hope that they will follow the matter up and if possible make a warning of the rascal. Perhaps the knowledge that steps will be taken, to sheet the offence home, will frighten men from setting such stories afloat, even should they be mean enough to do so': 'Mining Intelligence', *The Ballarat Star* (Victoria, 19 April 1872) 3.

4.7.2 The Queen against Barnard, Egerton and Read[186]

On the very same day, the below single line entry in the 19 April 1872 edition of *The Express and Telegraph*[187] heralded the start of what would be a lengthy trial.

> A case of conspiracy to rig the share market is to come before the Police Court shortly.[188]

The proceedings were comprehensively reported by the colonial press over the course of 1872[189] and were said to throw 'a good deal of light on the manner in which business [was] conducted in the share market'.[190]

According to the prosecution, it was 'the first case that had come up in the colony' where it would be claimed that the defendants had induced 'parties to purchase scrip by making false representations and pretending to make sales.'[191] Even before reporting of the trial in the local press began, the 'proceedings taken in Melbourne in the hope of bringing market riggers to book' was the subject of comment in at least one newspaper.[192] Indeed, it was reported in the 23 April 1872 edition of *The Ballarat Star* that the case would be 'watched with interest by all sorts of people engaged in stock-dealing', including the 'Verandah riggers'.[193]

> Those who are honest will hope the riggers will be tracked and punished, and those who are dishonest will be anxious to see whether or not it be possible to catch rogues of their particular shape. All fraud and wrong should be punishable, and if the law does not reach some forms of wrong the law is *pro tanto* defective. This is one point which enters into the proceedings instituted under the auspices of the Verandah dealers.[194]

---

[186] This is taken from a copy of a Notice to Produce bearing the words 'In the Supreme Court of the Colony of Victoria (Criminal Side), The Queen against Barnard & Others': Public Records Office Victoria, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Supreme Court of Victoria, Notice to produce documents addressed to Louis Barnard, Hugh Egerton and Henry Read, 15 May 1872.
[187] 'Telegraphic Despatches', *The Express and Telegraph* (Adelaide, 19 April 1872) 2.
[188] Ibid.
[189] A formal report of the judgment for this matter could not be located. However, excerpts from a criminal trial brief for the Criminal Sessions at the Supreme Court of Victoria were sourced from the Public Record Office Victoria: Public Records Office Victoria, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Trial Brief. The Trial Brief includes: Statements of the Accused; telegrams; Recognizances of Bail; transaction records; Recognizances to Give Evidence; witness statements.
[190] 'Charge of Rigging the Share Market', *The Leader* (Melbourne, 27 April 1872) 23 ('Charge of Rigging').
[191] Ibid.
[192] Untitled article, *The Ballarat Star* (Victoria, 23 April 1872) 2.
[193] Ibid.
[194] Ibid.

It appears from the tone of the article that the author was frustrated at what they considered to be:

> a great wrong that a man should not be able to buy and sell shares without being liable to have his property depreciated by the fraud of riggers, and the more riggers we can catch the better. [195]

Moreover:

> if it can be shown that riggers can be caught and made to suffer for their particular dealings, something of moment will be gained in the interests of honest share dealing and safe mining adventure . . . The thing to desire is the detection of fraud, and its exemplary punishment, and this is the meaning and interest of the case now pending "under the Verandah".[196]

The author's comments suggest once again that the manipulation of share prices was a familiar occurrence on local share markets.

On 24 April 1872, in the City Police Court in Melbourne, Louis Barnard, Hugh A Edgerton[197] and Henry Read were 'charged with conspiring to defraud' William James Dunkley in connection with 'certain shares and scrip' of the Golden Sovereign Extended Tribute Gold Mining Company (Limited) ('GSET Ltd').[198] The 25 April 1872 edition of *The Argus* was one of several newspapers that contained details of the below 'information' that had been 'laid under common law'[199] and read to the Court.

> The information and complaint of William James Dunkley, of Melbourne, mining speculator, laid on the 18th April, 1872, that on or about the 3rd April 1872, at Melbourne, Louis Barnard, Hugh A Edgerton, and Henry Read of Melbourne, mining agents, did unlawfully, fraudulently and deceitfully, conspire, combine, confederate and agree together, and make and propagate and cause to be made and propagated certain false reports, rumours, arts, contrivances, sales and purchases, of certain shares, and the scrip

---

[195] Ibid.
[196] Ibid.
[197] Note that the surname of Mr Edgerton is spelt in two different ways throughout the many newspaper articles and also the documents contained in the Trial Brief referred to above ie 'Edgerton' and 'Egerton'. The spelling 'Edgerton' will be used throughout this paper for the sake of consistency, except where 'Egerton' is used in a quote, in which case the spelling used in the quote will be used.
[198] '"Under the Verandah". Alleged Conspiracy of Share Brokers', *The Herald* (Melbourne, 24 April 1872) 3 ('Under the Verandah').
[199] 'Charge of Rigging the Mining Market', *The Argus* (Melbourne, 26 April 1872) 6 ('Charge of Rigging the Mining Market, 26 April'); 'Charge of Rigging the Mining Market', *The Australasian* (Melbourne, 27 April 1872) 21 ('Rigging the Mining Market').

> thereof, of and in a certain gold-mining company, called the [GSET Ltd], having a claim situate in the Bendigo mining district, near the town of Sandhurst – of an almost worthless character – thereby to occasion, without any just or true cause, a great increase and rise of the said shares and the scrip thereof, and with a wicked intention thereby to injure and aggrieve William James Dunkley, and obtain from him money for shares and scrip of the said company, divers sums of money to a large amount, and by divers false pretences and subtle means and devices, as aforesaid, falsely and fraudulently to acquire and obtain with intent to cheat and defraud him of the same, and did by such pretences, &c, falsely and fraudulently acquire – occasion an increase and rise in the price of the said scrip and shares with a wicked intention thereby to injure and aggrieve the said W J Dunkley, and obtain to yourselves said sums of money, &c.[200]

According to Mr M'Kean, the solicitor who appeared for the prosecutor in the case, Mr Dunkley, the scrip for GSET Ltd was issued on 25 March 1872, and sold prior to the company's incorporation on 3 April 1872.[201] Moreover, '[c]ertain gentlemen met together, and got a piece of ground in Sandhurst, to start what is known as a bubble company', the capital of which was stated to be '£14,000, in 28,000 shares of 10s each'.[202] Mr M'Kean submitted that the shares were 'represented as sold at 4d each as held by Mr Egerton, while they were sold at over 1s by rigging the market'.[203] In addition, the 'rigging of the market' was said to have begun in Sandhurst[204] 'on the very same day that a similar rigging began in Melbourne', where GSET

---

[200] 'Charge of Rigging the Mining Market', *The Argus* (Melbourne, 25 April 1872) 6 ('Charge of Rigging, 25 April'). See also 'Rigging the Mining Market' (n 199); 'Charge of Rigging' (n 190); 'Charge of Rigging the Mining Market', *The Sydney Morning Herald* (Sydney, 30 April 1872) 6 ('Charge of Rigging, SMH').

[201] 'Under the Verandah' (n 198).

[202] Ibid. Whilst GSET Ltd was claimed to be a 'bubble company' by Mr M'Kean, it appears, from a review of the newspaper articles that reported on this case, that there were no findings made with respect to any issues concerning the formation of the company or its legitimacy. There were several comments made in the written depositions contained in the Trial Brief by several witnesses in this regard. For example, in his written statement, Frederick Wilkinson, a managing Law Clerk and the Legal Manager of the Western Victoria Gold Mining Company, stated the following: 'I consider the Tribute Company a very good company. I hold shares in it and have paid a call on them – I consider it a very fair investment': PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of Frederick Wilkinson, 25 April 1872. William Mofflin, Legal Manager of GSET Ltd, stated the following in his written deposition: 'I consider this mine a good investment': PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of William Mofflin, 26 April 1872. Joseph Copeland, Mining Speculator, stated the following in his written statement: 'I had no arrangement with Mr Barnard to rig the market – there was no occasion there were plenty of buyers for stocks on that line . . . I consider the mine is of value now . . . I told Barnard I considered the mine a good speculation': PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of Joseph Copeland, [date illegible].

[203] 'Under the Verandah' (n 198).

[204] 'Melbourne. (From Our Own Correspondent)', *The Geelong Advertiser* (Victoria, 25 April 1872) 3.

Ltd's scrip was taken to 'Mr Knipe's Night Exchange, to rush them on the market'.[205] Further, Mr M'Kean stated the evidence would prove that the three defendants had:

> conspired together in dealing with shares in this company to defraud the prosecutor. They might fall back upon the practice under the verandah, but it was not the less illegal, where misrepresentation goes beyond the fair rise and fall of the market, and it affected the whole public to have these transactions fair and above-board.[206]

Mr M'Kean's reference to the defendants possibly 'fall[ing] back upon the practice under the verandah' suggests that the activities in question were common and may have even been accepted market practice at the time.

Notwithstanding Mr Dunkley's extensive 'information and complaint',[207] which contained a number of allegations against Messrs Barnard, Edgerton and Read, one of the main areas of focus for the proceedings in the City Police Court and, subsequently, the Supreme Court, related to alleged conduct that today would appear to be caught within the purview of s.1041B of the *Corporations Act*.[208] That is, '[f]alse trading and market rigging--creating a false or misleading appearance of active trading etc',[209] by making and causing to be made certain false (or fictitious) sales and purchases of GSET Ltd shares 'to occasion, without any just or true cause, a great increase and rise' in the price of those shares.[210] In particular, there was evidence given during the proceedings relating to a number of what appear to be fictitious trades in

---

[205] 'Under the Verandah' (n 198). This exchange would appear to have commenced operation on 15 January 1872 at 'the Canterbury Assembly Hall, Bourke Street' in Melbourne. According to Mr Knipe, the object of the exchange was as follows: 'to facilitate the acquisition of mining stock by persons whose business avocations prevented them from attending Under the Verandah of a day time.' A committee was appointed to 'draw up regulations for the management of the exchange': 'News of the Day' (n 175); 'Tuesday, January 16, 1872', *The Argus* (Melbourne, 16 January 1872) 4.
[206] 'Under the Verandah' (n 198).
[207] 'Charge of Rigging, 25 April' (n 200).
[208] To the extent there was any evidence of, or findings in relation to, the allegations against Messrs Barnard, Edgerton and Read concerning the making and propagating and causing 'to be made and propagated certain false reports, [and] rumours' ('Charge of Rigging, 25 April' (n 200)), this could be conduct caught within the purview of s.1041E of the Act. That is, '[f]alse or misleading statements' where a person makes a statement or disseminates information in circumstances where:
(a) the statement or information is false in a material particular or is materially misleading; and
(b) the statement or information is likely to induce people in Australia to apply for, acquire or dispose of shares or have the effect of increasing, reducing, maintaining or stabilising the price for trading in shares on a financial market; and
(c) when the person makes the statement or disseminates the information they do not care whether the statement or information is true or false or they know or ought reasonably to have known that the statement or information is false in a material particular or is materially misleading: section 1041E of the Act.
[209] Section 1041B of the Act.
[210] 'Charge of Rigging, 25 April' (n 200). See also 'Charge of Rigging' (n 190); 'Charge of Rigging, SMH' (n 200).

GSET Ltd shares between various parties, including Messrs Barnard, Edgerton, Read and a Mr William Lang, as well as Mr Dunkley himself.

By way of example, Mr Dunkley stated that he attended Knipe's Night Exchange on 27 March 1872 where he saw Messrs Edgerton, Read and Lang.[211] He stated that he saw some GSET Ltd shares 'apparently sold' between Messrs Lang and Edgerton and that Mr Read 'also bought, or apparently bought.'[212] The 'apparent sales on the occasion referred to were entered', but, according to Mr Dunkley, the 'scrip did not pass to the secretary' of the Exchange 'as is usual' and he saw no commission paid to the clerk of the Exchange.[213] As such, '[t]hese transactions were conducted before the public as other transactions, but were never carried out'.[214] It would appear, therefore, that the sales were fictitious or nothing but a 'sham'.

According to the 26 April 1872 edition of *The Argus*, Mr Lang gave evidence that on 27 or 28 March 1872 he was at Knipe's Exchange and bought 1,000 GSET Ltd shares from Mr Edgerton at 1s 6d a share, which he did not pay for and which he resold after 'quarter of an hour elapsed' to Mr Read for 1s 7d, 'one penny more' than he had paid for them.[215] Mr Lang received the difference of £4 3s 4d from Mr Read, who had apparently said 'two or three days before' that Mr Lang 'would be right in purchasing them'.[216]

Around that time, Mr Read had given Mr Lang 500 GSET Ltd shares to sell on commission, '[n]o fixed price was named', in respect of which Mr Lang was told by Mr Read to 'submit any offers' to him before selling.[217] On 25 or 26 March 1872, Mr Lang sold 100 GSET Ltd shares to Mr Read 'publicly under the Verandah', the 100 shares being Mr Read's 'own shares'.[218] Mr Read subsequently returned the 100 GSET Ltd shares he had purportedly bought from Mr Lang, after which Mr Lang 'gave back all the 500 to Read' that evening.[219] According to Mr Lang, when he 'offered the 100 shares to Mr Read, it was because he wished to appear to make a sale.'[220] Mr Lang gave the below evidence during the hearing.

---

[211] 'Under the Verandah' (n 198).
[212] Ibid.
[213] Ibid.
[214] 'Charge of Rigging, 25 April' (n 200).
[215] 'Charge of Rigging the Mining Market' (n 199).
[216] Ibid.
[217] Ibid.
[218] Ibid.
[219] 'Charge of Rigging the Share Market', *The Age* (Melbourne, 26 April 1872) 3 ('Rigging the Share Market'); 'Charge of Rigging the Mining Market' (n 199).
[220] 'Rigging the Share Market' (n 219).

> Re-examined – In Knipe's rooms Read bought 500 shares from me at 1s 10d, but the transaction was never carried out. It was only a friendly sale. It was made openly and publicly.
>
> Cross-examined – Mr Read told me the mine was a good one, and I believe it is now. The Transactions in this stock are the same that are usually done in new stock to place it on the market.
>
> Mr Braham – Then you were one of the conspirators, as far as these 500 shares were concerned?
>
> Witness – I suppose so. If you call it conspiracy, we were all conspirators.
>
> To the Bench – Those "friendly" sales are not recorded and are altogether fictitious; it is done every hour in the day. The object, I have always thought, is to make the stock operated upon appear marketable.[221]

Not only had Mr Lang essentially admitted to being one of the conspirators as far as the fictitious sale of 500 shares were concerned, even Mr Read's lawyer, Mr Braham, characterised the transactions between Mr Read and Mr Lang as being 'very reprehensible no doubt'.[222] Of concern is Mr Lang's assertion that '"friendly" sales are not recorded and are altogether fictitious; it is done every hour in the day', which suggests this particular activity was engaged in frequently.

In deciding whether there had been any 'evidence adduced to constitute a *prima facie* case of the indictable offence of conspiracy to effect an illegal object', Mr Sturt, PM, stated the following:

---

[221] 'Rigging the Share Market' (n 219); 'Charge of Rigging the Mining Market' (n 199). This evidence is consistent with the evidence given in Mr Lang's written statement: PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of William Lang, 26 April 1872. In his evidence given at the Supreme Court of Victoria hearing on 20 May 1872, Mr Lang referred to the 'friendly sales' as a 'colourable sale' and 'not a real sale': 'Melbourne Criminal Sessions', *The Argus* (Melbourne, 21 May 1872) 6 ('Melbourne Criminal Sessions, 21 May').

[222] 'Charge of Rigging the Mining Market' (n 199). However, Mr Braham appears to have tried to ameliorate the position by stating that 'it was only done to put the stock on the market', which could be construed as an argument to moderate the seriousness of the alleged conduct.

> There could be no doubt that a person might unquestionably place what value he liked upon his own property, but he might not give a fictitious value to it in the market by false representations, or by giving publicity to sales admitted to be fictitious.[223]

Mr Sturt was reported to have had regard to two cases referred to in *Russell on Crime*, *R v De Berenger*,[224] where it was 'held to be an indictable offence to conspire on a particular day by false rumours to raise the price of the public government funds',[225] and *Rex v Hilbers*,[226] where it was found that 'parties may be guilty of a conspiracy to raise the price of oil by making fictitious sales',[227] before stating the following:

> The question that chiefly arose upon the evidence was whether fictitious sales had been effected in order to put the shares in the market at a certain value. The charge of conspiracy might not be supported by direct evidence, but it seemed certainly to be inferential from the acts of these individual defendants.[228]

Accordingly, the Bench committed the defendants for trial at the Criminal sessions of the Supreme Court of Victoria.[229] Bail was granted for Messrs Barnard, Edgerton and Read in the amount of £100.[230]

If correct, and depending on how widespread, the evidence given during the hearing as reported in the colonial press paints a very poor picture of the integrity of domestic share trading and the share market generally during this period. It resonates with the below comments attributed to Mr M'Kean when opening the case for the prosecution.

> The evidence would show that the defendants had acted in concert to represent the [GSET Ltd] in the most favorable light, and induce parties to purchase scrip by making false representations and pretending to make sales. It might be all very well to say that such was the practice of the market; that speculating in mines was like betting or gambling; but . . . that such gambling was illegal. A great deal of it went on under the Verandah, and it was

[223] 'Rigging the Share Market' (n 219).
[224] (1814) 3 M & S 67; 105 ER 536.
[225] Russell, *Treatise on Crimes and Misdemeanors* (n 167) 122.
[226] (1818) 2 Chitty 163.
[227] There is no information provided to confirm which edition of *Russell on Crimes* Mr Sturt was using. However, the 1865 version contains references to both *R v De Berenger* and *Rex v Hilbers*: Russell, *Treatise on Crimes and Misdemeanors* (n 167) 122-123.
[228] 'Rigging the Share Market' (n 219).
[229] Ibid.
[230] Ibid.

> necessary that the public who wished to invest in mines should take some means of protecting themselves from fraud and deception.[231]

Similarly, the 15 May 1872 edition of *The Gympie Times and Mary River Mining Gazette* contained the below comments in relation to the case just prior to the hearing at the Supreme Court of Victoria, which commenced on 18 May 1872.

> The case of conspiracy against Egerton and others formed a topic of discussion under the Verandah and elsewhere in the city throughout the day on Friday. A general opinion prevailed that, whether the charge against these sharebrokers is true, or can be sustained or not, the publicity of the facts as already made known, will do a great deal of good, and tend to cause mining business to be conducted for the future in a legitimate manner. There is no doubt but that the practice of "rigging the market" has been resorted to frequently, and the injury which it has done to the share market has been considerable. We hope that, for the credit of the sharebrokers as well as the district, we have heard the last of such proceedings.[232]

According to the 21 May 1872 edition of *The Australasian*, the hearing in the Supreme Court of Victoria was held before Sir W F Stawell, Chief Justice, where the information filed against Messrs Barnard, Edgerton and Read was for 'having unlawfully conspired to defraud the Queen's subjects by means of false and fictitious sales of shares in' GSET Ltd, which were 'intended to raise the price of those shares above their fair market value'.[233] Mr Dunkley is reported as having alleged that:

> fictitious sales of large quantities of the stock had been made in his presence, that the defendants were jointly concerned in the sales, that, believing the sales to be genuine, he bought 10,000 shares at a price largely in excess of their actual worth in a fair market.[234]

The defendants pleaded 'Not Guilty'.[235]

Once again, the frequency of this nefarious activity was referred to in the colonial press, which tends to suggest that its incidence was a real problem facing those wishing to invest their capital on domestic share markets of the day. Moreover, the defence put forward was a 'denial of any

---

[231] 'Charge of Rigging' (n 190).
[232] 'Colonial', *The Gympie Times and Mary River Mining Gazette* (Gympie, 15 May 1872) 3.
[233] 'The Mining Conspiracy Case', *The Australasian*, 25 May 1872, 22 ('Mining Conspiracy').
[234] Ibid.
[235] 'Melbourne Criminal Sessions', *The Argus* (Melbourne, 20 May 1872) 6.

concert between the parties' and, somewhat worryingly, an assertion that the 'defendants had only done what was a matter of daily practice under the Verandah'.[236] This statement suggests that purportedly executing 'friendly' or fictitious sales was not only common, but, as noted earlier, was perhaps an integral and accepted part of trading on a domestic share market.

From the many reports contained in a number of local newspapers that covered the trial, it appears that the evidence given by the witnesses called was broadly similar to the evidence they had given previously during the initial hearing at the City Police Court.[237] In his summing up to the jury, Stawell CJ referred to the 'discreditable and disgraceful practice of making a market' and 'a man who obtained money from another by such means, defrauded him just as much as if he took the money out of his pocket'.[238] Unlike 'making a market' or 'market making' in contemporary domestic and international financial markets, seen as a perfectly legitimate trading activity and, in fact, one of the activities included in the definition of a financial service in s.766A of the *Corporations Act*,[239] it appears that 'making a market' in 1872 was seen as:

> nothing more or less than a number of sham sales, made in order to obtain a fictitious quotation, and to entrap some unwary bystander who might believe in their genuineness.[240]

Indeed, according to the 25 May 1872 edition of *The Leader*:

> The public have always been aware that many of the operations which take place upon the Stock Exchange partook very much of the nature of gambling, but "making a market" is very close akin to actual fraud.[241]

During the course of the hearing, Alfred Harris, a mining speculator, gave the below evidence where he proffered his view on what was meant by this term.

---

[236] 'Mining Conspiracy' (n 233).
[237] This was, for example, an observation made by the author of the 25 May 1872 edition of *The Leader* in respect of Mr Dunkley's evidence, who stated that his 'evidence was in effect similar to that he had given previously at the City Court': 'Saturday, 18th May. The Mining Conspiracy Case', *The Leader* (Melbourne, 25 May 1872) 23.
[238] 'Melbourne Criminal Sessions', *The Argus* (Melbourne, 23 May 1872) 1 ('Melbourne Criminal Sessions, 23 May').
[239] Making a market for a financial product is defined in s.766D of the Act ('Meaning of makes a market for a financial product').
[240] 'Making a Market', *The Leader* (Melbourne, 25 May 1872) 17.
[241] Ibid.

> I am a mining speculator. In the beginning of April, I sold Read 5,000 of these tribute shares for Dunkley at 1s 3d. Had arranged with Dunkley to sell his.
>
> To Mr Purves[242] – Sold Dunkley 2000 just before I sold to Read, who saw the sale. Never delivered the 2000 to Dunkley. Was never asked for them. We call that sort of thing making a market.
>
> To Mr G P Smith[243] – Dunkley offered to buy the 2,000 publicly, and I could not refuse. Was selling on his account at the time.[244]

Similarly, Mr Dunkley's evidence referred to the following sale by Mr Barnard, which, applying the ordinary, dictionary definition meaning of the word 'humbug' (a hoax; a 'thing which is not really what it pretends to be'; a 'deception, fraud, sham'),[245] tends to suggest it was not a genuine sale:

> On the Thursday or Friday following, I had a conversation with Barnard about his sale of 2,000 to Egerton. Told him he had sold 2,000 to Egerton, and he said he had not. I then alluded to the 2,000 Barnard said under the Verandah he had sold to Egerton on Thursday. He said it was a humbugging sale.[246]

Stawell CJ stated that the jury had to satisfy themselves that Messrs Barnard, Edgerton and Read had 'combined by means of false sales, to raise a fictitious value for the shares they held'.[247] After deliberating for 1.5 hours, the jury returned a verdict of not guilty in respect of each of the defendants, who were then discharged.[248]

An article in the 11 May 1872 edition of *The Kyneton Observer* reported that 'immediately after the prosecution against Messrs Barnard, Read and Egerton' it was rumoured that 'similar charges would be preferred against some person in connection with the sale of the Lazarus

---

242 Mr Purves appeared for Mr Read: 'Melbourne Criminal Sessions, 21 May' (n 221).
243 Mr G P Smith appeared for Mr Barnard: ibid.
244 Ibid. Mr Harris' evidence suggests that Mr Dunkley, the prosecutor in the case, was involved in a fictitious trade with him. This is something contended by Mr Purves (lawyer for Mr Read) when he was reported to have stated the following: 'there was no evidence of any attempt to rig the market, as it was called, pointed out that at the utmost only one sale by Read was said to be fictitious, and endeavoured to show that Dunkley did exactly the same thing': 'Melbourne Criminal Sessions, 23 May' (n 238).
245 *Oxford English Dictionary* (online at 13 February 2022) 'humbug' (defs 1, 2, 3).
246 Mr G P Smith appeared for Mr Barnard: 'Melbourne Criminal Sessions, 21 May' (n 221).
247 'The Mining Conspiracy Case', *The Weekly Times* (Melbourne, 25 May 1872) 13.
248 'Mining Conspiracy' (n 233). Apparently not satisfied with the outcome of the trial, Mr Dunkley was reported to have 'taken steps to bring the case forward on the civil side of the courts, and that writs have already been served upon the defence: 'Melbourne', *The Geelong Advertiser* (Victoria, 27 May 1872) 3. He is said to have made a claim of £1,000 against each of Messrs Barnard, Edgerton and Read: 'News of the Day' (n 175).

Mining Company's stock.'[249] Unlike the above matter, however, it was claimed that the charges would not 'come on for hearing at a police court'. Instead, the:

> gentlemen who figure in the transaction have paid £750 to those who deemed themselves to be injured, rather than appear on the floor of a police court on a charge of conspiracy to defraud.[250]

Although ultimately unsuccessful, the prosecution of Messrs Barnard, Edgerton and Read is an important milestone in tracing the historical roots of stock market manipulation in the domestic context. It is one of the earliest criminal prosecutions located in the research where the Government took decisive action in prosecuting people alleged to have 'executed' fictitious transactions to manipulate the market in a mining company's shares. The evidence given during the hearings appears to corroborate what several domestic newspapers claimed had been occurring on local share markets for some considerable time with impunity.

4.8 Conclusion

The number of newspaper articles reporting on the manipulation of domestic share markets, as well as the commentary in those reports, suggests that its occurrence was not obscure or isolated. Indeed, it appears to have become a subject that irked both journalists and their readers, particularly as the damaging effects of this type of market misconduct on individual investors, industries, towns and colonies became clear. Although unsuccessful, the two prosecutions discussed in this chapter suggest that at least one colonial government (in the colony of Victoria) was trying to do something to deter malefactors from engaging in the manipulation of local share markets. The next chapter will continue to trace the historical roots of stock market manipulation in the domestic context and consider what else, if anything, governments and stock exchanges were doing in response.

---

[249] 'Untitled article, Kyneton Observer' (n 177).
[250] Ibid.

CHAPTER 5: The Early Days - Part 2

> At the end of last week some smart men on 'Change got up a "corner" in the scrip of the Bear Hill Proprietary Company, from the success of which it is thought that they will net between fifty and eighty thousand pounds. It is said to have been the cleverest thing done in the way of market-rigging on record in Australia.[1]

5.1 Introduction

In continuing to trace the historical roots of stock market manipulation in the domestic context, this chapter will discuss several matters reported in the colonial press that appear to involve conduct intended to artificially interfere with the forces of genuine supply and demand in local share markets. The manipulative devices used include 'rumourtrage' through the sending of 'bogus' telegrams and establishing 'corners'. Consideration will also be given to what the governments and stock exchanges were doing, if anything, to combat this insidious activity.

5.2 A very concerning allegation

According to Salsbury and Sweeney, the 'best description of the workings of the early Sydney Stock Exchange' comes from Mr William T Muston, one of the original members of the SSE.[2] Whilst they refer to the 'strong-willed' and 'cantankerous' Mr Muston as a 'biased source', due to what appears to have been an ongoing wrangle with the Exchange, they state that 'other evidence supports the general picture.'[3] In what Salsbury and Sweeney describe as a 'stinging criticism of the business on the Exchange',[4] Mr Muston made the following comments in the 15 December 1876 edition of *The Sydney Morning Herald*:

> It is usual for the members to meet daily to report sales made and prices obtained, which are taken down by the Chairman and posted for public inspection. At these meetings fictitious sales were constantly quoted, with a view to influence the market, and also in some instances to induce a belief that certain brokers were doing an extensive business.

---

[1] 'A "Corner" in Mining Scrip', *The Advocate* (Tasmania, 2 May 1891) 10 ('A Corner').
[2] Stephen Salsbury and Kay Sweeney, *The Bull, the Bear and the Kangaroo: The History of the Sydney Stock Exchange* (Allen & Unwin, 1988), 141 ('*The Bull, the Bear and the Kangaroo*').
[3] Ibid.
[4] Ibid.

> This practice at length became so flagrant and glaring that many suggestions were made to the committee with a view to remedy the evil, but without avail . . .[5]

According to the article, this was the reason for Mr Muston ceasing 'his connection with the Association'.[6]

Once again, the integrity of trading on domestic share markets appears to have been called into question, this time from someone who was formerly an 'insider', a founding member of the SSE in 1871,[7] essentially alleging the manipulation of the market operated by the SSE through the constant quotation of 'fictitious sales' by its members.[8]

5.3 An early example of 'rumourtrage'?

In July 1878, a case involving the uttering of a forged telegram that appears to have been intended to interfere with the unfettered interplay of genuine supply and demand in the share market was reported in the colonial press.

> On Friday morning last a telegram was received by the legal manager of the Working Miners' claim, Home Bush, purporting to be signed by the mining manager of the claim, and which ran as follows: - "Splendid prospects, ounce to the truck, buy me fifty; down tomorrow."[9]

According to the 15 July 1878 edition of *The Maryborough & Dunolly Advertiser*, '[s]teps were at once taken to disseminate the [above] news as widely as possible, and for that purpose, telegrams were sent to Melbourne, Ballarat, Stawell, and elsewhere' in order to communicate the information.[10] On his arrival at Maryborough the following night, however, the Mining Manager 'at once pronounced the telegram a forgery' and stated that he had 'never either sent

---

[5] 'The Proposed New Bank and the "Sydney Stock Exchange" (?)', *Sydney Morning Herald* (Sydney, 15 December 1876) 12 ('Proposed New Bank'); Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 2) 142-143.
[6] 'Proposed New Bank' (n 5); Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 2) 141-142.
[7] Stephen Salsbury and Kay Sweeney, *Sydney Stockbrokers: Biographies of Members of the Sydney Stock Exchange 1871 to 1987* (Hale & Iremonger, 1992) 277 ('*Sydney Stockbrokers*').
[8] The potential for any bias in Mr Muston's account should be acknowledged. Information on some of the background to the wrangle with the Exchange is contained in Salsbury and Sweeney, *Sydney Stockbrokers* (n 7) 277.
[9] 'False Mining Telegrams', *The Maryborough & Dunolly Advertiser* (Melbourne, 15 July 1878) 2 ('False Mining Telegrams').
[10] Ibid.

it or authorized any one else to do so.'[11] In fact, the Mining Manager confirmed that 'nothing had occurred to warrant anything of the sort'.[12]

The article reported that '[e]nquiries were at once set on foot to discover the writer or sender, and so far no clue has been obtained.'[13] The objective of the sender of the telegram was suggested as being to create an increase in the share price of the Working Miners' claim.[14] Had the telegram had the desired effect, such an increase would not have been attributable to the forces of genuine supply and demand in the share market, but rather to an attempt to create an artificial price through fraudulent means.

> That the object of the sender of the telegram was to create a flutter in the market, which would advance the price of the shares seems evident, and it is to be hoped that the efforts being made for his discovery will be successful, and that, when unmasked, severe measures will be taken to punish the attempt to injure, not only the Working Miner's claim in particular, but the district at large.[15]

The alleged sender of the telegram, George Payne, was eventually apprehended and charged at the Maryborough Police Court on 21 August 1878 with:

> willfully uttering a forged telegram as true, purporting to have been sent from JR Williams, the mining manager of the Working Miners' claim, Homebush, on the 12th July.[16]

According to Mr Matthews, the Crown Prosecutor, the forgery in question:

> was a misdemeanour under common law, and likewise uttering, knowing the same to be a forgery, was also a misdemeanour.[17]

Mr Matthews stated that the Crown would 'produce evidence to show that the defendant did forge the telegram', even though Mr Payne had not been charged with doing so, 'perhaps out of kindness'.[18]

---

[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] 'False Mining Telegrams', *The Geelong Advertiser* (Victoria, 17 July 1878) 4.
[15] 'False Mining Telegrams' (n 9).
[16] Another charge of 'obtaining money by false pretences, to wit, a valueless cheque for £1 . . . was also preferred against Payne: 'Uttering Forged Telegram', *The Maryborough & Dunolly Advertiser* (Melbourne, 21 August 1878) 2-3. The hearing was comprehensively reported in *The Maryborough & Dunolly Advertiser*.
[17] Ibid.
[18] Ibid.

However, although a number of witnesses stated that the writing on the telegram in question was Mr Payne's, including one witness who stated he had 'no hesitation' in saying one of the documents produced during the hearing was signed by Mr Payne, none of them were prepared to 'swear to this'.[19] Similarly, Mr Frank Peacock, a telegraph messenger at the Carisbrook railway station, stated that he recognised the telegram in question and believed that 'it was George Payne who brought the telegram', but he would not 'swear it was.'[20] In response, Mr Orme, the lawyer who appeared for Mr Payne, 'called on the Bench to consider the flimsy and unsatisfactory evidence brought forward by the Crown.'[21] Nonetheless, the Bench reportedly considered that there was strong prima facie evidence of 'the writing being that of the prisoner' and, therefore, 'they had no option but to remit the case to a jury.'[22] Mr Payne was then committed for trial at the 'next Court of Assize to be held at Maryborough'.[23] According to the 21 August 1878 edition of *The Bendigo Advertiser*, a 'great deal of interest was taken in the case by the public'.[24]

At the Maryborough General Sessions held on 13 November 1878 before His Honour Judge Bindon, evidence was submitted by the prosecution that as a result of the information contained in the telegram allegedly sent by Mr Payne on 12 July 1878:

> the shares went up from £1 to £2 10s, and when it was found out that the telegram was a forgery, and done for the purpose of rigging the market, the shares receded to their former value.[25]

Notwithstanding Mr Payne's claim in the dock that he 'knew nothing whatever concerning the forged telegram',[26] he was found guilty of 'forging and uttering the telegram which led to a fictitious rise in the value of the scrip in the Working Miners' claim, Homebush'.[27] Bindon J passed a sentence of 18 months' imprisonment on Mr Payne after which he stated that 'no

---

[19] 'The Maryborough Market Rigging Case', *Bendigo Advertiser* (Victoria, 21 August 1878) 2 ('Maryborough Market Rigging'); 'Maryborough Police Court', *The Maryborough & Dunolly Advertiser* (Melbourne, 21 August 1878) 2-3.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] 'Maryborough Market Rigging' (n 19)
[25] 'Maryborough General Sessions', *The Bendigo Advertiser* (Victoria, 14 November 1878) 3.
[26] 'General Sessions', *The Maryborough & Dunolly Advertiser* (Melbourne, 15 November 1878) 2 ('General Sessions').
[27] Untitled article, *The Maryborough & Dunolly Advertiser* (Melbourne, 18 November 1878) 3 ('Untitled article, Maryborough').

doubt whatever existed in his mind, but that the prisoner was the man who wrote and sent the telegram in question.'[28] Although Mr Payne was not convicted of rigging the share market, his intention would appear to have been to inflate the price of the shares in question to an artificial level by spreading false rumours.

5.4 Mount Victoria Gold Mining Shares

As well as spreading false rumours and engaging in fictitious trades to artificially inflate or depress the price of mining shares on domestic share markets, another method used during this period was to sell shares at progressively lower prices, typically in combination with the holding of a short position, to force the share price down. This is an example of what the ASX over 100 years later referred to as 'supply side manipulation', discussed in Chapter 3.

An example of what appears to be 'supply side manipulation' reportedly occurred in the shares of the Mount Victoria Gold Mining Company ('MVG Company') in Tasmania in the 1880s. According to the 31 March 1884 edition of *The Tasmanian News*, 'a person well-known in mining circles', who the article referred to as 'Smart', came into possession of certain 'confidential information' concerning the MVG Company that indicated the value of the shares would fall.[29] In particular, that the results of a recent crushing 'were not likely to be nearly so good as was generally expected.'[30] Believing that 'a heavy fall in Mount Victoria shares was impending', Smart 'speedily made a bargain to deliver a large parcel at a short date, at a price very much below the current quotation', that is, it appears that Smart short sold MVG Company shares.[31]

However, the result of the crushing overall was better than expected and '[i]nstead of a fall, it was practically certain that there would be an advance in' MVG Company shares, which would have resulted in Smart losing a 'substantial sum'.[32] Accordingly, 'in such a desperate crisis', Smart 'set his wits to work to make the public bleed, instead of having to bleed himself, for his foolish bargain'.[33]

---

[28] 'General Sessions' (n 26). According to the 18 November 1878 edition of *The Maryborough & Dunolly Advertiser*, the conviction of Mr Payne was 'principally obtained by the evidence of the experts': 'Untitled article, Maryborough' (n 27).
[29] 'Share-Sharpers Unveiled or Tricks of Bitten Bears', *Tasmanian News* (Hobart, 31 March 1883) 2 ('Share Sharpers Unveiled).
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.

> The only way to drop the market was to initiate a public suspicion that there was "something wrong", by selling shares at *progressively receding* rates in small parcels, until the desired level was reached. By this strategy, it was hoped that the public, suspecting that the bottom had dropped out of the mine, or some other catastrophe had happened, would rush their shares into the market, and so Smart would be able to buy at a price which would save him from any loss on his undertaking.[34]

In what was described as 'a conspiracy against the whole body of MVG Company shareholders', the:

> "progressively falling" dodge was tried on with vigour, and the consequence has been that, in place of shares advancing last week, owing to the splendid crushing and magnificent prospects of the mine, they fell from 11s, at which price there were buyers last Monday, to 9s, shares having been sold at that figure on Friday last.[35]

By allowing the quotations to be published without giving the public any warning whatsoever that there was 'anything unusual in the business', as well as the fact that the seller was able to reduce the price of the shares he sold despite there being a buyer at a higher price present at the time, the author asserted that:

> the Exchange as a whole and every member thereof who was present, unmistakeably lent themselves to an artifice for creating a scare amongst the Mount Victoria shareholders, and inducing them to sell at prices below those they would have obtained if the market had not been rigged.[36]

According to the article, however, the 'Mining Exchanges' in Hobart and Launceston, where the market in MVG Company shares was 'rigged', were 'bodies of associated sharebrokers' that met 'twice a day for the transaction of business', were 'under no responsibility to the public' had 'no legal status whatever' and conducted their business 'in a strictly secret manner.'[37] As a consequence, victims of fraudulent practices, such as market rigging, that occur 'under the aegis of these Exchanges' would have 'the utmost difficulty in obtaining

[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.

evidence on the subject' and would have no recourse 'against the Exchange as a body for having permitted such practice.'[38]

The author of the article called for the intervention of the law to deal with this type of misconduct.

> We are not prepared to say that these bearing tricks would constitute an indictable offence in the eyes of the law, supposing even full evidence were obtainable. But none the less every well-principled man must grant that they are a most grievous offence against honesty, and it is unquestionably the duty of the Legislature to take cognisance of the fact that such practices prevail, that by them the public have been fleeced wholesale in the last few years, and that it is within the power of law to do much towards preventing them . . .[39]

Depending on the facts and circumstances, one of the few actions available at the time to authorities that had the appetite to take legal action in respect of such activities may have been some kind of common law conspiracy charge where two or more people had conspired together to commit an offence, such as conspiracy to defraud.[40] Instead, however, the above article concluded that should the stock exchanges themselves be 'in the least degree desirous of protecting the public' and giving share-dealings 'the character of fair business transactions' then they should permit reporters to be present at the daily meetings for buying and selling shares.[41]

> The secrecy observed is, as members must see, in itself suspicious, and without reason if it is desired to deal fairly with the outside public. Had reporters been present we venture to say that the irregularity of the particular transactions which we have noticed would not have failed to attract immediate attention and the shareholders would at once have been placed upon their guard.[42]

As we now know, however, a lot more is required to ensure that market integrity and fairness is maintained and the risk of market manipulation occurring is minimised. Nonetheless, even with comprehensive laws, state of the art surveillance systems, swift and consistent enforcement action by an aggressive regulator and strong deterrents in the form of long prison

[38] Ibid
[39] Ibid.
[40] See, for example, the discussion of The Queen against Barnard, Egerton and Read in section 4.7.3.
[41] 'Share-Sharpers Unveiled' (n 29).
[42] Ibid.

sentences and significant financial penalties, market manipulation still occurs on domestic share markets and remains an ongoing challenge for the Federal Government and ASIC.

5.5 Forged telegram

According to the 20 October 1886 edition of *The Ballarat Star*, a 'little bit of a mining swindle' had been 'brought to light' the morning prior following the receipt of a telegram by a firm of Melbourne brokers that stated 'King Midas bore bottomed on rich gold. – R A Thompson.'[43] As a result of this information, King Midas shares were reported to have 'made an upward move'.[44] The 29 October 1886 edition of *The Age* reported that the 'false telegram':

> which was posted at the Exchange, caused a considerable flutter in the stock until the fraud was discovered and many persons were cheated into buying shares at prices much in excess of their ordinary market value.[45]

Prior to receipt of the information contained in the telegram, the shares were quoted 'with buyers at 3s and sellers at 4s', however, they 'subsequently changed hands up to 4s 6d in Melbourne and up to 5s 1d in Ballarat.'[46]

The fraud was discovered when it was determined that the signature of Mr Thompson, the manager of the mine, had been forged and he had not sent the message.[47] The price of King Midas shares subsequently fell and the matter was reportedly 'placed in the hands of the police'.[48]

The 22 October 1886 edition of *The Ballarat Star* contained the following update:

> The Post-Master General mentioned in the Legislative Assembly on Wednesday that a special effort is to be made by his department to discover the sender of a forged telegram in reference to the alleged discovery of gold in the Kind Midas claim. An officer has been instructed to enquire into the matter, and in addition the police have been moved to action.[49]

---

[43] 'Untitled article', *The Ballarat Star* (Victoria, 20 October 1886) 2 ('Untitled article Ballarat Star').
[44] Ibid.
[45] 'The Recent Share "Rigging" Case. A Disputed Transaction', *The Age* (Melbourne, 29 October 1886) 5 ('Recent Share Rigging').
[46] 'Untitled article Ballarat Star' (n 43).
[47] Ibid.
[48] Ibid.
[49] Ibid.

Despite the efforts of the police and officers of the Post-Master General's department, however, it appears that the sender of the forged telegram was not located.[50] The only case brought before the courts relating to this matter that could be located was a case heard at the District Police Court around 28 October 1886, in which Mr DJ Gilchrist, a sharebroker, appeared in response to a complaint made by Mr Arthur Somerset. Mr Somerset alleged that he had been assaulted by Mr Gilchrist in Mr Gilchrist's office on 19 October 1886 following a dispute regarding the sale of 700 King Midas shares. In cross-examination, Mr Somerset stated that 'a bogus telegram was posted up relative to the King Midas mine', which had 'caused a temporary rise in the stock'. Mr Gilchrist stated that he had been 'imposed on by a false telegram.'[51] The Bench, however, dismissed the case with 30s costs.[52]

5.6 Corners

There have been a number of 'corners' of mining company shares established on domestic share markets over the course of the circa 80 years between one of the first major corners identified in the research that occurred in 1889, the Round Hill corner, and what appears to have been one of the last (if not the last) 'corners' in Australia, the 'infamous Antimony Nickel corner',[53] in 1971. According to Salsbury and Sweeney, 'cornering' the shares in a particular stock was one of the 'standard ploys' used on 'Change'.[54] Indeed, it is claimed that 'corners' were practised 'routinely' on the Melbourne and Sydney stock exchanges during the 'silver flutter' that occurred in 1887-88.[55]

It seems there are at least three reasons why 'corners' were able to be established in earlier times on domestic share markets: (i) the small number of shares on issue by the issuer/company (small issued capital);[56] (ii) trading by short (or spec) sellers in the markets;[57] and (iii) what

---

[50] According to *The Ballarat Star*, the person who had attempted to rig the market for King Midas shares 'could not be discovered': 'The Recent Share "Rigging" Case', *The Ballarat Star* (Victoria, 30 October 1886) 4 ('Share Rigging Case'). Information relating to the sender of the forged telegram was not located by the author.

[51] 'Recent Share Rigging' (n 45)

[52] Ibid; 'Share Rigging Case' (n 50).

[53] Jim Bain, *A Financial Tale of Two Cities: Sydney & Melbourne's remarkable contest for commercial supremacy* (UNSW Press, 2007), 261; Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 2) 386.

[54] Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 2) 150. The term 'on 'change' was widely used in the media in the 1800s when referring to a stock exchange.

[55] Ibid.

[56] In a subsequent 'corner' in November 1903, the relatively small number of Transit Gold Mining Company (TGMC) shares on issue was proffered by *The Ballarat Star* as being the reason why TGMC 'lends itself to share manipulation': 'Cornering Mining Shares. A Stock Exchange Deal', *The Ballarat Star* (Victoria, 20 November 1903) 4.

[57] R Baxt, HAJ Ford and GJ Samuel, *An Introduction to the Securities Industry Acts* (Butterworths, 1977) 195; R Baxt et al, *An Introduction to the Securities Industry Codes* (Butterworths, 2nd ed, 1982) 236-237; Robert

appears to have been a lack of any stock exchange rules that prohibited or otherwise governed this type of activity. Yet, whilst some aspects of cornering activities were subject to consideration by the stock exchanges and the courts, there appears to have been no disciplinary or other action taken to sanction those who intentionally established a corner in a particular share to raise its price to an artificial level in order to extort other market participants (short sellers in particular) to pay grossly inflated prices for the relevant shares so they could settle their transactions.

5.6.1 The Round Hill corner

An alleged 'corner' in the shares of the Round Hill Silver-mining Company (Round Hill) appears to have been a major focus of the domestic press during the period from 5 October 1889 to 21 December 1889, with at least 20 different newspapers containing reports relating to what was variously described as 'a Stock Exchange sensation',[58] a 'boom',[59] 'notorious',[60] a 'racket',[61] 'unprecedented',[62] and a 'fiasco'.[63] An article in *The Australasian* claimed that the:

> Stock Exchanges of the whole of the colonies have been in a state of agitation ever since Saturday morning in consequence of an attempt and subsequent failure to "boom" the shares in the Round Hill Silver-mining Company.[64]

This appears to have been one of the first 'corners' on a local stock exchange that was widely reported in newspapers across the Australian colonies.[65] According to Hall, this episode was known at the time as 'the Dix Affair', named after the person allegedly responsible for attempting to 'corner' other speculators on the Stock Exchange in Round Hill shares, Mr William Frederick Dix.[66]

Baxt, Christopher Maxwell and Selwyn Bajada, *Stock Markets and the Securities Industry: Law and Practice* (Butterworths, 3rd ed, 1988) 223.

[58] 'A Stock Exchange Sensation', *The Leader* (Melbourne, 12 October 1889) 39. It was also referred to as a 'mining sensation': 'A Mining Sensation', *The Mount Alexander Mail* (Victoria, 7 October 1889) 2.

[59] 'The Round Hill Boom', *South Australian Register* (Adelaide, 7 October 1889) 6.

[60] 'The Silver Boom', *The Daily Telegraph* (Sydney, 8 October 1889) 3 ('The Silver Boom').

[61] 'The Round Hill Share Racket. Collapse of the "Corner"', *The Age* (Melbourne, 7 October 1889) 5; 'The Round Hill Racket', *The Australian Star* (Sydney, 11 October 1889) 6.

[62] 'An Extraordinary Share Market', *The South Australian Register* (Adelaide, 5 October 1889) 4 ('Extraordinary Share Market').

[63] 'The Round Hill Fiasco. The Operating Broker Still Missing. Investigation by the Stock Exchange', *The Age* (Melbourne, 8 October 1889) 5 ('Round Hill Fiasco').

[64] 'An Attempted "Corner" in Shares', *The Australasian* (Melbourne, 12 October 1889) 28.

[65] Whilst there may be other examples of 'corners' that occurred on domestic stock exchanges, this is the first one located during the research that was extensively reported in the domestic context.

[66] AR Hall, *The Stock Exchange of Melbourne and the Victorian Economy 1852-1900* (Australian National University Press, 1968), 190 ('*The Stock Exchange of Melbourne*'). Mr Dix's full name was located in 'The

The increase in the Round Hill share price appears to have commenced on 4 October 1889 and one newspaper claimed that it was 'probably unprecedented in the eventful history of silver mining in the colonies.'[67] One of the earliest reports referred to the 'startling advance' in Round Hill's share price, which was claimed to be all the 'more extraordinary' given the 'inability of most people to account for the mysterious demand for the shares'.[68]

> To the astonishment of many of the dealers who haunt the locality of the Exchange by gaslight perchance anything should turn up Round Hills were in strong demand at figures ranging as high as £27, and indeed before the brokers left one parcel was placed at £45 a share. Our record, surprising as it was, is, however, completely beaten in Melbourne, where the stock sold as high as £150 a share.[69]

The cause of the 'wonderfully rapid rise in the value of Round Hill shares'[70] was attributed by one newspaper to the 'cornering of the stock in Melbourne'.[71] It was reported that 'an immense business was done' in Round Hill shares on 4 October 1889[72] and 'there was a scene of tremendous excitement' that involved 'half mad' people thronging Collins Street in Melbourne, 'so much so that the tram traffic was seriously suspended.'[73] This 'scare of the wildest excitement' appears to have continued the following day where it was claimed 'a sort of panic had taken place during the forenoon.'[74] Similarly, a rapid rise in the price of Round Hill shares in Adelaide was experienced, where sales were made up to £45.[75]

In response to the considerable increase in the share price, the manager and directors of the Round Hill mine 'wired down to Melbourne' to confirm there had been 'no change whatever

---

Round Hill Boom. Affidavits of Messrs Dix and Moore', *South Australian Chronicle* (Adelaide, 12 October 1889) 23 ('Affidavits of Messrs Dix and Moore').
[67] 'Extraordinary Share Market' (n 62).
[68] Ibid.
[69] Ibid.
[70] 'Mining Boom', *The Daily Telegraph* (Sydney, 7 October 1889) 3 ('Mining Boom').
[71] 'Excitement at Adelaide', *The Age* (Melbourne, 5 October 1889) 9. 'It was correctly reported last night that there was an attempt in consequence of private information to corner the market . . .': 'Extraordinary Share Market' (n 62).
[72] 'Share Boom in Adelaide. Round-Hill at £50', *The Daily Telegraph* (Sydney, 5 October 1889) 6.
[73] 'Melbourne Share Market. Great Excitement', *The Launceston Examiner* (Tasmania, 7 October 1889) 3 ('Great Excitement').
[74] 'Mining Boom' (n 70).
[75] 'A Mining Sensation. A Corner in Round Hills', *The Border Watch* (Mount Gambier, 9 October 1889) 4 ('Mining Sensation'). This article contained a report from the Melbourne *Herald*, which could not be read as much of the text available on Trove was illegible.

at the mine, that nothing had been "struck" to warrant such prices being given' and also warned the public 'not to be led astray'.[76]

According to the 7 October 1889 edition of *The Daily Telegraph*, it was initially thought that the 'rise was caused by a new discovery in the mine'.[77] Indeed, 'traps' (horse drawn carriages) were engaged after midnight to ferry speculators and others to the mine as it was 'generally believed that a remarkably rich development had taken place there.'[78] However, this turned out not to be the case.

> There are 16,000 shares in the mine, and these were operated on by a party of speculators, who operated by what is known as "rigging the market," and brokers who had undertaken to deliver shares at low prices, found themselves unable to do so, and had not shares returned to the original price, many would have been involved in financial ruin.[79]

Although there were only 16,000 Round Hill shares on issue, it was reported in the 7 October 1889 edition of *The South Australian Register* that a leading broker had provided information that no less than 18,000 shares were sold in the company on 4 and 5 October 1889 alone.[80] For those 'unacquainted with the ins and outs of share dealing', the author of the article in *The South Australian Register* provided an explanation for 'the significance of overselling', as appears to have had occurred in the shares of the Round Hill silver mining company.[81]

> It means that owing to the high price of shares dealers, imagining that a top level had been reached, sold shares which they did not have, but which they hoped they would be able to buy in at a lower figure when a reaction set in and the price of shares fell. They have to meet their contracts, and the consequence is that those who sold on Friday night at the lower rates would have to pay higher prices on Saturday morning to meet their contracts.[82]

At 7pm on 4 October 1889, 'news came through that Rounds was cornered', which resulted in the following response in Adelaide:

---

[76] 'Our Melbourne Letter. Rigging the Market', *The Newcastle Morning Herald and Miners' Advocate* (NSW, 14 October 1889) 2 ('Melbourne Letter').
[77] 'Mining Boom' (n 70).
[78] 'Mining. The Round Hill Mine. An Inspection of the Mine', *The Advertiser* (Adelaide, 7 October 1889) 6.
[79] 'Mining Boom' (n 70).
[80] 'The Round Hill Boom', *The South Australian Register* (Adelaide, 7 October 1889) 6 ('Round Hill Boom, SA Register').
[81] Ibid.
[82] Ibid.

brokers rushed from their dinners and the greatest excitement prevailed. Cabs could be seen rushing in all directions, chartered by brokers, who made for the residences of members of the Stock Exchange, who reside out of town, in order to try to buy Rounds from them before they got the news . . . whilst clerks were busy sending off wires to all those who were known to hold Rounds.[83]

Similarly, *The Evening News* provided an explanation of how the 16,000 Round Hill shares on issue had been 'operated on by a party of speculators' who had worked 'by what is known as "rigging the market."'[84]

> Already holding shares in the mine, they purchased without causing any stir, until they had acquired no fewer than 18,000, 2,000 more than could be delivered. Brokers who had undertaken to deliver shares at low prices found themselves unable to do so except by purchasing them at a much higher figure than they had sold at.[85]

Indeed, the directors of the Round Hill silver mining company published an announcement 'to the effect that there was nothing whatever to justify the inflation'.[86] Once this announcement had been made, the Round Hill share price fell from its high of £150 to £10 before closing at £13,[87] which *The Argus* reported was due to a particular broker no longer supporting the market.[88]

The broker, who was claimed by *The South Australian Register* to have 'caused the inflation' in Round Hill shares, Mr Dix, a member of the SEM, was identified quickly.[89] On 5 November 1889, Mr Dix's office was 'besieged by brokers' and after attending for a short while Mr Dix left his office.[90] He appears to have disappeared for some time[91] and was 'reported to the police

---

[83] 'Mining Sensation' (n 75)
[84] 'The Corner in Round Hills', *The Evening News* (Sydney, 8 October 1889) 5 ('Corner in Round Hills').
[85] Ibid.
[86] 'Great Excitement' (n 73). According to *The South Australian Register*, the Secretary of the Stock Exchange of Adelaide received a telegram from the Secretary of the Round Hill Company stating there was no discovery justifying the 'extraordinary upward run in the price of the Company's shares': 'Round Hill Boom, SA Register' (n 80). See also 'The Rise in Round Hill Silver Shares. Collapse of the Boom. Disappearance of the Operating Broker', *The Argus* (Melbourne, 7 October 1889) 7 ('Round Hill Silver Shares').
[87] 'The Round Hill Mine. The Boom Caused by a "Corner". A Fall From £150 to £10', *The Daily Telegraph* (Sydney, 7 October 1889) 7.
[88] 'Round Hill Silver Shares' (n 86).
[89] 'Round Hill Boom, SA Register' (n 80). The *Australian Star* refers to 'the individual who caused the "flutter": 'The Round Hill Racket. Collapse of the "Corner." Consternation and Dismay', *The Australian Star* (Sydney, 8 October 1889) 6 ('Round Hill Racket').
[90] 'Round Hill Boom, SA Register' (n 80).
[91] 'The Round Hill Share Boom', *The Gippsland Farmers' Journal and Taralgon, Heyfield and Rosedale News* (Victoria, 8 October 1889) 2.

as missing.'[92] Once his absence became known, 'a panic set in.'[93] When Mr Dix eventually returned to his house he was interviewed by one of the brokers of the SEM and stated that once he had found himself unable to meet his obligations, he took a large dose of morphia to 'settle his nerves' on 5 October 1889 at the Federal Coffee Palace.[94] He remained there until 7 October 1889, in a 'stupefied condition', after which he went to Heidelberg, a suburb of Melbourne.[95] The value of Mr Dix's transactions in Round Hill shares had reportedly reached nearly £100,000.[96]

It appears from an article in *The Argus* that there had been an artificial interference with the forces of genuine supply and demand in the market for Round Hill shares, which was not a surprise to market observers.

> It has long been an open secret that a "ring" existed, by which the prices of shares were manipulated. Hence the market would show them weak one day, and yet without the slightest news from the mine an advance of £2 to £3 per share would take place the next, only to be knocked down again within the hour.[97]

Moreover, it was claimed that on 3 October 1889, Mr Dix had been 'buying almost every share offered, either on 'Change or in the open market,' with his buying described as being of 'the most indiscriminate and reckless character.'[98] Indeed, according to *The Argus*, Mr Dix's buying of Round Hill shares was reckless and indiscriminate and within two or three hours he had forced the price up from £11 to £150.[99] Moreover:

> He gave out, according to his own showing, that he was acting for a "ring" which had "cornered" the mine, and that could either give or exact any price that it chose.[100]

Mr Dix was rumoured to have been buying Round Hill shares on behalf of Mr W Fitzgerald Moore, 'well known on the silver field as one of the pioneers'[101] and reportedly also a member

---

[92] 'The Silver Boom' (n 60). It was reported that Mrs Dix had told the criminal investigation branch that 'she had reason to suspect suicide': 'Round Hill Fiasco' (n 63).
[93] 'Round Hill Boom, SA Register' (n 80).
[94] 'The Round Hill Share Boom', *The Launceston Examiner* (Tasmania, 9 October 1889) 3 ('Share Boom').
[95] 'The Round Hill Racket. Mr Dix in a Fix', *The Australian Star* (Sydney, 9 October 1889) 5 ('Mr Dix in a Fix'); 'The Round Hill Corner', *National Advocate* (Bathurst, 9 October 1889) 3; 'Share Boom' (n 94).
[96] 'Mr Dix in a Fix' (n 95).
[97] 'Round Hill Silver Shares' (n 86).
[98] Ibid; 'The Round Hill Boom', *The Adelaide Observer* (South Australia, 12 October 1889) 14 ('Round Hill Boom, Adelaide').
[99] 'Thursday, October 10, 1889', *The Argus* (Melbourne, 10 October 1889) 6.
[100] Ibid
[101] 'Round Hill Silver Shares' (n 86). 'Affidavits of Messrs Dix and Moore' (n 66).

of the SEM.[102] Mr Moore, however, informed *The Argus* that the rumours to that effect were 'entirely untrue', he was not a holder of Round Hill shares and when he saw the 'reckless manner' in which Mr Dix had been buying he told him 'he ought to be careful what he was doing.'[103] It was reported that Mr Moore had 'disclaimed all participation in the ring which is believed to have manipulated the Round Hill shares.'[104]

Mr Moore was asked at a meeting before the committee of the SEM on 7 October 1889 to explain his connection with the matter and he 'emphatically denied that he had authorised Mr Dix to buy up Round Hills shares on his behalf.'[105] Indeed, according to Mr Moore:

> His name, he said, had been freely used, and he felt it incumbent upon him therefore to deny explicitly that he had any share whatever in Mr Dix's transactions. He was not a holder of Round Hill shares; he had not acted as Mr Dix's client, and finally Mr Dix had no authority whatever to use his name.[106]

However, a letter was read at the meeting by the chairman of the SEM from Mr Dix's wife in which she 'affirmed' that her husband had been 'acting on instructions from Mr Moore.'[107] Mr Moore apparently rose and 'denied the truth of the allegation'.[108] It was reported by *The Australian Star* that the Stock Exchange intended to 'make a full inquiry into the matter.'[109]

According to *The Launceston Examiner*, if the 'cornering speculation' had succeeded, the 'consequences would have been disastrous to many'. Moreover:

> if Mr Dix fails to take up the scrip he has bought, a number of brokers and shareholders will lose, and the only result will be to disorganise the market. Nothing, perhaps, can be done to stop such eccentricities. As long as a broker is permitted to buy extensively without actually paying down the money, any one eccentric man may disorganise the market. We do not know

---

[102] 'Legal Notes', *The Argus* (Melbourne, 21 December 1889) 11. Of the numerous articles reviewed, this is one of the few located that refers to Mr Moore as being a member of the Stock Exchange of Melbourne.
[103] 'Round Hill Silver Shares' (n 86).
[104] 'Round Hill Boom, Adelaide' (n 98).
[105] 'The Silver Boom' (n 60).
[106] 'Round Hill Fiasco' (n 63).
[107] 'The Silver Boom' (n 60); 'The Boom in Round Hills. Local Broker Hit Heavily', *The Australian Star* (Sydney, 8 October 1889) 5 ('Local Broker Hit Heavily').
[108] 'Round Hill Fiasco' (n 63).
[109] 'Local Broker Hit Heavily' (n 107).

> whether any rule could be framed to put an end to such *fiascos*. It is for the public to look out and see that they do not suffer by such reckless market operations.[110]

On Wednesday, 9 October 1889, Messrs Dix and Moore attended a 'crowded' SEM to explain their respective positions in connection with the buying of Round Hill shares.[111] After a lengthy discussion, a decision was made to admit the press to hear the matter,[112] which for the purposes of research into this case has proved invaluable given what appears to be a comprehensive account of the proceedings was reported in a number of domestic newspapers.[113]

Sworn declarations of Messrs Moore and Dix were handed to the chairman and read by the secretary to those present.[114] According to Hall, at 'least one of them was not merely lying but had committed perjury.'[115] Moreover, Hall claims that the Committee of the SEM not only had the 'unenviable task of sorting out these conflicting statements', but also questioned 38 witnesses and ended up with '243 typed foolscap pages of evidence'.[116]

Mr Dix's declaration stated that on 1 October 1889, Mr Moore informed him that he 'intended to operate in "Round Hill" stock' and would give him definite instructions when to buy.[117] On 2 October 1889, Mr Moore apparently gave Mr Dix instructions to buy Round Hill shares commencing on 3 October, after which Mr Dix purchased 700 Round Hill shares 'to the order of Mr Moore'.[118] On the morning of 4 October 1889, Mr Dix refrained from purchasing Round Hill shares 'in order to allow the market to ease' and 'to facilitate this object' Mr Dix sold a

---

[110] 'Share Boom' (n 94). Over 80 years later, a similar situation arose with respect to trading in the shares of Antimony Nickel NL, where the Committee of the Sydney Stock Exchange suspended trading in Antimony shares over its concern that the shares were being manipulated: 'Procedure of buying-in suspended', *The Canberra Times* (ACT) 6 April 1971, 3.

[111] The Round Hill Silver Boom. Proceedings in the Stock Exchange. The Broker and Alleged Client Explain. Statutory Declarations', *The Argus* (Melbourne, 10 October 1889) 7 ('Proceedings in the Stock Exchange'). *The Ballarat Star* reported that there was a larger attendance of the members of the Stock Exchange of Melbourne at the hearing than has assembled 'for a very long time', there being 94 members present out of a total of 120: '*The Round Hill Share Racket.* Mr Dix Accounts for the "Boom." Mr Moore Emphatically Denies the Statement', *The Ballarat Star* (Victoria, 10 October 1889) 4. This article was abridged from the Melbourne *Herald*.

[112] 'Proceedings in the Stock Exchange' (n 111).

[113] See, for example: 'Proceedings in the Stock Exchange' (n 111); 'The Round Hill Boom. Affidavits of Messrs. Dix and Moore', *The Express and Telegraph* (Adelaide, 10 October 1889) 2; 'The Round Hills Corner. Mr Dix's Statement. Affidavit by Mr R F Moore', *The Evening News* (Sydney, 10 October 1889) 8; 'The Round Hill Racket. Meeting of the Stock Exchange. Contradictory Affidavits', *The Australian Star* (Sydney, 11 October 1889) 6.

[114] 'Proceedings in the Stock Exchange' (n 111).

[115] Hall, *The Stock Exchange of Melbourne* (n 66) 191.

[116] Ibid.

[117] 'Proceedings in the Stock Exchange' (n 111).

[118] Ibid.

small parcel of Round Hill shares.[119] In the afternoon of 4 October 1889, Mr Dix purchased a further 1,400 Round Hill shares on Mr Moore's account.[120] That evening, after the Exchange had closed, Mr Dix claimed that Mr Moore instructed him to continue buying Round Hill shares, telling him to 'boom them.'[121] According to Mr Dix, these 'final instructions' precipitated the 'excited market in the vestibule on Friday evening', during which time he bought 'largely for Mr Moore at high prices' and Mr Moore stood near to Mr Dix while he was executing his instructions and supported his buying by 'various signs and expressions'.[122]

Mr Dix's sworn declaration stated the following:

> That after the operations in the vestibule on Friday evening last closed I had a conversation with Mr Moore, and we discussed the situation, and he was confident that the brokers had oversold Round Hill stock, and on my expressing anxiety as to the result of the large purchase, he assured me that it would be alright, that I had no cause for anxiety, and that he would place me in a position to settle on the following morning with the persons from whom I had bought, and before parting from my client he arranged to meet me on the following morning (Saturday) at 10 o'clock at the Bank of Australasia, in Collins-street, and make all arrangements for taking up the scrip purchased.'[123]

However, Mr Dix claimed that Mr Moore did not appear at the agreed time and place and provided the below account of what happened next.

> . . . I, from my position in front of the bank, seeing so many persons crowding about my office and expecting their money, became so alarmed at the probable results of Mr Moore's absence, and had not the courage to meet the numerous persons at my office and explain matters. A panic seized me – I became paralysed with fright at my position in not being able to keep my engagements, and determined not to go to my office, and I wandered about the whole of the day and did not recover my self-control until Monday, when I realised how stupidly I had acted in not explaining matters and disclosing that my principal, Mr Moore, had deserted me and left me to face the situation.[124]

---

[119] Ibid.
[120] Ibid.
[121] Ibid.
[122] Ibid.
[123] Ibid; 'Affidavits of Messrs Dix and Moore' (n 66).
[124] 'Proceedings in the Stock Exchange' (n 111).

Mr Moore's sworn declaration was reportedly 'a total denial' of the whole of Mr Dix's statement.[125] Mr Moore stated that at 5.15pm on 4 October 1889, he saw a crowd of people gathered opposite the SEM.[126]

> I saw Mr Dix leave the crowd and go to his office. When passing me I called to him 'What is the deal down there?' He came over and said, 'Well I don't mind telling you there is a big ring on with the purchase of Round Hill shares; and look here (opening his book), there are over 32,000 shares sold, and there are only 16,000 in the mine.' I said, 'Who are the men, are they good?' He said, 'They are all right, they paid £17,000 down yesterday. It is the biggest lot that has ever been done in one line on the 'Change.'[127]

Mr Moore claimed that he had asked Mr Dix who he was buying Round Hill shares for, and Mr Dix apparently said: 'I will tell you. He is a big fellow, and a big crowd behind him, his name is Mr Finley.'[128]

A report in 22 October 1889 edition of *The Evening News* referred to the committee of the SEM continuing its investigation into the 'Round Hill share boom' and the parts played by Messrs Dix and Moore.[129] The case for Mr Dix was concluded, after which the case for Mr Moore commenced with the examination of several witnesses.[130] At this point, the investigation was conducted behind 'closed doors'.[131] According to the 24 October 1889 edition of *The Evening News*, however, '[v]ery little evidence regarding the actual transaction was brought out' at this hearing.[132]

The 12 November 1889 edition of *The Age* contained further information concerning the SEM's investigation into Mr Dix's transactions in Round Hill shares, which had 'resulted in the undue inflation of values of that stock, and their subsequent rapid collapse to normal market prices.'[133] The wording used in this article and others suggests that the investigation undertaken by the

---

[125] 'Melbourne Letter' (n 76).
[126] 'Proceedings in the Stock Exchange' (n 111).
[127] Ibid.
[128] Ibid.
[129] 'The Round Hills Corner. The Stock Exchange Inquiry', *The Evening News* (Sydney, 22 October 1889 4) (Stock Exchange Inquiry, 22 October').
[130] Ibid.
[131] Ibid.
[132] 'The Round Hills Corner. The Stock Exchange Inquiry', *The Evening News* (Sydney, 24 October 1889) 6. This edition of *The Evening News* referred to the 'special committee of the Stock Exchange', as opposed to the 22 October edition, which just referred to the 'committee': Stock Exchange Inquiry, 22 October' (n 129).
[133] 'The Round Hill Share Corner. Stock Exchange Inquiry', *The Age* (Melbourne, 12 November 1889) 5 ('Share Corner').

SEM was focused on Mr Dix's conduct in cornering Round Hill shares and the consequent adverse impact to the orderly trading in those shares, as well as the settlement of all of the relevant transactions.[134] It appears, however, that the principal focus of the Committee was on Mr Dix having failed to meet his obligations to other members of the exchange with respect to the transactions effected between them rather than, for example, condemning his conduct or taking disciplinary action with respect to his apparent involvement in artificially inflating the price of Round Hill shares on the SEM's market. Several complaints had apparently been lodged with the Committee by a number of people who had had dealings with Mr Dix claiming that he 'had not carried out his contracts with them.'[135]

From the material reviewed, there appears to have been no consideration given by the SEM to any concerns about Mr Dix's apparent involvement in what was claimed to have been rigging the market in Round Hill shares traded on the Exchange's market, which is supported by the below.

(a) According to the 15 October 1889 edition of *The National Advocate*, the Chairman of the Adelaide Stock Exchange asked members at a meeting who had complaints to make against Mr Dix in connection with the 'Round Hill *fiasco*' to 'formulate them to be dealt with the following day'.[136] There was no mention in this article, or any of the other articles reviewed, of any concerns on the part of the SEM regarding the 'alleged attempt to rig the share market by cornering the Round Hill claim',[137] which had been the subject of a considerable amount of press coverage and speculation. No record or report of any disciplinary or other action that the Exchange may have taken was located during the research.

(b) The 12 November 1889 edition of *The Age* contained an article that stated the following: 'Evidence was to be taken, principally in reference to claims against Mr Dix for failing to meet his engagements.'[138] This also tends to suggest that the stock exchange hearing was focused more on the resolution of financial claims between its members rather than the conduct that precipitated the 'corner' in Round Hill shares in

[134] Whilst there are some records available for both the Stock Exchange of Melbourne and the Adelaide Stock Exchange held at the Noel Butlin Archives Centre at the Australian National University in Canberra, information relating to this matter was not located.
[135] 'The Round Hill Shares Corner. Supreme Court Proceedings', *The Age* (Melbourne, 20 December 1889) 6.
[136] 'The Round Hill Corner', *The National Advocate* (Bathurst, 15 October 1889) 3.
[137] 'Our Melbourne Letter', *The Colonist* (Sydney, 20 September 1890) 26.
[138] 'Share Corner' (n 133).

particular and the maintenance of market integrity, or the contemporary equivalent, more generally.

(c) Several articles referred to the Committee of the SEM having been enquiring into the claims and complaints that had been 'brought against Mr W F Dix for his alleged failure to pay for Round Hill shares purchased by him in the recent boom'.[139]

Even though it did take steps to resolve the settlement of the relevant transactions, there appears to have been no action taken by the SEM with respect to what seems to have been an instance of market rigging using the manipulative 'technique' of cornering the market in Round Hill shares. Indeed, there appears to have been no kind of formal statement issued by the SEM condemning this type of trading activity or conduct by one of its members, either to its cohort of members or the public more generally through the colonial press.[140]

In addition, there appears to have been no action taken by the SEM to minimise the likelihood of this type of activity recurring, including, for example, introducing rules to proscribe the intentional rigging of the market through cornering activities. This is surprising given that the consequences of the activity in question would, presumably, have not only accounted for a significant amount of time for exchange officials in resolving the issue, but also appears to have caused disruption to the Exchange's business operations and processes. In addition, notwithstanding that information concerning this matter was widely publicised, there was no information located to indicate whether the activity in question registered any concerns with the colonial government or law enforcement authorities. This is not surprising given the stock exchanges were viewed as, and functioning as, self-regulating bodies.[141]

With respect to the reference to market integrity in (b) above, one of the specific objects and purposes of the SEM, as articulated in Rule 2 of the 1889 version of its *Rules and Bye-Laws*, was the 'maintenance of honourable dealings amongst its Members'.[142] This, it could be argued,

---

[139] 'That Round Hills Corner. Mr Dix's Case', *The Evening News* (Sydney, 13 November 1889) 6; 'The Round Hills Corner. Mr Dix Ordered to Pay Up', *The Evening News* (Sydney, 27 November 1889) 4; 'The Round Hill Share Corner', *The Leader* (Melbourne, 16 November 1889) 40.

