The Antecedents and Consequences of Marketing Law Transgressions:

An Australian Perspective

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Abstract

Since the 1970s, a number of models have been developed that investigate the reasons why firms break the law. None of these, however, have focussed on why firms transgress laws specifically related to marketing, nor have they recognized the dynamic nature of the transgression process. Based on the extant literature, and a framework of motive, opportunity, and control, a model of transgressing the law was developed that formed the basis of empirical testing within a marketing context. Previous research has focussed on the factors that have led to a previous transgression and the factors that have impacted on intent to engage in questionable behaviour in the future. This model looks to link past and future behaviour by recognising the changes that occur in the firm as the result of a previous transgression being detected, and how these changes impact on the likelihood that future transgressions will occur. It is recognised that the commission of the transgression is not the end of the process, as experiences associated with committing the transgression, getting caught, and subsequent penalties will most likely influence decisions regarding future transgressions. This model also introduces the concept of unintentional illegality through a lack of knowledge of the law. The model is empirically tested using a combination of secondary data and a survey of marketing managers from Australia. The results find evidence that the transgression of marketing law is a dynamic process and show that control mechanisms, in particular, are effective in reducing the incidence of transgression.

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Chapter 1: Introduction

This chapter introduces the topic area for this thesis. First, a brief overview of marketing law is provided, before the concepts of illegal corporate behaviour, business ethics, and marketing law are defined. Secondly, a background to previous research in this area is provided, followed by an outline of the research objectives, and the contributions this research to the literature. Finally the research question is outlined, followed by a description of the value of this research to academics, managers, government regulators, and the wider community.

1.1. Overview

Illegal corporate behaviour (often referred to as ‘corporate wrongdoing’) is one of the most common incidences of macro dysfunction. There is evidence to suggest that significant numbers of firms routinely transgress the law (Finney and Lesieur, 1982; ACCC, 2007). Such behaviour can have quite significant effects on both customers and other firms (McKendall and Wagner, 1997). Of all the business functions, marketing is considered by many as the most likely to be associated with illegal or unethical behaviour (Dunfee, 1999; O’Higgins and Kelleher, 2005). Day and Montgomery (1999) have noted that, while marketing has contributed much to society, some of the outcomes of marketing activities have been to the detriment of consumers and society in general. Misleading advertising may trick consumers into buying products that they may otherwise not have purchased had they been fully aware of their true prices and features. Anti-competitive conduct restricts the product choices

available to consumers, stifles innovation, and leads to higher prices (Guiltinan, 2002). In addition, defective products not only result in financial harm and inconvenience for the consumer, but in certain circumstances can also result in physical harm and injury (Szwajkowski, 1985; Ryan, 2003).

The problem faced by consumers is that, as products have become more technical and complex, they have become increasingly reliant on marketers' claims when making purchase decisions. This is because consumers often lack the resources and the ability to interpret these claims (O'Higgins and Kelleher, 2005). In today's environment the onus is now placed on the seller, since the required standards of marketing practice have shifted away from 'caveat emptor' or buyer beware, whereby all the responsibility is placed on the consumer, to 'caveat venditor', or let the seller beware (Smith, 1995; Ryan, 2003). Laws such as the Trade Practices Act (1974) in Australia have been introduced in an attempt to redress the imbalance of power that has favoured sellers over buyers. Marketers now have a responsibility enshrined in legislation not to harm consumers. This legislation not only protects consumers but also affects law-abiding competitors. Such firms are placed at a competitive disadvantage to firms that attain better performance through illegal means.

These issues lead to questions of: 1) why do firms engage in illegal behaviour, and 2) what are the most effective ways to prevent it (Smith et al, 2007)? The primary objectives of this research were to develop an understanding of the reasons firms transgress marketing law and of the transgression process. Such research provides a means to shape policy designed to reduce the number of transgressions and to minimise the related harm to consumers and law-abiding competitors alike.

1.1.1. Extent and Costs of Illegal Corporate Behaviour

The issue of illegal corporate behaviour has been of concern for some time. Some of the earliest evidence of illegal corporate behaviour came from the classic research by Clinard and Yeager (1980) and Finney and Lesieur (1982). Clinard and Yeager (1980) found that the 580 largest firms in the United States had an average of 4.8 enforcement actions against them during 1975 and 1976. In 1979 it was estimated that the dollar losses from illegal corporate behaviour in the United States was over 2 billion dollars. Thornburg (1990) later found that 20% of Fortune 500 firms had been penalised for serious breaches of federal law. In Australia, whilst there has been a growing recognition of the need to examine ethical issues more closely, firms regularly engage in unethical or illegal behaviour (Wood and Callaghan, 2003). In Australia, for the year 2004 there were 20 court cases resolved with a financial penalty. There were also 53 cases where a firm provided a written undertaking to cease behaviour that breached marketing related laws (ACCC, 2007). These cases involved a wide variety of firms, ranging from large firms with in-house legal departments, to small firms that have neither the time nor the resources to seek legal advice.

1.1.2. Overview of the Literature, Research Gaps, and Contribution

It was not until the 1970s that illegal corporate behaviour became a particular area of interest to the public, government agencies, and academic researchers (Clinard and Yeager, 1980). More recently, a number of researchers, from a range of disciplines, have attempted to discover the reasons why firms might transgress the law (Hill et al,

1992). Marketing however has not been one of those disciplines. From a marketing perspective, the research focus has been on unethical behaviour as opposed to strictly illegal behaviour. Whilst both unethical and illegal behaviour are related they are not always the same. Behaviour that is unethical is not always illegal and, thus, not subject to regulatory enforcement (Nesteruk, 1999). Transgressing the law will result in more serious consequences to a firm than an act that is technically legal but considered unethical. A problem with unethical behaviour is that it can be subjective whether something is unethical or not. This research addressed these issues by attempting to determine the reasons why firms might transgress marketing laws and to identify the processes involved in the illegal marketing decision-making process.

Finney and Lesieur (1982) recognised that models of illegal corporate behaviour do not stop with the commission of the transgression. This is because previous transgressions play an important role in decisions regarding future transgressions. With the exception of Baucus and Near (1991), this issue has not adequately been addressed by the extant literature. This research, therefore, explores the dynamic nature of the transgression process, by combining both the antecedents of transgressing the law (both in the past and likelihood in the future) with the consequences on firm behaviour resulting from these transgressions having been detected by regulatory agencies.

Previous research has also failed to link unintentional illegality and knowledge of the law to models of illegal corporate behaviour. Not all transgressions will be a result of intentional acts. This research recognised that in some instances transgression of the law may be due to a lack of legal knowledge (Baucus, 1994; Peterson, 2001a). Such

research provides a significant opportunity for further study (Loe et al, 2000). Lastly, previous research into illegal corporate behaviour has focussed on firms from the United States. This research looked to overcome these limitations by investigating transgressions of marketing law within a non-North American context – namely Australia.

1.2. Defining Ethics and Illegal Corporate Behaviour

Previous research has tended to focus on the reasons why individuals engage in unethical behaviour, as opposed to the illegal behaviour of firms. Given that ethics is based on ‘morals’, it tends to reflect the behaviour of individuals within a firm, whereas illegal behaviour can be considered to be committed by the firm itself (Finney and Lesieur, 1982). Regardless, one cannot separate the issue of business ethics from the literature on illegal corporate behaviour. While the focus of this research was on illegal firm behaviour, both concepts were important in developing an understanding of why firms transgress the law. This is because specific legal issues are often intertwined with prominent ethical issues (Nesteruk, 1999).

1.2.1. Definition of Business and Marketing Ethics

Unethical behaviour is behaviour that breaches so called ‘moral norms’ and is concerned with the conflicts and duties that result from basic relationships between individuals (Gaski, 1999). Such behaviour may or may not be illegal. Ethics was therefore defined as “*an enquiry into the nature and grounds of morality where the*

term morality is taken to mean judgements, standards, and rules of conduct” (Taylor, 1975, cited in Lund, 2000, p. 331). Marketing ethics is a significant subset of business ethics and is concerned with moral issues relating specifically to marketing behaviour. Marketing ethics was therefore defined as: “*Standards of conduct and moral judgement applied to marketing practice*” (Gaski, 1999, p. 316).

1.2.2. Definition of Illegal Corporate Behaviour

The first empirical work in this area was that of Sutherland (1949). This was where the term ‘white-collar crime’ was coined, which Sutherland defined as “*criminal acts committed by persons of the middle and upper socio economic class in connection with their occupations*” (Sutherland 1949, cited in Clinard and Yeager, 1980, p. 18). Subsequently, this definition was found to be too restrictive, and references to the offenders’ ‘economic class’ are no longer seen as relevant. Clinard and Yeager (1980, p. 16) defined corporate crime as “*...any act committed by corporations that is punishable under administrative, civil, or criminal law*”. This definition extended corporate crime beyond the criminal law (the only means of redress for ‘ordinary’ crimes), to include civil actions and actions by specialist regulatory agencies, such as the Federal Trade Commission in the United States and the Australian Competition and Consumer Commission (ACCC) in Australia.

Finney and Lesieur (1982) noted three key issues of corporate crime:

1. Whether the organisation is the perpetrator or the victim, as, in many cases, transgressions are primarily aimed at other organisations.

2. Whether the transgressor is acting for personal gain or on behalf of the organisation.
3. Whether the organisation is a private enterprise or government agency.

According to issues 1 and 3, corporate crime occurs when the organisation is a non-government agency and it is the perpetrator. Issue 2 is the key consideration in defining illegal corporate behaviour. An important question is whether organisations can commit crimes, or only individuals within organisations. Some definitions (i.e. Sutherland, 1949) include behaviour that benefits the individual committing the act (Smith et al, 2007). Most sociologists and criminologists also recognise that organisations are entities in their own right. This has long been recognised by the law. While it is individuals who make decisions and act upon them, they do so as ‘agents’ of the organisation. As agents, their behaviour is for the sake of the organisation rather than for themselves. This is because employees aim to meet the organisation’s objectives and operate within its constraints (Finney and Lesieur, 1982). Therefore, this research was concerned with illegal activities that are designed to benefit the firm rather than the individual (i.e. not embezzling). This is consistent with the Kriesberg (1976), rational actor model, as well as other definitions, such as those by Clinard and Yeager (1980) and Smith et al (2007), all of whom recognised that transgressions are committed by organisations and not by individuals.

Debate has also occurred over whether definitions of illegal corporate behaviour should be limited to strictly illegal acts. Some definitions encompass unethical behaviours, as defined in the previous section. The problem with including unethical acts in the definition of illegal corporate behaviour is that ethics can be highly

subjective, whereas with legal issues a clearer distinction exists between what is considered acceptable and what is not.

Based on these considerations, for the purpose of this research, the definition of illegal corporate behaviour used was that proposed by Finney and Lesieur (1982). Adapted from Shover (1978), they defined illegal behaviour as:

“Illegal acts of omission or commission by individuals during the course of work in legitimate organisations, which they intend to contribute to the achievement of operative goals of the organisation, some subunit within the organisation or their own job duties” (Finney and Lesieur, 1982, p. 264).

1.2.3. Relationship Between Ethics and Illegal Corporate Behaviour

Unethical and illegal behaviour are closely aligned, with legal issues forming a prominent part of the business ethics discourse (Nesteruk, 1999). If certain behaviour is illegal then it will also be unethical, although situations exist where behaviour that is technically legal may, nevertheless, be considered unethical. At one extreme, Gaski (1999) has argued that ethical guidelines are simply restatements of legal principles. This means that, if one follows the law then one is behaving ethically: *“We are at a juncture possibly rare, in which the law and prevailing ethics are in close alignment”* (Gaski, 1999, p. 326). Smith (2001), on the other hand, has argued that, while following the law is necessary for good conduct, it is not sufficient. This is because situations exist where firms must do more than simply follow the law. The law only provides minimal standards and firms must also be guided by ethics. Therefore, ethics

has a moral component, whereby an individual (and not the law) decides whether an action is acceptable or not. The ethics literature was most relevant to this research, since factors that influence unethical behaviour should also help to explain strictly illegal behaviour. Having defined business ethics and illegal corporate behaviour in a general sense, the next section will outline the laws that specifically govern marketing behaviour, which was the focus of this research.

1.3. The Components of Marketing Law

As with many actions within the commercial environment, marketing behaviour is bound by a regulatory framework. In Australia these laws are primarily covered by the Trade Practices Act (1974). These laws are often collectively referred to as consumer protection legislation or marketing law. Marketing law in general (and the legislation outlined above) can be divided into three main categories. These are: 1) anti-competitive legislation, 2) advertising law, and 3) product quality legislation.

1.3.1. Anti-Competitive Legislation

Anti-competitive legislation (often referred to as antitrust) represents a major component of marketing law, and is perhaps the most important. Antitrust is “...concerned with business conduct that distorts the mix of products and prices that a free market would make available to consumers” (Guiltinan, 2002, p. 260). Such conduct includes monopolistic behaviour and agreements between firms to limit competition (Guiltinan, 2002). When competition is lessened, consumers tend to have

fewer product choices and are forced to pay higher prices. Anti-competitive legislation is most concerned with the issue of price. In Australia, such violations are addressed by Part four of the Trade Practices Act (1974). The overriding goal of this legislation is to promote competition, “...based on the premise that societies’ resources are best allocated in a competitive market where rivalry between firms ensures maximum efficiency in the use of resources” (Van Roy, 1991, p. 6).

1.3.2. Advertising Law

Advertising law addresses the control of promotional activities: in particular, misleading, unfair, and comparative advertising. Misleading advertising occurs when promotional materials lead consumers to believe something about a product or service that is not true. To determine whether consumers have been misled, the advertising must be examined and interpreted to see what messages are being communicated to consumers. If these messages are found to be untrue, then it must be determined whether they deceive consumers into making different purchasing decisions than they would have made with accurate information (Petty, 1997). In Australia, misleading advertising is addressed by Part five of the Trade Practices Act (1974). All aspects of the promotion and sale of goods and services, from advertising and pricing, to sales techniques and finance agreements, are covered. The key aspect of Part five is to regulate behaviour that is misleading or deceptive or likely to mislead or deceive (Lyonski and Duffy, 1992). While laws regarding misleading advertising mainly deal with issues relating to promotional activities, they also affect some pricing behaviour, such as misleading information with regards to pricing, discounts, and sales. Whilst misleading advertising laws are primarily designed to protect consumers, these laws

also help to protect those businesses that comply with the law and are, as such, disadvantaged by those that do not.

1.3.3. Product Quality Legislation

Product quality legislation is primarily concerned with ensuring that both goods and services meet certain standards, match the description provided, and do what they are supposed to do. A seller can be liable if a product causes harm whilst being used for its intended purpose (Ryan, 2003). In Australia, these requirements are covered, along with misleading advertising, under Part five of the Trade Practices Act (1974).

1.4. Marketing Law and the Four Ps

Marketing law has traditionally been based upon the four Ps of the marketing mix: product, price, place, and promotion. Each law is categorised according to which of the four Ps applies. The main disadvantage of this approach is that some areas of law are difficult to classify. Whilst each law mainly focuses on a particular aspect of the marketing mix, there is still some degree of overlap. For example, while advertising law focuses on promotion, it also covers elements of price and distribution. Thus, the four Ps approach can at times represent an oversimplification. Another problem is that, in some jurisdictions, the four Ps transactional approach to marketing is losing its appeal in favour of a shift towards a more pronounced relationship approach. This means some authors consider that other means of defining marketing law may be preferable (Petty, 1999). Despite these concerns, alternative definitions can be more

complex, whereas a four Ps approach is straightforward and easily understood by marketers (Petty, 1999; Petty, 2000). As a result, this approach was used in this research. Issues of price primarily relate to anti-competitive legislation, although some aspects of pricing are also covered by advertising law. Issues of promotion are primarily addressed by advertising law, while product issues are primarily addressed by product quality legislation. Issues relating to place are covered by aspects of all three components of marketing law, though mainly by anti-competitive legislation. The specific laws that apply to each of the four Ps are summarised in Figure 1.1.

