

## The Australian Wheat Board Scandal: Investigating International Bribery

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### Abstract

*The past decade has seen a dramatic increase in public awareness of white-collar crime. One form of white-collar crime that has spread from national to international levels is bribery. However, despite this, international bribery remains an important growth area which requires more research (Rollings 2008). The aim of this paper is twofold, aiming to: a) provide an in-depth understanding of international bribery by adopting an opportunity-focused theoretical framework, namely, the routine activity theory; and b) provide information that could enhance the investigation, detection and prevention of this crime. Understanding the context in which international bribery occurs is an important step in being able to investigate, detect and prevent it. To explore this, a case study analysis is conducted on Australia's largest international bribery case, the Australian Wheat Board (AWB) Scandal. Data analysis enabled the construction of a chronological timeline of the key events which is analysed against theoretical elements drawn from the routine activity theory and relevant literature. This method is found to be useful in providing an in-depth understanding of international bribery, from which suggestions are made as to how the regulation of this crime may be improved. This study contributes valuable information to the international bribery discourse, which currently lacks empirical research. It confirms the suitability of opportunity-focused theories to explain white-collar crime and highlights a number of areas which have implications for future research.*

**Keywords:** *international bribery; Australian Wheat Board; routine activity theory; white-collar crime*

### 1. Introduction

With the advent of globalisation, diverse cultures are gradually becoming more intertwined as businesses adapt to operating in a borderless world (Pedigo and Marshall 2009). Consequently, white-collar crimes are now committed within countries, between countries and across multiple borders. This expansion has made white-collar crime the single most significant impediment to worldwide economic development and growth (Gray and Kaufmann 1998). Presently, white-collar crime costs the Australian Government upwards of \$8.5 billion per year; which accounts for around 40% of the total cost of crime (Sanyal and Samanta 2011). In America every year, 6% of business revenues are lost to occupational white-collar crime and, on a global scale, the World Bank estimates more than \$1 trillion in bribes are paid out of a \$30 trillion world economy (Sanyal and Samanta 2011).

The most expensive and common form of white-collar crime is bribery (Cleveland *et al.* 2009). It has spread from national to international levels, posing as a particularly menacing and unethical problem world-wide. International bribery, also referred to as foreign, extraterritorial or transnational bribery,

occurs when two citizens from different countries participate in an act of bribery. This is particularly an issue when companies from different countries, with differing regulatory regimes for bribery, conduct business with one another. This often results in the other nations breaching their own country's law to facilitate the business transaction (Williams 2006). The past decade has seen a dramatic increase in public awareness of white-collar crime; however, despite this, international bribery remains an area requiring more research (Rollings 2008). This study aimed to provide: an in-depth understanding of international bribery through the use of routine activity theory, and information that could enhance the investigation, detection and prevention of this crime.

Despite opportunity-focused theories being highlighted as suitable tools in explaining white-collar crime no empirical studies have been undertaken into how routine activity theory could help in understanding acts of international bribery (Koppen *et al.* 2010). This study seeks to address this gap by exploring how the routine activity theory applies to the Australian Wheat Board (AWB) Scandal.

## 2. Literature Review

A review of the key literature surrounding white-collar crime, in particular international bribery, and the routine activity theory highlights how international bribery has received little attention within academic literature. There are numerous gaps which exist, including the effectiveness of legislation, the prevalence of international bribery in Australia, the occurrence of private-to-private sector international bribery and a clear understanding of international bribery and how it can be effectively investigated, detected and prevented.

### 2.1 International Bribery

Simply put, a bribe is a transaction between two people, one person offering money or other goods to a second person in order to induce that person to commit an improper act (D'Andrade 1985). Under the *Queensland Criminal Code* (1995, s.259 and s.260), the *first person* who gives or seeks to give a bribe commits a criminal act and the *second person* who seeks to accept or accepts a bribe, also commits a criminal act. In other words, all parties involved are at fault. International bribery occurs when individuals, corporations or governments from different countries participate in an act of bribery.

The principal-agent relationship, which is seen to be present during any act of white-collar crime, can aid in explaining international bribery. A principal-agent relationship exists when a principal assigns a task or activity to an agent, who is then responsible for acting in the principal's interest (James 2002). Problems arise with this relationship when an agent has a conflict between their personal interest and the interest of their principal, or when the principal asks the agent to carry out an illicit act. In essence:

- an agent can bribe a principal from another company;
- an agent can bribe an agent from another company;
- a principal can bribe an agent from another company; but
- a principal cannot bribe another principal.

Legislation often creates ambiguities such as permitting grease payments (to facilitate routine governmental action) but not illicit payments, creating confusion and communication conflicting ethical standards to the public, subsequently facilitating the existence of bribery (Reisman 1977). This confusion increases when exploring international bribery as many countries adopt a pragmatic attitude towards the difference between bribery and grease payments. One explanation for this pragmatism is *cultural*

*variability*. Cultural variability relates to the varying ethical standards held within different countries (Baughn *et al.* 2010). For example, what some cultures deem *bribes* are common practice in other cultures, and it is considered rude to refuse or not partake in them (Onkvisit and Shaw 1991). When the cultural norms, values and motives of suppliers and recipients distinctly differ, one side of the business transaction must compromise in order to proceed (Baughn *et al.* 2010). Furthermore, as a country's economic development is linked to its level of corruption; countries with advanced economies are more likely to have clearer laws and guidelines surrounding corporate management, whereas countries with poorer economies tend to view bribery as a means of supplementing low incomes (Baughn *et al.* 2010). Thus, cultural variability could very well contribute to the occurrence of international bribery.