[140] No information to this effect was located in the material reviewed for the purposes of this research.

[141] See, for example, David Geddes, 'Systems of Securities Regulation: A Comparative Study with Recommendations for Australia' (PhD Thesis, University of New South Wales, 1975) 14-15, 564 ('Systems of Securities Regulation').

[142] Rule 2 states that the 'objects and purposes of the Association are the exchange of quotations, the facilitating of purchases and sales, and the maintenance of honourable dealings amongst its Members: *Rules and Bye-Laws of the Stock Exchange of Melbourne*, Revised May 1889.

is the closest provision in the SEM's rules at that time to specifically contemplate what we understand today as market integrity, which incorporates norms of behaviour such as fairness and honesty, as well as rules that proscribe unfair trading practices, including market manipulation and insider trading.[143]

Unfortunately, for the researcher enquiring into the occurrence of stock market manipulation across the Australian colonies in the latter half of the 1800s, this means that the intentional cornering of shares and its interference with the forces of genuine supply and demand in the share market, as well as how identified instances were dealt with by the stock exchanges, remain unresolved. The researcher is left scratching their head and wondering, for example, whether the absence of any explicit reference in any of the newspaper articles, or other material reviewed, to Rule 17 of the *Rules and Bye-Laws of the Stock Exchange of Melbourne 1889*, which provided for the imposition of sanctions against Members found 'guilty of dishonourable or disgraceful conduct', could suggest several different scenarios.[144] It could, for example, suggest that the Committee:

(a) was not familiar with this type of misconduct and how it should be handled under the SEM's *Rules and Bye-Laws*;

(b) did not consider what was described in the evidence before it as an attempt to rig the market by cornering Round Hill shares to be 'dishonourable or disgraceful';

(c) did not believe that this type of activity or conduct was governed by the SEM's *Rules and Bye-Laws*;

---

[143] There appears to be no widely accepted definition of the term 'market integrity', however, guidance can be obtained on the meaning of this term from the following definition used by the International Organization of Securities Commissions (IOSCO): '*Market integrity* is the extent to which a market operates in a manner that is, and is perceived to be, fair and orderly and where effective rules are in place and enforced by regulators so that confidence and participation in the market is fostered: International Organization of Securities Commissions, Technical Committee, 'Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency', Consultation Report CR02/11, July 2011, 8 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD354.pdf>. Janet Austin highlights that whilst several regulators globally have incorporated market integrity and market fairness within their respective goals, there has not been sufficient analysis of what they each encompass: Janet Austin, 'What Exactly Is Market Integrity? An Analysis of One of the Core Objectives of Securities Regulation' (2017) 8(2) *William & Mary Business Law Review* 215. See also discussion of 'market integrity' in Janet Austin, *Insider Trading and Market Manipulation" Investigating and Prosecuting Across Borders* (Edward Elgar, 2017) 2-5.

[144] Rule 17 of the 1889 version of the Rules states the following: 'The Members shall have the power to fine, suspend or expel any Member who may be considered guilty of dishonourable or disgraceful conduct . . .': *Rules and Bye-Laws of the Stock Exchange of Melbourne*, Revised May 1889.

(d) did not have sufficient evidence before it to substantiate such a determination; or

(e) did not turn their minds at all to the question of whether or not the conduct in question was contrary to, or inconsistent with, one of the 'objects and purposes of the Association' articulated in Rule 2 of the SEM's *Rules and Bye-Laws* to maintain 'honourable dealings amongst its Members'.[145]

The Committee ultimately found against Mr Dix, who was 'ordered to pay a number of accounts to fellow brokers'.[146] When he failed to comply with the ruling of the Committee, Mr Dix was suspended on 6 December 1889 and given notice that if the matter was not resolved he would be expelled from the Exchange.[147] Mr Dix subsequently commenced proceedings in the Supreme Court against the SEM,[148] claiming damages for 'suspension, for passing illegal resolutions and for attempting illegally and improperly to oust him from his seat in the Exchange.'[149] He was eventually expelled as a Member of the SEM in July 1890.[150]

Following the Round Hill corner, concerns regarding whether there would be a proliferation of such activity on domestic stock exchanges were ventilated in some newspapers. According to an article in the 8 October 1889 edition of *The Australian Star*, for example:

> The Round Hill Racket (says the Age) is somewhat of a new departure in our Stock Exchange gambles. Hitherto, operators have been apparently content with small things, but now it would seem that "corners," so prolific in Wall-street, are to form a part of the Melbourne share business. Of course, there is neither here nor in New York any written law on the Stock Exchange against "corner" movements.[151]

---

[145] Rule 2 provides as follows: 'The objects and purposes of the Association are the exchange of quotations, the facilitating of purchases and sales, and the maintenance of honourable dealings amongst its Members': ibid.
[146] 'The Corner in Round Hills. Suspension of Mr W F Dix', *The Evening News* (Sydney, 7 December 1889) 5 ('Suspension of Mr Dix'); 'The Round Hill Shares Corner. Supreme Court Proceedings', *The Age* (Melbourne, 18 December 1889) 6 ('Supreme Court Proceedings 18 December'). According to George Meudell, a stockbroker and member of the Stock Exchange of Melbourne, in his autobiography, Mr 'Fitzgerald Moore . . . engineered the Round Hill "corner"': George Meudell, *The Pleasant Career of a Spendthrift* (George Routledge & Sons Ltd, 1929) 88.
[147] 'The Round Hill Fiasco. Mr Dix Suspended', *The Evening Journal* (Adelaide, 7 December 1889) 5; Hall, *The Stock Exchange of Melbourne* (n 66) 191.
[148] 'Suspension of Mr Dix' (n 146); 'Supreme Court Proceedings 18 December' (n 146)
[149] In terms of the latter claim, this was based on the ground that one of the members of the committee that 'adjudicated' on his case 'was himself an interested party': 'Supreme Court Proceedings 18 December' (n 146).
[150] 'The Round-Hill Boom Scandal. Mr Dix Finally Disqualified', *The Daily Telegraph* (Sydney, 15 July 1890) 5; Hall, *The Stock Exchange of Melbourne* (n 66) 191.
[151] 'Round Hill Racket' (n 89). According to Henry Clews, an American financier, the 'truth is, that it is almost impossible to legislate against "corners" without aiming a fatal blow against speculation itself . . .': Henry Clews, *Fifty Years in Wall Street* (Irving Publishing Company, 1908) 182.

'Corners' are claimed to have been common on the New York Stock Exchange in the 1800s, the cornering of railway company shares in particular being described as having 'recurred with unprecedented frequency.'[152] Perhaps it was this concern that domestic stock exchanges would follow suit that led to some of the comments that appeared in the local press around this time.

> The "spec" seller is "cornered," with the effect that the game is declared against him. In Wall-street a week hardly passes without a gamble of this character. Men "go under" as a matter of course, without a line in the public prints to record their financial extinction. In Collins-Street matters have not so far arrived at such a pitch, but recent events appear to warrant the assumption that our plungers are not far behind in learning the lessons taught by their New York compeers, and hence there are possibilities in the future of Melbourne competing with the centre of Yankeedom for big corners and cute cuttings.[153]

An article in the 13 January 1890 edition of *The Daily Telegraph* discussing whether or not a 'boom' in mining shares was then underway contained the below comments.

> I think there will be much more cornering this time than last, and it will be in a more artistic manner than previously. Nearly every stock is now being operated upon scientifically.[154]

Notwithstanding the commentary in the press at the time, it appears that the incidence of 'corners' being established on domestic stock exchanges in the latter part of the 1800s may not have been as prolific as was said to have been the case on Wall Street.[155] According to Rydge, writing in 1939, '[c]orners on an extensive scale are very infrequent in Australia'.[156] It was not long, however, before another 'corner' hit the headlines.

---

[152] Edward Chancellor, *Devil Take the Hindmost: A History of Financial Speculation* (Plume, 2000) 170; George L Leffler and Loring C Farwell, *The Stock Market* (John Wiley & Sons, 3rd ed, 1963) 447; Jerry W Markham, *Law Enforcement and the History of Financial Market Manipulation* (M.E. Sharpe, 2014) 15.
[153] 'The "Corner" in Bear Hill Shares. Further Advance in Price', *The Age* (Melbourne, 27 April 1891) 5. This particular 'corner' will be discussed in more detail below.
[154] 'Mining and Boomin. Results of the Last Boom: Prospects of Another', *The Daily Telegraph* (Sydney, 13 January 1890) 5.
[155] That is not to say there are not other 'corners' referred to in the literature. Salsbury and Sweeney, for example, refer to: (i) the cornering of shares being 'practised routinely on the exchanges of both Melbourne and Sydney during the 'silver flutter' of 1887-88'; (ii) the 'celebrated' Rising Sun corner; and (iii) the Castle Moat Silver Mine corner: Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 2) 150-151.
[156] Norman Bede Rydge, *The Australian Stock Exchange: Being an Explanation of the Functions of the Australian Stock Exchanges, A Consideration of the Principles Involved in Speculation and Investment, and a Commentary Upon the Essential Features Involved in the Selection of Sound Investments* (Rydge's Business Journal, 1939) 115.

5.6.2 The Bear Hill corner

Within around 18 months of the Round Hill corner being resolved, another 'corner' of a mining company's shares was the subject of considerable press coverage in Melbourne and elsewhere. Over the following weeks and months, reports of a corner in Bear Hill Proprietary Gold Mining Company NL (BHGMC) shares were regularly featured in colonial newspapers, often described in quite florid language.

> One of the most sensational and successful scrip "corners" ever known in Australia . . .'[157]
>
> [And]
>
> It is said to be the cleverest thing done in the way of market rigging on record in Australia . . .[158]
>
> [And]
>
> The "corner" is regarded as one of the best worked out things of its kind which has ever been tried . . .[159]
>
> [And]
>
> [A] syndicate which has "cornered" the Bear Hill Company's stock and caught the "spec sellers" in one of the toughest of cleft sticks which we can remember in the history of colonial share dealing.[160]

Two newspaper articles published in February 1891 referred to unusual movements in the price of BHGMC shares, one describing the market in the shares as being 'extremely irregular',[161] and suggesting that the prices were being forced up on behalf of a syndicate that had 'cornered the stock.'[162] It was reported that the matter had been referred to the committee of the SEM, which was subsequently said to have found no evidence to justify striking BHGMC from the

---

[157] 'The Ethics of "Cornering"', *The Daily Telegraph* (Sydney, 28 April 1891) 4 ('Ethics of Cornering').
[158] 'A "Corner" in Mining Scrip", *The Advocate* (Tasmania, 2 May 1891) 10; cf "'Spec Selling" and its Results', *The Bendigo Independent* (Victoria, 28 April 1891) 2 ('Spec Selling') – 'But we cannot agree with a Melbourne contemporary which seeks to gloss over this method of doing business by describing it as one of the cleverest things done in the way of market rigging in Australia.'
[159] 'The Bear-Hill "Corner"', *The Daily Telegraph* (Sydney, 1 May 1891) 4.
[160] 'Spec Selling' (n 158).
[161] 'Mysteries of Share Dealing. Melbourne Exchange Baffled', *The Evening Journal* (Adelaide, 28 February 1891) 5 ('Mysteries of Share Dealing').
[162] 'The Bear Hill Gold Mine. Extraordinary Rise in Shares. Rigging the Market. A Stock Exchange Inquiry', *The Barrier Miner* (Broken Hill, 27 February 1891) 3; 'Mysteries of Share Dealing' (n 161).

official list, although it was prepared to investigate any specific charges 'either against administration of a Company or any member of the Exchange in connection with the matter.'[163]

The syndicate said to be manipulating Bear Hill shares reportedly 'went to work cautiously and cleverly', having acquired a 'very large' number of BHGMC shares the year prior for 'little more than a shilling.'[164] It was also claimed that the syndicate had 'quietly bought up' large numbers of BHGMC shares in the weeks leading into May 1891, which was subsequently lent to 'unsuspecting jobbers'.[165]

In the first week of February, sales of BHGMC shares were made at 3s 5d and 'spec sellers'[166] were said to have felt confident that the shares would drop to that figure or lower.[167] A 'spec seller' was described by one domestic newspaper as follows:

> a broker who sells for delivery at a subsequent date certain shares in the hope that by the time he has to hand the scrip to the purchaser they will have fallen in price. Thus the "spec" seller will sell a line without having the shares in his possession, trusting to luck to be able to obtain them to complete the transaction where necessary.[168]

Indeed, the majority of brokers and speculators reportedly 'felt perfectly easy' believing that no syndicate could hold the 200,000 BHGMC shares that were then on issue, despite the share price having risen to 14s in the second week of March.[169] An article in the 28 April 1891 edition of *The Bendigo Independent* provided the below description of the movement of BHGMC's share price.

> A fortnight ago the shares were only worth a few shillings each; that was their market value as given to them by the natural process of demand and supply in the market. But towards

[163] 'Mysteries of Share Dealing' (n 161).
[164] 'A Stock Exchange Sensation. "Spec" Selling and its Consequences. A "Corner" in Bear Hill Shares', *The Age* (Melbourne, 25 April 1891) 9 ('Spec Selling and its Consequences').
[165] The Recent "Corner" in Bear Hill shares', *The Glen Innes Examiner and General Advertiser* (NSW, 12 May 1891) 4. ('Recent Corner')
[166] 'Spec sellers' have been described as those who sell shares they do not possess in the hope that before they are obligated to deliver them to the buyer the share price has fallen, allowing them to lock in a profit when they buy back the shares at the lower price: see, for example, 'A Misunderstanding', *The Bendigo Advertiser* (Victoria, 21 August 1882) 2. Essentially what we now know as 'short sellers/short selling'.
[167] 'Spec Selling and its Consequences' (n 164).
[168] 'The Mystery Solved. "Spec Selling"', *The Herald* (Melbourne, 10 September 1888) 2.
[169] BHGMC had been floated a few months prior into a no liability company of 200,000 shares of £1 each: 'Spec Selling and its Consequences' (n 164). Other articles reported that there were 'no more than 60,000 shares in the hands of the public' as opposed to the full 200,000 said to be on issue: 'Spec Selling' (n 158).

> the end of last week, and without any change whatever in the prospects of the mine the figures began to most suddenly rise from 30s to 40s to 50s and straight on to 90s.[170]

However, the syndicate were reported to have 'so pampered the market', buying the 'bulk' of BHGMC shares 'so as to be able to remove them from the market at a given signal',[171] that there were 20,000 shares sold more than had been issued by the company.[172] In the meantime, members of the syndicate had reportedly made contracts with 'unwary brokers for scrip to be delivered to them just at the moment when they had arranged to have the market cleared'.[173]

> The syndicate simply caused speculators, by a series of clever manipulations, to borrow shares to relieve their pressing necessities, and others to sell shares, expecting to be able at a later period to buy them at a much lower price.[174]

One newspaper described the operation of the 'corner' in the following terms:

> They bought from sellers "for future delivery" more shares than had ever been issued . . . The operator knows well that he is buying what the seller cannot possibly deliver, while the seller (who supposes that an ordinary market operation is going on) sells confidently, believing that when the time for delivering arrives he will find plenty of stock for sale.[175]

When the appropriate time arrived, the outcome was unsurprising. Those who had previously borrowed or oversold BHGMC shares and needed to acquire them to discharge their respective obligations (or engagements) had no choice but to buy them from the syndicate at an 'exorbitant rate.'[176]

> In this situation they were absolutely powerless, and had no resource but to pay whatever price their entrappers chose to exact as the price of their ransom from a carefully laid financial snare.[177]

The price at one stage was said to have reached as high as £5.[178]

---

[170] 'Spec Selling' (n 158).
[171] 'Ethics of Cornering' (n 157).
[172] 'Bears and Bear Hill', *The Express and Telegraph* (Adelaide, 30 April 1891) 4 ('Bears and Bear Hill')
[173] 'Ethics of Cornering' (n 157).
[174] 'Bears and Bear Hill' (n 172).
[175] 'The Bear Hill "Cornet"', *The Glen Innes Examiner and General Advertiser* (NSW, 7 June 1892) 2.
[176] 'Bears and Bear Hill' (n 172).
[177] 'Ethics of Cornering' (n 157).
[178] For example, a stockbroker who gave evidence in the Supreme Court proceedings that arose from the BHGMC corner stated that he had paid £5 for 50 BHGMC shares on 1 May 1891: 'The Bear Hill Proprietary

There were subsequent legal proceedings initiated to resolve disputes between various parties who had dealt in BHGMC shares during the period when they had apparently been subject to the cornering activities of the syndicate. In *Vicary v Foley*,[179] for example, the plaintiff, a member of the SEM, sought to recover damages for the defendant sharebroker's failure to return 1,000 BHGMC shares lent by the plaintiff to the defendant.[180] The questions Hodges J in the Supreme Court of Victoria was required to determine were: (i) the principle upon which damages should be assessed; and (ii) the time at which the damages should be calculated, that is, whether the calculation of the damages to be awarded to the plaintiff should referable to the market value of the BHGMC shares at the time the contract in question was 'broken' or the market value of the shares at the time of the trial.[181] The defendant had reportedly adduced evidence at the trial to show that the price of the shares at the relevant time 'had been unnaturally forced up so as to become quite fictitious'[182] due to BHGMC shares having been allegedly 'cornered'.[183]

Hodges J, however, made the below observations in his judgment in relation to the 'corner' in BHGMC shares.

> But it is urged that the damages are not to be assessed on the then price of the shares, as it was not the true market value, and that that could not be a proper test, because there had been a 'corner' in these shares, and that the price had been unnaturally forced up so as to become something quite fictitious . . . But I think that the price paid for these shares was their market value on the 8th of May, and although an attempt had been made to create what is known as a 'corner' in these shares, yet that attempt failed.[184]

Gold-Mining Company. Dispute Between Sharebrokers. The "Corner" in their Shares', *The* Argus (Melbourne, 12 September 1891) 11 ('Dispute Between Sharebrokers'); 'Recent Corner' (n 165).

[179] *Vicary v Foley* [1891] VLR 407.

[180] The actual damages claimed by the plaintiff was for the non-delivery of 1,200 BHGMC shares, which consisted of the 1,000 shares originally lent, plus 300 shares bought by the plaintiff from the defendant, less 100 shares sold by the plaintiff to the defendant: *Vicary v Foley* [1891] VLR 407, 408 (Hodges J). This case is discussed briefly in Paul Constable, 'Psst . . . Want to Hear a Rumour? Rumourtrage May Have Been Occurring in Australia for Longer Than We Thought' (2015) 19 *International Trade and Business Law Review* 48, 65-66.

[181] The plaintiff had elected to 'take the value of the shares at the time at which the contract was broken' and judgment to that effect was ordered by Hodges J accordingly: *Vicary v Foley* [1891] VLR 407, 410 (Hodges J).

[182] 'The "Corner" in Bear Hill Shares. Action in the Supreme Court. Verdict for J. S. Vickery for £2764', *The Age* (Melbourne, 12 September 1891) 10. The case was comprehensively reported in several newspapers, including the aforementioned and 'Dispute Between Sharebrokers' (n 178).

[183] *Vicary v Foley* [1891] VLR 407.

[184] Ibid 410 (Hodges J).

There was no substantive discussion of 'cornering' by Hodges J in his judgment, including what constituted a 'corner', how it arose on this particular occasion and how such an activity would be construed by the courts and the law. There is also no information available to indicate the basis upon which His Honour determined that the attempt to 'corner' BHGMC shares had 'failed', particularly given that the actions of the syndicate in 'cornering' the shares had been described as a success in several newspaper articles.[185] Approximately nine months later, however, a hearing in the Second Civil Court before Hood J was reported in the press, which provided further information on the BHGMC 'corner'.

Mr J. S. Vickery, the plaintiff in the proceedings discussed above, sought to recover £10,000 from Mr Donald Macvean 'in connection with stockbroking transactions in the Bear Hill Corner'.[186] Judgment was given for Mr Vickery, by consent, for the £10,000, but the action was then continued by Mr Macvean against Mr Henry Charles Armstrong and Mr John Moodie, who had been brought into the proceedings as third parties based on Mr Macvean's allegation that he had signed the contract with Mr Vickery at their request and they had promised to indemnify him against any loss in connection with the contract.[187] Mr Macvean's action against Messrs Armstrong and Moodie was ultimately dismissed by Hood J,[188] his Honour appearing to have been less than impressed with any of the parties. Indeed, according to His Honour:

> There was the most direct and positive contradiction between the witnesses, and undoubtedly perjury was committed by one side or the other.[189]
>
> [And]
>
> [Macvean's] answers were eminently unsatisfactory.[190]

---

[185] See, for example, 'Bears and Bear Hill'(n 172), 'The Bear-Hill "Corner"', *The Daily Telegraph* (Sydney, 1 May 1891) 4; 'A Corner' (n 1).

[186] 'The Late Bear Hill "Corner". Action for £10,000. "All in the Swim"', *The Newcastle Morning Herald and Miners' Advocate* (NSW, 31 May 1892) 5 ('Late Bear Hill').

[187] 'The Bear Hill Corner', *Table Talk*, (Melbourne, 3 June 1892) 12 ('Bear Hill Corner'); 'Litigation as to Share Broking Transactions. The "Boom" in Bear Hill and Earl of Hopetoun Shares. Mr Justice Hood on "Rings" and "Corners"', *The Argus* (Melbourne, 31 May 1892) 7 ('Litigation').

[188] According to one contemporary newspaper article: 'Some extraordinary evidence was given for both sides, and in dismissing the case, the Judge made scathing remarks, and said that all the parties were members of a ring and were co-adventurers to obtain each other's money': 'Late Bear Hill' (n 186).

[189] 'Litigation' (n 187).

[190] Ibid.

[And]

> In the witness box Armstrong was almost unintelligible. The story as told by him had no beginning, middle or end, and I doubt if the confusion was accidental.[191]

[And]

> [N]either side has given the full account of this affair.[192]

During the proceedings, Hood J is reported to have stated which parties were members of the 'ring' (or syndicate) that was responsible for the 'corner' in BHGMC shares. In an article in the 31 May 1892 edition of *The Argus*, for example, Hood J referred to 'the "ring" of which the company, Armstrong, Macvean, and others were members.'[193] The 'company' to which His Honour referred was Armstrong and Company, Limited, of which Messrs Armstong and Moodie were directors.[194] This company was said to have been formed for 'financial purposes' and 'speculated largely in shares'.[195] In addition to the aforementioned parties, the 3 June 1892 edition of *Table Talk* reported that Hood J had also referred to 'a broker named Charsley' as being a member of the "ring" that had been 'formed to send up the price of shares.'[196] Moreover, according to the 31 May 1892 edition of *The Argus*, whilst Mr Macvean had made no mention of the 'ring' in his evidence, which Hood J is reported as saying 'undoubtedly existed', he:

> could only be got to say that he *supposed* that he had taken steps to keep up the price of "Bear Hills," and he *supposed* that he had an interest in the transaction . . .[197]

Was this perhaps a reluctant and tacit admission by Mr Macvean of his involvement in artificially inflating or maintaining BHGMC's share price to facilitate the 'corner'?

Yet, despite several persons having been named in court as being involved in the 'ring', what appears to have been a tacit admission of his involvement during the proceedings by one of those named, and the impact of their activities on the market for BHGMC shares having been

---

[191] 'The Corner in Bear Hills. Mr Justice Hood on a Brokers' "Ring"', *The Age* (Melbourne, 31 May 1892) 6.
[192] 'Litigation' (n 187).
[193] Ibid.
[194] Ibid.
[195] 'Bear Hill Corner' (n 187).
[196] Ibid. This is the only information that was located concerning 'Charsley'.
[197] 'Litigation' (n 187).

widely reported, it seems that no one was held to account, either by the stock exchange or law enforcement authorities.

Unlike the Round Hill corner where the SEM became involved in resolving the orderly settlement of several of the relevant transactions, there appears to have been no such issues with the transactions the subject of the Bear Hill corner. As was the case with the Round Hill corner, however, it appears that no action was taken by the SEM with respect to what appears to have been another instance of market rigging using the manipulative 'technique' of cornering the market, this time in BHGMC shares. No statement condemning this type of activity and no new rules to proscribe its incidence appear to have been issued by the SEM in an attempt to combat this type of interference with the interplay of genuine supply and demand for shares traded on its market.[198]

Based on a review of the Rules of the SEM and the SSE that appear to have been in force around this time, it appears that there were no rules specifically dealing with 'corners'. That this was the case in respect of the SSE specifically is also evident from the below minute from the Special Meeting of the Committee of the SSE on 2 October 1891.

> a letter was read from the Stock Exchange of Brisbane asking what was the usual custom of this Exchange in dealing with a "cornered" stock. The Committee decided that a reply be sent intimating that the Exchange does not in any way recognise a "corner" and consequently has no rules bearing on the matter.[199]

Not only did the Exchange not have rules specifically dealing with 'corners', but it did not 'in any way recognise a "corner"', arguably denying the existence of such a phenomenon,

---

[198] It is worth acknowledging the following minute from the SEM's Committee meeting held on 13 October 1891: 'letter was read from the Secretary of the Brisbane Stock Exchange asking the practice of this Exchange with regard to companies whose stock had been "cornered". The Secretary was directed to send a copy of the decision arrived at in the Bear Hill case': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201/Box 1, The Stock Exchange of Melbourne, 'Minutes of Committee Meeting held on 13 October 1891'. It is unclear what a 'copy of the decision arrived at in the Bear Hill case' means. Was it, for example, the decision arrived at by the Judges in either or both of the cases referred to above or was it a decision 'arrived at' by the SEM. If the latter, that information has not been located, although that is not to say it does not exist. If it does exist, and consideration was given by the SSE's Committee or officials to the deleterious effect of establishing a 'corner', this would provide a valuable insight for research purposes.

[199] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, [TBC], The Sydney Stock Exchange, 'Minutes of Special Meeting of the Committee of the Sydney Stock Exchange held at the Exchange on the 2nd Oct 1891'.

notwithstanding at least two very significant, recent and widely reported instances, albeit both having taken place on the SEM.

The cause of the Bear Hill 'corner' was attributed to a number of factors in the colonial press, including 'spec selling',[200] with one commentator arguing that 'if people did not sell for future delivery there could be no "corners"'.[201] According to Hall, it was this type of trading activity that led to the drafting of the *Share Brokers Bill* (Vic) in 1891, which was supposedly intended to address 'spec selling' and prevent excessive speculation.[202] Hall asserts that this 'ill-conceived piece of legislation' imposed a number of requirements on sharebrokers that would not only 'seriously interfere with the efficient conduct of business' in a system he believed 'as a rule worked reasonably well', but 'would provide no guarantee that the admitted abuses would be checked.'[203] The brokers of the SEM were said to be much distressed by the proposed Bill[204] and, in response, a 'Special Committee appointed for the purpose of dealing with the proposed Sharebrokers Bill' appears to have been set up by the SEM.[205] At its 24 September 1891 meeting, the Special Committee agreed to several objections to the Bill, including the following:

> That the proposed "Sharebrokers Bill" is uncalled for, and would be pernicious in its effect.
>
> That it is invidious, as it singles out Brokers in Shares only, leaving untouched all other brokers and agents.
>
> That it would be a restraint of trade, and would undoubtedly bring down Melbourne from its present position as the Premier Financial Market of the Australian Colonies.

---

[200] See, for example, "'Spec" Selling on the Melbourne Exchange', *The Western Mail* (Perth, 9 May 1891) 14; 'The Bear Hill "Corner"', *The Glen Innes Examiner and General Advertiser* (NSW, 7 June 1892) 2 ('The Bear Hill "Corner"').
[201] 'The Bear Hill "Corner"' (n 200).
[202] Hall, *The Stock Exchange of Melbourne* (n 66) 191-192.
[203] Ibid 192.
[204] Ibid.
[205] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201-4, The Stock Exchange of Melbourne, Minutes of the 'Special Committee appointed for the purpose of dealing with the proposed Sharebrokers Bill' held on 25 September 1891.

> That in so far as the Bill deals with the matter of so called "spec" selling, even if it were desirable to legislate in this direction, its provisions are utterly inadequate, and would become a serious hindrance to the conduct of ordinary business.[206]

The Bill was eventually dropped.[207] However, despite the criticism levelled against the Bill by sharebrokers and others and its eventual demise,[208] it appears to have been one of the very rare early forays by an Australian colonial government into the 'murky world' of share trading to impose some kind of legislative control over the conduct and activities of sharebrokers.

As was the case following the Round Hill corner, there were some concerns expressed in the press around the time that the Bear Hill corner was initially the subject of newspaper commentary regarding the extent of this activity in local share markets. An article in the 28 April 1891 edition of *The Daily Telegraph*, for example, stated that 'it is on the increase here as far as mining business is concerned is a fact too patent for denial.'[209] Moreover:

> [i]n the Melbourne press it is asserted that more scrip-gambling rings have been formed in that city during the past six months than have ever been known before.[210]

Yet, whilst it is evident that the 'cornering' of shares did occur on some colonial share markets and share prices were intentionally distorted using this manipulative technique from time to time, there does not appear to have been a proliferation of this activity in the domestic context.

5.7 Market rigging using telegrams

As discussed in section 5.3 above, there was at least one prior conviction secured by the authorities against an individual for forging and uttering a telegram that was said to have resulted in a 'fictitious rise in the value' of the shares of the company in question. Similarly, in the final decade of the 1800s, 'bogus' telegrams appear to have been used on a number of

---

[206] A further objection was that 'there is no abuse incident to the business of Sharebroking a remedy for which is not provided for by the Rules of this Association, or which cannot be obtained at common law: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201-4, The Stock Exchange of Melbourne, Minutes of a special Committee . . . to consider what action should be taken by the Exchange in dealing with the proposed Sharebrokers Bill' held on 24 September 1891.

[207] Hall, *The Stock Exchange of Melbourne* (n 66) 192.

[208] Hall recounted remarks of the *Australasian Insurance and Banking Record* that he said thought so little of the provisions of the Bill, it 'cynically remarked that there was no chance of it being adopted and that it was presented simply to provide the minister with an excuse for doing nothing and to give members of Parliament 'texts for multifarious speeches": Hall, *The Stock Exchange of Melbourne* (n 66) 192.

[209] 'Ethics of Cornering' (n 157).

[210] Ibid.

occasions to interfere with the forces of genuine supply and demand in some of the share markets operating across the Australian colonies, a few of which will be discussed below.

5.7.1 Madame Berry West

In January 1893, using language that suggests this was not an isolated, one-off occurrence, *The Bendigo Advertiser* reported that '[a]nother impudent attempt' had been made 'to hoax the mining public of Ballarat . . . by forwarding a bogus telegram to this city'.[211] Indeed, several regional newspapers[212] reported an attempt in Ballarat to rig the market in Madame Berry West Company (MBWC) shares by sending telegrams to the local newspaper offices claiming that MBWC had 'struck a very rich run of gold', which had caused '[s]ome excitement' in 'local mining circles'.[213]

The Legal Manager for the mine was contacted to query the contents of the telegram and in response he telegraphed: 'Have heard of nothing fresh at mine'.[214] In addition, Mr Wheeldon, the Chairman of the mine, visited Ballarat 'to make inquiry into the sending of the forged telegram' and was reported to have been in communication with the local police.[215] Before returning to the mine, Mr Wheeldon received confirmation from the mine that there had been no change in conditions, which, according to *The Age*, 'conclusively' proved that the bogus telegrams were 'penned with the intention of running up the value of Madame Berry West stock.'[216]

Although the 13 January 1893 edition of *The Bendigo Advertiser* reported that 'the value of the shares was not seriously affected in the market by the wire', a Mr Sim Cohen, who may have been a broker on the Ballarat Stock Exchange, is quoted as having said that he was 'one of the victims who had purchased shares on the strength of the bogus wire'.[217] Apparently, the highest sale recorded in MBWC shares on the day in question was 37s 6d and 'this transaction was

---

[211] 'Another Bogus Mining Telegram', *The Bendigo Advertiser* (Victoria, 13 January 1893) 3 ('Another Bogus Mining Telegram').
[212] See, for example: '"Rigging" the Share Market. More Bogus Telegrams at Ballarat. The Madame Berry West Mine', *The Age* (Melbourne, 12 January 1893) 6 ('More Bogus Telegrams'); 'Bogus Telegrams and the Ballarat Share Market', *The Age* (Melbourne, 13 January 1893) 6 ('Bogus Telegrams'); 'Another Bogus Mining Telegram' (n 211); 'Bogus Telegrams', *The Mount Alexander Mail* (Victoria, 14 January 1893) 3 ('Bogus Telegrams, Mount Alexander').
[213] 'More Bogus Telegrams' (n 212).
[214] Ibid.
[215] 'Bogus Telegrams' (n 212).
[216] Ibid. See also 'The Country. "Rigging" the Share Market', *The Leader* (Melbourne, 14 January 1893) 26.
[217] 'Another Bogus Mining Telegram' (n 211).

brought about by one of the telegrams before the news was contradicted.'[218] Mr Cohen apparently suggested that 'the Stock Exchange should offer a reward of £50 for the arrest and conviction of the offender', however, a 'majority of the brokers' believed that 'it was the duty of the police to trace the culprit at the expense of the Government.'[219] At this point, a Detective Charles, who was said to have had 'a clue to the person who dispatched the messages', and the heads of the Postal and Telegraph Department, were said to be making enquiries in respect of this matter.[220]

A week or so later, a 'sensational development' was reported in a number of newspapers to have occurred in connection with the 'recent rigging of the share market in Ballarat'.[221] According to the 21 January 1893 edition of *The Age*, the Ballarat Stock Exchange 'took prompt measures to detect the author' of the bogus telegrams and, as a result, 'the unravelling of the mystery was placed in the hands of Detective Lomax of the Postal and Telegraph department'.[222] Detective Lomax established where the bogus telegrams had been sent from and then attempted to 'ascertain who in that locality would have [had] a beneficial interest in "rigging" the market.'[223]

> He learnt that Mr W Hughes, the station master at Frankston, was a holder of Madame Berry West stock, and that on the 11th inst., when the bogus telegrams were posted at the exchange at Ballarat, he telegraphed to his brokers to sell. On the following day, when the bogus nature of the message was exposed in the papers, Mr Hughes telegraphed to his brokers not to sell.[224]

Detective Lomax confronted Mr Hughes at Frankston with the information he had obtained and 'remarked that it was a peculiar coincidence, and something must be done.'[225] Detective Lomax also pointed out that the name of the Legal Manager on the telegrams had been forged and a 'warrant would have to be issued for the arrest of the forger.'[226] Mr Hughes stated 'he

---

[218] 'The Bogus Telegrams. A Sensational Development. A Station Master Shoots Himself', *The Age* (Melbourne, 21 January 1893) 7 ('Sensational Development').
[219] 'Bogus Telegrams' (n 212).
[220] Ibid.
[221] See, for example: 'Sensational Development' (n 218); 'The Bogus Telegrams. A Sensational Development', *The Ballarat Star* (Victoria, 23 January 1893) 2; 'Bogus Telegrams, Mount Alexander' (n 212); 'Attempted Suicide of a Station Master', *The Bendigo Independent* (Victoria, 24 January 1893) 2.
[222] 'Sensational Development' (n 218).
[223] Ibid.
[224] Ibid.
[225] Ibid.
[226] Ibid.

had nothing to do with it', after which Detective Lomax left.[227] Before he had gone far, however, Detective Lomax 'was called back and informed that Mr Hughes had shot himself'.[228]

> As soon as the seriousness of Mr Hughes's condition became apparent a magistrate was sent for and Mr Hughes's dying depositions were taken. In these depositions Mr Hughes stated he had nothing to do with the forgery, but in reply to a query as to why he had shot himself, he said the evidence seemed too strong against him.[229]

Unfortunately, in the final scene of what was referred to as a 'distressing tragedy', Mr Hughes died from the gunshot wound he had inflicted upon himself.[230]

5.7.2 The Black Prince Mine

On 24 June 1896, *The Evening Journal* reported that it had published a telegram it had received stating that:

> the Black Prince Mine had been seized by creditors, and would be sold on Wednesday in order to defray the costs of recent legal proceedings unless execution was satisfied.[231]

The Secretary of the Mine subsequently confirmed, however, that a 'reassuring telegram' had been received from the Manager of the mine that there was 'no truth in report Black Prince property seized.'[232] According to the Manager, he considered the 'report simply attempt rig share market.'[233] No information was located in connection with the identity of the malefactor who disseminated the false information or whether any action was taken to locate and hold them to account for what appears to have been a deceitful attempt to artificially depress the Black Prince Mine's share price.

5.7.3 Hepburn Estate Leasehold

Less than a year later, another instance of using a 'bogus' telegram to distort share prices was reported in the local press. In May 1897, what was referred to variously as a 'clumsy',

---

[227] Ibid.
[228] Ibid.
[229] Ibid.
[230] Mr Hughes lived longer than originally expected and had several unsuccessful operations in the interim: 'The Recent Ballarat Bogus Mining Telegrams', *The Bendigo Advertiser* (Victoria, 11 May 1893) 3.
[231] 'The Black Prince Mine. An Unfounded Report', *The Evening Journal* (Adelaide, 24 June 1896) 2.
[232] Ibid.
[233] Ibid.

'barefaced' and 'impudent attempt to rig the market' in Hepburn Estate Leasehold shares in Ballarat by 'means of a bogus telegram' was reported in several local newspapers.[234]

A 'bogus order' was reportedly sent through the local telegraph office addressed to Mr Peter Borwick, a 'well known' broker, which purported to have been signed by Mr A E Clarke of Clarke and Co, the 'well-known brokers of Melbourne'.[235] The telegraph reportedly stated:

> Buy 1000 Hepburn Estates up to 30s. Reply Monday night. Commercial Hotel, Daylesford. Visiting the mine.[236]

Suspicions were aroused as to the bona fides of the order due to the market value of Hepburn shares being 'only 20s', as well as the spelling of the surname 'Clark' on the telegram, which was spelt 'without the final "e"'.[237]

Following communications between Mr Borwick's firm and Clarke and Co, Mr Clarke 'wired' the following message: 'Have sent no order for Hepburns'.[238] According to *The Age*:

> [h]ad Mr Borwick acted on the order he would have sustained a loss of about £250. It was evidently the intention of the sender of the bogus message to inflate the value of the shares by placing the large order on the market, and then, being probably a large holder of the stock, to take advantage of the opportunity of disposing of his interest in the mine at the higher values.[239]

Yet, despite the fact that 'two persons [were] suspected', the matter was 'placed in the hands of the police with a view of detecting the would be defrauder'[240] and the Ballarat Stock Exchange 'decided to offer a reward of £25 for the conviction of the author of the bogus

---

[234] '"Rigging the Market". A Bogus Telegram', *The Age* (Melbourne, 10 May 1897) 6 ('Rigging the Market, The Age'); 'Clumsy Attempt at Rigging the Share Market', *The Bendigo Independent* (Victoria, 10 May 1897) 3 ('Clumsy Attempt'); 'Attempted Share Rigging. A Bogus Telegram', *The Barrier Miner* (Broken Hill, 10 May 1897) 2.
[235] 'Clumsy Attempt' (n 234).
[236] 'Rigging the Market, The Age' (n 234).
[237] There appears to be a discrepancy between the report contained in *The Age* and *The Bendigo Independent* concerning the spelling of the name of the Melbourne brokers. The former used 'Clarke', whereas the latter used 'Clark'. Unlike the former, the latter newspaper article did not refer to the spelling discrepancy as arousing suspicion as to the legitimacy of the telegram: 'Rigging the Market, The Age' (n 234); 'Clumsy Attempt' (n 234). However, at least one other newspaper reviewed used the same spelling of Clarke (with an 'e'): '"Rigging the Market"', *The Yackandandah Times* (Victoria, 14 May 1897) 3.
[238] 'Rigging the Market, The Age' (n 234).
[239] Ibid.
[240] 'Clumsy Attempt' (n 234).

telegram',[241] it appears from the information reviewed that the person (or people) responsible for the failed attempt at rigging the market in Hepburn shares was not located.

5.7.4 The No. 1 North Norseman mine

Yet another abuse of the telegraph wires to interfere with the forces of genuine supply and demand in the share markets towards the close of the nineteenth century was reported in October 1898 in several regional newspapers.[242]

According to the 7 October 1898 edition of *The Daily News*, for example, Mr W A Hardy,[243] who had been under arrest 'for several days', appeared at the Norseman Police Court on 7 October 1898 and pleaded guilty to charges 'preferred on behalf of the Postmaster-General' that he 'did unlawfully present for transmission at the Norseman Post-office and Telegraph-office a certain telegram bearing a fictitious signature'.[244] Other newspapers contained similar information to the effect that Mr Hardy had sent one telegram bearing a one fictitious signature,[245] whereas others reported that he had sent 'no less than 12 telegrams' to 'various parts in the colonies' and that he had been charged with having:

> wrongfully signed certain telegrams with the names of other persons without such other persons' authority, or with the names of fictitious persons.[246]

The information contained in the relevant telegrams referred to 'certain rich developments that had taken place at the No. 1 North Norseman mine', 'the No. 1 North Norseman had struck a rich lode' and advising 'to buy No.1 North Norseman scrip as a big rise was certain and to buy immediately'.[247] The assertions made in the telegrams 'were absolutely without the slightest

---

[241] 'Rigging the Market, The Age' (n 234); 'Attempt to Impose on the Stock Exchange. A Bogus Buying Order. Timely Exposure', *The Ballarat Star* (Victoria, 10 May 1897) 3.

[242] See, for example: 'Rigging the Market. A Fictitious Telegram. Six Months' Imprisonment', *The Daily News* (Perth, 7 October 1898) 3 ('Fictitious Telegram'); 'Misleading Mining Telegrams. A Sentence of Six Months' Imprisonment', *The Albany Advertiser* (WA, 8 October 1898) 3 ('Misleading Mining Telegrams'); 'Topics of the Day', *The Daily News* (Perth, 8 October 1898) 4 ('Topics of the Day'); 'Telegraphic News. West Australia', *Kalgoorlie Miner* (WA, 8 October 1898) 5 ('Telegraphic News'); 'An Old Trick', *The Goldfields Morning Chronicle* (Coolgardie, 8 October 1898) 3 ('Old Trick'); 'Fraudulent Telegrams. Sensational Method of Influencing the Market. An Exemplary Sentence', *The Norseman Times* (WA, 8 October 1898) 3 ('Influencing the Market'); 'Fictitious Telegrams', *The Western Mail*, 14 October 1898, 41 ('Fictitious Telegrams, Western Mail'); 'Sending Fraudulent Telegrams. Accused Sentenced to Six Months', *The Menzies Miner* (WA, 15 October 1898) 18.

[243] There are conflicting reports as to Mr Hardy's first and middle names – some newspapers refer to Wilfred Arthur Hardy, others to William Arthur Hardy, whereas most refer to him as WA Hardy.

[244] 'Fictitious Telegram' (n 242).

[245] See, for example: 'Telegraphic News' (n 242); 'Old Trick' (n 242).

[246] 'Fictitious Telegrams, Western Mail' (n 242); 'Influencing the Market' (n 242).

[247] 'Influencing the Market' (n 242).

foundation' and the mining manager 'was in a position to say that no rich developments had taken place on the property' during the relevant period.[248] Mr Hardy admitted that all of the 'telegrams that he had sent were fictitious.'[249]

As with many other malefactors who engaged in this type of activity, both before and since, it appears that Mr Hardy's intention for sending the fictitious telegrams was to distort the price of a company's shares to benefit himself at the expense of others.[250] This is apparent from a number of comments contained in the press reports of the time, including the following:

> The bench having inspected them took the view that the messages were not only fictitiously signed, but had been prepared with a fraudulent intent, viz., to increase the demand for certain shares which he, the accused, was selling.[251]
>
> [And]
>
> The Bench held that accused was attempting to mislead as to the value of shares, in fact he was rigging the market . . .[252]
>
> [And]
>
> [The telegrams] were addressed to fictitious persons, and made reference to certain rich developments that had taken place at the No.1 North Norseman mine. The assertions were absolutely without the slightest foundation. In point of fact, deprived of all legal verbiage, the accused had been attempting to "rig the market."[253]
>
> [And]
>
> [Mr Hardy had] sent a false telegram with a fictitious signature, with intent to defraud by increasing the price of certain shares which he was selling.[254]

---

[248] See, for example: 'Fictitious Telegrams, Western Mail' (n 242); 'Influencing the Market' (n 242);
[249] 'Fictitious Telegrams, Western Mail' (n 242); 'Influencing the Market' (n 242).
[250] In his defence, Mr Hardy 'considered it the duty of the post officials to have warned him that it was illegal to send a fictitious wire. If they had done so he would not now be placed in such a position: 'Influencing the Market' (n 242).
[251] 'Fictitious Telegram' (n 242).
[252] 'Misleading Mining Telegrams' (n 242).
[253] 'Topics of the Day' (n 242).
[254] 'Telegraphic News' (n 242); 'Old Trick' (n 242).

Before sentencing Mr Hardy to 'six months' hard labour in Fremantle gaol',[255] the adverse impact of this type of insidious activity was outlined by the Bench, which, as noted in Chapter 3, accords with similar sentiments expressed by many domestic and overseas courts and commentators since.

> Business had been wrongly and unduly interfered with by a fraudulent intent, not only locally and in this colony, but in the other colonies. The main industry of this district had been affected by the fraudulent means adopted by the accused, and it was as impossible to regard it otherwise than a most serious offence.[256]

According to 8 October 1898 edition of *The Daily News*, 'most people' would agree with the above 'magisterial comments' and stated that 'to those persons who send rosy-hued wires regarding mines in which they are interested', Mr Hardy's prosecution 'may come as a timely warning'.[257] Unfortunately, however, the below comment contained in the same article suggests that misconduct and illicit activity of this kind was not uncommon.

> The accused . . . was not the first man by thousands who had attempted to boom up shares by false telegrams . . .[258]

5.8 What action was being taken to combat stock market manipulation?

As is apparent from the discussion thus far, stock market manipulation was an ongoing and credible threat to the integrity and fairness of domestic share markets from the early days of share trading. The harm it could cause to the reputation of the Australian colonies as a destination for foreign capital and the adverse impact to the community appear to have been well understood and are broadly consistent with our understanding today. This section will consider what action, if any, was being taken by the colonial governments and the stock exchanges during this period to combat the manipulation of share prices on domestic share markets.

---

[255] The Bench reportedly thought that the sentence imposed 'would meet the justice of the case': 'Influencing the Market' (n 242).
[256] Ibid.
[257] 'Topics of the Day' (n 242). According to *The Critic* in an article published a few months after Mr Hardy's fate was determined, a petition was 'being extensively signed in WA for the release of W A Hardy, a young South Australian, who was recently sentenced to six months' imprisonment for forwarding fictitious telegrams. A good deal of sympathy is expressed for the young fellow, who has hitherto borne an excellent character. The general opinion is that Hardy was the tool of others, who should be in his place': 'Personal Gossip', *The Critic* (Adelaide, 25 February 1899) 15.
[258] 'Topics of the Day' (n 242).

5.8.1 Government action

Although there appears to have been no domestic legislation in force in the 1800s that specifically criminalised stock market manipulation, activities and conduct seemingly intended to distort share prices were investigated and prosecuted, although not always successfully. For example, the North Cornish prosecution for conspiracy by false and malicious reports to depreciate the value of the company's shares came to an abrupt halt when the Attorney-General declined to proceed.[259] The charge of conspiracy to rig the share market by fictitious trades in *The Queen against Barnard* resulted in a verdict of not guilty,[260] whereas those who sent bogus telegrams and/or telegrams with fictitious signatures in order to manipulate the price of a company's shares and corrupt the markets on which they were traded were, when caught and prosecuted, the subject of prison sentences, sometimes with hard labour.

So, whilst not always triumphant, colonial governments do appear to have taken action to try to combat the manipulation of share prices on domestic share markets, even where it may not have been specifically characterised or referred to as such. In relation to the two significant corners in 1889 and 1891, however, the government of the colony of Victoria does not appear to have taken any interest and may well have just left the stock exchange to resolve the incidents by itself. This would not be surprising given that the exchanges appear to have been left largely to their own devices, free of government interference, right up until the latter half of the 20th century.[261] According to Geddes, for example, the stock exchanges have 'historically been largely self-regulating' and were:

> seen as self-regulating units; State governments relied upon them to exercise control over their members and over those aspects of the securities industry which came within their jurisdiction, but they were not themselves subject to direct governmental control. It seemed to be generally assumed (in retrospect, without the matter having been carefully considered) that the stock exchanges were properly and efficiently managed, that they were capable of providing the degree of protection needed by investors in their markets . . .[262]

---

[259] See section 4.7.1.
[260] See section 4.7.2.
[261] See Geddes, 'Systems of Securities Regulation' (n 141) 14-15, 564.
[262] Ibid 564. This is consistent with the High Court's observation in *Director of Public Prosecutions (Cth) v JM* that: '[f]or many years, transactions on Australian stock exchanges were chiefly regulated by the relevant exchange or exchanges': *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30 [45] (French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ).

Nonetheless, to the extent that a 'ring' or 'syndicate' engaged in conduct to defraud investors in the share market, by whatever means, the common law offence of conspiracy to defraud may have been available to prosecutors seeking to take action for identified instances, as demonstrated in the failed prosecution in *R v Barnard*. As will be discussed in the next chapter, however, there was legislation that was enacted in the early part of 1901 that would appear to be suited for the prosecution of malefactors who corrupted stock markets through market manipulation in order to defraud the public. Yet, the 1800s came and went with the corruption of share markets not appearing to be a priority for the governments of the time.

5.8.2 The Stock Exchanges

The manipulation of the price of shares traded on the informal and more formal markets operating across the Australian colonies from the mid-1850s onwards appears to have been a regular occurrence. Yet, the rules that governed the stock exchanges operating in Sydney, Melbourne and Perth, for example, do not appear to have explicitly proscribed this type of misconduct on their respective markets.

5.8.2.1 Rules to combat manipulative conduct/activities?

The SSE, originally an association of stockbrokers, was established in 1871.[263] Whilst not the first stock exchange to operate in the Australian colonies,[264] its rule book is one of the earliest located during the research. *The Sydney Stock Exchange Rules and Regulations* is only six pages long and contains rules relating to entrance fees, brokerage rates, admission of new members and the settlement of share transactions.[265] Not surprisingly, there were no rules explicitly dealing with market manipulation or other forms of misconduct that could be perpetrated in the course of buying and selling shares. However, rule 14 provided as follows:

> Any Member found by the Committee to have been guilty of default or of conduct unbecoming a Member, shall forfeit his Membership and cease to be a Member.[266]

---

[263] Salsbury and Sweeney, *Sydney Stockbrokers* (n 7) 101; The Sydney Stock Exchange, *Rules and Regulations* (Joseph Cook & Co, 1872).
[264] See, for example, Edna Carew, *National Market National Interest: The drive to unify Australia's securities markets* (Allen & Unwin, 2007) xxi.
[265] As noted by Salsbury and Sweeney, the pamphlet gives no date of publication, however, they believe that 'it was probably printed in October 1872 since it contains a list of members current at that month': Salsbury and Sweeney, *Sydney Stockbrokers* (n 7) 101.
[266] Rule 14, The Sydney Stock Exchange, *The Sydney Stock Exchange, Instituted May, 1971: Rules and Regulations*, Instituted May 1871 (Joseph Cook & Co, Undated).

Whether intended or not, the term 'conduct unbecoming a Member' appears to be sufficiently broad, vague, and subjective to apply to a myriad of different facts, circumstances, activities and conduct that could, arguably, have included the rigging or manipulation of the prices of shares listed on the SSE, by whatever means.

The 1875 version of the *Rules and Regulations of the Sydney Stock Exchange* was different from the 1871 version in several respects, not just the fact that there were now 12 pages instead of six. Firstly, rule 14 above was replaced by Rule 29, which included the following:

> The Committee shall take cognisance of all violations of these rules whether in letter or spirit; and any Broker found by them to be guilty of conduct unworthy of a Member, shall be liable to fine or suspension by resolution of the Committee.[267]

Secondly, the 1875 version contained rule 12, a rule not previously included in the 1871 version, which provided as follows:

> If any quotation of sale be challenged at the daily meeting of Members, the Chairman of the day shall immediately accompany the Member whose quotation is doubted to his office, and shall there satisfy himself by examination of the Books or Papers of such Member as to the bona-fides of the quotation, and shall report the result either to the Committee in the first instance, or direct to the Members in daily meeting assembled, as to him shall seem fit. Any Member refusing to the Chairman an inspection of his Books shall be treated by the Committee as guilty of the offence, and shall be dealt with under Rule XXIX.[268]

The above wording is broadly similar to, for example, rule 21 in the 1891 version of the *Rules of the Stock Exchange of Perth*.[269] Unfortunately, no information was located to confirm why the rule was introduced and what particular mischief it was intended to address. On the face of it, however, the rule appears to have been aimed at ensuring quotations of sale were genuine and preventing false quotations, particularly given that refusal to allow the 'chairman of the

---

[267] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-2, The Sydney Stock Exchange, *Rules and Regulations Adopted at a General Meeting of Members of the Sydney Stock Exchange*, To take effect from 13 January 1875.

[268] Ibid. It is not clear what is meant by the reference to 'guilty of the offence' in the last line of rule 12, which is perhaps why the wording was changed in the 1881 version of the Rule Book (now rule 13) to the following: 'Any Member refusing to the Chairman an inspection of his books shall be treated by the committee as guilty of making a false quotation, and offender shall be dealt with under Rule 34': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, AU NBAC N209-4, The Sydney Stock Exchange, *Rules & Regulations of the Sydney Stock Exchange*, 1881.

[269] *Rules of the Stock Exchange of Perth*, Sands & McDougall Limited, Printers, Perth, 1891.

day' to inspect their books essentially resulted in the member in question being deemed to be guilty of 'making a false quotation'. This appears to be consistent with Salsbury and Sweeney's observation that rule 12 'attempted to stop false reporting'.[270] This is not surprising given that the prices of quotations, purchases and sales effected during the Official Meetings[271] would eventually form part of the Official List,[272] which would be 'available for the information of the public and the Press at all convenient times'.[273] As noted by *The Australasian Insurance and Banking Record* in relation to the SEM:

> The prices there quoted and transactions effected are at the disposal of the reporters of the four daily papers, so that an excellent check is afforded the public of the market value of their investments.[274]

It is arguable that the prevention of market rigging was one of the forms of mischief that the rule prohibiting the making of false quotations was attempting to proscribe, notwithstanding no authoritative source has been located to substantiate this. For example, the 31 March 1884 edition of *The Tasmanian News* contained the following excerpt, which relates to the discussion in section 5.4 concerning the rigging of MVG Company shares:

> With reference to the range of prices during last week in the shares of the Mount Victoria G. M. Co., it is our duty to warn the speculating public that information has reached us proving that special efforts were made by a sharebroking ring to bring about a fall in the shares. The members of this ring have succeeded in using both the Exchanges for their purpose, by obtaining what are virtually false quotations for the shares, as no broker in the

---

[270] The wording of Rule 12 quoted by Salsbury and Sweeney is broadly similar to the wording of Rule 15 above: Salsbury and Sweeney, *The Bull, the Bear and the Kangaroo* (n 2) 142.

[271] Rule 13 of the *Rules of the Sydney Stock Exchange* provided that an official meeting of the Sydney Stock Exchange be 'held twice a day, at such time and place as the committee shall appoint': *Rules of the Sydney Stock Exchange*, Revised April 1887, John Sands Printer, Sydney.

[272] Rule 13 of the *Rules of the Sydney Stock Exchange* also contained the following reference, which appears to be the predecessor to the 'Official List': 'At these meetings [the 'Official Meetings'] the list of sales and prices shall be made': *Rules of the Sydney Stock Exchange*, Revised April 1887. The 1891 version of the *Rules of the Sydney Stock Exchange* contained a much more comprehensive section on the 'Official List' at Rules 81-83: *Rules of the Sydney Stock Exchange*, Adopted 23 October 1891, with additions and amendments to 1 June 1898, 1898.

[273] The quotation is taken from Rule 19 of the *Rules of the Stock Exchange of Perth*, Sands & McDougall, 1891 (copy on file with author). This wording was not contained in the 1891 version of the *Rules of the Sydney Stock Exchange*.

[274] 'The Use of a Stock Exchange' (1878) 1(2) *The Australasian Insurance and Banking Record* 9 January 1878, p.3. Ensure correct quotation.

> colony is prepared to sell any very small parcels at the prices which have been quoted for the last week. [275]

The article goes on to compare the 'quotations given by the Hobart Exchange' and the prices at which MVG Company shares were 'sold in Hobart' to conclude that 'the quotations are unreliable as an indication of the value of stocks'.[276] As is apparent, the article draws a nexus between the sharebroking ring's efforts to artificially depress the price of MVG Company shares and the procurement of 'virtually false quotations for the shares'.[277]

Similarly, the following excerpt from an article in the 22 June 1870 edition of *The Bendigo Advertiser* suggests that the making of false quotations can be used as a means of interfering with the forces of genuine supply and demand in the market for shares:

> . . . it is asserted that the [introduction of a Brokers' Exchange] will be beneficial to the general public, because the power of making false quotations will in a great measure be removed, because if any broker makes a wrong quotation, and states that he has such and such a stock for sale at a lower price than he really has, for the purpose of causing a decline, he is certain to be picked up by some broker who has orders to buy. In this manner it is maintained that the quotations will be more reliable.[278]

Moreover, the following comments, under the heading 'Australian Bubble Companies' in the 25 April 1854 edition of *The Banner*, suggest that false quotations were used to manipulate share prices:

> A great deal has been said about the practice of rigging the market . . . The way rigging was done was this: when a company did not take with the public, the shares were dushed up, and false prices quoted, for the purpose of enabling large shareholders to get rid of their shares at an enormous premium; and he was afraid that when all these companies were supposed to be in so good a position, the directors sold their shares; and there could be no doubt that the public had been sacrificed to an immense amount.[279]

---

[275] 'Stock & Share Market', *The Tasmanian News* (Hobart, 31 March 1884) 3.
[276] Ibid.
[277] Ibid.
[278] 'Obstructionists', *The Bendigo Advertiser* (Victoria, 22 June 1870) 2. This article provided commentary on the benefits that a Brokers' Exchange would afford to both the brokers themselves and the general public.
[279] 'Australian Bubble Companies', *The Banner* (Melbourne, 25 April 1854) 9.

An example is also discussed in section 5.8.2.2 below where it was claimed that two members of the SEM had put up a false market by executing a fictitious trade. According to Matthews, writing around 1964:

> It would be a serious offence, punishable by expulsion, for a member to register a fictitious transaction, and a Stock Exchange of Melbourne rule provides that 'any member whose published quotation is challenged shall, if so called upon, verify the same to the satisfaction of the Committee'.[280]

A similar point was also made by Drake and Matthews writing around ten years later, the authors referring to the 'Melbourne rule' with the same wording as above, although they also observe that the Securities Industry Act 'makes it an offence to create a false or misleading appearance of trading activity'.[281] This could be read to support the argument that the mischief rule 12 (and similar rules adopted by other stock exchanges) was intended to address also included market manipulation.[282]

Finally, in September 1968, consideration appears to have been given to revising an existing SSE by-law (54(3)(e)) to incorporate a new provision that explicitly addressed 'wash trades', transactions involving no change in beneficial ownership.[283] Existing SSE by-law 54(3)(e), which dealt with quoted sales being challenged and the Secretary satisfying themselves 'as to the bona fides of the sale', was amended by adding the new paragraph dealing with wash trades.[284] The apparent merging of these two provisions may also support the above

---

[280] R. L. Matthews, 'The Stock Exchange, Securities and New Issue Markets, Investment Companies and Unit Trusts' in R. R. Hirst and R. H. Wallace (Eds), *Studies in the Australian Capital Market* (F. W. Cheshire, 1964) 16.

[281] P. J. Drake and R. L. Matthews, 'The Securities Markets' in R. R. Hirst and R. H. Wallace, *The Australian Capital Market* (Cheshire Publishing Pty Ltd, 1974) 18.

[282] Looking at this through a first principles lens, the *raison d'être* of a stock exchange is to 'provide a fair, orderly and efficient market for dealings in stocks and shares and other securities', which would suggest that any rules promulgated by the relevant exchange would necessarily include rules concerned with, either expressly or by implication, the prevention of market rigging 'or the creation of a false market': Geoffrey Cooper and Richard J Cridlan, *Law and Procedure of the Stock Exchange* (Butterworths, 1971) 8-9.

[283] This is discussed further in section 8.2. The then existing SSE by-law 54(3)(e), titled 'Sales', states: 'If any quoted sale be challenged, the Secretary shall satisfy himself as to the bona fides of the sale and may report the result to the Committee': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-46, The Sydney Stock Exchange Limited, *Memorandum & Articles of Association By-Laws & Regulations*, June 1972.

[284] The revised SSE by-law 54(3)(e), titled 'Sales', states: 'A bona fide sale shall be a transaction between a seller and a buyer when there is or will be a change of beneficial ownership, and a member shall not be a party to any transaction when there is no such change in ownership. If any quoted sale be challenged, the Secretary shall satisfy himself as to the bona fides of the sale and may report the result to the Committee': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-46, The Sydney Stock Exchange Limited, *Memorandum & Articles of Association By-Laws & Regulations*, June 1972.

argument.[285] However, if the old by-law was aimed at combating market rigging, it is puzzling why it was not drafted in a way that made this more explicit.

Indeed, the position across the stock exchanges in Australia was in stark contrast to the New York Stock Exchange (NYSE), for example, where rule 18 of the first Constitution of the NYSE, adopted on 25 February 1817, explicitly proscribed 'fictitious sales', a particular species of market manipulation.[286] According to Shultz:

> Rule 18 of the first Constitution (1817) stipulated that "no fictitious sale or contract shall be made at this board. Any member or members making a fictitious sale or contract shall, upon conviction thereof, be expelled."[287]

A similar rule was included in the 1892 version of the Constitution of the NYSE.[288] The 1925 version of the Constitution includes the below provisions, which would seem to be aimed at combating market manipulation on the NYSE's markets.

(a) Article XVII

> Sec.3 – Prohibition of 'making a fictitious transaction or of giving an order for the purchase or sale of securities the execution of which would involve no change of ownership, or of executing such an order with knowledge of its character'.[289]

---

[285] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-221 (Z718/137), Sydney Stock Exchange, Minutes of the Rules Subcommittee Meeting Held on 17 September 1968 at 3.15pm, 2.

[286] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), Birl E Shultz, *Stock Exchange Procedure* (New York Stock Exchange Institute, 1936) 8.

[287] Ibid.

[288] Section 8 in Article XXII of the 1892 Constitution, for example, provides as follows: 'No fictitious sales shall be made. Any member contravening this section, shall, upon conviction, be suspended for such period not exceeding twelve months, as a majority of the Governing Committee present, at a meeting thereof, may determine': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), *Constitution of the New York Stock Exchange*, Amended to 1 January 1892, 43.

[289] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), *Constitution of the New York Stock Exchange*, 1925, 43.

(b) Chapter XIV

Sec.4 – Prohibition of the 'circulation in any manner of rumors of a sensational character by a member, in any case where such act does not constitute fraud or conduct inconsistent with just and equitable principles of trade'.[290]

An additional provision that was adopted on 13 February 1934 is set out below.

Chapter XIV.

Sec.15 – Prohibition of directly or indirectly, participating in or having 'any interest in the profits of a manipulative operation' and 'knowingly' managing or financing a 'manipulative operation'.[291]

Although the exact date of its implementation cannot be located, what appears to be the earliest domestic stock exchange rule explicitly prohibiting market manipulation located during the research is rule 101 of the *Rules and Regulations of The Stock Exchange of Melbourne*. This rule prohibited the making of a 'fictitious transaction' or the giving an order 'for the purchase or sale of securities the execution of which would involve no change of ownership'. As will be discussed in section 8.2, this rule appears to have been incorporated in the SEM's rules some time prior to August 1968.

It is not clear why it took so long for any of the domestic stock exchanges to include rules that explicitly proscribed market manipulation, in whatever form, particularly when there appears to have been longstanding precedent in the US that could have provided guidance should it have been required.

---

[290] Ibid, 114-115. See also Article XVII, Sec.4 – Prohibition of '[p]urchases or sales of securities or offers to purchase or sell securities, made for the purpose of upsetting the equilibrium of the market and bringing about a condition of demoralization in which prices will not fairly reflect market values': at 43-44.

[291] Ibid 117-118. Section 15 of Chapter XIV of the NYSE Constitution provides the following guidance on the meaning of 'manipulative operation', 'managing a manipulative operation' and 'financing a manipulative operation': For the purpose of this rule (1) any pool, syndicate or joint account whether in corporate form or otherwise organized or used intentionally for the purpose of unfairly influencing the market price of any security by means of options or otherwise and for the purpose of making a profit thereby shall be deemed to be a manipulative operation; (2) the soliciting of subscriptions to any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation; and (3) the carrying on margin of either a long or a short position in securities for, or the advancing of credit through loans of money or of securities to, any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation: at 118.

5.8.2.2 Action to combat manipulative conduct/activities?

An early attempt at controlling what appears to have been the spreading of false and misleading information to interfere with the forces of genuine supply and demand in the share market by members of a stock exchange was the subject of a meeting held by the Committee of the SEM on 8 July 1890.[292] The 'Extracts from Minutes' for the 8 July 1890 meeting of the Committee record that:

> [a] resolution had been adopted by the Members – That the action of Members in publishing in the Press reports re Tramway shares be brought under the notice of the Committee for them to deal with. This motion had been adopted in consequence of the action of two Members, Messrs Ker and Willder, in publishing in the press extracts from their monthly guides to investors.[293]

It was eventually resolved that the action of Messrs Ker & Willder in publishing reports concerning Tramway shares in the press be 'referred to the Committee by the Members to be dealt with by them.'[294] The Committee made the following finding.

> The Committee find that according to the rules Members have freedom of quotation in the newspaper press or otherwise but they (the Committee) hold that the publication in the Public Press of statements and comments the natural tendency of which is to inflate or depress the market price of stocks and shares is adverse to the best interests of the Stock Exchange of Melbourne and is calculated to bring the Association into discredit. The Committee expect that this ruling will be strictly adhered to.
>
> The Secretary was directed to forward copies of the above resolution to Messrs Ker & Willder.[295]

The above resolution by the Committee was also read at an ordinary meeting of the Members held on the same date.[296] There was no other information located to explain how Messrs Ker and Willder's publication of their investor guides in the press resulted in the Committee issuing its decree. For example, what did the investor guides say and why was it considered

---

[292] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/068, The Stock Exchange of Melbourne, Extracts from Minutes, 'Committee Minute – 8 July 1890'.
[293] Ibid 1.
[294] Ibid.
[295] Ibid.
[296] Ibid 2.

as having a 'natural tendency' to inflate or depress the market price of Tramway shares. Although the censure by the Committee was a good way to make other exchange members aware of what was and was not acceptable practice, there appears to have been no penalty meted out to Messrs Ker and Willder for their apparent transgression.

One of the only earliest examples located in the research where disciplinary action appears to have been taken for market manipulation by a domestic stock exchange was the subject of an article in the 12 February 1897 edition of *Table Talk* titled 'Market Rigging', which reported on the SEM 'making an effort to stamp out some of the "trivial" tricks daily practiced within its precincts.'[297] More specifically:

> the latest verdict of the committee has compelled two members to pay a fine of £10 each for an unblushing "market rig." To put up a false market in New Koh-i-Noors, the pair arranged a bogus sale of 1000 shares. Their unscrupulous deal, unfortunately for them, leaked out, and they were promptly made an example of by the committee.[298]

The author of the article does not appear to have been impressed with the action taken by the exchange and the closing comments of the article suggest that the 'market rig' in respect of which the two members were fined was not an isolated, one-off occurrence.

> But I am afraid it is rather late in the day for the Exchange to start checking those practices which have made its name a by-word among Australian speculators.[299]

Once again, contemporary press commentary appears to suggest that market manipulation was a frequent occurrence that continued to plague domestic share markets.

The minutes of the meeting of the Committee of the SEM held on 8 February 1897 appear to corroborate, to a large extent, the information referred to in the above article. The minutes contain the below account of the hearing at which Messrs Ditchburn and Bagley had been 'summoned' to 'explain the circumstances of a reported sale of 2000 Kohinoors' between them that was 'made in the Hall publicly and afterwards scratched privately'.[300]

---

[297] Scrutator, 'The Mining Market: Rigging the Market', *Table Talk* (Melbourne, 12 February 1897) 5.
[298] Ibid.
[299] Ibid.
[300] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201/Box 1, Minutes of the meeting of the Committee of the Stock Exchange of Melbourne held on 8 February 1897.

Mr Bagley stated "He received a large order for Kohinoors on the morning of the day in question which he filled. Subsequently another order reached him to buy 2000 more Kohinoors. He purchased 200 @ 3/10 from Mr D Thomson and then offered to take 2000 @ 4/ which quantity Mr Ditchburn agreed to supply. This transaction took place among the members in the Exchange Hall. He then proceeded to the telegraph office to advise his client and just at the door met Ditchburn and thinking Ditchburn had specked the sale advised him that as he was purchasing for a big holder in Ballarat he thought Ditchburn had not done a wise thing in making the sale. Ditchburn then offered 20/ to be allowed to cancel the line which Bagley agreed to do but would not take the monetary consideration. He then wired to his client can only get 200 will try and complete order later.

On being questioned Mr Bagley expressed regret at having acted in the manner he had done and could now see the effect such a transaction would have on the market.

Perhaps this was a reference to the false signal that would have been sent to the market as a result of a trade of 2,000 Kohinoor shares having been apparently executed in front of other exchange members, but then subsequently cancelled behind the scenes.

Moreover, it would appear Mr Bagley considered his actions had resulted in his client not being treated fairly.

He did not consider the interest of his client when he agreed to scratch the purchase but now thought he had acted wrongly in not doing so.

He had acted on the spur of the moment out of good will to his fellow member who he thought was specking the shares.

Mr Ditchburn agreed with Mr Bagleys account of what took place.

On being questioned he stated he was not selling on behalf of a client.

Decision [illegible] Committee minute [illegible] folio 268

Each fined £10.[301]

Unfortunately, there is no reference to the specific rule in respect of which the Committee made the finding and imposed the financial penalty. The imposition of the £10 fine would,

[301] Ibid.

however, appear to have been permitted under rule 17 of the *Rules and Bye-Laws of the Stock Exchange of Melbourne*, which provided, relevantly, as follows:

> The Members shall have the power to fine, suspend, or expel any Member who may be considered guilty of dishonourable or disgraceful conduct . . .[302]

In the absence of any other rule or bye-law that specifically contemplated or proscribed the 'market rig' said to have been perpetrated by Messrs Bagley and Ditchburn, the Committee's finding may have been based on a determination that 'putting up a false market' in the shares in question constituted 'dishonourable or disgraceful conduct'.[303]

5.9 Conclusion

This chapter has again highlighted that domestic share markets were frequented and targeted by those intent on corrupting the forces of genuine supply and demand to benefit themselves at the expense of others. Whilst some action was taken by colonial governments and the stock exchanges to combat this insidious activity, there was much more that needed to be done in order to effectively deal with those who engaged in stock market manipulation and deter others minded to do the same.

---

[302] *Rules and Bye-Laws of the Stock Exchange of Melbourne*, Revised May 1889.
[303] Ibid.

PART THREE: INTO THE TWENTIETH CENTURY – Dawn of a new era or more of the same?

CHAPTER 6: 1900 to 1960

> The greatest scoundrels on earth are the financial swindlers who manipulated the Stock Exchange so that they can enrich themselves by causing losses to those who are not so clever. These are the arch-gamblers who should be raided and gaoled by the police . . .[1]

> In our experience we have come across many peculiar methods of manipulating the share market, but in none of them have we seen such brazen practices resorted to as those employed in boosting the now famous Chaffinch mine.[2]

6.1 Introduction

In continuing to trace the historical roots of stock market manipulation in Australia, this chapter will focus on the developments that took place over the course of the first half of the new century. As will become apparent, the manipulation of share prices continued to occur across domestic markets and whilst action was taken by some state governments to introduce laws that should have acted as a deterrent to those intent on rigging share markets, there was much more that needed to be done by Government and the stock exchanges in order to effectively combat the ongoing occurrence of this insidious activity.