Figure 1.1: Overview of the Main Marketing Laws that Influence Each of the Four Ps

1.5. Research Gaps

Since the 1970s, a number of sociological (Clinard and Yeager, 1980; Finney and Lesieur, 1982), marketing (Ferrell and Gresham, 1985; Hunt and Vitell, 1986), and management (Baucus and Near, 1991; Baucus, 1994; McKendall et al, 2002) theories regarding the determinants of unethical and illegal firm behaviour have been developed. However, theories from each of these disciplines have tended to exist in isolation. Empirical testing of these theories has also been limited and many of the factors tested, such as individual characteristics, have not been constant predictors of unethical or illegal firm behaviour (Hill et al, 1992; McLaren, 2000; Smith et al, 2007). Moreover, within the marketing discipline, the focus of previous research has been on unethical behaviour rather than strictly illegal behaviour. As has already been discussed, a major problem with focussing on unethical behaviour is that it is subjective as to whether something is unethical or not. It is much easier to determine whether a law has been transgressed. Day and Montgomery (1999) suggested that research in marketing, both theoretical and empirical, should look at issues such as intrusive marketing practices, deceptive advertising, and promotion. However, such research has not, to any great extent, been conducted from a legal standpoint. This lack of research is somewhat surprising given that of all the business functions marketing is often seen as one of the most likely to engage in questionable behaviour (O'Higgins and Kelleher, 2005).

Within the ethics domain, earlier research tended to focus on the processes that individuals go through when engaging in unethical behaviour, starting with identifying the ethical issue through to engaging in the unethical act. The problem

with these process models is that they do not explain the reasons behind the occurrence of unethical behaviour. Recognising this problem, determinant models have been developed, sometimes in combination with process models (Ferrell and Gresham, 1985; Jones, 1991). These models have had a strong emphasis on characteristics of the individual such as demographics and moral beliefs rather than on organisational factors (McClaren, 2000). The effects of various organisational and environmental factors have been included in more recent theories, such as the behavioural model of Bommer et al (1987) and Jones' moral intensity model (1991). These models recognised the importance of organisational and industry factors in unethical behaviour (Frederick, 1987; Badaracco and Webb, 1995; Baucus and Beck-Dudley, 2005). It has been noted, therefore, that there is a need for research that empirically tests the determinants of illegal (rather than unethical) behaviour, from the perspective of the organisation and industry (McLaren, 2000).

While there has been no research that has looked at strictly illegal marketing behaviour, studies investigating the antecedents of illegal corporate behaviour in other business disciplines have been a topic of interest within the management literature (Baucus and Near, 1991; McKendall and Wagner, 1997; McKendall et al, 2002). Unlike research in the ethics domain, since the early 1990s, research in management has resulted in the development of comprehensive models of the effects of organisational and environmental characteristics on illegal corporate behaviour. Similar to ethical research, however, many of the variables tested have not been consistent predictors of illegal behaviour, meaning there is still no clear indication as to its major antecedents. As the literature provides no clear picture of the factors that influence illegal behaviour, as suggested by Hill et al (1992), there is a need to

consider other factors and approaches. In light of this viewpoint, this research introduced the idea of a dynamic approach, and also the concept of knowledge, to the model of marketing law transgressions, which are described below (Finney and Lesieur, 1982; Baucus, 1994).

It is likely that many, if not, most, transgressions of the law are calculated and deliberate. Firms take the risk that they will not be caught, or that the financial benefits accrued will far outweigh the costs of any fines and/or negative publicity (Baucus and Near, 1991). For other, often smaller, firms without access to legal services, however, transgressions may be unintended. Such firms may have little knowledge of their legal obligations to consumers across the marketing mix, causing them to unwittingly transgress the law (Baucus, 1994). Baucus (1994) was the first to consider unintentional illegal corporate behaviour as being separate from intentional behaviour, claiming:

“We need to acknowledge the existence and importance of unintentional illegality so we can learn more about how to prevent it and respond effectively when it occurs. Managers may need to take different actions to prevent unintentional versus intentional wrongdoing, so research is required to identify these differences” (Baucus, 1994, p. 720).

Unintentional illegality is closely linked to the concept of knowledge, in that firms may transgress the law simply because they lack knowledge of the law (Baucus, 1994). Limited research has attempted to investigate the extent to which managers are knowledgeable of the law or ethical situations (Peterson, 1997; 2001a; 2001b; 2003;

Bowal and Wanke, 1998). Such research has failed to test how knowledge of the law impacts on illegal corporate behaviour. This failure represents a significant opportunity for research to determine whether a lack of knowledge of marketing law leads firms to unintentionally transgress (Loe et al, 2000).

Finney and Lesieur (1982) proposed that models of illegal corporate behaviour do not stop with the commission of the transgression. This is because both previous transgressions and detection play an important role in a firm's decision to transgress again in the future. Despite this contention, research into corporate illegality has tended to treat transgression of the law as a static process. That is, transgressions, either past or future, are viewed in isolation (e.g. McKendall and Wagner, 1997; McKendall et al, 1999; McKendall et al, 2002). Much of the research, especially relating to illegal corporate behaviour, has focussed on identifying the factors that may have led firms to transgress in the past (e.g. Baucus and Near, 1991; McKendall and Wagner, 1997; McKendall et al, 1999; McKendall et al, 2002). Other research, especially within the field of business ethics, has looked at intent to act unethically in the future (e.g. Hunt and Vitell, 1986; Sparks and Hunt, 1998; Weber and Gillespie, 1998). No previous research has attempted to link past transgressions, the consequences to the firm of those transgressions having been detected, and future intent. Some research has investigated the consequences of a transgression being detected by regulatory agencies in terms of the effects on a firm's share price and profitability, but has not been linked to subsequent firm behaviour (Baucus and Baucus, 1997). By investigating how the consequences of the detection of a previous transgression alter firm behaviour, or subsequently influence the likelihood of firms

transgressing the law in the future, considerable additional insights to the understanding of the transgression process could be gained.

It has also been suggested that new methodologies should be considered for research pertaining to illegal corporate behaviour (Hill et al, 1992). Previous research on deterrence has tended to rely on firm 'outcomes', which fails to account for potential future behaviour and ignores the effect that perceptions and related actions can have on the likelihood of future transgression occurring (Smith et al, 2007). Most of the previous research in this area has either been based on cross-sectional surveys (e.g. McKendall and Wagner, 1997) or longitudinal research using secondary data (e.g. Baucus and Near, 1991). Each of these methods is subject to limitations. Cross-sectional research is subject to time-ordering concerns when dealing with past behaviour, since changes might have occurred between the transgression and when the survey was conducted (McKendall and Wagner, 1997). Longitudinal research, while effective in analysing past behaviour, cannot be used to measure potential future behaviour, and also requires appropriate data sources. There is a need to combine these approaches in an attempt to develop a methodology that can overcome the limitations of each technique, and also to investigate both previous transgressions and potential future behaviour.

Lastly, previous research into corporate illegality has focussed on firms from North America. Other countries, naturally, have different legal and organisational environments. Hence, the drivers of illegal corporate behaviour may be different. It would be useful to determine whether models developed in a North American context apply in other jurisdictions/contexts, such as Australia.

1.6. Research Objectives

Based on the gaps in the literature identified in the previous section, the primary objective of this research was to *develop and test a model of marketing law transgression that recognises the dynamic nature of the transgression process*. The dynamic process includes previous transgressions, the consequences of those transgressions having been detected, and the impact of these consequences on the likelihood of future transgressions occurring. The specific objectives relating to each of these components are described below. The objectives of this research were to determine:

Previous transgressions

1. The factors that led firms to transgress marketing law in the first instance.

Consequences

2. What impact transgression detection and punishment by regulatory agencies has on firm behaviour.

Future Transgressions

3. The factors that impact on the likelihood of a firm transgressing marketing law in the future.
4. The impact that a lack of knowledge of marketing law has on the likelihood of a firm transgressing the law in the future.

1.7. Research Contributions

This research addressed the gaps described previously, resulting in a significant contribution to the existing literature. The contribution is four-fold, through:

1. The development of a comprehensive conceptual model of illegal corporate behaviour that incorporates both the antecedents and consequences of illegal behaviour by viewing corporate transgression as a dynamic process. Whilst the dynamic nature of the transgression process was recognised in 1982 (Finney and Lesieur), subsequent models have tended to view the process as being static (Jones, 1991; Baucus, 1994; McKendall and Wagner, 1997). This research considered a weakness of the extant theory to be the use of static models that do not recognise the role of repeat transgressions. The development of this dynamic model is considered to be an important contribution to the literature. This model drew upon literature from the sociology, management, marketing, and business ethics disciplines in order to combine the potential insights each discipline provides.
2. Empirically testing a comprehensive, dynamic, conceptual model of illegal corporate behaviour. As noted previously, empirical testing of such models has not always identified consistent predictors of unethical and illegal behaviour (Loe et al, 2000). It is important that new models be developed and be empirically tested that take a different approach to explaining the transgression of marketing law. This was the first piece of research to fully

empirically test Finney and Lesieur's (1982) proposition that models of illegal corporate behaviour do not stop with the commission of the transgression, because previous transgressions (and their detection) play an important role in decisions regarding future transgressions.

This dynamic model also recognises the influence that poor legal knowledge, which may result in unintentional transgression, may have on the transgression process. Whilst most illegality is likely due to intentional acts, it needs to be acknowledged that, for many firms (especially smaller ones), transgressions may occur as a result of poor knowledge of the law (Baucus, 1994; Peterson, 2003). Whilst ignorance of the law is not considered an excuse for illegal conduct in the view of the courts, the existence of unintentional transgressions as a result of poor legal knowledge may suggest that education is a possible means to improve behaviour. This research considered the omission of legal knowledge from models of illegal corporate behaviour to be another major weakness of extant theory. This research was the first to empirically test the role that knowledge of the law has on transgressions, as proposed by Baucus (1994).

3. Being the first research to test a model of illegal corporate behaviour from a marketing perspective. Marketers are faced with a range of laws that impact their marketing activities. Records show that such laws are broken on regular occasions (ACCC, 2007), yet no research has attempted to ascertain the reasons why marketers might break these laws in the first

place. Whilst research has been conducted in other areas of business law such as environmental law (Baucus and Near, 1991; McKendall and Wagner, 1997; Morris et al, 1999), it has not been conducted within the marketing domain. This research attempted to overcome this limitation, by recognising that the unique characteristics of the marketing discipline and practice may mean that the reasons for transgressing marketing law differ from those of other commercial laws.

In addition, previous research in this area has been primarily situated in a North American or European context. Models of illegal corporate behaviour were adapted to illegal marketing behaviour in an Australian setting, in order to determine whether models of illegal corporate behaviour primarily developed in North America could apply to a different legal and cultural environment.

4. The recognition that, in order to test the dynamic model, a combination of methodologies was required. This research was the first to combine techniques used to measure previous transgressions of the law (e.g. Baucus and Near, 1991; McKendall and Wagner, 1997) with techniques used to measure the consequences of transgression detection (e.g. Baucus and Baucus, 1997), and also future intent to transgress (e.g. Hunt and Vitell, 1986; Sparks and Hunt, 1998; Weber and Gillespie, 1998).

A combination of secondary and primary data was used to test the proposed model. This research recognised the limitations of cross-

sectional studies using survey instruments, such as McKendall and Wagner (1997), in that conditions within the firm may change subsequent to the transgression detection and before data collection. Similarly, longitudinal studies also have limitations in that (especially in the case of Australia) the data required is not always available. In addition, longitudinal studies using secondary data cannot provide information on future behaviour. Such information can only be obtained through cross-sectional research using a survey instrument. Therefore, another major contribution of this research is the use of a combination of longitudinal analysis using secondary data and cross-sectional research using a survey instrument. This methodology allowed time-ordering concerns to be addressed, while allowing for the collection of information – such as future intent of transgression - that is not available from secondary sources.

In addition, a hierarchical mixed model procedure was used to test the hypothesised relationships from the cross-sectional data. The benefit of this technique is that it recognises the heterogeneity that exists between respondents and the differences in their responses to scale items (Luke, 2004). The mixed model allowed for the potential existence of social desirability bias to not only be acknowledged, but also controlled for. Social desirability bias occurs when participants respond in a manner that shows their actions to be more positive than they actually are (Fisher, 1993; Chung and Monroe, 2003). Respondents were asked about their perceptions of their own as well as their competitors' behaviours to ascertain any biases that might exist.

Another methodological contribution is the use of hazard models in the analysis of secondary data. Hazard models look at the risk of events (in this case transgression) occurring in a given year, given the existence of previous transgressions. This is a technique that has been used in the context of re-offending for ‘ordinary’ crime, but has not previously been used to investigate recidivism in a business law context (DeJong, 1997; Wilson, 2005).

1.8. Research Question

Based on the previous discussion, the primary research question was:

What are the antecedents and consequences of transgressing marketing law?

For this question to be addressed, current models within the ethical and illegal corporate behaviour literature formed the basis of a model of the antecedents of transgressing marketing law, with knowledge included as an additional factor. This model was expanded to demonstrate the dynamic nature of the transgression process. To achieve this, the potential consequences and subsequent changes in behaviour by a firm caught transgressing marketing law, and the potential impact these consequences might have had on the likelihood of engaging in future illegal behaviour, were recognised. This updated model was then tested using quantitative techniques with both primary and secondary data. This research was conducted across a wide range of Australian firms. Therefore, more specific sub-questions questions were:

- 1) What factors influence previous transgressions of marketing law?*
- 2) What changes occur in firms' behaviour as a result of a transgression being detected by regulatory agencies?*
- 3) What factors might influence a firm's likelihood of transgressing marketing law in the future?*
- 4) How might changes resulting from the detection of a previous transgression affect the likelihood of transgressing marketing law in the future?*
- 5) What impact does knowledge of marketing law have on the transgression process?*

1.9. Value of the Research

This research is valuable to academic researchers, managers, regulatory agencies, and the general public. The value to each of these groups is outlined below.

1.9.1. Value of the Research to Academics

Despite the growing body of research looking at the factors that lead firms to behave illegally or unethically, empirical research has not yet identified constant predictors of illegal or unethical behaviour (Hill et al, 1992; Loe et al, 2000). The proposed research contributes to the extant literature, not only by investigating the antecedents of illegal corporate behaviour proposed in the literature in an Australian context, but also by investigating the dynamic nature of the transgression process, which has been inadequately addressed by previous research.

1.9.2. Value of the Research to Marketing Managers

By understanding the factors that influence illegal behaviour, one is (in theory) in a better position to reduce its occurrence. This knowledge can provide managers with a means of determining whether their firm is 'at risk' of engaging in illegal marketing behaviour, and suggest ways in which the likelihood of engaging in such behaviour can be reduced (Smith et al, 2007). Some firms may intentionally transgress the law, since they know that, even if they get caught, the benefits will far outweigh any fine or negative publicity. However, for other firms, a large fine and negative publicity could have a severe negative impact on their business (Petty, 1997). This research can suggest ways that managers in such firms can reduce the likelihood of this occurring.