For companies operating in countries that prohibit bribery, participating in bribery means moral degeneration and violation of the law, while non-participation means a loss of business (Onkvisit and Shaw 1991). In the international bribery discourse there are two competing moral standpoints: one permits bribery and one does not. Overall, it is the interpretation of what constitutes an improper payment and/or act which creates turmoil. The different cultural norms and values which shape the laws in each country are causal to the difficulties which surround the regulation of international bribery. In a sense, everyone bans *bribery*, but not everyone can agree on what constitutes a bribe. For the purposes of this study, the cultural norms and values which shape Australian legislation inform what constitutes and improper payment and/or act. It is unethical to argue one moral standpoint as superior; however, for ease of analysis one standpoint needs to be adopted.

## 2.2 Impacts of International Bribery

While some researchers have attempted to highlight the positive effects of bribery, such as avoidance of burdensome regulations (Dong 2011) and more equitable and progressive distribution of income (Hunt and Laszlo 2012), an almost universal consensus exists that making a payment in return for an illicit service is unethical, immoral and harmful (Cleveland *et al.* 2009). As the economic cost of white-collar crime can only be roughly estimated, estimating the more specific cost of international bribery is even more difficult (Braithwaite 1985). Therefore, rather than providing inaccurate estimates of its cost, other more established economic and wide-spread impacts which result from international bribery are discussed.

International bribery has been found to impede long-term foreign and domestic investment and undercut the government's ability to raise revenue, leading to higher tax rates, which in turn reduce the government's ability to provide public goods (Gray and Kaufmann 1998). It distorts governmental priorities and technological choices, pushes privatised firms underground and out of the formal sector, causes ineffective tax collection and administration and, in uncertain economies, raises transaction costs (Baughn *et al.* 2010, Gray and Kaufmann 1998). International bribery diverts money from public accounts to private individuals and into foreign bank accounts, while increasing the level of uncertainty in conducting business in countries with high levels of corruption (Wilder and Ahrens 2001).

It also undermines efficiency, equity and integrity by shifting the focus of the transaction from quality and price to the size of the bribe. In a fair market, competition eliminates inefficiency; however, when bribery is prevalent, inefficient players can survive over those who offer high quality, cost effective goods and services (Cleveland *et al.* 2009, Wilder and Ahrens 2001). This leads to the slow implementation of low quality government policy (Esty and Porter 2005) and diverts funds from the environmental, health and

education sectors to sectors where bribes are more likely to be processed such as construction and infrastructure (Mauro 1998, Rauch 1995, Ruzindana 1997).

If the above issues go unaddressed, with time poverty will be deepened and poorer sections of the community will suffer disproportionately as a result of the strain on government funds (Wilder and Ahrens 2001). Furthermore, the erosion of government legitimacy will deplete the effectiveness and public confidence in aid programs (Hill 2000, Wilder and Ahrens 2001). Bribery can also increase the abuse of human rights and undermine years of democratic progression (Hill 2000). As it stands, the primary approach to addressing any form of white-collar crime is through government policy and legislation (OECD 2012).

### 2.3 Policy Approaches

There is an increased measure of importance being placed on nongovernment organisations (NGOs), such as Transparency International (TI) and the Organisation for Economic Cooperation and Development (OECD), with respect to addressing international bribery. Established in 1961, the OECD provides a forum in which member governments can work together to combat economic and social issues, including international bribery and corruption. As of 2012, the OECD had 34 signatories who account for 70% of the world's trade (OECD 2012). In 2009, the OECD recommended that all signatories implement legislation which prohibits the offer, promise or supply of a bribe to a foreign public official. This led to 39 countries agreeing to implement such legislation.

Australia ratified the United Nations' (UN) Convention against Corruption 2000 and the UN's Convention against Transnational Organized Crime 2003. These two treaties and the rules of the OECD are the central instruments which address international bribery and Australia's domestic laws meet all of their obligations (AGDCP 2011). The OECD required the Australian Government to implement an amendment to the *Commonwealth Criminal Code Act of 1995*. This occurred in 1999 and was Australia's first significant step towards confronting international bribery (Hill 2000).

While the OECD's effectiveness in combating corruption has been praised (Wilder and Ahrens 2001) foreign public official legislation has been criticised. It was argued the legislation would only partly address the issue of corruption and criticism arose with reference to the Act not addressing issues, such as the difference between necessary gifts or facilitation payments, after the fact (Wilder and Ahrens 2001). Many of the provisions within the legislation are broad. Therefore, the effectiveness of the legislation in Australia will ultimately be determined by Australian courts in their interpretation of the legislation (Wilder and Ahrens 2001). Overall, however, the legislation is believed to be an effective deterrent in the sense that it acknowledges international bribery and publicises the regulation and criminalisation of such acts (Wilder and Ahrens 2001).

TI's Corruption Perception Index (CPI), which ranks countries according to their perceived levels of public sector corruption, depicted a favourable view of Australia, ranking it eighth out of 183 countries surveyed (TI 2011) scoring 8.8 on the 0 (highly corrupt) to 10 (very clean) scale. However, despite Australia and its regional neighbours Singapore and New Zealand being ranked in the top ten countries in the CPI, the vast majority of the remaining countries scored below five and 16 countries in the same Asia-pacific region ranked below three.

While the does not address participation by private sector employees with public sector employees overseas, which is the focus of this paper, given Australia conducts a majority of its international business transactions within the Asia-pacific region the CPI indicates a concerning reality: Australian employees

conducting business abroad are doing so in corrupt business environments (Pedigo and Marshall 2009). Criminological theory can be used to delineate what may be contributing to international bribery in the Australian business sector.