6.2 The Early 1900s

The start of the new century was essentially no different to the latter part of the previous one when it came to reports of market manipulation on those share markets operating throughout the Australian colonies on the eve of Federation, a practice claimed in the press to be 'universally condemned.'[3] Indeed, it was not long before a case involving a forged telegram that sent the price of shares in the Queensland Mining, Pastoral, and Investment Company ('QMPI') soaring dominated the local headlines. As discussed in previous chapters, bogus telegrams were used by malefactors on a number of occasions to distort share prices. Throughout May 1900, the newspaper headlines included references to, 'The Exchange

---

[1] "'Great curse!" Life of Idleness. Bishop Hits Out', *The Scone Advocate* (NSW, 16 February 1932) 1.
[2] 'The Chaffinch Scandal. An Administrative Enormity', *Truth* (Brisbane, 8 April 1911) 4 ('Chaffinch Scandal'). This matter was examined in the previous chapter.
[3] ''Rigs' on the Stock Exchange', *The Evening Star* (WA, 7 February 1900) 4.

Sensation',[4] 'The Adelaide Telegram Forgery'[5] and 'The Stock Exchange Swindle'.[6] Details of the case were reported in at least ten different domestic newspapers.[7]

6.2.1 The Case of Mr Mountain

On 16 and 17 May 1900, *The Age* and *Table Talk*, respectively, contained articles referring to the 'forged'[8] and 'bogus'[9] telegram and an 'ingenious fraud'[10] that had 'caused a sensation on the Melbourne Exchange'.[11] Yet, other than a reference to the below, there is no information in either article confirming the identity of the perpetrators/s of the 'forged telegram transaction'[12] that resulted in a 'sudden jump'[13] in the price of QMPI shares.

> The work of the Stock Exchange committee and the detectives has so far advanced, nevertheless, that relying on the facts ascertained, they are devoting special attention to one person, whose movements lately have been so peculiar as to attract attention. Though connected with a monetary institution and in receipt of a very large salary, he has been absent from his post for some days.[14]

However, the 17 May 1900 editions of *The Mount Lyell Standard and Strahan Gazette* and *The Express and Telegraph* both referred to a warrant having been issued by the South Australian police for the arrest of James Frederick Mountain, the general manager in Australia[15] of the

---

[4] 'The Exchange Sensation. Further Light on the Transaction. Disappearance of a Prominent Business Man', *The Age* (Melbourne, 16 May 1900) 9 ('Exchange Sensation').
[5] 'The Adelaide Telegram Forgery. The Suspect. Last Heard of in Sydney. A Warrant Issued', *The Express and Telegraph* (Adelaide, 17 May 1900) 3 ('The Suspect').
[6] 'The Stock Exchange Swindle', *The Mount Alexander Mail* (Victoria, 18 May 1900) 3 ('Exchange Swindle').
[7] 'Exchange Sensation' (n 4); 'Other People's Money', *Table Talk* (Melbourne, 17 May 1900) 7 ('Other People's Money'); 'Alleged Forgery. A Share Market Transaction', *The Mount Lyell Standard and Strahan Gazette* (Tasmania, 17 May 1900) 2 ('Alleged Forgery'); 'The Suspect' (n 5); 'Exchange Swindle' (n 6); 'The Forged Telegram. No Trace of the Suspect. Some Additional Details', *The Age* (Melbourne, 18 May 1900) 5 ('No Trace of Suspect'); 'The Forged Telegram', *The Adelaide Observer* (SA, 19 May 1900) 27 ('The Forged Telegram'); 'A Forged Telegram. A Warrant Issued. For Mr James Fredk Mountain', *The Weekly Times* (Melbourne, 19 May 1900) 24 ('Warrant Issued'); 'A Bogus Telegram. Name of an Adelaide Firm Forged', *The Western Mail* (Perth, 19 May 1900) 22 ('Adelaide Firm Forged'); 'The Forged Telegram. Singular Letter from the Suspect', *The Zeehan and Dundas Herald* (Tasmania, 22 May 1900) 3 ('Letter from the Suspect'); 'The Forged Telegram', *The Adelaide Observer* (SA, 26 May 1900) 29 ('Forged Telegram, 26 May'); 'Adelaide Forgery Case', *The Chronicle* (Adelaide, 26 May 1900) 29 ('Forgery Case').
[8] 'Exchange Sensation' (n 4).
[9] 'Other People's Money' (n 7).
[10] 'Ingenious Fraud. Insurance Manager Suspected. By Telegraph. (From Our Own Correspondent). Melbourne, May 16', *The Kalgoorlie Miner* (WA, 17 May 1900) 8 ('Ingenious Fraud').
[11] 'Exchange Sensation' (n 4).
[12] Ibid.
[13] 'The Forged Telegram' (n 7).
[14] 'Exchange Sensation' (n 4).
[15] 'The Forged Telegram' (n 7).

Imperial Insurance Company of London ('IICL').[16] It was claimed that Mr Mountain was 'the man who was most anxious to unload scrip' and he had 'given orders for the sale of 6000 [QMPI] shares'.[17]

The warrant reportedly charged Mr Mountain with forging a telegram at Adelaide on 5 May 1900 'in connection with the scrip of' QMPI.[18] The 'bogus' telegram had apparently been sent from Murray Bridge railway station, South Australia, to Melbourne.[19] According to *The Mount Alexander Mail*:

> [t]he scrip in question took a sudden rise, 6000 being disposed of in one line on the strength of a telegram received from Adelaide, and purporting to have been sent by Messrs Elder, Smith and Co. The telegram indicated that the company's properties were likely to be purchased by a London syndicate and information to that effect was allowed to leak out on the Exchange.[20]

However, Messrs Elder, Smith and Co were said to have 'disclaimed all knowledge of the telegram, and the matter to which it referred.'[21]

The specific wording of the telegram purporting to have been sent by Messrs Elder, Smith and Co was included in an article in the 19 May 1900 edition of *The Weekly Times*.

> Adelaide Railway. – To Harris and Field, Equitable Building, Collins street. – Anglo-Continental Syndicate, London, appointed us their agents, resume negotiations purchase Queensland Mining Investment properties same terms as before, allowing equal rights new issue; they guarantee completion immediately. Writing Monday. (Signed) Elder, Smith and Co., Currie Street. Time lodged, 3.10; time received, 4.36.[22]

According to the same article:

> The telegram was not divulged on the date of its receipt, but was mentioned on Monday, and on the same day confidential memoranda were distributed amongst members of the

---

[16] 'Alleged Forgery' (n 7); 'The Suspect' (n 5). According to *The Western Mail*, Mr Mountain's 'position with the insurance company is an opulent one, carrying with it a salary of £1,000 a year, together with commissions: 'Adelaide Firm Forged' (n 7).
[17] 'Ingenious Fraud' (n 10).
[18] 'Exchange Swindle' (n 6).
[19] 'A Serious Charge', *The Wagga Wagga Express* (NSW, 17 May 1900) 2 ('Serious Charge').
[20] 'Exchange Swindle' (n 6).
[21] Ibid.
[22] 'Warrant Issued' (n 7).

> Stock Exchange by a boy of an express agency, giving news of the alleged offer of the London Company to purchase the leases. The information contained in the memos, backed up by the telegram, gave the shares a rise of 70 to 100 per cent, and about 3000 changed hands.[23]

The 22 May 1900 edition of *The Zeehan and Dundas Herald* provided some additional colour on the content of the 'confidential memos'.

> It was on Tuesday that the "confidential notes," 14 in number, were distributed amongst members of the Exchange. These contained virtually the same statement as the Adelaide telegram, and were obviously meant to supply any deficiency in the scheme caused by delay in giving publicity to the telegram. They had the wished for effect, as there was a very marked rise in the stock.[24]

Similarly, other newspaper reports referred to the scrip having 'suddenly almost doubled in value'[25] and taken 'a sudden jump',[26] 'a very marked rise'[27] and a 'sudden rise, 6,000 being disposed of in one line' on the strength of the telegram in question.[28]

Enquiries were reportedly made by 'Stock Exchange officials', who became aware that one broker, 'Mr S B Bagley, of Collins-street, who [was] a member of the Exchange',[29] had received instructions from a client to sell 6,000 QMPI shares on the day that the forged telegram had been received.[30] Indeed, an article in the 17 May 1900 edition of *The Express and Telegraph* stated that the directors of QMPI and 'the Chairman and Secretary of the Stock Exchange, set to work to trace the operator'.[31] When asked by the Chairman of the Stock Exchange for the name of the client, Mr Bagley gave it as Mr Mountain, who was said to have been 'well known to everyone on the Exchange, and to most business men in Melbourne' by virtue of his position as 'General Manager of so big a concern as the' IICPL.[32] In addition, the handwriting on the 'telegraphic message' and the 'confidential memos' that had the 'wished for effect' of

---

[23] Ibid.
[24] 'Letter from the Suspect' (n 7).
[25] 'Alleged Forgery' (n 7).
[26] 'The Forged Telegram' (n 7).
[27] 'Letter from the Suspect' (n 7).
[28] 'Exchange Swindle' (n 6).
[29] 'No Trace of Suspect' (n 7).
[30] 'The Forged Telegram' (n 7).
[31] 'The Suspect' (n 5).
[32] 'The Forged Telegram' (n 7).

increasing the price of QMPI shares was 'pronounced very similar' to Mr Mountain's handwriting.[33]

An article in *The Adelaide Observer* reported that Mr Mountain was 'written to, and asked to attend on the [Stock Exchange] committee and explain', but despite promising to do so, he did not turn up.[34] The 18 May 1900 edition of *The Age*, however, reported that the executive of the Exchange asked the broker, Mr Bagley, to secure Mr Mountain's attendance at the Exchange.[35] When Mr Bagley conveyed 'the wish of the Exchange executive' to Mr Mountain, he apparently replied that 'he did not think a man in his position should be asked to do such a thing'.[36] In the absence of any information to the contrary, it is presumed that the Exchange had no jurisdiction over Mr Mountain, who does not appear to have been a member of the SEM and, therefore, would have been under no compulsion to comply with any of the rules promulgated or directions given by the Exchange.

Despite the matter being handed to the police for investigation and a warrant being issued for his arrest, it appears that Mr Mountain was not located and he was reported by at least one newspaper as 'missing'.[37] One of the last articles located that reported on this matter, published in the 22 May 1900 edition of *The Zeehan and Dundas Herald*, stated the following:

> Yesterday the management of the Imperial Insurance Company received from Mountain a letter, dated Sydney, Monday evening, in which he resigned his position as manager of the company. He also forwarded a letter, which covered 12 pages, in which he explained his position with regard to the forged telegram. While protesting his innocence of the fraud, he admitted that circumstances, unfortunately, made him the subject of suspicion. The position, he said, was such that the best thing he could do was to keep out of the way till the real culprit was arrested.[38]

Notwithstanding the alleged activities of Mr Mountain to artificially interfere with the forces of genuine supply and demand in the market for QMPI shares, it appears that it was all to no avail. Although there were sales executed in QMPI shares on the SEM at inflated prices due, it

---

[33] 'Letter from the Suspect' (n 7).
[34] 'Adelaide Firm Forged' (n 7); 'The Forged Telegram' (n 7).
[35] 'No Trace of Suspect' (n 7).
[36] Ibid.
[37] 'General News', *The Yackandandah Times* (Victoria, 25 May 1900) 3.
[38] 'Letter from the Suspect' (n 7).

was claimed, to the forged telegram and confidential memos issued by Mr Mountain, the Chairman of the SEM:

> [m]entioned that the sales effected in the "room" in connection with the recent dealing in [QMPI] shares had not been cancelled by the committee, as had been stated, but by the members concerned in accordance with the rules of the Exchange.[39]

In order to essentially unwind the sale transactions executed by Mr Bagley on behalf of Mr Mountain on the Exchange, the below action was taken.

> Arrangements were made whereby Mr Bagley received notice that the shares should be delivered in three days according to the rules. In an ordinary transaction it would have been imperative for him to obtain the scrip as best he could, and hand it over, but of course in the circumstances he took no such action, and the result was "no sale." The position was that the seller had no shares and the buyers did not want any—at double their real value. The bubble had burst.[40]

Indeed, according to the 16 May 1900 edition of *The Age*, 'the operator in-chief and instigator of the "market rigging" . . . appears to have put himself to a great deal of personal inconvenience for nothing.'[41] Fortunately, it was reported that 'no loss was sustained by the buyers' of QMPI shares at prices that had apparently been artificially inflated by the actions attributed to Mr Mountain.[42] An article in the 17 May 1900 edition of *The Wagga Wagga Express* reported that Mr Mountain had been 'absent from Melbourne for some days, and is supposed to be in another colony',[43] while *The Express and Telegraph* reported that Mr Mountain had 'probably departed for Honolulu'.[44]

No information was found to confirm whether Mr Mountain was ever located and whether any action was taken in respect of his alleged involvement in what appears to have been an attempt to manipulate the price of QMPI shares.[45]

---

[39] 'Forged Telegram, 26 May' (n 7).
[40] 'No Trace of Suspect' (n 7).
[41] 'Exchange Sensation' (n 4).
[42] 'Forgery Case' (n 7).
[43] 'Serious Charge' (n 19).
[44] 'The Suspect' (n 5).
[45] An article in the 26 May 1900 edition of *The Chronicle* stated that no trace had been found of Mr Mountain, the date recorded in the article being 17 May: 'Forgery Case' (n 7).

6.2.2 The Duke of York 'Squeeze' (or Possibly a 'Corner')

Another 'Stock Exchange sensation'[46] was reported in a number of domestic newspapers over the course of August and September 1901, which was described as follows:

> One of the cleverest market "coups" achieved on the Melbourne Stock Exchange since the "Bear Hill" corner years ago has apparently been engineered by the body of operators who control the course of dealing in the shares of the Duke of York GM Company, Bamganie.[47]

It was referred to variously as the 'latest mining scandal',[48] the 'Duke of York share racket',[49] the 'Duke of York scandal',[50] the 'Duke of York sensation',[51] the 'Duke of York share crisis',[52] 'one of the cleverest market coups achieved on the Melbourne Stock Exchange'[53] and a 'market gamblers' scandal'.[54] In terms of the manipulative technique employed by those responsible, some newspapers characterised it as a 'corner',[55] whereas others described it as a 'squeeze'.[56] According to Mr George Dick Meudell, a stockbroker and member of the SEM, this is one of the four 'corners' in which he openly admitted to taking part in his 'idiosyncratic and uninhibited autobiography',[57] *The Pleasant Career of a Spendthrift*.[58]

---

[46] 'Bears and Bulls. Stock Exchange Sensation', *The Mercury* (Tasmania, 4 September 1901) 6 ('Bears and Bulls').

[47] 'Bears and Bulls. Stock Exchange Sensation', *The Argus* (Melbourne, 22 August 1901) 5 ('Exchange Sensation').

[48] 'The Latest Mining Scandal', *The Bendigo Independent* (Victoria, 24 August 1901) 4 ('Mining Scandal').

[49] 'The Duke of York Share Racket', *The Age* (Melbourne, 28 August 1901) 7 ('Share Racket').

[50] 'Duke of York Scandal. The "Squeezing" Progressing', *The Bendigo Independent* (Victoria, 28 August 1901) 4 ('Duke of York Scandal').

[51] 'The "Duke of York" Sensation', *The Ballarat Star* (Victoria, 28 August 1901) 6.

[52] 'Share Sensation. Duke of York "Squeeze." Supreme Court Sequel. An Interesting Case', *The Herald* (Melbourne, 28 September 1901) 4 ('Share Sensation').

[53] 'Bears and Bulls' (n 46).

[54] 'Mining Scandal' (n 48).

[55] For example, 'Friday, August 23, 1901', *Argus* (Melbourne, 23 August 1901) 4 ('Friday, August 23'); 'Mining Intelligence', *The Ballarat Star* (Victoria, 23 August 1901) 6 ('Mining Intelligence, 23 August').

[56] 'Mining Scandal' (n 48); 'Bulls v Bears. Sensational Market Rise', *The Leader* (Melbourne, 24 August 1901) 19 ('Bulls v Bears'); 'Duke of York Scandal. Shares Cornered To 5 From 11s. An Eventful Day', *The Bendigo Independent* (Victoria, 27 August 1901) 3 ('Shares Cornered'); 'The Share Market. Monday's Business', *The Evening News* (Sydney, 27 August 1901) 6 ('Monday's Business'); 'Mining News', *The Advertiser* (Adelaide, 28 August 1901) 8; 'Share Racket' (n 49); 'Duke of York Scandal' (n 50); 'Mining and Finance', *The Critic* (Adelaide, 31 August 1901) 20 ('Mining Finance'); 'Mining Intelligence', *The Ballarat Star* (Victoria, 9 September 1901) 3. The overwhelming majority of articles reviewed characterised the activity as a 'squeeze' rather than a 'corner'. An article in *Table Talk*, however, appears to have used the terms 'squeeze' and 'corner' interchangeably: 'Other People's Money. The Duke of York "Squeeze"', *Table Talk* (Melbourne, 29 August 1901) 6 ('Squeeze').

[57] Diane Langmore 'Meudell, George Dick (1860-1936)', *Australian Dictionary of Biography* <http://adb.anu.edu.au/biography/meudell-george-dick-7564> ('*Dictionary of Biography*').

[58] George Meudell, *The Pleasant Career of a Spendthrift* (George Routledge & Sons, 1929) 87-88. According to the *Australian Dictionary of Biography*, George Dick Meudell (1860–1936) became a member of the Stock Exchange of Melbourne in January 1890: Langmore, '*Dictionary of Biography*' (n 57).

A review of the relevant newspaper reports indicates that this incident arose from what was described at the time as a 'bear and bull fight'.[59] Indeed, according to the 23 August 1901 edition of *The Argus*:

> The usual course of events in these corners is that "spec sellers" commence the operations. That is, speculators endeavour to force prices down by putting on the market shares which they do not actually possess. And, seeing that this is being overdone, an equally clever group buys largely and sends up prices, and is entitled to call for the delivery of shares which they assume do not exist or which will be obtainable only at rates which they will fix.[60]

The battle between the 'bears', who sold shares they did 'not possess in anticipation of buying them back at lower prices',[61] and the 'bulls', who had 'so cleverly effected' the corner,[62] was described in the 24 August 1901 edition of *The Bendigo Independent* as follows:

> The market rig on the part of the "bulls" seems to have been fixed up on the Sunday – on the old principle perhaps of the better the day the better the deed. At any rate they came down on Monday morning, and the "bears", quite as plucky and as confident as they, began pouring scrip into them. The game went on most willingly, between the spec sellers and the spec buyers. The latter outlasted the spec sellers, and prices then began to plunge forward – 12s to 13s 9d, next day to 19s 3d, next to 48s, then to 70s.[63]

Once it became known that there had been sales of 'several thousand more scrip than the 18,000 shares on the register of the contributing shares' of the Duke of York company and a 'coup could be effected', a syndicate was reportedly formed to finance buying transactions, thereby 'enabling the locking up of the scrip'.[64] The syndicate, stated to be the 'originators of the corner', was later reported to have been comprised of Messrs T Arnfield, S Allen, R Gilpin and H Goddard.[65] According to the 31 August 1901 edition of *The Critic*, the 'Duke of York Squeeze on Melb. 'Change' had been engineered by Mr Arnfield, who was said to be a 'curbstone broker, who lends money on scrip and other things.'[66]

---

[59] 'Mining Scandal' (n 48).
[60] 'Friday, August 23' (n 55).
[61] 'Bulls v Bears' (n 56).
[62] 'Mining Intelligence, 23 August' (n 55).
[63] 'Mining Scandal' (n 48).
[64] 'Exchange Sensation' (n 47).
[65] 'Squeeze' (n 56).
[66] 'Mining Finance' (n 56).

Given there had apparently been no material change 'for better or worse' in the mine during the prior two weeks, the author of an article in the 24 August 1901 edition of *The Bendigo Independent* expressed their astonishment at the 'impudence of the gang who have got amongst the shares and tossed them up from 11s to 70s', which they claimed was 'stupendous and amazing'.[67]

Details of when and how the matter was finally resolved are sketchy, at best. According to the 22 August 1901 edition of *The Argus,* it was rumoured, in relation to the 'bears', that 'some brokers had already made settlements at heavy cost', but 'those concerned are not prepared to admit that they have been bitten.'[68] The 27 August 1901 edition of *The Evening News* noted that if the 'bears' were unable to deliver the shares 'for which they are stated to have been "noticed,"'[69] then they would either have to 'compromise on the terms imposed by the bulls, or default.'[70]

It would appear from some of the newspaper reports at the time that there may have been no stock exchange rules in place that governed the price at which transactions were to be settled in the event of a 'corner'. *The Argus*, for example, stated the following, which suggests that guidance on this topic should be sought from an overseas exchange:

> [a] feeling existed in certain circles that as the crisis resembled in a minor degree the recent American railway deal, the precedent set by the committee of the London Stock Exchange should be followed, and a settlement price fixed by the Stock Exchange.[71]

Similarly, an article in the 29 August 1901 edition of *Table Talk* included the following observation:

> Early last week a member drew the attention of the Chairman of the Stock Exchange to the corner in Duke of York shares and suggested that following the precedent of the London

[67] 'Mining Scandal' (n 48).
[68] 'Exchange Sensation' (n 47).
[69] Presumably, this is a reference to a process (or broadly analogous process) whereby a seller who fails to deliver the shares they have sold to the buyer of those shares (within the period prescribed by the rules of the exchange) is given a written 'notice' by the buyer (in accordance with the rules of the exchange) that then allows the buyer to cancel their purchase or 'buy at the risk of the seller, through any Member of the Exchange': see, for example, Rule 30 of the *Rules and Bye-Laws of the Stock Exchange of Melbourne. Revised 1899* (McCarron, Bird & Co, 1889).
[70] 'Monday's Business' (n 56).
[71] 'Exchange Sensation' (n 47).

and New York Stock Exchanges, special settlement should be effected. The majority of members were however against the proposal.[72]

An article in the 28 August 1901 edition of *The Age* seemed to suggest that resolution of the matter was nearing.

> The excitement and unrest in Stock Exchange circles engendered by the "bear squeeze" in Duke of York contributing shares is on the wane. Operators are of opinion that the climax in the matter of fluctuations in rates was reached on Monday. There is a growing disposition on the part of the "bull" party to encourage settlement of their claims for scrip on payment of cash differences instead of insisting on delivery of the scrip, and it is hoped the majority of the issues raised with respect to the whole "deal" will be settled in the immediate future.[73]

Whilst the legality or otherwise of the 'corner' itself does not appear to have been considered by the courts, and no information has been located to confirm what action, if any, the Stock Exchange may have specifically taken, there were legal proceedings commenced in relation to the failure of certain parties to deliver Duke of York shares to the buyers of those shares.[74]

Yet, it appears that neither the machinery of justice nor the rules of the stock exchange were triggered or resorted to in relation to the 'corner' in Duke of York shares. Indeed, the author of an article in the 24 August 1901 edition of *The Bendigo Independent* appears to be incredulous at what had occurred based on their below comments concerning the Duke of York 'squeeze.'

> Is there no remedy for these nefarious proceedings? Has the law or Parliament nothing to say on the subject? Is the Crimes Act and imposition by trick dumb? Does the Gambling Suppression Bill not apply? Can a man with impunity sell that which he has not, or buy that for which he cannot pay? And can he also, whilst doing so, involve others and quite innocent persons in his own unrighteous and shameless proceedings?[75]

---

[72] 'Squeeze' (n 56). It appears there was no explicit rule dealing with 'corners' until around 1971, following the infamous Antimony Nickel corner. Whilst there was no specific rule dealing with 'corners' in the 1892 version of the NYSE Constitution/Rule book, s.7 of Article III dealing with 'corners' is contained in the 1925 version: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), *Constitution of the New York Stock Exchange*, 1925.

[73] 'The Duke of York Share Racket. A Retrogression in Rates', *The Age* (Melbourne, 28 August 1901) 7.

[74] See, for example, 'The Bull and Bear Squeeze. Scene Shifted to the Supreme Court', *The Age* (Melbourne, 5 September 1901) 4; 'Share Sensation' (n 52); 'The Duke of York "Squeeze"', *The Bendigo Independent* (Victoria, 20 December 1901) 1; 'Duke of York "Squeeze"', *The Evening Star* (WA, 23 December 1901) 4.

[75] 'Mining Scandal' (n 48).

Indeed, according to another newspaper report, members of Parliament had demanded 'laws and ordinances for the prevention of such iniquities' as those associated with the Duke of York Squeeze.[76]

There were reports in at least two separate articles in *The Bendigo Independent* that indicate the 'bulls' may have engaged in activity that appears to resemble 'wash trades' or fictitious transactions in order to effect the 'corner'. For example:

> They also are inclined to believe that orders have been "crossed" by the bulls, in order to lure bears into "covering" at high prices.[77]

And, more specifically:

> Other bears are inclined to think that the bulls are crossing their orders – that is, selling their own scrip through one operator, and buying it from another, in order to make a specious display of strength.[78]

To the extent that the 'bulls' were executing fictitious trades to increase the Duke of York share price to establish the 'corner', this would appear to have involved an intention to force the price to an artificial level, thereby manipulating the market. Yet, once again, no action appears to have been taken to hold anyone to account.

It would be another 70 years or so before Australia had legislation in place to specifically prohibit fictitious transactions, although the question of the legality of 'corners' and their treatment under stock exchange rules remain a bit of a mystery in the Australian context.

6.3 Legislation

As discussed in Chapter 2, the legal and other literature on domestic stock market manipulation typically focuses on legislation introduced in the early 1970s in four states that specifically criminalised this particular species of market misconduct in some parts of Australia only.[79] Prior to the 1970s, the very limited references to how market manipulation was dealt with in

---

[76] 'Tough Luck', *The Halesville and Yarra Glen Guardian* (Victoria, 20 September 1901) 4.
[77] 'Shares Cornered' (n 56).
[78] 'Duke of York Scandal' (n 50).
[79] According to Tomasic et al, for example, '[f]ollowing the Report of the Rae Committee legislation was introduced in Australia to outlaw manipulative practices in the securities industry': Roman Tomasic et al, *Corporation Law: Principles, Policy and Process* (Butterworths, 1990) 488. See also, for example, Ray Schoer, 'Self-Regulation and the Australian Stock Exchange' in Peter Grabosky and John Braithwaite (eds), *Business Regulation and Australia's Future* (Australian Institute of Criminology, 1993) 107.

Australia from colonial times suggests that it was primarily prohibited through common law principles.[80] Yet, there was legislation enacted in Queensland and Western Australia in the early 1900s, for example, provisions of which appear to have been suitable for prosecuting some identified instances of market manipulation, whether through manipulative conduct/activities or spreading false rumours or misleading information.

6.3.1 Criminal Code Act 1899 (Qld) and Criminal Code Act 1902 (WA)

Section 430 of the *Criminal Code Act* 1899 (Qld), for example, which came into force on 1 January 1901,[81] provided as follows:

> Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a crime, and is liable to imprisonment with hard labour for seven years.
>
> The offender cannot be arrested without warrant.

The Queensland *Criminal Practice Rules of 1900*, which also appear to have become effective from 1 January 1901,[82] contained the below information with respect to s.430.

> No.258 – CONSPIRACY TO DEFRAUD
>
> Section 430
>
> (1) Conspired together [*or* with one M.N. (and others) to affect by deceit [*or* by fraudulent means] the market price of sheep [*or* of shares in the X.Y. Gold-mining Company, Limited], being things which were then publicly sold . . .[83]

The *Criminal Practice Rules* appear to specifically contemplate not only shares, but shares in gold mining companies, which were often targeted by those who manipulated share prices during the early days of domestic share trading.

---

[80] H Chitimira, 'The Regulation of Market Manipulation in Australia: A Historical Comparative Perspective' (2015) 8(2) *Potchefstroom Electronic Law Journal* 111, 113.
[81] R.S. O'Regan, 'Sir Samuel Griffith's Criminal Code', *Royal Historical Society of Queensland Journal*, Volume XIV, No.8, August 1991,305, 310 ('Criminal Code').
[82] Ibid 305.
[83] *The Criminal Practice Rules of 1900*, Queensland, 10 October 1900 <https://digitalcollections.qut.edu.au/3305/1/qsr_criminal_practice_rules_1900_1jan86.pdf>.

It seems that the genesis of s.430 can be traced back to clause 264 of the *Criminal Code Bill 1880* (UK), which provided as follows:

264.

Conspiracy To Defraud

> Every one is guilty of a crime, and liable to *five years'* penal servitude, who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public, or any person ascertained or unascertained, or to affect the public market price of stocks funds shares merchandise or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence as hereinbefore defined.
>
> Every one who after a previous conviction for any offence involving dishonesty commits an offence under this section shall be liable upon conviction thereof to *fourteen years'* penal servitude.

According to O'Regan, when Sir Samuel Griffith was drafting the Queensland Criminal Code in the 1890s, he consulted three principal sources, one of which was the English Draft Bill of 1880 (*Criminal Code Bill 1880* (UK)).[84] However, of those three sources, '[u]ndoubtedly the most pervasive influence was the Draft Bill of 1880 and Griffith incorporated many of its provisions into his Code with little alteration'.[85]

Section 410 of the *Criminal Code Act* 1902 (WA), assented to on 19 February 1902, used exactly the same wording as that used in s.430 of the Queensland version.[86] No instances were identified in the research where the Queensland Code was used as the basis to prosecute malefactors for rigging the share market. There was, however, one unsuccessful prosecution located that took place in Perth in 1911, which will be discussed in more detail in section 6.5. In that case, three defendants were charged under s.410 of the WA *Criminal Code Act* with having acted in concert to affect the market value of shares in a gold mining company.

One unsuccessful prosecution almost 10 years after the law was introduced was not the most auspicious start for legislation that appears to have been suitable to combat certain types of

---

[84] O'Regan, 'Criminal Code' (n 81) 307.
[85] Ibid.
[86] Western Australia, Tasmania and the Northern Territory subsequently codified their criminal law. According to O'Regan, all were 'influenced by the Griffith model' enacted in Queensland: ibid, 305, 311.

manipulation of share markets in Queensland and WA. It could be argued, however, that this was an acknowledgment at least by Government that manipulating share prices and corrupting share markets was pernicious to the community at large and worthy of punishment under the criminal law.[87]

6.4 *Vickery v Taylor* (1910)[88]

In the latter part of 1909, domestic newspapers began reporting on a legal action that involved allegations of the use of manipulative devices to interfere with the forces of genuine supply and demand in the market for Kangiara Mines, No Liability (Kangiara) shares.[89] According to an article in the 15 October 1909 edition of *The Burrowa News*, this case was 'probably the first suit of the kind ever tested in our Courts', which was:

> regarded as making both sides determined to fight it out, because of the importance of the points raised for all classes of investors and speculators.[90]

The manipulative devices that were alleged by the plaintiff, Joseph Vickery, to have been used included 'cornering' the market, spreading false and fraudulent statements and 'fictitious sales'.[91]

---

[87] In addition, legislation was passed in Western Australia in 1906 that was, according to the 12 December 1906 edition of *The Kalgoorlie Miner*, intended to deal with 'false statements by officials of companies with intent to affect the price of shares': 'State Parliament. The Legislative Assembly. Amendment of Criminal Code. Fraudulent Share Dealing', *Kalgoorlie Miner* (WA, 12 December 1906) 5. This was a step in the right direction, in WA at least, in protecting vulnerable investors who relied on representations contained in mining prospectuses when parting with their money to invest in shares. Indeed, the Colonial Secretary, Mr JD Connolly, during the Second Reading of the *Criminal Code Amendment Bill* stated the following: 'if the manager or other official issues false information about a mine, about the quantity or the value of the ore, he is criminally liable. So he ought to be. Inducing the public to buy shares at ten times their value is nothing less than robbery, and this provision will do much to restore confidence in our mines, and to put mining on a better footing. This is the principal reason for the Bill': West Australian Government, *Parliamentary Debates*, Legislative Council, 13 December 1906, 3797 (JD Connolly, Colonial Secretary).

[88] (1910) 11 SR (NSW) 119.

[89] Articles reporting on this matter were contained in many local newspapers over the course of just over one year. For example: Kangiara Mines. Big Equity Suit. Directors and Brokers Sued', *The Burrowa News* (NSW, 15 October 1909) 2 ('Big Equity Suit'); 'Mining Case. Interesting Points', *The Register* (Adelaide, 27 November 1909) 15 ('Interesting Points'); 'Sydney Mining Action', *The Age* (Melbourne, 29 November 1909) 7; 'Mining Dispute. Kangiara Mines. Vickery v Taylor and Others', *The Burrowa News* (NSW, 3 December 1909) 6; 'Kangiara Mines Dispute', *The Goulburn Evening Penny Post* (NSW, 17 February 1910) 2; 'In Equity. (Before Mr Justice AH Simpson, Chief Judge in Equity). Kangiara Mines Dispute. Vickery v Taylor', *The Sydney Morning Herald* (Sydney, 25 March 1910) 4; 'Kangiara Mines. Appeal to the Full Court. Against Equity Decision', *The Evening News* (Sydney, 8 August 1910) 5; 'The Kangiara Share Case. Vickery v Taylor and Others. The Appeal Dismissed', *The Daily Telegraph* (Sydney, 29 October 1910) 24.

[90] 'Big Equity Suit' (n 89).

[91] *Vickery v Taylor* (1910) 11 SR(NSW) 119 ('*Vickery v Taylor*').

According to the 27 November 1909 edition of *The Register*, Mr Vickery applied for an injunction before Mr Justice AH Simpson, Chief Judge in Equity, in the Supreme Court of NSW to restrain the defendants, being several directors of Kangiara (the Directors), as well as a broker, Mr JE Ducker, a 'stock and share broker and a member of the' SSE, from:

> conspiring together to make and from making false representations of fact in order to raise or maintain the market price of shares of [Kangiara]; and that the defendant Ducker be restrained from taking any steps to enforce any rights claimed by him in respect of the agreements of March 10 and August 7 last; and that he be restrained from taking any steps to have the plaintiff posted as a defaulter at the Sydney Stock Exchange.[92]

The essence of Mr Vickery's complaint is set out in the facts that appear in the judgment of Simpson CJ in Equity, delivered on 24 March 1910.[93] The relevant parts are cited below.

> [O]n the 10th March 1909, when the plaintiff owned no shares in the defendant company, the defendant Ducker induced [Mr Vickery] to enter into an agreement with him, by which the plaintiff, in consideration of one shilling a share, ie, 15l., agreed that he would at any time within six months, sell to the defendant 300 shares in the defendant company, at 16s. a share. On the 7th August, 1909, Ducker exercised his option to purchase 300 shares in the defendant company at 16s. a share. On the 14th September, he again wrote asking for the scrip. At that time the shares had risen in the market, and the plaintiff alleges that such rise was caused by conspiracy, afterwards carried into action between the defendants, to make false and fraudulent statements as to the value of the mine, and to send up the value of the shares by fictitious sales.[94]

The reference to 'fictitious sales' is further addressed in Mr Vickery's statement of claim, which asserted the following:

> The defendants, other than the company, who either own or control nearly the whole of the shares in the company, have also for the purposes aforesaid, and in furtherance of the said conspiracy, bought, or pretended to buy, shares from each other for fictitious prices in order

---

[92] 'Interesting Points' (n 89).

[93] His Honour's judgment is contained in the law report for Mr Vickery's appeal against that decision: *Vickery v Taylor* (n 91), 119-125 (Simpson CJ in Equity).

[94] *Vickery v Taylor* (n 91) 120 (Simpson CJ in Equity). As noted in Chapter 3, the use of false rumours and misleading statements to artificially inflate the price of shares, known in modern parlance as 'rumourtrage', is an offence under the law today by virtue of s.1041E of the *Corporations Act*: See, for example, Australian Securities and Investments Commission, '08-47 'False or misleading rumours' (Media Release 08-47, 6 March 2008).

> to induce persons who desired to become, or who might thereafter become shareholders in the company to believe, contrary to the fact, that there is a *bona fide* market for the said shares, and that the shares are at a real premium.[95]

In terms of the alleged 'cornering' of the market for Kangiara shares, Mr Vickery asserted in his statement of claim that the defendants 'had obtained the control of practically all the shares in the company' and could raise the price of those shares 'as they pleased, and intended so to do'.[96] Moreover, Mr Vickery claimed that he would be unable to purchase any Kangiara shares 'except at such price as such defendants should elect to fix'.[97]

According to Mr Vickery, whose complaint alleged that Kangiara had conspired with others to engage in activities 'calculated to affect the market value of [its] shares',[98] the wrongful acts of the defendants had meant that he was unable to buy Kangiara shares 'except at the fictitious price to which they had risen.'[99] Moreover, unless the defendants were restrained from continuing with those wrongful acts, 'he and other members of the public would be compelled to pay fictitious prices for the shares' or be 'posted at the Stock Exchange as defaulters'.[100]

The Supreme Court, however, dismissed Mr Vickery's appeal and affirmed the decision of Simpson CJ in Equity. Relying on authorities such as *Salaman v Warner*,[101] Street J stated that:

> when a conspiracy is aimed, not at an individual or at a class of individuals, but at the public, the damage sustained by a member of the public is too remote to give a right of action[102] . . . The judgments in *Quinn v Leathem* ([1901] A.C. 495) if carefully examined show that in order to maintain a civil action for conspiracy it is necessary for the person bringing the action to show that the wrongful act complained of was done with the design

---

[95] *Vickery v Taylor* (n 91) 120 (Simpson CJ in Equity).
[96] Ibid.
[97] Ibid.
[98] Ibid 128 (Street J).
[99] 'Kangiara Mines. Alleged Conspiracy. Application for Injunction', *The Argus* (Melbourne, 27 November 1909) 22.
[100] According to *The Star*, rule 124 of the Sydney Stock Exchange Rules states: 'In the event of a non-member failing to meet an engagement with a member of the Sydney Stock Exchange the member may apply to the committee to have such person posted as a defaulter. The committee shall inquire into the case, and provided the complaining member affords satisfactory evidence of default having been made shall post the said person and announce to the members that he is in default: 'Kangiara Mines. Joseph Vickery and the Directors. Alleged False Representations. Commencement of a Big Equity Suit', *The Star* (Sydney, 27 November 1909) 2. Rule 125 states: 'A member shall not transact business for a non-member who has been announced to the members as a defaulter, unless such person shall have made a satisfactory arrangement with his creditor, who shall report such arrangement at the time to the committee'.
[101] *Salaman v Warner* (1891) 65 LT 132.
[102] *Vickery v Taylor* (n 91) 130 (Street J).

> of injuring him, and that it did in fact injure him. If he is not struck at, either directly or through others, but is only injured as a member of the public the damage is too remote; but if the intention was to injure him, that intention, as Lord Lindley points out (p.537) negatives all excuses and disposes of any question of remoteness of damage.[103]

Although the Court did not make any kind of findings in relation to the substantive (mis)conduct alleged by Mr Vickery, for example, the legality or otherwise of 'cornering' the market, and making fictitious sales, this case is, nonetheless, interesting for several reasons. In referring to certain paragraphs in Mr Vickery's statement of claim, for example, Simpson CJ in Equity stated the following:

> These paragraphs seem to me very important. In them it is stated that on the 10th of March, 1909, the defendant directors owned or controlled practically all the shares in the company; consequently the defendant directors could refuse to sell except at their own price; they had, in fact, cornered the market; but I am not aware that this is by law a wrongful act. It was this fact which was the effective cause of the price going up, not the various false statements made by the defendants.[104]

His Honour appears to have explicitly acknowledged that the 'cornering' of the market was due to 'the directors having control of practically all the remaining shares' and they 'could refuse to sell except at their own price', which he stated 'was the effective cause' of the price of Kangiara shares 'going up'.[105] Yet, this was not considered to be a wrongful act. This is consistent, however, with the comments contained in the 1913 edition of *Halsbury's Laws of England* concerning 'corners', which were said to be 'legitimate in the absence of fraudulent representations made with the object of inducing and in fact inducing persons to sell'.[106] Indeed, according to Cooper and Cridlan in their 1971 text *Law and Procedure of the Stock Exchange*:

> combinations are permitted to "corner" the market, ie, to buy up all available securities of a particular kind so as to drive speculative sellers into a 'corner'; this will compel them to buy from the combination – at a price dictated by the combination – in order to obtain the securities which they have agreed to acquire for their clients. Where, however, the instigators

---

[103] *Vickery v Taylor* (n 91) 130-131 (Street J).
[104] Ibid 121 (Simpson CJ in Equity).
[105] Ibid.
[106] Where fraudulent devices are relied upon, however, 'the persons engaged are indictable for conspiracy and liable to an action for deceit': Butterworth, *Halsbury's Laws of England*, vol 27 (at 24 October 1913) 'Stock Exchange', Part 6 Illegality and Fraud, Section 4 'Corners' 264 <https://archive.org/details/lawsofenglandbei27hals_0/page/n8/mode/2up>.

> of pools and corners resort to fraudulent methods, then clearly they bring themselves within the law of conspiracy.[107]

Could this perhaps explain why there appears to have been a reticence on the part of domestic courts and stock exchanges to condemn this type of activity or take any kind of action when they had occasion to consider matters involving 'corners', some of which have been discussed in this and previous chapters.

Nonetheless, deliberately establishing a 'corner' in the share market (as opposed to futures or commodity markets) has been referred to as a form of market manipulation in Australia and overseas[108]—for example, where a person intentionally forces up the price of a company's shares to an artificial level intending to corner the shares so as to compel short sellers to 'pay an exorbitant price for the scrip' they want.[109] Goldwasser, for example, refers to imposing a 'corner' on a security as an example of a 'recognised manipulative' device.[110] A 1990 Memo issued to Member Organisations by the ASX concerning market manipulation contained the below description of 'cornering'.

> 'Domination and Control of Market'
>
> Most forms of market Manipulation involve gaining control of the market by purchasing significant volumes at artificially set prices. Also called 'cornering'. This can be followed by increasing or decreasing prices to desired levels. The more illiquid the stock, the easier to gain control and therefore the easier to manipulate.[111]

Whilst there have been several 'corners' established on stock markets in Australia, some of which are discussed in this thesis, and although they have been typically characterised by the

---

[107] Geoffrey Cooper and Richard J Cridlan, *Law and Procedure of the Stock Exchange* (Butterworths, 1971), 9-10.
[108] In the US, a corner has been defined in the following terms: 'the situation which exists when an issue is held almost completely in the hands of the operators not with intent to hold, but to cause those who have sold short to be so unable to borrow for delivery that they will be forced to settle practically at the operator's terms': Notes, 'Illegality of Stock Market Manipulation', (1934) 34(3) *Columbia Law Review* 500, 502 n 9. See *Sampson v Shaw* 101 Mass. 145 (1869); Loss, Louis, *Fundamentals of Securities Regulation* (Little, Brown and Company, 2nd ed, 1988) 849.
[109] Norman Bede Rydge, *The Australian Stock Exchange* (Rydge's Business Journal, 1939) 124 ('*Australian Stock Exchange*').
[110] Vivien R Goldwasswer, *Stock Market Manipulation and Short Selling* (CCH Australia and Centre for Corporate Law and Securities Regulation, 1999) 144.
[111] ASX, Circular to Member Organisations No. 306/90, 'Sections 123 and 124 of the Securities Industry Code', 21 June 1990, Attachment B.

press as market rigging,[112] there do not appear to have been any decided cases where the legality or otherwise of this particular manipulative device has been considered in the domestic context. This seems to be the case even where spreading false statements and engaging in fictious transactions were allegedly used as a means of raising the price of shares to establish a corner.[113]

As will be discussed in Chapter 8, possibly one of the last significant 'corners' effected in Australia in the 1970s (Antimony Nickel) brought into sharp focus the adverse impact that this particular manipulative technique can have on the orderly conduct of share trading on a domestic stock exchange. Once again, however, this matter did not result in any judicial determination on the legality or otherwise of establishing a corner in the domestic share market, notwithstanding the characterisation by the SSE Chairman (on behalf of the SSE's Committee) of the relevant trading as 'creating artificial prices' and the market 'being manipulated'.[114] Similarly, there was no information located to confirm whether disciplinary action was taken by any of the stock exchanges against their members in connection with any involvement they may have had in establishing a corner on their markets.

6.5 The Great Chaffinch Case[115]

Only a few months after the hearing in *Vickery v Taylor*, a criminal investigation commenced into the actions of three men who were charged with conspiracy to 'affect by deceit the market price of shares in the Great Chaffinch Gold Mining Company, No Liability', which resulted in an unsuccessful prosecution and much criticism of the action taken by the WA Government. The affair was described by one commentator in the following terms:

---

[112] See, for example, 'The Corner in Round Hills', *The Evening News* (Sydney, 8 October 1889) 5; 'A "Corner" in Mining Scrip', *The Advocate* (Tasmania, 2 May 1891) 10; 'Mining Scandal' (n 48).

[113] See, for example, the above discussion regarding the Bear Hill corner, Duke of York corner/squeeze and *Vickery v Taylor* (n 91).

[114] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), Sydney Stock Exchange Limited 'Press Release', purportedly signed by J. H. Cooper, Chairman, 5 April 1971. This matter is discussed in Chapter 8.

[115] This title has been borrowed from the title of a letter from the General Secretary of the Chamber of Mines of Western Australia to the Premier of Western Australia: Letter from the General Secretary of the Chamber of Mines of Western Australia to the Premier of Western Australia, 14 September 1911, 'Great Chaffinch Case', State Records Office of Western Australia, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn.

> It was, and is, and will, it is to be hoped, ever remain, the most calmly contemplated, callously concocted, and cruelly carried out, premeditated coup of the many mining coups ever perpetrated in Australia.[116]

This matter was widely reported in the domestic press from December 1910 to June 1911[117] and is an important milestone in tracing the historical roots of stock market manipulation in Australia. It is one of the earliest prosecutions located where charges were laid under a piece of legislation enacted in WA in 1902 (discussed in section 6.3.1 above) that appears to have explicitly proscribed conduct aimed at rigging the price of shares traded on a domestic share market.

> This is a different thing from the ordinary criminal investigation. It is unique, both in regard to the nature of the charge and the class of the accused. Here are three men . . . charged with having conspired "to affect by deceit the market price of shares in the Great Chaffinch Gold Mining Co. Ltd." It is a new sensation to see three reputable looking men criminally prosecuted under a practically new law.
>
> Parliaments and Governments have been urged for years to legislate for the protection of the public against the practices of market manipulators, and WA at all events has set the example by creating a very heavy penalty for the promoter, or any person connected with the flotation of a company, who misrepresents the facts in order to induce any person to take shares. Similarly the same Act (Criminal Code 1902) provides a maximum of seven years' hard labor for the offence of conspiring by deceit to affect the market price of any shares.[118]

This case appears to be an early example of a prosecution for 'rumourtrage', discussed in Chapter 3.[119] Although the conduct in question involved the use of a much cruder technology than is available today, the telegram, the alleged objective appears to have been the same, that

---

[116] 'The Bullfinch Field. How the Boom Was Started. At Southern Cross, WA; And Boosted, Beared, and Bulled. In That Jerusalem of Jobbers. Adelaide, City of Snide Saints', *Truth* (Brisbane, 5 February 1911) 4.
[117] One of the earliest reports regarding this matter was 'The `Chaffinch Denouement. Study in Telegrams. Mines Department Asked for Report', *The Register* (Adelaide, 5 December 1910) 7. One of the latest reports was 'The Chaffinch Sensation. Royal Commission Suggested', *The West Australian* (Perth, 3 June 1911) 12 ('Royal Commission Suggested').
[118] 'The Comedie Humaine. An Impression of the Proceedings', *The Sunday Times* (Perth, 26 March 1911) 3 ('Comedie Humaine').
[119] Rumourtrage involves disseminating false rumours and misleading information in relation to shares 'in order to take advantage of artificial changes in their price', contrary to s.1041E of the *Corporations Act 2001* (Cth): see Australian Securities & Investments Commission, *Consultation Paper 118: Responsible Handling of Rumours*, September 2009 7 <https://download.asic.gov.au/media/1331012/cp118.pdf>.

is, to rig share prices in order to benefit the alleged perpetrators at the expense of other participants in the market.

In early December 1910, several newspapers contained reports that the Adelaide Stock Exchange and the SSE had sent telegrams to the 'Minister of Mines, Perth' expressing their concerns in connection with reports about the Chaffinch mine and requesting an investigation.[120] The Adelaide Stock Exchange's telegram stated the following:

> The Committee of the Adelaide Stock Exchange strongly suggest you should have immediate and strictest investigations made discoveries Chaffinch mine as reports received here are very contradictory and we consider it essential in the interests of mining your state as well as of Stock Exchanges of Commonwealth that official state report be obtained.[121]

In October 1910, after securing it 'from its peggers',[122] Mr Henry Arthur obtained an option over the lease for the Chaffinch mine on behalf of a 'group of Adelaide capitalists' operating as the 'Kookynie Option Syndicate'.[123] Mr Arthur was appointed local director and his son, Mr Arthur Jnr, was put in charge of the mine[124] 'pending the appointment of a manager by the board in Adelaide.'[125] The Great Chaffinch Gold Mining Company, No Liability was subsequently floated in Adelaide and it was reported that '[s]peculation was brisk and the shares

---

[120] See, for example, 'The Bullfinch Boom. Stock Exchanges Take Action. Investigation Asked For. Market Weaker', *The Express and Telegraph* (Adelaide, 5 December 1910) 1 ('Bullfinch Boom'); 'The Chaffinch', *The Albany Advertiser* (WA, 7 December 1910) 3 ('Chaffinch').

[121] Telegram from WB Carr, Chairman Stock Exchange of Adelaide, to Minister of Mines Perth: Telegram from WB Carr, Chairman of the Adelaide Stock Exchange to Minister of Mines, Perth, 5 December 1910, State Records Office of Western Australia, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn. This telegram was referred to in 'Bullfinch Boom' (n 120). Similarly, the Stock Exchange of Sydney's telegram stated that '[f]or the good reputation of mining in your state members of this exchange consider strict investigation should be made into contradictory reports from Chaffinch mine': Telegram from V Willis, Chairman Sydney Stock Exchange, to Minister for Mines Perth: Telegram from V Willis, Chairman Sydney Stock Exchange addressed to 'Minr for Mines Perth', 5 December 1910, State Records Office of Western Australia, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn. This telegram was reported in 'Bullfinch Boom' (n 120). According to *The Barrier Miner*, 'the Stock Exchanges in Adelaide, Melbourne, and Sydney are moving in the matter of having a thorough investigation into the alleged discoveries at the Chaffinch mine': 'The Chaffinch Mystery. Independent Engineer to Report. Action by the Stock Exchange', *The Barrier Miner* (Broken Hill, 7 December 1910) 5.

[122] 'The Chaffinch Debacle. What Will the Government Do?', *Truth* (Brisbane, 11 February 1911) 8 ('Chaffinch Debacle').

[123] According to *The Evening Journal*, the 'history of the Chaffinch mine is too recent to need elaboration': 'Chaffinch Sensation. Charge of Conspiracy. Warrants For Arrests', *The Evening Journal* (Adelaide, 6 February 1911) 4 ('Charge of Conspiracy'). Similarly, *Truth* observed that the 'Chaffinch affair is of such recent date as to be fresh in the recollection of everybody: 'Chaffinch Debacle' (n 122).

[124] 'Chaffinch Sensation. Charges of Conspiracy', *The Australasian* (Melbourne, 11 February 1911) 40 ('Chaffinch Sensation').

[125] 'Chaffinch Debacle' (n 122); 'Charge of Conspiracy' (n 123).

quickly at a premium.'[126] Towards the latter part of November 1910, Mr Arthur Snr exhibited 'rich specimens' at Southern Cross, which he claimed had been dug out of a trench on the property by his son, Mr Arthur Jnr.[127]

However, many people were said to have questioned the origins of the 'rich specimens' and, as a consequence, the 'prospects of the Chaffinch mine was a matter of considerable doubt.'[128] In response, Mr Arthur Snr arranged and paid for a number of 'pressmen, representing eastern and Western Australian newspapers' and others to inspect the find, the visit being referred to by one newspaper as 'that famous trip of newspaper men'[129] and another as involving the 'celebrated band of pressmen.'[130] According to the 6 February 1911 edition of *The Evening Journal*, those who inspected the find 'certified that marvellously rich ore, estimated at 100oz per ton, was broken in their presence from the virgin face of the trench.'[131] Not surprisingly, the good news had a positive impact on the Chaffinch share price, which 'jumped from 5/- to 22/-, and buyers were keen.'[132] Indeed, *The Daily News (WA)* claimed that after the 'marvellously rich find was made' the shares 'soared up to fine heights.'[133] The slump, however, came quickly and 'Australia was to learn of an affair that could produce good gold one day, and the next have nothing.'[134]

On 24 November 1910, Harold Greenway arrived at Southern Cross to commence his role as manager of the Chaffinch mine, having been appointed by the Adelaide directors.[135] Mr Greenway's examination of the trench in question resulted in him reporting to the Adelaide board that 'he could not find the rich stuff alleged to have been found'.[136] The wording of Mr

---

[126] 'Chaffinch Debacle' (n 122).
[127] Ibid. Before arriving in WA, Mr Arthur Snr was reported to have been 'stock-jobbing on the pavement in Adelaide': 'The Great Chaffinch Charade. Dyason, Bonwick and Greenway Charged with Conspiracy. An Interesting Case. Director Arthur in the Witness box. A Strenuous Cross-Examination', *The Sunday Times* (Perth, 26 March 1911) 3 ('Chaffinch Charade').
[128] 'The Chaffinch Mine. Sensational Development. The Recent Scandal. Three Arrests to be Made. The Mine Not Salted', *The Daily News* (WA, 4 February 1911) 12 ('Sensational Development'); 'Chaffinch Debacle' (n 122).
[129] 'Chaffinch Debacle' (n 122); 'Charge of Conspiracy' (n 123); 'Sensational Development' (n 128).
[130] 'The Chaffinch Chirps in the Police Court. Preliminary Hearing of the Great Conspiracy Case. Bulls and Bears of the Bullfinch Bonanza. Make Some Remarkable Revelations Concerning Chaffinch Shares', *Truth* (Perth, 25 March 1911) 5, 6 ('Chaffinch Chirps').
[131] 'Charge of Conspiracy' (n 123).
[132] 'Chaffinch Debacle' (n 122).
[133] 'Sensational Development' (n 128).
[134] Ibid
[135] 'Chaffinch Sensation' (n 124); 'Charge of Conspiracy' (n 123).
[136] 'The Chaffinch Affair. Charge of Conspiracy', *The Northern Star* (Lismore, NSW, 11 February 1911) 3. *The Australasian* reported that 'the rich vein had disappeared': 'Chaffinch Sensation' (n 124). According to the

Greenway's telegram of 2 December 1910 was referred to in an article in the 3 December 1910 edition of *The Register*.

> "Consider it advisable you keep specimens from the costeen forwarded you." Also, "Have sampled along bottom costeen 2ft. samples for 12ft. Panning results – (mutilated code word), this sample alone can be considered representative whatever formations of value exists on property has yet to be discovered. In view of most extraordinary circumstances opinion of a fully qualified mining engineer highly desirable. An average sample will be assayed today."[137]

According to this article, the receipt of the above telegram 'caused a sensational decline' in the value of Chaffinch shares,[138] the effect of which was described as having arrived 'like a bombshell among Adelaide investors' and 'share values toppled and fell like ninepins.'[139] An article in the 5 December 1910 edition of *The Register* observed that the 'one obvious conclusion to be drawn from the tidings' was that Mr Greenway's opinion was the mine had been 'salted' and 'on all sides there was a wild scramble to get out.'[140] Subsequent newspaper reports concerning Mr Greenway's telegram referred to his 'absolute condemnation' and 'wholesale condemnation' of the Chaffinch mine.[141]

As a result of the news from Mr Greenway, the directors of the mine reportedly requested the Minister of Mines to conduct an official investigation.[142] As the Minister did not have an officer immediately available to inspect the mine, Mr Grut, a 'well known Kalgoorlie expert', was commissioned to carry out the inspection.[143] It appears that the findings in Mr Grut's report, which contained a 'scathing reference to "the babblings of irresponsible pressmen"', were

---

Truth newspaper, Mr Greenway's wire to the Adelaide board expressed his 'opinion that all was not as it should be': 'Chaffinch Debacle' (n 122).

[137] 'Great Chaffinch. Value Still to be Proved', *The Register* (Adelaide, 3 December 1910) 17.

[138] Ibid.

[139] 'The Chaffinch Denouement. Study in Telegrams. Mines Department Asked for Report', *The Register* (Adelaide, 5 December 1910) 7 ('Chaffinch Denouement'). Adelaide was described by one journalist at the time as 'that holy hotbed of disingenuous scrippers': 'Comedie Humaine' (n 118).

[140] 'Chaffinch Denouement' (n 139).

[141] 'Much Concern in the West. Southern Cross', *The Register* (Adelaide, 3 December 1910) 17; 'Chaffinch Condemned', *Coolgardie Miner* (WA, 3 December 1910) 3; 'A Bullfinch Panic. Heavy Fall in Prices', *The Advertiser* (Adelaide, 3 December 1910) 13; 'Feeling in Adelaide', *The Sun* (Kalgoorlie, 4 December 1910) 1.

[142] 'Charge of Conspiracy' (n 123). There are several telegrams held in the State Records Office of Western Australia which contain requests to this effect sent to the Minister of Mines, Perth in December 1910: State Records Office of Western Australia, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn.

[143] 'Charge of Conspiracy' (n 123); 'The Fall in Chaffinch Shares. A Sensational Sequel. Action by the Government. Information Sworn Against Prominent Mining Men. An Arrest in Melbourne', *The West Australian* (Perth, 6 February 1911) 5 ('Fall in Chaffinch Shares'); 'Chaffinch' (n 120).

consistent with Mr Greenway's findings.[144] The effect of the reports was to cause Chaffinch shares, which 'had increased in value to nearly 30/ to fall to about 5/, at about which figure they have remained ever since.'[145]

According to the 6 February 1911 edition of *The West Australian*, it was around this time that:

> the Criminal Investigation Department began to investigate the circumstances under which various telegrams affecting the market value of Chaffinch shares were despatched to the Eastern States.[146]

Detective Mann was sent to conduct the investigation, which involved reviewing the 'despatches transmitted through the Southern Cross Telegraph Office' concerning the Chaffinch mine and 'its values'.[147]

The Daily *News* summarised this series of events in the following terms:

> Then there were rumours of dark dealings, investigation was called for. The public was scandalised, and finally the Mines Department asked the CID to make investigation. The result of this was that Detective Sergeant Mann was instructed to proceed to the Bullfinch field and make inquiries.[148]

The whole affair appears to have caused somewhat of a sensation at the time.

> The fluctuations of Chaffinch stocks on the Eastern markets and the conflict of reports in respect to the value and quantity of its lode material were during the early part of December a matter of Australian notoriety.[149]

According to the 11 February 1911 edition of the *Truth* newspaper, Detective Mann's enquiries and subsequent report appear to have been:

---

[144] 'Chaffinch Debacle' (n 122).
[145] 'Chaffinch Sensation' (n 124).
[146] 'Fall in Chaffinch Shares' (n 143).
[147] Ibid.
[148] 'Sensational Development' (n 128).
[149] 'Fall in Chaffinch Shares' (n 143).

> chiefly based on examination of wires sent by the accused parties to alleged confederates in Adelaide and Melbourne. A carefully planned scheme is alleged to have been exposed by the police investigations to decry the field for the benefit of bear operators.[150]

In other words, it would appear that a 'short and distort', in modern parlance, of Chaffinch shares had taken place.

As a result of Detective Mann's 'confidential report', warrants were issued for the arrest of Edward C Dyason (mining investor),[151] Harold Greenway (mine manager)[152] and Edwin Walter Bonwick (mining agent),[153] which was claimed to have caused a 'sensation in mining circles'.[154]

Soon after his arrest, Mr Bonwick gave a statement to *The Daily Telegraph* in which he made the following comments:

> On December 1 Mr Greenway called at my camp, stating that he was very worried, as he could see no signs of even payable material, and asked my advice. I advised him to carefully and thoroughly sample, and if he found no values to report the same to his directors. Sampling was done on December 2, and the results duly telegraphed to Adelaide. A good deal of very 'tall talk' was indulged in against Mr Greenway, and I was requested by him to check his sampling, his board being duly advised of his action.[155]

All three men were eventually arrested and appeared at the Perth Police Court on 20 March 1911 before Mr A S Roe, Police Magistrate, each charged under s.410 of the *Criminal Code Act* 1902 (WA) with the following:

> [t]hat you, between November 29, 1910 and December 13, 1910, at Southern Cross and elsewhere in Western Australia, conspired, with others, to affect by deceit the market price

---

[150] 'Chaffinch Debacle' (n 122).

[151] Mr Dyason was reportedly 'a well known man in mining and Stock Exchange circles' and a 'graduate of the Melbourne University, where he took his degree of Bachelor of Science and Bachelor of Mining Engineering': 'Chaffinch Sensation. Warrants for Three Arrests. Charges Against Dyason, Greenway, and Bonwick. Alleged Conspiracy to Defraud Public', *The Kalgoorlie Miner* (WA, 6 February 1911) 5 ('Warrants for Three Arrests').

[152] Mr Greenway was described as 23 years of age and a graduate of the Adelaide School of Mines: 'The Chaffinch. Warrants for the Arrest of Prominent Mining Men. Mining Men Surprised', *The Evening Star* (WA, 6 February 1911) 3 ('Mining Men Surprised').

[153] 'Chaffinch Debacle' (n 122); 'Fall in Chaffinch Shares' (n 143); 'The Chaffinch Sensation. Alleged Conspiracy. Two of the Accused Remanded', *The Western Mail* (Perth, 18 February 1911) 18.

[154] 'Charge of Conspiracy' (n 123); 'Warrants for Three Arrests' (n 151).

[155] 'Chaffinch Sensation. Statement By Mr Bonwick', *The Kalgoorlie Western Argus* (WA, 21 February 1911) 34.

> of shares in the Great Chaffinch Gold-mining Co., No Liability, being things which were then publicly sold.[156]

According to the Crown Solicitor, Mr A E Barker, in his opening remarks:

> [t]he case was one in which the three defendants were charged with having acted in concert to affect the market values of the shares of a mine known as the Great Chaffinch GM Co., with the result that there was a fall in the prices of the shares on the market.[157]

Mr Barker stated he would submit in evidence 'wires that had been sent to Adelaide, Sydney, and Melbourne by each of the defendants' that 'contained in the majority of cases the same substance and the same wording.'[158]

> Greenway wired to Dyason to the effect that the market prices were too high, and that a chance presented itself which was too good to miss. It stated that work had been done on the supposed rich find in the Chaffinch, and it was absolutely valueless, and the whole thing was a swindle. He was advised to sell as much as he could. Wires were sent on November 2 to "Titmus", Stock Exchange, Sydney, and to Crocker at Adelaide, advising the sale of the shares. Most of Dyason's wires were sent to Mr Byron Moore sharebroker, of Collins-street, Melbourne, and on December 2 one was sent stating that work on the supposed rich find at the Chaffinch had proved absolutely valueless. In this wire Mr Moore was advised to sell as much as he could.[159]

Evidence was given during the proceedings concerning the various prices of Chaffinch shares on the Adelaide Stock Exchange in November and December 1910 by Mr David George Sandes, described as 'a mining investor of Adelaide'.[160] Those prices were said to have been certified by the 'secretary of the Stock Exchange of Adelaide.'[161] In addition, Mr Sandes:

---

[156] 'The Chaffinch Sensation. Charge of Conspiracy. Outline of the Case. Mr Barker's Address', *The Daily News* (Perth, 20 March 1911) 9 ('Outline of the Case').
[157] Ibid. An article in *The West Australian* reported Mr Barker as having said that the three defendants 'acting in concert' had 'made an attack upon the Chaffinch mine' that had resulted in 'a very serious fall in the price of the shares on the market': 'Great Chaffinch Mine. Rise and Fall of Shares. Was There a Conspiracy? Charge Against Mining Experts. Police Court Proceedings', *The West Australian* (Perth, 21 March 1911) 7 ('Great Chaffinch Mine').
[158] 'Outline of the Case' (n 156).
[159] Ibid.
[160] 'The Chaffinch Sensation. Eighth Day's Proceedings. Evidence For Prosecution Continued', *The Daily News* (Perth, 29 March 1911) 9.
[161] Ibid.

> identified several telegrams received in Adelaide regarding the Great Chaffinch mine and the developments there. The general opinion amongst the members of the Stock Exchange was that the mine had been salted, and there was, therefore, a general depreciation in shares. A suspicion of salting would have a permanent effect on the market . . . It was common talk that Greenway's wires had inferred that Arthur had salted the Chaffinch.[162]

The wording of a number of the telegrams referred to in the course of the trial was contained in several of the newspapers that reported on the proceedings.[163] According to the 25 March 1911 edition of the *Truth* newspaper, the three defendants 'attempted to damn the mine so that the selling prices of the shares should be "beared" or knocked down to the lowest level' and 'a great number of telegrams, sent by all accused, form[ed] an important part of the Crown's case.'[164] These telegrams were alleged to indicate that the three defendants 'were mixed up in the policy of deceit.'[165] Examples that could, arguably, suggest the accused were part of an enterprise to drive the Chaffinch share price down include those set out below.

30 November 1910 – sent by Mr Greenway to Mr Bristow,[166] Adelaide.

> . . . Cannot trust anybody here. Think Arthur's report conveys erroneous impression with regard to formation.[167]

1 December 1910 – sent by Mr Bonwick to Mr Crocker,[168] Adelaide.

> Chaffinch trench on supposed rich ore extending 12 feet, no indication of high values. Great samples taken during the night, 5dwt per ton, but do not regard it as representative. Greenfinch trench 60ft north is located on same vein, absolutely valueless.[169]

---

[162] Ibid.
[163] For example: 'Outline of the Case' (n 156); 'Great Chaffinch Mine' (n 157); 'Chaffinch Mystery. Conspiracy Charges. Interesting Telegrams', *The Advertiser* (Adelaide, 21 March 1911) 7; 'Stock Exchange Notes. Mining and Finance', *The Critic* (Adelaide, 22 March 1911) 14; 'Chaffinch Chirps' (n 130).
[164] 'Chaffinch Chirps' (n 130). According to the *Sunday Times*, 'the prosecution depends mainly upon the telegrams which were sent from WA by the accused during the height of the boom in Bullfinch stocks': 'Chaffinch Charade' (n 127).
[165] 'Chaffinch Chirps' (n 130).
[166] Mr Bristow was reportedly the Secretary of the Great Chaffinch Co: 'Great Chaffinch Mine' (n 157).
[167] Ibid.
[168] According to *The Zeehan and Dundas Herald*, Joseph Edward Crocker was an 'accountant and secretary of the Adelaide Bullfinch syndicate, to whom several of the defendants' telegrams had been addressed': 'Chaffinch Sensation. Police Court Hearing. Further Evidence Heard. How Shares Were Disposed Of', *The Zeehan and Dundas Herald* (Tasmania, 27 March 1911) 1.
[169] 'Outline of the Case' (n 156). The same telegram was sent to Titmus, Sydney: 'Great Chaffinch Mine' (n 157).

2 December 1910 – sent by Mr Bonwick to Mr Crocker, Adelaide.

> Chaffinch working on supposed rich ore packed in bags absolutely valueless. The whole thing a regular swindle. The new manager will report practically in that way to-day, but I will endeavour hold back as long as possible. Sell as much as you can, the chance is too good to be lost. Chaffinch, Greenfinch (stop) also probably; the effect will be very serious . . . has been necessary to co-operate with Dyason, of Bendigo . . . He is telegraphing open orders Melbourne, gives me two-thirds. I will share with you. Titmus working Sydney. You take Adelaide; combined profits to be taken in thirds. You can adjust my share; this means little or no competition; you are absolutely first.[170]

2 December 1910 – sent by Mr Dyason to Mr 'Byron Moore, sharebroker of Collins-street, Melbourne'.

> Chaffinch working on supposed rich ore packed in bags absolutely valueless, the whole thing is a regular swindle. New manager will report practically in that way this evening; sell as much as you can; Chaffinch, Greenfinch Stop also; probably the effect will be serious generally . . . am working Titmouse Sydney, Crocker Adelaide. This means little or no competition, as you are absolutely first. Telegraph as soon as possible [171]

2 December 1910 - sent by Mr Dyason to Mr Byron Moore.

> Received wires, cannot understand why market broke so fast so early, was there a leakage; you had all day everything absolutely right. Manager has just telegraphed supposed discovery worth about 1dwt.[172]

3 December 1910 – sent by Mr Bonwick to 'Titmus',[173] Sydney.

> You had better cover Chaffs, Youngs, Monday, letting Melbourne and Adelaide go a little longer.[174]

---

[170] 'Outline of the Case' (n 156); 'Great Chaffinch Mine' (n 157); 'Chaffinch Mystery. Conspiracy Charges. Interesting Telegrams', *The Express and Telegraph* (Adelaide, 21 March 1911) 4 ('Chaffinch Mystery').

[171] The spelling in the telegram, 'Titmouse', is different to the spelling in the newspaper article, 'Titmus', who was reported as having had a telegram sent to them at the 'Stock Exchange, Sydney': 'Outline of the Case' (n 156).

[172] 'Outline of the Case' (n 156); 'Great Chaffinch Mine' (n 157); 'Chaffinch Mystery' (n 170).

[173] It is unclear who Titmus was. Given that telegrams were reportedly sent to '"Titmus", Stock Exchange, Sydney', they may have been a member of the Sydney Stock Exchange: 'Outline of the Case' (n 156).

[174] 'Outline of the Case' (n 156).

3 December 1910 – sent by Mr Bonwick to Mr Crocker, Adelaide.

> Dyason frightfully annoyed at small number of shares sold.[175]

6 December 1910 – sent by Mr Bonwick to Mr Crocker, Adelaide.

> Had no wish to operate, but hand forced by Dyason co-operation appeared only chance profit making.[176]

9 December 1910 – sent by Mr Bonwick to Mr Tilly, Sydney.

> Chaffs probably the mine has been salted . . .[177]

The Assistant Crown Prosecutor, Mr Frank Parker, asserted that the correspondence showed that when Mr Dyason sent telegrams to his brokers to sell Chaffinch and other shares he must have known that Mr Greenway had either 'wired or was going to wire a report that would smash the market.'[178] Moreover, the Crown's submission was that Messrs Dyason, Bonwick and Greenway, after having given two of them time to sell the Chaffinch shares they did not own, 'had smashed the market so that they might buy in again.'[179]

However, according to Sir Walter James KC, counsel for Mr Dyason, the 'correspondence disclosed no conspiracy', but rather that Messrs 'Dyason and Bonwick were "bearers" even before meeting [Mr] Greenway.'[180] Moreover, Sir Walter submitted that:

> [u]nless the prosecution could prove conspiracy in the wires, their case must fail. Whatever conspiracy there had been, it had not changed the value of the shares. The talk about salting was only an expression of opinion, and one which they consistently acted on. They did not endeavour to corrupt the market and then buy it.[181]

Yet, the telegrams and the information contained therein were an essential part of the prosecution's case, as was apparent from an exchange during the proceedings reported in the 1

---

[175] Ibid.
[176] Ibid.
[177] Ibid; 'Great Chaffinch Mine' (n 157); 'Chaffinch Mystery' (n 170).
[178] 'Chaffinch Sensation. Magistrate's Decision. Accused Discharged', *The Kalgoorlie Western Argus* (WA, 11 April 1911) 3.
[179] Ibid.
[180] 'The Chaffinch Sensation. Tenth Day's Proceedings. Crown Case Concluded', *The Daily News* (Perth, 31 March 1911) 10 ('Tenth Day's Proceedings'). *The Evening Star* stated that this 'case opens up extraordinary possibilities if bearing is declared criminal': 'Mining Men Surprised' (n 152). Presumably, "bearers" is a reference to 'bears'.
[181] 'Tenth Day's Proceedings' (n 180).