1.9.3. Value of the Research to Regulatory Agencies

This research can also provide regulatory agencies with valuable information to assist in targeting their enforcement activities to firms and industries most likely to transgress the law. A greater understanding of the role of knowledge in illegal marketing behaviour can also assist regulatory agencies in their educational programmes. The findings from this research could also suggest whether there is a requirement to improve knowledge at all, or whether regulatory agencies should focus more on enforcement activities. Developing a greater understanding of the consequences of illegal behaviour, in particular how firms may change their behaviour as a result of transgressions being detected, will lead to greater insights into the effectiveness of enforcement activities, and which methods might be the most effective in reducing the likelihood that such behaviour will reoccur. Such

information can help policy-makers determine the most appropriate sanctions that will minimise the risk of future transgressions occurring.

1.9.4. Value of the Research to the Wider Community

Ultimately, consumers should benefit from greater knowledge and enforcement of marketing law, since they are the ones who are misled by promotional material or who have to pay higher prices as a result of anticompetitive behaviour. The same applies to firms that work within the law, but are disadvantaged by the illegal actions of their competitors.

1.10. Research Outline

This chapter has provided an introduction to the topic of interest as well as the aim and importance of the proposed research. Chapter 2 provides a detailed overview of the literature encompassing a range of disciplines. The focus is on models that describe the factors that lead to unethical or illegal behaviour and the attempts to empirically test such models. Additionally, the limited research on knowledge of the law and the consequences of illegal behaviour within the marketing context is introduced. Chapter 3 describes the development of the proposed conceptual research model and associated hypotheses. Chapter 4 presents the methodology and results of the secondary data analysis using hazard models. Chapter 5 explains the general research design and the methodologies used to test the model for the quantitative survey, in addition to describing the measurement model. Chapter 6 describes the

results obtained from the quantitative survey, which are discussed in greater depth in Chapter 7. Chapter 8 describes the implications of the results for managers and regulatory agencies, while Chapter 9 presents the limitations of the research conducted and outlines possible avenues for future research. Lastly, Chapter 10 provides some overall conclusions.

Chapter 2: Literature Review

2.1. Introduction

This chapter provides the background to the research model that is introduced in Chapter 3. In this chapter the extant literature is reviewed in order to illustrate: 1) the factors that impact on unethical and illegal corporate behaviour, 2) the role that unintentional behaviour plays on illegal corporate behaviour through insufficient knowledge of the law, 3) the consequences for a firm of a transgression being detected by regulatory agencies, and 4) the effect that these detections have on the likelihood of future transgressions occurring. As alluded to in Chapter 1 and demonstrated in Figure 2.1, the literature can be divided into two major components: illegal corporate behaviour and business ethics. Theories of both illegal and unethical behaviour by firms have been developed across a wide range of disciplines. These include: marketing, business ethics, management, and to a lesser extent sociology and law. As a result, a broad review of the literature from these different disciplines was required.

Some of the earliest comprehensive theories of the factors that lead to illegal firm behaviour were developed by sociologists Clinard and Yeager (1980) and Finney and Lesieur (1982). These authors recognised that the transgression process is dynamic. Since then, the preponderance of published research in the area of corporate illegality has occurred within the management and organisational research literatures and has

tended to view the transgression process as being static, rather than dynamic (e.g. McKendall and Wagner, 1997; McKendall et al, 2002).

Business ethics can claim to be a discipline in its own right and a large body of literature pertaining to ethical firm behaviour has developed over the last 30 years (Malhotra and Miller, 1998). Within the field there has been a large volume of relevant research, including that which addresses ethical issues specifically related to marketing. Additionally, both management and, in particular, marketing, have made significant contributions to the business ethics field.

On the other hand, there is a dearth of research regarding the extent to which firms are knowledgeable of the law that affects them. If knowledge of the law is poor then the law may be transgressed unintentionally (Baucus, 1994). Bowal and Wanke (1998) attempted to address firms' legal knowledge from a legal perspective as did Peterson (1997; 2001a; 2001b; 2003) from a management perspective.

If, as suggested by Finney and Lesieur (1982), the transgression process is dynamic then the literature on the consequences to a firm of having its transgression detected by regulatory agencies should be considered. Empirically, however, only a small number of management studies have investigated these consequences and their effect on short-term profitability and share price (e.g. Baucus and Baucus, 1997). This research has not been linked to subsequent illegal behaviour.

Figure 2.1 illustrates the diverse sources of literature considered relevant to this study:

Figure 2.1: Summary of the Disciplines Informing the Research

While differing in many aspects, there is, nevertheless, a considerable degree of overlap between both illegal and unethical behaviours. Only the discipline of management has, to any great extent, focussed its attention on both areas of interest. Where theories that inform the literature have been explicitly mentioned, they tend to include control theory (McKendall and Wagner, 1997), learning theory (Hill et al, 1992), and transaction cost economics (Morris et al, 1995).

This chapter will firstly examine the development of research into unethical and illegal firm behaviours. Secondly, the role of marketing in unethical and illegal behaviour research is investigated. Thirdly, the major theories of antecedents of illegal and unethical behaviour are considered in more detail, followed by a summary of empirical work. Fourthly, the concepts of unintentional illegality and legal knowledge are introduced. The last section examines the consequences and

behavioural changes a firm experiences if a transgression of the law is detected by regulatory agencies.

2.2. Development of Research into Illegal/Unethical Behaviour

This section provides a brief overview of the relevant literature on both illegal and unethical firm behaviour.

2.2.1. Unethical Firm Behaviour

The literature on business ethics was most relevant to this research since unethical behaviour is closely related to strictly illegal behaviour (Gaski, 1999). Business ethics can be classified as a discipline in itself, although much of the ethics literature is found within the marketing and management disciplines. Until the mid 1980s, research into unethical behaviour was largely atheoretical. Few attempts had been made to explain the reasons behind unethical behaviour (Hunt and Vitell, 1986). As a response to these problems, the marketing discipline provided two major theoretical contributions to the ethics literature, through Ferrell and Gresham's (1985) contingency framework and Hunt and Vitell's (1986) general theory of marketing ethics. Since then, a considerable body of literature has developed, illustrating numerous ethical decision-making models in both marketing and management. These models identify important constructs for determining what factors have the greatest influence on ethical decision-making (Loe et al, 2000). However, there has been a lack of empirical testing of the factors that impact on unethical behaviour,

“substantially impeding the development of the field” (Ford and Richardson, 1994, p. 205).

2.2.2. Illegal Firm Behaviour

In the 40 years that followed Sutherland (1949) first coining the term ‘white collar crime’, research into corporate illegality was irregular, both in quantity and direction. During this period, most research was conducted by those who specialised in criminal behaviour, such as criminologists and sociologists. During the 1970s, a number of articles and books appeared on this topic, including work on antitrust and advertising within marketing. This research recognised the importance of a multiple factor approach. Clinard and Yeager (1980) noted that different combinations of independent variables were able to predict varying types of corporate offences, suggesting that illegal corporate behaviour was a ‘multidimensional’ concept. By the mid 1980s, however, few researchers had *“...attempted to integrate their work into the body of theory and empirical findings residing outside their own fields”* (Szwajkowski, 1985, p. 558). A notable exception was Finney and Lesieur’s (1982) contingency theory of organisational crime, which recognised that criminal behaviour follows a temporal sequence. Firstly, there are the events that lead to the transgression, secondly, the actual transgression, and lastly, the consequences of the transgression (if it is detected). Their research examining corporate crime played a major role in guiding further research in the area, although the ‘temporal sequence’ aspect has never been fully explored.

Since then, much of the research on illegal firm behaviour has been situated within the management literature. Researchers have developed a number of models that propose a range of antecedent conditions that lead to illegal corporate behaviour, such as demographics, moral beliefs, firm performance, and firm size (e.g. Szwajkowski, 1985; Baucus and Near, 1991; Baucus, 1994). Until the end of the 1980s, however, there had been limited empirical testing of these models, the major exception being Clinard and Yeager (1980). The level of empirical testing improved considerably in the 1990s, as evidenced by the work of Baucus and Near (1991), Hill et al (1992), McKendall and Wagner (1997), McKendall et al (1999) and McKendall et al (2002). These models will be discussed in more detail later in this chapter.

2.3. Marketing and Illegal/Unethical Behaviour

It is logical to expect that managers of different business functions within an organisation will have different ethical and legal beliefs. The demands of the job, daily work experiences, and management expectations differ between managers within the same organisation (O'Higgins and Kelleher, 2005). According to Dunfee et al (1999, p. 19), *"there have been many cases of unethical conduct in marketing; indeed marketing is viewed by some as the worst offender of the business functions"*. Baumhart (1961) conducted one of the earliest studies into the unethical behaviour of firms. Based on a sample of 1,700 business practitioners, results showed that 82% of respondents were 'concerned' about behaviour related to the marketing function. These respondents believed that marketing provided the greatest number of opportunities for unethical behaviour to occur (Baumhart, 1961). These findings were

supported by O'Higgins and Kelleher (2005), who found that marketing managers were significantly more accepting of illegal or unethical conduct than human resource and finance managers. O'Higgins and Kelleher (2005) suggested that this is because marketing managers are often primarily concerned with revenue maximisation, and, therefore, consciously aware of their role in ensuring their firm gains a competitive edge. In addition, their performance is often measured by meeting quotas and sales expectations. Such pressure can lead to unethical or illegal behaviour (O'Higgins and Kelleher, 2005). It is also possible that fewer constraints are placed on marketers than in other professions, provided they continue to contribute to the firm's financial performance (Wood and Callaghan, 2003; O'Higgins and Kelleher, 2005).

The study of ethical behaviour in marketing has provided a significant contribution to the business ethics literature. A criticism of the earlier work in marketing ethics was that it was neither innovative nor systematic, and that the lack of a systematic approach to marketing ethics was due to a lack of overarching theory (Hunt and Vitell, 1986). The mid 1980s saw the development of a theoretical and empirical foundation for future research in this area (Laczniak, 1993). In fact, the theories of marketing ethics proposed by Ferrell and Gresham (1985) and Hunt and Vitell (1986) are two of the cornerstone theories of business ethics. The next section reviews the major theories of business ethics.

2.4. Major Theories of Business Ethics

Within the business ethics and marketing ethics literature, a number of theories (see Table 2.1) have been developed that attempt to explain how decisions are reached in ethically problematic situations (Srnrka, 2004).

Table 2.1: Summary of the Major Theories of Business Ethics

Discipline	Author(s)	Year	Description
Marketing	Ferrell and Gresham	1985	Contingency framework: ethical decisions depend on the social and cultural environment, individual beliefs, significant others, and company culture.
Marketing	Hunt and Vitell	1986	Ethical decisions depend on the industry, culture, and organisation combined with deontological and teleological evaluations.
Ethics	Bommer et al	1987	Ethical decisions depend on individual attributes, personal environment, professional environment, work environment, legal environment, and social environment.
Marketing	Ferrell et al	1989	A synthesis of ethical decision models for marketing.
Management	Jones	1991	Integrates the above models with characteristics of the ethical issue itself.

While many of these theories have been well received, none can be classified as providing definitive answers as to why unethical behaviour occurs (Malhotra and Miller, 1998). It can be argued that some of the reasons for this may include the fragmented nature of the research, lack of empirical testing and inconsistent results. Nevertheless, three theories have been widely acknowledged as the most complete approaches to ethical decision-making in marketing. These are: 1) *A Contingency Theory for Understanding Unethical Decision-Making in Marketing*, by Ferrell and Gresham (1985), 2) *A Contingency Theory of Marketing Ethics*, by Hunt and Vitell (1986), expanded in (1991), and 3) *A Synthesis of Ethical Decision Models for Marketing*, by Ferrell et al (1989).

The first 'all encompassing' theory of ethical decision-making was developed by Hunt and Vitell (1986). It proposed that the decision-maker follows a process when making an ethical decision. First, the decision-maker must recognise that the decision is of an ethical nature, and then they must recognise the available alternatives to resolve the ethical situation. At this point, all alternatives are evaluated based on teleological and deontological viewpoints. From the teleological viewpoint, the extent to which an alternative is ethical depends upon the outcomes or consequences of the decision. The idea is to select the outcome that results in the greatest good. Conversely, the deontological viewpoint focuses on the means behind a decision rather than the ends. Lastly, a final decision on which course of action to take (intention) is made and the behaviour occurs. Hunt and Vitell (1986) also noted that the whole process is influenced by the organisational culture of the firm, opportunity, and the characteristics of the individual concerned.

While the Hunt and Vitell (1986) model addressed the factors that impact on the ethical decision-making process, to some extent, their primary focus was on the process itself. The problem with process models is that they do not tend to consider the reasons why unethical behaviour occurs. Understanding these reasons can be important, especially when trying to reduce the likelihood of illegal behaviour occurring. Other models have focussed on the determinants of unethical behaviour rather than the processes (Bommer et al, 1987; Hunt and Vitell, 1991; Malhotra and Miller, 1998). These models reflect the debate within business ethics over whether unethical decisions are the result of 'bad apples' or 'bad barrels' (Brass et al, 1998). From a 'bad apples' perspective, unethical behaviour is a result of an individual's personal characteristics. Under this approach, it is suggested that organisations would

be best to attract individuals who meet a pre-determined profile of 'desirable' characteristics. It is also suggested that organisations should aim to improve employees' moral character through training programmes. Conversely, from a 'bad barrels' perspective, factors from within the organisation and its environment are considered to influence ethical decision-making. This perspective promotes the use of organisational tools, such as rewards systems, company culture, and codes of compliance, as means of improving ethical behaviour. It has been argued that, on their own, neither the bad apples nor bad barrels approach adequately explains unethical behaviour (Brass et al, 1998). As a result, researchers such as Ferrell and Gresham (1985) and Trevino (1986) have attempted to combine the two approaches (Brass et al, 1998).

Ferrell and Gresham (1985) noted that, up until that point, there had been no clear consensus about unethical behaviour by marketers, suggesting that academics had limited their research to analysing certain marketing activities to see whether marketing practitioners believed they were ethical or not. Such research does not provide insight into why unethical behaviour occurs. In response, Ferrell and Gresham (1985) were the first to focus specifically on the determinants of unethical behaviour. Ferrell and Gresham (1985) developed a framework that included variables that might impact on unethical decisions within organisations. Using a contingency approach, they proposed that ethical decisions are influenced by the interaction of both individual characteristics and organisational factors. Individual characteristics included a person's values and attitudes as well as intentions formed through education, experience, and interaction with others. Organisational factors included significant others (peers and superiors) and the existence of opportunities to

commit unethical behaviour. These opportunities included corporate policy and whether the firm provided professional codes of behaviour.

Trevino (1986) also recognised that previous research had not adequately dealt with the interaction between individual characteristics and what the author referred to as situational variables, which are effectively organisational components representing the culture of the firm. Trevino (1986) developed an interactionist model, suggesting that ethical decision-making is based on the interaction between individual characteristics and these situational components. Trevino (1986) proposed that reaction to any ethical situation is determined by an individual's stage of cognitive moral development in concert with characteristics such as ego strength, field dependence, and locus of control. These characteristics then further interact with situational components, such as referent others, authority, normative structure, and other job pressures.