#### 2.4 Routine Activity Theory

Routine activity theory is an opportunity-based theory that has been shown to be effective in aiding the detection and investigation of crime (Culp and Bracco 2005, Marquart *et al.* 2000, Sasse 2005). It claims that a crime cannot take place without the convergence of three core elements in time and space: a motivated offender, the presence of a suitable target and the absence of a capable guardian (Felson and Cohen 1979). The *motivated offender* is anybody who for any reason may commit a crime, and the *suitable target* is the item, content or person the motivated offender is pursuing (Clarke and Felson 2004). The *capable guardian* refers to any person, body of persons or objects that prevent the crime from occurring (Yar 2005). The capable guardian differs from the offender and target because it is the *absence* of the guardian that counts (Felson 2003). Through this approach, Felson and Cohen argue that society invites crime to occur by offering a variety of illegal opportunities through the community's flow of routine activities (Natarajan 2011).

More recently, Felson (1987) increased the three core elements to six (Tillyer & Eck 2010), adding: *intimate handler*, a person with whom the motivated offender holds a social bond, who can assist in keeping them in order through social control (Felson 1987); *place manager*, a person who is allocated the responsibility of supervising behaviour in their place of employment; and *crime facilitators*, the tools which aid the criminal act (Natarajan 2011).

A review of the literature highlighted how routine activity theory has created an improved understanding of a variety of crimes and how it is a suitable tool for exploring white-collar crime (Culp and Bracco 2005, Koppen *et al.* 2010, Marquart *et al.* 2000, Sasse 2005). Therefore, this theory is used to further conceptualise and understand the mechanics of international bribery offences and highlight how the investigation, detection and prevention of this crime may be improved.

### 3. Methodology

The methodology used for this study involved a qualitative case study analysis of the Australian Wheat Board (AWB) Scandal. In particular, an analysis was conducted of the events leading up to the scandal beginning in 1990, during the scandal from 1999 to 2005 and, the events following until December 2006.

The research design required the creation of a chronological timeline of key events drawn from the data. The grounded theory approach was employed to ensure the data analysis was thorough. First, a non-probability judgement sampling strategy was employed to collect a sample of publicly available secondary data. Second, the three stages of grounded theory, namely, open coding, axial coding and selective coding, were employed to commence the data analysis.

In the open coding stage a list of all dated events was recorded to create a chronological timeline. In the axial coding stage, events that were not applicable to the international bribery which occurred during the case were removed and the list of four theoretical elements from the routine activity theory and literature was devised. In the selective coding stage an initial analysis and a sub-analysis was conducted. The initial analysis involved the four theoretical elements being analysed against the key events in the timeline. The sub-analysis was devised due to a large number of events that remained unallocated to theoretical

elements following the initial analysis. It involved the three additional elements from the routine activity theory being analysed in the same fashion against the remaining unallocated events. During these processes, the deviant case analysis procedure, theoretical sampling and constant comparative method were employed to improve the transferability and confirmability of the study. Third, the total number of events alongside the total number of each theoretical element was calculated.

### *3.1 Case Selection and Background*

The case selected for this methodology was the AWB Scandal (1999–2005). Initially this case was selected due to its significance as ‘Australia’s largest reported international bribery case’ (Overington 2007). The AWB Scandal’s suitability for this study was further supported after conducting detailed research into the case. AWB transitioned from being a publicly-run company into a private entity, and therefore provides for an analysis which discusses the potential for corruption in both structures. The case was heavily reported in the news media, two books on the issue had been published and government and independent inquiries were held providing an array of data.

During this study’s analysis of principal-agent involvement, individuals were assumed to be representing the company or organisation they were employed by as opposed to being agents in their own right. More specifically, individual principals and agents were not identified, instead, they were referred to primarily as the companies, governments or organisations they were employed by, unless specifically stated.

Inquiries and investigations (specifically the Cole Inquiry) into the AWB Scandal began in 2003 following years of allegations of misconduct by wheat companies around the world, the media and the United States (US) Government. These investigations revealed that Saddam Hussein manipulated the restrictions placed on Iraq through the Oil-For-Food-Program (OFFP), which permitted Iraq to export a restricted quantity of oil and in return import specific humanitarian goods. These manipulations involved: Hussein selling oil to neighbouring countries without processing the sales through the UN-monitored Banque Nationale de Paris (BNP) escrow account (Katzman and Blanchard 2005), allowing the money to go directly to the Iraqi Government; and exploiting loopholes in the program’s regulations — Iraq imposed surcharges on 139 companies who were purchasing OFFP-approved oil shipments and solicited kickbacks from 2,253 humanitarian goods suppliers, including the AWB. (Katzman and Blanchard 2005, Volcker *et al.* 2005). The kickbacks provided Iraq with its largest source of illicit income during the OFFP, totalling more than \$1.5 billion over a 5-year period (Volcker *et al.* 2005).