April 1911 edition of *The West Australian*.[182] When asked by Sir Walter James 'how did the Crown say the defendants had been guilty of conspiracy', the Crown Solicitor, Mr Barker, responded 'only by the correspondence.'[183] Mr Roe, the Police Magistrate, stated:

> [t]hat is so. There was no action on the part of the defendants on which the Crown can put their finger and establish conspiracy, but as Mr Barker had said the Crown relied on the correspondence and telegrams.[184]

The committal hearing lasted around eleven days.[185] On the final day, Mr Roe PM determined there was insufficient evidence to 'establish conspiracy against the three defendants.'[186]

> They honestly believed that the mine had been salted, and circulated a report as the outcome of that honest belief. The accused would accordingly be discharged.[187]

The 5 April 1911 edition of *The Bendigo Advertiser* purported to append the full text of Mr Roe PM's decision, which contained several points worthy of note.[188] Firstly, Mr Roe stated that although there appeared to be an impression that 'it was a new offence under the section under which the prosecution was laid', this was not the case.[189] Rather, it had been pointed out more than once that 'Sir Samuel Griffith, who was primarily responsible for it, had made no new law', but had 'simplified and amplified the law as it then existed.'[190] The 20 March 1911 edition of *The Daily News* contained a similar statement from Mr Barker's opening address for the prosecution when he stated the following:

> . . . proceedings were taken under section 410 of the Criminal Code, which provided that any person conspiring with another to affect the market price of any public commodity, will be regarded as guilty of a criminal offence. The matter had already been decided by

---

[182] 'The Great Chaffinch Case. Alleged Conspiracy. Charge Against Mining Men. Case For Crown Closed. Application for Dismissal. Addresses By Counsel', *The West Australian* (Perth, 1 April 1911) 9.
[183] Ibid.
[184] Ibid.
[185] 'The Chaffinch Sensation. Eleventh Day's Proceedings. Counsel's Addresses. Mr Parker For the Crown. Accused All Discharged, *The Daily News* (Perth, 3 April 1911) 9.
[186] Ibid.
[187] Ibid.
[188] 'Chaffinch Sensation. Mr Roe's Judgment. The Full Text', *The Bendigo Advertiser*, 5 April 1911, 5 ('Mr Roe's Judgment').
[189] Ibid.
[190] Ibid.

> Sir Samuel Griffith in connection with conspiring to affect the market price of mining shares.[191]

As discussed in section 6.3.1 above, s.410 of the WA Criminal Code and s.430 of the Queensland Criminal Code appear to have provided a sufficient basis on which to prosecute certain identified instances of stock market manipulation.

During the hearing, it transpired that the three defendants had not obtained any meaningful benefit from their alleged conspiracy to affect by deceit the market price of Chaffinch shares.[192] Bonwick was said to have made 'only what was a comparatively insignificant sum' out of his dealings in Chaffinch shares, whilst 'Mr Greenway had made nothing',[193] 'did not at any time deal' in Chaffinch shares, 'nor had he even possessed one single share.'[194] It was not known 'exactly what Dyason had made, but the sum was not a large one.'[195] Mr Roe emphasised, however, that even if they 'had made not one farthing', had the conspiracy between the three defendants to affect the Chaffinch share price by deceit been established then 'the case would certainly have gone to a jury.'[196]

Moreover, Mr Roe went on to state that 'the people who made money out of this transaction were not the three defendants', but the Kookynie Option Syndicate and those who held Chaffinch shares.[197] Indeed, Mr Roe went further and stated that he saw no reason to doubt Mr Penny's (Mr Greenway's counsel) submission that the Great Chaffinch Gold Mining Company, No Liability was 'floated on a telegram based upon hearsay evidence, and that that had been instrumental in drawing about £125,000 out of the pockets of the public.'[198] Moreover, he observed that:

> It was a crying shame; it was a monstrous scandal that such a thing should be possible. It came off, and they had it in evidence that Mr Arthur himself had practically engineered the

---

[191] 'Outline of the Case' (n 156).
[192] 'Mr Roe's Judgment' (n 188).
[193] Ibid.
[194] 'Chaffinch Scandal' (n 2).
[195] According to Mr Roe PM, had the charge been established, 'it would not have mattered to him if they had not made one farthing', the 'case would certainly have gone to a jury': 'Mr Roe's Judgment' (n 188).
[196] Ibid.
[197] Ibid.
[198] Ibid. In his address, Mr Penny stated that Mr Arthur had 2,500 vendors' shares, which rose in price as a result of telegrams sent by Mr Arthur, which he then sold at a profit. According to Mr Penny, '[n]obody could deny that Arthur's manipulation of telegrams procured money for himself': 'The Chaffinch Sensation. Three Defendants Discharged', *The Border Morning Mail and Riverina Times* (Albury, 5 April 1911 1).

whole thing, the other people in Adelaide not being behind the scenes, and that he profited very largely out of Kookynie option shares and Great Chaffinch shares.[199]

According to Mr Roe, whilst all three of the defendants had said they believed the mine was 'salted', the key question was did they 'say this for the purpose of "rigging" the market'.[200]

Bonwick and Greenway's telegrams to their brokers were not intended for public information and Greenway's message of 2nd December to his directors was not intended to be published; but it was the first public information that anything was wrong.[201]

After considering all of the evidence, including the telegrams, and particularly those sent on 2 December 1910, Mr Roe found that it was 'impossible to come to the conclusion that there had been a conspiracy between the three defendants' to affect the market price of Chaffinch shares by deceit.[202]

Sir Walter James and Mr Penny had admitted that there had been a conspiracy – though conspiracy was not the proper word to use in that sense between Bonwick and Dyason, they having a knowledge of the mine from personal inspection and having no faith in it – to bear the market. There was nothing illegal as far as he knew of in two of those men combining together to operate on the sharemarket providing they did not combine together to circulate any false reports in order to affect the market.[203]

According to Mr Roe, on the evidence that had been placed before him, no jury could find that Messrs Bonwick, Dyason and Greenway, 'by stating that the mine had been "salted", had stated something which they knew to be false.'[204] Mr Roe stated that whilst it was within the power of the Attorney-General to overrule his decision and 'find a true bill against the defendants', he very much doubted that would happen based on the evidence that had been adduced during the proceedings.[205]

---

[199] 'Mr Roe's Judgment' (n 188).
[200] 'The Chaffinch Sensation. Defendants Discharged', *The Leader* (Melbourne, 8 April 1911) 24 ('Defendants Discharged').
[201] Ibid.
[202] 'Mr Roe's Judgment' (n 188).
[203] Ibid.
[204] Ibid; 'Defendants Discharged' (n 200).
[205] 'Mr Roe's Judgment' (n 188).

Mr Roe dismissed the case against the defendants, who were then discharged.[206] Messrs Bonwick, Dyason and Greenway were reported as being 'the recipients of hearty congratulations from a large number of those present in the court.'[207] That was not, however, the end of the matter. The 7 April 1911 edition of *The North Western Advocate and The Emu Bay Times* reported that Mr Dyason was 'applying to the Westralian Government for £1,000' to reimburse him for the expenses he had incurred as a result of defending himself from a 'charge on which the Crown failed to make out a prima facie case.'[208] His co-defendants, Messrs Greenway and Bonwick, were said to also be applying for compensation.[209]

Following the conclusion of the committal proceedings and the discharge of the defendants, the press turned the focus of their ire to the 'fatuousness of the Government'[210] for what was described by one newspaper as a 'ridiculous' and 'ill-considered prosecution.'[211] *The Kalgoorlie Miner* stated that in 'their haste to "do something"', the Government had 'over-stepped the mark most egregiously.[212] According to one newspaper, the 'Government chose to prosecute the wrong men', who, it was claimed had:

> been treated to the humiliating indignity of an arrest and a Police Court trial. They have been dragged thousands of miles to answer a charge of conspiracy that never had the slightest foundation in fact, and have been put to endless expense in defending their reputations and their liberty.[213]

However, despite what may have been thought of at the time as an 'asinine blunder' by the Government,[214] this case is another important milestone in tracing the historical roots of stock market manipulation in Australia. It was, for example, the only prosecution located in the

---

[206] Ibid.
[207] Ibid.
[208] 'The Chaffinch Sensation. Defendants Applying for Compensation', *The North Western Advocate and The Emu Bay Times* (Tasmania, 7 April 1911) 2.
[209] Ibid. There were suggestions that the Western Australian Government should appoint a Royal Commission to investigate the whole Chaffinch matter: 'Royal Commission Suggested' (n 117). There is a letter held in the archives of the State Records Office of WA, which appears to be from the Acting Premier to the General Secretary of the Chamber of Mines of Western Australia, in which the Acting Premier advises that the Government would not be awarding compensation to Messrs Greenway, Dyason and Bonwick as in the opinion of the Executive 'no grounds were brought forward which justify the Government in awarding any compensation': Copy of letter from the 'Acting Premier, HG' to General Secretary of the Chamber of Mines of Western Australia, 25 July 1911, State Records Office of Western Australia, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn.
[210] 'Chaffinch Scandal' (n 2).
[211] 'The Chaffinch Sensation', *The Kalgoorlie Miner* (WA, 8 April 1911) 6.
[212] Ibid.
[213] 'Chaffinch Scandal' (n 2).
[214] Ibid.

research involving an alleged contravention of s.410 of the *Criminal Code Act* 1902 (WA) in connection with the manipulation of mining shares. Indeed, according to the 26 March 1911 edition of *The Sunday Times*, this case, which it referred to as 'the Chaffinch mystery', was 'perhaps the first attempt to put the law into motion for the suppression of deceitful practices in connection with share dealing . . .'[215]

Notwithstanding the prosecution was ultimately unsuccessful, the fact that the Government was willing to take enforcement action for conduct and activities that distorted share prices and corrupted domestic share markets could have sent a strong deterrent message to participants in those markets that market rigging, by whatever means, would not be tolerated and would be investigated and prosecuted. Yet, as history has shown, stock market manipulation has continued to plague domestic markets through the following decades, right up to the present time.

6.6 Rumourtrage hits the news again

References to the spreading of false rumours and misleading statements intended to interfere with the forces of genuine supply and demand on local share markets seemingly continued to make a regular appearance in the Australian press over the course of the latter part of the 1800s and throughout the new century.[216] Indeed, only a few weeks after the defendants in the Chaffinch prosecution were discharged, the local newspapers contained reports in early May 1911 alleging that shares in the Ajax Mining Company at Daylesford in Victoria had been 'rigged', which, it was claimed, had 'provided the latest mining sensation, and someone is likely to get into trouble over it.'[217] Three weeks prior to the reports, there had apparently been a 'sharp advance' in the price for Ajax Mining Company shares, which rose from 11/ to 20/ on the basis of an 'unofficial report that payable gold had been struck in the western crosscut at the bottom level.'[218] According to 2 May 1911 edition of *The Age*, a 'number of persons, on

---

[215] 'Chaffinch Charade' (n 127). Whilst the 26 March 1911 edition of *The Sunday Times* asserted that it was 'a new sensation to see three reputable looking men criminally prosecuted under a practically new law', the law had been in place since 1902, so it was not strictly 'new': 'Comedie Humaine' (n 118).
[216] 'Rumourtrage' made an appearance in the national press as recently as 25 July 2014 when Jonathan Moylan was convicted for disseminating false information to the market in relation to ANZ Banking Group Limited shares: Australian Securities and Investments Commission, 14-179MR 'Jonathan Moylan Convicted' (Media Release 14-179, 25 July 2014).
[217] '"Rigging" the Market', *The Barrier Miner* (Broken Hill, 8 May 1911) 4 ('Rigging').
[218] '"Rigging" the Market. Operations in a Daylesford Stock', *The Age* (Melbourne, 2 May 1911) 7 ('Daylesford Stock').

hearing the rumour, rushed into the market and, through their brokers, purchased scrip at figures touching 20/.'[219]

It was later reported that certain rich specimens that were claimed to have been 'obtained from the lowest (No.8) level of the Ajax mine' were exhibited at Daylesford, some of which 'came into the hands of one of the directors, who showed them to the mine manager.'[220] It was subsequently found that:

> no such stone was obtained at that level – on the contrary, they had met bunches of stone which were practically worthless. Then followed a slump in share values . . .[221]

The circumstances of the matter were 'placed in the hands of Detective Rogerson for investigation'.[222]

> The detective, of course, is endeavouring to gain some information respecting the identity of the person who in the first instance became possessed of the golden specimen which he represented to be the product of the bottom level of the mine, but which the manager, who is an expert, declares was obtained in some of the higher workings.[223]

No information was located, however, to confirm the outcome of the investigation or whether this matter resulted in any kind of criminal prosecution or other action. Yet, what appears to have been a perennial problem in Australia over the years during which domestic share trading was taking place continued to plague and corrupt domestic share markets. It is not surprising, therefore, that the author of an article in the 27 August 1912 edition of *The Register* was frustrated at those who frequented the share markets spreading false rumours and distorting share prices with impunity, citing a recent example.

> It seems generally to be supposed that sharebrokers and dealers in stocks and shares are immune from the ordinary penalties for obtaining money by false representations and pretences, or by rumours, and so on, started, circulated and repeated for the purposes of either raising or depressing prices. During the last few days certain people have been industriously circulating statements that a certain mining company at Broken Hill was pressed for money as (a) scarcely to be able to pay the men and settle accounts, for (b) machinery supplied, (c)

---

[219] Ibid.
[220] 'Rigging' (n 217).
[221] Ibid.
[222] 'Daylesford Stock' (n 218).
[223] Ibid.

belting delivered, (d) that the mill was working at a loss, and (e) that a call was just going to be made. These statements were not idle gossip, but emanated from certain well-known frequenters of the Exchange, and were made with the purpose of putting down prices.[224]

However, the author then goes on to describe how those who perpetrate this type of activity are not, in fact, beyond the reach of the law.

> There is always a difficulty in sheeting home such charges, but, if proved, the offenders are guilty of misdemeanour, and may be sentenced to hard labour. The offence consists in conspiracy to do any act with intent to defraud the public or any particular person or class of persons, and although no actual damage to the public or person has been done. The actual cases which may interest the Stock Exchange are - (1) a conspiracy to raise the price of Consols by false rumours; and (2) to defraud generally by getting a settling day for shares in a new company. For lawyers' benefit I give reference to last case - R v Aspinall L.R. 1 QBD 730.[225]

The article's author appears to have had a point. Distorting the financial markets by spreading false rumours was a practice condemned by the common law as early as 1814 by virtue of the decision in *R v De Berenger*,[226] which is, presumably, the case referred to in (1). To the extent that people conspired together to artificially raise or depress share prices and corrupt the stock market through the dissemination of false rumours, there appears to have been legal recourse available to governments and their agencies through, for example, the common law offence of conspiracy to defraud.

As is apparent from the above and preceding chapters of this thesis, the use of false rumours to artificially depress or inflate share prices appears to have been closely associated with the history of mining in Australia. In addition to the many newspaper articles that reported on false rumours being spread to rig share prices, there is some archival material available that also provides observations on the extent to which false rumours were being spread at various points in time. By way of example, a letter from the Manager of Cocks Eldorado Gold Dredging NL (CEGD) to the Financial Editor of *The Argus* newspaper, dated 5 June 1936, for example, includes the following comments:

---

[224] 'False Rumours and the Stock Exchange', *The Register* (Adelaide, 27 August 1912) 10.
[225] Ibid.
[226] 'Recent Cases' (1933-1034) 82(5) *University of Pennsylvania Law Review* 429, 541 n 2.

> Regrettably, there appears to be a systematic endeavour being made by unscrupulous individuals to set afoot rumours calculated to alarm holders, or would-be holders, in many mining stocks . . . The conduct of the unscrupulous in the majority of their activities is usually not difficult to recognise, whether they be conducting the old-fashioned profession of pick pockets in the Market Place or merely defrauding nervous mining investors, slightly more indirectly but still always for their own gain.[227]

One possible explanation for the ongoing and seemingly frequent use of false rumours to artificially inflate or depress share prices may be that unlike effecting a 'corner' or 'squeeze' or 'bulling' or 'bearing' the market, the spreading of false rumours and misleading information did not necessarily require the outlay of any capital or even trading in the relevant shares. As such, it was possible, in theory at least, for almost anyone to spread false rumours or misleading information about a company in order to artificially influence the price of its shares to unjustly benefit themselves or others at the expense of others.

Yet, notwithstanding the many reported instances of markets being rigged by various means, the research has not identified that many prosecutions, whether under the common law or, for example, the legislation discussed in section 6.3.1 above. Similarly, no information was located confirming whether the stock exchanges were taking overt and meaningful action to specifically deter, detect and punish those who engaged in manipulative activities on their respective markets. This could suggest that combating this insidious activity may not have been a priority for governments of the day or the stock exchanges.

6.7 'Corners' in the spotlight once again

The manipulative technique known as a 'corner' and a new exchange rule aimed at 'suppressing' them were the subject of commentary in several newspapers in the latter part of 1913.[228] According to the 24 September 1913 edition of *The Daily Telegraph*, for example, it had received a letter from the Secretary of the SSE in relation to a new rule passed by the

---

[227] This letter appears to be one of several provided by CEGD to the Chairman of the Stock Exchange of Melbourne in connection with concerns raised by *The Argus* regarding rumours that appear to have resulted in a fall in CEGD's share price: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/067, Copy of a letter from AR Bruhn, Manager, Cocks Eldorado Gold Dredging NL, Addressed to 'The Financial Editor, "Argus"', 5 June 1936.

[228] 'Suppression of "Corners"', *The Daily Telegraph* (Sydney, 24 September 1913) 13 ('Suppression of Corners'); 'Sydney's Monte Carlo', *The Worker* (Wagga, 25 September 1913) 13 ('Monte Carlo'); 'The New Stock Exchange Rule. To The Editor', *The Daily Telegraph* (Sydney, 27 September 1913) 17.

Exchange that corrected a statement made the day before by the newspaper under the heading 'Suppression of Corners'.[229]

> "In to-day's issue, under the heading 'Suppression of Corners,' you state that the Sydney Stock Exchange passed a resolution to the effect that 'if it is practically impossible to buy, the transaction is to be declared off.' This is incorrect. The new rule passed yesterday is as follows: - 'The committee may suspend either indefinitely or for such time as they think fit the buying-in of any debentures, transfers, scrip, or other securities, when circumstances appear to them to make such suspensions desirable. The committee may from time to time, either during its continuance, or after the termination of any such suspension, remove, renew, or re-impose such suspension.'
>
> "From this you will note that the buying-in may be 'suspended.' No contract can be cancelled. The object of this rule is to meet very exceptional circumstances. The London Stock Exchange has a similar rule."[230]

A review of the *Rules of the Sydney Stock Exchange* that appear to have become effective on 23 September 1913 indicates that Rule 107a, located under the heading 'Power to Buy in or Sell Out Through the Secretary', uses the same wording as that used in the above article in *The Daily Telegraph*.[231]

Unlike Rule 3.9 of the 1987 version of the *ASX Business Rules*, which is titled 'Corners' and contains wording that is broadly consistent with the description of a corner, there is no reference to 'corners' in Rule 107a.[232] Instead, without explicitly saying so, it would appear that a 'corner' was one of the circumstances under Rule 107a in respect of which the committee

---

[229] 'Suppression of Corners' (n 228). The decision to correct the statement in the 23 September 1913 edition of *The Daily Telegraph* was recorded in the minutes of the 51st Committee Meeting of the Sydney Stock Exchange, held on 23 September 1913, which stated the following: '"Daily Telegraph" Article appearing in Financial columns of "Daily Telegraph" of 23/9/13 under heading "Suppression of Corners" was referred to, and it was decided that letter be written correcting statement therein re Stock Exchange new Rule regarding suspension of Buying-in': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-922 (Z718/455), 'Minutes of the 51st Committee Meeting of the Sydney Stock Exchange', 23 September 1913.

[230] 'Suppression of Corners' (n 228).

[231] *Rules of the Sydney Stock Exchange*, Adopted 9 May 1904. With Additions and Amendments to 23 September 1913. A review of the Sydney Stock Exchange rule books located for this research suggests that the rule governing the power to buy in or sell out through the secretary (Rule XIX) was first included in the version of the rules that became effective from 18 January 1875: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-2, The Sydney Stock Exchange, *Rules and Regulations Adopted at a General Meeting of Members of the Sydney Stock Exchange, To Take Effect From 13 January 1875.*

[232] Australian Stock Exchange, *Memorandum and Articles of Association, Business Rules*, 1 April 1987.

could have found it 'desirable' to suspend the buying-in of any shares. Similarly, there is no reference to 'corners' in any of the rules located under the heading 'Power to Buy in or Sell Out Through the Secretary'.[233]

It would appear that the SSE's rules were primarily focused on the orderly settlement of transactions executed rather than any specific concerns around prohibiting an activity that could create a false market and undermine the efficient and fair operation of its markets. A review of the available early stock exchange rule books provides no explicit evidence as to whether a 'corner' was considered to constitute misconduct or 'conduct unbecoming a member', particularly as there was no rule specifically proscribing this type of activity. This is equally true of market manipulation more generally and it may well be the case that what appears to have been the 'catch all' provision in rule 14 of the 1871 version of the *Rules and Regulation of the Sydney Stock Exchange*, discussed in section 5.8.2.1, which proscribed 'conduct unbecoming a member', was sufficiently broad and subjective enough to capture all species of market misconduct, whatever form they may have taken.[234]

'Corners' do not appear to have been expressly prohibited under the *ASX Business Rules* either, even as recently as 1987. An excerpt from rule 3.9 of the *ASX Business Rules*, titled 'Corners', located in the section headed 'Client Relations', is set out below.

> (1) When in the opinion of the Board a person or company or two or more persons and/or companies acting in concert have acquired such control of a Security admitted to quotation by the Exchange that the same cannot be obtained for delivery on existing contracts except at prices or on terms arbitrarily dictated by such persons and/or companies which are unfair, harsh or unconscionable, the Board may, for the purpose of enabling equitable settlement to be effected on these contracts, postpone the times for deliveries on contracts for any such Security . . .[235]

---

[233] The 25 September 1913 edition of *The Worker*, when referring to an article in *The Daily Telegraph*, stated that members of the Sydney Stock Exchange had been 'considering the question of checking the manipulation of "corners" therein.' A corner was described as follows: 'If a man, or body of men, holding all, or nearly all, the stock in a certain enterprise, or commodity, then buy heavily from speculators, shares, or goods, which such speculators will be unable to deliver, they create a 'corner"': 'Monte Carlo' (n 228).
[234] The Sydney Stock Exchange, *Rules and Regulations*, Instituted May 1871. The language used in later versions of the *Rules of the Sydney Stock Exchange* was 'conduct unworthy of a member': see, for example, rule 134 of the *Rules of the Sydney Stock Exchange*, Adopted 9 May 1904. With Additions and Amendments to 23 September 1913.
[235] Rule 3.9(1) states, in full, the following: 'When in the opinion of the Board a person or company or two or more persons and/or companies acting in concert have acquired such control of a Security admitted to quotation by the Exchange that the same cannot be obtained for delivery on existing contracts except at

Whilst it does provide a description of what constitutes a 'corner', as with the older rules, Rule 3.9 appears to be targeted at resolving the settlement of transactions, rather than expressly prohibiting people engaging in conduct that established 'corners', particularly where they had done so by manipulating share prices.

Nonetheless, like its 1871 predecessor from 116 years earlier, Article 52(1) of the 1987 version of the ASX's *Memorandum and Articles of Association, Business Rules* contains what appears to have been a similar 'catch-all' provision that would seem to capture most forms of market misconduct, including market manipulation. More specifically, Article 52(1) provided the ASX Board with the power to 'charge' a Member or Member Organisation with 'Prohibited Conduct', which was defined to mean conduct that was not 'efficient, honest or fair' or otherwise 'prejudicial to the interests of the Exchange or its Members', whether or not the relevant conduct constituted or involved a breach of any of the Articles or Rules.[236]

Theoretically, at least, it appears that the exchange in 1871 and its successor 116 years later had a provision in their respective rules under which action could have been taken against members who had 'cornered' the shares of a company where that conduct was determined to be 'unbecoming a member' or otherwise 'prejudicial to the interests of the Exchange or its Members'. Unfortunately, however, no material was located where this may have happened.

---

prices or on terms arbitrarily dictated by such persons and/or companies which are unfair, harsh or unconscionable, the Board may, for the purpose of enabling equitable settlement to be effected on these contracts, postpone the times for deliveries on contracts for any such Security and may for the same purpose from time to time further postpone such times and may at any time by resolution declare that if such Security is not delivered on any contract requiring delivery on or before the time to which delivery has been postponed such contract shall be settled by payment to the party entitled to receive such Security or by the credit to such party of a fair settlement price determined as hereinafter provided': Australian Stock Exchange, *Memorandum and Articles of Association, Business Rules*, 1 April 1987.

[236] Article 52(1) states, in full, the following: 'If the Board considers a Member or Member Organisation should be charged with conduct (herein called "Prohibited Conduct") which is not efficient, honest or fair or is otherwise conduct that is prejudicial to the interests of the Exchange or its Members (whether such prohibited conduct constitutes or involves a breach of any of the Articles or Rules or not) it shall give the Member or Member Organisation concerned written notice of the particulars of the charge and of the date (being not less than 7 days after the date when such notice is served) when such charge is to be heard. The Member or Member Organisation shall, if the Member or Member Organisation so wishes, be heard in answer to the charge': ibid. Article 52(2) sets out the sanctions that the Board may have imposed where a Member or Member Organisation was found guilty of Prohibited Conduct.

6.8 The Federation and Mount Owen 'corner' – a 'gambling "sensation"'[237]

In September 1920, the cornering of yet another mining company's shares hit the headlines in domestic newspapers and 'created a good deal of public interest'.[238] Although the corner in Federation and Mount Owen Gold Mines, No Liability (FMOGM) shares itself was the subject of much commentary, the action taken by the Committee of the SSE in suspending the company's quotations from the Official List, and the associated court proceedings to determine whether the Committee had acted ultra vires in doing so, were also the focus of a good deal of media coverage. According to Rydge, this was the 'most outstanding corner in Australia'.[239]

It was reported that shortly after its flotation, FMOGM's shares had risen sharply from around 5s, up to 16s and then subsequently advanced to 38s on the back of a report from the Inspector of Mines issued on 11 May 1920,[240] which included the comment: 'I congratulate the shareholders upon the fact that they have a very valuable mine.'[241] In July 1920, however, the Minister for Mines made available a full report on several mines in the Gloucester district, including the Mount Owen mine and the Federation mine,[242] following which, according to the 1 September 1920 edition of *The Newcastle Sun*, 'the scrip quickly dropped back to 10s 2'.[243] Speculation at the time was said to be 'heavy', and 'heavy forward selling' took place.[244] According to the 16 October 1920 edition of *The Daily Telegraph*:

> Certain speculators, thinking that the market in this company's shares was top heavy, and due for a fall, sold scrip which they did not possess, on the assumption that they could buy it at a lower price and pocket the difference.[245]

All of the 'scrip offered was absorbed', however, and 'values advanced accordingly.'[246]

---

[237] 'The Gaming House. Mount Owen Share Smash. Will Exchange Cleanse Itself?', *Smith's Weekly* (Sydney, 4 September 1920) 4 ('Gaming House').
[238] 'Federation and Mt. Owen Gold Mines', *The Daily Telegraph* (Sydney, 11 January 1921) 6 ('Mt. Owen Gold Mines').
[239] Rydge, *Australian Stock Exchange* (n 109) 115.
[240] 'Mount Owen Mine. 'Change Fluctuations. Buying-In Notices', *The Newcastle Sun* (NSW, 1 September 1920) 5 ('Mount Owen Mine'); 'Mount Owen Gold Mine. Inspector's Report', *The Dugong Chronicle: Durham and Gloucester Advertiser* (NSW, 18 May 1920) 5 ('Gold Mine').
[241] 'Gold Mine' (n 240).
[242] 'Federation and Mount Owen Mines', *The Sydney Morning Herald* (Sydney, 5 July 1920) 9.
[243] 'Mount Owen Mine' (n 240).
[244] Ibid.
[245] 'Stock Exchange Ethics', *The Daily Telegraph* (Sydney, 16 October 1920) 10.
[246] 'Mount Owen Mine' (n 240).

> A group of "Bulls," including men on the Exchange and speculators outside, bought heavily, and continued to buy. The price ran in ten days from 19/- to 87/- a share. The "Bears" had continued to sell and sell. They hadn't the shares, and did not perceive that in fact the scrip was cornered. Members of the Exchange and speculators outside the Exchange, small fry and large, hopped into the business, to find to their dismay that they were badly oversold, and the "Bulls" held all the goods.[247]

A subsequent report in the 22 May 1922 edition of *The Sun* stated that 'a body of men outside the Exchange had cornered the scrip, and would not sell to enable the speculators in the Exchange to make deliveries.'[248] As with the other corners previously discussed, the instigator/s of the corner, in theory at least, held all the power and could arbitrarily dictate the price at which the short sellers had to purchase the shares to fulfil their delivery obligations to the buyers to whom they had sold FMOGM scrip.

> "Bear" brokers had to deliver, or lose their places on the Exchange. But in order to deliver, they must buy from the "Bull" corner at its own terms – which might prove ruinous to some of them.[249]

The 1 September 1920 edition of *The Newcastle Sun* reported that the market had been 'practically bare of scrip' and during the prior two weeks 'buying in notices for several thousands' of FMOGM shares had been 'posted in the vestibule' of the Exchange.[250] On the same day, *The Maitland Daily Mercury* contained an article in which the chairman of the SSE was said to have 'officially stated that the committee had removed the Federation and Mount Owen gold mines from the official list of the exchange'.[251]

Rather than suspend the buying-in process, as contemplated by the relatively recent addition of Rule 107a in the *Rules of the Sydney Stock Exchange*, referred to above, the:

---

[247] 'Gaming House' (n 237).
[248] 'Lure of Gold. Gambling On 'Change. Burst Booms. Fortunes Made and Lost', *The Sun* (Sydney, 22 May 1922) 6 ('Lure of Gold').
[249] 'Gaming House' (n 237).
[250] 'Mount Owen Mine' (n 240). This process was provided for in rule 107 ('Power to Buy In or Sell Out Through the Secretary') of the SSE's rules: *Rules of the Sydney Stock Exchange*, Adopted 9 May 1904. With Additions and Amendments to 23 September 1913.
[251] 'Removed From Exchange List', *The Maitland Daily Mercury* (NSW, 1 September 1920) 5.

> Committee interfered. It took the shares off the list – which meant relieving the "Bears" of special obligation as brokers, to fulfil their contracts. The "Bulls" could not force huge payments out of them.[252]

However, the delisting of FMOGM's shares by the Exchange had the same effect given that 'no buying or selling of the shares in the call-room could be carried on'.[253]

There was some speculation that the Committee had taken this course of action to 'save the Stock Exchange from the scandal and bad odour which would have accompanied the ruin of the gamblers'.[254] Yet, no information was located to shed any light on why the Exchange suspended FMOGM shares from the official list in the first place. However, FMOGM's application for an order seeking an injunction to restrain the SSE from excluding its shares being quoted on the official list contained a number of allegations, some of which were serious and, if true, could have provided a motive for the Exchange's actions. They included the following:[255]

(a) neither the committee nor the SSE had made any complaint or charge against FMOGM or afforded it any opportunity to be heard in connection with the suspension;

(b) the committee had refused to provide FMOGM with the reason for the suspension, even though the company had requested this information;

(c) the committee acted with a view to 'enabling or to assist in enabling members of the committee to escape performance by them of contracts relating to the sale' of FMOGM shares and to escape the ordinary consequences of such non-performance; and

(d) the committee was improperly constituted as there were members present 'who were personally interested' in the matter being considered, being forward sellers of FMOGM shares who could not perform their contracts of sale, who spoke and voted on the matter 'in accordance with their personal interest' and who 'so influenced the

---

[252] 'Gaming House' (n 237).
[253] 'Interesting Law Suit', *The Daily Telegraph* (Launceston, 22 October 1920) 2 ('Interesting Law Suit').
[254] 'Gaming House' (n 237).
[255] 'Off the List. An Injunction Sought. Federation and Mt. Owen Action. Allegations Against 'Change', *The Sun* (Sydney, 12 October 1920) 7.

committee in its action.' According to the barrister representing FMOGM, the 'whole of the contracts were sales by members of the committee, or firms of which a partner was a member of the committee.'[256]

The Chairman of the SSE was quoted in an affidavit of the solicitor acting for FMOGM, who, when asked why the committee thought it fit to remove the company's shares from the official list apparently stated the following:

> The market position is ridiculous. There is not a market at all. There are no prompt sellers about. The Stock Exchange is intended for legitimate business, and won't lend itself to the furtherance of this kind of thing, making fancy prices with no sellers.[257]

Mr Justice Harvey 'in the Equity Court' refused to grant an interim injunction and held that the committee of the SSE had the power to suspend a company from quotation 'at its pleasure' and, moreover, could do so without giving a reason.[258]

So, did the action taken by the Exchange essentially neutralise the corner? It would appear so, based on the 4 September 1920 edition of *Smith's Weekly*:

> The "Bull" still has the right to sue the "Bear" in the law-courts for non-performance of contract. But "Bulls" will not be able to show actual loss, through non-delivery of shares, which they themselves already hold. So this legal right has little monetary value. Thus the Committee's action will save from financial destruction the losers in a notorious gamble.[259]

On 19 October 1920, however, *The Argus* reported that according to an official announcement made that day by the SSE, the restrictions on the quotations of FMOGM shares would be partially removed 'so as to permit of "buying-in" transactions'.[260] This would enable those who oversold FMOGM shares to complete their contracts, provided the scrip was available.[261] Although there was no information located to confirm the final outcome of the buying-in process, the inference that could be drawn from the scant material available is that it ended up

---

[256] 'Mount Owen Shares. Question of Quotations. Stock Exchange Suspension', *The Daily Telegraph* (Sydney, 13 October 1920) 12.
[257] '"At Its Pleasure". Stock Exchange May Act. Mount Owen De-Listment. No Interim Injunction', *The Sun* (Sydney, 15 October 1920) 5.
[258] Ibid.
[259] 'Gaming House' (n 237).
[260] 'Stock Exchange Ban Lifted', *The Argus* (Melbourne, 19 October 1920) 9. In January 1921, *The Daily Telegraph* reported that the action initiated by FMOGM against the Sydney Stock Exchange had been withdrawn by FMOGM and it had paid the attendant costs: 'Mt. Owen Gold Mines' (n 238).
[261] 'Sydney Mining Dispute. Removal of Suspension', *The Herald* (Melbourne, October 1920) 3.

being a costly lesson for the bears who had short sold FMOGM shares.[262] Yet, there was little sympathy for the bears, as evidenced by an article in the 22 October 1920 edition of *The Daily Telegraph*:

> if people sell shares they do not possess in the hope of buying them in later on at a profit, and find the market bare of scrip, they have themselves to blame if they have to pay a high price for scrip.[263]

The selling of shares that they did not own, or short selling, by the 'bears' was a recurring issue, the propriety of which appears to have been ventilated many times over the years. It would certainly appear to be one of the factors that facilitated the establishment of a 'corner'. According to Deutsch, 'trading in the early 1970s in the mining stock Antimony Nickel N.L.', which resulted in a 'corner', quite possibly the last corner to occur in the domestic context, was the 'catalyst in the creation of the short selling offence in Australia'.[264]

Although an article in the 4 September 1920 edition of *Smith's Weekly* recounted that most of the "Bears" regarded a 'very prominent "Bull"' as being responsible for the corner, no information was located regarding the identity of those responsible for the 'successful' cornering of FMOGM shares.[265]

6.9 The 'bullfighter' admits rigging the share market

In June 1949, an article in *The Herald* reported that Mr HB Turner, a Liberal member of the NSW Parliament Legislative Assembly, had requested the NSW Attorney-General, Mr Martin, to investigate as a matter of urgency the relationships of several companies, including Mount Eba Gold Mines Ltd (MEGM), with John Woolcott Forbes, described variously as a 'financier',[266] the 'Bullfighter'[267] and the 'famous corporate fraudster of the 1930s and

---

[262] For example, according to *The Sun*, '[a]fter the lesson learnt in Federation and Mount Owens, speculative brokers are very disinclined to bear gold stocks . . .': 'Gilt-Edged Stock Firm. Banking Amalgamations Rumoured. Activity in Gold Shares', *The Sun* (Sydney, 14 May 1922) 4. The *Sun* also reported just over a week later that the scrip sold by the bears had been 'absorbed by a group outside the Exchange, and the bears had to pay. It was an expensive lesson, but was not forgotten': 'Lure of Gold' (n 248).
[263] 'Interesting Law Suit' (n 253).
[264] Robert Deutsch, 'Short Selling' (1983) 1 *Company and Securities Law Journal* 142, 142-143.
[265] 'Gaming House' (n 237).
[266] Thomas H Bivin, 'Broker's Liability for Transferring Defrauded Owner's Stocks' (1949) 16 *Insurance Counsel Journal* 177, 177.
[267] 'Trainer's night vigil among the tombstones', *The Sydney Morning Herald* (Sydney, 16 November 1986) 93. According to *The Mirror* newspaper, Mr Woolcott Forbes was known as the 'Bullfighter' based on his 'astonishing punting in the [betting] ring in most of the States': '"Bullfighter" Forbes. Mammoth Punter Left Perth—Made Fortune. His Home for the Duke of Kent', *The Mirror* (Perth, 7 January 1939) 1.

1940s'.[268] It is unclear what prompted Mr Turner's request, but he had asked Mr Martin to direct particular attention to the following matters with respect to MEGM:

(a) whether any 'suspicious fluctuations' had occurred in the price of MEGM shares;

(b) whether the value of MEGM shares had risen suddenly to about 16/ a share and, within a relatively short period of time, had dropped to less than 3d a share and become 'unsaleable'; and

(c) whether there was 'any manipulation of MEGM and the other shares 'with consequent loss to investors in [NSW] of about £100,000'.[269]

Mr Turner asked, on notice, that should any of the above enquiries disclose any evidence of fraud or other offences then the Attorney-General should take appropriate legal action against everyone involved.[270]

The 7 July 1949 edition of *The Sydney Morning Herald* reported that 'a special police report' on the mining companies highlighted by Mr Turner was released in the Legislative Assembly the prior evening.[271] The complete 'Printed Question and Answer' in respect of Mr Turner's questions and Mr Martin's responses to those questions was reported in the NSW Legislative Assembly *Hansard* for 31 August 1949.[272] The report referred to, which appears to have been prepared by the NSW Commissioner of Police, contained the following responses to the above questions concerning MEGM:

(a) MEGM had been listed on the Stock Exchange for 18 months and the price of its shares had 'fluctuated from the original price of 2s. 6d. to 16s.', after which they had dropped to as low as 3d. a share.' At the relevant time, they were 'listed at 1s. 6d. per share';[273]

---

[268] The full quote from the book's description is: 'Riveting figures haunt these pages, such as Woolcott Forbes, the famous corporate fraudster of the 1930s and 1940s known in the press as "The Bullfighter" . . .': Federation Press, 'A History of Criminal Law in New South Wales – Volume 2: The New State, 1901-1955', Federation Press Online Bookstore <https://www.federationpress.com.au/bookstore/book.asp?isbn=9781760021931>.
[269] 'Woolcott Forbes Inquiry Urged', *The Herald* (Melbourne, 22 June 1949) 3.
[270] Ibid. The 'Printed Question and Answer: Operations of Certain Mining Companies' in response to Mr Turner's request was reported in: New South Wales, *Parliamentary Debates*, Legislative Assembly, 31 August 1949, 3189-3193 ('*Parliamentary Debates*').
[271] 'Report on Companies. Gold Mining Shares', *The Sydney Morning Herald* (Sydney, 7 July 1949) 6.
[272] *Parliamentary Debates* (n 270) 3189-3193.
[273] Ibid 3189-3193, 3192.

(b) MEGM shares ‘were not hawked or sold to the public by John Woolcott Forbes or any other share salesman’. Mr Forbes was not a shareholder in MEGM and was ‘in no way connected with the activities’ of MEGM;[274] and

(c) police inquiries indicated that the companies appeared to have functioned in a normal manner and in compliance with the requirements of the Companies Acts, there were no known breaches of the share hawking provisions of the Companies Act and ‘fluctuations in the values of the shares of [the] companies’ were ‘due to the companies’ known activities and reputation.’[275]

Notwithstanding the findings of the police report, however, it appears that any concerns Mr Turner may have had in relation to Mr Forbes and his involvement with MEGM that led to his request in Parliament were vindicated by the evidence given by Mr Forbes during his examination in the Bankruptcy Court in December 1952.[276]

As well as admitting that he had invested £50,000 of what he referred to as ‘black money’ (money obtained illegally or not disclosed to taxation authorities)[277] on the share market in fictitious names, Mr Forbes reportedly made several statements in court admitting what appears to have been blatant manipulation in the shares of several of his companies, including MEGM.[278] This is apparent from the following excerpts from some of the newspapers that covered Mr Forbes’ appearance at his examination.[279] The person who posed the questions, Mr JK Manning, was acting for the Official Receiver.[280]

Mr Manning: You set out deliberately to rig the market for shares in your companies?
Mr Forbes: I tried to strengthen the market.[281]

Mr Manning: You set out to create a market price that was quite fictitious to buy when you wanted to increase the price, and sell when you wanted to reduce it?

---

[274] Ibid.
[275] Ibid 3189-3193, 3193.
[276] ‘Forbes’ Admission: Invested £50,000 of “Black” Money on Market’, *The Warwick Daily News*, 9 December 1952, 1 (‘Forbes’ Admission’).
[277] *Oxford English Dictionary* (online at 13 February 2022) ‘black money’ (defs 2, 3).
[278] See, for example, ‘Forbes Tells of ‘Black Money’ Investments’, *The Sydney Morning Herald* (Sydney, 9 December 1952) 3 (‘Black Money’).
[279] The questions and answers are not in any particular order. Excerpts have been used from several newspapers.
[280] Mr Manning examined Mr Forbes under s.68 of the *Bankruptcy Act* 1924 (Cth): see, for example, ‘Financier tried to “balance” budget. Forbes admits rigging share markets’, *The Argus* (Melbourne, 9 December 1952) 3 (‘Forbes Admits Rigging’).
[281] ‘Forbes’ Admission’ (n 276).

Mr Forbes: I tried to make the market strong. I have never tried to make it weak.[282]

Mr Manning: How much money did you spend when you wanted to strengthen the market for Mount Eba shares?

Mr Forbes: About £10,000.[283]

Mr Manning: It was in your interest to rig the market to persuade shareholders not to sell?

Mr Forbes: Yes.[284]

Mr Manning: At the same time, you were causing shares to be bought and sold at gradually increasing prices?

Mr Forbes: Yes.[285]

Mr Manning: You employed brokers, both acting for you, to buy and sell at prices in excess of what bona-fide buyers and sellers were prepared to give?

Mr Forbes: Yes.[286]

Mr Manning: You employed sharebrokers on both sides in a number of transactions?

Mr Forbes: Yes.[287]

Mr Manning: You had a broker selling shares on your behalf and another broker buying back the same shares?

Mr Forbes: We supported the market too strongly for that.

Mr Manning: Well, on the company's behalf?

Mr Forbes: Yes. I was trying to balance the budget.[288]

Mr Manning: You have boasted of the fact that you have bumped the market up by selling shares to yourself at higher prices than the ruling market price?

Mr Forbes: Yes, I may have done that.[289]

---

[282] Ibid.
[283] Ibid.
[284] Ibid.
[285] 'Black Money' (n 278).
[286] 'Forbes Admits Rigging' (n 280).
[287] 'Black Money' (n 278).
[288] Ibid.
[289] 'Forbes' Admission' (n 276).

Mr Manning: You were the brain behind it all, the man behind the gun?

Mr Forbes: There were other brokers behind it as well.[290]

Not only had Mr Forbes admitted on the public record to having engaged in market manipulation, using several different manipulative techniques, but he had also potentially implicated share brokers who appear to have knowingly assisted him in his illegitimate endeavours. Yet, no action appears to have been taken against Mr Forbes for rigging the share market. Moreover, there was no information located to confirm whether or not the stock exchange conducted an investigation to determine if any of its members had, in fact, been knowingly involved in Mr Forbes' trading activities and whether any disciplinary action was taken against them as a consequence. It would appear that those who engaged in conduct that corrupted domestic share markets did so with impunity. That this was the case during this period is not surprising, as will be discussed in the next chapter.

6.10 Conclusion

Consistent with the 40 or so years prior to 1900, stock market manipulation continued to be the subject of many newspaper reports over the course of the first few decades of the twentieth century. Not only was it seemingly continuing unabated, but neither the governments of the day nor the stock exchanges appear to have taken any significant or co-ordinated measures to reduce the risk of its ongoing incidence on domestic share markets. As will be discussed in the next chapter, however, this would change quite dramatically from the latter part of the 1960s as the stock exchanges and state and federal governments finally started to focus their efforts on combating stock market manipulation (and other market misconduct). Indeed, the period from the late 1960s to 1990 would usher in very significant changes to the domestic securities market regulation paradigm, which were long overdue.

[290] 'Forbes admits share rigging', *The Daily Telegraph* (Sydney, 9 December 1952) 6.

CHAPTER 7: 1960 to 1990 - Part 1

> The fact that such uncontrolled speculation could exist in the 1970s is a sad reflection on Australia's inability to keep up with the times. The belated calls for an SEC are of little consolation to the man who lost his shirt on Tasminex. The undignified rush by the States to push through legislation banning 'the spreading of false rumours and manipulation of share prices' would be laughable if it were not so serious. One might ask what the authorities have been doing for the last 40 years.[1]

7.1 Introduction

Of all the decades reviewed for the purposes of this thesis, the period from the 1960s to the time of the first successful criminal prosecution in Australia in 1990 for share market rigging was a period where there appears to have been the most intense focus by Federal and State Governments and the stock exchanges on addressing activities that caused considerable harm to the integrity, fairness and reputation of domestic capital markets. The initiatives implemented during this period fundamentally changed the securities market regulation paradigm in Australia, forever. Yet, it took a very long time and a lot of manipulative trading activities on domestic share markets to get to this point.

The implementation of the *Securities Industry Acts* in four Australian States in the 1970s and the publication of the Rae Report in 1974,[2] both of which will be discussed in this chapter, represent pivotal turning points in the history of domestic securities market regulation and have been the subject of considerable focus in the literature. Yet, there were many other factors at play that helped positively influence efforts to combat market manipulation and other forms of market misconduct in Australia. This chapter and Chapter 8 will discuss some of these factors, as well as the significant contribution they have collectively made to combating the manipulation of share prices on domestic share markets.

---

[1] Keith Sharp, *The House of Mammon: The Stock Exchange at Work* (Hicks Smith & Sons, 1971) 69.
[2] Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (Report, Volume 1, 1974) ('*Australian Securities Markets and their Regulation*').

7.2 Setting the scene

The 1960s started off with a flurry of activity that appears to have been intended to interfere with the 'free forces' of genuine supply and demand for listed shares on domestic stock exchanges.[3]

7.2.1 False rumours

As is apparent from earlier chapters, this particular species of market manipulation would seem to have been used on domestic share markets on a number of occasions over the years and things were no different from the 1960s onwards.[4] If anything, the advent of new communication technology, for example, made it easier to spread false rumours or misleading information to an increasingly larger number of potential victims for the purpose of distorting share prices.

7.2.1.1 A.J. Chown Holdings Ltd

The 1960s commenced with a warning from the Acting Attorney-General, Mr Reid, that the State Government in Victoria would 'investigate any complaints by the Melbourne Stock Exchange of attempts to manipulate the share markets'.[5] According to Mr Reid, he viewed 'with the gravest concern the reported practice of share manipulation' and the 'Government would do everything within its power to prevent this type of operation'.[6] An article in the 21 July 1960 edition of *The Canberra Times* article that contained Mr Reid's comments stated that Melbourne and Sydney police were investigating 'attempts to manipulate share markets on stock exchanges in the two cities.'[7] A spokesman for the 'Melbourne Stock Exchange' was reported as saying that 'the Exchange was very concerned with the development of this type of

---

[3] According to an ASX Circular issued in June 1990, '[g]enerally, market manipulation may arise out of an intentional interference with the free forces of supply and demand for listed shares: ASX, 'Circular to Member Organisations 306/90', 'Subject: Sections 123 and 124 of the Securities Industry Code', 21 June 1990 1 ('Circular to Member Organisations Number 306/90').

[4] Other examples include, but are not limited to: (a) a bogus telegram that was sent by an 'unnamed "middle-aged man" from the Moorrooka Post Office' to the London Stock Exchange in early 1970 falsely stating that Eastmet Minerals NL had 'struck 3.1 per cent nickel and 2.8 per cent copper', in the name of the company's chairman: "False' cable sent to UK on nickel', *The Canberra Times* (ACT, 6 February 1970) 1; and (b) a 'bogus telegram designed to rig share prices caused a stir in investment circles in Sydney late yesterday'. The telegram falsely stated that Holidaywise Ltd, an industrial company, had been granted mineral claims at Mount Clifford in Western Australia, which was reportedly a 'highly considered nickel area': 'Bogus telegram attempt to rig share prices', *The Canberra Times* (ACT, 10 March 1970) 16.

[5] 'Will Investigate any Complaints of Share Rigging', *The Canberra Times* (ACT, 21 July 1960) 13 ('Will Investigate').

[6] Ibid.

[7] Ibid.

share manipulation.'[8] Although the article does not provide any details on the type of manipulative activities in question, the following comments attributed to the State Opposition Leader, Mr Stoneham, suggest that the spreading of 'false or misleading information in respect of certain securities to take advantage of artificial changes in their price'[9] may have been the subject of his comments:

> the urgent matter of protecting small investors from criminal misrepresentation by tipsters of take-overs and mergers was only one aspect of the much bigger problem of safeguarding vital public interests bound up in the wide ramifications of stock exchange operations.[10]

A 'Notice to Members' issued by the SSE, dated 19 July 1960, may have had something to do with Mr Reid's warning as the subject matter and timing appear to be reasonably correlated. According to the Notice, the SSE's Committee was 'greatly concerned' about the activities of a certain group, or groups, of people issuing circulars to investors across Australia that advised 'them to buy shares in particular companies' on the basis that the group, or groups, of people possessed information that a takeover was imminent.[11]

The Notice described how circulars had been sent to shareholders in AJ Chown Holdings Ltd (AJCH) 'without any indication of the senders name and address' stating that 'a take-over was in the offing and that they should not sell their shares under 28/-'.[12] At around the same time, a circular was issued by a 'share advisory company', said to be 'based interstate', which recommended to its subscribers that they should buy AJCH up to 23/-.[13] The advisory company subsequently sent telegrams to selected investors stating the following:

> Instruct broker buy good parcel AJ Chown Holdings Ltd. Sydney Exchange up to 23/- stop expect rise to 35/- stop take-over imminent.[14]

The Notice set out details of the action the Committee had taken in response.

---

[8] Ibid.
[9] Known today as 'rumourtrage', discussed in Chapter 3.
[10] 'Will Investigate' (n 5).
[11] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N210-8, The Sydney Stock Exchange, 'Notice to Members', 19 July 1960.
[12] Ibid.
[13] Ibid.
[14] Ibid.

> Your Committee and the Committee of the Melbourne Exchange have been making strenuous efforts to find a way to control this type of thing and in the course of their endeavours have contacted the appropriate authorities who are also thoroughly investigating the situation.
>
> At present, it appears that little more can be done and I am taking this opportunity of asking Members to advise the Secretary immediately of any information they might have, and, at the same time, to warn their clients of what can only be regarded as an attempt to upset the orderly conduct of the market.
>
> Because your Committee considers that this entire matter is bound up with the Exchange's responsibility to the investing public, immediate steps were taken, in each case, to see that the financial press was kept fully informed by the companies concerned.[15]

The spreading of what would appear to constitute false rumours and misleading information to investors in an attempt to induce them to buy shares in AJCH, presumably, in an effort to artificially increase the price for trading in those shares, was characterised by the Exchange as 'as an attempt to upset the orderly conduct of the market'.[16] It would also appear to have been a deliberate attempt to manipulate AJCH's share price.

7.2.1.2 Longreach Oil Ltd

The 26 February 1963 edition of *The Canberra Times* contained an article titled 'Faked Wire Starts Rush on Oil Shares', which described how a 'fake telegram caused a 23 minute oil shares buying rush on the Stock Exchange'.[17] The telegram received by the Exchange stated the following:

> The directors of Longreach Oil Ltd wish to report that on Sunday 24th February oil flowed in the companies Alice River No.1 well at a depth of 2,904ft.
>
> A report from technical consultant is expected within 48 hours.
>
> The board will then issue a detailed statement on the significance of the strike.[18]

---

[15] Ibid.
[16] Ibid.
[17] 'Faked Wire Starts Rush on Oil Shares', *The Canberra Times* (ACT, 26 February 1963) 3 ('Faked Wire'); 'On 'Change: Prices Firm in Spite of Oil Telegram Hoax', *The Canberra Times* (ACT, 26 February 1963) 21 ('Prices Firm').
[18] 'Faked Wire' (n 17).

The telegram was later declared to be a fake by the Stock Exchange after contact was made with the directors of the company and sales of Longreach shares were subsequently suspended.[19] Prior to the shares being suspended, however, the price had risen from 1/11 to 3/9.[20] It appears from archival material that the Stock Exchanges provided assistance to the Fraud Squad in relation to their investigation.[21] Whilst the article noted that detectives from both the Post-Master General and the Fraud Squad had 'traced the origin of the fake telegram to a metropolitan public telephone box', and notwithstanding any assistance the stock exchanges may have provided, no information was located to confirm whether or not the perpetrator was brought to justice for their role in apparently manipulating the price of Longreach shares.[22]

7.2.1.3 Gold Mines of Kalgoorlie

According to an article in the 12 June 1970 edition of *The Sun*, the SSE had 'foiled an attempt to rig the market' in the shares of Gold Mines of Kalgoorlie (Aus) Ltd (GMK).[23]

> A number of Sydney brokers had received mysterious calls accidentally disclosing that a stock called Gold Mines of Kalgoorlie (Aust) Ltd had made important nickel finds.
>
> Brokers became immediately suspicious because G.M.K. has no nickel leases. It is a Kalgoorlie gold miner.
>
> The caller or callers each time told similar stories and said they wanted to buy some shares.

---

[19] 'Ibid; 'Prices Firm' (n 17).
[20] 'Faked Wire' (n 17).
[21] For example, a letter from the SSE to the Stock Exchange of Adelaide and the Brisbane Stock Exchange, dated 1 March 1963, headed 'Longreach Oil Ltd & Farmount Drillers NL' stated that 'The Fraud Squad has requested as a matter of urgency that your Exchange request its Members to provide details of sales made in the above companies last Monday, prior to the suspension of trading'. The details requested were client's name and address, time and date selling orders were received, number of shares sold. The letter also stated: 'This information will be passed directly to the Fraud Squad and treated as strictly confidential. We have already provided the bulk of this information in respect of Sydney transactions': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/58 (Z718/173), Letter from the Sydney Stock Exchange to the Stock Exchange of Adelaide Ltd and the Brisbane Stock Exchange, dated 1 March 1963, in relation to Longreach Oil Ltd and Farmout Drillers NL.
[22] 'Faked Wire' (n 17).
[23] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-008 (Z718/8), Ralph Wragg, 'Mining Shares', *The Sun* (Sydney), handwritten annotation '12 June 1970' ('Mining Shares'); GMK was a Western Australia gold mining company: 'Share Warning', *Sydney Morning Herald* (Sydney, 13 June 1970) 1 ('Share Warning').

When asked for their names they suddenly rang off, saying it must be the wrong broker and not to mention anything about the company disclosing nickel assays.[24]

It was reported that two Sydney stockbroking firms and the Melbourne office of another broker had received calls from a man who 'claimed to be a partner in a London firm of chartered accountants'.[25] During the telephone conversation, the man was said to have 'let slip' that he had reliable information the chairman of GMK 'would announce the nickel find.'[26]

In response, the SSE reportedly broadcast a brief statement to the trading floor prior to the opening of the market, warning its members to 'exercise extreme caution when dealing in' GMK shares until advice was obtained for the company.[27] The directors of GMK subsequently informed the SEM that they were not aware of any information 'that would increase the price of the company's shares.'[28] Another attempt to rig the share market by false rumours would seem to have been attempted, although no information was located to confirm whether anyone was brought to account.

7.2.2 'Window dressing'

The spreading of false rumours, however, was not the only species of stock market manipulation that appears to have been affecting trading on markets operated by the stock exchanges during the 1960s. According to an article in the 9 July 1965 edition of *The Sydney Morning Herald* under the headline 'Melbourne Preference Post "Raided"', for example, there had been a 'sudden and sharp rise in the buyer bids for selected preference shares' on the Melbourne Stock Exchange around the time of the 'luncheon adjournment' (between 12.30pm and 2pm) on 30 June.[29] The article claimed that:

> someone altered the buying bids on the preference post. Several buying bids were sharply increased and then as quickly removed once the exchange staff had copied them off the board as the "official" market.[30]

---

[24] 'Mining Shares' (n 23).
[25] 'Share Warning' (n 23)
[26] Ibid.
[27] 'Mining Shares' (n 23).
[28] Ibid.
[29] 'Melbourne Preference Post "Raided"', *The Sydney Morning Herald* (Sydney, 9 July 1965) 12 ('Preference Post Raided').
[30] Ibid.

No sales were said to have taken place at the 'sharply increased buying bids', which were apparently 'well above interstate markets' and which 'were withdrawn immediately after they had served their purpose.'[31]

This type of activity would appear to constitute 'window dressing', discussed in Chapter 3. This type of manipulative device is typically employed by those who have an incentive to artificially influence share prices around key reporting dates, such as the end of a financial or calendar year or quarter end.[32] One of the 'key reporting dates' in Australia is 30 June, which is the end of the financial year and a target for those wishing to artificially affect share price valuations and performance figures.[33] The below comments suggest that this may have been the concern of the author of the above article.

> . . . June 30 Stock Exchange quotation sheets have a very particular significance and one that makes their complete accuracy one of considerable public interest.
>
> The Stock Exchange recognises this and each June 30 prints several hundred additional sheets and makes these available at a price to accountants, auditors, tax assessors, superannuation funds and investment company managers.
>
> The quotations on these sheets are used for "official valuations" of portfolios, investment funds, mutual funds, unit trusts, etc. They are used in calculating whether the value of the investments rose or fell in the year, to give the asset backing for investment company shares, etc.[34]

Despite the closing comment imploring that the 'public is entitled to know who did it, why it was done and who stands to benefit',[35] no information was located to provide answers to these questions.

---

[31] Ibid.
[32] Australian Securities & Investments Commission, 'On the lookout for EOFY 'window dressing', 'Market Integrity Update', Issue 105, June 2019 <https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-issue-105-june-2019/#window-dressing> ('EOFY Window Dressing').
[33] Ibid.
[34] 'Preference Post Raided' (n 29).
[35] Ibid.

Concerns around this type of activity have persisted over the years and, as recently as June 2019, share market participants were put on notice by the domestic regulator that this type of activity is still of concern.[36]

> **On the lookout for EOFY 'window dressing'**
>
> As we near the end of the financial year, we'd like to remind you to be on the lookout for any unusual trading that may affect share price valuations and end of financial year performance figures. This activity is known as 'window dressing'.[37]

Archival records indicate that over three decades earlier (in 1987) the NCSC had also been keeping a watchful eye out for end of financial year 'window dressing'. By way of example, a letter from the NCSC to the ASX, dated 4 August 1987, states the following:

> In one recent case, NCSC staff queried ASX Sydney in regard to trading in Westfield Holdings bonus delivery shares which purportedly took place late on 30 June 1987 . . . As it happened, Commission staff were monitoring trading for end-of-financial year "window dressing" . . .[38]

Prior to the responsibility for market supervision and real-time surveillance of trading on ASX's markets being passed from ASX to ASIC in August 2010,[39] this type of activity was also of concern to the stock exchanges.[40]

---

[36] 'EOFY Window Dressing' (n 32). 'Window dressing' at the end of the 2019 calendar year was also the subject of an ASIC warning: Australian Securities & Investments Commission, 'On the lookout for EOCY 'window dressing'', 'Market Integrity Update', Issue 111, December 2019.

[37] 'EOFY Window Dressing' (n 32). To underline the importance of market participants remaining vigilant at this particular time of year, the following comment was included in ASIC's Market Integrity Update: 'We'll continue to monitor unusual price movements that may indicate market manipulation. If we identify any trading that we believe should have been reported to ASIC, but wasn't, we'll contact you for an explanation': Australian Securities & Investments Commission, 'Market Integrity Update – Issue 105 – June 2019' <https://asic.gov.au/about-asic/corporate publications/newsletters/market-integrity-update/market-integrity-update-issue-105-june-2019/>.

[38] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, Z718/181 (24406/266), Letter to Australian Stock Exchange from National Companies and Securities Commission, 'JECNET – Data Processing Errors', 4 August 1987.

[39] Australian Securities & Investments Commission, 'Report 227: ASIC supervision of markets and participants: August to December 2010', January 2011, 4 <https://download.asic.gov.au/media/1343564/rep227.pdf>.

[40] Although just outside the date range for this research, there is archival material available that indicates the ASX was monitoring trading activities for 'End-of-Year Window Dressing' in 1991: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-644 (Z718/375), 'ASX Memorandum, Subject: End-of-Year Window Dressing, 17 July 1991'.

The theme that emerges from the data reviewed and the discussion in this and earlier chapters is that the manipulation of share prices on domestic share markets just continued on, as it had done for the preceding 100 or so years. What was about to change, however, was the start of what appears to have been an unprecedented focus by state and federal governments and the stock exchanges on combating manipulative activities on the nation's stock markets. The remainder of this chapter will consider some of the steps taken by Government to combat stock market manipulation and the next chapter will consider some of those taken by the stock exchanges.

7.3 Action taken by Government to combat stock market manipulation

7.3.1 Bring on the sunlight[41] – More data equals more transparency

As the decades came and went from the 1960s onwards, manipulative activities continued to plague domestic share markets. Unlike previous decades, however, there started to be more information publicly available that provided additional insight on not only the incidence of the manipulation of share prices on domestic stock exchanges, but also the action that was being taken in response to combat identified instances. In addition to newspaper articles, other sources of data included annual reports of the stock exchanges and regulatory agencies. By way of example, excerpts from the annual reports of two of the regulatory agencies, the NSW CAC and the NCSC, are set out below.

> **(5) Stock Market Surveillance**
>
> Inquiries were commenced into 31 matters to determine whether any person had acted so as to create a false or unfair market, or had acted in the stock market with the benefit of knowledge not generally known to the public or in contravention of any other provision of the Securities Industry Act. Of these and the 36 cases under investigation at 1st January, 1980, 32 cases were completed. In 22 cases there was found to be a lack of evidence, and in 10 cases the Principal Solicitor advised that the evidence was not sufficient to substantiate charges.[42]
>
> [And]

---

[41] An excerpt from Louis Brandeis' famous quote: Brandeis, Louis D, 'What Publicity Can Do', *Harper's Weekly*, 20 December 1913, 10.

[42] New South Wales Corporate Affairs Commission, *Report of the Corporate Affairs Commission For Year Ended 31 December, 1980*, 79.

Evidence has been collected during the year which suggests that a series of share transactions in a listed public mining company have been arranged by certain persons with the object of creating a false or misleading appearance of active trading in the securities of that company. The evidence is now the subject of legal review.[43]

[And]

Stock Exchange Liaison

Unusual market activity was watched carefully. Liaison was maintained with The Sydney Stock Exchange Limited and signs of market manipulation received prompt attention.[44]

[And]

The [NCSC] was concerned during the year at the possibility that the physical share market may have been manipulated in the period leading up to the expiry of the March 1986 series of the futures contract based on the Australian Stock Exchanges All Ordinaries Share Price Index . . . The Commission conducted an extensive enquiry into the trading. It did not find any evidence to suggest manipulation had taken place.[45]

[And]

During 1990, the Commission conducted two private hearings as part of on-going investigations into possible manipulation of the market in particular shares.

Conduct under investigation includes possible market rigging under Part X of the Securities Industry Code . . .[46]

---

[43] Ibid.

[44] New South Wales Corporate Affairs Commission, *Report of the Corporate Affairs Commission For The Six-month Period Ended 30 June, 1982*, 22.

[45] National Companies and Securities Commission, *Seventh Annual Report and Financial Statements 1 July 1985 to 30 June 1986*, 31. Details of the NCSC's investigation of this matter and follow-up actions are contained in the following documents: letter from Mr R J Schoer, Executive Director, National Companies and Securities Commission to Mr Peter Marshman, Managing Director, Sydney Stock Exchange Limited, 'Expiration Day Effects of Index Based Futures', 30 July 1986, attached to which is National Companies and Securities Commission, Media Release, 'NCSC Inquiry Into Share Market Activity in March 1986', 24 June 1986: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-266 (Z718/181). Ten years later, Nomura International PLC was found to have engaged in market manipulation by reason of its index arbitrage trading activities on the ASX and Sydney Futures Exchange 29 March 1996. This matter is discussed in Chapter 3.

[46] National Companies and Securities Commission, *Eleventh Annual Report and Financial Statements 1 July 1989 to 30 June 1990*, 52.

The reports of special investigations conducted under the uniform *Companies Acts* provided a further rich source of information.

7.3.1.1 Reports of Special Investigations

Each of the States and Territories enacted uniform Companies Acts (Ordinances of the Territories) from 1 July 1962 to address the difficulties that had been caused by variances in the legislation up to that point.[47] These Acts and Ordinances incorporated provisions relating to 'special investigations' in various forms.[48] Section 173(1) of the *Companies Act* 1961 (NSW), for example, provided as follows:

> The Governor may appoint one or more inspectors to investigate the affairs of any company to which this Division applies and to report thereon in such manner as the Governor directs.

A review of some of these reports, prepared by Inspectors appointed under the relevant legislation, provides details of conduct and activities that appear to suggest that stock market manipulation was continuing to occur unabated, including those discussed below.

(a) Factors Ltd

In the 1966 Interim Report of an investigation into the affairs of Factors Ltd and certain other public companies, Peter Murphy QC made several findings in relation to what he referred to as 'sharepropping', which involved the purchase of shares in various companies mentioned in the report to 'support the market price' of those shares, thereby creating a 'false market'.[49]

The report states that in giving 'instructions to the various employees to buy shares in a particular company' on a 'systematic' basis, Mr Stanley Korman, who has been described as an 'industrialist, property developer and entrepreneur'[50] and was the subject of considerable

---

[47] Paul Redmond, *Corporations and Financial Markets Law* (Lawbook Co., 7th ed, 2017) 43; The University of Melbourne, 'Key Documents in the History of Australian Corporate Law' (Web Page) <https://law.unimelb.edu.au/centres/ccl/resources/history/key-documents-in-the-history-of-australian-corporate-law>.

[48] A brief history of special investigations legislation is provided by Ipp J in *Bond Corporation Holdings Ltd v Sulan* (1990) 8 ACLC 562, 570 (Ipp J).

[49] Peter Murphy, *Interim Report of an Investigation Under Division 4 of Part VI of the Companies Act 1961 into the Affairs of Factors Ltd and Other Companies* (Melbourne: Government Printer, 1966) 157 ('Factors Ltd').

[50] Peter Spearritt and John Young, 'Korman, Stanley (1904-1988)', *Australian Dictionary of Biography*, 2007 <https://adb.anu.edu.au/biography/korman-stanley-12755>.

criticism in the report,[51] was 'resorting to a device to give the companies an appearance of prosperity.'[52]

> Stanley Korman was well aware of the importance of inspiring public confidence and of maintaining good public relations. It was he who directed officers of the companies in a systematic programme of sharepropping, buying shares in Factors, Rockmans, S.C.L and Chevron Sydney and endeavouring to keep the price of shares in those companies at a high level.[53]

However, although Mr Korman was ultimately convicted of issuing a prospectus that contained untrue statements in respect of Factors Ltd (contrary to s.37 of the *Companies Act* 1955 (Vic)) and sentenced to six months imprisonment after losing his appeal,[54] there appears to have been no action taken with respect to the 'sharepropping'. This would seem surprising in circumstances where the Inspector identified what he referred to as a 'systematic programme of sharepropping.'[55]

(b) Cox Brothers (Australia) Limited

The 30 November 1967 edition of *The Canberra Times* contained an article in which Mr JW Galbally, the then Opposition Leader in the Victorian Legislative Council, reportedly remarked that '[s]hare deals by the Cox Brothers group were a conspiracy against the share market.'[56] Moreover:

> All these deals were planned to skirt around the law and deceive the public . . . [and] . . . [w]here the law stood in the way of their schemes, the law was extinguished.[57]

---

[51] See, in particular, Murphy, 'Factors Ltd' (n 49) 186.
[52] Ibid 160-162.
[53] Ibid 185.
[54] See, for example, 'Financier begins six months in gaol', *The Canberra Times* (ACT, 25 August 1967) 1; 'Six months' sentence passed on Korman', *The Canberra Times* (ACT, 27 October 1966) 3; 'Police charge Stanley Korman', *The Canberra Times* (ACT, 14 November 1964) 1. In his judgment, Nelson J stated that the relevant provision of the *Companies Act* was 'part of our law to protect investors against false statements made in an attempt to solicit their money' (891) and 'I think the over-riding consideration in this case is that it must be made abundantly clear to the business community that the failure to preserve complete honesty in statement and in disclosure in any case where an appeal is made to the general public for funds, is a failure which the Court will not look leniently upon (892)': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-029 (Z718/024), Judgment of His Honour Judge Nelson, *Korman v Mudge*, Court of General Sessions, Melbourne, 24 August 1967.
[55] Murphy, 'Factors Ltd' (n 49)185.
[56] 'Cox share deals a 'conspiracy'', *The Canberra Times* (ACT, 30 November 1967) 32 ('Cox Share Deals').
[57] Ibid.

Apparently, Mr Galbally had been referring to certain share dealings that were the subject of a report of an investigation by Melbourne barrister, Mr BJ Shaw,[58] into the circumstances surrounding the acquisition of Cox Brothers (Australia) Ltd (CBAL) shares by certain other companies named in that report (the Cox Report).[59]

An excerpt in the Cox Report from an article in the 29 September 1960 edition of *The Financial Review* discusses share trading in September 1960 in CBAL shares as part of CBAL's attempted take-over of a Melbourne retailer known as Georges Holdings Ltd (Georges).[60] According to the article, behind the scenes of CBAL's first offer for Georges and its rejection by the board of Georges the evening prior lay a 'remarkable story'.[61] Following notification of the offer to the stock market, CBAL reportedly gave Georges 'only three and a half trading days' in which to make its decision on CBAL's offer.[62] The price of CBAL shares at the time of the offer was said to be 'around 10s. 6d.' and, by what the article refers to as 'some mysterious trick, they remained at that price during the time it took Georges to say 'no''.[63]

> This may not be too surprising if it were not for the fact that more than 103,000 shares changed hands in that small space of time. And despite that extra-ordinarily heavy volume of selling the price stood still in the face of a generally falling market.
>
> It was obvious that one Melbourne broker was buying all he had to in order to keep the market dead level as all the people who realised it was being supported got in to unload.
>
> The broking firm of Ian Potter and Co must have one operator with a throat hoarse from saying 'buy' yesterday.
>
> And around it all the rest of the market quietly sagged.
>
> The enormous cost of this price support manoeuvre may well have been the reason that Cox asked Georges to hurry up with their decision . . . [64]

---

[58] Ibid.
[59] BJ Shaw, *Report of an Investigation Under Section 178 of the Companies Act 1961 into the Circumstances Under Which Walana Investments Pty Ltd in July 1962 Acquired 1,136,636 Shares in Cox Finance Corporation Limited and the Circumstances Under Which Cox Finance Corporation Limited Acquired Those Shares Originally and Later Disposed of Them to Walana Investments Pty Ltd* (Melbourne: Government Printer, 1967) ('Cox Finance').
[60] Ibid 12.
[61] Ibid.
[62] Ibid.
[63] Ibid.
[64] Ibid.