Subsequent to Trevino (1986), a number of models were developed that followed the interactionist approach, each proposing a range of individual characteristics and environmental factors that might explain unethical decision-making. The individual characteristics posited have all tended to include demographic variables (i.e. age, income, gender, and education) and an individual's personality traits (i.e. motivations, and moral views). The environmental factors posited are the "*socio-cultural circumstances under which decisions are made*" (Singhapakdi and Vitell, 1990; Srnka, 2004, p.8) and encompass both the organisational and industry environments. As illustrated in Table 2.2, from within the organisation, Ferrell and Gresham (1985), Ferrell et al (1989), Hunt and Vitell (1991), and Malhotra and Miller (1998) all

recognised the role of formal and informal rules (i.e. codes of ethics) and firm culture in ethical decision-making. Additionally, Hunt and Vitell (1991), Brass et al (1998), and Malhotra and Miller (1998) highlighted the importance of behaviour by firms and individuals within the wider industry and profession on ethical decision-making within individual firms. Recognising what they perceived to be the dearth of determinants of unethical decision-making in the literature, Bommer et al (1987) proposed 23 environmental and individual factors that might impact on unethical decisions. Their categories included the work environment (corporate policy and culture), the government environment (legislation and regulatory agencies), and individual characteristics (goals, social status, moral level, and demographics).

Table 2.2: Summary of Previous Research into the Effect of the Environment on Unethical Behaviour

Environmental Factors	Research
External Environment	
Industry	Hunt and Vitell (1991), Ferrell et al (1989), Malhotra and Miller (1998)
Legal environment	Bommer at al (1987)
Internal Environment	
Relevant others (management and peers)	Ferrell and Gresham (1985), Ferrell et al (1989).
Organisational culture (rules, codes, and enforcement)	Ferrell and Gresham (1985), Ferrell et al (1989), Malhotra and Miller (1998), Hunt and Vitell (1991)

Researchers who follow the interactionist approach do not consider their models an alternative to process models, but rather a perspective that can be combined with other approaches. This was first undertaken by Ferrell et al (1989), who amalgamated both the process and determinant approaches of Ferrell and Gresham (1985) and Hunt and Vitell (1986). Theoretical components of the Trevino (1986) interactionist model were also incorporated. This resulted in a process model of ethical decision-making

that combined the individual's internal decision-making process with external impacts from both the individual and environmental perspectives.

From a management perspective, Jones (1991) integrated the previous ethical decision-making models of Ferrell and Gresham (1985), Hunt and Vitell (1986), and Trevino (1986) into what the author considered to be a consensus of the variables that influence ethical decision-making. Jones (1991) also introduced the concept of 'moral intensity' into his issue-contingent model. With moral intensity, the characteristics of the moral dilemma itself are considered to influence ethical decision-making within a firm. Such characteristics include the size of the consequences, the probability of effect, the concentration of effect, and temporal immediacy. Jones (1991) proposed that controlling for moral intensity would become an important component of the Hunt and Vitell (1986) and Trevino (1986) models.

Figure 2.2 summarises Jones's (1991) model of ethical decision-making, which integrated the work of Ferrell and Gresham (1985), Hunt and Vitell (1986), and Trevino (1986), as well as introduced the concept of issue contingencies (moral intensity). This resulted in a model that describes both the determinants and processes involved in ethical decision-making.

Figure 2.2: Summary of Ethical Decision-Making Models

H/V= Hunt and Vitell, 1986

T= Trevino, 1986

F/G= Ferrell and Gresham, 1985

J= Jones, 1991

(Source: Jones, 1991, p. 370)

According to the Jones (1991) model, the process leading to unethical behaviour occurs in stages. Firstly, from the environment (social, cultural, economic, and organisational factors), ethical issues emerge and are recognised (Ferrell and Gresham, 1985; Hunt and Vitell, 1986). Hunt and Vitell (1986) explicitly noted that

not all ethical issues are recognised, however this step remained implicit for Trevino (1986) and Ferrell and Gresham (1985). Secondly, Hunt and Vitell (1986) and Trevino (1986) recognised an 'ethical judgement' stage whereby a decision is made as to whether an action is ethical or not, a stage omitted by Ferrell and Gresham (1985). For Trevino (1986), ethical judgement is a result of cognitive moral development, whereas for Hunt and Vitell (1986) it is a result of teleological and deontological moral evaluations. Lastly, the unethical behaviour occurs. Hunt and Vitell (1986) also included a step whereby the decision-maker establishes intent before engaging in the behaviour. Ferrell and Gresham (1986) and Trevino (1986) proposed a direct relationship between ethical judgement and ethical behaviour. From the interactionist perspective, ethical judgements and the final decision to engage in unethical behaviour were considered to depend upon a range of external moderating variables, including significant others (Ferrell and Gresham, 1985), individual moderators (Ferrell and Gresham, 1985; Trevino, 1986), situational moderators (Trevino, 1986), and opportunity (Ferrell and Gresham, 1985). Jones (1991) then proposed that characteristics of the ethical issue (moral intensity) impact on each of these stages.

The main advantage of the Jones (1991) model is that it effectively fused together research that had been conducted up to that point - both in terms of the processes involved when engaging in unethical behaviour and the determinants of that behaviour. A limitation of the model, however, is that it is static, in that it does not consider the role of repeat transgression. Another feature of this model is the inclusion of individual characteristics. As will be discussed later, there has been a move towards research that investigates the influence of the organisation and industry environment on unethical behaviour, instead of the influence of individual characteristics. The extant model does not adequately consider the effect of these

variables as determinants of unethical behaviour. These limitations were inherent in many of the models developed at this time. The next section will investigate in more detail, the factors that have been proposed to influence unethical behaviour.

2.5. Factors that Influence Unethical Behaviour

Despite an initial lack of empirical testing, since the beginning of the 1990s there has been a noticeable increase in such research within the business ethics literature. Much research in this field has looked at intent to engage in unethical behaviour rather than actual behaviour (Weber and Gillespie, 1998). This research has attempted to determine the factors influencing unethical behaviour on the part of the individual, the firm, and its environment.

2.5.1. Individual Factors

Most attention has been placed on individual characteristics in the empirical research on factors that impact on ethical decision-making. These factors include age, gender, religion, nationality, personality, education, employment status, and moral values of the individual. A problem with this approach is that many of these variables have been inconsistent predictors of unethical behaviour (Ford and Richardson, 1994; Loe et al, 2000). Of the individual factors researched, the one most investigated has been gender, with most studies reporting either no difference between males and females or that females are more ethical than males (Loe et al, 2000). In terms of education, the results have again been mixed. Approximately half of the studies conducted have

found that education has no influence on unethical behaviour, whereas others have found that higher levels of education resulted in greater ethical 'sensitivity'. Another area that has received particular attention has been the moral philosophy of individuals. Research has shown that there are some individual personality traits that influence one's ethical behaviour (Ford and Richardson, 1994; Loe et al, 2000).

One individual variable that has proved a more consistent predictor of unethical behaviour has been the role played by referent groups, which include both peer groups and top management. Ferrell and Gresham (1985) saw this as an integral part of their contingency framework. A number of studies have found that respondents believe they are more ethical than their peers (Ford and Richardson, 1994). Zey-Ferrell et al (1979) found that an individual's perception of the beliefs of their peers was the best predictor of an individual's own ethical behaviour. In subsequent work, Zey-Ferrell and Ferrell (1982) found that this relationship did not hold true in situations where an individual had less contact with their peers. Since then, there has been considerable support for the proposition that significant others play an important role in ethical decision-making (Loe et al, 2000).

2.5.2. Environmental Factors (Organisational)

While much of the focus of earlier research into ethical behaviour has been on the characteristics of individuals that lead to unethical decisions, several researchers have argued that the work environment and organisational factors have a greater influence (Frederick, 1987; Badaracco and Webb, 1995; Baucus and Beck-Dudley, 2005). It has been commonly argued that a firm's organisational culture is the major determinant of

how employees behave (Soutar et al, 1994). The behaviour of superiors, in particular, plays a significant role in setting the 'tone' for behaviour within the organisation. Top management can act as models of desired behaviour or influence behaviour through punishment and reward. Likewise, Soutar et al (1994) found that, in Australia, the behaviour of superiors was the most critical factor in ethical decision-making within the firm.

Formal company policies have also been found to play an important role in ethical decision-making. Employees want standards of behaviour that are endorsed by the company. This should go beyond codes of practice to include training and regular audits (Soutar et al, 1994). Hegarty and Sims (1979) found that ethical behaviour improved when a company had a formal or written policy. In New Zealand, Alam (1993; 1999) showed that the commitment of top management, a written and published code of behaviour, and an efficient legal education system were the main factors in ensuring an ethical environment. However, it has been shown that it is not simply enough to have a code of ethics; it must also be seen to be adhered to, and not viewed as just a public relations exercise (Alam, 1993; Soutar et al, 1994). Kohut and Corriher (1994) found that simply knowing that the firm has a code of ethics has no significant impact on ethical decision-making.

The impact of firm size on ethical decision-making has been studied to a much lesser extent. Again, results have been mixed (Ford and Richardson, 1994). Browning and Zabriskie (1983) found respondents from larger firms were more willing to accept gifts and favours from suppliers. Vitell and Festervand (1987) concluded that smaller firms might be under greater pressure to behave in an unethical manner to stay

competitive with larger firms, although no statistical analyses were performed to verify this proposition.

2.5.3. Environmental Factors (External)

There has been limited research conducted into the impact of a firm's external environment and industry on ethical behaviour. Research investigating the effects of the industry, e.g. Laczniak and Inderrieden (1987) and Akaah and Riordan (1989), found 'type of industry' had no impact on the amount of unethical behaviour within firms. Previous research also investigated whether increased competition provides greater pressure to behave unethically in order to compete. Hegarty and Sims (1979) found that increased competitiveness leads to a decrease in ethical behaviour. Dubinsky and Ingram (1984), however, found no such relationship.

Having looked at the theories of ethical or unethical behaviour and the results of empirical testing of some of these theories, the next section focuses on behaviour that is strictly illegal. Models of illegal corporate behaviour are presented, followed by a summary of the results from empirical testing of those models.

2.6. Theories of Illegal Corporate Behaviour

As opposed to theories of unethical behaviour, the differences of which were outlined previously, this section looks at the major theories of illegal corporate behaviour that have been developed in the extant literature. These theories are summarised in Table

2.3. Not surprisingly, there is a degree of overlap in the illegal corporate behaviour literature with the business ethics literature, given the close link between illegal and unethical behaviour (Nesteruk, 1999). The key difference in this section is that the literature deals only with actions that breach the law and ignores actions that, while technically legal, are regarded as unethical.

Table 2.3: Potential Antecedents of Illegal Corporate Behaviour

Discipline	Author	Year	Proposed Antecedents of Illegal Behaviour
Sociology	Finney and Lesieur	1982	Society and culture, Performance emphasis, Social controls (internal and external), Prior violations
Management	Szwajkowski	1985	Environment, Organisational structure, Individual choice
Management	Baucus and Near	1991	Environment, Internal, Situational
Management	Baucus	1994	Pressure, Opportunity, Predisposition
Management	McKendall and Wagner	1997	Motive, Opportunity, Choice
Management	McKendall et al	1999	Motive, Opportunity, Control

Until the early 1980s, research into illegal corporate behaviour occurred across a wide range of disciplines and few researchers sought to integrate their work with theory and empirical findings from outside their own field. Szwajkowski (1985) attempted to overcome these problems by combining the findings from different disciplines and applying them to the broader topic area of illegal corporate behaviour, revealing considerable convergence. Szwajkowski found that three distinct, but often interacting, elements appeared to form the building blocks of corporate crime theory: environment, relationship structure, and inner-directed choice processes (Szwajkowski, 1985).

The concept of the environment is based largely on simple cost-benefit analysis. That means illegality will occur when the benefits of such behaviour outweigh the costs, as

determined by the probability and consequences of detection. Therefore, it is likely that illegality will tend to occur under conditions of economic pressure, resulting from poor performance by the firm or industry (Szwajkowski, 1985).

Relationship structure can occur at three levels: 1) within the organisation, 2) within the industry, and 3) within legal controls. Within the organisation, the existence of hierarchical levels and departmental boundaries hamper the detection of illegal behaviour. At the industry level, highly concentrated industries with limited competition allow for greater collusion between members. Finally, a lack of legal controls creates a climate, whereby illegal behaviour is neither detected nor punished due to ineffective regulatory agencies. While the environmental category is common across most research, other studies have separated structure into organisational and situational components (e.g. Baucus and Near, 1991).

With choice, the concept of intent is important and is based on the reasoning that “*evil deeds are done by evil people*” (Szwajkowski, 1985, p. 561). Choice is strongly linked to the concept of ‘moral development’ proposed by Hunt and Vitell (1986) in the marketing ethics literature. Choice represents the ‘bad apples’ approach described earlier, which suggests individuals’ characteristics impact on the decision to engage in unethical or illegal behaviour.

Szwajkowski’s (1985) theory of illegal corporate behaviour formed the basis for future research in this area. However, as discussed in the next section, at this point research in illegal corporate behaviour tended to shift away from the characteristics of

individuals or ‘bad apples’ approach, towards a ‘bad barrels’ approach, which placed the focus on the organisation and its external environment.

2.6.1. Organisation and the Environment versus the Individual

Frederick (1987, p. 93) noted that the key to understanding the moral behaviour within an organisation is “*not so much in direct observation of the decision-maker as in a firmer grasp of the decision-maker’s environment*”. While it is recognised that a few ‘bad apples’ exist and some people are unethical by nature, there is a tendency to suggest that firms themselves influence or even encourage unethical behaviour by their employees (Baucus and Beck-Dudley, 2005). As a result of a series of interviews with managers, Badaracco and Webb (1995, p. 10) found that “*a clear majority believed that organisational pressures – not character flaws – had led people in their organisations to behave unethically*”. More recent theories of firm illegality have tended to focus on organisational and environmental factors, rather than on the moral beliefs and demographic characteristics of individuals (e.g. Baucus and Near, 1991; Hill et al, 1992; Baucus, 1994; McKendall and Wagner, 1997). Earlier research failed to discover any meaningful personal characteristics that consistently distinguished offenders from non-offenders. Instead, it was speculated that societal norms and organisational characteristics influence illegal behaviour rather than individual personality traits (Finney and Lesieur, 1982; McKendall and Wagner, 1997).

Given that individual characteristics have not consistently predicted illegal behaviour and that other research has moved away from an individual approach, models that focus on the organisation and its environment may be better at predicting and

understanding illegal or unethical behaviour. Finney and Lesieur (1982) were strong proponents of the idea that illegal corporate behaviour could not be properly understood without using the organisation as the unit of analysis.

Organisational theory can provide some insight into the illegal behaviour of firms. Size, structure, and culture can all lead to conditions that encourage illegal behaviour. Economic pressure has generally been proposed as the main organisational driver behind illegal behaviour (Finney and Lesieur, 1982; Baucus and Near, 1991). Organisations are strongly 'goal oriented'; and, where barriers impeding the attainment of these goals exist, strains are created. Attempts to overcome these strains can lead to illegal action. The value organisations place on profit maximisation has long been promoted in economic theory. This theory suggests that one of an organisation's primary goals (if not the primary goal) is to maximise profit. Therefore, poor profitability is usually the most commonly proposed factor behind organisational transgressions (Finney and Lesieur, 1982; Wood and Callaghan, 2003). However, as Clinard and Yeager (1980) noted, motivations for corporate crime often involve reasons other than profitability. Firms will usually have multiple goals, which can be pursued at different times, depending upon current social and economic conditions. For example, the firm may strive for a greater market-share in order to improve its competitive position within the industry.

Another goal that a firm may have is growth. However as firms grow, decision-making is increasingly delegated and dispersed (Clinard and Yeager, 1980). Additionally, the structure of firms becomes more complex. These complexities create problems of control, coordination, and communication, which may result in pressure

to commit illegal behaviour. Conversely, as firms get larger, their visibility increases. Increased visibility can result in the firm receiving greater scrutiny from regulatory agencies (Clinard and Yeager, 1980; Finney and Lesieur, 1982). As a result, most models of illegal corporate behaviour hypothesise that firm size is a major determinant such behaviour.