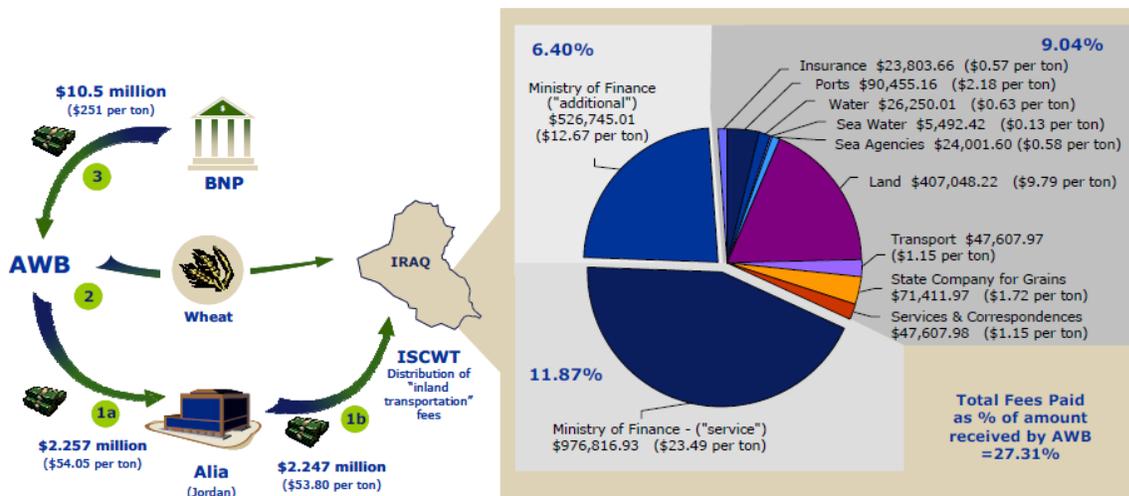
AWB was the largest provider of humanitarian goods to Iraq under the OFFP which ran from December 1996 to 2003. During this time, AWB received a total of \$2.3 billion from the BNP account by selling 6.8 million tonnes of wheat to Iraq. In return, AWB paid \$221.7 million in illicit fees to Iraq, contributing to 14% of the kickbacks paid during the OFFP (Volcker *et al.* 2005). From 1997 to mid-1999 the Iraqi Grain Board (IGB) was responsible for the inland transportation of AWB’s humanitarian supplies. However, directly following the privatisation of AWB in July 1999, IGB and AWB agreed to amend the standard contract they used for all purchases. This amendment involved the addition of a clause, whereby AWB would pay for the inland transportation of the wheat following its delivery to the Iraqi ports (Volcker *et al.* 2005). AWB did not have its own trucking fleet in Iraq and foreign companies could not easily access transportation facilities (Meyer and Califano 2006). Instead, AWB followed IGB’s instruction and used Alia, a Jordanian transportation company who agreed to service AWB’s requirements (Volcker *et al.* 2005).

The agreed price of the inland transportation fee (*trucking fee*), started at \$12 per tonne of wheat and stayed at this price until mid-2000 when it increased to \$15 per tonne. From 2001 the fee was between \$45–56 per tonne. This sharp increase coincided with a memoranda issued by Iraqi officials demanding a 10% *after-service-sales fee* (ASSF) to be included in the transfer of the trucking fee (Volcker *et al.* 2005). The trucking fee paid by AWB was consistently \$25 per tonne and the ASSF averaged around \$20–31 per tonne.

In reality Alia was partly owned by the Iraqi Minister of Transportation, who acted as a collection agent for the Iraqi Government (Volcker *et al.* 2005). Under the OFFP no supplier was able to directly pay the Iraqi Government with all monetary exchanges having to go through the BNP escrow account. However, AWB did not arrange the payments to Alia to go through the BNP escrow account, consequently providing money directly to the Iraqi Government (see Figure 1). Moreover, the transportation of the wheat from Iraq’s deep water port, Umm Qasr, was being managed by Iraqi Government employees (Overington 2007); a third-party transportation company was not being used.

Figure 1. AWB Scandal (Volcker et al. 2005)

Chart E – Sample Distribution of AWB "Inland Transportation" Fees<sup>458</sup>



The Iraqi Government made clear that if AWB did not pay the trucking fee the wheat would not be accepted on arrival at Umm Qasr (Overington 2007). The first shipment following the addition of the trucking was made by an AWB ship. As it was approaching Umm Qasr the trucking fee totalling \$504,000, which was meant to have been paid five days before arrival, had not been paid. Consequently, Iraq advised AWB that if the money was not immediately transferred to Alia the ship would be sent back to sea (Overington 2007), illustrating Iraq’s unwillingness to do business without payment of the illicit fee and AWB’s original hesitation in paying it. It also demonstrates how these kickbacks were, in essence, bribes.

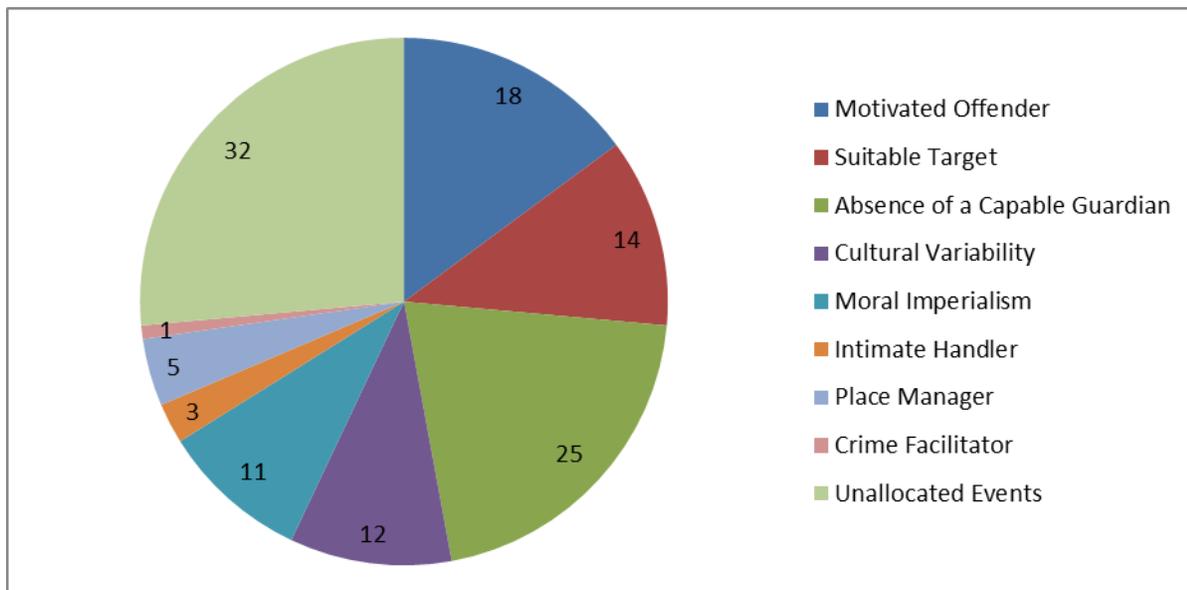
In the AWB Scandal the Iraqi Government filled the role of *offering the bribe*, by granting AWB the large wheat contracts on the premise they would pay the trucking fee and ASSF to Alia. AWB filled the role of