According to the Cox Report, the 'fact that the market was being supported was thus well known in financial circles.'[65] Moreover, the report states that irrespective of whether the activities were reported in the press 'it must have been common knowledge amongst members of the Stock Exchange' given that 'Potters operations were not concealed.'[66]

During his investigation, various explanations were given to Mr Shaw 'for the market support'.[67] The true explanation, however, according to Mr Shaw, was that the CBAL shares were bought at the time of the CBAL offer for Georges in order to provide 'market support' with the 'simple object of assisting that offer to succeed.'[68] In conclusion, Mr Shaw asserted the following:

> The object was, in the first place, to raise the price of Cox Bros' shares on the Stock Exchange at Melbourne from a price of about 10s. (which was current at the time when buying commenced) to 10s. 6d. and then, once that result had been achieved, to hold the price at no less than 10s. 6d. The motive was that it was thought that, if this object was achieved, it would assist in the success of the takeover offer which Cox Bros was intending to make and finally did make for Georges Holdings Ltd.[69]

Although the first purchases did, in fact, initially increase the price of CBAL shares, which was maintained 'for some time by heavy buying', the selling pressure eventually became so significant that it was 'felt that the price of 10s. 6d. could not be held any longer.'[70] Even then, attempts continued to be made to hold the price 'at various lesser prices on the way down to about 9s.', after which buying ceased when it 'became clear that the offer for Georges was to be successful.'[71]

According to the article in the 30 November 1967 edition of *The Canberra Times*, Mr RJ Hamer, the then Minister of Local Government, had stated that the Cox Report had already been referred by the Attorney General to the Crown Law Department for investigation.[72] No information was located, however, to indicate whether any action was taken to hold to account

---

[65] Ibid.
[66] Ibid.
[67] Ibid 16.
[68] Ibid 21.
[69] Ibid 41.
[70] Ibid.
[71] Ibid.
[72] 'Cox Share Deals' (n 56).

those responsible for apparently manipulating the price of CBAL shares during the period in question.

(c) Tasminex

In January 1970, during a period in which Australian stock exchanges were said to have been 'whirling on a roller coaster ride of giddy speculation',[73] Mr William Singline, the Chairman of Tasminex NL, a Tasmanian mining exploration company, was reported as having confirmed rumours that Tasminex had 'struck massive sulphides at Mt Venn, about 100 miles north-east of Windarra in Western Australia.'[74] An article in the 28 January 1970 edition of *The* Sun[75] contained the following account of a telephone discussion between Mr Singline and the journalist, Trevor Sykes, that had occurred the day prior, on 27 January 1970:

> "Tasminex NL had struck a nickel field which would be bigger than Poseidon's", the Tasminex chairman, Mr W.S. Singline, said last night. Mr Singline, who had just flown back to Melbourne from Western Australia, confirmed rumours that Tasminex had struck massive sulphides at Mount Venn, about 100 miles north-east of Windarra.
>
> The rumours were rampant in Melbourne yesterday, driving Tasminex shares up $13.45 to $16.80 – one of the most staggering leaps seen on the 'Change since Poseidon's hey-day.

The telephone discussion reported in Mr Sykes' article included Mr Singline telling him that '"I reckon it could be better than Poseidon and bigger"'.[76]

Poseidon NL had made a major nickel discovery in 1969 in Windarra, Western Australia, claimed to have 'launched the greatest speculative sharemarket boom in Australian history',[77] which resulted in its shares rising from $0.80 in early September 1969 to a peak of $280 on 5 February 1970.[78]

---

[73] 'Sharkproofing the Exchanges', *The Tribune* (11 February 1970) 2 ('Sharkproofing').

[74] 'Nickel Strike "Bigger Than Posiedon's"', *The Papua New Guinea Post-Courier* (Port Moresby, 28 January 1970) 7.

[75] The 'material part of this article' is reproduced in the Inspector's report: J W Wilson, *Report of the Inspector appointed pursuant to Section 178(1) of the Companies Act 1961 of the State of Victoria to investigate and report on the circumstances in which any person acquired or disposed of, or became entitled to acquire or dispose of any shares in Tasminex N.L. during the period 7 November 1969 to 18 March 1970*, 1970, 26 <https://www.parliament.vic.gov.au/papers/govpub/VPARL1970-71NoC1.pdf> ('Tasminex').

[76] Ibid.

[77] 'Magnate's new Poseidon adventure', *The Sydney Morning Herald* (online, 14 April 2007) <https://www.smh.com.au/business/magnates-new-poseidon-adventure-20070414-gdpwv3.html>.

[78] John Simon, 'Three Australian Asset-price Bubbles', Reserve Bank of Australia, 2003 (Web Page), 26, 28 n 30. <https://www.rba.gov.au/publications/confs/2003/pdf/simon.pdf> ('Asset Price Bubbles').

According to the newspaper reports of the time, as well as the Report of the Inspector appointed under the Companies Act to investigate share transactions in Tasminex (the Report), what was referred to as Mr Singline's seven word 'magic incantation'[79] (could be better than Poseidon and bigger) had a 'very substantial effect on the market for Tasminex shares'.[80] The federal opposition leader Lionel Murphy stated that Mr Singline's comments were 'calculated to inflame the speculative mania'.[81] Mr Singline's remarks to Mr Sykes, as well as the comments he made in a television interview on 28 January 1970, were characterised by the Inspector as 'certainly unjustified and irresponsible'.[82]

The Report stated that the turnover in Tasminex shares on 27 January 1970 on the SEM had risen considerably that day, from an average of 3,000 trades per day to over 117,000, and the price had increased from the prior trading day's closing price of $3.30 to $16.80 after shares had been sold as high as $18.50.[83] The SEM sought an explanation from Tasminex for the price increase during the course of that day and was told by the Company Secretary that he was 'unable to account for fluctuations in the share prices'.[84] However, following Mr Sykes' report of his telephone discussion with Mr Singline being sent to London, which was received approximately two hours before the close of the London market on 27 January 1970, Tasminex shares traded as high as $96.[85]

The sentiment at the time appears to have been neatly summarised by the following extract from the 11 March 1970 edition of *The Tribune*:

> How can it happen that the chairman of a mineral exploration company, by speaking seven words, recently set in train events that lifted the value of the company's shares by millions overnight?[86]

---

[79] 'Burnt fingers on 'Change – but Mr. Big's sitting pretty', *The Tribune* (Sydney, 11 March 1970) 3 ('Burnt Fingers').
[80] Wilson, 'Tasminex' (n 75) 26; 'Call to prosecute Tasminex directors', *The Papua New Guinea Post-Courier* (Port Moresby, 4 March 1970) 6; 'Burnt fingers' (n 79); 'Tasminex chief hit in share report', *The Papua New Guinea Post-Courier* (Port Moresby, 14 October 1970) 7 ('Tasminex Chief Hit').
[81] Commonwealth, *Parliamentary* Debates, Senate, 19 March 1970, 490 (Lionel Murphy – Leader of the Opposition).
[82] Wilson, 'Tasminex' (n 75) 28.
[83] Ibid 8.
[84] The Company Secretary also informed the Exchange that Tasminex's chairman, Mr Singline, and manager 'were in the Mount Venn area but added that no information was then available': ibid 8.
[85] Ibid 8-9.
[86] 'Burnt fingers' (n 79).

The Inspector was critical of the action taken by the Tasminex Board in response to the publication of Mr Singline's comments, particularly the sufficiency of the statement released to the SEM on 2 February 1970. According to the Inspector, the statement was 'inadequate' because it did not 'directly and specifically refute the reported statements of the Board's chairman' and it 'did not state enough information to destroy the false market that then existed'.[87] Moreover, the Inspector stated that the situation that had arisen at the time 'required a much more direct and specific statement'.[88]

> The Board knew that the remarks reported to have been made by Mr Singline were irresponsible and that they had caused widespread comment and above all that they had obviously had a substantial effect on the market. I consider that it was the Board's duty to repudiate those statements, notwithstanding the sales that had been made by Mr Singline and his wife. I also consider that had this been done, many people would not have purchased Tasminex shares and the market would have been restored to a more realistic state much earlier than in fact happened.[89]

The Inspector asserted that even after the 2 February 1970 announcement had been made, the 'false market persisted for a further month',[90] at which point another announcement was issued by Tasminex on 3 March 1970, this time to the SSE.[91]

The Report contains details of sales of Tasminex shares made between 27 and 30 January 1970 by Mr Singline's wife and by two companies of which Mr Singline and his wife were the shareholders.[92] These sales were said to have 'realised an amount of $1,028,071.93'.[93] According to the Inspector:

> I am satisfied that Mr Singline was responsible for these sales being made and that the sales late in January were made despite advice which he was given by fellow directors not to sell at that time. I believe that he would have continued to sell had his fellow directors not

[87] Wilson, 'Tasminex' (n 75) 34.
[88] Ibid 35.
[89] Ibid.
[90] Ibid 34.
[91] The announcement stated that 'the Board of Directors regrets the unwarranted fluctuation of the shares on the stock market and advise shareholders to treat Mount Venn in its correct perspective – an exploration prospect of considerable promise, but as yet unproven' and 'the Board advises that shareholders minimise trading and transactions at this stage of exploration': ibid 9-10.
[92] Ibid 60.
[93] Ibid.

> intervened . . . I consider that Mr Singline must be severely censured for the sales which were made between the 27th and 30th January.[94]

Yet, despite the 'unjustified and irresponsible' comments made by Mr Singline about Tasminex that resulted in the dramatic increase in its share price, as well as the sale of Tasminex shares for which Mr Singline was found to be responsible that 'resulted in very large profits being made because of the very high prices obtained',[95] no action appears to have been taken to hold anyone to account. This was the case notwithstanding the statement attributed to the Victorian Attorney-General at the time that the Report would be 'immediately investigated' and a determination made on whether criminal proceedings would be 'taken against any person named in the [R]eport'.[96] Indeed, according to an article in *The Canberra Times*, the NSW Attorney-General was reported to have stated that 'the possibility of proceedings over the Tasminex report were "very remote"', although no reason was given as to why.[97]

Perhaps the below comments in the 11 February 1970 edition of *The Tribune* shed some light on the challenges faced at the time by law enforcement and prosecuting authorities when misconduct relating to the share markets was identified.

> Yet, while business is being done in multi-million dimensions, Governments have allowed the laws to trail far behind the needs of the times, with loopholes wide enough to drive a bulldozer through.
>
> As one example it was pointed out last week that if a company director puts his name to a false or misleading prospectus, he can go to jail (although not many do go there), but a director can say anything he likes, verbally, about his company's prospects with complete impunity.[98]

Moreover, in what appears to have been a swipe at Australia's stock exchanges, the same article contained the following comment:

---

[94] Ibid.
[95] Ibid 38.
[96] 'Tasminex Chief Hit' (n 80).
[97] 'Singline to quit as Tasminex chairman', *The Canberra Times* (ACT, 22 October 1970) 37.
[98] 'Sharkproofing' (n 73).

> The laxity of the Australian situation has caused concern even in London, where it is said that the Stock Exchange Council "regrets that standards on other Exchanges may be less stringent than demanded here."[99]

Once again, it appears that it was possible to manipulate domestic share markets with impunity.

(d) Nickelore NL

A 'Report of the Inspector' appointed under the *Companies Act* 1961 (NSW) 'to investigate and report on the circumstances under which any person' bought or sold shares in Nickelore NL in the period 17 December 1970 to 31 March 1971, dated 18 June 1971 (the Report), contained a number of findings that suggested market manipulation had occurred. By way of example, the Report states the following:

> After considering all aspects of the share trading activity in Nickelore shares between the period 31st December, 1970 and 9th February, 1971, I am of the opinion that a scheme was in operation for the purpose of maintaining and increasing, or attempting to maintain and increase the price of Nickelore shares over this period to enable the interested parties to dispose of their shareholdings at a substantial profit.[100]

The Report refers to a number Nickelore NL shares being sold on various days during March 1971 on behalf of one of the relevant people in circumstances where 'purchases of Nickelore shares were also made on his behalf at approximately the same price', although the volumes did not match.[101] According to the Inspector, 'this action' in 'these circumstances' may have constituted an attempt to 'raise the price of Nickelore shares on the market generally' in order to 'enable the sale of large numbers of those shares' at higher prices than would otherwise have been available.[102]

In light of the information contained in the Report, the Inspector made the following recommendation:

---

[99] Ibid.
[100] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-265, GA Bower, *Report of the Inspector appointed pursuant to section 178(1) of the Companies Act, 1961, of the State of New South Wales to investigate and report on the circumstances under which any person acquired or disposed or became entitled to acquire or dispose of shares in Nickelore NL*, 18 June 1971 [54].
[101] Ibid [67].
[102] Ibid [111].

> It is recommended that this report, together with all supporting documentation and working papers, be forwarded to the Crown Solicitor's Office for consideration as to whether or not the matters outlined in paragraphs 109 and 111 of this report constitute offences against Sections 70 and/or 71 of the Securities Industry Act, 1970, and if so, whether or not, on the evidence submitted, a case has been established sufficient to warrant the institution of criminal proceedings against one or more of the persons named in this report.[103]

Sections 70 and 71 prohibited 'False trading and markets' and 'Market rigging transactions', respectively.[104]

It appears, however, that no action was taken to prosecute the parties identified in the Report for apparently contravening ss.70 or 71 of the *Securities Industry Act* 1970 (NSW). A Memorandum titled 'Nickelore NL. Memorandum from the Commissioner for Corporate Affairs', dated 18 February 1977, indicates that the matter was forwarded by the Attorney General to the State Crown Solicitor's Office, which, in turn, forwarded the brief to Counsel, who 'advised against the institution of proceedings against any person'.[105]

As the abovementioned matters suggest, successfully prosecuting those found to have engaged in stock market manipulation and other types of market misconduct would seem to have been a perennial challenge in the domestic context during this period. Indeed, this was noted by the Rae Committee in its 1974 report, which included the below comments that resonate strongly with the above discussion.

> Even when the work of investigation is carried out there seems little prospect of speedy and effective prosecution. Where there is a possibility of prosecution as the result of investigation by an investigator, appointed under the Companies Act, by a Companies Office investigator, or by a fraud squad, cases are, for the most part, referred to the appropriate Crown Solicitor's Office. The delay in handling these cases by these offices is notorious and has recently been the subject of criticism in New South Wales. In our view, these Offices also do not have the expertise or manpower to handle cases in this area with which we are concerned.[106]

---

[103] Ibid [113].
[104] These provisions are located in Part VIII of the *Securities Industry Act* 1970 (NSW).
[105] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-265 (Z718/180), Commissioner for Corporate Affairs, 'Nickelore NL. Memorandum from the Commissioner for Corporate Affairs', 18 February 1977.
[106] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 15.29.

It is little wonder then that it would be another 20 years after the enactment of legislation that specifically criminalised market manipulation in four Australian States before the first successful prosecution for rigging the share market was secured in Australia.[107]

The investigations conducted by the Inspectors and the comprehensive reports they issued represented a dramatic change to prior decades, where manipulative activities occurring on domestic stock exchanges were primarily brought to the attention of the public by way of newspaper articles written by keen eyed and well-connected journalists. They also perhaps suggest the lack of will or ability (or both) on the part of regulators, crown prosecutors and the stock exchanges to confront this insidious activity occurring on the nation's share markets and take decisive and timely enforcement action against those responsible.

7.4 Legislation that explicitly criminalised stock market manipulation

One of the most important initiatives taken in Australia to combat domestic stock market manipulation, which would also appear to have represented a very significant symbolic gesture in the battle against this insidious activity, was the enactment of legislation by four state governments during the early 1970s. Amongst other things, this legislation specifically criminalised the act of manipulating share prices through fictitious transactions, false trading and market rigging, as well as the spreading of false rumours.[108] It was a very public, unambiguous and long overdue declaration that the rigging of share markets and other forms of misconduct on the nation's stock exchanges would no longer be tolerated. This initiative has been characterised as the 'first attempt to provide for a general regulation of the securities industry in Australia'[109] and, in NSW at least, was referred to as 'pioneer legislation'[110] and 'the first attempt that has ever been made in this Parliament to protect the public and to provide a fair and orderly market.'[111]

The enactment of this legislation was to be the start of a long and, at times, arduous journey in constructing and implementing a truly national regulatory framework for share markets in

---

[107] See section 7.7 below.
[108] R Baxt et al, *An Introduction to the Securities Industry Codes* (Butterworths, 2nd ed, 1982) 20 ('*An Introduction to the Securities Industry Codes*').
[109] Roman Tomasic, Stephen Bottomley & Rob McQueen, *Corporations Law in Australia* (Federation Press, 2nd ed, 2002) 558.
[110] New South Wales, *Parliamentary Debates*, Council, 19 March 1970, 4578 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council).
[111] New South Wales, *Parliamentary Debates*, Assembly, 17 March 1970, 4381 (Kenneth McCaw, Attorney-General).

Australia. A journey that traversed the challenges of attempting to achieve uniformity across multiple domestic jurisdictions, inter-state co-operation, co-operative schemes between the Commonwealth Government and the states, cross-vesting, referral of powers from the states to the Commonwealth Government, as well as constitutional challenges, on the way to becoming the national law prohibiting stock market manipulation that today resides in Division 2 of Part 7.10 of the *Corporations Act*.[112]

As noted in Chapter 2, a lot of the literature written on the enactment of legislation in Australia to criminalise stock market manipulation typically refers collectively to the 'minerals markets boom (and subsequent bust)',[113] or what Salsbury and Sweeney refer to as the 'nickel frenzy or Poseidon boom of 1968-1971',[114] the work of the Rae Committee that commenced in 1970 and the release of its report in 1974 and the legislative responses by NSW, Victoria, WA (in 1970) and Queensland (in 1971).[115] Generally speaking, much of the literature avoids delving into the detail of why the legislation was enacted at that particular point in time.[116] This was not always the case, however, and there is some literature that sheds some additional, albeit very limited, light in this area. Baxt et al, for example, state that the legislation was introduced in the four Australian jurisdictions as a result of 'a period of discussion and co-operative research by the various States'.[117] An article in the 30 June 1970 edition of *The Australian Law Journal* includes the following information:

> . . . Bills for a *Securities Industry Act* were introduced in New South Wales and Victoria in March and, with amendments in both States, have become law . . . Drafts of the legislation

---

[112] For an overview of the journey, which includes the evolution of current regulatory framework, see ch 1 'Regulating Securities and Markets' in Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis, 10th ed, 2021) ('*Securities and Financial Services Law*').
[113] Ibid 34.
[114] Stephen Salsbury and Kay Sweeney, *The Bull, the Bear & the Kangaroo: The History of the Sydney Stock Exchange* (Allen & Unwin, 1988) 345 ('*The Bull, the Bear & the Kangaroo*').
[115] *Securities Industry Act* 1970 (NSW); *Securities Industry Act* 1970 (Vic); *Securities Industry Act* 1970 (WA); *Securities Industry Act* 1971 (Qld). See, for example, *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30 [45] French CJ, Hayne, Crennan, Kiefel, Bell, Gageler and Keane JJ.
[116] See, for example, R Tomasic et al, *Corporation Law: Principles, Policy and Process* (Butterworths, 1990) 488; Alan Shaw and Paul Von Nessen, 'The Legal Role of the Australian Securities Commission and the Australian Stock Exchange' in Gordon Walker, Brent Fisse and Ian Ramsay (eds) *Securities Regulation in Australia and New Zealand* (LBC Information Services, 2nd ed, 1998) 161; Vivien Goldwasser, *Stock Market Manipulation and Short Selling* (CCH Australia Limited, 1999) 39-41 ('*Stock Market Manipulation*'); Roman Tomasic, Stephen Bottomley & Rob McQueen, *Corporations Law in Australia* (Federation Press, 2nd ed, 2002) 556-557 ('*Corporations Law in Australia*'); Black and Hanrahan, *Securities and Financial Services Law* 32-35.
[117] Baxt et al, *An Introduction to the Securities Industry Codes* (n 108).

> were before the Standing Committee of Attorneys-General which recommended similar legislation in all States in view of the then existing situation in the securities markets.[118]

Some additional insight is, for example, provided in the discussion that occurred in 1970 during the first and second readings of the *Securities Industry Bill* 1970 (NSW) recorded in *Hansard* where it was noted that '[e]xercise of control over the stock exchange has been under consideration for many years.'[119] By way of example, in March 1970, the following comment was made by The Hon. JBM Fuller (Minister for Decentralisation and Development and Vice-President of the Executive Council) during the first reading of the Bill:

> For some time now the Government has been concerned with the absence of statutory provisions in New South Wales regulating the formation and the control of stock exchanges and the activities of persons dealing in or connected with trading in securities. The bill is therefore submitted to the House, its major object being to ensure adequate protection is afforded the public in the field of stock market investment. The freedom from legislative restriction has been enjoyed by the Sydney Stock Exchange and its members and those operating on its fringes, in common with the London Stock Exchange and, with minor exceptions in Victoria and South Australia, the other States of the Commonwealth, but in contrast with the position that exists in the United States of America, the provinces of Canada, South Africa, New Zealand and India.
>
> The Attorney-General first took an active interest in this matter in 1967, when he set in motion lines of inquiry aimed at establishing whether or not legislative action in the areas referred to was called for.[120]

Moreover, The Hon. JBM Fuller also noted that the Attorney-General had begun discussions with the chairman and deputy chairman of the SSE and subsequently sought the views of his

[118] 'A Face Lift for The Companies Act' in 'Current Topics' (1970) 44(6) *Australian Law Journal* 245, 246. Presumably, the comment regarding the 'then existing situation in the securities markets' was referable to the mining boom that would eventually collapse in early 1970: see, for example, 'Asset Price Bubbles' (n 78).

[119] New South Wales, *Parliamentary Debates*, Council, 19 March 1970, 4565 (Robert Downing, Leader of the Opposition).

[120] New South Wales, *Parliamentary Debates*, Council, 18 March 1970, 4442 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council). A similar point was made by The Hon. JBM Fuller during the second reading of the Bill: 'Historically it goes back to 1967, when the Attorney-General of this State was given the authority of the Government to confer with the Attorneys-General of the other States of the Commonwealth to ascertain whether it would be possible to get uniform legislation in the States to handle the problems of the stock exchange and dealings in securities. Attempts have been made to see that uniform legislation is introduced throughout the Commonwealth, but naturally it takes some time to reach agreement on uniform legislation': New South Wales, *Parliamentary Debates*, Council, 19 March 1970, 4576-4577 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council).

colleagues on the standing committee of Australian Attorneys-General concerning the 'desirability' of introducing statutory control over the 'formation of stock exchanges and on the operation of stock and share brokers'.[121]

> Since then the matter has been under constant review by the committee and the departmental officers of the States who have conferred on numerous occasions with representatives of the Australian Associated Stock Exchanges.[122]

There is archival material available that records some of the machinations that were taking place behind the scenes in the lead up to the enactment of the securities industry acts in 1970 and 1971. For example, whilst it does not appear to be expressly linked to the creation of the legislation, a letter purporting to be from the 'Attorney-General N.S.W.', dated 9 June 1967, addressed to Mr KJ Polkinghorne, Chairman of the SSE, provides, arguably, an indication that the ability of the stock exchanges to effectively 'regulate' themselves was perhaps the subject of deliberation and possibly concern within the Government.[123] The starting premise of the letter was the absence of legislation that would enable the Government to impose conditions in connection with proposals that may be made to establish additional stock exchanges.[124] Towards the end of the letter, however, the following comments were made:

> May I suggest to you that the Exchange view the ventilation of the matters referred to in this letter as also providing an opportunity for a reappraisal by the Exchange of the role which the Government in this country has traditionally and, in my view advisedly allowed it to play in the regulation of the securities industry. I cannot conceive of so complex and delicately balanced an industry benefitting from undue legislative interference, but it is I

---

[121] New South Wales, *Parliamentary Debates*, Council, 18 March 1970, 4443 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council).

[122] New South Wales, *Parliamentary Debates*, Council, 18 March 1970, 4443 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council).

[123] There is no signature or name at the bottom of the letter, just a signature block with the title 'Attorney-General': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259, Letter (unsigned) purporting to be from the 'Attorney-General N.S.W.' to the Chairman of the Sydney Stock Exchange, 9 June 1967. The Attorney-General for NSW during this period was Sir Kenneth Malcolm McCaw (13/5/1965-3/1/1975): Parliament of Australia, 'List of Australian Attorneys-General' <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/attorneysgeneral#NSW> ('List of A-G's').

[124] As will be seen below, a letter from the Federal Attorney-General to Mr Butcher, the General Manager of the Sydney Stock Exchange in July 1968 also made reference to consideration being given by the Standing Committee of Commonwealth and State Attorneys- General to 'the possibility of formation of new Stock Exchanges': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Nigel Bowen, Federal Attorney-General to Mr Butcher (General Manager of the Sydney Stock Exchange), 18 July 1968.

> think essential that public confidence in the ability and willingness of the Exchange to enforce just and equitable principles in securities trading should not be impaired. I do not mean to suggest that there is any evidence of public disquiet in this respect. What I am concerned to discover is whether the rules of the Exchange are adequate for the purpose of protecting the public against the charges made from time to time – I do not know with what truth – that the price of shares can be manipulated on a small turnover and that there is an inherent conflict of interest involved in the combination in a single person of the functions of broker and dealer. It is an allied question as to the nature of the steps taken by the Exchange to detect dealings in securities on the basis of inside information. [125]

Mr Polkinghorne was requested to bring the various matters addressed in the letter to the attention of members of the Exchange's Committee 'for the purpose of advising [the Attorney-General] of their reaction.' The Attorney-General's final comment was that the views that may have been expressed were 'of the most tentative kind' and they had not yet been placed before his 'Cabinet colleagues.'[126]

An article in the 21 June 1968 edition of *The Canberra Times* reported that the day prior, a meeting of the Standing Committee of Federal and State Attorneys-General in Canberra had considered tighter control over the securities industry, which had been 'prompted by the growth of share dealings'.[127] The article contained a statement issued following the meeting, part of which is set out below.

> While ministers were conscious of the degree of effective control which existing stock exchanges have generally exercised over their own affairs, they felt that the extent of dealings and the circumstances which had arisen in recent times required the examination of the need for supporting legislation, particularly in those States where none now exists.[128]

---

[125] The letter includes the following request: 'Perhaps you will be good enough to draw my attention to any rules or practices of the Exchange which are pertinent to these matters and indicate the extent to which these would be made more effective by legislative sanctions': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259, Letter purporting to be from the Attorney-General to the Chairman of the Sydney Stock Exchange, 9 June 1967, 2.
[126] Ibid.
[127] 'Securities industry draft legislation planned', *The Canberra Times* (ACT, 21 June 1968) 13.
[128] Ibid. See also, for example, 'Stock exchange legislation plans get mixed reception', *The Canberra Times* (ACT, 22 June 1968) 16.

A letter purporting to be from Mr KG Elliott, Chairman of the Brisbane Stock Exchange,[129] dated 19 June 1968, addressed to The Hon. PR Delamothe,[130] Queensland Minister for Justice & Attorney General, in response to Mr Delamothe's prior letter of 6 June 1968 requesting comments on the 'Stock & Share-brokers' Act (1958 Victoria)', includes the below comments concerning stock market manipulation.

> Market manipulation and information to clients:
>
> We would not countenance any wilful non-disclosure or market manipulation. Should it come to our notice that either exists, the Committee would take a very firm stand and the Member concerned would be severely dealt with. Our Rules and Regulations give the Committee sufficient powers to deal with Members concerned . . . With regard to market manipulation, we would not be opposed to any legislation to govern wilful manipulation. This is a type of fraud which no respectable citizen would countenance.[131]

A letter from Nigel Bowen, the then Federal Attorney-General,[132] dated 18 July 1968, to Mr Butcher, the Chairman of the SSE, refers to the 'recent meeting in Canberra of the Standing Committee of Commonwealth and State Attorneys-General' and its consideration of a paper concerning 'possible legislative control of Stock Exchanges and the activities of stock and share brokers'.[133]

> The Ministers were conscious of the degree of effective control which existing Stock Exchanges have generally exercised over their own affairs. But they felt that the extent of dealings and the circumstances which had arisen in recent times required the examination of the need for supporting legislation, particularly in those States where none exists . . . In

[129] The letter is not signed and only contains a signature block that states '(KG Elliott) Chairman'. Mr KG Elliott was Chairman of the Brisbane Stock Exchange in the period 1967-1969: AL Lougheed, *The Brisbane Stock Exchange 1884-1984* (Boolarong Publications, 1984) 181.
[130] Mr Peter Roylance Delamothe was the Queensland Attorney-General for the period 29/9/1963 to 20/12/1971: 'List of A-G's' (n 123).
[131] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter purporting to be from KG Elliott, Chairman to The Hon. PR Delamothe, Minister for Justice & Attorney-General, 19 June 1968.
[132] Sir Nigel Hubert Bowen was the Federal Attorney-General in the period 14 December 1966 to 12 November 1969: 'List of A-G's' (n 123).
[133] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Nigel Bowen, Federal Attorney-General, to Mr Butcher, General Manager of the Sydney Stock Exchange, 18 July 1968.

> regard to some of the matters discussed, the Ministers felt that the possibility of the Exchanges exercising appropriate control over their own members should be examined.[134]

The above letter could be read to suggest that the Government's confidence in the stock exchanges' ability to adequately regulate the activities that occurred on their respective markets was waning.

A month later, Mr FJO Ryan, the Registrar of Companies, wrote to Mr Butcher concerning a number of matters that 'officers' wanted to discuss with the 'members of the sub-committee of the Australian Associated Stock Exchanges' (AASE).[135] In order to assist in that regard, Mr Ryan stated that he would 'set out complete extracts from the paper which the officers presented to the Standing Committee in Canberra' in respect of which the officers had been directed by the Standing Committee to confer with the AASE.[136] The letter includes the below comments.

> Market Manipulation
>
> The suggestions made from time to time that share prices can be manipulated upon a relatively small turnover and that an appearance of active trading in stock can be artificially stimulated lead officers to the view that some general statutory prohibitions might be effective to discourage these abuses.
>
> In this connection the officers have noted certain provisions of the Securities Exchange Act as referred to by Loss in "Securities Regulation" at pp.1542,1543.[137]

---

[134] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Nigel Bowen, Federal Attorney-General, to Mr Butcher, General Manager of the Sydney Stock Exchange, 18 July 1968.

[135] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Mr FJO Ryan, Registrar of Companies, to Mr DM Butcher, General Manager of the Sydney Stock Exchange, 21 August 1968. The AASE was formed in 1937 and, according to Carew: 'loosely brought together [the six capital-city-based exchanges (Melbourne, Perth, Sydney, Adelaide, Brisbane, Hobart)] to promote the interests of their members and oversee greater consistency in listing rules for public companies': Edna Carew, *National Market National Interest: The drive to unify Australia's securities markets* (Allen & Unwin, 2007) 3.

[136] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Mr FJO Ryan, Registrar of Companies, to Mr DM Butcher, General Manager of the Sydney Stock Exchange, 21 August 1968.

[137] Ibid. The letter also states the following: 'A provision along the lines of s.9(a)(4) referred to above would deal, and it is thought, deal more effectively with the situation to which the proposed adaptation of s.176 of the Crimes Act (NSW) referred to above under "Control of Brokers Circulars" is addressed and render that proposal unnecessary.' Section 9(a)(4) deals specifically with the making of false or misleading statements to induce the purchase or sale of securities. However, there is no section of the letter titled "Control of Brokers Circulars". At this point in time, s.176 of the *Crimes Act* 1900 (NSW) made it an offence for directors or officers of companies to make, circulate, etc, fraudulent statements with intent to induce a person to become a shareholder, etc.

The letter then sets out the wording from s.9(a)(1), 9(a)(3) and 9(a)(4) of the *Securities Exchange Act* 1934 (US).[138] To the extent that the Government was looking for guidance on how to craft specific legislation addressing stock market manipulation, the United States would appear to have been an obvious source for inspiration, particularly given its history of dealing with misconduct on its stock exchanges and the fact that the legislation implemented to combat market manipulation had been in place at that point for over 30 years.

It appears that a meeting was held at the SSE on 28 August 1968 between government representatives and officers of the AASE after 'Departmental Officers had been directed by the Standing Committee to raise a number of matters with the Stock Exchanges.'[139] The matters in question were referred to as the matters set out in the above letter to Mr Butcher, dated 21 August 1968.[140] The record of the meeting (the Record) contains, relevantly, the extract from the letter to Mr Butcher, including the sections from the US *Securities Exchange Act*. The Record states that Mr Looker (AASE President) read Melbourne Rule 101 to the meeting,[141] the wording of which is as follows:

> 101. A Member shall not make a fictitious transaction or give an order for the purchase or sale of securities the execution of which would involve no change of ownership, nor shall he execute such an order with knowledge of its character.[142]

According to the Record, Mr Looker suggested that a rule based on Rule 101, as well as legislation similar to s.9(a)(4) of the *Securities Exchange Act* 'would go a long way to dealing with the problem'.[143] The meeting considered the three sections from the *Securities Exchange Act* to 'ascertain whether there could be an adaptation in Australia of the US provisions' and

---

[138] Ibid.
[139] Attendees included representatives from the AASE, the Sydney and Melbourne stock exchanges, Federal Attorney-General's Department, Adelaide Attorney-General's Department, Office of the Registrar of Companies for Perth and Sydney and the Solicitor General's Office (as well as a 'Parliamentary Draftsman' from Melbourne): Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, 'Notes on Discussions Held at the Sydney Stock Exchange Limited on Wednesday, 28th August, 1968 at 10am' ('Notes on Discussions Held at SSE').
[140] Ibid.
[141] As will be discussed in Chapter 8, this was the earliest domestic exchange rule located that explicitly proscribed a particular species of stock market manipulation. Unfortunately, no information was discovered during the research to confirm when the rule was first introduced and why.
[142] 'Notes on Discussions Held at SSE' (n 139).
[143] Ibid.

Mr Looker indicated that the Stock Exchanges would 'look into the matter to see whether anything should be done.'[144]

By way of a letter, dated 20 December 1968, addressed to Mr DM Butcher, General Manager of the SSE, Mr FJO Ryan, the NSW Registrar of Companies, sent a copy of a 'rough draft' of provisions that were to be included in a 'draft Bill to be submitted to the Standing Committee of Attorneys-General'. According to Mr Ryan, the provisions would be 'inserted in that part of the Bill dealing with "Market Manipulation"'.[145]

> You will observe that those sections of the draft identified by the marginal notes "False trading and markets" and "False or misleading statements about marketable securities" are similar to the provisions which I brought to the notice of your Chairman and Vice Chairman at a meeting on 12th March, 1968. In a letter of 10th April, 1968 the Chairman intimated that the Committee of the Exchange would not oppose legislation of this nature.[146]

The letter states that the officers dealing with this matter were still 'apprehensive that the provisions may in terms apply to transactions which are not morally reprehensible' and, therefore, would not be 'an apt subject for legislation.'[147] The letter requested Mr Butcher to 'cause a careful analysis to be made' of the draft provisions 'in the light of the practical operation of a stockbroker's business' and to advise what types of transactions, if any, that 'although falling within the terms of any of the provisions are not regarded by the Committee of the Exchange with disfavour.'[148] An attachment to the letter includes four clauses, titled 'False trading and markets', 'Effect transactions to raise or lower market prices', 'Effecting market price by fictions' and 'False or misleading statements about marketable securities', as

[144] It was noted that 'it would be necessary for the Companies Act to incorporate the provisions covered by the SEC Regulations': ibid.
[145] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259, Letter from Registrar of Companies to DM Butcher, 20 December 1968, including attachment containing 'a copy of a rough draft of provisions which are to be included in a draft Bill to be submitted to the Standing Committee of Attorneys-General' ('RoC to DMB 20Dec1968').
[146] Ibid.
[147] Ibid.
[148] Ibid. Mr Butcher's response to Mr Ryan's letter notes that there appeared to be nothing in the proposed clauses that would 'inhibit ethical dealings in the market or outside it', although there was one clause ('Effect transactions to raise or lower market prices') that he suggested be amended to make it clear that 'normal trading in securities' would not be affected: In closing, Mr Butcher states the following in his letter: 'Operations intended to wilfully mislead buyers or sellers into acquiring or disposing of their securities appear to be the main problem and some wording incorporating that concept may be appropriate': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-72, Letter from Mr DM Butcher to Mr FJO Ryan, 5 February 1969.

well as sections titled 'Interpretation' and 'Offences and Penalty'.[149] The description of manipulative conduct in these clauses is broadly aligned with the provisions that were subsequently contained in, for example, ss.70-73 in Part VIII of the *Securities Industry Act* 1970 (NSW).

The correspondence between the exchanges and the regulator continued and eventually securities industry legislation that explicitly criminalised stock market manipulation was enacted in four states after more than 100 years of share trading in Australia. Although it had taken the federal and state governments a considerable period of time to begin constructing a regulatory framework to combat stock market manipulation and other forms of market misconduct on domestic stock exchanges, it would seem they were, to a very large extent, the driving force behind the stock exchanges finally having to focus their attention and efforts on matters pertaining to the maintenance of market integrity. The imperative to do so would be increased very considerably once the inner workings of the stock exchanges became the subject of intense and unrelenting scrutiny as a result of the work of the Rae Committee.[150]

7.5 The Rae Committee

Yet another seminal chapter in the history of securities market regulation in Australia, and a key step in combating stock market manipulation and other market misconduct, was the work undertaken by the Rae Committee and the report it published in July 1974 (Rae Report),[151] described by Baxt as 'monumental'.[152] In the 20 July 1974 edition of *The Canberra Times*, the Rae Committee was said to have:

> reported widespread abuses and malpractices in the securities industry in Australia and provided a long chronicle of duplicity, share rigging, insider trading and general deception of private investors.[153]

---

[149] 'RoC to DMB 20Dec1968' (n 145).
[150] The Committee was originally chaired by Sir Magnus Cormack, who later resigned and was replaced by Mr Rae: Robert Baxt, *The Rae Report – Quo Vadis?* (Butterworths, 1974), 1 ('*The Rae Report - Quo Vadis*').
[151] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2). There were three interim reports issued by the Rae Committee prior to its 'massive four volume final report' being published in 1974: Tomasic, Bottomley and McQueen, *Corporations Law in Australia* (n 116) 22.
[152] Baxt, *The Rae Report - Quo Vadis* (n 150) 2.
[153] 'Pall cast by Rae Report', *The Canberra Times* (ACT, 20 July 1974) 16.

Although not without its critics,[154] including the former Chairman of the SSE,[155] John Valder, the Rae Report was the result of the first review of certain aspects of the domestic securities industry 'ever conducted in Australia'.[156] Indeed, it has been remarked that the Rae Report was the:

> first (and only) major document in this country which analysed the workings of the securities market, which examined problems encountered by the regulators, both official and unofficial, of that market during a time of extreme pressure and which posed solutions to those problems.[157]

In March 1970, the then Labor Senator, and future High Court judge, Lionel Murphy established a Senate Select Committee to 'examine the securities industry and the operations of the stock exchanges in the wake of the excesses of the mining boom', which had attracted large numbers of small and first-time investors.[158] The activities of company directors, promoters, stockbrokers and others were claimed to have 'fleeced investors of millions of dollars in the mining boom.'[159] On 19 March 1970, the Senate resolved the following:

> That a Select Committee be appointed to inquire into and report upon the desirability and feasibility of establishing a securities and exchange commission by the Commonwealth either alone or in co-operation with the States and the powers and functions necessary for

---

[154] 'In some respects the work of the committee was disappointing, largely because it was a part time committee, inadequately financed and furnished with inadequate resources': R Baxt, HAJ Ford and GJ Samuel, *An Introduction to the Securities Industry Acts* (Butterworths, 1977) 17 ('*An Introduction to the Securities Industry Acts*'); Peter Brown, 'Recession and Cure', *The Australian Jewish Times* (Sydney, 19 September 1974) 8.

[155] According to an archival document purporting to contain extracts from an address given by Mr J H Valder, Chairman of the Sydney Stock Exchange Limited, '[p]erhaps I was prejudiced, but I was never an admirer of the Rae Report, and still remain highly critical of it. But it is essential that legislation not be based simply on isolated or exceptional events or on the passing judgments of particular individuals': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-079 (Z718/073), document titled 'Extracts from address given by Mr J H Valder, Chairman, The Sydney Stock Exchange Limited, at a seminar on the Securities Industry Acts 1975 sponsored by the Commercial Law Association and the Securities Institute of Australia, held at the Wentworth Hotel, Sydney, on Tuesday, 21st September 1976', 5. Mr Valder reportedly also said the following: 'only some of the charges made in the Rae Report were found to be proved' and in 'some circumstances the Senate committee did not always seem to be in possession of all the facts.' Moreover, this 'had led it to "place constructions on certain events and transactions which do not appear to be justified by the full facts"': '$67,500 in fines for members of Exchange', *The Canberra Times* (ACT, 5 October 1974) 1.

[156] James N Feros and Richard BW Watters, *Index to the Report on Australian Securities Markets and their Regulation, or "The Rae Report"* (West Publishing Corporation Pty Ltd, 1974) 3.

[157] Baxt, Ford and Samuel, *An Introduction to the Securities Industry Acts* (n 154) 17.

[158] Commonwealth, *Parliamentary* Debates, Senate, 19 March 1970, 489-517 (Lionel Murphy – Leader of the Opposition); 'Parties Agree. Senate to look at share deals', *The Canberra* Times (ACT, 20 March 1970,)1; Stephen Bottomley et al, *Contemporary Australian Corporate Law* (Cambridge University Press, 2nd ed, 2021) 22.

[159] 'Stock Swindles', *The Tribune* (Sydney, 23 July 1974) 3; '200-page draft Bill', *The Canberra Times* (ACT, 19 July 1974) 1.

> such a commission to enable it to act speedily and efficiently against manipulation of prices, insider trading and such other improper or injurious practices as the Committee finds have occurred or may occur in relation to shares and other securities of public companies, and to recommend generally in regard to the foregoing such legislative and administrative measures by the Commonwealth as will, having regard to the constitutional division of legislative power in Australia, enable the utmost protection of members of the public and the national interest.[160]

From the time of its first meeting on 21 April 1970 until the publication of its report in 1974, the Rae Committee met on 167 occasions, received evidence at 86 meetings (held mainly in Canberra, but also in Perth, Sydney and Melbourne) from 142 witnesses (including, amongst many others, regulators, stockbrokers, stock exchange members and executives and financial journalists) that was recorded on more than 12,000 pages of typed transcript.[161] The findings of the Committee as set out in its report are not for the faint hearted and remain a damning indictment on the regulation and supervision of Australia's stock exchanges during the late 1960s and early 1970s.[162]

The opening paragraph of Chapter 8 of the Rae Report, titled 'Runs, Pools and Rumours', which contains details of the 'manipulative practices' uncovered by the Rae Committee, provides an alarming summary of the incidence of market manipulation in the domestic context during the period under consideration.[163]

> Testimony given by witnesses with a close knowledge and experience of the share market, together with our own investigations has convinced the Committee that the deliberate manipulation of the market for listed shares on the organised exchanges has at times been widely practised in Australia. Although this manipulation has been known to prominent market traders, the practices have seldom been exposed publicly. They have not been effectively regulated.[164]

The 'manipulative devices' specifically discussed in this chapter of the Rae Report, 'pools', 'churning' and 'runs', were all regarded by the Rae Committee as being:

---

[160] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) v.
[161] Ibid vii.
[162] Paul Constable, 'Ferocious Beast or Toothless Tiger? The Regulation of Stock Market Manipulation in Australia' (2011) 8 *Macquarie Journal of Business Law* 54, 67.
[163] According to FitzGerald, market manipulation and insider trading were 'rife in Australia': Jeffrey FitzGerald, 'Legal Studies "Down Under"' (1976) 3 *The American Legal Studies Association Forum* 17, 22.
[164] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 8.1.

designed to stimulate artificially market turnover and share prices for the purpose of profiting, at the general public's expense, from the distortions inflicted on the market.[165]

The Rae Committee received evidence that 'pools' had been organised by groups of wealthy investors and managed by brokers 'during the years of the mineral share boom'[166] and share traders operating in Australian markets had engaged in 'churning' in 'recent years'.[167] The Committee concluded that the ''run' type of manipulation', the device referred to by 'most witnesses who discussed manipulative devices',[168] had been 'practised to an appreciable extent in recent years'.[169] As is apparent from these comments, as well as the contents of the Rae Report itself, the focus of the Rae Committee was limited mainly to the period of the 'mineral share boom', not the preceding circa 100 years that share trading had been conducted on domestic stock exchanges. According to the then Chairman of the SSE, John Valder, in a 1975 article in the *Australian Stock Exchange Journal*, the Committee's focus on the events of the mining boom was problematic.

> It goes without saying that if the Senate Committee had been asked to investigate almost any other three or four year period in the hundred year history of the stock exchanges it would have come up with a very different report than that which it did by confining itself solely to the mining boom.[170]

Yet, many of the findings in the Committee's report would appear to have been equally as relevant long before the commencement of the mining and minerals boom of the late 1960s. Indeed, the Rae Committee appears to have alluded to this in the following comment from its report:

> Such evidence as is available about previous periods of high and rising activity in company securities in Australian markets suggests that similar patterns of abuse and shortcomings in disclosure have occurred before, though sometimes concentrated in other areas of the securities market.[171]

---

[165] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 8.1.
[166] Ibid.
[167] Ibid. 8.2.
[168] Ibid 8.5-8.6.
[169] According to the Rae Report, this conclusion was based not only on the formal testimony of witnesses, but also on 'other evidence of a specific and confidential character' received by the Rae Committee: ibid 8.14.
[170] John Valder, 'Can the Community Afford This Bill?' (1975) 4(2) *Australian Stock Exchange Journal* 14, 15.
[171] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 15.3.

Moreover, according to Sykes, 'mining-share booms are no strangers to Australia' and whilst the 'Poseidon boom of 1969-1970 was the biggest yet', there had been 'booms in mining shares in every decade of the last half of the 19th century'.[172]

The intense and unrelenting focus of the Rae Committee on the operation of the domestic securities markets essentially acted as the 'sunlight' in US Supreme Court Justice Louis Brandeis' oft-quoted phrase in exposing the misconduct that was occurring on domestic stock exchanges, as well as the extent to which the exchanges and regulators had fallen short in terms of their oversight and supervision of poor and sharp practices.[173] The State Companies Offices, for example, were said to have only recently 'developed significant concern with the stock markets, brokers and others in the securities industry', their principal functions up to that point having been 'to receive and process incorporating documents and returns' and handle inquiries rather than investigate or conduct surveillance on often complex trading activities on the nation's securities markets.[174] Indeed, it was found that the Companies Offices did not have the investigatory staff available to ensure that 'the major work of investigating possible abuses in connection with public companies and the securities market has been carried out comprehensively and expeditiously.'[175] Moreover:

> Evidence and information received by this Committee disclosed an alarming number of public company and stock market situations which should have been, but were either not, or not promptly, investigated.[176]

Even where investigations were carried out, the Rae Report identified several concerns in relation to securing a 'speedy and effective prosecution'.[177] Moreover, in the context of having received evidence that led it to conclude that the 'run' type of manipulation had been 'practised to an appreciable extent in recent years' in Australia, the Committee made the following comments:

---

[172] Trevor Sykes, *The Money Miners: The Great Australian Mining Boom* (Allen & Unwin, 1995) 1 ('*The Money Miners*').
[173] 'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman': Brandeis, Louis D, 'What Publicity Can Do', *Harper's Weekly*, 20 December 1913, 10.
[174] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 15.27.
[175] Ibid 15.28.
[176] Ibid.
[177] Ibid 15.29.

> Nevertheless, we cannot point to any successful prosecutions of individuals concerned in these practices, and the rare attempts which have been made to initiate legal proceedings in this area have been abortive. The Committee is aware that several cases of apparent manipulation of the markets have been referred to State authorities, but although periods of about three years have passed in each of these instances, nothing has been heard in public about what the authorities discovered, either in the form of a report on the specific dealings or in the form of a general statement on the kind of practices involved.[178]

This may have been one of the factors that led Sykes to observe that during this period the 'odds against being convicted for any malpractice' were 'high'.[179]

The domestic stock exchanges were also the subject of a good deal of criticism in the report, with the Committee concluding as follows:

> In sum, we consider that the exchanges have neither the jurisdiction, the power, the disinterested will and lack of bias nor the appropriate full-time professional approach to warrant the assumption that they are the principal and best regulators of the securities market and their members. We have no doubt that there will need to be a substantial self-regulatory role for stock exchanges. However, in our opinion a body with broader authority and greater sympathy with the public interest is required in order to stimulate the stock exchanges to carry out their self-regulatory functions.[180]

The Rae Committee made its views very clear throughout its report on what it had observed during the course of its inquiries and the failings it had identified, which included the below examples.

> As the foregoing chapters of the Report have made clear, this Committee is seriously concerned about the inadequacy and ineffectiveness of the present regulation of the Australian securities market . . .[181]

[178] Ibid 8.14-8.15.
[179] Sykes, *The Money Miners* (n 172) 373.
[180] Senate Select Committee, *Australian Securities Markets and their Regulation* (n 2) 15.20.
[181] Ibid 15.1.

[And]

> There has been considerable evidence of insider trading, manipulation and other abuse in the stock markets.[182]

[And]

> We found in the securities markets a high level of abuse and much behaviour falling short of minimum acceptable standards of fair dealing, competence and responsibility.[183]

[And]

> After examination of the existing body of law, rules and administrative practices, we have concluded that these fail to provide adequate and effective regulation. In our view there is a need for a new approach to securities regulation in Australia.[184]

[And]

> Even where the exchanges have formulated rules on matters of regulatory significance, we have found a conspicuous failure to ensure the detection of breaches and to enforce the rules. There has been an excessive and optimistic reliance on the 'grapevine' to bring breaches to light. The Committee was repeatedly informed, either in evidence or in the course of other discussion, that if a broker were engaged in malpractices these dealings would be discovered by other members and reported to the exchange . . . In the light of our observation of numerous detailed instances of objectionable practices which would not have been revealed but for this inquiry conducted under the investigatory powers of the Senate, we have no confidence in that assumption.[185]

The deleterious effect on the securities market of the misconduct and inadequate regulation identified in its report was acknowledged by the Rae Committee.

> It must also be noted here that securities markets will not, in the long run, develop or maintain any reasonable standards of efficiency in gathering financial savings and distributing them to productive uses in industry if those who run – and operate in – the market allow sharp and manipulative practices to develop and continue unchecked. Many

[182] Ibid.
[183] Ibid 15.31.
[184] Ibid.
[185] Ibid 15.14-15.15.

> institutions and individuals must, in such circumstances, be expected to direct their funds elsewhere.[186]

It would appear that such concerns were warranted based on the results of a survey in the United Kingdom of 'leading bankers, brokers and investment houses' referred to in a 1971 article by Rae.[187] They showed that a 'very high percentage' of those surveyed believed that 'uniform and effective regulation of the industry in Australia' was 'essential to the restoration of confidence in share investment in Australian companies.'[188] According to Rae, whilst there was no doubt about Australia's growth and development prospects and its 'attractiveness for investment', it appeared that the view expressed in an article in the *Financial Times* was 'widely held', 'Australia's securities industry stands discredited in the eyes of many people overseas'.[189]

The very painful and costly lessons from the experience in the United States that led to the enactment of the 'New Deal Statutes' in 1933 and 1934,[190] which were intended to prohibit 'some of the more spectacular extravagances of 1928 and 1929',[191] appear to have been lost on domestic stock exchanges and governments. These 'extravagances' included '[p]ool operations, wash sales, the dissemination of tips or patently false information', as well as 'other devices for rigging or manipulating the market'.[192] Indeed, according to the Rae Committee:

> Many of the promotional and manipulative techniques we observed have been well known and documented in other industrialised countries and have long ago brought forth regulatory responses by governments. Some were known at the time of the 'South Sea Bubble' in Britain in the early eighteenth century. Many of them were described in the U.S. Senate Committee on Banking and Currency's inquiry into the Stock Exchange Practices which followed the Wall Street Crash of 1929.[193]

---

[186] Ibid 15.2-15.3.
[187] No details are provided in Rae's article of the survey in question: Peter Rae, 'Moulding the Securities Industry for Tomorrow', *The Australian Accountant*, December 1971, 489.
[188] Ibid.
[189] Ibid.
[190] *Securities Act of 1933*, 15 USC §§ 77a-77m (1933) and *Securities Exchange Act of 1934*, 15 USC §§ 78a-78jj (1934), respectively. According to Avgouleas, these statutes 'constituted the twin pillars of the US regulatory system for securities markets' and 'have provided a strong guiding influence in the drafting of securities regulation in the whole of the Western world': Emilios Avgouleas, *The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis* (Oxford University Press, 2005) 175.
[191] John Kenneth Galbraith, *The Great Crash 1929: The classic account of financial disaster* (Penguin Books, 1975) 183.
[192] Ibid 184.
[193] Senate Select Committee, *Australian Securities Markets and their Regulation* (n 2) 15.3.

Having regard to the contents of the preceding chapters of this thesis, however, the findings of the Rae Committee are not altogether surprising. Indeed, stock exchanges and governments do not appear to have made combating market manipulation a priority over the previous 100 or so years that share markets had been operating in Australia, notwithstanding the valuable lessons that could have been learnt from the US experience, for example. According to one observer, who headed an organisation representing small and middle-size investors, it was 'amazing that the stock exchanges had waited for the [Rae Committee] to uncover so much dirt before doing something themselves'.[194]

Nonetheless, the work of the Rae Committee, including the publication of its hard-hitting, 'warts and all' report, was, arguably, the catalyst for the many improvements to the regulation of domestic securities markets that were to gradually develop over the following decades. The two key recommendations from the Rae Report, 'nationally uniform regulation' and 'a national regulatory body',[195] have now been in place in Australia for some time.

Perhaps the final word on the long overdue intervention of Government in regulating the stock exchanges should be left to Mr John Valder, the then Chairman of SSE, who, in 1976, made the below comment when giving an address at a seminar on the Securities Industry Acts.

> But I think there is now a widespread recognition that there must be some form of statutory control that goes beyond the "paper tiger" powers of the stock exchanges . . .[196]

This observation from Mr Valder, a self-described critic of the Rae Report,[197] is somewhat ironic as it could be construed as a tacit and belated admission of the inadequacy of the stock

---

[194] Mr Gordon Brun quoted in 'Laws in States 'futile'', *The Canberra Times* (ACT, 20 July 1974) 15. As a result of the allegations made by the Rae Committee concerning Members of the Sydney Stock Exchange (SSE), the SSE conducted an investigation into those allegations. In a Circular issued to Members, dated 4 October 1974, the SSE advised that only some of the 'charges were found to be proved and accordingly fines totalling $67,500 [were] imposed': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N210/32-36, Book N210/35, The Sydney Stock Exchange Limited, 'Circular to Members No.61', 4 October 1974.

[195] Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 16.7 and Chapter 16 generally. More specifically, the Rae Committee recommended that a 'new national regulatory body should be established by the Federal Government': at 16.14.

[196] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-079, Z718/073, document titled 'Extracts from address given by Mr J H Valder, Chairman, The Sydney Stock Exchange Limited, at a seminar on the Securities Industry Acts 1975 sponsored by the Commercial Law Association and the Securities Institute of Australia, held at the Wentworth Hotel, Sydney, on Tuesday, 21st September 1976', 2.

[197] Refer to the comments in n 155.

exchanges' ability to exercise effective supervision over their markets and members. Government intervention and oversight of the stock exchanges was well and truly overdue.

7.6 Enforcement action ramps up, slowly

Following the release of the Rae Report, the many abuses that had occurred on domestic stock markets had finally been uncovered for all to see and something had to be done in response. This is not to say, however, that things changed overnight. There was, for example, no sudden flood of regulatory enforcement outcomes or proliferation of disciplinary action taken by the stock exchanges relating to manipulative activities. Indeed, as discussed earlier, the paucity of regulatory enforcement action taken by the authorities against malefactors allegedly engaging in stock market manipulation and other form of market misconduct was the subject of adverse comment by the Rae Committee in its report.[198] It has also been a topic of discussion in the literature, where, for example, corporate affairs regulation generally in the 1960s to 1980s was said to have been 'characterized by severe understaffing, massive backlogs, and political interference'.[199] Australian business regulatory agencies, such as the State CACs and the NCSC, amongst others, were claimed to be 'of manners gentle', where 'any kind of adversarial encounter with industry [was] commonly only undertaken as a last resort'.[200] Indeed, Freiberg's below comments appear to be broadly in agreement.

> Corporate Affairs officers do not see themselves as being in the business of prosecuting criminals . . . a major reason for the lack of rigorous enforcement may well be that the ideology of "regulation" which prevails in agencies such as the Corporate Affairs Commission is not consonant with an aggressive prosecution/deterrent orientation.[201]

Yet, matters involving activities that constituted an intentional interference with the interplay of genuine supply and demand in domestic share markets slowly began to be taken before the courts. The early cases related to action taken in connection with the dissemination of false rumours and misleading information under provisions in the securities industry legislation that

---

[198] See section 7.3 above.
[199] See, for example, Peter Grabosky and John Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies* (Oxford University Press, 1986) 10 ('*Of Manners Gentle*'). See also generally, Arie Freiberg, 'Abuse of the Corporate Form: Reflection from the Bottom of the Harbour' (1987) 10 *University of New South Wales Law Journal* 68 ('Bottom of the Harbour'); Tony Hartnell, 'Regulatory Enforcement by the Australian Securities Commission: An Inter-Relationship of Strategies' in Peter Grabosky and John Braithwaite (eds), *Business Regulation and Australia's Future* (Australian Institute of Criminology, 1993) 25 <https://www.waveflux.net/wp-content/uploads/2015/10/business-reg.pdf>.
[200] Grabosky and Braithwaite, *Of Manners Gentle* (n 199) 1.
[201] Freiberg, 'Bottom of the Harbour' (n 199) 72-73; cf Hartnell (n 199) 25.

broadly correspond with s.1041E of the *Corporations Act* 2001 (Cth). By way of example, in *R v McMahon*[202] five directors of Mineral Securities Australia Ltd (MSAL) (a company that had been the subject of considerable scrutiny in the Rae Report)[203] had been charged under s.176 of the *Crimes Act* 1900 (NSW) with having concurred in publishing a false statement concerning the company's half-yearly profit (to 31 December 1970) and s.73 of the *Securities Industry Act* 1970 (NSW) with having disseminated false information 'with respect to securities'. It was an offence under s.73, from which s.1041E of the *Corporations Act* 2001 (Cth) was partly derived,[204] for a person to make a statement or disseminate any information with respect to any securities when they knew, or had reasonable grounds for knowing, that it was false or misleading in a material particular.[205]

The directors had purported to sell over five million Robe River Ltd (RRL) shares held by MSAL to a firm of 'stock and share brokers', Hattersley & Maxwell (H&M), which acted as principal in the transaction, at a higher price than MSAL had paid for the shares, thereby generating an apparent profit.[206] In the accounts of MSAL, the profit on the sale of the RRL shares to H&M was shown as $6,630,000.[207] The purported sale was executed on the understanding that H&M would sell the shares back 'in the next few days' at 'substantially the same price' to Mineral Securities Investments Pty Ltd (MSIPL), a wholly owned subsidiary of MSAL.[208] H&M subsequently purported to sell the RRL shares back to MSIPL.[209] However,

---

[202] (1976) 2 ACLR 543. The facts relating to this case have been sourced from the appeal judgment, *R v M* [1980] 4 ACLR 610 ('*R v M*').
[203] See, for example, Chapter 14, titled 'Minsec' in Senate Select Committee*, Australian Securities Markets and their Regulation* (n 2) 14.1 onwards.
[204] According to Black, Baxt and Hanrahan, s.1041E was partly derived from s.73 of the *Securities Industry Act* 1970 (NSW) and partly derived from s.94 of the *Securities Industry Act* 1971 (Qld) and, up '[u]ntil 2001, the provision appeared in s 999 of the Corporations Law': Black and Hanrahan, *Securities and Financial Services Law* (n 112) 329. Tomasic, Bottomley and McQueen referred to s.73 of the *Securities Industry Act* 1970 (NSW) as an 'earlier version of s1041E': Tomasic, Bottomley and McQueen, *Corporations Law in Australia* (n 116).
[205] Section 73 of the *Securities Industry Act* 1970 (NSW) provided as follows: 'A person shall not with respect to any securities, make any statement or disseminate any information which at the time it is made or disseminated, he knows or has reasonable grounds for knowing is false or misleading in a material particular.' 'Securities' were defined in s.4 of the *Securities Industry Act* 1970 (NSW) to mean: 'debentures, funds, stocks, shares or bonds of any Government or of any Local Government authority or of any body corporate or unincorporate and includes any right or option in respect thereof and any interest as defined in section seventy-six of the Companies Act 1961'.
[206] *R v M* (n 202) 626 (Street CJ, Lee and Slattery JJ).
[207] Ibid.
[208] Ibid 628 (Street CJ, Lee and Slattery JJ).
[209] Ibid 626 (Street CJ, Lee and Slattery JJ).

no RRL scrip or money 'changed hands' with respect to the purported sale and re-purchase transactions.[210] The Crown claimed that:

> the falsity of the profit statement charged in the indictment arose essentially because the profit therein asserted, namely a profit "in excess of $3,500,000" was arrived at by including "profit" made on the sales of these shares. Yet, said the Crown, there was no such profit at all, because the sales were shams, and if this was so the whole of the profit referred to, "in excess of $3,500,000" was obliterated and there was a substantial loss.[211]

The trial judge held that the sales and purchases were genuine and not 'shams' as alleged by the Crown and directed the jury to acquit all of the accused on both counts of the indictment.[212] On appeal, however, the NSW Court of Criminal Appeal held that the trial judge 'fell in error in determining as a matter of fact that dealings were not sham transactions'.[213] Rather:

> it was for the jury to determine in the light of the whole of the evidence whether it was the intention of all the parties to the dealings in the Robe River shares that the purported transactions should or should not give rise to the rights and obligations which they appeared to create.[214]

Similarly, in *R v Wright*,[215] the director of a listed mining company, Wattle Gully Gold Mines NL (WGGM), appealed against his conviction for contravening s.110 of the *Securities Industry Act* 1975 (Vic) on 30 December 1976 in relation to a letter he had authorised for delivery that

---

[210] Ibid 628 (Street CJ, Lee and Slattery JJ).
[211] Ibid 609 (Street CJ, Lee and Slattery JJ).
[212] Ibid 624 (Street CJ, Lee and Slattery JJ). All of the accused were acquitted at the direction of Taylor CJ at CL on each of the charges: ibid 613 (Street CJ, Lee and Slattery JJ).
[213] The Court referred to *Snook v London & West Riding Investments Ltd* [1967] 1 All ER 518 where Diplock LJ had considered what was meant by the word "sham" in the context of a transaction. He said the following: 'I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual rights and obligations (if any) which the parties intend to create. One thing I think, however, is clear in legal principle, morality and the authorities . . . that for acts or documents to be a 'sham', with whatever legal consequences follows from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating.'
[214] *R v M* (n 202) 628 (Street CJ, Lee and Slattery JJ). According to the 4 July 1979 edition of *The Tribune*, the directors could not be charged again since the trial judge had 'acquitted them without allowing the jury to decide the case': A Special Correspondent, 'The strange case of ex-Justice Taylor', *The Tribune* ('Sydney, 4 July 1979) 2. Instead, the Attorney-General submitted a number of questions of law that had arisen from the trial judge's directions for determination by the NSW Court of Appeal: *R v M* (n 202) 613 (Street CJ, Lee and Slattery JJ). The questions and answers are set out at 638.
[215] [1980] VR 593.

day to the SEM for publication.[216] The letter contained statements in relation to a consultant geologist's preliminary report prepared for the company that were not consistent with the contents of that report and which were found to be false or misleading. Opinion evidence was given by a banker and a stockbroker as to the likely effect of the misleading information on the market price of WGGM's shares, both indicating that the relevant statement in the letter was likely to have the effect of raising the price of WGGM shares.[217] The appeal was dismissed.

Chapter 3 contains details of other examples where the domestic regulator was successful in seeking regulatory outcomes in court with respect to stock market manipulation, including *National Companies and Securities Commission v Monarch Petroleum NL*[218] and *Corporate Affairs Commission (NSW) v Walker*,[219] both of which related to the dissemination of false or misleading information and the consequent impact on share prices. It was not until 1990, however, that the domestic regulator, this time the CAC (Australian Capital Territory (ACT)), secured what appears to have been the first ever conviction in Australia for market rigging under s.124(1) of the *Securities Industry Act* 1980 (Cth).[220]

7.7 The first successful domestic prosecution for market rigging

An ASX document titled 'News Release', dated 1 August 1990, has attached to it an 'advice' from the CAC, ACT, titled 'Market Rigging – s.124(2) Security Industries Act 1980 Moage Limited'. The 'advice' contains the below information.

> As a consequence of information supplied by the Surveillance Division of the Australian Stock Exchange Limited (ASX), the Australian Federal Police and the ACT Corporate Affairs Commission commenced an inquiry into the trading activities of options in Moage Limited for the period 1 June 1989 to 30 June 1989.
>
> Yesterday Mr Bruce Emerton MILES pleaded guilty in the ACT Magistrates Court to an offence under Section 124(2) of the Securities Industry Act 1980, i.e., Market Rigging and

[216] Section 110 of the *Securities Industry Act* 1975 (Vic) provides as follows: 'A person shall not make a statement or disseminate information that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising or lowering the market price of securities if, when he makes the statement or disseminates the information—(a) he does not care whether the statement or information is true or false; or (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.'
[217] *R v Wright* [1980] VR 593, 605-606 (Kaye J).
[218] [1984] VR 733.
[219] (1987) 11 ACLR 884.
[220] This legislation has been referred to as the 'first federal securities legislation' in Australia: Director of Public Prosecutions, 'Applicant's Submissions', Submission in *Director of Public Prosecutions (Cth) v JM*, No. M73 of 2012, 25 January 2013, 11 [59].

> to two charges under Section 24(1) of the Cash Transactions Reports Act 1988, i.e. the opening of an account in a false name.[221]

According to the document, between 5 and 15 June 1989, Mr Miles was alleged to have placed orders with nine separate stockbrokers to buy and/or sell Moage Limited options in fictitious names. This had the effect of inflating the price of 'these securities from 1 cent to 9 cents over a five day period'.[222] Although the Media Release refers to the Moage options being 'securities', as discussed below, it appears that Mr Miles made 'bogus inflated bids for Moage shares', which consequently increased the price of Moage Limited options.[223] On 15 June 1989, the ASX 'suspended trading' in Moage Limited options.[224]

In sentencing Mr Miles, Magistrate John Dainer took into account Mr Miles' 'previously good character' and:

> placed him on a suspended sentence of 12 months imprisonment with a non parole period of 6 months, conditionally on entering a recognizance of self surety of $10,000 to be of good behaviour for 2 years. He was also ordered to pay compensation of $36,454 to specific stock brokers who suffered as a result of his activities.

---

[221] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-687 (Z718/381), Australian Stock Exchange Limited, 'Media Release', 1 August 1990, attached to which is a Corporate Affairs Commission, Australian Capital Territory document titled 'Market Rigging – s.124(2) Security Industries Act 1980 Moage Limited'. Notwithstanding the reference to Mr Miles having pleaded guilty to a single charge of contravening s.124(2) of the *Securities Industry Act* 1980 (Cth), according to Goldwasser, it appears that he may have been charged with, and convicted on, six counts of having contravened the *Securities Industry Act* 1980 (Cth). In Particular, Goldwasser states that '[f]ive of those charges related to breach of ss.124 and 145, and only one (CC 89/15906) to breach of s.123, the s.997 equivalent, and s.145'. According to Goldwasser, this information had been 'confirmed by [JP] of the ACT Magistrates Court' on 28 November 1996: Goldwasser, *Stock Market Manipulation* (n 116) 76 n 93. A copy of the 'Bench Information/Charge' sheet for this matter obtained by the author appears to confirm that: (i) five charges were laid against Mr Miles for contravening s.124(2) (and s.145) of the *Securities Industry Act* 1980 (Cth) between 5 June 1989 and 17 June 1989 (CC89/15907, CC89/15902, CC89/15903, CC89/15904, CC89/15905); and (ii) one charge was laid against Mr Miles for contravening s.123(1) (and s.145) of the *Securities Industry Act* 1980 (Cth) between 5 June 1989 and 17 June 1989 (CC89/15906): 'Bench/Information/Charge', *Howard v Miles*, Magistrates Court, Canberra, C.C. No. CC89/15902-15907.

[222] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-687, Australian Stock Exchange Limited, 'Media Release', 1 August 1990, attached to which is a Corporate Affairs Commission, Australian Capital Territory document titled 'Market Rigging – s.124(2) Security Industries Act 1980 Moage Limited'.

[223] Elizabeth Knight, 'CAC Bullseye with Conviction for Rigging', *Financial Review* (Sydney, 2 August 1990) 20 ('CAC Bullseye').

[224] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-687, Australian Stock Exchange Limited, 'Media Release', 1 August 1990, attached to which is a Corporate Affairs Commission, Australian Capital Territory document titled 'Market Rigging – s.124(2) Security Industries Act 1980 Moage Limited'.

> This successful prosecution is the first such conviction in Australia, under these provisions of the Securities Industry Act 1980 and similar State Codes.[225]

Concerns around the trading in question can be traced back to 16 June 1989, when it appears that the ASX Manager, Regulation and Compliance, sent a circular to ASX Member Organisations requesting those that had recently received orders to buy Moage Limited shares or options to check the bona fides of their clients.[226] Those brokers who had dealt in Moage Limited shares between 9 and 15 June 1989 and those who had received orders to deal in those securities on behalf of a client 'not well-known to the firm' were requested to send details to the ASX Manager, Regulation and Compliance.[227] A week later, an ASX Circular appears to have been sent to Senior Partners and Managing Directors of Member Organisations from the ASX Manager, Regulation and Compliance, which contained information of an 'attempted fraud' that refers to 'M shares', the details of which appear to be consistent with the method described in the Media Release and the newspaper reports of the time.[228]

Not only was this the first such conviction successfully prosecuted by the regulator for this particular type of manipulation, but it was reportedly secured as a result of the transactions in question being picked up 'by computers in the ASX Market Surveillance Unit', which were then 'further investigated by staff.'[229] Indeed, this was confirmed by the opening words of the 'advice' provided by the ACT CAC to Mr Berry of the ASX around 1 August 1990, which stated that the Australian Federal Police and the ACT CAC had commenced their enquiries into Mr Miles' trading activities as 'a consequence of information supplied by the Surveillance

---

[225] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-687, Australian Stock Exchange Limited, 'Media Release', 1 August 1990, attached to which is a Corporate Affairs Commission, Australian Capital Territory document titled 'Market Rigging – s.124(2) Security Industries Act 1980 Moage Limited'. 'Securities' were defined in s.4(1) of the *Securities Industry Act* 1980 (Cth) to mean: '(a) debentures, stocks or bonds issued or proposed to be issued by a government; (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate or unincorporate; (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or (d) a prescribed interest, but did not include—(e) bills of exchange; (f) promissory notes; or (g) certificates of deposit issued by a bank.'

[226] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/86, Australian Stock Exchange Limited, Circular No. 42/89, 'Moage Limited – Shares and Options', 16 June 1989.

[227] Ibid.

[228] The Circular advised of certain precautions that should be taken and also included a physical description of the 'proponent of this attempted fraud': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/86, Australian Stock Exchange Limited, Circular No. SPD6/89, 'Attempted Fraud', 23 June 1989.

[229] Knight, 'CAC Bullseye' (n 223); Jeni Porter, 'Man Guilty of Options Rort', *The Sydney Morning Herald* (Sydney, 2 August 1990) 34 ('Options Rort').