In addition to firm size, a firm's organisational environment has been proposed as a determinant of illegal corporate behaviour. Organisational environment can be defined as the "*shared perceptions or prevailing organisational norms for conducting workplace activity*" (Cohen, 1995, p. 387). Building on the Szwajkowski (1985) model, Hill et al (1992) proposed that researchers have tended to follow a 'learning theory' approach, which states that the behaviour of firms is strongly influenced by the 'prevailing norms' within the organisation or industry. If the norms within an organisation stress the need for legal behaviour, then compliance with the law is likely to be high. Alternatively, if there is a culture that promotes the need for strong financial performance at any cost, then pressure for illegality increases.

The ethical climate of an organisation is a subset of the organisational environment. More specifically, ethical climate can be defined as "*shared perceptions or prevailing organisational norms for addressing issues with an ethical component*" (Cohen, 1995, p. 387). Early work by Kohlberg (1984, cited in Cohen, 1995) in a social setting provided an important basis for research in this area. Experiments were conducted in schools and prisons whereby it was found that changing organisational processes, such as introducing policies and procedures, improved moral judgement and reduced instances of cheating and stealing. Researchers adopting this perspective have

identified a number of antecedent factors that influence organisational norms, in particular, the use of compliance codes and management's commitment to legal behaviour.

An ethical climate can also exist at the industry level. Firms within the same industry generally face the same limitations, constraints, and sources of uncertainty (Clinard and Yeager, 1980). As a result, members of that industry may develop similar attitudes and ideas. While firms are keen to increase their profitability and market-share at the expense of other members, there is still the tendency to think in broader terms of the success of the industry rather than that of individual firms. Therefore, certain industries can develop a culture of illegal behaviour, as illegal practices become diffused throughout the industry. It has been proposed that this culture has a major impact on the decision to transgress the law (Clinard and Yeager, 1980). The level of competition within an industry is another commonly proposed determinant of illegal corporate behaviour (Clinard and Yeager, 1980; Baucus and Near, 1991; Baucus, 1994). In situations where there is considerable interaction between firms, increased competitive uncertainty develops, which may then lead firms to transgress the law. As previously discussed, environmental and organisational factors have usurped individual characteristics as the basis of the more recent models of antecedents of illegal corporate behaviour. The next section outlines these updated models of illegal corporate behaviour and describes the results of empirical testing of these models.

2.6.2. Updated Theories of Illegal Corporate Behaviour and Empirical Testing

For a long time, there was a paucity of empirical research on the antecedents of illegal corporate behaviour. Empirical research tended to focus on only a small number of factors rather than the entire range of organisational and environmental variables. While Szwajkowski (1985) had developed a comprehensive model of the factors that influenced illegal corporate behaviour, integrating the findings from different disciplines, his proposed factors were not empirically tested. These problems have been somewhat rectified in recent times, with a range of work empirically testing a wide variety of potential antecedents of illegal corporate behaviour. However, these studies have not always provided a consistent picture (Hill et al, 1992; McKendall et al, 2002).

The work of Baucus and Near (1991) represented a major step toward the development and testing of a comprehensive model of illegal corporate behaviour that integrated the theoretical contributions from a range of disciplines. Their proposed antecedent conditions were empirically tested using data from Fortune 500 firms in the United States. The focus was not on questionable or unethical behaviour, but on behaviours that managers knew or should have known to be illegal. Baucus and Near (1991) also ignored the role of an individual's personality characteristics in favour of conditions pertaining to the firm and its environment. This research was also unique in that it used historical data to look at transgressions over time. In their model, the authors developed three antecedent classifications, environmental, internal, and situational, which were largely based on the factors proposed by Finney and Lesieur (1982). These are described in more detail below:

a) Environmental

The measured variables Baucus and Near (1991) associated with the firm environment were scarcity, dynamism, and heterogeneity. They proposed that scarcity of resources increases uncertainty within the firm and that illegal behaviour may occur to overcome this uncertainty. They also proposed that firms operating in turbulent, dynamic, and rapidly changing environments are more likely to engage in illegal behaviour to overcome the difficulties associated with such environments. Finally, they proposed that firms operating in heterogeneous environments with high uncertainty and competitiveness are more likely to engage in illegal behaviour to reduce uncertainty and competition. This is because it is easier to deal effectively with a stable environment, where there is greater certainty (Baucus and Near, 1991).

b) Internal (Organisational)

Internal antecedents represent characteristics of individual firms. The internal antecedents proposed by Baucus and Near (1991) included firm performance, firm size, and organisational slack. When a firm is performing poorly, it may be pressured to find resources or cut costs in ways that might not be legal. As firms grow, decentralisation often occurs and this not only creates more units in which illegal behaviour can occur, but can lead to coordination and communication problems, resulting in greater uncertainty and potential illegal behaviour (Baucus and Near, 1991).

c) Situational

The situational antecedents proposed included prior violations, industry-type, and type of violation. With prior violations, Baucus and Near (1991) proposed that if a firm develops a history of illegal behaviour, then it may develop a culture of illegal behaviour that results in further violations. Industry-type was seen as an important factor because illegal behaviour is believed to be more prevalent in certain industries, due to either less focused or less strict legal enforcement. Certain industries also develop 'behavioural norms' that are shared by members. It was also proposed that certain types of legislation would be breached more than others.

The results of the Baucus and Near's (1991) study are summarised in Figure 2.3:

Figure 2.3: Modified Model of the Illegal Corporate Behaviour Process

(Source: Baucus and Near, 1991)

Figure 2.3 demonstrates that of the environmental variables, Baucus and Near (1991) found that illegal behaviour is likely when resources are scarce, but even more likely when resources are very plentiful, providing mixed support for their hypothesis. Dynamism was found to have an impact on illegal behaviour, as firms that operate in highly dynamic and rapidly changing environments were found to be 51% more likely to engage in illegal behaviour than those that operate in less turbulent environments. Of the internal variables tested, a firm's performance was found to have no impact on illegal behaviour. In terms of firm size, it was found that large firms are more likely to engage in illegal behaviour than small ones. Lastly, with regards to the situational variables, having three or more prior violations was found to be a predictor of corporate illegality, as was operating in certain industry sectors, such as food, petroleum, and automobiles (Baucus and Near, 1991).

Baucus and Near's (1991) research had a number of important advantages over other research in this area. Firstly, it only focussed on illegal behaviour, rather than dealing with the uncertainty surrounding unethical behaviour. Secondly, it was comprehensive, incorporating a range of potential variables that might impact on illegal corporate behaviour. These were limited to factors from the firm itself and its environment, not individual characteristics. Thirdly, the fact that it looked at transgressions over a period of time and used existing data sources meant that accurate results could be obtained, since they were not relying on the recollection or perceptions of individuals. The only problem with this approach is that it does not predict how the firm might behave in the future, i.e. determine what are the possible future implications of detection of these previous transgressions? However, while not a dynamic model as such, it at least recognised the potential impact of previous

transgressions, although it did not consider changes to firm behaviour after these earlier transgressions were detected by regulatory agencies.

The results also indicated (which the authors recognised) that there may be flaws in the theory underpinning the model. The findings suggested that the predominant view that pressure leads to illegality is only partially correct, and that there are also other factors involved. This led Baucus (1994) to propose an improved model of illegal corporate behaviour, combining the results of the Baucus and Near (1991) research with additional theory. Significantly, this model introduced the concept of unintentional illegality, a concept that has never been empirically tested in other corporate illegality research. While intentional behaviour may represent the majority of transgressions (Baucus, 1994), the failure to acknowledge unintentional transgressions is a weakness of literature in this area. Baucus (1994) proposed three main explanations of corporate illegality. These were: a) pressure, b) opportunity, and c) predisposition. Although the model in its original form was never empirically tested, it formed the basis of McKendall and Wagner's (1997) model of motive, opportunity, and choice, and subsequent McKendall et al's (2002) model of motive, opportunity, and control. These are described in the next section.

2.7. Motive, Opportunity, and Control

McKendall and Wagner (1997) noted that, despite the increase in empirical research and the development of a few conceptual frameworks since the mid 1980s,

considerably more research into the area of illegal corporate behaviour was required before a well-articulated body of research could be established.

McKendall and Wagner (1997) summarised the previously hypothesised constructs and processes as follows:

“Corporations operate in an environment of goal directedness, competition, and performance pressures. Factors internal and external to each organisation combine to create a tension or motive to engage in illegal activities as a way of achieving organisational objectives and ensuring organisational survival. In the presence of motivation, additional factors, again both internal and external, operate to create the opportunity to engage in illegal activities. Whether motive and opportunity will actually influence intentional illegal behaviour depends on choice (control), which is shaped by the presence of effective controls that function to prevent corporate illegality” (McKendall and Wagner, 1997, p.625).

Table 2.4 summarises the findings of previous research into illegal corporate behaviour from a motive, opportunity, and control perspective:

Table 2.4: Chronology of Major Research into Illegal Corporate Behaviour

Study	Category	Hypothesis
Staw and Sz wajkowski (1975)	Motive	Industry profit (-), Firm profit (-), Firm profit per industry (0)
Asch and Seneca (1976)	Motive	Firm profit (-), Firm size (+), Industry concentration (+ and -)
Clinard and Yeager (1980)	Motive	Firm profit (-), Industry profit (-), Firm growth rate (0), Firm labour intensity (+)
	Opportunity	Market power (-), Firm size (0), Diversification (0),
Simpson (1986)	Motive	Firm profit (0), Industry profit (-), Stock price (+)
Cochran and Nigh (1987)	Motive	Firm profit (-), Industry profit (0), Firm liquidity (0)
	Opportunity	Firm size (+), Firm diversification (0), Firm growth (+)
Matthews (1987)	Control	Ethical codes (0)
Dalton and Kesner (1988)	Opportunity	Firm size (+)
Baucus and Near (1991)	Motive	Firm profit (0), Firm slack (0)
	Opportunity	Heterogeneous environment (0), Firm size (+), Dynamic environment (+), Industry (+)
	Control	Prior violations (+)
Hill et al (1992)	Motive	Firm profit (0)
	Opportunity	Firm size (0/+), Decentralisation (0), Diversification (0)
	Control	Evaluation criteria (+), Incentive systems (0)
McKendall and Wagner (1997)	Motive	Industry profit (0), Firm profit (0)
	Opportunity	Industry concentration (0), Firm size (0), Complexity (0), Decentralisation (0), Industry (+)
	Control	Ethical climate (0)
McKendall et al (1999)	Motive	Industry profitability (+), Firm profitability (+)
	Opportunity	Size (+), Corporate board structure (0)
McKendall et al (2002)	Motive	Profits (+)
	Opportunity	Size (0), Industry (0)
	Control	Codes of ethics (0)

(Source: McKendall and Wagner, 1997, p.630)

These findings are described in more detail below.

2.7.1. Motive

Motive represents the reason or purpose for illegal behaviour, and is defined as the factors that incite organisations to commit illegal acts (McKendall et al, 2002). The motive most hypothesised by the literature to lead to illegal firm behaviour is

performance pressure. Lower profits create pressure to acquire resources and cut costs by illegal means (McKendall et al, 2002). It has been suggested that this is due to expectations in society that emphasise profit as the primary goal of business. According to Vaughn (1983), in order for a firm to be respected in society it must be profitable. Such expectations create a competitive atmosphere within the firm, as individual units strive to outperform each other, providing further motivation for illegal behaviour (McKendall et al, 1999). At the same time, intense competition from within an industry motivates firms to engage in illegal behaviour as a means of gaining a competitive advantage. An environment characterised by high levels of competition creates pressure for illegal behaviour by restricting the legitimate means for acquiring resources or attaining desired levels of performance (Vaughn, 1983).

2.7.2. Opportunity

Opportunity is defined as *the “favourable combination of circumstances that make a particular course of action possible”* (McKendall et al, 1999, p. 203). Conditions of opportunity may exist either internally or externally. Opportunity for illegal conduct occurs when conditions allow the firm to transgress the law with relative ease and be confident that detection can be avoided. Therefore, research looking at conditions of opportunity should focus on factors that provide sufficient ease, anonymity, or rewards for corporate illegality (McKendall and Wagner, 1997). Firm size has been the most commonly studied opportunity variable.

Opportunity can also be linked to learning theory. According to learning theory, *“...the approach of managers to corporate wrongdoing is strongly influenced by the*

prevailing norms within their company or industry” (Hill et al, 1992, p. 1056).

Conditions of opportunity exist where organisational or industry norms stress the need for high levels of performance, but not the need for these to be achieved in an ethical or legal manner. Therefore, given the existence of motive, the opportunity exists if illegal behaviour is either condoned or expected. As a result, these organisational norms create an environment that is conducive to illegality (Hill et al, 1992). The same applies at the industry level. By operating in an industry environment where illegal behaviour is prevalent and encouraged, illegal behaviour is more likely to occur (Baucus and Near, 1991).

2.7.3. Control

If motive and opportunity both exist, then the choice to engage in illegal behaviour ultimately depends on the existence or absence of effective mechanisms of control. Control mechanisms can “*establish expectations, raise the likelihood of detection, reward desired behaviour, and/or make punishment for transgressions more severe*” (McKendall, 1999, p. 204). Issues of control form a part of the moral intensity component of Jones’ (1991) model. Two types of control mechanisms have been proposed in the literature. These are internal and external controls.

a) Internal Controls

A firm’s ‘ethical climate’ can be described as, “*the prevailing perceptions of typical organisational practises and procedures that have an ethical content*” (Victor and Cullen, 1988, p. 101). There has been widespread agreement that the establishment of

'codes' is an effective means of developing a positive ethical or legal environment and, as such, creating internal control mechanisms. Such codes should spell out the ethical and legal expectations of the firm as well as providing a means of detection and punishment (McKendall et al, 2002). In Australia, for example, the Australian Competition and Consumer Commission (ACCC) strongly promote the use of such programmes as a means of developing a culture of compliance within a firm. A compliance programme is one tailored to the needs of the individual firm that explains to employees the procedures required to minimise the chances of transgression. Such programmes usually consist of employee education, checklists, systems for handling complaints, and means of reviewing such systems to ensure they remain relevant, comprehensive, and cost effective (Wells, 1995; Commerce Commission, 1999). Researchers have suggested that ethical and legal issues should be built into the procedures for selection and performance evaluation of employees (McKendall et al, 2002), although this seldom occurs (Alam, 1993). In a comprehensive study of the use of codes of compliance, Weaver et al (1999a) found that 98% of United States firms in the Fortune 1000 used some kind of formal document to address compliance issues, while 78% did so through a separate code of ethics/compliance document.

Codes of ethics/compliance programmes in Australia are broadly similar to those in North America in terms of how they are constructed and content, although they do have some elements that differ. For example, Australian firms are less reliant upon internal and external watchdogs and their own legal representatives. This may be because there is less of a litigation culture in Australia (Wood, 2000). In Australia, it has been found that over 50% of firms communicate their codes to employees, offer

induction programmes, judge employees on their ethical conduct, and have sanctions for breaches of the code (Wood and Callaghan, 2003).