*committing the improper act* by breaching the OFFP sanctions and paying the illicit fees to the Iraqi Government, via Alia.

#### 4. Findings

To interpret the findings of the qualitative analysis this study first questioned if the routine activity theory is able to help in understanding the occurrence of international bribery-related offences. For a criminal act to occur the routine activity theory predicts the convergence in time and space of a motivated offence, a suitable target and the absence of a capable guardian (Felson 2003, Yar 2005). The initial analysis considered these three key elements as well as cultural variability (drawn from the literature as a key ethical issue) against the key events in the AWB Scandal. In the sub-analysis Felson's (2003) three additional elements, intimate handler, place manager and crime facilitator, were also considered against the events that remained unallocated following the initial analysis. Figure 2 displays the overall findings from the coding and analysis of the data.

Figure 2. Number of events per theoretical element



##### 4.1 Motivated Offender and Suitable Target

Due to routine activity theory's conventional use in explaining predatory violent crime there is usually one motivated offender, which is distinct from the one suitable target. However, this must be adapted when applied to bribery, as in an act of bribery all parties involved in the facilitation of the illicit transaction must be held responsible (D'Andrade 1985). Therefore those who seek, offer, accept and pay bribes are offenders, and those who comply in accepting bribes are suitable targets. Given the complex nature of international bribery and the large number of personnel involved in the AWB Scandal, numerous motivated offenders and suitable targets were identified, some of which were classified as both.

Motivated offender/s were identified within the chronological timeline by looking for evidence of anybody who participated in improper decision-making, decisions based on personal gain and events which facilitated illicit payments. Of the 95 events in the timeline 18 were allocated to this element and three motivated offenders were identified: the Iraq Government, AWB and Alia. When identifying suitable targets evidence was sought of any item, content or person that participated in: providing an illicit service, providing a benefit outside of its intended purpose and acting as a compliant bribee. The following incidences from the AWB Scandal aligned with these criteria: requests for tender by IGB including illicit fees, contracts between IGB and AWB including illicit fees, requests for additional fees outside of the OFFP and AWB complying to pay the illicit fees. Fourteen of the 95 events identified were allocated to this element.

Based on this analysis, it is evident that AWB committed the improper act of paying illicit fees, thus making the company a motivated offender. At the same time, AWB signed and paid the contracts inclusive of the illicit fees, thus making the company a suitable target. This confirms the roles of motivated offender and suitable target are not exclusive.

#### *4.2 Absence of a Capable Guardian*

Evidence of system failures, management being absent or not proactive and decisions being made without proper justification or investigation was considered when identifying the absence of such guardians. Of the 95 events identified 25 were allocated to this element, making absence of a capable guardian the largest of the three routine activity theory elements evident in the AWB Scandal. The key finding was that the system did not lack guardianship because the guardians were not physically absent, it lacked guardianship because said guardians were not capable. In other words, it was the incapability of such guardians in fulfilling their role responsibility that effectively caused their absence.

For a guardian to be considered capable they must prevent the crime from occurring (Felson 2003). All of the guardians identified in the timeline had the authority to act in a capable manner but neglected to do so. In addition to this, there were personnel during the scandal who tried to act in a capable manner. As seen in Figure 2, the largest category of events were those that remained unallocated following the second round of analysis (n=32). Employing the deviant case analysis procedure prompted the question: why did these events not fit into a theoretical element (Marvasti 2004)? It was found that 56% of these unallocated events were incidents of official personnel trying to investigate and reveal the truth behind the kickback allegations (n=18). It is believed this group of unallocated events displays a systematic communication failure. On numerous occasions the kickback allegations were investigated but these investigations failed due to poor communication between departments, organisations and businesses.

#### *4.3 Intimate Handler, Place Manager, Crime Facilitator*

A sub-analysis of intimate handler, place manager and crime facilitator was conducted, primarily due to the large amount of unallocated events which remained following the first stage of the analysis (n=41). As shown in Figure 2, all three elements were present during the AWB Scandal; however, these elements were found to be of a non-significant nature (n=9) and their relationship with the events they were allocated to did not produce any new or significant knowledge. Convergence in Time and Space

While all three core routine activity theory elements were present during the AWB Scandal, to complete Cohen and Felson's crime chemistry these three elements must have converged in time and space (Felson 2003). Theoretically, this convergence is the criminal act taking place. The motivated offender, suitable target and absence of a capable guardian were identified in the same event on two occasions out of the 95

events in the timeline.

The convergence of the three elements in the identified events contributed towards to the illicit transactions; however, they did not single-handedly depict the criminal act of international bribery. In fact, the convergence of all three elements in time and space perhaps occurred by chance, because regardless of these two events the criminal act would still have taken place. This illustrates that the convergence in time and space of a motivated offender, suitable target and absence of a capable guardian is not required for international bribery to take place. Instead, numerous events contributed to the criminal act; therefore, it is the convergence of all three elements during the whole timeline of the AWB Scandal that depicted the criminal act.