Division of' the ASX.[230] This particular matter was said to have been 'one of about 10' cases that the ASX's 'recently established Market Surveillance Unit' had referred to either the NCSC or the State CACs.[231] But for the work of the ASX surveillance unit, however, it is unclear whether or not the conduct in question would have been identified.[232]

Whilst Goldwasser, writing in 1999, asserted that this case was one of only two recorded convictions under the 'Stock market manipulation' provisions in the law up until that time,[233] the market rigging prosecution referred to above would bring to an end what had been a very significant drought in terms of regulatory enforcement action being taken in response to identified instances of this insidious activity, particularly criminal prosecutions. Later the same year as the Moage case, for example, a conviction was secured for stock market manipulation associated with the 1988 collapse of the Western Australian (Perth based) merchant bank Rothwells Limited.[234] According to an article in the 12 December 1990 edition of *The Canberra Times*, Mr Dennis Brian Jones, formerly Rothwells' share portfolio manager, had been fined $20,000 in the Perth District Court after pleading guilty to 'two charges relating to the "gigantic manipulation" of the share price of Rothwells' subsidiary, Paragon Resources.'[235] Mr Jones was said to have been involved in a 'sophisticated share rigging exercise in 1987', which was 'aimed at supporting' Paragon's share price.[236]

---

[230] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-687, Z718/381, Australian Stock Exchange Limited, 'News Release', 1 August 1990 attached to which is a document on Corporate Affairs Commission, Australian Capital Territory letter head, titled 'Market Rigging – s.124(1) Securities Industry Act 1980 Moage Limited'.
[231] Knight, 'CAC Bullseye' (n 223); Porter, 'Options Rort' (n 229).
[232] The work undertaken by the ASX Surveillance Division will be discussed in Chapter 8.
[233] The other conviction referred to by Goldwasser is *R v Michael Robert Shearer* (District Court Adelaide, No. 36/98, David J, 18 June 1998, unreported). Mr Shearer was sentenced to 18 months imprisonment in the Adelaide District Court after pleading guilty to one count of market manipulation under s.997(1) of the *Corporations Law*: Goldwasser, *Stock Market Manipulation* (n 116) 76 n 93. A copy of David J's sentencing remarks was obtained by the author and is kept on file.
[234] Graeme Anderson, *Miners and Millionaires: The First One Hundred Years of the People, Markets and Companies of the Stock Exchange in Perth 1889-1989* (Australian Stock Exchange (Perth) Limited, 1989) 277; Neale Prior and Gareth Costa, 'Western Australia's 10 worst corporate collapses', *The West Australian* (online, 3 February 2018) < https://thewest.com.au/business/a-scrap-heap-of-dodgy-deals-ng-b88723725z>.
[235] Judge Peter Williams is reported to have told Mr Jones that he had avoided a jail sentence 'only because he had agreed to help in investigations into the failed merchant bank': 'Rothwells employee fined $20,000', *The Canberra Times* (ACT, 12 December 1990) 18. This was referred to by Ipp J in *R v Lloyd* (1996) 19 ACSR 528 (a case involving Mr Jones' co-accused, Mr Lloyd) when he quoted Williams DCJ as saying 'in your case you have provided material assistance to the special investigator and have indicated that you will continue to assist and the Crown does not press for a custodial sentence': *R v Lloyd* (1996) 19 ACSR 528, 542 (Ipp J).
[236] Tony Kaye, 'Rothwells Man Fined for Role in Share Rigging', *Financial* Review (Sydney, 12 December 1990) 20. According to Goldwasser, s.124(1) of the *Securities Industry (Western Australia) Code* was the equivalent of s.998 of the *Corporations Law* (ie 'False trading and market rigging transactions'). The case citation for this matter provided by Goldwasser was *R v Jones* (unreported, Dist Ct WA, Williams DCJ, No. 1348 of 1990, 10 December 1990): Vivien Goldwasser, 'The Regulation of Stock Market Manipulation and

The ASX also appears to have taken disciplinary action against at least one of its members in connection with the above matter.[237] According to the 4 January 1990 edition of *The Sydney Morning Herald*, the former chairman of a Perth stockbroker, Mr Harold Christensen, had been 'expelled' from the ASX for 'not paying fines relating to his alleged role in the Paragon share price support scheme.'[238] Mr Christensen had reportedly been expelled following disciplinary hearings held the prior year 'where he was found to have breached certain business rules of the exchange'.[239]

> The breaches related to his involvement in the Paragon share scheme, whereby the price of Paragon shares allegedly was supported artificially at more than 70c in 1988, during which time the company was making a scrip takeover bid for Mt Carrington Mines and Rothwells chairman Mr Laurie Connell was attempting to quit his controlling stake in Paragon.[240]

It would seem that things were changing.

7.8 Non-criminal matters

As well as grappling with a slowly increasing number of criminal matters involving allegations of stock market manipulation that were being taken before them as the decades passed, the courts were also very slowly starting to craft and add to a body of domestic law in considering a variety of non-criminal matters. Some of the cases have achieved 'seminal' status in the history of domestic securities market regulation and continue to influence contemporary judicial thinking on this topic, including, for example, *North v Marra Developments Limited*,[241] a non-criminal matter decided in the 1980s. In addition, during the 1980s the regulator was seeking injunctive and other relief/orders from the courts where suspected manipulative activities were identified.[242]

Short Selling in Australia' in Gordon Walker, Brent Fisse and Ian Ramsay, (eds), *Securities Regulation in Australia and New Zealand* (LBC, 2nd ed, 1998) 537 n.99.

[237] According to *The Sydney Morning Herald,* an individual, Mr Christensen was expelled 'as a natural person member' of the ASX: 'ASX expels Christensen', *The Sydney Morning Herald* (Sydney, 4 January 1990) 23 ('ASX Expels Christensen'); Mark Smith 'ASX suspends Perth broker over unpaid fine', *The Australian Financial Review* (Sydney, 14 April 1989) 29 ('ASX suspends Perth broker'). It is unclear why there appears to be a disparity between the dates of these two newspapers.

[238] 'ASX Expels Christensen' (n 237); Smith, 'ASX suspends Perth broker' (n 237).

[239] 'ASX Expels Christensen' (n 237); Smith, 'ASX suspends Perth broker' (n 237).

[240] 'ASX Expels Christensen' (n 237). The 21 November 1996 edition of the *Australian Financial Review* reported that Mr Christensen was convicted on 21 November 1995 on charges 'related to manipulation of Paragon Resources NL shares in 1988': Staff Reporter, 'Share price charge', *The Australian Financial Review* (online, 21 November 1995).

[241] (1981) 148 CLR 42.

[242] See, for example: (i) *National Companies and Securities Commission v Monarch Petroleum NL and Others* [1984] VR 733, where injunctive relief was sought by the regulator and granted by the Court; (ii) *Golden*

7.9 Conclusion

As is apparent from the matters discussed in this chapter, there is a very significant difference between the actions taken by governments from the 1960s onwards to combat stock market manipulation on domestic share markets and those taken by their predecessors over the prior century. There was still a long way to go, however, particularly given what appears to have been a perennial challenge at the time of identified instances of market manipulation occurring with impunity. Whilst it is difficult to pinpoint the exact trigger for this very considerable change of heart, there is no doubt that it was long overdue. The next chapter will consider the action taken by the stock exchanges during this period to combat manipulative activities on domestic share markets.

Bounty Resources NL v National Companies and Securities Commission (1990) 3 ACSR 134 where the regulator sought to extend the suspension of a company's shares for possible contravention of the Securities Industry Code (WA) provisions relating to false trading and market rigging; and (iii) *National Companies and Securities Commission v de Vincentiis & Ors* (1990) 8 ACLC 1,130 where the regulator 'made an application to the Supreme Court of Victoria for interim orders restraining certain persons from dealing with shares in Golden Bounty Resources NL' (related to (ii)).

CHAPTER 8: 1960 to 1990 - Part 2

> The most exciting investment scene in the world today is undoubtedly Australia. For the gambler, manipulator and entrepreneur alike the field is wide open.[1]

> Australia is not only well endowed with minerals. It is also generously endowed with share manipulators. In 1969 manipulation became a sizable industry.[2]

> Manipulating the market for the purpose of making a profit does not appear to be a major problem in the open and public market provided in Australia.[3]

8.1 Introduction

In stark contrast to the prior 100 years, Chapter 7 highlighted some of the very significant changes that started to occur in the domestic context with respect to combating stock market manipulation by state and federal governments. Similarly, the stock exchanges themselves, particularly following the publication of the Rae Report and, as will be discussed, 'encouragement' from Government, started to focus their attention on more vigorously supervising their markets and combating market manipulation.

This chapter will highlight some of the initiatives that were taken by the stock exchanges over the course of 1960 to 1990 to combat the incidence of manipulative activities on their respective markets. In particular, consideration will be given to, arguably, the three most important initiatives taken by the stock exchanges during this period: (i) implementing rules that explicitly prohibited market manipulation; (ii) implementing an electronic surveillance function to identify manipulative activities (and other misconduct) on their markets; and (iii) taking disciplinary action where such instances were identified. In addition, what appears to have been the final 'corner' established on a domestic stock exchange in 1971 will also be briefly discussed.

---

[1] Keith Sharp, *The House of Mammon: The Stock Exchange at Work* (Hicks Smith & Sons, 1971) 66.
[2] Trevor Sykes, *The Money Miners: The Great Australian Mining Boom* (Allen & Unwin, 1995) 145.
[3] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259 (Z718/174), Sydney Stock Exchange Limited, 'Replies to Questionnaire from the Senate Select Committee on Securities and Exchange', 24 July 1970, B.1.

8.2 Implementing explicit rules to prohibit manipulative activities

In the late 1960s, the SSE appears to have taken steps to implement a rule that specifically and overtly proscribed a particular species of market manipulation, fictitious transactions, including 'wash trades'. It appears, however, that the SEM was the first stock exchange in Australia with such a provision in its rule book, Rule 101. Unfortunately, no information was located during the research to explain: (i) why this was the case; (ii) what prompted the SEM to specifically introduce this rule; and (iii) when exactly the rule was added to the SEM's rule book.

A Memo from DM Butcher, the General Manager of the SSE, addressed to 'Committee', dated 5 September 1968, refers to attached draft By-laws that were 'submitted for consideration following a discussion with the Registrar of Companies in which he indicated a desire that the Committee act promptly in these matters.'[4] Item 1 in the attachment to the Memo, titled 'Draft By-Laws', reads as follows:

> Bona Fide Transactions
>
> A member who shall be adjudged guilty by the Committee of giving an order for the purchase or sale of securities the execution of which would involve no change of ownership or of executing such an order with knowledge of its character may be fined, suspended or expelled as the Committee may determine.[5]

The Memo states that the wording of Item 1 'is based on the New York Rules'.[6]

Also attached to the Memo is a document titled 'Melbourne Rule 101. Fictitious Transactions', which states the following:

> A Member shall not make a fictitious transaction or give an order for the purchase or sale of securities the execution of which would involve no change of ownership, nor shall he execute such an order with knowledge of its character.[7]

---

[4] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-221, Memo from DM Butcher, General Manager of the Sydney Stock Exchange, to 'Committee', 5 September 1968 ('DMB Memo to Committee').

[5] Ibid.

[6] Ibid.

[7] 'Melbourne Rule 101. Fictitious Transactions', undated, attached to ibid.

A copy of the *Rules and Regulations of The Stock Exchange of Melbourne*, which includes amendments to January 1970, contains Rule 101, the wording of which appears to be the same as the above wording.[8] As noted above, details of when and why Rule 101 was added to the SEM rulebook could not be located. It would appear, however, that it was included at some point prior to 5 September 1968, the date of the Memo to which the document titled 'Melbourne Rule 101. Fictitious Transactions' that sets out the wording of Rule 101 was attached.[9] As noted in Chapter 7, reference to 'Melbourne Rule 101' was also made at a meeting between representatives of the stock exchanges and Federal and State governments on 29 August 1968, which suggests that Rule 101 existed even earlier.[10]

The minutes of the 17 September 1968 SSE Rules Sub-Committee Meeting, where the addition of the draft By-Law referred to above was considered, records the following information:

> Bona Fide Transactions
>
> Consideration was accorded to amendments to the By-law to provide for bona fide transactions.
>
> Following discussion;
>
> RESOLVED to recommend that By-Law 54(3)(e) be amended by adding a new paragraph to the beginning of sub-clause (e) which will then read:
>
> "A bona fide sale shall be a transaction between a seller and a buyer when there is or will be a change of beneficial ownership, and a member shall not be a party to any transaction when there is no such change in ownership."
>
> If any quoted sale be challenged, the Secretary shall satisfy himself as to the bona fides of the sale and may report the result to the Committee.[11]

---

[8] *Rules and Regulations of The Stock Exchange of Melbourne* (Including amendments to January, 1970)
[9] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-221, Sydney Stock Exchange, Minutes of the Rules Subcommittee Meeting Held on September 17, 1968 at 3.15pm, 2 ('Rules Subcommittee meeting').
[10] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, 'Notes on Discussions Held at the Sydney Stock Exchange Limited on Wednesday, 28th August, 1968 at 10am'.
[11] SSE, 'Rules Subcommittee meeting' (n 9).

By way of a letter dated 26 September 1968, Mr Butcher provided details of the By-Law changes to Mr FJO Ryan, the Registrar of Companies. Relevantly, the letter states the following:

> The Committee has also amended By-Law 54(3)(e) which covers the question of fictitious sales as raised by Mr CT Looker. A copy of that amendment is also attached and its effective date is October 8, 1968.[12]

A copy of the SSE Rulebook,[13] into which the above By-Law was added, has not been located. Although worded quite differently, the June 1972 version of the Rulebook includes By-Law 54D, which, according to 'Amendment List 1/71' (dated July 1971),[14] appears to have been a new By-Law that became effective on 20 April 1971. This By-Law provides as follows:

> Fictitious Transactions
>
> It shall constitute conduct unworthy of a Member if a Member shall in any way be concerned in a fictitious transaction or give an order for the purchase or sale of securities the execution of which would involve no change of ownership of those securities, or execute such an order with knowledge of its character.[15]

What the above information could suggest is that the SSE did not have a specific rule proscribing fictitious transactions until some time after 8 October 1968 (and possibly from 20 April 1971), and this was the first time that a rule was included in the SSE Rulebook that explicitly addressed a form of manipulative trading. The reference in Mr Butcher's abovementioned 5 September 1968 memo to 'Committee' indicating the Registrar of Companies' 'desire that the Committee act promptly in these matters' could be construed as an indication of the Registrar applying encouragement, or even pressure, on the SSE to incorporate a rule that specifically dealt with market manipulation.[16] Perhaps the inclusion of such a rule

---

[12] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-72, Letter from Mr DM Butcher to Mr FJO Ryan, 26 September 1968. Mr CT Looker was President of the Australian Associated Stock Exchanges.

[13] The complete title is 'Sydney Stock Exchange Limited, Memorandum & Articles of Association, By-Laws & Regulations'.

[14] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-46, Sydney Stock Exchange Ltd, *Memorandum & Articles of Association, By-Laws & Regulations*, June 1972, 'Amendment List 1/71. The Sydney Stock Exchange Ltd, Memorandum & Articles of Association By-Laws & Regulations', July 1971

[15] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, AU NBAC N209-46, Sydney Stock Exchange Limited, Memorandum & Articles of Association, By-Laws & Regulations, June 1971, 198.

[16] 'DMB Memo to Committee' (n 4).

was considered by the regulator as being long overdue for inclusion in the rulebook of a modern day stock exchange, particularly when the NYSE, for example, had a rule in its rulebook that expressly prohibited fictitious transactions from 1817.[17] As will become apparent from the discussion in section 8.3 below, the state and federal governments, through their respective regulators, appear to have taken an active role in encouraging change by the stock exchanges.

As time went on, the rules concerning market manipulation were broadened in scope. Rules that overtly prohibited activities that corrupted the equilibrium of the market and undermined investor confidence was a significant and symbolic step. Members of the stock exchange were put on notice that this insidious activity would not be tolerated. However, the rules had to be enforced to provide meaningful deterrence and affirm the stock exchanges' intolerance for this type of misconduct. But first, breaches of the rules that prohibited market manipulation had to be identified

8.3 Market surveillance

In addition to the introduction of legislation in Australia that specifically outlawed stock market manipulation and the publication of the Rae Report (and implementation of its two key recommendations), as well as the many changes that followed, one of the most significant developments in the battle against its occurrence has been the advent of the automated surveillance of trading activities conducted on domestic stock exchanges.[18]

Put simply, market surveillance can be described as the activities undertaken to identify unusual trading activity, market misconduct, breaches of a stock exchange's rules and other illegal, sharp or inappropriate practices that have the capacity to damage the integrity and fairness of the markets operated by the stock exchanges.[19] Indeed, the importance of market

---

[17] This specific prohibition was stipulated in 'Rule 18 of the first Constitution (1817)' of the NYSE: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302) Birl E Shultz, *Stock Exchange Procedure* (New York Stock Exchange Institute, 1936) 8. According to Bruns, the NYSE's 'earliest rules illustrate fundamental principles': Gordon R Bruns, *The Stock Exchange* (Jenkin, Buxton & Co Pty Ltd, 1957) 17.

[18] 'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman': Brandeis, Louis D, 'What Publicity Can Do', *Harper's Weekly*, 20 December 1913, 10.

[19] According to IOSCO, the two primary goals of market surveillance are: (i) to ensure trading in the market is fair and orderly; and (ii) to 'detect or uncover market abuse': The Board of the International Organization of Securities Commissions, 'Technological Challenges to Effective Market Surveillance: Issues and Regulatory Tools', FR04/13, April 2013, 2-3 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD412.pdf>. An article in the 30 September 1859 edition of *The Age* argued that the remedy for 'checking unhealthy speculation that naturally arises from the constant and unaccountable variations in the price of shares' was the 'establishment of a mart' at which shares could be bought and sold, more specifically, a stock exchange: 'A Stock Exchange

surveillance in combating market manipulation (and other forms of market misconduct) was recognised in a 2009 report published by the International Organization of Securities Commissions (IOSCO). In discussing how market integrity is maintained 'through a combination of surveillance, inspection, investigation and enforcement of relevant laws and rules', the report acknowledges that:

> [m]arket surveillance, in particular, plays a significant role in anticipating the potential vulnerabilities to a capital market. It is seen as a pre-emptive measure aimed at detecting and deterring potential market abuse and avoiding disruptions to the market from anomalous trading activity, including market and price manipulation, insider trading, market rigging and front running.[20]

Similarly, according to Watson:

> Market surveillance is critical to the integrity of the capital market. Insider trading and market manipulation have done more to cause investors to lose confidence in capital markets than all other forms of abuse of the market. Surveillance is essential to deter or halt these abuses whenever possible before they harm investors.[21]

To the extent that there was any kind of surveillance of activities that occurred on domestic share markets operated by the various stock exchanges, it would, presumably, have been rudimentary, manual and most likely not that effective. This was particularly the case in the days prior to the automation of trading with the introduction of the Stock Exchange Automated Trading System (SEATS) in October 1987.[22] Before the launch of SEATS, 'surveillance could not be very effective because there was no log of what trades had occurred.'[23] Indeed,

---

Wanted', *The Age* (Melbourne, 30 September 1859) 5. The existence of 'any bubble or swindling schemes' would 'soon become apparent under the organised surveillance of men whose business it would be to discover it': ibid. Whilst the context was very different, the essence of this comment still resonates strongly today when considering the importance of market surveillance to maintaining market integrity.

[20] Emerging Markets Committee of the International Organization of Securities Commissions, 'Approaches to Market Surveillance in Emerging Markets: Final Report', December 2009, 5 ('Approaches to Market Surveillance').

[21] Michael J Watson, British Columbia Securities Commission, Canada, 'The Regulation of Capital Markets: Market Manipulation and Insider Trading', 13 <https://docplayer.net/12896910-The-regulation-of-capital-markets-market-manipulation-and-insider-trading.html>. As Brown and Goldschmidt assert, '[s]urveillance to detect unusual trading behaviour is an important tool for building market confidence, thereby increasing market liquidity, and ultimately decreasing the cost of capital to business. It potentially has far-reaching implications for the economy as a whole': P Brown and P Goldschmidt, 'ALCOD IDSS: Assisting the Australian Stock Market Surveillance Team's Review Process' (1996) 10 *Applied Artificial Intelligence* 625, 625.

[22] ASX, *ASX Story: History* < https://www2.asx.com.au/about/asx-story>.

[23] Edna Carew, 'National Market National Interest: The drive to unify Australia's securities markets' (Allen & Unwin, 2007) 256.

according to Jim Berry, the former head of the ASX Surveillance Division, the exchange's approach to surveillance prior to the advent of SEATS consisted of the below.

> We could follow the chalkie as he changed prices and recorded the change. The sequence was entry to the chalk board then entry to the system. But there was very little checking on the accuracy of the times and the data. In busy times, floor operators would execute a trade, put the slip in their top pocket, and when things eased, they'd give it to an exchange employee to input.[24]

This would, presumably, have impeded the ability to effectively surveil the market.

Prior to 1987, when he became the Head of Surveillance, Mr Berry recalls that although there was some work being undertaken on developing computer code to assist with the interrogation of electronic records for the purposes of market surveillance, there was nothing done specifically by the stock exchanges to 'attempt to find manipulation'.[25]

> Well, the exception is that, my boss . . . had been to America and had seen marking the close reports, and had employed someone in the IT department to write similar code. There was a start there, but I didn't never, ever see any evidence that it was examined on a daily basis.[26]

The trip to the United States would, presumably, have been extremely fruitful given that the stock exchanges there were, according to Mr Berry, '10 to 15 years ahead' of domestic exchanges when it came to the surveillance of trading activity on their markets.[27]

Although an exact date for the introduction of automated market surveillance of US stock markets could not be located, according to a senior ASX compliance officer, the NYSE and US Securities and Exchange Commission 'reached an agreement to develop real time monitoring systems to highlight unusual market movements in 1981'.[28] The NYSE's 'Stock Watch' surveillance program more broadly is said to have 'monitored trading activity since

---

[24] Ibid 256-257.
[25] Interview with James (Jim) Berry, Former ASX Head of Surveillance (Sydney, 26 May 2017) ('Interview – Jim Berry').
[26] Ibid.
[27] Ibid.
[28] Brett Bondfield, 'The Conduct of Securities Business' in The College of Law, 'An Introduction to the Stock Exchange and Securities Industry', 89/54, 24 November 1989 ('Introduction to the Stock Exchange').

the 1940s'.[29] It was not until 1989, however, that the ASX's Surveillance Division commenced operations and essentially laid the foundations for the real-time surveillance of share market activities that is undertaken today by ASIC and participants on domestic stock exchanges, including investment banks, institutional investors and share brokers.

Yet, whilst electronic surveillance of the stock exchange's markets heralded a new era in the deterrence and detection of market manipulation and other forms of market misconduct, it appears that a more basic form of surveillance had been in place at some domestic exchanges over 25 years earlier. This is apparent from archive documents from 1963 through to the commencement of the ASX's Surveillance Division in 1989, which provide an insight on not only how the state stock exchanges conducted market surveillance, but also the protocols applied by the NYSE and the LSE. As will be discussed below, this appears to have become a focus not only for the stock exchanges themselves, but also the state and federal governments right up until the introduction of electronic surveillance in 1989 by the ASX.[30] Indeed, it would appear from a review of the archival material that 'encouragement' from Government played a role in this important development.

8.3.1 The early stages (1963 onwards)

In 1964, the SSE was the first domestic stock exchange to have a computer installed, which was used initially to 'streamline clearing house functions and broker-client accounting'.[31] However, there was no electronic trading and no automated market surveillance, both of which would not be in place for another 20 plus years. Whilst there is information available to suggest that there was some oversight of sudden increases in prices and trading volumes by the stock exchanges,[32] it appears that a directive to keep the trading floor under surveillance 'at all times' was not given until 1963. This is evident from a memo from the Secretary (Operations) to the Trading Floor Supervisor, dated 2 August 1963, titled 'Reporting of Sudden Rises in Prices and/or Volume', which states the following:

---

[29] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/157 (Z718/97), Kenneth B Noble, 'US exchanges' quiet detectives tackle the stock manipulators', handwritten notation states 'Fin Rev 16/3/81' ('Quiet Detectives').

[30] See, for example, Mark Lawson, 'ASX computers to look for suspect share trading', *Australian Financial Review* (Sydney, 12 September 1989) 17, ('Suspect Share Trading')

[31] ASX Operations Pty Ltd, *ASX Story: History* (1960s) <https://www2.asx.com.au/about/asx-story>.

[32] In particular, the memo refers to 'the present system of regular written reports made periodically throughout the day by recording Clerks reporting to [the Trading Floor Supervisor] any sudden rise in prices and volume': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, Z777/067, Memo to Trading Floor Supervisor from Secretary (Operations), titled 'Reporting of Sudden Rises in Prices and/or Volume, 2 August 1963.

> In addition to the present system of regular written reports made periodically throughout the day by recording Clerks reporting to you any sudden rise in prices and volume, in future you or your assistant will be required to keep the Floor under surveillance at all times.
>
> If a crowd gathers, you should join the crowd to ensure that nothing untoward is taking place. Any undue rises will be reported immediately to me or in my absence, to Mr Upjohn. If nothing of significance happens by the time you leave, and the group is still assembled you should ensure that the Post Clerks are alerted to call you if anything develops.[33]

There was no guidance located as to what particular mischief was in scope for the purposes of the above process, what constituted an 'undue rise' or what 'nothing untoward' was intended to include.

Although the complete set of correspondence between the exchanges was not located, it appears that from around August 1963 the SSE was making enquiries into how the NYSE and LSE were conducting surveillance of their respective markets. In a letter from the NYSE, dated 15 August 1963, for example, the term 'stock watching' is used, which is described as follows:

> It is our practice in the investigation of unusual market increases or decreases to first turn to the information available in our "clearing sheet", which list the buying and selling firms each day for each issue traded on the Exchange. For any given day, the number of issues looked into naturally varies and normally depends on movement or volume, although there may also be other reasons for looking at a particular issue. When we have ascertained the firms representing a sizable portion of the purchases or sales, whichever interests us, we call them and obtain from them the name of the buying or selling customers and the basis of the customers' trades.
>
> There are also occasions when market activity or movement in either direction requires us to contact the company. In these instances, we are anxious to learn whether there is any information known to the company to account for the activity or movement. With some frequency, we have required companies to release information about mergers, acquisitions,

[33] Ibid.

> earnings, dividend action, etc, that may have inadvertently leaked out and become known to some sources and identified as a reason for the movement.[34]

Where the NYSE's enquiries disclosed 'any violations' of its rules, consideration was 'given to appropriate disciplinary action'.[35] If there appeared to be 'a violation of Federal securities laws', a referral would be made 'to the Securities and Exchange Commission for appropriate action'.[36] In response, the SSE sent a further enquiry by way of a letter dated 20 August 1963, which expressed a particular interest 'to know what type of situation or criteria prompts your inquiry i.e. do you have a prescribed formula which, if overstepped, causes the Exchange to inquire?' The SSE's interest in this area was stated to be 'that we are attempting to evolve some formal basis for our own inquiries.'[37] The latter comment could suggest that the SSE did not have a process for monitoring trading activity on its markets or, perhaps, that it was looking to improve the process that it may have had in place. In a letter dated 23 August 1963, the NYSE provided a detailed response to the SSE's enquiry.[38]

It appears that a similar enquiry was made of the LSE, which, in a letter dated 15 August 1963, stated that its 'reaction to sudden rises in the prices of individual shares' was to 'regard such happenings as the manifestation of normal market activity' unless there was 'prima facie evidence to the contrary.'[39]

---

[34] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the New York Stock Exchange to the Sydney Stock Exchange, 15 August 1963.
[35] Ibid.
[36] Ibid.
[37] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the Sydney Stock Exchange to the New York Stock Exchange, 20 August 1963.
[38] The letter includes the following: 'The stocks selected for follow up under our stock watch are a by-product of our stock clearing operation which is accomplished on IBM equipment. The day's activity is tabulated in such a form that by the morning following the transaction we are able to determine all the stocks where the price variation was more than a predetermined standard. For example, in a normal market, any price change in excess of 1½ points in a stock selling in the $10 - $20 range would be listed in a report prepared by the tabulating unit. The amount of permissible variation would vary in accordance with the price range in which the stock sells. We might also use a different scale if there were a very wide market fluctuation. The extent to which we investigate the variations included in the special tabulation depends on the circumstances. Sometimes there is a very evident explanation due to some industry development or company announcement. At other times, we go into greater detail in discussing the question with the company or analyzing the source of the buy and sell offers through our member firm organization. We look at the price changes on both day-to-day comparison of closing prices as well as intra-day fluctuations': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the New York Stock Exchange to the Sydney Stock Exchange, 23 August 1963.
[39] It appears that the Sydney Stock Exchange requested this information from the London Stock Exchange by way of a letter dated 1 August 1963 (not located during the research): Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996,

> However, as you say, unexpected sharp price movements might be the result of dealings following the leakage of confidential information, while another possible cause might be 'share pushing' or manipulation of the market. Consequently, my Council might receive a request to hold an enquiry, either from the Jobbers who dealt in the shares in question or from the Chairman of the Company concerned, because they suspect that dealings of this nature have taken place.[40]

The letter goes on to explain the investigative process that would then be followed.

A letter from the SSE to the Registrar of Companies, dated 4 October 1963, appears to have been sent following a visit to the Exchange by the Registrar.[41] The wording of the letter indicates that the SSE had received a request from the Attorney General to 'supply . . . co-operation' by way of a letter dated 20 September.[42] It also suggests that the Registrar of Companies had requested certain information from the SSE, in response to which the SSE undertook to do, amongst other things, the following:

(a) advise the Registrar daily of any announcements made to the Exchange's trading floor;

(b) where requested, supply the Registrar with details of floor transactions in relation to any particular company's shares for the period specified; and

(c) supply the Registrar daily with details of turnover, indicating the most active stocks.[43]

This would seem to indicate that the Registrar wanted to perform some kind of monitoring or oversight in connection with trading activities that were occurring on the Exchange.

24406/211 (Z718/127), Letter from the London Stock Exchange to the Sydney Stock Exchange, 15 August 1963 ('LSE to SSE 15Aug1963').

[40] Ibid.

[41] The letter is not signed. At the bottom it states 'c.c. Attorney General': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/072 (Z718/066), Letter from the Sydney Stock Exchange to the Registrar of Companies, 4 October 1963.

[42] 'I trust the matters outlined in this letter will supply that co-operation which the Attorney General has requested in his letter to us of September 20': ibid.

[43] Ibid.

Attached to the letter is a document titled 'Sydney Stock Exchange Stock Watching Procedure', the same term referred to by the NYSE in its 15 August 1963 letter to the SSE. The Procedure commences with the following statement:

> 1. The following are the details of the Sydney Stock Exchange "Stock Watching" procedure. It should be noted that the procedure has its limitations as all recording is at present on a manual basis.
>
> 2. The difficulties associated with the manual recording will be eliminated if, and when the Stock Exchange adopts electronic data processing.[44]

The document then sets out details of the reporting and inquiry procedures followed with respect to the 'investigation of unusual market increases and decreases'.[45] This includes 'reporting unusual changes during the day's trading', comparing 'the day's trading with that of the previous day',[46] instructing Post Clerks and Recording Clerks to 'be on alert for any unusual movements in either price or volume'[47] and requiring the Trading Floor Supervisor to refer 'unusual market increases or decreases' to the Secretary (Companies) for investigation.[48] There is, however, no information concerning the specific objective of the process. For example, was it to confirm whether or not companies were complying with any disclosure requirements imposed by the exchange, monitor trading activity to identify 'share pushing' or 'manipulation of the market', whether members were trading on material non-public information (or inside information), or something else?

Notwithstanding the 'stock watching' activities undertaken by staff of the Exchange, as well as the comment in the Procedure that the Exchange 'is often made aware of something untoward by either a member firm or by an outside source', there is a paucity of information available on the reason for the focus by the Registrar on market surveillance at this particular point in time.[49] However, comments made by the Registrar of Companies in an article in the

---

[44] 'Sydney Stock Exchange Stock Watching Procedure' attached to a letter from the Sydney Stock Exchange to the Registrar of Companies, dated 4 October 1963: ibid.
[45] Ibid.
[46] This involved comparing: (i) current prices with the 'previous day's closing market and last sale'; and (ii) the number of sales slips at 11.30am, 12.30pm and 3.30pm with the previous day's sales slips at the same times: ibid.
[47] As a 'rough guide', clerks are 'instructed to report to the Trading Floor Supervisor any movement in price at or in excess of 10 minimum bids', whereas 'the Exchange relies on the "experience" of the Recording Clerks' in relation to the 'reporting of unusual changes in volume': ibid.
[48] Ibid.
[49] Ibid.

10 March 1964 edition of *The Canberra Times* provide some clues in this regard. According to the article:

> [a] detection section designed to uncover malpractices in share transactions has been established by the Attorney-General, Mr Downing. It is known as the investigations and prosecutions section of the companies office.
>
> Details of the section were contained in a report to Mr Downing by the Registrar of Companies, Mr F J O Ryan.
>
> Mr Ryan said the section was formed to police the Companies Act, which ensured that a director did not make use of his position to gain an improper advantage for himself.[50]

The article states that the investigations and prosecutions section had arranged to receive 'notice of important announcements' from the stock exchange and, where a 'significant market reaction' was identified, enquiries would be made with the exchange to identify the brokers concerned in the relevant transactions, who, in turn, would be asked to provide the names of the clients for whom they acted.[51] In this way, the Companies Office would be 'made aware of the persons who purchased shares, either immediately before or after an announcement' and this would assist in identifying whether they 'could have been connected in any way with the company concerned or its board of directors.'[52]

Whilst the article refers to the investigations and prosecutions section of the Companies Office having been designed to 'uncover malpractices in share transactions', the conduct that is the focus of this article appears primarily to be insider trading rather than market manipulation or any other forms of market misconduct.[53] This is consistent with the following comment made by Mr Ryan in a letter to the General Manager of the SSE, dated 6 June 1968:

> As you will be aware enquiries into share market activity is one of the functions of the Investigation and Prosecution Division and is aimed primarily towards the discovery of insider dealing.[54]

---

[50] 'Detection Squad Formed to Watch Share Deals', *Canberra Times* (ACT, 10 March 1964) 12.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260 (Z718/175), Letter from the Registrar of Companies to the General Manager of the Sydney Stock Exchange, subject 'Silver Valley Minerals NL, 6 June 1968. This is

Although market manipulation had plagued Australia's share markets for a very long time, it is surprising that it does not seem to have been front of mind for the government, the SSE or the regulator. Given the SSE appears to have sought guidance from the New York and London stock exchanges to prepare its response to the Companies Office, this could suggest that it had not, up until that particular point in time, turned its mind, fully or at all, to the adequacy of its surveillance arrangements to combat misconduct on its markets, including market manipulation.

8.3.2 The 1970s

That the SSE might not have been particularly focused on combating market manipulation may not be surprising based on its response to a questionnaire it received from the Rae Committee in June 1970 concerning the operations of the SSE.[55] The SSE's response, dated 24 July 1970, to the Rae Committee's question regarding whether the SSE had 'been aware of any manipulative action on the Exchange market in the last few years' includes the below statement.

> In general the suspicion has rather been that of "inside trading" than actual manipulation. Manipulating the market for the purpose of making a profit does not appear to be a major problem in the open and public market provided in Australia . . . A few attempts to spread false rumours by telegram or by written messages to member firms have occurred. These would be reported to the police, P.M.G. and Commissioner, as appropriate.[56]

Nonetheless, the surveillance of trading on the SSE's markets continued to be the subject of internal communications, as well as correspondence with the regulators over the following decades, right up to the ASX's Surveillance Division commencing operation in 1989, and beyond.

---

consistent with the following comment made by Mr Ryan in the 7 June 1968 edition of *The Canberra Times*: '[Mr Ryan] added that inquiries into share market activity is one of the functions of the investigation and prosecution division and is aimed primarily at discovery of "insider dealing"': 'Silver Valley Share Dealings Investigation', *Canberra Times*, 7 June 1968, 15.

[55] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406/259 (Z718/174), Letter from DW Whitbread (Secretary of the Senate Select Committee on Securities and Exchange) to Mr L Foldes (Manager, Companies, SSE), 30 June 1970.

[56] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406/259 (Z718/174), Document titled 'The Sydney Stock Exchange Limited. Replies to Questionnaire from the Senate Select Committee on Securities and Exchange', 24 July 1970, attached to a letter from J.H Cooper (SSE Chairman) to Mr DW Whitbread (Secretary, Senate Committee on Securities and Exchange', 24 July 1970.

An internal memo from the Floor Manager of the SSE addressed to the 'Manager Companies', dated June 1970, for example, states the following:

> Further to our discussion, following the inception of the Securities Industry Act, No. 35, [a]ll members of the Trading Floor staff have been once more advised to consider it their duty to inform me should they notice any significant rise or fall or marked increase in trading, in any stock listed on the boards, or any unusual occurrence in trading.
>
> The basis for arriving at a "significant rise or fall" will generally be if a stock rises or falls in excess of twenty percent approximately, of course this can vary with the price trend of the market. I have given instructions that the procedure is to be as follows:
>
>> If a board boy has to report, he should not leave the board but advise one of the recording clerks to find me immediately, when I will see him and investigate, as soon as possible and report to you.
>>
>> In addition to the above I have detailed a member of the staff to inspect the boards at 11.45 a.m. and 2.00 p.m. everyday and report any fluctuation or irregularity to me. Of course this is all in addition to my own normal overall supervision of the market.[57]

It appears that the SSE may have been enhancing its 'stock watching' process following the enactment of the *Securities Industry Act* in 1970. As was the case with the material referred to above, however, there is no reference to the type of misconduct or inappropriate activity that was being specifically targeted or what exchange rules were at risk of being contravened by conduct associated with 'any fluctuation or irregularity' in market activity.[58]

The Rae Committee's view of surveillance by the exchanges

The Rae Committee was clearly unimpressed with the very limited capabilities of the stock exchanges when it came to the surveillance of potential trading misconduct. This is apparent from the below comments contained in its final report, published in 1974.

---

[57] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Sydney Stock Exchange Limited Memo from Floor Manager to Manager – Companies, June 1970.

[58] Ibid. As noted in the response from the London Stock Exchange to the Sydney Stock Exchange's 1963 enquiry, 'unexpected sharp price movements might be the result of dealings following the leakage of confidential information' or 'share pushing' or manipulation of the market': 'LSE to SSE 15Aug1963' (n 39).

> So far as surveillance of the trading market is concerned, our examination of action taken to detect and follow up fraud, insider trading, manipulation and other improper practice prompts several comments. One is that though the executives of some of the exchanges have endeavoured to detect instances of possible abuse, the task has been performed in an erratic, ad hoc way. In the result, far too many serious instances have passed without action. We have also received clear evidence that some members have been involved in organising 'runs' in the market and in manipulating share prices in other ways.[59]

Yet, it was not just the stock exchanges that were the subject of criticism. The Rae Committee also found that the combined surveillance of the market carried out by the Adelaide Stock Exchange and the South Australian Registrar of Companies, for example, 'seems to have been equally undeveloped and ineffective'.[60] This conclusion was based, in part, on the below excerpt from a letter to the Committee from the South Australian Registrar of Companies in response to specific questions from the Committee:

> Q: Has any surveillance been maintained on trading on the Adelaide Stock Exchange in the years 1968, 1969, 1970 and 1971?
>
> A: No surveillance has been maintained on trading on the Stock Exchange of Adelaide during the past four years.[61]

There was clearly much more that needed to be done in this space.

8.3.3 The 1980s

Over the course of the next decade, a review of the archival material containing some of the communications between the stock exchanges and the national regulator indicates that there was a continuing and considerable focus on implementing the surveillance of trading activities on the share markets in Australia. This ultimately resulted in the establishment in 1989 of the 'Australian Stock Exchange's new watchdog, a computerised surveillance service,' which was said to have 'emerged as a new factor in the lives of market participants who want to bend the rules.'[62]

---

[59] Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (1974), Part I, Volume 1 ('*Australian Securities Markets and Their Regulation*').
[60] Ibid. 2.106.
[61] Ibid 2.107.
[62] Lawson, 'Suspect Share Trading' (n 30)

What is not clear, however, is the driver behind what appears to have been a significant push by the regulator for this to happen at this particular point in time. Whilst there is no one document or series of documents that contains a specific reason, one of the drivers may have been the extent to which other stock exchanges were implementing technology to help them combat market misconduct. By way of example, a newspaper article from the early 1980s reported on 'a little-publicised team of analysts' at the NYSE whose 'detective skills' were being tested during the recent 'flurry of stock-trading scandals'.[63] The article refers to examples of people found to have engaged in insider trading and 'stock manipulation' and the 'detective work' in each case' having 'originated in a small, noisy room several stories above the trading floor' of the NYSE.[64]

> There, amid the staccato clatter of printing machines that record stock trades, a team of 11 analysts and investigators, armed with computers, follows each transaction made in a trading session.
>
> Officials at the New York Stock Exchange are decidedly optimistic about their surveillance program, known as Stock Watch, which has monitored trading activity since the 1940s.[65]

Whilst it may be naïve to attribute the increased focus on surveillance of share market trading activity to one newspaper article, however, it was not long afterwards that the NCSC would seem to have taken a renewed interest in what the domestic stock exchanges were doing to monitor dealings on their respective markets.

For example, a letter from the NCSC to the AASE, dated 6 August 1982, sets out the NCSC's expectations with respect to stock exchanges taking an active role in monitoring the flow of information that would be 'likely to materially affect the price of securities' as part of their 'self-regulatory functions'.[66] This included generally maintaining 'constant surveillance of the market in securities' and investigating and reporting 'promptly unusual activity, both in

---

[63] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/157 (Z718/97), Kenneth B Noble, 'US exchanges' quiet detectives tackle the stock manipulators', handwritten notation states 'Fin Rev 16/3/81'. The article has been cut from a newspaper and does not include the name of the newspaper or date of publication. The article cannot be located online.
[64] Ibid.
[65] Ibid.
[66] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/675, Z718/380, Letter from Mr Leigh Masel, National Companies and Securities Commission to Mr L Ian Roach, Australian Associated Stock Exchanges, headed 'Market Surveillance', 6 August 1982.

volume and price on a systematic basis.'[67] The letter was focused specifically on inside information and rumours in the broad context of the continuous disclosure obligations of listed companies in 'section 3A of the Listing Requirements',[68] although the below comment was made with respect to false rumours.

> If of course rumours with respect to a security are circulated and are known to be false, then those who circulate those rumours may contravene sections 125, 126 or 127 of the Securities Industry Act.[69]

The author of the letter states that the primary purpose for writing to the AASE arose from:

> a belief that whilst it is impossible of course to protect investors against all risk, it is possible to reduce substantially the probability of loss to a lesser number of investors if investors know that monitoring of abnormal movements in volume and prices is promptly undertaken by the Stock Exchanges and that rumours may be the subject of enquiry of the listed company concerned.[70]

The language of the letter is not directive in nature, as is apparent from the opening words, which state: 'I thought it would be helpful if I were to set out some thoughts in relation to market surveillance by the Australian Stock Exchanges.'[71] Similarly, the words used in the closing paragraph also appear to be passive.

> While I am conscious that monitoring activities will differ from Exchange to Exchange, I feel that steps should be taken to monitor market activities on a systematic basis by the Exchanges in order to ensure that the markets are as informed as far as possible and that in appropriate cases the attention of the Commission and its delegates is drawn by the Exchanges to cases involving possible breaches of the Securities Industry Act and Codes . . .[72]

However, this appears to be another example of the national regulator pressing for the stock exchanges to do more when it came to conducting surveillance of trading activities on their

---

[67] Ibid.
[68] Ibid. As stated in the letter: 'The principal requirement of course is that the listed company should notify the Home Exchange immediately of any information concerning the company or any of its subsidiaries necessary to avoid the establishment of a false market in the securities or which would be likely to materially affect the price of those securities.'
[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Ibid.

markets. As is apparent from previous similar correspondence, notwithstanding this was, and continued over the years to be, the subject of ongoing enquiry by the regulator, the stock exchanges do not appear to have made this a priority area of focus.

Indeed, over the course of the subsequent months and years, there were a number of letters sent between the national regulator and the various stock exchanges in relation to the NCSC's apparent increasing interest in the market surveillance conducted by the stock exchanges. By way of example, a letter from Mr L Ian Roach, Chairman of the SEM, to Mr L Masel, Chairman of the NCSC, dated 9 August 1982, appears to be in response to a request from the NCSC for the SEM to keep the regulator informed of 'unusual activity' in listed securities.[73] Mr Roach advised in the letter that arrangements had been made for one of the SEM's 'Floor Governors' or the 'Floor Supervisor' to phone Mr Masel's office when they noticed 'unusual activity in a particular stock'.[74]

The below comments in the letter could, however, be read to suggest that the SEM was not particularly confident that it would be able to successfully satisfy the regulator's request.

> When I told them what you wanted their reaction was something like my initial reaction when you raised the matter with me but we would like to accede to your wishes and test the procedure. Inevitably there will be false alarms and it will not always be possible to identify the kind of activity you would like to detect early.
>
> The arrangement will not generally be known to others on the Floor. You will appreciate that we would not wish to accept responsibility in the event of our non-detection of any particular activity which might subsequently be recognised as being in the reportable category but of course we will do our best.[75]

Such a concession by the Chairman of one of Australia's biggest stock exchanges around eight years after the publication of the Rae Report may not have done much to reassure the regulator with respect to the adequacy of the SEM's surveillance arrangements. This may have, in part, informed the regulator's input at the meeting referred to below.

---

[73] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266, Z718/181, Letter (unsigned) from Mr L Ian Roach, Chairman, Stock Exchange of Melbourne, to Mr L Masel, Chairman, National Companies & Securities Commission, 9 August 1982, headed 'Unusual Activity in a Listed Security'.
[74] Ibid.
[75] Ibid.

The focus of the national regulator on market surveillance continued into the new year, which is apparent from the below comments contained in the notes from a 27 May 1983 meeting between the NCSC and Chairmen of the six Member stock exchanges of the AASE.

> Mr Greenwood[76] advised the Exchanges that the Commission was somewhat concerned with the manner in which the Exchanges carried out market surveillance. He said that recently he had been in the United States and had seen a computer based programme designed to pick up unusual trading patterns and he wondered if the Exchanges intended looking at a similar system. The Exchange representatives said that the Australian market was too small to justify this type of operation but that experienced brokers and operators acted as floor governors and that any unusual trading pattern or breach of trading rules would soon be reported by interested peer groups on the floor. Mr Ranson[77] said that the Brisbane Exchange had notified the Commission on a number of occasions about certain trading events that caused concern and that they had had no response from the Commission and that before the Commission could ask the Exchanges to do more, the Commission itself should advise the Exchanges on what action it had taken on prior reports.[78]

The apparent 'push back' from the Exchange is surprising, particularly given surveillance appears to have been an ongoing concern of the regulator for around 20 years, as well as the fact that the Mr Greenwood's opening comments explicitly referred to the regulator's concern regarding the manner in which market surveillance was conducted by the Exchanges. The reference to 'reliance on interested peer groups on the floor' identifying and escalating unusual trading and breaches of the rules to the exchange appears to resonate with the comments contained in the Rae Report regarding the stock exchanges' 'excessive and optimistic reliance on the 'grapevine' to bring breaches to light', mentioned in section 7.5 above.[79] Seemingly, the Rae Committee's finding almost ten years earlier that the stock exchanges' performance of 'their regulatory responsibilities with respect to their members has been seriously wanting' had been forgotten.[80]

---

[76] Mr AB Greenwood is recorded in the document as being 'Present from the NCSC': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/266 (Z718/181), 'Notes on the Meeting Between the NCSC and the Chairmen of the Six Member Stock Exchanges of the AASE Held in Sydney on Friday May 27, 1983', 1.
[77] Mr AE Ranson is recorded in the document as 'Representing the Stock Exchanges': ibid 1.
[78] Ibid 6.
[79] Senate Select Committee*, Australian Securities Markets and Their Regulation* (n 59) 15.14-15.15.
[80] Ibid 15.6.

The above sentiment is also recorded in the minutes of a 30 May 1983 meeting of the Committee of the Stock Exchange of Perth, which, under the heading 'Stock Exchange Systems for Enforcement of Listing and Business Rules', states the following:

> The NCSC advised the AASE that they were concerned that certain matters were not dealt with promptly by the Stock Exchanges whilst they were being noted and monitored by the NCSC. Two examples given were the Pacific Copper takeover on the Sydney floor and trading in Carr Boyd before the issue of the company report. While the Chairman had reported at the meeting that he was not aware what action Perth had taken on Carr Boyd (and he agreed to advise the NCSC what action was taken) it was apparent to him that the Stock Exchange surveillance techniques must be significantly improved if the Exchange wished to maintain control over their surveillance.[81]

Although no information was located to explain the ongoing and heightened focus of the regulator on the Exchange's surveillance activities, capability and capacity, particularly around this time, the below observation from Jim Berry, the former head of the ASX Surveillance Department, may provide some context.

> Well, in '84 the Exchanges decided to merge and in 1986 or 1987, the NCSC unofficially made it a condition of giving their approval that Australia had modern surveillance methods and enforced the laws against their members.[82]

Almost four years later, questions about the surveillance activities conducted by the Stock Exchange of Perth were posed by the WA state corporate regulator. A letter, dated 14 April 1987, from the Commissioner for Corporate Affairs to the Chairman of the Stock Exchange of Perth stated that a committee had been 'recently established' to 'review the extent of share market surveillance that would be feasible' by the Corporate Affairs Department.[83] The committee was said to have been comprised of two Managers from the Investigation Division, two Financial Analysts from the Corporate Operations Division and was chaired by an Assistant Director.[84] To 'reduce the possibility of unnecessary duplication of effort' and to

---

[81] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, Box N198/10-11 (N198/10), 'Minutes of a Meeting of the Committee of the Stock Exchange of Perth Limited Held in the Boardroom on Monday 30 May 1983 at 3.35pm'.
[82] 'Interview – Jim Berry' (n 25).
[83] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/673 (Z718/379), Letter (signed) from AD Smith, Commissioner for Corporate Affairs, to The Chairman, Stock Exchange of Perth Limited, headed 'Share Market Surveillance', 14 April 1987.
[84] Ibid.

assist the committee, the letter requested the provision of information concerning the parameters used to determine when a 'please explain' request should be forwarded to a company's directors and under what circumstances the NCSC or CAC are advised of 'suspicious price movements'.[85] This appears to have been a continuation of a process of the regulators trying to understand the surveillance conducted by the stock exchanges that had commenced over 23 years earlier.

A response to the Commissioner for Corporate Affairs was provided by way of a letter, dated 15 June 1987, from Mr JG Thomson, Managing Director of the Stock Exchange of Perth.[86] The responses include those set out below.

> **a) What is the extent of the Exchange's surveillance activities?**
>
> The Exchange's surveillance role is directed at two areas; one is aimed at the administration of listing requirements and the other is aimed at exploring the possibilities of market anomalies in terms of either price or volume trading. In line with the Exchange's primary responsibility the predominant amount of time is devoted to the first area.
>
> The second area, being the exploration of the possibility of anomalous trading covers an investigation of price and volume movements along with historic movements particularly in relation to the timing of announcements or expected announcements of price sensitive information . . .
>
> **b) What parameters are used by the Exchange which must be exceeded before a please explain is forwarded to company directors?**
>
> The parameters used by the Exchange before an investigation is initiated are not at this time in any way formalised. It is considered that formal criteria may inhibit subjective

[85] The specific questions posed were: '(a) What is the extent of the Exchange's surveillance activities? (b) What equipment is employed to monitor price or volume movements? (c) What parameters are used by the Exchange which must be exceeded before a please explain is forwarded to company directors? (d) Under what circumstances is either the National Commission or this Department advised of suspicious price movements?'. The letter advised that a similar request had been circulated to the National Commission and all Corporate Affairs Commissions: ibid.

[86] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/673 (Z718/379), Letter (unsigned) from JG Thomson, Managing Director, Stock Exchange of Perth, to Mr AD Smith, Commissioner for Corporate Affairs, 15 June 1987 ('Perth SX to CAD'). According to Adamson, Mr Thompson was appointed as Chief Executive of the Perth Stock Exchange in 1986: Graeme Adamson, *Miners and Millionaires: The First One Hundred Years of the People, Markets and Companies of the Stock Exchange in Perth 1899-1989* (Australian Stock Exchange (Perth) Limited, 1989) 181.

> analysis within a dynamic market place and staff are encouraged to look for general anomalous behaviour. Despite this, in broad guidelines, a 20% price movement over three days would cause concern and would initiate internal investigation by the Exchange . . .[87]

Some of the questions posed and responses provided could be construed as suggesting that surveillance of trading activity to detect (and deter) market manipulation was not a specific priority or focus for the regulator or the stock exchange. For example, the response in (a) refers to 'the predominant amount of time' with respect to the stock exchange's 'surveillance role' being devoted to 'the administration of listing requirements'.[88] Whilst the next paragraph goes on to discuss 'exploration of the possibility of anomalous trading' in more detail, this does not appear to be in the context of identifying and investigating manipulative activities in the markets operated by the stock exchange, but rather appears to be more focused on insider trading. Similarly, the question posed in (c) appears to be framed in the context of a continuous disclosure enquiry rather than being specifically directed at the surveillance of market manipulation.

Given that the regulator approached the stock exchanges multiple times over circa 24 years in connection with the surveillance of their respective markets, the response concerning the 'parameters used by the Exchange before an investigation is initiated' not being 'in any way formalised' is surprising given the ongoing regulatory scrutiny the exchanges were under with respect to the surveillance of their respective markets.[89] The correspondence reviewed seems to suggest that market manipulation and other forms of market misconduct were not a key focus of, or priority for, the domestic regulators or exchanges for some considerable time, with initial attention being given mainly to the disclosure obligations of listed companies and insider trading. Whilst the regulators were certainly probing the exchanges with respect to their surveillance arrangements and had articulated some concern about those arrangements in their more recent correspondence, they do not appear to have applied a sufficient level of encouragement to ensure the stock exchanges made it a focus area of priority. However, this was about to change.

---

[87] In concluding, the letter states the following: 'Please be assured that the Exchange is conscious of its co-regulation or self-regulation responsibilities in this area and continually is concerned about upgrading its services to the market place for this end': 'Perth SX to CAD' (n 86).
[88] Ibid.
[89] Ibid.

The ongoing focus of the NCSC on market surveillance persisted into 1988. By way of a letter dated 23 December 1988, the NCSC wrote to the ASX following a meeting between both parties.[90] Although the letter states the meeting was 'very valuable', the NCSC Chairman, Mr Henry Bosch, wanted to 'put a few points on the record', including those set out below.

> First of all the Commission is very anxious that the process of bringing Australian securities markets into line with the best international practice proceed as rapidly as possible. We recognise that the ASX Board has made great efforts in this direction and we appreciate that there have been considerable difficulties in its path. I am sure that it is recognised by everyone that there is still much to be done . . .[91]
>
> Perhaps the least satisfactory part of our discussion on Monday concerned the surveillance systems. Frankly we are not comfortable about the present situation and believe that something more needs to be done either by you or by us. Of course the SEATS system would provide a major step forward but if it does not apply to the most active stocks its use is very limited. We will be giving further thought to what needs to be done in this area.[92]

Not only did the regulator express its dissatisfaction with the ASX's surveillance arrangements, but the inference that could be drawn from the letter is that those arrangements, and possibly others that were discussed,[93] were not considered by the NCSC as being consistent with international best practice.

There are archival records of deliberations within the ASX concerning Mr Bosch's letter. A Memorandum, dated 12 January 1989, for example, noted the following with respect to the then current surveillance practices:

> We are aware that in comparison to the markets in the US and UK our market surveillance procedures are in their infancy. In consequence thereof we have been investigating methods to improve our market surveillance performance.[94]

---

[90] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Mr H Bosch, Chairman of the National Companies and Securities Commission, to Mr LI Roach, Chairman of the Australian Stock Exchange Ltd, 23 December 1988.
[91] Ibid.
[92] Ibid.
[93] Ibid.
[94] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, Z777/166, Australian Stock Exchange (Sydney) Limited, Memorandum, Subject: Market Surveillance, 12 January 1989.

Nonetheless, in the concluding paragraph, the impact of the initiatives discussed in the Memorandum to improve 'market surveillance performance' was stated as follows:

> We would anticipate that each of the initiatives referred to above will lead to an increase in the number of matters reported to the NCSC or otherwise result in disciplinary action before the ASX (Sydney) Board. In the past we have had to prioritise our activities due to the resources available.[95]

Mr Bosch's letter suggests that the national regulator had finally lost its patience with the progress that had been made by the ASX with respect to its market surveillance arrangements. This is not surprising given that the NCSC and its state predecessors had been prodding and probing the stock exchanges with respect to the adequacy and effectiveness of the surveillance of their respective markets for almost 25 years. Mr Bosch's letter would seem to have finally had the desired effect, however, as a few months later the ASX launched its new Surveillance Division.

8.3.4 Birth of the ASX Surveillance Division

It was not only systems and technology that were required to effectively conduct surveillance of ASX's markets. A team was needed to develop processes and methodologies to assist in identifying inappropriate and unlawful trading activities and sharp practices. Mr Berry set up the ASX Surveillance Division from scratch and did it at a time when experience in this particular field would most likely have been extremely rare in the domestic context. Around 1987, with only a copy of the judgment in *North v Marra Developments Ltd*[96] and the Rae Report, as well as a visit to New York (NYSE) and Washington (National Association of Securities Dealers) to look at their stock exchanges' surveillance systems, to initially guide him through the unchartered waters of detecting and investigating market manipulation on ASX's markets,[97] Mr Berry built a team and processes that, to a very large extent, were the blueprint for the surveillance conducted by ASIC today, over 30 years later.

Mr Berry's team set up a secure network to receive a feed of order and trading data from SEATS, implemented processes and 'put people in place' and trained them.[98] Mr Berry also acquired 'a very large manual from the SEC, their training manual' and requested copies of

---

[95] Ibid.
[96] (1981) 148 CLR 42.
[97] 'Interview – Jim Berry' (n 25).
[98] Ibid.

transcripts of cases referred to therein to build up his team's knowledge and expertise, as well as inform the content of the referrals of suspected market misconduct they made to the domestic regulator.[99]

The data provided by SEATS was key to building an effective market surveillance framework for the ASX. As noted by an ASX Senior Compliance Officer in November 1989:

> In the SEATS system, there is an audit trail at every point to protect everyone's interests; bids, offers and trades being recorded accurate to one one hundredth of a second . . . The audit trail also allows investigation of market irregularities to a degree never before seen in Australia.[100]

It was a long time coming, but by March 1989, the ASX had a 'new watchdog', a 'computerised surveillance service' that had 'emerged as a new factor in the lives of market participants who want to bend the rules.'[101]

> Started as part of a major reorganisation of the ASX announced in March, the ASX surveillance service owes at least part of its formation to the example of the Stockwatch service operated by the New York Stock Exchange. The Stockwatch service, now staffed by 120 people working several sophisticated computer systems, was instrumental in catching the major American inside trader, Dennis Levine.[102]

An ASX Press Release from June 1989 announced a number of organisational changes that would 'enhance significantly the Exchange's surveillance procedures' and 'make a positive contribution to investor protection generally'.[103] It includes the below comments concerning market surveillance.

> Recent concerns about various trading practices, such as insider trading, by both the regulatory authorities and the community at large have emphasised the need for ASX to effectively review trading in its marketplace and to investigate any breaches of its rules and securities laws that occur as a result of this trading.

---

[99] Ibid.
[100] Bondfield, 'Introduction to the Stock Exchange' (n 28) 40.
[101] Lawson, 'Suspect Share Trading' (n 30).
[102] Ibid.
[103] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406-687, Z718/381, Australian Stock Exchange Limited, 'Press Release: Australian Stock Exchange Reorganisation', date/time stamped 15 June 1989.

> For some time ASX has been actively developing its surveillance capacity and this process is now being accelerated with the full support of the various regulatory authorities.[104]

In the first six months of its operation, the ASX Surveillance Division had referred six matters to the NCSC, with Mr Berry reportedly stating that the NCSC was 'following some of the matters with "considerable interest"'.[105] A March 1990 ASX Media Release noted that in its first year of operation the ASX Surveillance Division had reported 'possible breaches of laws and regulations at a rate of more than one a week', which included suspected market rigging and insider trading.[106] Mr Berry was quoted as saying that:

> the number of reports is a "matter of concern" and that his surveillance team aims to "reduce the temptation to engage in unacceptable market behaviour".[107]

Deterrence, as well as detection, was the order of the day.

Over time, these numbers would increase significantly.[108] The results of the investigation of surveillance alerts where suspected market manipulation was identified, contrary to the relevant exchange rules, would be heard and determined by the ASX's National Adjudicatory Tribunal[109] (later called the ASX Disciplinary Tribunal) and the outcome published by way of Participant Circulars from at least June 2001, and most likely prior to then.[110] As mentioned in Chapter 7, the first criminal conviction for market rigging in Australia was secured in July 1990, which originated from the work conducted by the ASX Surveillance Division just over a year after it had commenced operation.

---

[104] Ibid.
[105] Mark Lawson, 'ASX Gets a Watchdog Running for $200,000', *The Australian Financial Review* (Sydney, 18 September 1989) 39.
[106] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406-687 (Z718/381), Australian Stock Exchange Limited, 'Memorandum' attached to which is a document referred to as a 'media release', titled 'ASX Watchdog Barks Once a Week', 19 March 1990.
[107] Ibid.
[108] See, for example, Carole Comerton-Forde and James Rydge, 'Market Integrity and Surveillance Effort' (2006) 29(2) *Journal of Financial Services Research* 149.
[109] The 'little known' National Adjudicatory Tribunal was referred to as the 'silent enforcer': Stuart Washington, 'The Silent Enforcer', *The Australian Financial Review (online* 1 May 2013) <https://www.afr.com/companies/the-silent-enforcer-20030501-kaaf6>.
[110] The author has copies on file of a number of ASX 'Disciplinary Matters' Participant Circulars involving findings by the Disciplinary Tribunal (previously the National Adjudicatory Tribunal) concerning breaches of the Exchange's Rules regarding share price manipulation, commencing from 7 June 2001. There is some information available on the ASX's website, however, the original PDF versions of the circulars are not available in many instances: <https://www2.asx.com.au/about/regulation/asx-compliance/enforcement/disciplinary-announcements>.

Paradoxically, according to Mr Berry, the first market manipulation case his team ever handled was identified not by a sophisticated computerised market surveillance system, but by the Trading Floor Manager (TFM) 'who still roamed around the floor'.[111] The TFM became aware that traders on the trading floor were 'getting [frustrated] because they [couldn't] get volume out into Qintex and every afternoon it would close high'.[112] The investigation that followed indicated concerns around 'marking the close' in the shares of Qintex Australia Limited (QAL).[113] Mr Berry recalls that the traders on the floor had:

> volume to sell, and they couldn't. They'd have to keep pushing their prices down to get volume out. And yet, late in the day, there'd be these magic bids of a thousand shares that propped up the price.[114]

Mr Berry believes that 'the pattern of behaviour appear[ed] to be that there [was] market manipulation going on by closing the market high' and, given he considered it 'was so serious', he rang the NCSC and his team also formally referred the matter to the regulator.[115]

The circumstances referred to by Mr Berry appear to accord with an article in the 21 March 1990 edition of *The Canberra Times*, which reported that the NCSC was conducting a 'private inquiry into transactions last year involving shares in Christopher Skase's collapsed' QAL.[116] According to the article:

> The inquiry is one of the most major investigations ever launched by the corporate watchdog. It is also looking at the activities of a leading Melbourne stockbroking house.
>
> In recent months, Qintex executives, financial institution representatives and a director of McIntosh Securities – the dominant broker in Qintex trade before the group's demise – have been summoned to give evidence.[117]

Similarly, Hoyte's below comments also appear to substantiate Mr Berry's recollection.

---

[111] 'Interview – Jim Berry' (n 25).
[112] Ibid.
[113] Ibid. '[M]arking (up) the close' or 'ramping' was defined by the ASX as involving the placement of a bid or the purchase of a parcel of shares 'at or near the close [of trading] which changes the closing price': Australian Stock Exchange Limited, 'Circular to Member Organisations Number 306/90: Sections 123 and 124 of the Securities Industry Code', 21 June 1990.
[114] 'Interview – Jim Berry' (n 25).
[115] Ibid.
[116] 'NCSC investigates Qintex dealings', *The Canberra Times* (ACT, 21 March 1990) 30.
[117] Ibid.

> The NCSC investigated possible breaches of Sections 123 and 124 of the Securities Industries Act, and possible share price manipulation in September and October 1989, taking sworn evidence from Qintex executives, financial institutions and McIntosh. It was adjourned in November 1990, and resumed by the ASC in 1991.[118]

It appears from a search of publicly available information in relation to this matter, however, that there was no enforcement outcome achieved by the NCSC in connection with this particular ASX referral.[119] As discussed in Chapter 7, the regulators that oversaw the conduct of domestic securities markets during the 1970s and 1980s were the subject of criticism for the low number of criminal prosecutions secured and other successful enforcement outcomes, with the NCSC, for example, being described as 'an underfunded, large-mesh sieve that filtered out only a few of the rorts'[120]

Nonetheless, the importance of the ASX finally establishing an electronic market surveillance capability cannot be overstated. The below excerpt from the Crown Prosecutor's opening address in *R v Tuckwell*, heard in the Central District Criminal Court in Adelaide 1992, for instance, underlines just how important the advent of SEATS and the Market Surveillance Division were in efforts to combat stock market manipulation in the domestic context.

> We now embark on a trial that makes Australian legal history. This is the first prosecution to go to trial for an offence of this kind the allegation being essentially one of stock market manipulation . . . It seems that market manipulation has probably occurred since stock markets began, but the detection and investigation has previously been difficult, indeed impossible. Two things have happened in this country in the last four to five years to change that. The first is the introduction of SEATS . . . The other very important development has been that the Australian Stock Exchange itself has established a market surveillance branch and that branch monitors and conducts surveillance upon the transactions occurring on SEATS . . . So those two factors in combination have changed the Australian stock market

[118] Catherine Hoyte, *An Australian Mirage* (PhD Thesis, Griffith University, 2004) 293.
[119] 'Interview – Jim Berry' (n 25). There are many reasons why an enforcement outcome may not have been achieved by the regulator in this particular matter, including lack of sufficient evidence and inadequate resources to proceed with the investigation. Alternatively, there may have been an enforcement outcome, but details may not have been made public or cannot be easily located.
[120] Malcolm Maiden, 'A New Order Emerges from the Ashes of the Boom', *The Australian Financial Review* (online, 21 November 1990) <https://www.afr.com/politics/a-new-order-emerges-from-the-ashes-of-boom-19901121-k46l6>.

> and are the explanation for you being presented with a case that years ago there were none.[121]

Whilst it was ultimately inevitable that the ASX would need to automate the surveillance of trading activity on its markets to combat market manipulation and other misconduct, as has been highlighted in this section, it appears to have taken many years of Government 'encouragement' before that objective was finally achieved.

8.4 Disciplinary action for manipulative activities

Implementing trading rules that specifically prohibited market manipulation and conducting market surveillance to deter and detect the occurrence of this insidious activity were important and necessary steps for domestic stock exchanges that were competing domestically and internationally for capital in a modern world. What was also required, however, was effective and timely enforcement where non-compliance was detected. According to IOSCO, for example, '[h]aving a transparent set of trading rules which are effectively enforced . . . is critical in any market'.[122]

Set out below are brief details of each of the early matters located during the research that were the subject of disciplinary action taken by the stock exchanges for identified instances of market manipulation prior to 1990. As with the other key initiatives taken by domestic stock exchanges, the effective enforcement of their rules was also an important symbolic step, putting their Members and the public at large on notice that market manipulation would not be tolerated.

8.4.1 November 1985

The earliest record located of disciplinary action taken by a stock exchange in Australia for a contravention of a rule that explicitly proscribed a type of market manipulation is a circular issued to Members of the SSE, dated 1 November 1985. It states that the Board had, pursuant to Article 82(3), 'found a Member Organisation guilty' of breaching Rule 6.6(2)(i) (Orderly Market) and Rule 6.8 (Fictitious Transactions).[123] Fines of $5,000 and $2,500 were imposed,

---

[121] Mr D Chapman for Commonwealth Director of Public Prosecutions, Transcript of Proceedings, *R v Tuckwell* (Central District Criminal Court, Adelaide, 2045/91, Judge Russell, 18 March 1992) 81, 92-93.
[122] IOSCO, 'Approaches to Market Surveillance' (n 20) 5.
[123] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/27 (Z718/22), The Sydney Stock Exchange Limited, Circular to Members Number 103, 'Article 82 – Breach of Rules', 1 November 1985.

respectively, by the Board on the unnamed Member Organisation. However, no information on the facts and circumstances of the breaches was provided in the Circular.[124]

8.4.2 July 1987

A Circular issued by the ASX (Sydney), dated 21 July 1987, provides a brief summary of certain breaches of the ASX's Rules, including breaches of 'Joint Rule 6.8, Fictitious Transactions'.[125] According to the Circular, two Member Organisations had admitted breaching Joint Rule 6.8, but, in 'the circumstances, the Board decided that no penalty' would be imposed.[126] The Circular also states that the Board had found a Member Organisation guilty of breaching the same rule and 'in the circumstances the Member Organisation concerned was fined' $5,000.[127] No other information was provided on the relevant facts and circumstances of the matters or, importantly, the rationale for imposing a financial penalty on one Member Organisation for a breach of Rule 6.8, while no penalty was imposed on the other two Member Organisations that had admitted breaching the same rule.

The Circular includes the wording of 'ASX Rule 2.8 – Fictitious Transactions', which is almost the same wording used in Melbourne Rule 6.8, as well as the definition of 'change of beneficial ownership' in 's.124(5) of the Securities Industry Code'.[128] The Circular also contains the below advice from the Exchange.[129]

> Therefore, Members should satisfy themselves that they have internal control systems which ensure that:
>
> (a) all transactions result in a change of ownership; and
>
> (b) all transactions are at arm's length.

---

[124] Ibid.
[125] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, N210/47-51, Australian Stock Exchange (Sydney) Limited, Circular to Members Number 45, 'Breach of Rules', 21 July 1987.
[126] Ibid.
[127] Ibid.
[128] ASX Rule 2.8 provides that: 'A Member or Broker shall not make a fictitious transaction or give an order for the purchase or sale of Securities the execution of which would involve no change of ownership, nor shall he or it execute such an order with knowledge of its character': ibid.
[129] Ibid.

Furthermore, the Board urges Members to ensure that their staff, including Authorised Operators, are aware of these most important requirements.[130]

8.4.3 August 1987

By way of a letter dated 21 August 1987,[131] the SSE provided notification to the CAC of disciplinary action that the SSE and the SEM had taken against their respective members for a number of breaches of Rule 6.8, which provided as follows:

> A Member or Member Organisation shall not make a fictitious transaction or give an order for the purchase or sale of Securities the execution of which would involve no change of ownership, nor shall he or it execute such an order with knowledge of its character.[132]

Attached to the letters are Notices issued to each of the member organisations, Hattersley Maxwell Noall Ltd (HMN), Potter Partners Ltd (PPL) and Roach Tilley Grice & Co Ltd (RTG), dated 11 June 1987, which set out details of the 'charges' levelled against each organisation and notification that the charges would be heard on 23 June 1987.[133] An example of the wording of one of the charges against HMN is set out below.

> <u>Charge 1</u>
>
> Breach of Rule 6.8:
>
> That the Member Organisation on or about 16 February, 1987 made a fictitious transaction or gave an order for the purchase or sale of securities, namely the purchase from and subsequent sale to Potter Partners Limited of 2,600 shares in Private Blood Bank of Australia Limited, the execution of which involved no change of ownership, or was

---

[130] Ibid.

[131] A letter appears to have been sent to the Chairman of the NSW Corporate Affairs Commission with respect to the findings of the Board of the Australian Stock Exchange (Sydney) Limited against Hattersley Maxwell Noall Limited and two letters appear to have been sent to the Chairman of the Victorian Corporate Affairs Commission with respect to Potter Partners Limited and Roach Tilley Grice & Co Ltd: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/071 (Z718/065), Letters from Mr Andrew E Bennett, Secretary, to Chairman of the NSW Corporate Affairs Commission, 21 August 1987, and to Chairman of the Victorian Corporate Affairs Commission, 21 August 1987, containing notices concerning charges made against Hattersley Maxwell Noall Limited, Potter Partners Limited and Roach, Tilley Grice & Co Ltd, 11 June 1987 ('ASX v HMN et al').

[132] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, AU NBAC 209-56, The Sydney Stock Exchange Limited, *Memorandum and Articles of Association Rules, By-Laws & Regulations*, Effective 21 September 1986. This rule was the same rule number and content for the Stock Exchange of Melbourne.