Previous research has suggested that it is not enough to simply have codes of compliance; the codes must actually impact on firm behaviour, otherwise they simply act as a public relations exercise (Soutar et al, 1994; Wood and Callaghan, 2003). If the codes are largely ignored in day-to-day business, then they will not influence firm behaviour. Of most importance is the extent to which codes influence decision-making, not simply whether the code exists (Kohut and Corriher, 1994; Wood and Callaghan, 2003). A number of studies have found the commitment of top managers to legal issues a crucial means of ensuring the effectiveness of ethical codes/compliance programmes in the United States (Kohut and Corriher, 1994; Lee and Yoshihara, 1997), New Zealand (Alam, 1993), and Australia (Soutar et al, 1994; Wood, 2000). Managers must act as role models and the need for ethical and legal behaviour should be continuously reinforced via policy statements, speeches, and other references. The key message is that top management needs to communicate ethical and moral issues to all employees constantly and consistently (Soutar et al, 1994; Wood and Callaghan, 2003).

Additionally, internal agents such as lawyers can also act as control mechanisms, whether they are employed in-house or consulted externally. If their advice is ignored, or if they are bypassed altogether, then the likelihood of transgression increases. Conversely, their role is not always positive, as firms may be able to utilise their specialist knowledge to facilitate transgressions and help avoid detection (Finney and Lesieur, 1982).

b) External Controls and Deterrence

Issues of external control are based strongly on deterrence theory. Deterrence is the *“process by which a society coerces individuals into conformity through legal sanctions”* (Cole, 1989, p.108). Deterrence examines the relationship between sanctions and the likelihood of behaving in a legal manner. Under deterrence theory, *“the greater the certainty and severity of punishment for a type of crime, the more individuals are deterred from that crime”* (Cole, 1989, p. 108). That is, the chance of a transgression of the law occurring is lower when the probability of detection is higher and the likely punishment resulting from that crime is greater.

Kriesberg's (1976) rational actor model suggested a number of implications for external controls. This model suggested that regulatory agencies should look to influence firms' behaviour by manipulating their corporate values and options. Kriesberg (1976) recognised that trying to influence a firm's values is likely to be extremely difficult, if not impossible. These values are most likely ingrained in the corporate structure and management. However, it is believed that corporate options can be manipulated by having regulatory agencies criminalise and punish the decision to use certain options. Regulatory agencies can look to make the consequences of a firm engaging in an illegal option more severe i.e. increase the size of potential sanctions, or increase the probability that an illegal option will be detected.

The concept of risk plays an important part in deterrence theory. Risk is *“a characteristic of decisions that is defined here as the extent to which there is uncertainty about whether potentially significant and/or disappointing outcomes of*

decisions will be realised” (Sitkin and Pablo, 1992, p. 10). Risk is most often associated with outcome uncertainty. Variability in potential outcomes is considered undesirable unless expected returns are high. Where outcomes cannot be controlled and are left to chance, the risk is far greater than in situations where the decision-maker, at the very least, has some influence over potential outcomes (Sitkin and Pablo, 1992). When engaging in illegal behaviour, there is always a risk that the transgressor will get caught and punished. While this outcome can be controlled by the firm (e.g. attempts made to avoid detection), there is always the chance that the regulatory agencies will detect the transgression.

A key determinant of firm behaviour is how it perceives risk. Risk perceptions can be defined as “*a decision-maker’s assessment of the risk inherent in a situation*” (Sitkin and Pablo, 1992, p. 11). The literature has related risk perceptions to how a decision-maker labels a situation, estimates the extent to which the risk is controllable, and feels confident of those estimates. In terms of marketing law, risk perception is often closely linked to cost-benefit analysis. Managers weigh up the likely benefits (i.e. profits) of the illegal action against the potential costs (usually fines and negative publicity) (Szwajkowski, 1985). The impact of the costs will usually depend on the firm’s perception of its chances of detection and punishment by regulatory agencies. Therefore, if the regulatory environment becomes more uncertain, the attractiveness of illegal behaviour can be diminished. Such uncertainty can be created through higher penalties or increased surveillance and certainty of detection, which increases the risk involved with an illegal action (Ghosh and Crain, 1995). A number of studies have found a link between risk and unethical or illegal behaviour (Laczniak and Inderrieden, 1987; Fritzsche, 1988; Dabholkar and Kellaris, 1992; Cherry and

Fraedrich, 2002). External controls, therefore, should include vigilant regulatory agencies and substantial penalties for non-compliance (McKendall et al, 2002).

c) Risk of Detection

It has traditionally been difficult for regulators and researchers to understand why firms take the risk that a transgression will not be detected. The simple answer to this problem is to make it more likely that a transgression will be detected. It has been suggested that increasing the risk of detection is much more effective than increasing the severity of sanctions (Cole, 1989). As an example, police found that parking empty police cars in areas where speeding was a problem and the use of neighbourhood watch signs to be effective ways of reducing crime, since they give the perception that the likelihood of detection is higher. Therefore, increased investigative behaviour by regulatory agencies (or the threat of) is seen as an important external control over illegal corporate behaviour (Gellerman, 1986).

d) Penalties

There is evidence from the United States that risk perception is generally quite low. This is because transgressors are not “*subjected to the full force of the law*” (Clinard and Yeager, 1980, p. 123). In the United States, Clinard and Yeager (1980) found that 43% of transgressors received warnings, with only 23% receiving fines. Of the fines and other penalties, most were relatively minor. For seriously breaching environmental laws in 1972, Chevron was fined one million dollars (a relatively high penalty), which based on their financial records at the time, represented .03 percent of

Chevron's gross income. As Clinard and Yeager (1980) pointed out, this was the equivalent of a \$10 parking ticket for someone earning \$25,000 per annum. Therefore, to many firms, monetary penalties are simply a cost of doing business, with firms often gaining considerably more from the transgression financially than they might lose in fines. Even if the chances of getting caught are perceived to be reasonably high, the firm is unlikely to be overly concerned if the punitive consequences are minor (Clinard and Yeager, 1980).

Some research has focused on how to develop an 'optimal' penalty. If a penalty is too low, levels of corporate crime might increase, whereas, if the penalty is too high, firms may be less likely to engage in legitimate actions for fear of punishment or may develop costly compliance procedures that are not required (Cohen, 1996). The Kriesberg (1976) rational actor model suggested that penalties should be directed at the organisation rather than individuals within it. In addition, the penalty should be based on the value that has led to the behaviour. If, for example, the transgression was in the interests of profit maximisation, then the penalty should reflect the company's profits or relate to the profits gained from the transgression. This way, judges could have a range of punitive options, tailored to the circumstances of the particular transgressor.

e) Penalty versus Income

Strachan et al (1983) and Jarrel and Peltzman (1985) considered transgression to be simply a function of the costs (penalties) of a transgression being punished, while Cole (1989) and Cohen (1996) considered it to be a function of risk and the

probability of detection. Bromiley and Marcus (1989) believed that another issue to consider is the income a firm can gain from engaging in illegal behaviour. Belief within a firm that an illegal act will enhance the company's situation or status has a tendency to lead to transgressions (Bromiley and Marcus, 1989). This can be related to the concept of value, suggested by Kriesberg (1976), where firms make a conscious decision to transgress the law to enhance value, which tends to be profitability.

2.7.4. Summary

The work of McKendall and Wagner (1997), McKendall et al (1999) and McKendall et al (2002) and their theory of motive, opportunity, and control provided an important comprehensive framework of illegal corporate behaviour. It is strengthened, as Table 2.4 illustrates, by having been developed from a significant portion of research in the field. Unlike Baucus and Near (1991), whose research was conducted over time with secondary data, McKendall and her colleagues (1997; 1999; 2002) used cross-sectional surveys. Such an approach is necessary when historical data is not available, or if one is interested in managerial perceptions. However, a cross-sectional survey opens the research to issues of time-ordering. Time-ordering occurs when conditions in the firm or its environment change between the time a transgression occurs and the survey is conducted. McKendall and Wagner (1997) recognised the potential for this to occur, so also asked respondents to note the changes in conditions over the course of a specific time period. As no differences were found, it was concluded that the study did not suffer from time-ordering effects. However, this does not take into account situations where a respondent was not at the firm at the earlier time, cannot remember, or does not know what changes have

occurred. It is, therefore, highly tenuous to claim that their results were not affected by time-ordering. There is a need for better measures of the time-ordering phenomenon.

In addition to time-ordering concerns, another limitation of research into illegal corporate behaviour is that despite the suggested superiority of firm level factors (e.g. profitability, size, and industry), Based on a review of empirical findings, as Table 2.5 illustrates, there is still no fully consistent picture of what influences transgressions of the law. Industry concentration and profit have proved to be the predictors that most often impact upon illegal behaviour, although in almost 30% of cases no relationship was found to exist.

Table 2.5: Summary of the Empirical findings of Research into the Antecedents of Illegal Corporate Behaviour

Antecedent	Number of Studies	Percent Significant	Percent Not Significant
Industry concentration	7	71%	29%
Industry profit	7	71%	29%
Firm profit	10	60%	40%
Firm size	9	56%	44%
Diversification	3	33%	67%
Codes of ethics	4	25%	75%
Industry	3	66%	34%
Decentralisation	2	0%	100%

It is, therefore, important look beyond current models described in the literature. To achieve this, literature on the role of unintentional illegality (ethical and legal knowledge) and the consequences of a transgression being detected are introduced in the next sections.

2.8. Unintentional Illegality and Knowledge of the Law

The conditions of motive, opportunity, and control described in the previous section only represent intentional illegal behaviour: that is, situations where firms decide to engage in illegal behaviour to overcome a particular problem. This approach ignores the role of illegal behaviour that occurs unintentionally. Researchers have tended to combine intentional and unintentional illegality. Baucus (1994) was the first to properly distinguish between the two. Most corporate crime is considered to be intentional. That is, the transgressor knows that the act is illegal. However, many acts occur by omission, where the transgressor fails to recognise that an act might be in breach of the law and have serious consequences. In such circumstances, transgression does not occur as the result of a rational decision-making process, but rather as an unintended outcome of actions and decisions made by the firm. A basic example of an unintentional transgression would be members of a group of firms within one industry getting together over dinner at a conference and discussing pricing strategies. While this conversation might be considered harmless, regulatory authorities might see it as an example of price fixing: an action that carries quite severe penalties (Baucus, 1994). Intentional illegality would have occurred in this situation if the members of the industry, came together with the explicit intention of fixing prices to limit competition and raise profits.

Unintentional illegality can be linked to the concept of legal knowledge. In many cases, unintentional transgression occurs simply because the firm had no knowledge the act was in violation of the law (Baucus, 1994). The role of legal knowledge in legal decision-making has received relatively little attention in the literature. It is in

the interests of the businessperson to have an understanding of the legal environment in which he or she operates (Bowal and Wanke, 1998). Managers with poor knowledge of the law expose themselves to potential prosecution and its associated ramifications. While it is unreasonable to expect that managers will have an extensive knowledge of all the law that applies to them, it is important they have a basic understanding of the key legislation. This is especially important for smaller firms, which may not be able to afford to regularly consult lawyers (Peterson, 2001a). Knowledge of ethical and legal situations will now be considered separately.

2.8.1. Ethical Knowledge

Research into ethical knowledge has tended to focus on the ethical perceptions of different groups of people, in particular students, but also managers. Such research has sought to determine the extent to which respondents perceive a certain situation to be ethically suspect and how these perceptions may differ between different types of respondents. The use of student samples in ethical knowledge research is a weakness of research in this area. Research into ethical knowledge has been conducted in a range of contexts. Dubinsky et al (1992) simply researched the ethical perceptions of sales personnel. Respondents were provided with 12 ethically 'questionable' behaviours. Results demonstrated that respondents were generally not aware of any problems with these behaviours, demonstrating knowledge of ethical issues to be poor. Other research has looked at comparisons between individuals or groups. There has been strong support for the proposition that individuals perceive their knowledge of ethical issues to be greater than others (Tyson, 1992; Morgan, 1993). Schlegelmilch and Robertson (1995) found cultural differences, in that managers from

the United States recognised more ethical issues than managers from the United Kingdom. Lastly, Wimalasiri et al (1996) found that ethical knowledge was not linked to gender and ethnicity.

2.8.2. Legal Knowledge

In terms of knowledge of the law, much of the earlier research was conducted in the social sciences. Bowal and Wanke (1998) were among the first to look at the knowledge of business law on the part of non-legal experts. Respondents were provided with 16 scenarios across a wide range of legal business issues, where they had to provide simple true/false answers. The average score was 47% correctly answered, which showed legal knowledge to be particularly poor.

The best example of research into knowledge of business law is sited in the management literature. Peterson (1997; 2001a; 2001b; 2003) looked at the capability of brand managers, small retailers, service companies, middle managers in health maintenance organisations, and hotel/motel managers in discriminating between selected legal and illegal actions. The purpose was to determine familiarity with a number of influential laws. Respondents were provided with a list of scenarios and were required to rate these on a scale, anchored by the statements ‘obviously legal’ and ‘obviously illegal’. In most cases, respondents who failed to correctly identify the legal status of a scenario rated illegal behaviour as legal. This showed a bias towards lacking in-depth knowledge of the legislation. In each case, respondents were, on average, able to identify the legal status of over 50% of the scenarios, however, there were a number of areas where knowledge was found to be lacking. The main areas of

concern related to pricing and anti-competitive violations, such as predatory pricing and market-sharing. All six cases in which the majority of brand managers were unable to identify the legal status of the scenario related to anti-competitive conduct, with five specifically relating to the pricing function. This is of considerable concern given that pricing is usually an integral part of the marketing strategy used by brand managers and because the authorities take such violations extremely seriously. Penalties for non-compliance with anti-competitive legislation are particularly severe. The next section will focus on the determinants of ethical and legal knowledge.

2.8.3. Determinants of Legal Knowledge

A small number of studies have looked at the characteristics or factors that influence ethical or legal knowledge. Most of this research is described in the ethics literature, which has analysed the influences on whether an action is considered to be ethical or not. Little research exists that looks specifically at knowledge of the law.

a) Ethical Knowledge

Initially, individuals must recognise an ethical issue before they can consider whether it is ethical or not. Individuals vary in their sensitivity to ethical issues and the personal, situational, and cultural factors that are likely to influence their sensitivity (Barnett and Valentine, 2004): *“Ethical decision-making is a process that begins with an individuals recognition that a given action or situation has ethical content and continues as individuals evaluate the action’s ethicality, form behavioural intentions, and engage in actual behaviour”* (Barnett and Valentine, 2004, p. 338).

Within the ethics literature, the impact of ethical codes, individual ideologies, demographic characteristics, and organisational characteristics on knowledge of ethical issues have all been investigated. As in the area of corporate illegality, the research findings could be best described as fragmented and mixed (Giacobbe and Segal, 2000). In a review of the literature, McClaren (2000) found gender had only a minimal influence on ethical perceptions, as did level of education, and age. In their study of the ethical perceptions of sales-people, Dubinsky et al (1992) looked at the influence of demographic characteristics (age, education, gender, and job tenure) on ethical knowledge. Only age was found to have an impact on the ethical perceptions of the respondents. Schlegelmilch and Robertson (1995) found that both industry sector and country of origin influenced the ethical perceptions of managers, suggesting that legal knowledge can vary across different countries and industries.