#### *4.4 What Caused the Illicit Payments?*

Understanding what factors contributed to the bribery is important in identifying how to enhance the investigation, detection and prevention this crime. Secondary analysis of the data was conducted to identify if it included particular information that explains what caused AWB to participate in the corrupt dealings with Iraq. This enables a presentation of further facts drawn from the data, including the analysis of cultural variability.

#### *4.5 Cultural Variability*

Evidence of varying ethical standards evident in differing countries and any difference in cultural norms, values or motives was sought when identifying this element. It was hypothesised the analysis of this element would reveal if the cultural differences present during the AWB Scandal affected the payment of bribes; 12 of the 95 events in the timeline were allocated to this element, including:

- AWB and IGB failing to resolve business matters during the many trips made by AWB employees to Baghdad;
- AWB and IGB holding different views towards in the expected processes and responsibilities of each company when conducting business;
- Iraq believing that AWB would hold the same view as the Australian Government in supporting the US and consequently halving all of AWB's contracts with IGB; and
- Alia communicating to AWB during investigations that 'such fees are normal in the middle east' (Volcker et al. 2005, 251).

The key findings drawn from this analysis are that difficulties occur in relation to communication and allocation of responsibility when conducting international business. Ordinary business processes differ between companies in different countries and this can lead to misunderstandings and disputes. Political disagreement can lead to a loss of business, and most importantly, conflicting cultural norms can contribute to international bribery. Alia's message to the Independent Inquiry Commission was a clear indication that bribes were an established part of the Middle-Eastern business culture (Volcker *et al.* 2005).

#### *4.6 Setting*

Felson (2003) applies the routine activity theory to a variety of criminal acts in a number of different settings, consistently emphasising the setting can act as a *crime generator* because opportunity is the central cause of crime. Therefore, in considering what caused the payment of the kickbacks, the settings in which the illicit transactions occurred were analysed. Following allegations of corruption, in August 2000 AWB sought independent assistance from Arthur Andersen to determine if any control systems in

place were failing and if any unethical or illegal behaviour existed within the company, particularly in relation to international business transactions conducted by the international marketing group (Cole 2006). In December 2000, while the illicit payments were occurring, Arthur Andersen reported their findings, highlighting areas for improvement and key recommendations, to AWB.

Overall, the review found a number of clear warning signs presented to AWB employees in relation to the payments to Alia, which they failed to fully explore in a legal or commercial manner (Cole 2006). These included: the AWB culture, particularly with regard to ethicality and management pressure to achieve sales; the potentially reputation-damaging acts of seeking to disguise or hide trucking fee payments; and the concern surrounding excessive increases in trucking fees, which 'may be diverted for purposes other than trucking' (Cole 2006).

Arthur Andersen recommended that AWB: conduct an ethical assessment of the culture within the organisation; create a transparent environment where employees are encouraged to report incidents, risks and improper conduct; construct controls that will prevent and deter illegal and improper conduct; and educate staff in relation to risk, controls and the expectations of AWB (Arthur Andersen 2000; Cole 2006).

Following the review, Charles Stott (AWB's International Sales and Marketing Manager) was allocated the task of implementing the recommendations. He made his own investigations and reported to AWB management that Alia was legitimate and the UN had approved the increase in the trucking fees. The Cole Inquiry found both of these statements to be false and, that following the Arthur Andersen report, AWB made no inquiry into its culture, why AWB thought it necessary to disguise the payments to Alia, the reason for the increase in trucking fees, or why AWB had agreed to pay the fees (Cole 2006).

#### *4.7 Single Desk and Sole Distribution*

During the scandal AWB was the exclusive manager and marketer of all Australian wheat exports through a supply pooling system arrangement with Australian wheat growers, commonly referred to as a *single desk policy* (Bartos 2006, Volcker *et al.* 2005). Single desk policies are controversial as they place one body in charge of numerous other independent bodies. Essentially, AWB controlled the entire sale of one of Australia's largest export industries placing AWB in a position of great power and responsibility (Staley 2008). It could be argued the single desk arrangement contributed to the illicit payments as it was this policy that gave AWB access to the amount of wheat and funds required to service Iraq's large wheat contracts.

#### *4.8 Rationalisations*

Various rationalisations made by absent capable guardians and individuals involved in the AWB Scandal emerged from the data analysis. One rationalisation that emerged from the Cole Inquiry was a strong denial of knowledge and responsibility put forth by various guardians. One such denial was made by Australia's Minister for Trade at the time, Mark Vaile, when he said: 'I have no recollection that any employee or agent of AWB ever discussed with me the detailed nature of the AWB's arrangements to deliver wheat to Iraq' (Cole 2006, 95). He said this despite having been carbon copied in on a number of correspondences regarding the kickback allegations. Consequently, the Cole Inquiry had no other choice but to find these individuals had no contributing role in the AWB Scandal (Cole 2006). It is feared these *denials* were used as a mechanism to shift the blame, reflect responsibility and adopt the 'not my job role' approach to detecting the illicit payments. These types of post hoc rationalisations contribute to the spread of corruption through a lack of accountability and a failure to identify what went wrong (Rabl and

Kuhlmann 2009).