[133] 'ASX v HMN et al' (n 131).

executed with knowledge of its character, in breach of Rule 6.8 of the Rules of The Sydney Stock Exchange Limited.[134]

It appears from the contents of the letters and Notices that on 4, 16 and 23 February 1987, HMN, PPL and RTG had executed several 'wash trades', whereby they essentially sold Private Blood Bank of Australia Limited (PBBAL) shares between themselves and then reversed the trades by buying back the same volume of PBBAL shares from each other at exactly the same price and time, most of the trades having been booked to 'House', 'Error' or 'Suspense' accounts.[135] By way of example, on 16 February 1987, HMN bought 2,600 PBBAL shares at $6.20 from PPL at 11:34am. The transaction was then immediately reversed and PPL bought 2,600 PBBAL shares at $6.20 from HMN at 11:34am.[136] These transactions would, presumably, have artificially inflated the volume of trading in PBBAL shares on the relevant days and would have also sent false or misleading signals to other member organisations and investors with respect to the demand for, or price of, those shares.[137]

8.4.4 February 1989

In February 1989, a Member Organisation and one of its directors were found to have contravened Article 52 (Prohibited Conduct) by virtue of manipulating the market price of a particular security.[138] The director is recorded as having placed 'various buy and sell orders into SEATS that had the effect of lowering the share price'.[139] The Member Organisation was fined $5,000. In relation to the conduct of the director, the Member Organisation was directed to obtain the director's resignation as a director and notified that he could not be considered to re-apply to become a director for a period of one year.[140] No other information was located concerning the facts and circumstances of this particular matter.

In response to a request by the author for information concerning when disciplinary action was first taken against an exchange member/participant for market manipulation, a document was provided by the ASX titled 'Schedule Showing All Fines and Penalties Levied by ASX

---

[134] Ibid.
[135] Ibid.
[136] Ibid.
[137] No other information was located concerning the facts and circumstances of this matter, including why the wash trades were executed.
[138] Copy of a document titled 'Schedule Showing All Fines and Penalties Levied by ASX Subsidiaries 1.4.87 To 1.11.89'.
[139] Ibid.
[140] According to the Schedule, action was taken against the relevant individual under what was referred to as a 'non-Member Agreement pursuant to Article 37(2)': ibid.

Subsidiaries 1.4.87 To 1.11.89' (the Schedule).[141] According to this document, other than the two findings of breaches of Article 52 and the three findings of breaches of Rule 6.8 referred to above, there was no other disciplinary action taken by the stock exchanges for market manipulation in the period covered by the Schedule.[142] Five disciplinary outcomes over a two and half year period for market manipulation in the late 1980s was certainly an improvement as compared to prior decades where there does not appear to have been any such action taken.[143] What is not clear, however, is whether what appears to be a relatively small number of disciplinary actions is indicative of, amongst other things, the following:

(a) market manipulation not occurring on domestic stock exchanges (or not occurring that often);

(b) manipulative activities occurring, but not being identified by the stock exchanges;

(c) manipulative activities being identified, but not considered to constitute a breach of the exchanges' rules;

(d) manipulative activities being identified, but insufficient evidence being available to substantiate disciplinary action being taken or a tribunal determination being made; or

(e) manipulative activities occurring and being identified, but disciplinary action not being taken by the Exchanges (or not being taken in every instance).

Although the number of disciplinary actions taken does not appear significant, taking such action represented yet another significant milestone in efforts to combat market manipulation on domestic share markets.

8.5 Farewell to the 'corner' in Australia

Several 'corners' have been discussed in previous chapters. However, one of the last 'corners' to be established on a domestic stock exchange occurred in 1971. Unlike the 'corners' previously considered where the stock exchanges do not appear to have treated establishing a corner as a manipulative activity, the Antimony Nickel N.L. corner, described by Sykes as 'the

---

[141] Ibid.
[142] Ibid.
[143] Note, however, the matter discussed in Chapter 5, where a fine of £10 was imposed on two members of the SEM for what appears to have been a fictitious trade.

father and mother of all bear traps',[144] resulted in the Chairman of the SSE, Mr Jim Cooper, issuing a statement to the press on behalf of the Committee of the SSE expressing concern that the market in Antimony shares had been manipulated.[145] The statement was also issued to SSE Members by way of a 'Notice to Members', dated 6 April 1971.[146]

> The Committee of the Sydney Stock Exchange takes a very grave view of recent attempts to corner markets in certain stocks with the result that orderly markets have not been maintained.
>
> These activities appear to have, inter alia, the objective of creating artificial prices for the purposes of exploiting the buying-in procedure which is to enable delivery of securities to be obtained . . .[147]
>
> In the circumstances as they appeared to the Committee, there was reason to fear that the price of the stock was not in accord with free market concepts and that the market was being manipulated so that it would no longer give a proper indication of the price of the shares.[148]

The Press Release states that trading in the shares would be suspended. It also states the following:

> It has been demonstrated that there are loopholes in Stock Exchange Regulations which have made possible cornering operations which cannot be regulated as such by the Committee. However, the Committee would immediately suspend any member who engaged in cornering operations on his own account.
>
> The events which occurred in this matter have indicated that . . . further steps are necessary to prevent manipulation of the market by members or non members, and steps are being

---

[144] Trevor Sykes, *The Money Miners: The Great Australian Mining Boom* (Allen & Unwin, 1995) 72
[145] In a letter from Mr Cooper to Sir Magnus Cormack, Mr Cooper states the following: You may recall that on the fifth day of April, 1971, I issued a statement to the press concerning the suspension of trading in shares of Antimony Nickel . . .': Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), Copy of unsigned letter from J. H. Cooper to Sir Magnus Cormack, Chairman, Senate Select Committee on Securities and Exchange, 19 May 1971.
[146] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N210/27-31, Sydney Stock Exchange Limited, Notice to Members, Personal 28, 'Antimony Nickel N.L.', purportedly signed by A. E. Bennett for D. M. Butcher, 6 April 1971.
[147] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-008 (Z718/08), Sydney Stock Exchange Limited 'Press Release', purportedly signed by J. H. Cooper, Chairman, 5 April 1971.
[148] Ibid.

taken immediately to deal with the situation. Details of the steps being proposed are being communicated to the Attorney-General.[149]

On 10 May 1971, the Committee of the SSE appointed a sub-Committee to investigate 'all matters leading up to touching on and concerning the suspension of Antimony Nickel N.L.' and 'consider if and in what circumstances the suspension should be lifted.'[150] In addition, several amendments were made to the SSE's By-laws: (i) the sale of shares not owned by the seller (short selling) was prohibited by By-Law 54B (Short Sales);[151] (ii) a new rule dealing with corners, By-Law 54C, was added, which was based on a rule that operated on the NYSE (and other exchanges in the US) and the Toronto Stock Exchange (and other exchanges in Canada); and (iii) as noted in section 8.2 above, By-Law 54D dealing with 'Fictitious Transactions' was added.[152] Yet, despite Mr Cooper's comments referring to the creation of artificial prices and the market in Antimony Nickel being manipulated, no information was located to suggest that disciplinary action was taken against any members of the SSE in relation to this matter. Although a court case ensued,[153] like the court cases discussed in previous chapters that had a connection with cornering the share market, there appear to have been no findings or comments by the Court in relation to the legality or otherwise of establishing a corner. Indeed, no cases were located during the research where such a determination was made on the legality or otherwise of cornering the local share market.

Although the corners discussed in previous chapters were characterised at the time as market rigging by the press, and some academics have asserted that '[c]orners could be covered by s123' of the *Securities Industry Act* 1980 (NSW) (Stock market manipulation),[154] the legality

---

[149] Ibid.
[150] Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), 'Minutes of Special Antimony Nickel Sub-Committee Meeting Held on Tuesday 3rd August, 1971 at 2.00pm', H. R. Hardie, 4 August 1971.
[151] See also Robert Deutsch's comment that the Antimony Nickel N.L. corner was the 'catalyst in the creation of the short selling offence in Australia': Robert Deutsch, 'Short Selling' (1983) 1 *Company and Securities Law Journal* 142, 142-143.
[152] The Committee of the SSE determined that these By-Laws be amended in the manner set out in the Notice to Members, dated 6 April 1971: Noel Butlin Archives Centre, Australian National University: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), Sydney Stock Exchange Limited, 'Notice to Members', Personal 29, 6 April 1971.
[153] *Osborne v Australian Mutual Growth Fund* [1972] 1 NSWLR 100. The case did not involve consideration of the legality or otherwise of cornering the market or any actions taken by the SSE in dealing with the corner in Antimony Nickel N.L. The SSE was not a party to the proceedings, although the application of its articles and by-laws to the issues in question was considered by the Supreme Court of NSW (Street J held that the contract between the plaintiffs and the defendant was subject to the relevant SSE articles and by-laws).
[154] Robert Baxt, Christopher Maxwell and Selwyn Bajada, *Stock Markets and the Securities Industry: Law and Practice* (Butterworths, 3rd ed, 1988) 223.

or otherwise of a corner or cornering the share market may now be a moot point. This is based on the comments of the High Court in *Director of Public Prosecutions (Cth) v JM* that given the takeover provisions in Chapter 6 of the Act, 'it may be unlikely that any buyer or seller can, in any practical sense, "corner" or "squeeze" the market for listed shares.'[155] As such, it would appear that corners remain an enigma in the rogue's gallery of manipulative activities, in the domestic context at least.

8.6 Conclusion

The period discussed in this chapter and Chapter 7 was a seminal epoch in the history of securities market regulation in Australia. It was a period of many firsts, including the publication of the Rae Report, the 'first (and only) major document in this country which analysed the workings of the securities market',[156] which found many failings on the part of both regulators and the stock exchanges, the enactment of the first domestic laws that specifically criminalised stock market manipulation;[157] the first national securities markets regulator; the implementation of electronic market surveillance on domestic stock exchanges; the enforcement by the stock exchanges of rules explicitly proscribing market manipulation; and the first prosecution and conviction of an individual for engaging in share market rigging in Australia.

Yet, this was only just the beginning. The thirty years since the end of this period have seen the world change at an even faster speed and efforts to perpetrate and combat stock market manipulation and other forms of market misconduct continue to evolve rapidly. As history has shown, however, the manipulation of share prices on domestic share markets remains a credible and ongoing threat to their fairness and integrity. Complacency in vigorously investigating and taking swift enforcement action for contraventions of the laws that proscribe this insidious activity puts the international reputation of Australia's capital markets and wellbeing of the national economy and the community at risk.

---

[155] *Director of Public Prosecutions (Cth) v JM* [2013] HCA 30 [65].
[156] R Baxt, H A J Ford and G J Samuel, *An Introduction to the Securities Industry Acts* (Butterworths, 1977) 17.
[157] Although note the discussion in Chapter 6 regarding the WA and Queensland Criminal Code Acts.

PART FOUR: THE CLOSING BELL

CHAPTER 9: Conclusion

> We must have an industry in which insider trading is relatively unheard of, but when it is, it should be because those thieves masquerading as businessmen are being prosecuted. Can we continue with a situation where insider trading and manipulation prosecutions are unheard of and where the machinery for investigation of such matters is either virtually non-existent, or so cumbersome and lacking in resources and expertise, as to make effective investigation and prosecution something which happens only in the most glaring cases.
>
> Can we have confidence in a share market in which it is still possible to organise manipulated "runs" under the noses of the existing regulatory authorities and in the deadest of trading conditions?[1]

> The manipulator will always try his hand. Fraud will always exist.[2]

As this thesis has highlighted, conduct and activities intended to interfere with the forces of genuine supply and demand on domestic share markets have a long history, one that stretches back much further in time than a review of the legal literature would otherwise suggest. As outlined in Chapter 4, the historical roots of stock market manipulation in the domestic context can be traced back to the early days of share trading in some of the Australian colonies where rudimentary share markets were established on the streets of several gold mining towns. Since then, it has continued to plague domestic share markets, several examples of which have been discussed throughout this thesis.

The harm caused by rigging share markets is significant and its effects are widespread, ultimately threatening the economic wellbeing of all Australians, as discussed in Chapter 3. This is something that appears to have been well understood as far back as the very early days of share trading across the Australian colonies. Yet, as this thesis has found, taking comprehensive, co-ordinated and effective action to combat the occurrence of manipulative activities on domestic share markets was seemingly not a priority for governments or the stock exchanges for over 100 years. Although some action was taken to hold those who rigged the

[1] Peter Rae, 'Moulding the Securities Industry for Tomorrow', *The Australian Accountant*, December 1971, 489.

[2] Robert Baxt, *The Rae Report – Quo Vadis* (Butterworths, 1974) 2.

share markets to account, it was infrequent, often not successful and would have most likely done little to deter others minded to do the same.

Chapters 7 and 8 examined the changes that started to occur in the domestic context during the period from the 1960s to 1990, the year when the first successful prosecution for stock market rigging was secured. In stark contrast to the prior century, combating stock market manipulation became an area of significant focus for governments and stock exchanges during this period. Laws explicitly criminalising stock market manipulation, the Rae Committee's 'warts and all' report that exposed the failings of regulators and stock exchanges in combating manipulation and other misconduct, as well as the implementation of electronic market surveillance by the ASX are all examples of the dramatic changes that would fundamentally transform the securities market regulation paradigm in Australia. Although it is difficult to pinpoint the exact trigger for this very considerable turnaround, there is no doubt that it was long overdue.

Today, domestic share markets are well regulated. Indeed, Australia has a powerful regulator, staffed with, amongst others, ex-financial market practitioners, as well as experienced lawyers and investigators. ASIC has a sophisticated surveillance system that allows its staff to identify possible manipulative activities in real-time, the ability to obtain very significant sanctions against those who engage in those activities and investigation powers and a set of regulatory tools at its disposal that would make it the envy of other securities market regulators and law enforcement agencies. And yet, we continue to see reports of share prices being manipulated on domestic stock exchanges. However, according to Rae:

> it is unreal to think that amongst men and women there are not always those who will find a way to engage in abuses and malpractices. No form or regulation or organisation will eliminate ordinary crime nor will it prevent the commercial criminal from using to his advantage the continuing gullibility and ignorance of the general public.[3]

If nothing else, the history of stock market manipulation in Australia has emphasised that the national regulator needs to remain vigilant and resilient. As 'Stock and Share Broker' Frank Blackley observed in 1889, 'abuses, like all other ill weeds, easily establish themselves in any soil, but can only be eradicated by laborious and persevering endeavour'.[4] Whilst the complete

---

[3] Peter Rae, 'Moulding the Securities Industry for Tomorrow' (1971) *The Australian Accountant* 483.
[4] Frank Blackley, *Notes of Interest. "On Change"* (Frank Blackley, 10 December 1889) 2.

eradication of market manipulation from domestic (and international) share markets may not be a realistic prospect, there is no doubt that ASIC must continue with its 'laborious and persevering endeavour' to combat this insidious and harmful activity that continues to plague the nation's capital markets and has done so for a very long time. The cost is just too high to do otherwise.

Bibliography

A *Articles/Books/Reports*

Adamson, Graeme, *Miners and Millionaires: The First Hundred Years of the People, Markets and Companies of the Stock Exchange in Perth, 1889-1989* (Australian Stock Exchange (Perth) Limited, 1989)

Alexander, Carol and Douglas Cumming (eds), *Corruption and Fraud in Financial Markets: Malpractice, Misconduct and Manipulation* (Wiley, 2020)

Armson, Emma, 'False Trading and Market Rigging in Australia' (2009) 27 *Company and Securities Law Journal* 411

Arvedlund, Erin, *Open Secret: The Global Banking Conspiracy that Swindled Investors Out of Billions* (Portfolio, 2014)

Atkinson, Linda, *Founding Father of Gympie. Business Man. Mine Owner. Community Pioneer: 1840-1905* (Gympie Regional Council, 2017)

Austin, Janet, 'A Rapid Response to Questionable Trading – moving towards better enforcement of Australia's securities laws' (2009) 27 *Companies and Securities Law Journal* 203

Austin, Janet, 'Government to the rescue: ASIC takes the reins of the stock markets' (2010) 28 *Companies and Securities Law Journal* 444

Austin, Janet, *Insider Trading and Market Manipulation: Investigating and Prosecuting Across Borders* (Edward Elgar Publishing, 2017)

Austin, Janet, 'What Exactly Is Market Integrity? An Analysis of One of the Core Objectives of Securities Regulation' (2017) 8(2) *William & Mary Business Law Review* 215

Avgouleas, Emilios, *The Mechanics and Regulation of Market Abuse: A legal and economic analysis* (Oxford University Press, 2005)

Bain, Jim, *A Financial Tale of Two Cities: Sydney & Melbourne's remarkable contest for commercial supremacy* (UNSW Press, 2007)

Banner, Stuart, *Anglo-American Securities Regulation: Cultural and Political Roots, 1690-1980* (Cambridge University Press, 1998)

Banner, Stuart, 'The Origins of the New York Stock Exchange, 1791-1860' (1998) 27(1) *Journal of Legal Studies* 113

Bate, WA, *The Lucky City, The First Generations at Ballarat* (Melbourne University Press, 1978)

Baumgartner, Joseph, 'Newspapers as Historical Sources' (1981) 9(3) *Philippine Quarterly of Culture and Society* 256

Baxt, Robert, *The Rae Report – Quo Vadis?* (Butterworths, 1974)

Baxt, Robert and Allen B Afterman, *Casebook on Companies and Securities* (Butterworths, 1976)

Baxt, Robert, Ashley Black and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis Butterworths, 9th ed, 2017)

Baxt, Robert, Christopher Maxwell, and Selwyn Bajada, *Stock Markets and the Securities Industry: Law and Practice* (Butterworths, 3rd ed, 1988)

Baxt, Robert, HAJ Ford and Ashley Black, *Securities Industry Law* (Butterworths, 4th ed, 1993)

Baxt, R, HAJ Ford and GJ Samuel, *An Introduction to the Securities Industry Acts* (Butterworths, 1977)

Baxt, R, HAJ Ford, GJ Samuel and CM Maxwell, *An Introduction to the Securities Industry Codes* (Butterworths, 2nd ed, 1982)

Black, Ashley and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis, 10th ed, 2021)

Bedford, Randolph, *Naught to Thirty-three* (Melbourne University Press, 1976)

Bell, Felicity, 'Empirical Research in Law' (2016) 25(2) *Griffith Law Review* 262

Bell, Harold F, 'The Securities Market – National Control or Self-Regulation?' (1975) 51(3) *Economic Record* 372

Berle, AA, 'Liability for Stock Market Manipulation' (1931) 31(2) *Columbia Law Review* 264

Berle, AA 'Stock Market Manipulation' (1938) 38(3) *Columbia Law Review* 393

Bhattacharya, U and H Daouk, 'The World Price of Insider Trading' (2002) 57(1) *Journal of Finance* 75

Birrell, Ralph W, *Staking a Claim: Gold and the Development of Victorian Mining Law* (Melbourne University Press, 1998)

Bivin, Thomas H, 'Broker's Liability for Transferring Defrauded Owner's Stocks' (1949) 16 *Insurance Counsel Journal* 177

Black, Ashley, 'Regulating market manipulation: sections 997-999 of the Corporations Law' (1996) 70 *Australian Law Journal* 95

Black, Ashley and Pamela Hanrahan, *Securities and Financial Services Law* (LexisNexis, 10th ed, 2021)

Blackley, Frank, *Notes of Interest: 'On Change'* (Frank Blackley, 1889)

Blainey, Geoffrey, *The Rush That Never Ended: A History of Australian Mining* (Melbourne University Press, 5th ed, 2003)

Bosch, Henry, *The Workings of a Watchdog* (William Heinemann Australia, 1990)

Bottomley, Stephen, Kath Hall, Peta Spender and Beth Nosworthy, *Contemporary Australian Corporate Law* (Cambridge University Press, 2nd ed, 2021)

Brandeis, Louis D, 'What Publicity Can Do', *Harper's Weekly*, 20 December 1913

Bromberg, Lev, George Gilligan and Ian Ramsay, 'Financial Market Manipulation and Insider Trading: An International Study of Enforcement Approaches' [2017] 8 *Journal of Business Law* 652

Brough Smyth, R, *The Gold Fields and Mineral Districts of Victoria* (Queensberry Hill Press, 1979)

Brown, Callum G, *Postmodernism for Historians* (Routledge, 2013)

Brown, P and P Goldschmidt, 'ALCOD IDSS: Assisting the Australian Stock Market Surveillance Team's Review Process' (1996) 10 *Applied Artificial Intelligence* 625

Bruce, Robert, Bruce McKern, Ian Pollard and Michael Skully, *Handbook of Australian Corporate Finance* (University of Hawaii Press, 2nd ed, 1986)

Bruns, Gordon R, *The Stock Exchange* (Jenkin, Buxton & Co Pty Ltd, 1957)

Bruns, Gordon R, *The Stock Exchange* (Gordon R Bruns, 4th ed 1962)

Cane, Peter and Herbert Kritzer (eds), *Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2012)

Calvert, Albert F, *My fourth tour in Western Australia* (William Heinemann, 1897)

Carew, Edna, *National Market National Interest: The drive to unify Australia's securities markets* (Allen & Unwin, 2007)

Castles, Alex C, 'The Reception and Status of English Law in Australia' (1963) 2(1) *Adelaide Law Review* 1

CCH Australia, *A Guide to Australian Securities Industry Law and Stock Exchange Control* (CCH Australia, 1971)

Chancellor, Edward, *Devil Take the Hindmost: A History of Financial Speculation* (Plume, 2000),

Chitimira, H, 'The Regulation of Market Manipulation in Australia: A Historical Comparative Perspective' (2015) 8(2) *Potchefstroom Electronic Law Journal* 111

Clews, Henry, *Fifty Years in Wall Street* (Irving Publishing Company, 1908)

Comerton-Forde, Carole and Rydge, James, 'Market Integrity and Surveillance Effort' (2006) 29 *Journal of Financial Services Research* 149

Comerton-Forde, Carole and Talis J. Putniņš, 'Measuring closing price manipulation' (2011) 20(2) *Journal of Financial Intermediation* 135

Constable, Paul, 'Ferocious Beast or Toothless Tiger? The Regulation of Stock Market Manipulation in Australia' (2011) 8 *Macquarie Journal of Business Law* 54

Constable, Paul, 'Psst ... Want to Hear a Rumour? Rumourtrage May Have Been Occurring in Australia for Longer Than We Thought' (2016) 19 *International Trade and Business Law Review* 48

Constable, Paul, 'Tracing the Historical Roots of Share Price Manipulation in Australia: *Rerum Cognoscere Causas*' (2019) 22 *International Trade and Business Law Review* 69

Cooper, Geoffrey and Richard J Cridlan, *Law and Procedure of the Stock Exchange* (Butterworths, 1971)

Corzo, Teresa, Margarita Prat, and Esther Vaquero, 'Behavioral Finance in Joseph de la Vega's Confusion de Confusiones' (2014) 15(4) *Journal of Behavioral Finance* 341

Cumming, Douglas and Johan, Sofia, 'Global Market Surveillance' (2008) 10(2) *American Law and Economics Review* 454

Curle, JH, *The Gold Mines of the World Containing Concise and Practical Advice for Investors Gathered from a Personal Inspection of the Mines of Transvaal, India, West Australia, Queensland, New Zealand, British Columbia and Rhodesia* (Waterlow and Sons, 1899)

'Current Topics' (1970) 44(6) *Australia Law Journal* 245

Cusack, Frank, *Bendigo: A History* (Lerk & McClure, 2002)

Dale, Richard, *Napoleon is Dead: Lord Cochrane and the Great Stock Exchange Scandal* (Sutton Publishing, 2006)

Davies, Stephen, *Empiricism and History* (Palgrave Macmillan, 2003)

Davison, Graeme, *The Rise and Fall of Marvellous Melbourne* (Melbourne University Press, 1978)

Defoe, Daniel, *The Anatomy of Exchange Alley: or, A System of Stock Jobbing* (2nd ed, 1719)

Defoe, Daniel, *Essays Upon Several Projects: or, Effectual Ways for Advancing the Interest of the Nation* (1702)

Defoe, Daniel, *The Villainy of Stock-Jobbers Detected, and the Causes of the Late Run Upon the Bank and Bankers Discovered and Considered* (1701)

Deutsch, Robert, ‘Short Selling’ (1983) 1 *Company and Securities Law Journal* 142

Dow, Hume (ed), *Trollope’s Australia* (Thomas Nelson, 1966)

Drake, PJ, ‘Stock exchange reforms in Australia’ (1985) 294 *The Round Table* 114

Durston, Gregory J and Ailsa McKeon, *The Little Book of Market Manipulation: An Essential Guide to the Law* (Waterside Press, 2020)

Edgar, Lynsey, ‘Market manipulation through false or misleading statements on social media: Enforcement issues’ (2018) 33 *Australian Journal of Corporate Law* 166

Enrich, David, *The Spider Network: The Wild Story of a Math Genius, a Gang of Backstabbing Bankers, and One of the Greatest Scams in Financial History* (Custom House, 2017)

Epstein, Lee and Gary King, ‘The Rules of Inference’ (2002) 69(1) *University of Chicago Law Review* 1

‘Expulsion from Stock Exchanges as a Check to Matched Orders and Other Manipulation’ (1940) 49(8) *Yale Law Journal* 1469

Ferguson, John and Elaine Brown, *The Gympie Goldfield 1867-2008* (Gympie Regional Council, 2009)

Feros, James and Richard BW Watters, *Index to the Report on Australian Securities Markets and their Regulation, or “The Rae Report”* (West Publishing Corporation Pty Ltd, 1974)

Fischel, Daniel R and Ross, David J, ‘Should the Law Prohibit “Manipulation” in Financial Markets?’ (1991) 105(2) *Harvard Law Review* 503

Fischer, Phil, *The Australian Stock Exchange: Am Introduction* (CCH Australia, 1988)

FitzGerald, Jeffrey, ‘Legal Studies “Down Under”’ (1976) 3 *The American Legal Studies Association Forum* 17

Fox, Merritt B, Lawrence R Glosten and Gabriel V Rauterberg, ‘Stock Market Manipulation and its Regulation’ (2018) 35 *Yale Journal on Regulation* 67

Franklin, Allen and Douglas Gale, ‘Stock-Price Manipulation’ (1992) 5(3) *Review of Financial Studies* 503

Freiberg, Arie, ‘Abuse of the Corporate Form: Reflection from the Bottom of the Harbour’ (1987) 10 *University of New South Wales Law Journal* 68

Galbraith, John Kenneth, *The Great Crash 1929: The classic account of financial disaster* (Penguin Books, 1975)

Galbraith, John Kenneth, *The Great Crash 1929* (Penguin Books, 2009)

Gibbs, RM, *Bulls, Bears and Wildcats: A Centenary History of the Stock Exchange of Adelaide* (Peacock Publications, 1998)

Gillies, Peter, *The Law of Criminal Conspiracy* (Federation Press, 2nd ed, 1990)

Goldwasser, Vivien R, ‘The Enforcement Dilemma in Australian Securities Regulation’ (1999) 27 *Australian Business Law Review* 482

Goldwasser, Vivien R, ‘CLERP 6 – Implications and Ramifications for the Regulation of Australian Financial Markets’ (1999) 17 *Company and Securities Law Journal* 206

Goldwasser, Vivien, *Stock Market Manipulation and Short Selling* (CCH Australia and Centre for Corporate Law and Securities Regulation, 1999)

Goldwasser, Vivien R, ‘Regulating Manipulation in Securities Markets: Historical Perspectives and Policy Rationales’ (1999) 5 *Australian Journal of Legal History* 149

Goldwasser, Vivien R, 'The Regulation of Stock Market Manipulation – A Blue Print for Reform' (1998) 9(2) *Australian Journal of Corporate Law* 109

Grabosky, Peter and John Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies* (Oxford University Press, 1986)

Green, Anna and Kathleen Troup, *The Houses of History: A Critical Reader in Twentieth-Century History and Theory* (Manchester University Press, 1999)

Hall, AR, *The Stock Exchange of Melbourne and the Victorian Economy 1852-1900* (Australian National University Press, 1968)

Hamilton, John P, *Adjudication on the Gold Fields in New South Wales and Victoria in the 19th Century* (Federation Press, 2015)

Harrison, Karen and Nicholas Ryder, *The Law Relating to Financial Crime in the United Kingdom* (Routledge, 2nd ed, 2017)

Hart, Geoffrey, 'The Regulation of Stock Market Manipulation' (1979) 7 *Australian Business Law Review* 139

Hill, David, *Convict Colony: The remarkable story of a fledgling settlement that survived against the odds* (Allen & Unwin, 2019)

Hill, David, *The Gold Rush: The Fever That Forever Changed Australia* (William Heinemann, 2010)

Hillion, Pierre and Matti Suominen, 'The Manipulation of Closing Prices' (2004) 7 *Journal of Financial Markets* 351

Hirst, RR and RH Wallace, RH (eds), *The Australian Capital Market* (Cheshire, 1974)

Hirst, RR and RH Wallace, RH (eds), *Studies in the Australian Capital Market* (FW Cheshire, 1964)

Holley, Dean, 'Market Manipulation – The Focus on Prevention' (1993) 19(4) *Commonwealth Law Bulletin* 1927

Hopt, Klaus J and Gunther Teubner (eds), *Corporate Governance and Directors' Liabilities: Legal, Economic and Sociological Analyses on Corporate and Social Responsibility* (Walter de Gruyter, 1985)

Huang, Hui, 'Redefining Market Manipulation in Australia: The Role of an Implied Intent element' (2009) 27 *Company and Securities Law Journal* 8

Hutcheon, Robert J, 'Speculation, Legitimate and Illegitimate' (1922) 32(3) *International Journal of Ethics* 289

Hutchinson, Terry, *Researching and Writing in Law* (Lawbook Co, 3rd ed, 2010)

Hutchinson, Terry and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83

'Illegality of Stock Market Manipulation' (1934) 34(3) *Columbia Law Review* 500

Judd, William, *The Stock Exchange: Its Organization and Functions* (Sydney Stock Exchange, 2nd ed, 1955)

Kincade, Julie, *To the Miner Born: A Stockbroker's Life in the Ballarat Gold Rush* (JI Kincade, 2015)

Knight, Andrew and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell, 2008)

Kumar, Praveen and Duane T Seppi, 'Futures Manipulation with "Cash Settlement"' (1992) 47(4) *Journal of Finance* 1485

La Croix, Sumner, 'Property Rights and Institutional Change during Australia's Gold Rush' (1992) 29 *Explorations in Economic History* 204

Latimer, Paul, 'False trading and market rigging on the Stock Exchange' (1999) 7(2) *Asia Pacific Law Review* 247

Latimer, Paul, 'Legal Enforcement of Stock Exchange Rules' (1995) 7(2) *Bond Law Review* 1

Leffler, George L and Loring C Farwell, *The Stock Market* (John Wiley & Sons, 3rd ed, 1963)

Lewis, Michael, *Flash Boys: Cracking the Money Code* (Allen Lane, 2014)

Lewis, MK and RH Wallace (eds), *Australia's Financial Institutions and Markets* (Longman Cheshire, 1987)

Lodewijk, Petram, *The World's First Stock Exchange* (Columbia University Press, 2014)

Loke, Alexander FH, 'The investors' protected interest against market manipulation in the United Kingdom, Australia and Singapore' (2007) 21 *Australian Journal of Corporate Law* 22

Loss, Louis, *Fundamentals of Securities Regulation* (Little, Brown & Company, 2nd ed, 1988)

Loss, Louis and Joel Seligman, *Fundamentals of Securities Regulation* (Little, Brown & Company, 3rd ed, 1995)

Lougheed, AL, *The Brisbane Stock Exchange 1884-1984* (Boolarong Publications, 1984)

Lougheed, AL, 'The First Major Share Market Boom in Queensland – Gympie, 1881', University of Queensland, Working Paper Number Forty-Six, July 1984

Lowenfels, Lewis D, 'Sections 9(a)(1) and 9(a)(2) of the Securities Exchange Act of 1934: An Analysis of Two Important Anti-Manipulative Provisions Under the Federal Securities Laws' (1991) 85 *Northwestern University Law Review* 698

Mackay, George, *The History of Bendigo* (Fergusson & Mitchell, 1891)

Markham, Jerry W, *A Financial History of the United States, Volume 1: From Christopher Columbus to the Robber Barons (1492 -1900)* (ME Sharp, 2002)

Markham, Jerry W, *Law Enforcement and the History of Financial Market Manipulation* (ME Sharpe, 2014)

Marshall, John, *Battling for Gold or Stirring Incidents of Goldfield Life in Western Australia* (Hesperian Press, 2015)

Marwick, Arthur, *The New Nature of History: Knowledge, Evidence, Language* (Palgrave Macmillan, 2001)

Matthews, Tony, *Gold, Graves and Gallows: Crimes and Calamities on the Colonial Goldfields* (Central Queensland University Press, 2002)

Mattli, Walter (ed), *Global Algorithmic Capital Markets: High Frequency Trading, Dark Pools and Regulatory Challenges* (Oxford University Press, 2019)

McCabe, Lawrence Damian, 'Puppet Masters or Marionettes: Is Program Trading Manipulative as Defined by the Securities Exchange Act of 1934?' (1993) 61(6) *Fordham Law Review* S207

McConville, Mike and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press, 2nd ed, 2017)

McIlwraith, John, *A Century of Scripping: The first 100 years of Eyres Reed Limited Stock Broker* (Eyres Reed, 1996)

Meudell, George*, The Pleasant Career of a Spendthrift* (George Routledge & Sons, 1929)

Meyer, Peter W R, 'Fraud and Manipulation in Securities Markets: A Critical Analysis of Sections 123 to 127 of the Securities Industry Codes' (1986) 4 *Company and Securities Law Journal* 92

Mezrich, Ben, *The Antisocial Network: The GameStop Short Squeeze and the Ragtag Group of Investors that Brought Wall Street to its Knees* (Harper Collins, 2021)

Michie, Ranald C, *The Global Securities Market: A History* (Oxford University Press, 2006)

Michie, Ranald, *The London Stock Exchange: A History* (Oxford University Press, 1999)

Mills, Annie and Peter Haines, *Essential Strategies for Financial Services Compliance* (Wiley, 2nd ed, 2015)

Moore, James Wm and Frank M Wiseman, 'Market Manipulation and the Exchange Act' (1934) 2(1) *University of Chicago Law Review* 46

Morgan, E Victor and Thomas, WA, *The Stock Exchange: Its History and Functions* (Elek Books, 1962)

Murphy, Anne L, *The Origins of English Financial Markets: Investment and Speculation Before the South Sea Bubble* (Cambridge University Press, 2012)

Notes, 'Illegality of Stock Market Manipulation', (1934) 34(3) *Columbia Law Review* 500

O'Regan, R.S, 'Sir Samuel Griffith's Criminal Code', *Royal Historical Society of Queensland Journal*, Volume XIV, No.8, August 1991

Overland, Juliette (ed), *The Many Aspects of Market Integrity* (Australian Scholarly Publishing, 2010)

Paterson, WE and HH Ednie, *Aspects of the Corporations and Securities Industry Bill 1974* (Butterworths, 1975)

Patterson, JA, *The Goldfields of Victoria in 1862* (Wilson & Mackinnon, 1862)

Pearce, Dennis, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987)

Perino, Michael, *The Hellhound of Wall Street: How Ferdinand Pecora's Investigation of the Great Crash Forever Changed American Finance* (Penguin Books, 2010)

Platt, Stephen, *Criminal Capital: How the Finance Industry Facilitates Crime* (Palgrave Macmillan, 2015)

Porterfield, Paul L, 'Securities: Stock Market Manipulation at Common Law and Under Recent Federal Securities Legislation' (1940) 28(3) *California Law Review* 378

Poser, Norman S, 'Stock Market Manipulation and Corporate Control Transactions' (1986) 40(3) *University of Miami Law Review* 671

Rae, Peter, 'Moulding the Securities Industry for Tomorrow', *Australian Accountant*, December 1971

Rawlings, Philip, 'A Compleat System of Knavery: Folk Devils, Moral Panics and the Origins of Financial Regulation' (2008) 61(1) *Current Legal Problems* 325

'Recent Cases' (1933-1034) 82(5) *University of Pennsylvania Law Review* 429

Redmond, Paul, *Corporations and Financial Markets Law* (Lawbook Co, 7th ed, 2017)

Redmond, Paul, Don Harding and Ian Cameron, *Companies and Securities Law: Commentary and Materials* (The Law Book Company, 1988)

'Regulation of Stock Market Manipulation' (1947) 56(3) *Yale Law Journal* 509

Roderick, Don, *Charters Towers and its Stock Exchange* (The National Trust of Queensland, 1977)

Rose, PJ, *Australian Securities Markets* (FW Cheshire, 1969)

Russell, William Oldnall, *A Treatise on Crimes and Misdemeanors* (Stevens, Volume III, 1865)

Rydge, Norman Bede, *The Australian Stock Exchange: Being an Explanation of the Australian Stock Exchanges, a Consideration of the Principles Involved in Speculation and Investment, and a Commentary Upon the Essential Features Involved in the Selection of Sound Investments* (Rydge's Business Journal, 1939)

Salsbury, Stephen and Kay Sweeney, *The Bull, the Bear & the Kangaroo: The History of the Sydney Stock Exchange* (Allen & Unwin, 1988)

Salsbury, Stephen and Kay Sweeney, *Sydney Stockbrokers: Biographies of Members of the Sydney Stock Exchange 1871 to 1987* (Hale & Iremonger, 1992)

Sawer, Geoffrey, 'Australian Securities Markets and Their Regulation' (1975) 51(3) *Economic Record* 379

Schindler, Mark, *Rumors in Financial Markets: Insights into Behavioural Finance* (Wiley, 2007)

Sharp, Keith, *The House of Mammon: The Stock Exchange at Work* (Hicks Smith & Sons, 1971)

Serle, Geoffrey, *The Golden Age. A History of the Colony of Victoria: 1851-1861* (Melbourne University Press, 1968)

Siering, Michael, Benjamin Clapham, Oliver Engel and Peter Gomber, 'A taxonomy of financial market manipulations: establishing trust and market integrity in the financialized economy through automated fraud detection' (2017) 32 *Journal of Information Technology* 251

Smiles, Samuel (ed), *A Boy's Voyage Round the World; Including a Residence in Victoria, and a Journey by Rail Across North America* (John Murray, 1871)

Smith, Russell G and Peter N Grabosky, 'Online Securities Fraud' (2001) 9(1) *Journal of Financial Crime* 54, 55

Spray, David E (ed), *The Principal Stock Exchanges of the World: Their Operation Structure and Development* (International Economic Publishers, 1964)

Steel, FO, *Short Sketch of the Early History of the Sydney Stock Exchange: And Some Particulars About the Working Systems of the London and New York Stock Exchanges* (Publisher unknown, 1939)

Stenfors, Alexis, *Barometer of Fear: An Insider's Account of Rogue Trading and the Greatest Banking Scandal in History* (Zed Books Ltd, 2017)

Stone, Bruce, 'Accountability reform in Australia: The WA Inc Royal Commission in Context' (1993) 65(2) *The Australian Quarterly* 17

Strange, AW, *Ballarat: A Brief History* (Lowden Publishing, 1971)

Sykes, Trevor, *The Money Miners: The Great Australian Mining Boom* (Allen & Unwin, 1995)

Sykes, Trevor, *Two Centuries of Panic: A History of Corporate Collapses in Australia* (Allen & Unwin, 2003)

Thel, Steve, '$850,000 in Six Minutes – the Mechanics of Securities Manipulation' (1994) 74 *Cornell Law Review* 219

Thel, Steve, 'The Original Conception of Section 10(b) of the Securities Exchange Act' (1990) 42 Stanford Law Review 385

Thel, Steve, 'Regulation of Manipulation under Section 10(b): Security Prices and the Text of the Securities Exchange Act of 1934' (1988) 2 *Columbia Business Law Review* 359

Thel, Steve, 'Taking Section 10(B) Seriously: Criminal Enforcement of SEC Rules' (2014) 1 *Columbia Business Law Review* 1

Tilley, Wilberton, *The Wild West of Tasmania: Being a Description of the silver fields of Zeehan and Dundas (1891)* (Evershed, 1891)

Tilston, John, *Bull Market: The Rise and Eclipse of Australian Stock Exchanges* (The Yellow Sail Company, 2016)

Tomasic, Roman, Stephen Bottomley and Rob McQueen, *Corporations Law in Australia* (Federation Press, 2nd ed, 2002)

Tomasic, Roman, James Jackson, Brendan Pentony and Robin Woellner, *Corporation Law: Principles, Policy and Process* (Butterworths, 1990)

Trichardt, Anton, 'Australian Greenshoes, Price Stabilisation and IPOs – Part 1' (2003) 21 *Company and Securities Law Journal* 26

Trichardt, Anton, 'Australian Greenshoes, Price Stabilisation and IPOs – Part 2' (2003) 21 *Company and Securities Law Journal* 75

Turner, Henry Gyles, *A History of the Colony of Victoria: Volume 1: A.D. 1797-1854* (Cambridge University Press, 2011)

Turner, Henry Gyles, *A History of the Colony of Victoria: Volume 2: A.D. 1854-1900* (Cambridge University Press, 2011)

Tushnet, Mark and Peter Cane, *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005)

'The Use of a Stock Exchange' (1878) 1(2) *The Australasian Insurance and Banking Record* 9 January 1878

Utpal Bhattacharya and Hazem Daouk, 'The World Price of Insider Trading' (2002) 57(1) Journal of Finance 75

Valder, John 'Can the Community Afford This Bill?' (1975) 4(2) *Australian Stock Exchange Journal* 14, 15.

Vaughan, Liam, *The Fix: How Bankers Lied, Cheated and Colluded to Rig the World's Most Important Number* (Bloomberg, 2016)

de La Vega, Josef, *Confusion De Confusiones* (Martino, 2013)

Vitiello, Domenic and George E Thomas, *The Philadelphia Stock Exchange and the City It Made* (University of Pennsylvania Press, 2010)

Walker, Gordon and Brent Fisse (eds), *Securities Regulation in Australia and New Zealand* (Oxford University Press, 1994)

Walker, Gordon, Brent Fisse and Ian Ramsay (eds), *Securities Regulation in Australia and New Zealand* (LBC Information Services, 2nd ed, 1998)

Waugh, JC, 'No Liability Companies in Victoria' (1987) *Australian Mining and Petroleum Law Association Yearbook* 30

Were, J.B & Son, *The House of Were, 1839-1854: The History of J.B. Were & Son and its Founder, Jonathan Binns Were* (J.B. Were & Son, 1954)

Were, J.B & Son, *J.B. Were & Son. 1839-1948* (J.B. Were & Son, 1948)

Were, J.B & Son, *Were's Stock Exchange Handbook* (J.B. Were & Son, 2nd ed, 1951)

Wick, Douglas W, 'Interdisciplinarity and the Discipline of Law' (2004) 31(2) *Journal of Law and Society* 163

Withers, William Bramwell, *History of Ballarat* (Ballarat Star, 1870)

Withers, William Bramwell, *The History of Ballarat from the First Pastoral Settlements to the Present Time* (FW Niven, 2nd rev ed, 1887)

WJS, 'Corporations: Stock Market Manipulation: Rescission for Fraud' (1935) 34(2) *Michigan Law Review* 268

Wonson, HR, *Stocks and Shares: Conditions Governing or Pertaining to Transactions on the Sydney Market* (Sydney Stock Exchange, 1936)

B *Cases*

Australian Securities Commission v MacLeod [2000] WASCA 101

Australian Securities Commission v Nomura International PLC (1998) 160 ALR 246

Australian Securities and Investments Commission v National Australia Bank Limited [2017] FCA 1338

Australian Securities and Investments Commission v Soust [2010] FCA 68

Australian Securities and Investments Commission v Westpac Banking Corporation (No 2) [2018] FCA 751

Australian Securities and Investments Commission, in the matter of Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd [2017] FCAFC 100

Australian Securities and Investments Commission v Whitebox Trading Pty Ltd (No 7) [2019] FCA 849

Bond Corporation Holdings Ltd v Sulan (1990) 8 ACLC 562

Braysich v R [2009] WASCA 178

Braysich v R [2011] HCA 14

Brown v R [2006] WASCA 145

Cargill, Incorporated v Hardin 452 F.2d 1154 (8th Cir. 1971)

Controlled Consultants Pty Ltd v Commissioner for Corporate Affairs [1984] VR 137
Director of Public Prosecutions (Cth) v JM [2012] VSCA 21

Director of Public Prosecutions (Cth) v JM [2013] HCA 30

Donald v Australian Securities and Investments Commission [2000] FCA 1142

Dresna Pty Ltd v Misu Nominees Pty Ltd [2004] FCAFC 169

Endresz v Whitehouse [1998] 3 VR 461

Fame v Decorator Agencies Pty Ltd v Jeffries Industries Ltd (1998) 28 ACSR 58

Fenwick v Jeffries Industries Ltd (1995) 13 ACLC 1334

Golden Bounty Resources NL v National Companies and Securities Commission (1990) 3 ACSR 134

Howard v Miles (Unreported, ACT Magistrates Court, Dainer SM, 30 July 1990)

James Hardie Industries NV v Australian Securities and Investments Commission (2010) 274 ALR 85

Joffe v R; Stromer v R [2012] NSWCCA 277

Morgan Stanley Wealth Management Australia Pty Ltd v Detata [No 3] [2018] WASC 32

National Companies and Securities Commission v Monarch Petroleum NL and Others [1984] VR 733

National Companies and Securities Commission v de Vincentiis & Ors (1990) 8 ACLC 1,130

Osborne v Australian Mutual Growth Fund [1972] 1 NSWLR 100

R v Adler [2005] NSWSC 274

R v Aspinall (1876) 1 QBD 730

R v Aspinall (1876) 2 QBD 48

R v Barnard (1872)

R v Chan [2010] VSC 312

R v De Berenger (1814) 3 M&S 67 (KB), 105 Eng Rep 536

R v Heath [2015] NSWDC 282

R v Jacobson [2014] VSC 592

R v Jones (District Court WA, No. 1348 of 1990, Williams DCJ, 10 December 1990, unreported)

R v Kathiravelu [2021] WASCSR 6

R v Lloyd (1996) 19 ACSR 528

R v Loiterton (2005) 54 ACSR 728

R v M (1979) 4 ACLR 610

R v M [1980] 4 ACLR 610

R v Michael Robert Shearer (District Court Adelaide, No. 36/98, David J, 18 June 1998, unreported)

R v Moylan [2014] NSWSC 944

R v Teh (District Court of Victoria, Kelly DCJ, 2 September 1991)

R v Wright [1980] VR 593

Rubery v Grant (1872) 13 LR Eq 443

Salaman v Warner (1891) 65 LT 132

Sampson v Shaw 101 Mass. 145 (1869)

Scook v The Queen [2008] WASCA 114

Scott v Brown, Doering, McNab & Co [1892] 2 QB 724

Snook v London & West Riding Investments Ltd [1967] 1 All ER 518

Thurling v The North Cornish Quartz Mining Company, Registered, and Joseph Beckett [1872] VicWABWRp 127; (1872) 3 Webb A'B & W 236 (2 December 1872)

United States v Brown (1935) 79 F 2d 321

Vicary v Foley [1891] VLR 407

Vickery v Taylor (1910) 11 SR(NSW) 119

C ***Legislation, Regulations, Bills***

Australian Securities and Investments Commission Act 2001 (Cth)

Companies Act 1955 (Vic)

Corporations Act 2001 (Cth)

Crimes Act 1900 (NSW)

Criminal Code Act 1899 (Qld)

Criminal Code Act 1902 (WA)

Criminal Code Bill 1880 (UK)

Criminal Practice Rules of 1900 (Qld)

Securities Act of 1933, 15 USC §§ 77a-77m (1933)

Securities Exchange Act of 1934, 15 USC §§ 78a-78jj (1934)

Securities Industry Act 1970 (NSW)

Securities Industry Act 1970 (Vic)

Securities Industry Act 1970 (WA)

Securities Industry Act 1971 (Qld)

Securities Industry Act 1975 (Vic)

Securities Industry Act 1980 (Cth)

D *Archival Sources*

Noel Butlin Archives Centre, Australian National University (NBAC)

1875

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-2, The Sydney Stock Exchange, *Rules and Regulations Adopted at a General Meeting of Members of the Sydney Stock Exchange*, To take effect from 13 January 1875

1880s

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, AU NBAC N209-4, The Sydney Stock Exchange, *Rules & Regulations of the Sydney Stock Exchange*, 1881

1890s

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/068 (C5507850297), The Stock Exchange of Melbourne, Extracts from Minutes, 'Committee Minute – 8 July 1890'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201-4, The Stock Exchange of Melbourne, Minutes of a special Committee . . . to consider what action should be taken by the Exchange in dealing with the proposed Sharebrokers Bill', 24 September 1891

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201-4, The Stock Exchange of Melbourne, Minutes of the 'Special Committee appointed for the purpose of dealing with the proposed Sharebrokers Bill', 25 September 1891

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, [TBC], The Sydney Stock Exchange, 'Minutes of Special Meeting of the Committee of the Sydney Stock Exchange held at the Exchange on the 2 October 1891'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201/Box 1, The Stock Exchange of Melbourne, 'Minutes of Committee Meeting held on 13 October 1891'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), *Constitution of the New York Stock Exchange*, Amended to 1 January 1892

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N201/Box 1, Minutes of the meeting of the Committee of the Stock Exchange of Melbourne held on 8 February 1897

1910-1925

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-922 (Z718/455), 'Minutes of the 51st Committee Meeting of the Sydney Stock Exchange', 23 September 1913

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), *Constitution of the New York Stock Exchange*, 1925

1936

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), Birl E Shultz, *Stock Exchange Procedure* (New York Stock Exchange Institute, March 1936)

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/067 (C5507850296), Copy of a letter from AR Bruhn, Manager, Cocks Eldorado Gold Dredging NL, Addressed to 'The Financial Editor, "Argus"', 5 June 1936

1960s

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N210-8, The Sydney Stock Exchange, 'Notice to Members', 19 July 1960

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/58 (Z718/173), Letter from the Sydney Stock Exchange to the Stock Exchange of Adelaide Ltd and the Brisbane Stock Exchange in relation to Longreach Oil Ltd and Farmout Drillers NL, 1 March 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, Z777/067 (C5507850296), Memo to Trading Floor Supervisor from Secretary (Operations), titled 'Reporting of Sudden Rises in Prices and/or Volume', 2 August 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the London Stock Exchange to the Sydney Stock Exchange, 15 August 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the New York Stock Exchange to the Sydney Stock Exchange, 15 August 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the Sydney Stock Exchange to the New York Stock Exchange, 20 August 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Letter from the New York Stock Exchange to the Sydney Stock Exchange, 23 August 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/072 (Z718/066), Letter from the Sydney Stock Exchange to the Registrar of Companies, 4 October 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/072 (Z718/066), Letter from the Sydney Stock Exchange to the Registrar of Companies, 4 October 1963

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-434 (Z718/302), Sydney Stock Exchange Education Service, ‘The Practices & Procedures of The Stock Exchange’, Volume 1, Pamphlet 1, 1967

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260 (Z718/175), Letter from the Registrar of Companies to the General Manager of the Sydney Stock Exchange, subject ‘Silver Valley Minerals NL, 6 June 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259, Letter purporting to be from the Attorney-General to the Chairman of the Sydney Stock Exchange, 9 June 1967

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-029 (Z718/024), Judgment of His Honour Judge Nelson, *Korman v Mudge*, Court of General Sessions, Melbourne, 24 August 1967

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Nigel Bowen, Federal Attorney-General to Mr Butcher (General Manager of the Sydney Stock Exchange), 18 July 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260 (Z718/175), Letter from the Registrar of Companies to the General Manager of the Sydney Stock Exchange, subject 'Silver Valley Minerals NL', 6 June 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter purporting to be from KG Elliott, Chairman to The Hon. PR Delamothe, Minister for Justice & Attorney-General, 19 June 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Nigel Bowen, Federal Attorney-General, to Mr Butcher, General Manager of the Sydney Stock Exchange, 18 July 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, Letter from Mr FJO Ryan, Registrar of Companies, to Mr DM Butcher, General Manager of the Sydney Stock Exchange, 21 August 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-260, 'Notes on Discussions Held at the Sydney Stock Exchange Limited on Wednesday, 28 August, 1968 at 10am'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-221, Memo from DM Butcher, General Manager of the Sydney Stock Exchange, to 'Committee', 5 September 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-221 (Z718/137), Sydney Stock Exchange, Minutes of the Rules Subcommittee Meeting Held on September 17, 1968 at 3.15pm

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-72, Letter from Mr DM Butcher to Mr FJO Ryan, 26 September 1968

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259, Letter from Registrar of Companies to DM Butcher, 20 December 1968, including attachment containing 'a copy of a rough draft of provisions which are to be included in a draft Bill to be submitted to the Standing Committee of Attorneys-General'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259, Letter from Registrar of Companies to Mr DM Butcher, 20 December 1968, including an attachment containing 'a copy of a rough draft of provisions which are to be included in a draft Bill to be submitted to the Standing Committee of Attorneys-General'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-72, Letter from Mr DM Butcher to Mr FJO Ryan, 5 February 1969

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-72, Letter from Ralph B Lee, Australian Associated Stock Exchanges to the stock exchanges in Adelaide, Hobart, Perth, Brisbane and Sydney, titled 'Marketable Securities (Control of Sales) Bill', 4 March 1969

1970s

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/211 (Z718/127), Sydney Stock Exchange Limited Memo from Floor Manager to Manager – Companies, June 1970

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-008 (Z718/8), Ralph Wragg, 'Mining Shares', *The Sun* (Sydney), handwritten annotation '12 June 1970'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406/259 (Z718/174), Letter from DW Whitbread (Secretary of the Senate Select Committee on Securities and Exchange) to Mr L Foldes (Manager, Companies, SSE), 30 June 1970

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406/259 (Z718/174), Letter from DM Butcher to the Select Committee on Securities and Exchange, 1 July 1970

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-259 (Z718/174), Sydney Stock Exchange Limited, 'Replies to Questionnaire from the Senate Select Committee on Securities and Exchange', 24 July 1970

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406/259 (Z718/174), 'The Sydney Stock Exchange Limited. Replies to Questionnaire from the Senate Select Committee on Securities and Exchange', 24 July 1970, attached to a letter from J.H Cooper (SSE Chairman) to Mr DW Whitbread (Secretary, Senate Committee on Securities and Exchange', 24 July 1970

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406/259 (Z718/174), 'The Sydney Stock Exchange Limited. Replies to Questionnaire from the Senate Select Committee on Securities and Exchange', 24 July 1970, attached to a letter from J.H Cooper (SSE Chairman) to Mr DW Whitbread (Secretary, Senate Committee on Securities and Exchange', 24 July 1970

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-008 (Z718/08), Sydney Stock Exchange Limited 'Press Release', purportedly signed by J. H. Cooper, Chairman, 5 April 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N210/27-31, Sydney Stock Exchange Limited, Notice to Members, Personal 28, 'Antimony Nickel N.L.', purportedly signed by A. E. Bennett for D. M. Butcher, 6 April 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), Sydney Stock Exchange Limited, ‘Notice to Members’, Personal 29, 6 April 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), Copy of unsigned letter from J. H. Cooper to Sir Magnus Cormack, Chairman, Senate Select Committee on Securities and Exchange, 19 May 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-265, GA Bower, *Report of the Inspector appointed pursuant to section 178(1) of the Companies Act, 1961, of the State of New South Wales to investigate and report on the circumstances under which any person acquired or disposed or became entitled to acquire or dispose of shares in Nickelore NL*, 18 June 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-46, Sydney Stock Exchange Limited, *Memorandum & Articles of Association, By-Laws & Regulations*, June 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-46, Sydney Stock Exchange Ltd, *Memorandum & Articles of Association, By-Laws & Regulations,* June 1972, ‘Amendment List 1/71. The Sydney Stock Exchange Ltd, Memorandum & Articles of Association By-Laws & Regulations’, July 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-264 (Z718/179), ‘Minutes of Special Antimony Nickel Sub-Committee Meeting Held on Tuesday 3 August, 1971 at 2.00pm’, H. R. Hardie, 4 August 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-46, Sydney Stock Exchange Ltd, *Memorandum & Articles of Association, By-Laws & Regulations*, June 1972, containing document titled ‘Amendment List 1/71. The Sydney Stock Exchange Ltd. Memorandum & Articles of Association By-Laws & Regulations’, July 1971

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N210/32-36, Book N210/35, The Sydney Stock Exchange Limited, 'Circular to Members No.61', 4 October 1974

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-079, Z718/073, 'Extracts from address given by Mr J H Valder, Chairman, The Sydney Stock Exchange Limited, at a seminar on the Securities Industry Acts 1975 sponsored by the Commercial Law Association and the Securities Institute of Australia, held at the Wentworth Hotel, Sydney, on Tuesday, 21st September 1976'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-265 (Z718/180), Commissioner for Corporate Affairs, 'Nickelore NL. Memorandum from the Commissioner for Corporate Affairs', 18 February 1977

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, N209-48, The Sydney Stock Exchange Limited, *Memorandum & Articles of Association By-Laws & Regulations*, February 1977

1980s

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/157 (Z718/97), Kenneth B Noble, 'US exchanges' quiet detectives tackle the stock manipulators', includes handwritten notation 'Fin Rev 16/3/81'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/675 (Z718/380), Letter from Mr Leigh Masel, National Companies and Securities Commission to Mr L Ian Roach, Australian Associated Stock Exchanges, titled 'Market Surveillance', 6 August 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/266 (Z718/181), 'Notes on the Meeting Between the NCSC and the Chairmen of the Six Member Stock Exchanges of the AASE Held in Sydney on Friday May 27, 1983'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/675, Z718/380, Letter from Mr Leigh Masel, National Companies and Securities

Commission to Mr L Ian Roach, Australian Associated Stock Exchanges, headed 'Market Surveillance', 6 August 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (unsigned) from Mr L Ian Roach, Chairman, Stock Exchange of Melbourne, to Mr L Masel, Chairman, National Companies & Securities Commission, titled 'Unusual Activity in a Listed Security', 9 August 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Memorandum (signed) to 'The Chief Executive – All Exchanges' from 'The Executive Durector', Subject: 'NCSC – Market Surveillance', 1 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Sydney Stock Exchange Limited Memorandum from Manager Companies to General Manager titled 'Market Surveillance', 7 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Peter W Marshman, General Manager, Sydney Stock Exchange Limited to Mr RL Coppel, Australia Associated Stock Exchanges, titled 'NCSC – Market Surveillance AASE Reference: N.6', 9 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), 'Query Letter Re Fluctuation in Share Price' attached to letter (signed) from Peter W Marshman, General Manager, Sydney Stock Exchange Limited to Mr RL Coppel, Australia Associated Stock Exchanges, titled 'NCSC – Market Surveillance AASE Reference: N.6', 9 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/675 (Z718/380), Letter (signed) from Mr M Heelan, General Manager, Perth Stock Exchange, to Mr RL Coppel, Executive Director, Australian Associated Stock Exchanges, titled 'NCSC – Market Surveillance', 9 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from AK Wertheimer, Manager, The Hobart Stock

Exchange to The Executive Director AASE, titled ‘NCSC – Market Surveillance Your Ref: - N6’, 14 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Mr RJ Schoer, Executive Director, National Companies and Securities Commission, to Mr L Ian Roach, Chairman, Australian Associated Stock Exchanges, titled ‘Unusual Activity in a Listed Security’, 14 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Ian G Bogle, General Manager, The Stock Exchange of Adelaide Limited to The Executive Director, Australian Associated Stock Exchanges, titled ‘NCSC – Market Surveillance Your Reference: N.6 – 1st September, 1982, 15 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Ralph B Lee, General Manager, The Stock Exchange of Melbourne Limited, to Executive Director, Australian Associated Stock Exchanges, titled ‘Market Surveillance – NCSC’, 16 September 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Mr RJ Schoer, Executive Director, National Companies and Securities Commission, to Mr RH Mullens, Chairman, The Sydney Stock Exchange, titled ‘Unusual Activity in a Listed Security’ 26 October 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (unsigned, but initialled) from Peter W Marshman, General Manager, Sydney Stock Exchange, to Mr RJ Schoer, Executive Director, National Companies and Securities Commission, titled ‘Unusual Activity in a Listed Security’, 22 November 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Mr RJ Schoer, Executive Director, National Companies and Securities Commission to Mr PW Marshman, General Manager, The Sydney Stock Exchange Limited, titled ‘Unusual Activity in a Listed Security’, 7 December 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266, (Z718/181), Letter (not signed, but initialled) from Peter W Marshman, General Manager, The Sydney Stock Exchange Limited, to Mr RJ Schoer, Executive Director, National Companies and Securities Commission, titled 'Unusual Activity in a Listed Security', 30 December 1982

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/266, Copy of document titled 'Notes on the Meeting Between the NCSC and the Chairmen of the Six Member Stock Exchanges of the AASE Held in Sydney on Friday 27 May 1983'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, Box N198/10-11 (N198/10), 'Minutes of a Meeting of the Committee of the Stock Exchange of Perth Limited Held in the Boardroom on Monday 30 May 1983 at 3.35pm'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/27 (Z718/22), The Sydney Stock Exchange Limited, Circular to Members Number 103, 'Article 82 – Breach of Rules', 1 November 1985

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-266 (Z718/181), Letter from Mr R J Schoer, Executive Director, National Companies and Securities Commission, to Mr Peter Marshman, Managing Director, Sydney Stock Exchange Limited, 'Expiration Day Effects of Index Based Futures', 30 July 1986, attached to which is a National Companies and Securities Commission, Media Release, 'NCSC Inquiry into Share Market Activity in March 1986', 24 June 1986

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 209-56, The Sydney Stock Exchange Limited, *Memorandum and Articles of Association Rules, By-Laws & Regulations*, Effective 21 September 1986

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/673 (Z718/379), Letter (signed) from Mr AD Smith, Commissioner for Corporate Affairs, to The Chairman, Stock Exchange of Perth Limited, titled 'Share Market Surveillance', 14 April 1987

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, 24406/071 (Z718/065), Letters from Mr Andrew E Bennett, Secretary, to Chairman of the NSW Corporate Affairs Commission, 21 August 1987, and to Chairman of the Victorian Corporate Affairs Commission, 21 August 1987, containing notices concerning charges made against Hattersley Maxwell Noall Limited, Potter Partners Limited and Roach, Tilley Grice & Co Ltd, 11 June 1987

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/673 (Z718/379), Letter (unsigned) from JG Thomson, Managing Director, Stock Exchange of Perth, to Mr AD Smith, Commissioner for Corporate Affairs, 15 June 1987

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, N210/47-51, Australian Stock Exchange (Sydney) Limited, Circular to Members Number 45, 'Breach of Rules', 21 July 1987

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 – 1996, Z718/181 (24406/266), Letter to Australian Stock Exchange from National Companies and Securities Commission, 'JECNET – Data Processing Errors', 4 August 1987

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, Z777/166, ASX Memorandum (signed) from Mr RB Lee to Messrs RE South and JH Berry, titled 'Market Surveillance', 21 December 1988

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406/266 (Z718/181), Letter (signed) from Mr H Bosch, Chairman of the National Companies and Securities Commission to Mr LI Roach, Chairman of the Australian Stock Exchange Ltd, 23 December 1988

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, Z777/166, Australian Stock Exchange (Sydney) Limited, Memorandum, Subject: Market Surveillance, 12 January 1989

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, Z777/166, Australian Stock Exchange Limited, Memorandum, Subject: Market Surveillance, 16 January 1989

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406-687 (Z718/381), Australian Stock Exchange Limited, 'Press Release: Australian Stock Exchange Reorganisation', date/time stamped 15 June 1989

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/86, Australian Stock Exchange Limited, Circular No. 42/89, 'Moage Limited – Shares and Options', 16 June 1989

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, Z777/86, Australian Stock Exchange Limited, Circular No. SPD6/89, 'Attempted Fraud', 23 June 1989

1990s

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916-1996, 24406-687 (Z718/381), Australian Stock Exchange Limited, 'Memorandum' attached to which is a document referred to as a 'media release', titled 'ASX Watchdog Barks Once a Week', 19 March 1990

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-687 (Z718/381), Australian Stock Exchange Limited, 'Media Release', 1 August 1990, attached to which is a Corporate Affairs Commission, Australian Capital Territory document titled 'Market Rigging – s.124(2) Security Industries Act 1980 Moage Limited'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-644 (Z718/375), 'ASX Memorandum, Subject: End-of-Year Window Dressing', 17 July 1991

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-258 (Z718/173), 'ASX (Sydney) Board Agenda Paper, For Meeting on Thursday, 13

December 1990', purportedly signed by C.A.H. Lonergan, attached to which is a copy of a newspaper article and excerpts from the 'McCusker Report'

NBAC: ASX Archives Collection 1875-1987; ASX Publications Collection 1916 –1996, 24406-644 (Z718/375), 'ASX Memorandum, Subject: End-of-Year Window Dressing, 17 July 1991'

Public Records Office Victoria (PROV)

PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Trial Brief: Barnard, Egerton and Read

PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Supreme Court of Victoria, Notice to produce documents addressed to Louis Barnard, Hugh Egerton and Henry Read, 15 May 1872

PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of Joseph Copeland, [date illegible]

PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of William Lang, 26 April 1872

PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of William Mofflin, 26 April 1872

PROV, VA 2550, Office of Public Prosecutions, VPRS 30, PO 412, Case 7, Written statement of Frederick Wilkinson, 25 April 1872

State Records Office, WA (SROWA)

Copy of letter from the 'Acting Premier, HG' to General Secretary of the Chamber of Mines of Western Australia, 25 July 1911, SROWA, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn.

Letter from the General Secretary of the Chamber of Mines of Western Australia to the Premier of Western Australia, 14 September 1911, 'Great Chaffinch Case', SROWA, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn

Telegram from WB Carr, Chairman of the Adelaide Stock Exchange to Minister of Mines, Perth, 5 December 1910, SROWA, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn

Telegram from V Willis, Chairman Sydney Stock Exchange addressed to 'Minr for Mines Perth', 5 December 1910, SROWA, S20 cons964 1910/5233 – Re inspection of the Chaffinch lease, Yilgarn

E *Stock Exchange Rules, Articles, By-Laws, etc*

Australian Stock Exchange, *Memorandum and Articles of Association, Business Rules*, 1 April 1987

The Brisbane Stock Exchange, *Rules and Regulations*, Reprinted 1971

Rules and Bye-Laws of the Stock Exchange of Melbourne, Revised May 1889

Rules, Regulations, and By-Laws of The Stock Exchange of Perth, 1906

Rules and Regulations of The Stock Exchange of Melbourne (Including amendments to January 1970)

Rules of the Stock Exchange of Perth, 1891

Rules of the Sydney Stock Exchange, Revised April 1887

Rules of the Sydney Stock Exchange, Adopted 23 October 1891, With additions and amendments to 1 June 1898

Rules of the Sydney Stock Exchange, Adopted 9 May 1904, With Additions and Amendments to 23 September 1913

The Stock Exchange of Adelaide Limited, *Memorandum and Articles of Association and By-Laws*, 1939

The Stock Exchange of Melbourne Limited, *Memorandum & Articles of Association and Regulations*, July 1973

The Sydney Stock Exchange, *Rules and Regulations*, Instituted May 1871

F *Newspapers*

A

'A Big Jumping Case', *The Mercury* (Tasmania, 12 October 1872) 3

'A Bogus Telegram. Name of an Adelaide Firm Forged', *The Western Mail* (Perth, 19 May 1900) 22

'A Bullfinch Panic. Heavy Fall in Prices', *The Advertiser* (Adelaide, 3 December 1910) 13

'A "Corner" in Mining Scrip', *The Advocate* (Tasmania, 2 May 1891) 10

'A Forged Telegram. A Warrant Issued. For Mr James Fredk Mountain', *The Weekly Times* (Melbourne, 19 May 1900) 24

'A Mining Board Sent to Prison', *The Adelaide Express* (South Australia, 3 May 1865) 2

'A Mining Sensation. A Corner in Round Hills', *The Border Watch*, (Mount Gambier, 9 October 1889) 4

'A Mining Sensation', *The Mount Alexander Mail* (Castlemaine, Victoria, 7 October 1889) 2

‘A Misunderstanding’, *The Bendigo Advertiser* (Victoria, 21 August 1882) 2

‘A New Stock Exchange’, *The Herald*, (Melbourne, 7 January 1890) 1

‘A Second Case. Two Arrests Made’, *The Chronicle* (Adelaide, 16 January 1897) 19

‘A Serious Charge’, *The Wagga Wagga Express* (NSW, 17 May 1900) 2

A Special Correspondent, ‘The strange case of ex-Justice Taylor’, *The Tribune* (Sydney, 4 July 1979) 2

‘A Stock Exchange Sensation’, *The Leader* (Melbourne, 12 October 1889) 39

‘A Stock Exchange Sensation. “Spec” Selling and its Consequences. A “Corner” in Bear Hill Shares’, *The Age* (Melbourne, 25 April 1891) 9

‘A Stock Exchange Wanted’, *The Age* (Melbourne, 30 September 1859) 5

‘Adelaide Forgery Case’, *The Chronicle* (Adelaide, 26 May 1900) 29

‘The Adelaide Telegram Forgery. The Suspect Last Heard of in Sydney. A Warrant Issued. Melbourne May 16’, *The Express and Telegraph* (Adelaide, 17 May 1900) 3

‘Alleged Forgery. A Share Market Transaction’, *The Mount Lyell Standard and Strahan Gazette* (Queenstown, Tasmania, 17 May 1900) 2

‘Alleged Forgery of a Telegram’, *The South Australian Register* (Adelaide, 9 January 1897) 5

‘An Attempted “Corner” in Shares’, *The Australasian* (Melbourne, 12 October 1889) 28

‘An Extraordinary Share Market’, *The South Australian Register* (South Australia, 5 October 1889) 4

‘An Old Trick’, *The Goldfields Morning Chronicle* (Coolgardie, 8 October 1898) 3

‘Another Bogus Mining Telegram’, *The Bendigo Advertiser* (Victoria, 13 January 1893) 3

‘ASX expels Christensen’, *The Sydney Morning Herald* (Sydney, 4 January 1990) 23

“‘At Its Pleasure”. Stock Exchange May Act. Mount Owen De-Listment. No Interim Injunction’, *The Sun* (Sydney, 15 October 1920) 5

‘Attempt to Impose on the Stock Exchange. A Bogus Buying Order. Timely Exposure’, *The Ballarat Star* (Victoria, 10 May 1897) 3

‘Attempted Share Rigging. A Bogus Telegram’, *The Barrier Miner* (Broken Hill, 10 May 1897) 2

‘Attempted Suicide of a Station Master’, *The Bendigo Independent* (Victoria, 24 January 1893) 2

‘Auri Sacra Fames’, *The Weekly Times* (Melbourne, 21 October 1871) 8

‘Australian Bubble Companies’, *The Banner* (Melbourne, 25 April 1854) 9

B

‘Ballaarat (sic) District Police Court, *The Age* (Melbourne, 15 March 1865) 7

‘Ballaarat (sic) Western Police Court’, *The Age* (Melbourne, 20 March 1865) 5

‘Ballaarat (sic) Western Police Court’, *The Leader* (Melbourne, 25 March 1865) 4

‘Ballarat’, *The Argus* (Melbourne, 19 April 1872) 6

‘Ballarat Circuit Court. Criminal Sittings’, *The Argus* (Melbourne, 24 April 1865) 6

‘Ballarat Circuit Court. Nisi Prius Sittings’, *Ballarat Courier* (Victoria, 8 October 1872) 2

‘Bear and Bear Hill’, *The Express and Telegraph* (Adelaide, 30 April 1891) 4

‘Bears and Bulls. Stock Exchange Sensation’, *The Argus* (Melbourne, 22 August 1901) 5

‘Bears and Bulls. Stock Exchange Sensation’, *The Mercury* (Hobart, 4 September 1901) 6

‘The Bear-Hill “Corner”’, *The Daily Telegraph* (Sydney, 1 May 1891) 4

‘The Bear Hill Corner’, *Table Talk* (Melbourne, 3 June 1892) 12

‘The Bear Hill “Corner”’*, The Glen Innes Examiner and General Advertiser* (NSW, 7 June 1892) 2

‘The Bear Hill Gold Mine. Extraordinary Rise in Shares. Rigging the Market. A Stock Exchange Inquiry’, *The Barrier Miner* (Broken Hill, 27 February 1891) 3

‘The Bear Hill Proprietary Gold-Mining Company. Dispute Between Sharebrokers. The “Corner” in their Shares’, *The* Argus (Melbourne, 12 September 1891) 11

‘Bears and Bear Hill’, *The Express and Telegraph* (Adelaide, 30 April 1891) 4

'Bears, Bulls, Brokers, &c.', *The Sydney Morning Herald*, (Sydney, 9 October 1866) 2

Beyer, Mark, ‘Dismissal of Falk Charges Overturned’, *The Financial Review* (Sydney, 12 March 1993) 7

‘The Black Prince Mine. An Unfounded Report’, *The Evening Journal* (Adelaide, 24 June 1896) 2

‘Bogus telegram attempt to rig share prices’ *The Canberra Times* (ACT, 10 March 1970) 16.