Some studies have looked at the role played by company culture, codes of compliance, and risk in terms of ethical knowledge. This is an area of particular importance since such programmes seek to reduce the likelihood of transgression by improving knowledge. Dubinsky et al (1992) found that sales personnel wanted a policy to help guide their decisions, yet many firms did not provide one. In organisations where codes of ethics are enforced, individuals perceive transgressions to be more severe than in companies without codes (Singhapakdi and Vitell, 1991). Risk has not only been found to impact on actual legal behaviour but has also been found to impact on whether managers perceive an action as being ethical or not. A study by Fritzsche and Becker (1983) found that ethical judgments are linked to the severity of the consequences. Laczniak and Inderrieden (1987), Dabholkar and

Kellaris (1992), and Cherry and Fraedrich (2002) all found risk to impact the perceptions managers had on the ethicality of various ethical situations.

b) Legal Knowledge

In terms of the factors that influence knowledge of the law, firm size is the only variable to have been studied. Peterson (1997) found that managers of larger hotels/motels had a greater knowledge of the law than managers in smaller hotels/motels. Peterson (2001a) also found that brand managers in larger firms had a greater knowledge of the law, as did managers employed by larger health maintenance organisations (Peterson, 2003). It was suggested that managers of larger firms are aware that they are likely to be more attractive targets of regulatory agencies that have limited enforcement funds. Therefore, such firms will take steps to understand their legal obligations to further avoid prosecution. Additionally, managers in smaller firms often have a broader range of responsibilities than those in larger firms who can specialise, making it more difficult to learn the relevant laws (Peterson, 1997). Whilst this indicates the aspects of the law that are understood by managers, and also suggests how knowledge differs between different groups of people, a major limitation of this research is that it has not attempted to link knowledge of the law to actual firm behaviour.

2.9. Time-Ordering and the Consequences of Transgressing the Law

As previously noted, cross-sectional research, such as that conducted by McKendall and Wagner (1997) and McKendall et al (2002), is subject to time-ordering bias. Antecedent characteristics are measured at the time a survey is conducted, generally after the transgression has occurred. This means there is a danger that conditions either internal or external to the firm may have changed since the transgression occurred. McKendall and Wagner (1997) found that any changes in structure, decision-making, and ethical climate occurring over the period captured by their survey had no significant effects on their results. However, the findings of Gazley et al (2005) indicated that temporal issues could be very important. Gazley et al (2005) found that the control antecedents (perceived risk of detection and use of a compliance programme) change as a result of a transgression having been detected. In other words, a firm's perception of the risk of having a transgression detected by regulatory agencies increases and a compliance programme is more likely to be introduced as a result of a previous transgression having been detected. These changes may then determine whether further transgressions will occur, given the ongoing existence of conditions of motive, opportunity, and control. Wells (1995), LeClair et al (1997) and McKendall et al (2002) all suggested that, in many circumstances, compliance programmes are only introduced after a transgression has occurred and not before. These findings suggest that the static models proposed in the literature do not adequately explain the dynamic processes involved.

Previous research has found that multiple transgressions occur. For example, Clinard and Yeager (1980) found that 42% of manufacturing firms had committed multiple

transgressions and that a small percentage of firms accounted for a highly disproportionate number of all transgressions. This may be partly due to the fact that, once a firm has transgressed, regulatory agencies will focus their attentions on that firm, increasing the chances that further transgressions will be detected. Alternatively, it could be a result of the culture of the organisation that encourages or allows continual illegal behaviour to occur. With the exception of Baucus and Near (1991), this issue has not yet been adequately addressed in the literature.

Finney and Lesieur (1982) noted that a likely reason for repeated transgressions is weak societal reaction. This may be due to ignorance by the public or under-staffing and under-funding of regulatory agencies. At the same time, however, organisations play an active role in attempting to ‘weaken or subvert’ external controls. Organisations aim to influence policy and regulatory agencies. More powerful organisations are better at influencing legislative processes and defending actions taken against them. Additionally, organisations can attempt to indirectly influence public knowledge through the media (Finney and Lesieur, 1982).

While there is a sound body of literature encompassing the antecedents of illegal corporate behaviour, little has been written on the consequences of a firm having been caught engaging in illegal marketing behaviour. Almost all the studies conducted after a transgression has been detected have focussed on financial consequences, such as effect on stock price (Wier, 1983) and financial performance (Bromiley and Marcus, 1989; Marcus and Goodman, 1991; Baucus and Baucus, 1997). In terms of stock price, Randall and Newman (1979, cited in Baucus and Baucus, 1997) found stock market performance dropped on average 2% following the announcement of penalties

for illegal mergers and acquisitions. Randall and Newman (1979, cited in Baucus and Baucus, 1997) also found a decline in stock prices immediately following prosecutions for violations of anti-competitive legislation. However, these were only short term effects. In terms of financial performance, Bromiley and Marcus (1989) found few negative consequences in the short term after the announcement of dubious behaviour. Interestingly, some firms even reported greater than usual growth. Weinberger and Romeo (1989) also investigated the consequences of illegal behaviour on financial performance and found that prosecution due to product defects led to a decrease in market-share and profits immediately after the incident. The most comprehensive study of the impact of illegal corporate behaviour on financial performance was conducted by Baucus and Baucus (1997). In an extension of the Baucus and Near (1991) research, the authors looked at the long-term financial consequences of the firms studied in the earlier research. They found that convicted firms experienced lower returns on assets, reduced sales growth, and lower income over the five years subsequent to a conviction compared to non-convicted firms.

None of this research, however, has linked these ‘consequences’ to subsequent firm behaviour, so it cannot be ascertained whether such outcomes have changed the likelihood of subsequent transgressions occurring. For example, does reduced profitability or a lower share-price reduce the likelihood of subsequent transgressions? Linking behavioural consequences to future behaviour would allow for the dynamic transgression process, as suggested by Finney and Lesieur (1982) to be better tested. The testing of the dynamic process requires the combination of approaches. The work of Baucus and Near (1991), Baucus and Baucus (1997), McKendall and Wagner (1997), and McKendall et al (2002) form the basis of understanding initial

transgressions and how behaviour changes subsequent to that transgression being detected and punished. In isolation, however, this work is not sufficient to understand the full transgression process. Business ethics research, which looks at potential future behaviour (e.g. Hunt and Vitell, 1986; Weber and Gillespie, 1998), can form the basis of looking at the effects of previous transgression detection on firm behaviour and subsequently the likelihood of future transgressions occurring, filling this gap.

2.10. Chapter Summary

This chapter has reviewed the literature on both unethical behaviour and illegal behaviour by firms. First, important theories of the determinants of unethical actions were reviewed, beginning with the decision process models developed by Ferrell and Gresham (1985) and Hunt and Vitell (1986), before moving onto the interactionist models proposed by Trevino (1986) and Jones (1991). Empirical testing of these models has produced mixed results, with demographic variables, moral beliefs, organisation culture, and organisation size all found to impact on ethical decision-making by some studies. Following the review of the ethics literature, the major theories of illegal corporate behaviour were reviewed. Szwajkowski's (1985) theory of organisational illegality was the first to integrate research across different disciplines, followed by Baucus and Near (1991) who were the first to empirically test an integrated comprehensive model of the factors that lead to firms transgressing the law. This led to a review of the more recent theory of transgressing business law, McKendall et al's (2002) model of motive, opportunity, and control. Firm performance, firm size, competition, industry characteristics, firm culture, and the use

of compliance programmes have all been found to influence illegal corporate behaviour, yet none of these variables has proved to be a constant predictor. The concept of unintentional illegality was then introduced. Unintentional illegality recognises that not all transgressions are the result of deliberate acts, and that in some instances occur due to poor legal knowledge. Previous research in this area has shown legal knowledge to be poor. Finally, the limited research on the consequences of a transgression having been detected was reviewed, which showed illegal behaviour can have a negative influence on later profitability but this research did not investigate changes in firm behaviour.

The models of illegal corporate behaviour reviewed in this chapter, in particular, the model of motive, opportunity and, control will form the basis of the conceptual model developed in Chapter 3. Both unintentional illegality and consequence of a transgression are also added to the model. Models of unethical behaviour were also used to inform the model.

Chapter 3: Theoretical Background and Model Development

3.1. Introduction

Having reviewed the literature in Chapter 2, this chapter describes the development of the conceptual model (see Figure 3.10). After a brief overview, the hypotheses relating to the factors that have caused a firm to transgress in the past are described. These are divided into conditions of motive, opportunity, and control. Secondly, hypotheses relating to the consequences of a previous transgression having been detected and punished by regulatory agencies are developed in terms of changes to firms' perceptions of risk and the use and comprehensiveness of compliance programmes. Thirdly, these consequences are linked to the factors that might influence firms to transgress the law in the future. The concept of legal knowledge is then introduced to the model before, finally, a description and overview of how the entire model works are provided.

3.2. Overview

It is apparent from the literature discussed in Chapter 2 that models of illegal corporate behaviour need to be comprehensive (Baucus and Near, 1991), yet there have been relatively few such models in this literature. This has created difficulties for researchers in identifying the factors that lead firms to transgress the law and specifying the antecedent conditions (Baucus and Near, 1991). Given recent research

that suggests that the characteristics of a decision-maker's environment are more influential than those of the individual decision-maker (Frederick, 1987; Baucus and Beck-Dudley, 2005), the proposed model follows a 'bad barrels' approach focussing on the effects factors from a decision-maker's firm and industry have on illegal marketing behaviour. Despite the apparent lack of consistent predictors, research investigating why firms transgress the law does, at least, provide an indication as to the conditions existing within a firm and its environment that can lead to transgressions of marketing law. Such work was used to develop an initial set of hypotheses, positing the factors that have caused firms to transgress the law in the past. In particular, the framework devised by McKendall and Wagner (1997) and expanded by McKendall et al (1999) and McKendall et al (2002) formed the foundations for this section of the model, whereby the factors that potentially lead to a transgression of the law were separated into conditions of motive, opportunity, and control.

Previous research into illegal corporate behaviour has tended to look at transgressions that have occurred in the past (i.e. Baucus and Near, 1991; McKendall and Wagner, 1997), while other research in the business ethics field has looked at potential future behaviour (Weber and Gillespie, 1998). Both approaches have been used within the illegal corporate behaviour and business ethics literature, but have not, as yet, been combined. The model developed and tested in this thesis research recognises that the antecedents of previous transgressions form only part of an overall dynamic transgression process, as noted by Finney and Lesieur (1982) and Baucus and Near (1991). This model thus goes beyond a static approach, in acknowledgement of the fact that multiple transgressions occur. This was achieved by investigating the

potential consequences to a firm of a transgression having been detected and punished by regulatory agencies. The motive, opportunity, and control framework was then used to determine how these consequences, in combination with other factors, impact on the likelihood that future transgressions will occur. This resulted in a dynamic model of marketing law transgressions, which in addition, extended previous research in the area by including knowledge of the law as a potential factor in transgressing the law.

3.3. Antecedents of Previous Illegal Corporate Behaviour

There is consensus in the literature that the three pre-conditions for illegal corporate behaviour are motive, opportunity, and absence of control (McKendall et al, 2002). Because this is the most recent theory underpinning the factors that cause firms to transgress the law, this framework formed the basis of the antecedent section of the conceptual model used in this research. It was assumed that these factors would apply as equally to marketing laws as they do to other commercial laws.

3.3.1. Motive

Motives are processes that incite action. They are the “*reasons that prompt individuals and groups in corporations to engage in illegal behaviour*” (McKendall et al, 1999, p. 203). The most commonly tested motive variable in the literature has been firm profitability. While profitability is the most commonly researched motive, it is recognised that other motives for illegal behaviour exist. For example, a firm may try

to attain a greater market-share, or be constrained by intense competition (Clinard and Yeager, 1980). McCaghy (1976) claimed profit pressure to be the single most compelling factor behind deviance by industry, as low profitability creates economic pressures that motivate firms to engage in illegal behaviour. Although Baucus and Near (1991), Hill et al (1992), and McKendall and Wagner (1997) found no relationship between firm performance and illegal corporate behaviour, a larger number of studies have demonstrated such a relationship does exist (Staw and Sz wajkowski, 1975; Clinard and Yeager, 1980; Cochran and Nigh, 1987; McKendall et al, 1999; McKendall et al, 2002). Given that recent models continue to hypothesise a relationship between performance and illegal corporate behaviour (McKendall et al, 1999), based on the stronger evidence in favour of such a relationship existing, it is hypothesised that:

H1a: Firms with lower profitability are more likely to have transgressed marketing law than firms with higher profitability.

H1b: Firms with a lower market-share are more likely to have transgressed marketing law than firms with a higher market-share.

Closely linked to firms' performance is competitive position. Intense competition creates pressure on firms to engage in illegal behaviour (McKendall et al, 1999). Kennedy and Lawton (1993) noted that, in the service sector, intensification of competition significantly increased the temptation to make ethical compromises. In environments where there are high levels of competition, increased pressure creates a need for illegal behaviour, because legitimate means of acquiring resources and

obtaining desired levels of performance may be less achievable (Vaughn, 1983). Conversely, Schneider and Johnson (1992) found that greater competition actually led to greater levels of ethical behaviour, suggesting that unethical firms tended to be weaker and thus get eliminated by market forces. Nevertheless, Baucus and Near (1991) and Hoffman et al (1991) found evidence relating questionable firm behaviour to competitive markets. Likewise, Badaracco and Webb (1995) found that many managers perceive intense competition to be the ‘starting point’ for unethical behaviour. This is because “*clients, customers, and competitors demanded even lower costs, higher quality and faster action*” (Badaracco and Webb, 1995, p. 11). These pressures then flow through the remainder of the organisation. Based on these findings it is hypothesised that:

H1c: Firms in more competitive industries are more likely to have transgressed marketing law than firms in less competitive industries.

The hypothesised relationships between motive and a previous transgression of marketing law are summarised in Figure 3.1:

Figure 3.1: Proposed Relationships between Motive and Previous Transgression of Marketing Law

3.3.2. Opportunity

On its own, motive is not always sufficient for illegality to occur, as opportunity must also be present: *“Opportunity makes an illegal behavioural option available to an organisation by generating conditions conducive to violating the law and impeding detection and/or significant punishment”* (McKendall et al, 2002, p. 368). The size of the firm is the most commonly researched opportunity variable. Larger firms may be less concerned with the consequences of getting caught since they are more likely to have the capacity to absorb the costs of legal fees and fines than smaller firms (McKendall et al, 2002). In addition, since larger firms have more employees and are more complex, the opportunities for illegality to occur as a result of communication and coordination breakdowns are higher (Baucus, 1994). Larger firms are also more visible to regulatory agencies, making them more vulnerable to detection (McKendall et al, 1999). The majority of previous research has demonstrated a relationship between firm size and illegal corporate behaviour (Cochran and Nigh, 1987; Dalton and Kesner, 1988; Baucus and Near, 1991; McKendall et al, 1999). Therefore, it is hypothesised that:

H2a: Larger firms are more likely to have transgressed marketing law than smaller firms.

Conditions of opportunity are closely linked to learning theory. Learning theory states that attitudes towards illegal corporate behaviour are based on the ‘prevailing norms’ within the company or industry (Szwajkowski, 1985). In certain industry sectors, there is less enforcement, therefore illegal behaviour is more prevalent. If the industry

culture (behavioural norms shared by firms in that industry) encourages illegal behaviour, then there is greater opportunity for illegal behaviour to occur (Baucus and Near, 1991). Clinard and Yeager (1980), Simpson (1986), and Baucus and Near (1991) found relationships between industry sector and illegal corporate behaviour. Therefore it is hypothesised that:

H2b: Firms operating within certain industry sectors are more likely to have transgressed marketing law than firms in other industry sectors.

Also related to learning theory, the extent to which it is believed that illegal behaviour occurs within an industry can also lead to illegal corporate behaviour. Certain industry cultures may condone illegal behaviour (Baucus and Near, 1991). The belief that 'other firms are doing it' can be seen as a justification for such behaviour. Soutar et al (1994) found that many managers feel that, if others are breaking the law, then the only way to compete is to behave in the same manner. If a firm sees their competitors attaining high levels of performance as a result of illegal behaviour, it may be much harder for them to follow an entirely legal course of action (Baucus and Near, 1991). Therefore it is hypothesised that:

H2c: The more that firms perceive that others in their industry are transgressing marketing law, the more likely that they are to have transgressed marketing law themselves.