In addition to these denials, it was found that the Department of Foreign Affairs and Trade (DFAT) failed to read and act on intelligence reports outlining Iraq's manipulation of the OFFP with the use of Alia. The department's inability to take action on substantial evidence of corruption was reportedly due to the intelligence being 'not of sufficient importance to be a subject of specific importance' (Cole 2006, 101). In other words, the system in place (guardian) failed to detect the \$221.7 million paid in bribes because the level of substantiation required was higher than documentation gathered by Australian intelligence agencies.

These types of justifications promote poor communication, a lack of individual role responsibility and unreasonable substantiation requirements within the business setting.

#### *4.9 Investigation, Detection and Prevention*

This case study found that various business arrangements and systematic flaws contributed to the illicit payments that occurred during the AWB Scandal. This section discusses how these findings can be used, through incorporating the literature on white-collar crime and international bribery, to improve the investigation, detection and prevention of international bribery.

#### *4.10 Level of Responsibility*

During an international bribery investigation it is the responsibility of the investigator to prepare a report providing all of the facts and evidence pertaining to the case to ensure a conviction in court (Williams 2006). Investigators may find it helpful to use the routine activity theory during their case analysis and report writing process. A key element of any white-collar crime is establishing the offender intended to commit the crime; that is, proving *intent* (Williams 2006). Routine activity theory can be used to identify the *overt act* that occurred during the case, from which intent can be inferred (Azuelos-Atias 2006). In addition, the theory will enable investigators to: clarify the actions taken by each party by categorising them into the three key elements based on the measurement principles; allocate a level of responsibility (i.e. is a motivated offender, who has also acted as a suitable target, more or less responsible for the illicit acts than an individual who has only acted as a motivated offender); and justify this level of responsibility based on the individual actions of the persons involved. This will improve the credibility of the investigator's report and help to secure a conviction in court.

#### *4.11 Raising Awareness, Whistle-Blowing and Communication*

In this case study absence of a capable guardian was the most frequently identified element of the routine activity theory (n=25). Two key reasons identified as contributing to this were the denial of knowledge and responsibility by the guardians and poor systematic communication. By analysing the unallocated events, the systematic communication failure was further supported (n=32). Of the unallocated events 56% were found to be events whereby a guardian was neither capable nor incapable. That is, their actions were appropriate as they tried to reveal the truth behind the corruption allegations; however, the system failed to effectively support their inquiries.

The denials of knowledge and responsibility indicate the guardians lacked understanding or concern toward the negative effects of international bribery and perhaps feared retribution of making unsubstantiated claims or revealing a corrupt culture. Based on these findings, two methods are suggested to combat this issue. First, employees, particularly those involved in public works, contracts and construction, who are seen to be most-likely to participate in bribery abroad, need to be educated and

informed of the negative effects and consequences of white-collar crime (Hardoon and Heinrich 2011). By creating a more informed workplace, not only will employees be aware of how to detect white-collar crime they will also be aware of why they should not participate in white-collar crime. To target a wider audience advertising campaigns that communicate a number of key messages that help in understanding white-collar crime are recommended. In effect this could decrease the number of individuals in the community who rationalise this type of crime as acceptable, which may potentially decrease the number of individuals who choose to participate in white-collar crime and potentially increase the number of whistle-blowers.

The second method relates to effective whistle-blowing processes being available to employees that deal with foreign trade. A finding which further supports the importance of effective whistle-blowing procedures was the finding that lots of smaller events contributed to the AWB illicit payments, as opposed to a more conventional crime where the criminal act occurs in one location during one timeframe. Therefore, anonymous whistle-blowing is an effective system which must, at the very least, be available to all individuals involved in foreign business trading to facilitate the detection of international bribery. This could be facilitated by an independent anonymous investigative agency, which in time could develop into an international network of anonymous agencies that investigate whistle-blowing, who work alongside intelligence agencies to combat international white-collar crime.

The poor systematic communication that occurred throughout the AWB Scandal indicated that communication between the multitude of government bodies, agencies, organisations and companies involved in foreign trading may be unreliable when it comes to detecting and preventing international bribery. This issue is a reflection of the existence of a *myth system* and an *operational code* in place in numerous organisations at the time of the AWB Scandal (Reisman 1977). More specifically, the myth system in place stated that everybody acted on their received correspondence and the operational code in place; that is, what actually occurred was *selective reading*. Individuals did not take ownership over communications addressed to numerous persons or themselves, and corporate management did not enforce them to do so. Based on this finding it is suggested that governments and privatised businesses place added emphasis on individual role responsibility amongst employees. Every piece of communication received by each employee should be followed up and if this is not possible, each organisation needs to review their methods of communication. Every organisation should clarify the responsibilities of the individual the correspondence is directly addressed to, this clarification is essential for the abolishment of myth systems and operational codes.

#### *4.12 Business Practice*

During the scandal Arthur Andersen's review highlighted a number of issues with AWB's business practices. This demonstrates the importance of all businesses to have procedural reviews in place which address business integrity, corporate culture and accounts. Furthermore, it emphasises the importance of following up and implementing, where possible, key advice resulting from reviews. Companies need to implement comprehensive compliance programs and effective financial internal controls, such as procedural reviews. By doing so they can substantially abate their risk of violating international bribery legislation and ensure high ethical standards are maintained.

#### *4.13 Market Regulation*

This study found that the Australian wheat industry's single-desk policy may have contributed to the AWB Scandal. This policy effectively reduced the number of guardians in place to supervise the business

practiced within the Australian wheat trade and allocated all of the decision-making power to one body: AWB. Therefore, to reduce the likelihood of corruption, all single-desk policy-run industries should employ a greater number of capable guardians. This can mean the implementation of policies, strategies and review processes, as outlined above, or more individuals in supervisory roles—as long as they act as preventatives in stopping corruption.