‘Bogus Telegrams’, *The Mount Alexander Mail* (Victoria, 14 January 1893) 3

‘The Bogus Telegrams’, *The Mount Alexander Mail* (Victoria, 23 January 1893) 2

‘The Bogus Telegrams. A Sensational Development’, *The Ballarat Star* (Victoria, 23 January 1893) 2

‘The Bogus Telegrams. A Sensational Development. A Station Master Shoots Himself’, *The Age* (Melbourne, 21 January 1893) 7

‘Bogus Telegrams and the Ballarat Share Market’, *The Age* (Melbourne, 13 January 1893) 6

‘The Boom in Round Hills. Local Broker Hit Heavily’, *The Australian Star* (Sydney, 8 October 1889) 5

Brown, Peter, ‘Recession and Cure’, *The Australian Jewish Times*, (Sydney, 19 September 1974) 8

‘The Bull and Bear Squeeze. Scene Shifted to the Supreme Court’, *The Age* (Melbourne, 5 September 1901) 4

“‘Bullfighter” Forbes. Mammoth Punter Left Perth–Made Fortune. His Home for the Duke of Kent’, *The Mirror* (Perth, 7 January 1939) 1

‘Bulls v Bears. Sensational Market Rise’, *The Leader* (Melbourne, 24 August 1901) 19

‘The “Bus” Papers’, *The Weekly Times* (Melbourne, 27 July 1872) 8

‘Bubble Companies’, *The Maryborough Chronicle, Wide Bay and Burnett Advertiser* (Queensland, 31 August 1872) 4

‘Bubble Companies’, *The Sydney Morning Herald* (Sydney, 20 March 1854) 4

‘Bubble Companies. To the Editor of the Brisbane Courier’, *The Brisbane Courier* (Queensland, 23 August 1872) 2

‘The Bullfinch Boom. Stock Exchanges Take Action. Investigation Asked For. Market Weaker’, *The Express and Telegraph* (Adelaide, 5 December 1910) 1

‘The Bullfinch Field. How the Boom Was Started. At Southern Cross, WA; And Boosted, Beared, and Bulled. In That Jerusalem of Jobbers. Adelaide, City of Snide Saints’, *Truth* (Brisbane, 5 February 1911) 4

‘Burnt fingers on ‘Change – but Mr. Big’s sitting pretty’, *The Tribune* (Sydney, 11 March 1970) 3

‘The “Bus” Papers’, *The Weekly Times* (Melbourne, 27 July 1872) 8

C

‘Call to prosecute Tasminex directors’, *The Papua New Guinea Post-Courier* (Port Moresby, 4 March 1970) 6

‘The Chaffinch’, *The Albany Advertiser* (Western Australia, 7 December 1910) 3

‘The Chaffinch Affair. Charge of Conspiracy’, *The Northern Star* (Lismore, NSW, 11 February 1911) 3

‘The Chaffinch. Warrants for the Arrest of Prominent Mining Men. Mining Men Surprised’, *The Evening Star* (Western Australia, 6 February 1911) 3

‘The Chaffinch Chirps in the Police Court. Preliminary Hearing of the Great Conspiracy Case. Bulls and Bears of the Bullfinch Bonanza. Make Some Remarkable Revelations Concerning Chaffinch Shares’, *Truth* (Perth, 25 March 1911) 5, 6

‘Chaffinch Condemned’, *Coolgardie Miner* (Western Australia, 3 December 1910) 3

‘The Chaffinch Debacle. What Will the Government Do?’, *Truth* (Perth, 11 February 1911) 8

‘The Chaffinch Denouement. Study in Telegrams. Mines Department Asked for Report’, *The Register* (Adelaide, 5 December 1910) 7

‘The Chaffinch Mine. Sensational Development. The Recent Scandal. Three Arrests to be Made. The Mine Not Salted’, *The Daily News* (Perth, 4 February 1911) 12

‘Chaffinch Mystery. Conspiracy Charges. Interesting Telegrams’, *The Advertiser* (Adelaide, 21 March 1911) 7

‘Chaffinch Mystery. Conspiracy Charges. Interesting Telegrams’, *The Express and Telegraph* (Adelaide, 21 March 1911) 4

‘The Chaffinch Mystery. Independent Engineer to Report. Action by the Stock Exchange’, *The Barrier Miner* (Broken Hill, 7 December 1910) 5

‘The Chaffinch Scandal. An Administrative Enormity’, *Truth* (Perth, 8 April 1911) 4

‘The Chaffinch Sensation’, *The Kalgoorlie Miner* (WA, 8 April 1911) 6

‘The Chaffinch Sensation. Alleged Conspiracy. Two of the Accused Remanded’, *The Western Mail* (Perth, 18 February 1911) 18

‘Chaffinch Sensation. Charges of Conspiracy’, *The Australasian* (Melbourne,11 February 1911) 40

‘Chaffinch Sensation. Charge of Conspiracy. Warrants for Arrests’, *The Evening Journal* (Adelaide, 6 February 1911) 4

‘The Chaffinch Sensation. Charge of Conspiracy. Outline Of the Case. Mr Barker’s Address’, *The Daily News* (Perth, 20 March 1911) 9

‘Chaffinch Sensation. Charge of Conspiracy. Warrants For Arrests’, *The Evening Journal* (Adelaide, 6 February 1911) 4

‘The Chaffinch Sensation. Defendants Applying for Compensation’, *The North Western Advocate and The Emu Bay Times* (Tasmania, 7 April 1911) 2

‘The Chaffinch Sensation. Defendants Discharged’, *The Leader* (Melbourne, 8 April 1911) 24

‘The Chaffinch Sensation. Eighth Day’s Proceedings. Evidence For Prosecution Continued’, *The Daily News* (Perth, 29 March 1911) 9

‘The Chaffinch Sensation. Eleventh Day’s Proceedings. Counsel’s Addresses. Mr Parker For the Crown. Accused All Discharged, *The Daily News* (Perth, 3 April 1911) 9

‘Chaffinch Sensation. Magistrate’s Decision. Accused Discharged’, *The Kalgoorlie Western Argus* (WA, 11 April 1911) 3

‘Chaffinch Sensation. Mr Roe’s Judgment. The Full Text’, *The Bendigo Advertiser* (Victoria, 5 April 1911) 5

‘Chaffinch Sensation. Police Court Hearing. Further Evidence Heard. How Shares Were Disposed Of’, *The Zeehan and Dundas Herald* (Tasmania, 27 March 1911) 1

‘The Chaffinch Sensation. Royal Commission Suggested’, *The West Australian* (Perth, 3 June 1911) 12

‘Chaffinch Sensation. Statement By Mr Bonwick’, *The Kalgoorlie Western Argus* (WA, 21 February 1911) 34

‘The Chaffinch Sensation. Tenth Day’s Proceedings. Crown Case Concluded’, *The Daily News* (Perth, 31 March 1911) 10

‘The Chaffinch Sensation. Three Defendants Discharged’, *The Border Morning Mail and Riverina Times* (Albury, 5 April 1911) 1

‘Chaffinch Sensation. Warrants for Three Arrests. Charges Against Dyason, Greenway, and Bonwick. Alleged Conspiracy to Defraud Public’, *The Kalgoorlie Miner* (WA, 6 February 1911) 5

‘Charge of Rigging the Mining Market’, *The Argus* (Melbourne, 25 April 1872) 6

‘Charge of Rigging the Mining Market’, *The Argus* (Melbourne, 26 April 1872) 6

‘Charge of Rigging the Mining Market’, *The Australasian* (Melbourne, 27 April 1872) 21

‘Charge of Rigging the Mining Market’, *The Sydney Morning Herald* (Sydney, 30 April 1872) 6

‘Charge of rigging the Share Market’, *The Age* (Melbourne, 25 April 1872) 3

‘Charge of Rigging the Share Market’, *The Age* (Melbourne, 26 April 1872) 3

‘Charge of Rigging the Share Market’, *The Leader* (Melbourne, 27 April 1872) 23

‘Circuit Court. Nisis Prius’, *The Ballarat Star* (Victoria, 9 October 1872) 3

‘Clumsy Attempt at Rigging the Share Market’, *The Bendigo Independent* (Victoria, 10 May 1897) 3

‘Colonial’, *The Gympie Times and Mary River Mining Gazette* (Queensland, 15 May 1872) 3

‘The Comedie Humaine. An Impression of the Proceedings’, *The Sunday Times* (Perth, 26 March 1911) 3

‘Commercial Telegrams’, *The Age* (Melbourne, 28 June 1887) 4

‘The “Corner” in Bear Hill Shares. Action in the Supreme Court. Verdict for J. S. Vickery for £2764’, *The Age* (Melbourne, 12 September 1891) 10

‘The “Corner” in Bear Hill Shares. Further Advance in Price’, *The Age* (Melbourne, 27 April 1891) 5

‘The Corner in Bear Hills. Mr Justice Hood on a Brokers’ “Ring”’, *The Age* (Melbourne, 31 May 1892) 6

‘The Corner in Round Hills’, *The Evening News* (Sydney, 8 October 1889) 5

‘The Corner in Round Hills. Suspension of Mr W F Dix’, *The Evening News* (Sydney, 7 December 1889) 5

‘Cornering Mining Shares. A Stock Exchange Deal’, *The Ballarat Star*, (Victoria, 20 November 1903) 4

‘The Country. “Rigging” the Share Market’, *The Leader* (Melbourne, 14 January 1893) 26

‘Cox share deals a ‘conspiracy”, *The Canberra Times* (ACT, 30 November 1967) 32

D

‘Daily Issue. Saturday, 23rd January, 1869’, *The Ballarat Star* (Victoria, 23 January 1869) 2

‘Detection Squad Formed to Watch Share Deals’, *The Canberra Times* (ACT, 10 March 1964) 12

‘Domestic Intelligence [Continued]. Supreme Court. Monday, 8th May, 1837’, *The Colonist* (Sydney, 18 May 1837) 6

‘Duke of York Scandal. Shares Cornered To 5 From 11s. An Eventful Day’, *The Bendigo Independent* (Victoria, 27 August 1901) 3

‘Duke of York Scandal. The “Squeezing” Progressing’, *The Bendigo Independent* (Victoria, 28 August 1901) 4

‘The “Duke of York” Sensation’, *The Ballarat Star* (Victoria, 28 August 1901) 6

‘The Duke of York Share Racket’, *The Age* (Melbourne, 28 August 1901) 7

‘The Duke of York Share Racket. A Retrogression in Rates’, *The Age* (Melbourne, 28 August 1901) 7

‘The Duke of York “Squeeze”’, *The Bendigo Independent* (Victoria, 20 December 1901) 1

‘Duke of York “Squeeze”’, *The Evening Star* (Boulder, Western Australia, 23 December 1901) 4

Durkin, Patrick, ‘Australian Shares are Being Manipulated, Say Researchers’, *The Sydney Morning Herald* (online, 14 April 2014) <http://www.smh.com.au/business/markets/australian-shares-are-being-manipulated-say-researchers-20140414-36m8p.html>

E

‘The Ethics of “Cornering”’, *The Daily Telegraph* (Sydney, 28 April 1891) 4

‘The Exchange Sensation. Further Light on the Transaction. Disappearance of a Prominent Businessman’, *The Age* (Melbourne, 16 May 1900) 9

‘Excitement at Adelaide’, *The Age* (Melbourne, 5 October 1889) 9

F

‘Faked Wire Starts Rush on Oil Shares’, *The Canberra Times* (ACT, 26 February 1963) 3

‘The Fall in Chaffinch Shares. A Sensational Sequel. Action by the Government. Information Sworn Against Prominent Mining Men. An Arrest in Melbourne’, *The West Australian* (Perth, 6 February 1911) 5

‘“False’ cable sent to UK on nickel’, *The Canberra Times* (ACT, 6 February 1970) 1

‘False Mining Telegrams’, *The Geelong Advertiser* (Victoria, 17 July 1878) 4

‘False Mining Telegrams’, *The Maryborough & Dunolly Advertiser* (Victoria, 15 July 1878) 2

‘False Rumours and the Stock Exchange’, *The Register* (Adelaide, 27 August 1912) 10

‘Federation and Mount Owen Mines’, *The Sydney Morning Herald* (Sydney, 5 July 1920) 9

‘Federation and Mt. Owen Gold Mines’, *The Daily Telegraph* (Sydney, 11 January 1921) 6

‘Feeling in Adelaide’, *The Sun* (Kalgoorlie, 4 December 1910) 1

‘Fictitious Telegrams’, *The Western Mail* (Perth, 14 October 1898) 41

‘Financier begins six months in gaol’, *The Canberra Times* (ACT, 25 August 1967) 1

‘Financier tried to “balance” budget. Forbes admits rigging share markets’, *The Argus* (Melbourne, 9 December 1952) 3

‘Finlay’s Case’, *The Bacchus Marsh Express* (Victoria, 12 October 1872) 3

‘Forbes’ Admission: Invested £50,000 of “Black” Money on Market’, *The Warwick Daily News* (Queensland, 9 December 1952) 1

‘Forbes admits share rigging’, *The Daily Telegraph* (Sydney,9 December 1952) 6

‘Forbes Tells of ‘Black Money’ Investments’, *The Sydney Morning Herald* (Sydney, 9 December 1952) 3

‘The Forged Telegram’, *The Adelaide Observer* (South Australia, 19 May 1900) 27

‘The Forged Telegram’, *The Adelaide Observer* (South Australia, 26 May 1900) 29

‘The Forged Telegram. No Trace of the Suspect. Some Additional Details’, *The Age* (Melbourne, 18 May 1900) 5

‘The Forged Telegram. Singular Letter from the Suspect’, *The Zeehan and Dundas Herald* (Tasmania, 22 May 1900) 3

Fraser, Stuart, ‘Reform banking by putting capitalism back at the heart of capitalism’, *The Guardian* (online, 5 July 2012) <http://www.theguardian.com/commentisfree/2012/jul/05/reform-banking-culture>

‘Fraud Squad swoops’, *The Sydney Morning Herald* (Sydney, 13 August 1989) 48
‘Fraudulent Telegrams. Sensational Method of Influencing the Market. An Exemplary Sentence’, *The Norseman Times* (Western Australia, 8 October 1898) 3

‘Friday, August 20, 1869’, *The Sydney Morning Herald* (Sydney, 20 August 1869) 4

‘Friday, August 23, 1901’, *The Argus* (Melbourne, 23 August 1901) 4

‘Further Charges Over Rothwells’, *The Financial Review* (Sydney, 24 December 1990) 3

G

‘The Gaming House. Mount Owen Share Smash. Will Exchange Cleanse Itself?’, *Smith’s Weekly* (Sydney, 4 September 1920) 4

‘General News’, *The Yackandandah Times* (Victoria, 25 May 1900) 3

‘General Sessions’, *The Maryborough & Dunolly Advertiser* (Victoria, 15 November 1878) 2

‘Gilt-Edged Stock Firm. Banking Amalgamations Rumoured. Activity in Gold Shares’, *The Sun* (Sydney, 14 May 1922) 4

‘Gold’, *The Argus* (Melbourne, 21 June 1852) 2

‘Great Chaffinch. Value Still to be Proved’, *The Register* (Adelaide, 3 December 1910) 17

‘The Great Chaffinch Case. Alleged Conspiracy. Charge Against Mining Men. Case For Crown Closed. Application for Dismissal. Addresses By Counsel’, *The West Australian* (Perth, 1 April 1911) 9

‘The Great Chaffinch Charade. Dyason, Bonwick and Greenway Charged with Conspiracy. An Interesting Case. Director Arthur in the Witness box. A Strenuous Cross-Examination’, *The Sunday Times* (Perth, 26 March 1911) 3

‘Great Chaffinch Mine. Rise and Fall of Shares. Was There a Conspiracy? Charge Against Mining Experts. Fourth Day’, *The West Australian* (Perth, 24 March 1911) 5

‘Great Chaffinch Mine. Rise and Fall of Shares. Was There a Conspiracy? Charge Against Mining Experts. Police Court Proceedings’, *The West Australian* (Perth, 21 March 1911) 7

“‘Great curse!” Life of Idleness. Bishop Hits Out’, *The Scone Advocate* (NSW, 16 February 1932) 1

‘Gympie’, *The Maryborough Chronicle, Wide Bay and Burnett Advertiser (*Queensland, 14 July 1884) 3

H

Humphries, David, ‘Sydney Broker on Rothwells Charges’, *The Sydney Morning Herald* (Sydney, 6 December 1990) 3

I

‘In Equity. (Before Mr Justice AH Simpson, Chief Judge in Equity). Kangiara Mines Dispute. Vickery v Taylor’, *The Sydney Morning Herald* (Sydney, 25 March 1910) 4

‘In Newcastle’, *The Australian Star* (Sydney, 10 September 1890) 5

‘Inauguration of the Queenstown Stock Exchange’, *The Mount Lyell Standard and Strahan Gazette* (Queenstown, Tasmania ,15 January 1898) 3

‘Ingenious Fraud. Insurance Manager Suspected. By Telegraph. (From Our Own Correspondent). Melbourne, May 16’, *The Kalgoorlie Miner* (WA, 17 May 1900) 8

‘Intercolonial News’, *The Brisbane Courier* (Queensland, 18 December 1872) 3

‘Interesting Law Suit’, *The Daily Telegraph* (Launceston, 22 October 1920) 2

‘Intricacies of the share market', *Daily Telegraph* (Sydney, 8 March 1890) 6

K

‘Kalgoorlie Stock Exchange’, *The Southern Times* (Bunbury, 24 August 1895) 3

‘Kangiara Mines. Alleged Conspiracy. Application for Injunction’, *The Argus* (Melbourne, 27 November 1909) 22

‘Kangiara Mines. Appeal to the Full Court. Against Equity Decision’, *The Evening News* (Sydney, 8 August 1910) 5

‘Kangiara Mines. Big Equity Suit. Directors and Brokers Sued’, *The Burrowa News* (NSW, 15 October 1909) 2

‘Kangiara Mines. Joseph Vickery and the Directors. Alleged False Representations. Commencement of a Big Equity Suit’, *The Star* (Sydney, 27 November 1909) 2

‘Kangiara Mines Dispute’, *The Goulburn Evening Penny Post* (NSW, 17 February 1910) 2

‘The Kangiara Share Case. Vickery v Taylor and Others. The Appeal Dismissed’, *The Daily Telegraph* (Sydney, 29 October 1910) 24

Kaye, Tony, ‘Rothwells Man Fined for Role in Share Rigging’, *The Financial Review* (Sydney, 12 December 1990) 20

Kaye, Tony, ‘Sydney Broker Charged’, *The Australian Financial Review* (Sydney, 6 December 1990) 18

‘Khull’s Stock Exchange – Stock and Shares for Sale’, *The Argus* (Melbourne, 9 March 1857) 7

Knight, Elizabeth, ‘CAC Bullseye with Conviction for Rigging’, *The Financial Review* (Sydney, 2 August 1990) 20

L

‘The Late Bear Hill “Corner”. Action for £10,000. “All in the Swim”’, *The Newcastle Morning Herald and Miners’ Advocate* (NSW, 31 May 1892) 5

‘The Latest Mining Scandal’, *The Bendigo Independent* (Victoria, 24 August 1901) 4

‘Law Report. Supreme Court’, *The Argus* (Melbourne, 2 December 1872) 1

‘Laws in States ‘futile’’, *The Canberra Times* (ACT, 20 July 1974) 15

Lawson, Mark, 'ASX computers to look for suspect share trading', *The Australian Financial Review* (Sydney, 12 September 1989) 17

Lawson, Mark, ‘ASX Gets a Watchdog Running for $200,000’, *The Australian Financial Review* (Sydney, 18 September 1989) 39

‘Legal Notes’, *The Argus* (Melbourne, 21 December 1889) 11

Letts, Stephen, ‘ANZ, NAB agree to $100 million settlement of swap rate rigging case’, *ABC News* (Web Page, 10 November 2017) <http://www.abc.net.au/news/2017-11-10/anz-nab-agree-to-$100m-settlement-of-swap-rate-fixing-case/9138796>

‘Litigation as to Share Broking Transactions. The “Boom” in Bear Hill and Earl of Hopetoun Shares. Mr Justice Hood on “Rings” and “Corners”’, *The Argus* (Melbourne, 31 May 1892) 7

‘Lord Dundonald’, *The Sydney Morning Herald* (Sydney, 18 October 1855) 3

‘Lord Dundonald’s Autobiography’, *The Herald* (Melbourne, 1 February 1861) 6

‘Lure of Gold. Gambling On ‘Change. Burst Booms. Fortunes Made and Lost’, *The Sun* (Sydney, 22 May 1922) 6

M

‘Magnate’s new Poseidon adventure’, *The Sydney Morning Herald* (online, 14 April 2007) <https://www.smh.com.au/business/magnates-new-poseidon-adventure-20070414-gdpwv3.html>

Maiden, Malcolm ‘A New Order Emerges from the Ashes of the Boom’, *The Australian Financial Review* (online, 21 November 1990) <https://www.afr.com/politics/a-new-order-emerges-from-the-ashes-of-boom-19901121-k46l6>

Main, Andrew, ‘Don’t humour the rumour mongers’, *The Australian* (Sydney, 7 July 2015) 26

‘Making a Market’, *The Leader* (Melbourne, 25 May 1872) 17

‘Maryborough General Sessions’, *The Bendigo Advertiser* (Victoria, 14 November 1878) 3

‘The Maryborough Market Rigging Case’, *Bendigo Advertiser* (Victoria, 21 August 1878) 2

‘Maryborough Police Court’, *The Maryborough & Dunolly Advertiser* (Victoria, 21 August 1878) 2-3

McCarthy, Phillip, ‘Hype and ‘Rumourtrage’ Overwhelm Wall Street’, *The Sydney Morning Herald* (Sydney, 24 June 1989) 41

McIlwraith, Ian, ‘Rumourtrage: the art of walking a very fine line’, *The Sydney Morning Herald* (online, 14 May 2010) <https://www.smh.com.au/business/rumourtrage-the-art-of-walking-a-very-fine-line-20100513-v1tq.html>

‘Melbourne’, *The Ballarat Star* (Victoria, 17 November 1871) 3

‘Melbourne’, *The Geelong Advertiser* (Victoria, 27 May 1872) 3

‘Melbourne. (From Our Own Correspondent)’, *The Geelong Advertiser* (Victoria, 25 April 1872) 3

‘Melbourne. (From Our Own Correspondent). August 28’, *The Hamilton Spectator* (Victoria, 30 August 1876) 3

‘Melbourne Criminal Sessions’, *The Argus* (Melbourne, 20 May 1872) 6

‘Melbourne Criminal Sessions’, *The Argus* (Melbourne, 21 May 1872) 6

‘Melbourne Criminal Sessions’, *The Argus* (Melbourne, 23 May 1872) 1

‘Melbourne. 11th October’, *The Ballarat Star* (Victoria, 12 October 1871) 2

‘Melbourne Preference Post “Raided”’, *The Sydney Morning Herald* (Sydney, 9 July 1965) 12

‘Melbourne Share Market. Great Excitement’, *The Launceston Examiner* (Tasmania, 7 October 1889) 3

‘The Melbourne Stock Exchange’, *The Mount Alexander Mail* (Victoria, 23 March 1863) 2

‘Melbourne, Tuesday, August 23rd, 1859’, *The Age* (Melbourne, 23 August 1859) 4

‘Metropolitan Gossip’, *The Sydney Morning Herald* (Sydney, 3 January 1855) 3

‘Mine Booming’, *The Adelaide Observer* (South Australia, 15 October 1898) 8

‘Mining and Boomin. Results of the Last Boom: Prospects of Another’, *The Daily Telegraph*, (Sydney, 13 January 1890) 5

‘Mining and Finance’, *The Critic* (Adelaide, 31 August 1901) 20

‘Mining Boom’, *The Daily Telegraph* (Sydney, 7 October 1889) 3

‘Mining Case. Interesting Points’, *The Register* (Adelaide, 27 November 1909) 15

‘The Mining Conspiracy Case’, *The Australasian* (Melbourne, 25 May 1872) 22

‘The Mining Conspiracy Case’, *The Weekly Times* (Melbourne, 25 May 1872) 13

‘Mining Dispute. Kangiara Mines. Vickery v Taylor and Others’, *The Burrowa News* (NSW, 3 December 1909) 6

‘Mining Frauds. Victimizing Sharebrokers. Serious Allegations of Leakage’, *The Evening Journal* (Adelaide, 11 January 1897) 3

‘Mining. The Round Hill Mine. An Inspection of the Mine’, *The Advertiser* (Adelaide, 7 October 1889) 6

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 8 November 1865) 2

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 19 November 1870) 2

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 31 July 1871) 2

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 23 August 1871) 4

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 19 April 1872) 3

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 23 August 1901) 6

‘Mining Intelligence’, *The Ballarat Star* (Victoria, 9 September 1901) 3

‘Mining Intelligence’, *The Sydney Morning Herald* (Sydney, 14 February 1888) 5

‘Mining Intelligence’, *The Sydney Morning Herald* (Sydney, 13 January 1890) 9

'Mining Investors v Mining Jobbers: To the Editors of the Star', *The Ballarat Star* (Victoria, 24 July 1868) 2

‘Mining News’, *The Advertiser* (Adelaide, 28 August 1901) 8

‘Mining Speculators’ Roguery’, *The Ballarat Courier* (Victoria, 26 July 1871) 3

‘Misleading Mining Telegrams. A Sentence of Six Months’ Imprisonment’, *The Albany Advertiser* (Western Australia, 8 October 1898) 3

‘Monday, January 14, 1861’, *The Argus* (Melbourne, 14 January 1861) 5

‘Mount Owen Gold Mine. Inspector’s Report’, *The Dugong Chronicle: Durham and Gloucester Advertiser* (NSW, 18 May 1920) 5

‘Mount Owen Mine. ‘Change Fluctuations. Buying-In Notices’, *The Newcastle Sun* (NSW, 1 September 1920) 5

‘Mount Owen Shares. Question of Quotations. Stock Exchange Suspension’, *The Daily Telegraph* (Sydney, 13 October 1920) 12

‘Mr Luplau Committed for Trial’, *The Tasmanian* (Launceston, 28 October 1871) 14

‘Much Concern in the West. Southern Cross’, *The Register* (Adelaide, 3 December 1910) 17

‘The Mystery Solved. “Spec Selling”’, *The Herald* (Melbourne, 10 September 1888) 2

‘Mysteries of Share Dealing. Melbourne Exchange Baffled’, *The Evening Journal* (Adelaide, 28 February 1891) 5

N

‘NCSC investigates Qintex dealings’, *The Canberra Times* (ACT, 21 March 1990) 30

‘Newcastle Stock Exchange. Opening Proceedings’, *Newcastle Morning Herald and Miners’ Advocate* (NSW 10 September 1890) 6

‘The New Mining Exchange’, *The Daily Telegraph* (Sydney, 13 February 1888) 4

‘News and Notes’, *The Ballarat Star* (Victoria, 31 May 1865) 2

‘News and Notes’, *The Ballarat Star* (Victoria, 3 October 1871) 2

‘News and Notes’, *The Ballarat Star* (Victoria, 2 December 1872) 2

‘The News of the Day’, *The Age* (Melbourne, 1 July 1865) 5

‘The News of the Day’, *The Age* (Melbourne, 27 November 1871) 2

‘The News of the Day’, *The Age* (Melbourne, 16 January 1872) 2

‘The News of the Day’, *The Age* (Melbourne, 27 May 1872) 2

‘The New Stock Exchange Rule. To The Editor’, *The Daily Telegraph* (Sydney, 27 September 1913) 17

‘Nickel Strike “Bigger Than Posiedon’s”’, *The Papua New Guinea Post-Courier* (Port Moresby, 28 January 1970) 7

‘No.5 North Glanmire Mine and Mr Warden Lukin’, *The Brisbane Courier* (Queensland, 9 July 1884) 3

Norris, Floyd, ‘Louis Loss, 83, Dies; Harvard Professor Defined and Interpreted Field of Securities Law’, *The New York Times* (online, 16 December 1997) <https://www.nytimes.com/1997/12/16/business/louis-loss-83-dies-harvard-professor-defined-interpreted-field-securities-law.html>

‘North Cornish Conspiracy’, *The Ballarat Star* (Victoria, 14 October 1871) 2

‘North Cornish Conspiracy Case’, *The Argus* (Melbourne, 16 October 1871) 6

‘The North Cornish Conspiracy Case’, *The Ballarat Star* (Victoria, 25 November 1871) 4

‘The North Cornish Conspiracy Case’, *The Herald* (Melbourne, 25 November 1871) 3

‘North Cornish Conspiracy Case’, *The Kyneton Guardian* (Victoria, 18 October 1871) 3

O

‘Obstructionists’, *The Bendigo Advertiser* (Victoria, 22 June 1870) 2

‘Off the List. An Injunction Sought. Federation and Mt. Owen Action. Allegations Against ‘Change’, *The Sun* (Sydney, 12 October 1920) 7

‘Old Stories Re-Told’, *The Sydney Morning Herald* (Sydney, 15 May 1868) 3

‘On ‘Change: Prices Firm in Spite of Oil Telegram Hoax’, *The Canberra Times* (ACT, 26 February 1963) 21

‘The Opening of the Federal Stock Exchange’, *The Herald* (Melbourne, 30 May 1888) 3

‘Other People’s Money’, *Table Talk* (Melbourne, 17 May 1900) 7

‘Other People’s Money. The Duke of York “Squeeze”’, *Table Talk* (Melbourne, 29 August 1901) 6

‘Our Melbourne Letter’, *The Colonist* (Launceston, 20 September 1890) 26

‘Our Melbourne Letter. Rigging the Market’, *The Newcastle Morning Herald and Miners’ Advocate* (NSW, 14 October 1889) 2

P

‘Pall cast by Rae Report’, *The Canberra Times* (ACT, 20 July 1974) 16

‘Parramatta Quarter Sessions’, *The Evening News* (Sydney, 20 February 1871) 4

‘Parties Agree. Senate to look at share deals’, *The Canberra* Times (ACT, 20 March 1970) 1

‘Personal Gossip’, *The Critic* (Adelaide, 25 February 1899) 15

‘Police charge Stanley Korman’, *The Canberra Times* (ACT, 14 November 1964) 1

‘Police Court’, *The Adelaide Times* (South Australia, 12 October 1850) 3

Porter, Jeni, ‘Man Guilty of Options Rort’, *The Sydney Morning Herald* (Sydney, 2 August 1990) 34

Prior, Neale ‘Ananda Kathiravelu spared jail over explorer’s ramp up ahead of capital raising’, *The West Australian* (online, 9 February 2021) <https://thewest.com.au/business/asic/ananda-kathiravelu-spared-jail-over-explorers-ramp-up-ahead-of-capital-raising-ng-b881791085z>

Prior, Neale and Gareth Costa, ‘Western Australia’s 10 worst corporate collapses’, *The West Australian* (online, 3 February 2018) < https://thewest.com.au/business/a-scrap-heap-of-dodgy-deals-ng-b88723725z>

‘Procedure of buying-in suspended’, *The Canberra Times* (ACT, 6 April 1971) 3

‘Properly Punished’, *The Mount Alexander Mail* (Victoria, 29 April 1865) 2

‘The Proposed New Bank and the “Sydney Stock Exchange” (?)’, *Sydney Morning Herald* (Sydney, 15 December 1876) 12

Q

‘Queenstown Stock Exchange’, *The Daily Telegraph* (Launceston, 14 January 1898) 3

R

‘The Recent Ballarat Bogus Mining Telegrams’, *The Bendigo Advertiser* (Victoria, 11 May 1893) 3

‘The Recent “Corner” in Bear Hill shares’, *The Glen Innes Examiner and General Advertiser* (NSW, 12 May 1891) 4

‘The Recent Share “Rigging” Case’, *The Ballarat Star* (Victoria, 30 October 1886) 4

‘The Recent Share “Rigging” Case. A Disputed Transaction’, *The Age* (Melbourne, 29 October 1886) 5

‘Removed From Exchange List’, *The Maitland Daily Mercury* (NSW, 1 September 1920) 5

‘Report on Companies. Gold Mining Shares’, *The Sydney Morning Herald* (Sydney, 7 July 1949) 6

‘Rigging the Gympie Mining Market’, *Southern Argus* (Goulburn, 19 July 1884) 4

‘Rigging the Gympie Mining Market’, *The Sydney Morning Herald* (Sydney, 15 July 1884) 8

‘“Rigging” the Market’, *The Barrier Miner* (Broken Hill, 8 May 1911) 4

'"Rigging the Market"', *The Yackandandah Times* (Victoria, 14 May 1897) 3

'"Rigging the Market". A Bogus Telegram', *The Age* (Melbourne, 10 May 1897) 6

'Rigging the Market. A Fictitious Telegram. Six Months' Imprisonment', *The Daily News* (Perth, 7 October 1898) 3

'Rigging the Market. Operations in a Daylesford Stock', *The Age* (Melbourne, 2 May 1911) 7

'Rigging the Share Market', *The Bendigo Advertiser* (Victoria, 22 November 1875) 2

'Rigging the Share Market. (From the Maryborough and Dunolly Advertiser, April 19)', *The Argus* (Melbourne, 20 April 1875) 7

'"Rigging" the Share Market. More Bogus Telegrams at Ballarat. The Madame Berry West Mine', *The Age* (Melbourne, 12 January 1893) 6

"Rigs' on the Stock Exchange', *The Evening Star* (Boulder, Western Australia, 7 February 1900) 4

'The Rise in Round Hill Silver Shares. Collapse of the Boom. Disappearance of the Operating Broker', *The Argus* (Melbourne, 7 October 1889) 7

'Rothwells employee fined $20,000', *The Canberra Times* (ACT, 12 December 1990) 18

'The Round Hill Boom', *The Adelaide Observer* (South Australia, 12 October 1889) 14

'The Round Hill Boom', *The South Australian Register* (Adelaide, 7 October 1889) 6

'The Round Hill Boom. Affidavits of Messrs. Dix and Moore', *The Express and Telegraph* (Adelaide, 10 October 1889) 2

'The Round Hill Boom. Affidavits of Messrs Dix and Moore', *South Australian Chronicle* (Adelaide, 12 October 1889) 23

‘The Round-Hill Boom Scandal. Mr Dix Finally Disqualified’, *The Daily* Telegraph (Sydney, 15 July 1890) 5

‘The Round Hill Corner’, The *National Advocate* (Bathurst, 9 October 1889) 3

‘The Round Hill Corner’, *The National Advocate* (Bathurst, 15 October 1889) 3

‘The Round Hill Fiasco. Mr Dix Suspended’, *The Evening Journal* (Adelaide, 7 December 1889) 5

‘The Round Hill Fiasco. The Operating Broker Still Missing. Investigation by the Stock Exchange’, *The Age* (Melbourne, 8 October 1889) 5

‘The Round Hill Mine. The Boom Caused by a “Corner”. A Fall From £150 to £10’, *The Daily Telegraph* (Sydney, 7 October 1889) 7

‘The Round Hill Racket’, *The Australian Star* (Sydney, 11 October 1889) 6

‘The Round Hill Racket. Collapse of the “Corner.” Consternation and Dismay’, *The Australian Star* (Sydney, 8 October 1889) 6

‘The Round Hill Racket. Meeting of the Stock Exchange. Contradictory Affidavits’, *The Australian Star* (Sydney, 11 October 1889) 6

‘The Round Hill Racket. Mr Dix in a Fix’, *The Australian Star* (Sydney, 9 October 1889) 5

‘The Round Hill Share Boom’, *The Gippsland Farmers’ Journal and Taralgon, Heyfield and Rosedale News* (Victoria, 8 October 1889) 2

‘The Round Hill Share Boom’, *The Launceston Examiner* (Tasmania, 9 October 1889) 3

‘The Round Hill Share Corner’, *The Leader* (Melbourne, 16 November 1889) 40

‘The Round Hill Share Corner. Stock Exchange Inquiry’, *The Age* (Melbourne, 12 November 1889) 5

‘The Round Hill Share Racket. Collapse of the “Corner”’, *The Age* (Melbourne, 7 October 1889) 5

‘*The Round Hill Share Racket.* Mr Dix Accounts for the “Boom.” Mr Moore Emphatically Denies the Statement’, *The Ballarat Star* (Victoria, 10 October 1889) 4

‘The Round Hill Shares Corner. Supreme Court Proceedings’, *The Age* (Melbourne, 18 December 1889) 6

‘The Round Hill Shares Corner. Supreme Court Proceedings’, *The Age* (Melbourne, 20 December 1889) 6

‘The Round Hill Silver Boom. Proceedings in the Stock Exchange. The Broker and Alleged Client Explain. Statutory Declarations’, *The Argus* (Melbourne, 10 October 1889) 7

‘That Round Hills Corner. Mr Dix’s Case’, *The Evening News* (Sydney, 13 November 1889) 6

‘The Round Hills Corner. Mr Dix Ordered to Pay Up’, *The Evening News* (Sydney, 27 November 1889) 4

‘The Round Hills Corner. Mr Dix’s Statement. Affidavit by Mr R F Moore’, *The Evening News* (Sydney, 10 October 1889) 8

‘The Round Hills Corner. The Stock Exchange Inquiry’, *The Evening News* (Sydney, 22 October 1889) 4

S

'Saturday, 18th May. The Mining Conspiracy Case', *The Leader* (Melbourne, 25 May 1872) 23

Scrutator, 'The Mining Market: Rigging the Market', *Table Talk* (Melbourne, 12 February 1897) 5

'Securities industry draft legislation planned', *The Canberra Times* (ACT, 21 June 1968) 13

'Sending Fraudulent Telegrams. Accused Sentenced to Six Months', *The Menzies Miner* (Western Australia, 15 October 1898) 18

'Share Boom in Adelaide. Round-Hill at £50', *The Daily Telegraph* (Sydney, 5 October 1889) 6

'Share Jobbing in Ballarat', *The Ballarat Star* (Victoria, 27 September 1866) 3

'The Share Market. Monday's Business', *The Evening News* (Sydney, 27 August 1901) 6

'Share Sensation. Duke of York "Squeeze". Supreme Court Sequel. An Interesting Case', *The Herald* (Melbourne, 28 September 1901) 4

'Share-Sharpers Unveiled or Tricks of Bitten Bears', *Tasmanian News* (Hobart, 31 March 1883) 2

'Share Warning', *Sydney Morning Herald* (Sydney, 13 June 1970) 1

'Shares scam spammer jailed', *BBC News* (online, 30 October 2000) <http://news.bbc.co.uk/2/hi/asia-pacific/998626.stm>

'Sharkproofing the Exchanges', *The Tribune* (Sydney, 11 February 1970) 2

‘The Silver Boom’, *The Daily Telegraph* (Sydney, 8 October 1889) 3

‘Silver Valley Share Dealings Investigation’, *Canberra Times* (ACT, 7 June 1968) 15

‘Singline to quit as Tasminex chairman’, *The Canberra Times* (ACT, 22 October 1970) 37

‘Six months’ sentence passed on Korman’, *The Canberra Times* (ACT, 27 October 1966) 3

‘$67,500 in fines for members of Exchange’, *The Canberra Times* (ACT, 5 October 1974) 1

Smith, Mark, ‘ASX suspends Perth broker over unpaid fine’, *The Australian Financial Review* (Sydney, 14 April 1989) 29

“‘Spec Selling” and its Results’, *The Bendigo Independent* (Victoria, 28 April 1891) 2

“‘Spec” Selling on the Melbourne Exchange’, *The Western Mail* (Perth, 9 May 1891) 14

Staff Reporter, ‘Share price charge’, *The Australian Financial Review* (online, 21 November 1995)

‘State Parliament. The Legislative Assembly. Amendment of Criminal Code. Fraudulent Share Dealing’, *Kalgoorlie Miner* (WA, 12 December 1906) 5

‘Stock and Share Broker’, *The Argus* (Melbourne, 28 October 1852) 7

‘Stock & Share Market’, *The Tasmanian News* (Hobart, 31 March 1884) 3

‘Stock and Share Markets. Melbourne’, *The Argus* (Melbourne, 28 September 1868) 6

‘Stock Exchange at Cairns’, *The Sydney Morning Herald* (Sydney, 3 May 1906) 7

‘Stock Exchange Ban Lifted’, *The Argus* (Melbourne, 19 October 1920) 9

‘Stock Exchange Ethics’, *The Daily Telegraph* (Sydney, 16 October 1920) 10

‘Stock Exchange for Kalgoorlie’, *The Golden Age* (Coolgardie, 24 August 1895) 3

‘Stock exchange legislation plans get mixed reception’, *The Canberra Times* (ACT, 22 June 1968) 16

‘Stock Exchange Notes. Mining and Finance’, *The Critic* (Adelaide, 22 March 1911) 14

‘The Stock Exchange of New South Wales. Successfully Started’, *The Australian Star* (Sydney, 11 January 1890) 3

‘The Stock Exchange of Melbourne’, *Table Talk* (Melbourne, 13 November 1891) 8

‘The Stock Exchange Swindle’, *The Mount Alexander Mail* (Victoria, 18 May 1900) 3

‘Stock Swindles’, *The Tribune*, 23 July 1974, 3; ‘200-page draft Bill’, *The Canberra Times* (ACT, 19 July 1974) 1

‘Stockjobbers and Stockbrokers’, *The South Australian Register* (South Australia, 11 December 1878) 4

‘Summary for Europe. Introduction’, *The Argus* (Melbourne, 25 March 1865) 1

‘Suppression of “Corners”’, *The Daily Telegraph* (Sydney, 24 September 1913) 13

‘Supreme Court, Brisbane — August 21, Criminal Sittings’, *The Ipswich Herald and General Advertiser* (Queensland, 23 August 1861) 3

‘Supreme Court. Friday, July 2’, *The Sydney Gazette and New South Wales Advertiser* (NSW, 3 July 1830) 3

‘Sydney Mining Action’, *The Age* (Melbourne, 29 November 1909) 7

‘Sydney Mining Dispute. Removal of Suspension’, *The Herald* (Melbourne, 10 October 1920) 3

‘Sydney’s Monte Carlo’, *The Worker* (Wagga, 25 September 1913) 13

T

‘Tasminex chief hit in share report’, *The Papua New Guinea Post-Courier* (Port Moresby, 14 October 1970) 7

‘Telegraphic Despatches’, *The Express and Telegraph* (Adelaide, 19 April 1872) 2

‘Telegraphic News. West Australia’, *The Kalgoorlie Miner* (WA, 8 October 1898) 5

‘Thursday, July 27, 1871’, *The Argus* (Melbourne, 27 July 1871) 4

‘Thursday, October 10, 1889’, *The Argus* (Melbourne, 10 October 1889) 6

‘To the Editor of the Sydney Morning Herald’, *The Sydney Morning Herald* (Sydney, 4 April 1854) 5

‘Topics of the Day’, *The Daily News* (Perth, 8 October 1898) 4

‘Topics of the Week’, *The South Australian Weekly Chronicle* (Adelaide, 28 March 1863) 5

‘Tough Luck’, *The Halesville and Yarra Glen Guardian* (Victoria, 20 September 1901) 4

‘Trainer’s night vigil among the tombstones’, *The Sydney Morning Herald* (Sydney, 16 November 1986)

‘Tuesday, January 16, 1872’, *The Argus* (Melbourne, 16 January 1872) 4

‘Tuesday, June 9, 1868’, *The Argus* (Melbourne, 9 June 1868) 4

U

"'Under the Verandah". Alleged Conspiracy of Sharebrokers', *The Herald* (Melbourne, 24 April 1872) 3

Untitled article, *The Age*, (Melbourne, 28 April 1865) 4

Untitled article, *The Ballarat Star* (Victoria, 23 April 1872) 2

Untitled article, *The Ballarat Star* (Victoria, 20 October 1886) 2

Untitled article, *The Herald* (Melbourne, 6 March 1863) 4

Untitled article, *The Kyneton Observer* (Victoria, 11 May 1872) 2

Untitled article, *The Maryborough & Dunolly Advertiser* (Victoria, 18 November 1878) 3

'Uttering Forged Telegram', *The Maryborough & Dunolly Advertiser* (Victoria, 21 August 1878) 2-3

V

'Victimising Sharebrokers. Alleged Forgery of Telegrams. A Clever Scheme. Arrest of the Principal', *The Express and Telegraph* (Adelaide, 9 January 1897) 4

W

'Warden Lukin's Report', *The Brisbane Courier* (Queensland, 18 July 1884) 5

'Warden Lukin's Report', *The Brisbane Courier* (Queensland, 11 September 1884) 5

Washington, Stuart, 'The Silent Enforcer', *The Australian Financial Review (online* 1 May 2003) <https://www.afr.com/companies/the-silent-enforcer-20030501-kaaf6>

‘Wednesday, March 13, 1872’, *The Brisbane Courier* (Queensland, 13 March 1872) 2

‘The Week’, *The Leader* (Melbourne, 18 March 1865) 1

‘The West Australian Goldfields. Lord Sudeley has an Unpleasant Experience. Opening of the Coolgardie Stock Exchange’, *The Daily Telegraph* (Sydney, 24 August 1894) 5

‘Will Investigate any Complaints of Share Rigging’, *The Canberra Times* (ACT, 21 July 1960) 13

‘Woolcott Forbes Inquiry Urged’, *The Herald* (Melbourne, 22 June 1949) 3

Z

Zappone, Chris, ‘Window dressing tipped to lift stocks’, *The Sydney Morning Herald* (online, 9 June 2009) <https://www.smh.com.au/business/markets/window-dressing-tipped-to-lift-stocks-20090628-d14z.html>

G *Other*

PhD and Honours Theses

Austin, Janet Elizabeth, ‘When Insider Trading and Market Manipulation Cross Jurisdictions: What Are the Challenges For Securities Regulators and How Can they Best Preserve the Integrity of Markets?’ (PhD Thesis, Osgoode Hall Law School of York University, 2016)

Diaz, David, *Financial Market Monitoring and Surveillance Systems Framework: A Service Systems and Business Intelligence Approach* (PhD Thesis, The University of Manchester, 2011)

Geddes, David, ‘Systems of Securities Regulation: A Comparative Study with Recommendations for Australia’ (PhD Thesis, University of New South Wales, 1975)

Goldwasser, Vivien Ruth, ‘The Regulation of Stock Market Manipulation’ (Thesis for Doctor of Juridical Science, The University of Melbourne, 1997)

Hoyte, Catherine, *An Australian Mirage* (PhD Thesis, Griffith University, 2004)

McIntyre, Graeme, ‘Reforming the Regulation of Financial Market Manipulation’ (Honours Program Thesis, University of Sydney, Faculty of Law, 2014)

Murphy, Anne L, *Society, Knowledge and the Behaviour of English Investors, 1688-1702* (PhD Thesis, University of Leicester, 2005)

Overland, Juliette, ‘The Criminal Liability of Corporations for Insider Trading in Australia: Proposals for Reform’ (PhD Thesis, Australian National University, 2015)

Putniņš, Tālis J, *Closing price manipulation and the integrity of stock exchanges* (PhD Thesis, University of Sydney, 2009)

Domestic Government Material

Australian Criminal Intelligence Commission, *Financial Crime* (Web Page) <https://www.acic.gov.au/about-crime/crime-types/financial-crimes>

Australian Securities & Investments Commission, ‘ASIC Enforcement Outcomes: January to June 2018, Report 585’ (Web Page, 9 August 2018) <https://asic.gov.au/media/4841269/rep-585-published-9-august-2018.pdf>

Australian Securities and Investments Commission, ‘ASIC Market Supervision Update: Issue 1’ (Web Page) < https://asic.gov.au/about-asic/corporate-publications/newsletters/asic-market-supervision-update/asic-market-supervision-update-previous-issues/asic-market-supervision-update-issue-1/>

Australian Securities & Investments Commission, *Consultation Paper 118: Responsible handling of rumours*, September 2009 <https://download.asic.gov.au/media/1331012/cp118.pdf>

Australian Securities & Investments Commission, ‘Consultation Paper 202: Dark liquidity and high-frequency trading: Proposals’, March 2013 <https://www.asic.gov.au/media/1335404/cp202-published-18-March-2013.pdf>

Australian Securities and Investments Commission, ‘End of financial year 'window dressing'’ in ‘Market Integrity Update - Issue 83 - June 2017’, <https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-issue-83-june-2017/>

Australian Securities & Investments Commission, ‘Market Integrity Update – Issue 105’, June 2019 < https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-issue-105-june-2019/>

Australian Securities & Investments Commission, ‘On the lookout for EOFY ‘window dressing’, ‘Market Integrity Update’, Issue 105, June 2019 <https://asic.gov.au/about-asic/corporate-publications/newsletters/market-integrity-update/market-integrity-update-issue-105-june-2019/#window-dressing>

Australian Securities & Investments Commission, ‘Regulatory Guide 196: Short Selling’, October 1998 < https://download.asic.gov.au/media/4896780/rg196-published-8-october-2018.pdf>

Australian Securities and Investments Commission, ‘Regulatory Guide 216: Markets Disciplinary Panel’, July 2010

Australian Securities and Investments Commission, ‘Regulatory Guide 225: Markets Disciplinary Panel Practices and Procedures’, May 2011

Australian Securities & Investments Commission, ‘Report 227: ASIC supervision of markets and participants: August to December 2010’, January 2011 https://download.asic.gov.au/media/1343564/rep227.pdf

Australian Securities and Investments Commission, 'Report 243 – ASIC supervision of markets and participants: January to June 2011', July 2011 <https://download.asic.gov.au/media/1343654/rep243-published-13-July-2011.pdf>

Australian Securities & Investments Commission, 'Report 327: ASIC supervision of markets and participants: July to December 2012', February 2013 <https://download.asic.gov.au/media/1344158/rep327-published-26-February-2013.pdf>

Australian Securities and Investments Commission, 'Report 425: ASIC supervision of markets and participants: July to December 2014', March 2015

Australian Securities & Investments Commission, 'Report 452: Review of high-frequency trading and dark liquidity', October 2015 <https://download.asic.gov.au/media/3444836/rep452-published-26-october-2015.pdf>

Australian Securities & Investments Commission, ASIC Gazette, 'Markets Disciplinary Panel Infringement Notice, Recipient: D J Carmichael Pty Limited', No. MDP03/15, 23 September 2015

Australian Senate, 'Navigate Senate Committees', *1970-75. Securities and Exchange. Select Committee on Securities and Exchange* (Web Page) <http://navigatesenatecommittees.senate.gov.au/events/select-committee-on-securities-and-exchange/14>

Commonwealth, *Parliamentary Debates*, Senate, 19 March 1970, 489-517 (Lionel Murphy – Leader of the Opposition)

Commonwealth, *Parliamentary Debates*, Senate, 19 March 1970, 490 (Lionel Murphy – Leader of the Opposition)

Corporate Affairs Commission (NSW), *Report of the Corporate Affairs Commission for Year Ended 31 December, 1980*

Corporate Affairs Commission (NSW), *Report of the Corporate Affairs Commission for the Six-month Period Ended 30 June, 1982*

Gold Fields' Commission of Enquiry: Commission Appointed to Inquire into the Condition of the Gold Fields of Victoria (Report, 1854-1855) <https://www.vgls.vic.gov.au/client/en_AU/search/asset/1286493/0>

House of Representatives Standing Committee on Legal and Constitutional Affairs, 1989, *Fair Shares for All: Insider Trading in Australia* (October 1989)

McCusker, MJ, *Report of Inspector on a Special Investigation into Rothwells Ltd Pursuant to Companies Code (WA), Part VII Part 1* (Western Australia: Government Printer, 1990)

Murphy, Peter, *Interim Report of an Investigation Under Division 4 of Part VI of the Companies Act 1961 into the Affairs of Factors Ltd and Other Companies* (Melbourne: Government Printer, 1966)

National Companies and Securities Commission, *Fifth Annual Report and Financial Statements 1 July 1983 to 30 June 1984*

National Companies and Securities Commission, *Seventh Annual Report and Financial Statements 1 July 1985 to 30 June 1986*

National Companies and Securities Commission, *Eleventh Annual Report and Financial Statements 1 July 1989 to 30 June 1990*

New South Wales, *Parliamentary Debates*, Assembly, 17 March 1970 (Kenneth McCaw, Attorney-General)

New South Wales, *Parliamentary Debates*, Council, 18 March 1970 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council)

New South Wales, *Parliamentary Debates*, Council, 19 March 1970 (Robert Downing, Leader of the Opposition)

New South Wales, *Parliamentary Debates*, Council, 19 March 1970 (JBM Fuller, Minister for Decentralisation and Development and Vice-President of the Executive Council)

Parliament of Australia, *List of Australian Attorneys-General* (Web page) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Browse_by_Topic/law/attorneysgeneral>

Queensland Parliament, Legislative Assembly, *Warden Lukin's Report of 1 July 1884: Return to Order, Tabled Paper 220*, 7 October 1884 <https://www.parliament.qld.gov.au/work-of-assembly/tabled-papers/online-tabled-papers>

Replacement Explanatory Memorandum, Corporations Amendment (No.1) Bill 2010 (Cth)

Second Reading Speech, *Criminal Code Amendment Bill*, 13 December 1906, WA Government, 3797

Shaw, B.J., *Report of an Investigation Under Section 178 of the Companies Act 1961 into the Circumstances Under Which Walana Investments Pty Ltd in July 1962 Acquired 1,136,636 Shares in Cox Finance Corporation Limited and the Circumstances Under Which Cox Finance Corporation Limited Acquired Those Shares Originally and Later Disposed of Them to Walana Investments Pty Ltd* (Melbourne: Government Printer, 1967)

Securities and Exchange Commission, 'Amendments to Regulation SHO, 17 CFR Part 242, [Release No. 34-56212; File No. S7-12-06]' (Web Page) <https://www.sec.gov/rules/final/2007/34-56212.pdf>

Senate Economics Reference Committee, Parliament of Australia, *Inquiry into the Framework for the Market Supervision of Australia's Stock Exchanges* (2002)

Senate Select Committee on Securities and Exchange, Parliament of Australia, *Australian Securities Markets and Their Regulation* (Report, Part 1, Volume 1, 1974)

West Australian Government, *Parliamentary Debates*, Legislative Council, 13 December 1906 (JD Connolly, Colonial Secretary).

Wilson, J.W., *Report of the Inspector appointed pursuant to Section 178(1) of the Companies Act 1961 of the State of Victoria to investigate and report on the circumstances in which any person acquired or disposed of, or became entitled to acquire or dispose of any shares in Tasminex N.L. during the period 7 November 1969 to 18 March 1970*, 1970, 26 <https://www.parliament.vic.gov.au/papers/govpub/VPARL1970-71NoC1.pdf>

Media/Press Releases

Australian Securities and Investments Commission, 'ABN AMRO Securities Representative Banned for Four Years' (Media Release 99-246, 21 July 1999)

Australian Securities & Investments Commission, 'ASIC accepts enforceable undertakings from ANZ and NAB to address conduct relating to BBSW' (Media Release 17-393, 20 November 2017)

Australian Securities and Investments Commission, 'ASIC bans former dealer and portfolio manager Dylan Rands for market manipulation' (Media Release 21-253, 22 September 2021)

Australian Securities & Investments Commission, 'ASIC Charges Two Over Spam E-Mail and Internet Web Board Postings' (Media Release 00/193, 2 May 2000)

Australian Securities and Investments Commission, 'ASIC on Alert for Window Dressing' (Media Release 10-139, 29 June 2010)

Australian Securities and Investments Commission, 'ASIC warns of social media led 'pump and dump' campaigns' (Media Release 21-256, 23 September 2021)

Australian Securities and Investments Commission, 'Corporate finance director sentenced for conspiring to manipulate market' (Media Release 21-020, 10 February 2021)

Australian Securities and Investments Commission, 'Court reduces jail time for New South Wales man sentenced for market manipulation' (Media Release 16-051, 29 February 2016)

Australian Securities and Investments Commission, 'Enquiries into Market Manipulation' (Media Release, 08-202, 17 September 2008)

Australian Securities and Investments Commission, 'False or misleading rumours' (Media Release 08-47, 6 March 2008)

Australian Securities and Investments Commission, 'Former broker sentenced to jail for market manipulation' (Media Release 10-156, 12 May 2010)

Australian Securities & Investments Commission, 'Internet 'Spammer' Gaoled' (Media Release 00/445, 30 October 2000)

Australian Securities & Investments Commission, 'Internet 'Spammer' Pleads Guilty to ASIC Charges' (Media Release 00/306, 14 July 2000)

Australian Securities and Investments Commission, 14-179MR 'Jonathan Moylan Convicted' (Media Release 14-179, 25 July 2014)

Australian Securities and Investments Commission, 'NSW man jailed for market manipulation' (Media Release 15-271, 25 September 2015)

Australian Securities & Investments Commission, 'Queensland Man Appears on Spam Charges' (Media Release 00/457, 3 November 2000)

Australian Securities & Investments Commission, 'Two Years Jail – Suspended – For Internet Spammer' (Media Release 01/166, 22 May 2001)

Australian Securities & Investments Commission, *Supervision* (Web Page) <http://asic.gov.au/regulatory-resources/markets/supervision/>

The Treasury (Cth), *Reforms to the Supervision of Australia's Financial Markets* (Media Release, No.013, 24 August 2009)

Speeches, Seminars and Addresses

Australian National University, ‘Annual Geoffrey Sawer Lecture’, <https://law.anu.edu.au/news-and-events/event-series/annual-geoffrey-sawer-lecture>

Black, Ashley, ‘Market Manipulation – Incentives and Enforcement’, Ross Parsons Law and Business Seminar Series, 20 February 2014 <http://classic.austlii.edu.au/au/journals/NSWJSchol/2014/3.pdf>

The College of Law, Continuing Legal Education Department, Being papers presented by the continuing legal education department of the College of Law on Friday, 24th November 1989 at the Menzies Holiday Inn, ‘An Introduction to the Stock Exchange and Securities Industry 89/54’

D’Aloisio, Tony, ‘ASIC’s approach to market integrity’ (Notes used in a speech delivered at the Monash Centre for Regulatory Studies and Clayton Utz Luncheon Lecture, 11 March 2010) < https://download.asic.gov.au/media/1316137/ASICs-approach-to-market-integrity.pdf>

Debelle, Guy, ‘FX Benchmarks’, (Address to the FX Week Australia Conference, Sydney, 12 February 2015) <https://www.rba.gov.au/speeches/2015/sp-ag-2015-02-12.html>

The Hon TF Bathurst, Chief Justice of New South Wales, Sydney, ‘The Historical Development of Corporations Law’, Francis Forbes Society for Australian Legal History, Introduction to Australian Legal History Tutorials (3 September 2013)

Levitt, Arthur, ‘A question of investor integrity: Promoting investor confidence by fighting insider trading’ (Speech delivered at the ‘SEC Speaks Conference, Washington DC, 27 February 1998) <https://www.sec.gov/news/speech/speecharchive/1998/spch202.txt>

Longo, Joe, ‘Market Misconduct Provisions of the Financial Services Reform Act: Challenges for Market Regulation’ (Paper presented at Centre for Corporate Law and Securities Regulation seminar on Market Misconduct and the Financial Services Reform Bill,

Melbourne, 25 July 2001 and Sydney, 14 August 2001) <https://law.unimelb.edu.au/__data/assets/pdf_file/0007/1710088/116-mkt-misconduct1.pdf>

McClellan, Peter, ‘White Collar Crime: Perpetrators and Penalties’ (Keynote Address delivered at the Fraud and Corruption in Government Seminar, University of NSW Sydney, 24 November 2011) <http://www.austlii.edu.au/au/journals/NSWJSchol/2011/39.pdf>

Phillipps, Tim, ‘Avoiding Share Scams in Cyberspace’ (Address delivered at The Australian Financial Review “Online Broking – Opportunity or Threat” conference, Sydney, 20 and 21 September 1999) <https://asic.gov.au/media/1327364/conference.pdf>

Schooling Latter, Edwin, ‘Conduct Risk in FX Markets’ (Speech delivered at FX Week Europe, London, 30 November 2016) <https://www.fca.org.uk/news/speeches/conduct-risk-fx-markets>

Other Material

ASX Limited, *ASX Story: History* <https://www2.asx.com.au/about/asx-story>

ASX Limited, ‘Frequently Asked Questions – BBSW’ (Web Page, 2016) <https://www.asx.com.au/documents/products/bbsw-frequently-asked-questions.pdf>

Australian Dictionary of Biography <http://adb.anu.edu.au>

Australian Securities Exchange, ASX Australian Investor Study 2020, August 2020 <https://www2.asx.com.au/blog/australian-investor-study>

Australian Securities Exchange, ‘Trading Near Financial Year End’, ASX Circular 206/09, 19 June 2009

Australian Stock Exchange, ‘Business Rule Guidance Note 8/00: Trading Practices. Business Rule 2.2.4 – Prevention of Manipulative Trading. Business Rule 1.2.1 – Order Records’, 13 November 2000, 13

Australian Stock Exchange, 'Disciplinary Matters: ABN AMRO Morgans Limited', ASX Participant Circular 138/08, 18 March 2008

Australian Stock Exchange, 'Disciplinary Matters: ETRADE Australia Securities Limited', ASX Participant Circular 186/02, 16 April 2002

Australian Stock Exchange, 'Disciplinary Matters: Tolhurst Noall Limited', ASX Participant Circular 653/03, 17 December 2003

Australian Stock Exchange*, Memorandum and Articles of Association, Business Rules*, 1 April 1987

Australian Stock Exchange, 'Schedule Showing All Fines and Penalties Levied by ASX Subsidiaries 1.4.87 To 1.11.89'

Australian Stock Exchange Limited, 'Circular to Member Organisations Number 306/90: Sections 123 and 124 of the Securities Industry Code', 21 June 1990

Australian Transaction Reports Analysis Centre, *Australia's Securities and Derivatives Sector: Money Laundering and Terrorism Financing Risk Assessment*, July 2017 <http://www.austrac.gov.au/sites/default/files/securities-and-derivitives-ra-FINAL-2.pdf>

'Bench/Information/Charge', *Howard v Miles*, Magistrates Court, Canberra, C.C. No. CC89/15902-15907

The Board of the International Organization of Securities Commissions, 'Technological Challenges to Effective Market Surveillance: Issues and Regulatory Tools', FR04/13, April 2013, 2-3 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD412.pdf>

Bondfield, Brett, 'The Conduct of Securities Business' in The College of Law, 'An Introduction to the Stock Exchange and Securities Industry', 89/54, 24 November 1989

Butterworth, *Halsbury's Laws of England*, vol 27 (at 24 October 1913) 'Stock Exchange', Part 6 Illegality and Fraud, Section 4 'Corners', 264 <https://archive.org/details/lawsofenglandbei27hals_0/page/n8/mode/2up>

Cambridge Dictionary (online at 30 January 2022)

City of Ballarat, Heritage Weekend, 'The Corner: Corner of Sturt and Lydiard Street' (Web Page, 2018) <https://ballaratrevealed.com/tour.php?action=view_tour&tour_id=12>

The Criminal Practice Rules of 1900, Queensland, 10 October 1900 <https://digitalcollections.qut.edu.au/3305/1/qsr_criminal_practice_rules_1900_1jan86.pdf>

Deloitte Access Economics, *ASX Australian Investor Study 2017* <https://www.asx.com.au/documents/resources/2017-asx-investor-study.pdf>

Director of Public Prosecutions, 'Applicant's Submissions', Submission in Director of Public Prosecutions (Cth) v JM, No. M73 of 2012, 25 January 2013

Emerging Markets Committee of the International Organization of Securities Commissions, 'Approaches to Market Surveillance in Emerging Markets: Final Report', December 2009, 5

Explanatory Memorandum, Futures Industry Bill 1986 (Cth)

Federation Press, 'A History of Criminal Law in New South Wales – Volume 2: The New State, 1901-1955', Federation Press Online Bookstore <https://www.federationpress.com.au/bookstore/book.asp?isbn=9781760021931>

Financial Conduct Authority, 'Final Notice: Mr Adrian Geoffrey Horn', 3 March 2021, 7 <https://www.fca.org.uk/publication/final-notices/adrian-horn.pdf>

Financial Conduct Authority, 'Market Abuse' (Web Page, 20 December 2017) <https://www.fca.org.uk/markets/market-abuse>

Finnerty, John D, 'Short Selling, Death Spiral Convertibles, and the Profitability of Stock Manipulation', March 2005, 11 <https://www.sec.gov/comments/s7-08-08/s70808-318.pdf>

Grabosky, Peter and John Braithwaite (eds), *Business Regulation and Australia's Future* (Australian Institute of Criminology, 1993) <https://www.waveflux.net/wp-content/uploads/2015/10/business-reg.pdf>

Grasshoff, Gerold, Zubin Mogul, Thomas Pfuhler, Norbert Gittfried, Carsten Wiegand, Andreas Bohn and Volker Vonhoff, The Boston Consulting Group, *Global Risk 2017: Staying the Course in Banking*, March 2017, 5, 16 <https://image-src.bcg.com/BCG_COM/BCG-Staying-the-Course-in-Banking-Mar-2017_tcm9-146794.pdf

Hall, AR, 'Khull, Edward (1805-1884)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University <https://adb.anu.edu.au/biography/khull-edward-3949/text6223>

HM Treasury, *A New Approach to Financial Regulation: Building a Stronger System*, February 2011, Presented to Parliament by the Financial Secretary to the Treasury by Command of Her Majesty <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/81411/consult_newfinancial_regulation170211.pdf>

Hodder, Jack, Roger Wallis and Tim Smith, 'Brief Counsel. New Zealand', *Market manipulation – a suspect form of human ingenuity* (7 August 2013, Web Page) <https://www.mondaq.com/newzealand/corporate-crime/256424/market-manipulation-a-suspect-form-of-human-ingenuity>

International Monetary Fund, *Financial System Abuse, Financial Crime and Money Laundering— Background Paper*, Washington DC, 2001, <https://www.imf.org/external/np/ml/2001/eng/021201.pdf>

International Organization of Securities Commissions, *Objectives and Principles of Securities Regulation* (May 2017), <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD82.pdf>

International Organization of Securities Commissions, Technical Committee, 'Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency',

Consultation Report CR02/11, July 2011, 8 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD354.pdf>

Langmore, Diane, ‘Meudell, George Dick (1860-1936)’, *Australian Dictionary of Biography* <http://adb.anu.edu.au/biography/meudell-george-dick-7564>

London Stock Exchange, *Our History* (Web Page) <http://www.londonstockexchange.com/about-the-exchange/company-overview/our-history/our-history.htm >

Matthews, Christopher, ‘LIBOR Scandal: The Crime of the Century?’, *TIME* (online), 9 July 2012 <http://business.time.com/2012/07/09/libor-scandal-the-crime-of-the-century/>

Matthews, Thomas, ‘A History of Australian Equities’, Reserve Bank of Australia Research Discussion Paper RDP 2019-04, June 2019 <https://www.rba.gov.au/publications/rdp/2019/pdf/rdp2019-04.pdf>

National Library of Australia, *About Trove* (Web Page) <https://trove.nla.gov.au/about>

National Museum of Australia, ‘20 Years 2021. Defining Moments. First Stock Exchange. 1859: Establishment of Australia’s first stock exchange’ (Web Page) <https://www.nma.gov.au/defining-moments/resources/first-stock-exchange>

O’Connell, Ann, ‘Protecting the Integrity of Securities Markets — What is an ‘Artificial Price’?: DPP (Cth) v JM’, Opinions on High, 1 August 2013 <https://blogs.unimelb.edu.au/opinionsonhigh/2013/08/01/o-connell-jm/#more-1608>

Oxford University Press, *Oxford English Dictionary* (online) 2021

Quinlan, Benjamin, Yvette Kwan and Hugo Cheng, *Value at Risk: A look at banking’s USD 850 billion behavioural problem*, Quinlan & Associates, September 2017, 4 <https://www.quinlanandassociates.com/wp-content/uploads/2017/09/Quinlan_Associates-Value-At-Risk.pdf

Report of the Sub-Committee of the Stock Exchange, Relative to the Late Fraud, London, 1814

Second Report of the Sub-Committee of the Stock Exchange, Relative to the Late Fraud, London, 1815

Securities and Exchange Commission*, In the Matter of L.C. Wegard & Co., Inc. and Leonard B. Greer*, 29 May 1998, Washington, D.C., Admin. Proc. File No. 3-8533, 10 <https://www.sec.gov/litigation/opinions/3440046.txt>

Simon, John, 'Three Australian Asset-price Bubbles', Reserve Bank of Australia, 2003 (Web Page) <https://www.rba.gov.au/publications/confs/2003/pdf/simon.pdf>

Smith, Tim and Rodger Wallis, *Market Manipulation – A Suspect Form of Human Ingenuity* (7 August 2013) Chapman Tripp: Brief Counsel <http://www.chapmantripp.com/publications/Documents/2013%20PUB%20BC%20Market%20manipulation%20%20a%20suspect%20form%20of%20human%20ingenuity%20-%207%20august.pdf>

Spearritt, Peter and Young, John, 'Korman, Stanley (1904-1988)', *Australian Dictionary of Biography*, 2007 <https://adb.anu.edu.au/biography/korman-stanley-12755>

Taibbi, Matt, 'Everything is Rigged: The Biggest Price-Fixing Scandal Ever', *Rolling Stone* (Web Page, 25 April 2013) <http://www.rollingstone.com/politics/news/everything-is-rigged-the-biggest-financial-scandal-yet-20130425>

Technical Committee of the International Organisation of Securities Commissions, 'Investigating and prosecuting market manipulation', May 2000

Transcript of Proceedings, *R v Tuckwell* (Central District Criminal Court, Adelaide, 2045/91, Judge Russell, 18 March 1992)

United States Commodity Futures Trading Commission, 'History of the CFTC', <https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html>

United States Department of Justice, ‘Bank of America to Pay $16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis’ (Web Page, 21 August 2014) <https://www.justice.gov/opa/pr/bank-america-pay-1665-billion-historic-justice-department-settlement-financial-fraud-leading>

United States Department of Justice, ‘Credit Suisse Pleads Guilty to Conspiracy to Aid and Assist U.S. Taxpayers in Filing False Returns’ (Web Page, 19 May 2014) <https://www.justice.gov/opa/pr/credit-suisse-pleads-guilty-conspiracy-aid-and-assist-us-taxpayers-filing-false-returns>)

United States Securities and Exchange Commission, ‘Amendments to Regulation SHO, 17 CFR Part 242, [Release No. 34-56212; File No. S7-12-06]’ <https://www.sec.gov/rules/final/2007/34-56212.pdf>

United States Securities and Exchange Commission, ‘Civil Action Against Stephen Hourmouzis and Wayne Loughnan’ in *SEC News Digest*, Issue 2000-85, 4 May 2000, 5 <https://www.sec.gov/news/digest/2000/dig050400.pdf>

United States Securities and Exchange Commission, ‘Litigation Release No. 16705’, Securities and Exchange Commission v Stephen Hourmouzis and Wayne Loughnan, No. 00-N-905 (D. Colo.)’, 15 September 2000 <https://www.sec.gov/litigation/litreleases/lr16705.htm>

United States Securities and Exchange Commission, ‘Securities and Exchange Commission v. Stephen Hourmouzis and Wayne Loughnan, (Civ. No. 00-N-905 USDC D. Colo.)’, (Litigation Release No. 16535, 3 May 2000) <http://www.sec.gov/litigation/litreleases/lr16535.htm>

United States Senate Committee on Banking and Currency, Report of the Committee on Banking and Currency, ‘Stock Exchange Practices’, Senate Report No. 1455, 73D Congress, 2D Session (1934)

The University of Melbourne, ‘Key Documents in the History of Australian Corporate Law’ (Web Page) <https://law.unimelb.edu.au/centres/ccl/resources/history/key-documents-in-the-history-of-australian-corporate-law>

University of Tasmania, ‘The Companion to Tasmanian History. Stock Exchanges’ (Web Page) <https://www.utas.edu.au/library/companion_to_tasmanian_history/S/Stock%20exchanges.htm>

Watson, Michael J, ‘The Regulation of Capital Markets: Market Manipulation and Insider Trading’ (Web Page) <https://docplayer.net/12896910-The-regulation-of-capital-markets-market-manipulation-and-insider-trading.html>

Every reasonable effort has been made to acknowledge the owners of copyright material. I would be pleased to hear from any copyright owner who has been omitted or incorrectly acknowledged.