The restrictive trade practiced by Iraq and AWB (that is, AWB gaining sole distributor rights over the Iraqi wheat trade) was also highlighted as contributory to the length of the scandal. The sole distributor rights effectively eliminated competition in the marketplace for AWB, which decreased the likelihood of the kickbacks being detected and victimised the people of Iraq as the country's money was not necessarily being spent in their best interests. This study does not disagree with the granting of sole distributor rights; however, it does not agree these rights being granted on the proviso of an illicit arrangement as was the case in the AWB Scandal. In this situation this right becomes a *crime facilitator*.

To decrease the likelihood of this occurring, this study emphasises the need for industry regulators to encourage market competition, especially in the international business sphere (OECD 2010). In addition, it reinstates the need for sole distributor rights to be granted in a legal and ethical manner.

#### *4.14 International Regulation*

This study found that difficulties occur when communicating and allocating responsibility when conducting international business. Ordinary business processes differ between companies in different countries and this can lead to misunderstandings and disputes. Political disagreement can lead to a loss of business and, most importantly, conflicting cultural norms can contribute to white-collar crime.

These findings suggest that to prevent international bribery, the cultural norms and values common within those countries conducting large levels of international business need to be ascertained and documented. This information could be used to determine when countries with conflicting cultural norms are conducting business. This knowledge will enable countries that prohibit international bribery to improve their regulation of the contracts and transactions that occur with countries that do not.

## **5. Conclusion**

There has been a growing body of literature exploring transnational white-collar crime and opportunity-focused criminological theories. However, despite literature highlighting the suitability of opportunity theory's in explaining white-collar crime, very few empirical studies have been undertaken that combine these two fields (Culp and Bracco 2005, Koppen *et al.* 2010, Marquart *et al.* 2000, Sasse 2005). This research partly addressed this gap by exploring if a criminological opportunity theory, namely the routine activity theory, was able to help explain an act of international bribery.

The analysis found that motivated offenders, suitable targets and the absence of a number of capable guardians were all present during the AWB Scandal and these roles were filled by more than one item, content or person. It was found these roles were not exclusive—a person could be a motivated offender and a suitable target. In addition, the AWB Scandal did not occur in a setting which lacked physical guardianship – numerous guardians were identified — instead it was a lack of capability that caused their absence. Lastly, the convergence of all three elements in time and space, in relation to international bribery, must be adapted. When the three elements did converge it was by chance and did not depict the

criminal act. All three elements of the theory were presented during the AWB Scandal; however, their convergence occurred during the whole timeline of the scandal and not in a particular time and space.

These findings confirm that the routine activity theory framework is able to help in understanding international bribery related offences. The diverse and complex nature of international bribery was highlighted by outlining the responsibility of all persons involved, the important difference between tangible and capable guardianship, and the ability for crime to arise from lots of small events as opposed to one criminal act. However, despite this improved understanding, this analysis failed to explain what caused the payment of the bribes.

The second research focus was to determine what can be done to improve the investigation, detection and prevention of international bribery. It was found that the investigation of international bribery cases could be improved by investigators utilising the routine activity theory. Understanding the roles motivated offender, suitable target and absent capable guardian would allow them to determine the level of responsibility each party is subject to and provide this information in their investigative report to help secure a conviction in court. Investigators are also able to use the theory to identify the overarching act that occurred from which the intent of the offender can be inferred.

This paper concludes that the detection of international bribery can be improved by establishing independent anonymous agencies to investigate whistle-blowing and by advertising campaigns raising awareness of the negative consequences of the crime. The prevention of international bribery will be aided by educating and informing the individuals who play guardian roles of the negative consequences of international bribery. Governments and private businesses need to emphasise individual role responsibility, and businesses need to conduct and follow up on procedural reviews which address their integrity, corporate culture and accounts. Industry regulators need to encourage market competition and any sole distributor rights need to be granted in a legal and ethical manner. Lastly, the cultural norms and values common within countries need to be identified to enable the monitoring and regulation of cultural variability during international business transactions.

### *5.1 Limitations*

While this study has presented valuable information to the international bribery discourse there are some limitations. As there is no previous empirical research on international bribery with an opportunity-based theoretical application, no comparisons or similarities are available. This decreases the generalisability of the findings as they are based on a single case study design. However, analytical techniques were employed throughout the data analysis to increase the generalisability of this case study (Flyvbjerg 2006, Platt 1992). These techniques ensured the findings are highly credible and transferable. Therefore, they are able to act as a basis for future research to draw analytical generalisation and a basis for law enforcement to work from within the context of this methodology.

### *5.2 Future Research*

This study identified three key findings which have implications for future research. First, the perceived likelihood of private firms paying bribes to other private firms is almost as high as the bribery of foreign public officials (Hardoon and Heinrich 2011). This paper focused on a case involving a privatised Australian company and an overseas government body. A comparative study which explores the differences between private-to-private sector international bribery could provide new information, particularly surrounding the effectiveness of the different regulatory processes within the public and private sectors.

Second, the three additional elements of the routine activity theory, namely intimate handler, place manager and crime facilitator, were found to exist in the AWB Scandal. Future research could conduct an in-depth exploration of these elements, potentially providing further improvements to the regulation of international bribery and act as a comparison to the results of this study.

Third, this study focused solely on crime opportunity theory and did not explore individual motivation. Accordingly, individuals were assumed to represent the company that employed them. In the initial coding stages, however, individual involvement was outlined in the chronological timeline. Therefore, future research could use this data set to analyse individual involvement and motivation and compare these findings to the opportunity analysis provided within this study. This could provide a major contribution to criminological research, which has debated over the varying significance of opportunity and criminality for decades (Natarajan 2011).

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