The proposed relationships between the conditions of opportunity and previous transgression of marketing law are summarised in Figure 3.2:

Figure 3.2: Proposed Relationships between Opportunity and Previous Transgression of Marketing Law

3.3.3. Control

Finally, the decision to engage in illegal behaviour depends on the existence of, or lack of, effective controls. Drawing upon transaction cost economics, it is assumed that illegal corporate behaviour results from firms engaging in opportunistic behaviour in the absence of organisational controls to prevent it (Morris et al, 1995). Control systems aim to “*stabilise behaviour allowing stable expectations to be formed by each member of the group as to the behaviour of other members under specified conditions*” (Weaver et al, 1999b, p. 42).

Controls that exist internally within firms, such as compliance programmes and codes of behaviour, are designed to develop a culture of compliance. The literature shows considerable agreement regarding the value of such programmes in promoting compliance of the law as an important ‘operating philosophy’ (McKendall et al, 2002). However, there has been much less research on whether these recommended practices actually do have any effect on firms’ behaviour (McKendall et al, 2002). It is generally assumed that the existence of a compliance programme reduces the likelihood that a transgression will occur (Wells, 1995; McKendall and Wagner,

1997). However, as Gazley et al (2005) found, the existence and comprehensiveness of a compliance programme is subject to time ordering effects when conducting cross-sectional research. Gazley et al (2005) found that firms that had been previously caught transgressing marketing law were more likely to have a comprehensive compliance programme, in contrast to what might be expected from the literature. The authors speculated that this was because firms were introducing compliance programmes after they had been caught transgressing, either voluntarily, or as a result of enforcement action by regulatory agencies. Based on this, it is hypothesised that:

H3a: Firms that have a more comprehensive compliance programme are more likely to have been caught transgressing marketing law than firms that have a less comprehensive compliance programme.

Controls may also exist externally to the firm, and include the effectiveness of regulatory agencies. Deterrence research “*emphasises the process by which a society coerces individuals into conformity through legal sanctions*” (Cole, 1989, p. 108). Deterrence theory also posits that “*the greater the certainty and severity of punishment for a type of crime, the more individuals are deterred from that crime*” (Cole, 1989, p. 108). Previous research has shown that, as the perceived risk of detection increases, respondents are less likely to behave unethically (Laczniak and Inderrieden, 1987; Fritzsche, 1988; Dabholkar and Kellaris, 1992; Cherry and Fraedrich, 2002). However, similar to the use of a compliance programme, risk is also considered to be subject to time ordering effects when conducting cross-sectional research. Gazley et al (2005) found that firms previously caught transgressing marketing law were currently more likely to have higher perceptions of risk than

those that had not. Again it was speculated that this was because, after being caught transgressing, firms would naturally increase their perceptions of the likelihood that they would be caught again. Based on this, it is hypothesised that:

H3b: Firms that have higher perceptions of the risk that a transgression of marketing law will be detected by regulatory agencies are more likely to have previously been caught transgressing marketing law than firms with lower perceptions of risk.

The proposed relationships between control variables and previous transgression of marketing law are summarised in Figure 3.3:

Figure 3.3: Proposed Relationships between Control and Previous Transgression of Marketing Law

In summary (see Figure 3.4), it is proposed that the following variables influence the occurrence of previous marketing law transgressions: 1) Motive: profitability, market-share, and competition. 2) Opportunity: firm size, industry type, and perceptions of the incidence of transgressions by other firms in the industry. 3) Control: risk of detection and the use and comprehensiveness of a compliance programme. These variables combined represent the main factors found to have influenced previous illegal behaviour in the extant literature.

Figure 3.4: The Antecedents of Previous Transgression of Marketing Law

Hill et al (1992) noted that empirical work on the antecedents of illegal corporate behaviour had not provided a consistent picture of the hypothesised relationships. The authors suggested that this might be due to poor methodology, bad data, or inadequate measures. Alternatively, they suggested that errors might exist in the theory itself. In an attempt to overcome these problems, the next section expands the model by exploring the dynamic nature of the transgression process via the consequences of a transgression having been detected by regulatory agencies.

3.4. Consequences of Transgressing Marketing Law

McKendall and Wagner (1997) recognised the existence of temporal issues in cross-sectional studies of illegal corporate behaviour, specifically the danger that both the internal and external conditions of a firm can change in the period after a

transgression has occurred. Despite this, McKendall and Wagner (1997) found such issues had no effect on their results. Gazley et al (2005), however, found that two control antecedents (the perceived risk of detection and the existence and comprehensiveness of a compliance programme) changed after a transgression had been detected. They found that firms that had been caught transgressing marketing law had higher perceptions of risk than those that had not, and were more likely to have a more comprehensive compliance programme in place at the time of being surveyed. With risk, it is intuitive that the very fact a firm has been caught should increase perceptions that they might be caught again in the future. In terms of compliance, LeClair et al (1997) noted that many organisations only recognise the need for codes of compliance after a transgression has been detected. Likewise, McKendall et al (2002) found evidence that smaller firms that transgressed the law tended not to have compliance programmes in place prior to their transgression being detected. In addition, the various sanctions handed out by the Australian Competition and Consumer Commission (ACCC) and the courts in Australia (as in other countries) often require that a compliance programme be introduced. These findings suggest that the static models proposed in the literature do not adequately explain the processes involved. Therefore, as shown in Figure 3.5, it is hypothesised that:

H4a: Firms caught transgressing marketing law are more likely to develop a higher perception of the risk of detection by regulatory agencies than firms that have not been caught transgressing.

H4b: Firms caught transgressing marketing law are more likely to introduce a more comprehensive compliance programme than firms that have not been caught transgressing.

Figure 3.5: Consequences for a Firm Previously Caught Transgressing Marketing Law

Moreover, Weaver et al (1999b) determined that knowledge of the penalties (and associated risk of getting caught) specified in the United States Sentencing Commissions guidelines encouraged firms to implement more comprehensive compliance programmes than had previously been the case. Similarly, Gazley et al (2005) found a relationship between perceived risk of detection and the use of a compliance programme. This suggests that, once a firm is caught transgressing the law, their perception of the chances of getting caught increases, making illegal behaviour a less attractive option in the future, potentially leading to the introduction of a compliance programme (see Figure 3.6).

H5: The greater the perceived risk of being caught transgressing marketing law by regulatory agencies, the more comprehensive a firm's compliance programme will be.

Figure 3.6: Proposed Relationship between Perceived Risk of Detection and Compliance Programme

These new perceptions of risk and the introduction or development of a compliance programme should then influence the likelihood of further transgressions occurring. Having accounted for the factors that caused illegal behaviour to occur in the past and the possible consequences of these actions, the next phase of the dynamic model is to look at factors that might influence the likelihood of marketing law transgressions recurring in the future, together with the influence of experiences associated with the detection of previous transgressions. These issues are covered in the next section.

3.5. Future Behaviour

To this point, the model has focussed on identifying the factors that caused a firm to transgress in the past and the resulting changes in firm behaviour in terms of perceived risk of detection and the use of a compliance programme. As noted previously, models dealing with previous transgressions are likely to be adversely influenced by time-ordering effects. One way to overcome these issues, and fully

develop a dynamic model is to look at intent to engage in future behaviour. This technique has been widely used in business ethics research (Weber and Gillespie, 1998). Each of the conditions of motive, opportunity, and control hypothesised to influence a previous transgression were assumed in this research to apply equally to the potential of a future transgression occurring. In addition, this methodology allowed for additional deterrence variables to be introduced into the model. Therefore, as will be summarised in Figure 3.7, additional hypotheses can be proposed.

3.5.1. Motive

It is expected that conditions of motive (profitability, market-share, and competition) will impact on future behaviour, for the same reasons as outlined in the section on previous transgressions. They are summarised again below and are illustrated in Figure 3.7. A number of studies have demonstrated a negative relationship between firm performance and transgression (Staw and Szwajkowski, 1975; Clinard and Yeager, 1980; Cochran and Nigh, 1987; McKendall et al, 1999; McKendall et al, 2002). Therefore, it is hypothesised that:

H6a: Firms with lower profitability are more likely to consider transgressing marketing law in the future than firms with higher profitability.

H6b: Firms with a lower market-share are more likely to consider transgressing marketing law in the future than firms with a higher market-share.

Kennedy and Lawton (1993) and McKendall et al (1999) suggested that more intense competition creates more pressure on firms to engage in illegal behaviour. In addition, Baucus and Near (1991) and Hoffman et al (1991) found evidence that questionable firm behaviour is related to competitive markets. Therefore it is hypothesised that:

H6c: Firms in more competitive industries are more likely to consider transgressing marketing law in the future than firms in less competitive industries.

3.5.2. Opportunity

It is expected that conditions of opportunity (firm size, industry type, and perceptions of industry behaviour) will impact on future behaviour, for the same reasons as those outlined in the section on previous transgressions. In addition, the number of previous transgressions a firm has committed is added as an opportunity variable. These variables are outlined below and illustrated in Figure 3.7. Firm size has been the most commonly researched opportunity variable, with most previous research revealing a relationship between firm size and illegal corporate behaviour (e.g. Cochran and Nigh, 1987; Dalton and Kesner, 1988; Baucus and Near, 1991; McKendall et al, 1999). Based on these findings, it is hypothesised that:

H7a: Larger firms are more likely to consider transgressing marketing law in the future than smaller firms.

In certain industry sectors, illegal behaviour is more prevalent and enforcement less strict. Clinard and Yeager (1980), Simpson (1986), and Baucus and Near (1991) all

found a relationship between industry sector and illegal corporate behaviour. Therefore it is hypothesised that:

H7b: Firms operating within certain industry sectors are more likely to consider transgressing marketing law in the future than firms in other industry sectors.

Behaviour by other firms in an industry can also create opportunity for illegal behaviour. Soutar et al (1994) found that perceptions of the extent to which other industry members transgress the law impacts on the likelihood that a firm will transgress themselves. Based on these findings, it is hypothesised that:

H7c: The more firms perceive that others in their industry are transgressing marketing law, the more likely that they will consider future marketing law transgressions themselves.

Where a culture of illegal behaviour exists, a firm is likely to have engaged in a number of previous transgressions and, where there is a history of previous transgressions, it is likely that the firm will continue to transgress (Clinard and Yeager, 1980; Finney and Lesieur, 1982). Baucus and Near (1991) found that having committed three or more previous transgressions was a significant predictor of continued illegal behaviour. Therefore, it is hypothesised that:

H7d: The more previous transgressions a firm has had detected, the more likely the firm will consider future marketing law transgressions.

3.5.3. Control

While the investigation of the impact of conditions of control on the occurrence of a previous transgression is complicated by time-ordering effects, no such problem exists when investigating control's impact on future behaviour. Therefore, in terms of future behaviour, it is anticipated that control factors will have the effect of reducing the likelihood of transgressions occurring, as suggested by the general literature (McKendall et al, 1999; McKendall et al, 2002). In addition, investigating future behaviour allows for the role of deterrence to be expanded to include the potential rewards and sanctions that might result from transgressions of marketing law and their detection (see Figure 3.7).

a) Internal Control

The literature shows considerable agreement about the value of utilising compliance programmes to promote adherence to the law as an important 'operating philosophy'. However, there has been much less research on whether these recommended practices actually have any effect on firm behaviour (McKendall et al, 2002). Among studies that have looked at this relationship, results have been mixed. Matthews (1987, cited in McKendall and Wagner, 1997), found no relationship, whereas McKendall and Wagner (1997) found some interactions. Despite the uncertainty, a compliance programme is strongly advocated by regulatory agencies, such as the ACCC, as an important means of reducing the likelihood of further transgressions occurring. Thus, it is hypothesised that:

H8a: Firms that have more comprehensive compliance programmes are less likely to consider transgressing marketing law in the future than firms that have less comprehensive compliance programmes.

b) External Control

Drawing upon deterrence theory, it is posited that the certainty (likelihood of a transgression being detected) and severity (size of the potential consequences) of punishment will impact on the likelihood of a future transgression occurring (Szwajkowski, 1985; Cole, 1989). It is also posited that the potential rewards (gains from the illegal act) will have an impact. According to deterrence theory, it is also posited that individuals act in a rational manner based on free will. Deterrence occurs when, as the result of a sanction, either an individual (manager or firm) or the general population desists from transgressing in the future (Smith et al, 2007). As a result, in addition to the risk of detection, three new control variables, grounded in the theory of deterrence, are introduced: 1) potential fines, 2) potential negative publicity, and 3) likely rewards (Bromiley and Marcus, 1989; Cole, 1989; Cohen, 1996). These variables could not be included in the model of factors influencing previous transgression, due to the difficulties in determining historical managerial perceptions.

A number of studies have found that, as the risk of detection increases, respondents are less likely to behave unethically (Laczniak and Inderrieden, 1987; Fritzsche, 1988; Dabholkar and Kellaris, 1992; Cherry and Fraedrich, 2002). Cohen (1996) also argued that transgressions of the law are less likely when the risk of detection is higher. Cole (1989) found that, from a consumer's point of view, the risk of getting caught had a

greater impact than potential sanctions on reducing the likelihood that fraud would occur. These lead to the following hypothesis:

H8b: Firms that have higher perceptions of the risk that a transgression of marketing law will be detected by regulatory agencies are less likely to consider transgressing marketing law in the future than firms with lower perceptions of risk.

The impact of deterrence theory in terms of risk has already been considered. While risk of detection forms one aspect of deterrence theory, potential sanctions are another aspect. That is, firms are deterred from transgressing by a combination of the risk of detection (as per H8b) and the severity of resulting punishment (Szwajkowski, 1985; Cole, 1989). Two of the major types of punishment that can affect a firm are fines and negative publicity. Fines are usually implemented by the courts and tend to be based on the level of harm, severity of the offence, or resulting gain from that particular action (Cohen, 1996). McDermott and Newhams (1971) and Laczniaik and Inderrieden (1987) found that the potential punishment (or threat of) led to a reduced likelihood of an illegality occurring. Hegarty and Sims (1979) also found that the threat of punishment countered the effect of any potential rewards from the illegal behaviour. Negative publicity occurs as a result of the public hearing about a particular transgression, often through the media, which may make them less inclined to deal with that firm. Finney and Lesieur (1982) suggested that many transgressions occur due to the lack of negative publicity about firms' illegal acts. Anecdotal evidence from the ACCC suggested that, given the inability to impose adequate fines, it was the potential for negative publicity that was of greatest deterrence for transgressors. Based on this, it is hypothesised that:

H8c: The larger the potential fine that might result from a marketing law transgression being detected, the less likely a firm will consider transgressing marketing law in the future.

H8d: Where the potential for adverse publicity that might result from a marketing law transgression exists, the less likely a firm will consider transgressing marketing law in the future.

Theories of deterrence are concerned with removing the gain from a crime (Cohen, 1996). Much of the previous research conducted in this area has suggested that the price of getting caught is the sole determinant of a decision to transgress the law. Rational choice models based in criminology suggest that the deterrent effect of any sanctions must be weighed against the potential rewards. It is assumed under deterrence theory that “*persons will choose to be lawful if the pain associated with offending is greater than the pleasure it will bring*” (Smith et al, 2007, p. 635). On the other hand, the role of expected rewards in that decision should also be recognised, in that they are often calculable and need to be greater than the potential losses from any sanctions received (Bromiley and Marcus, 1989). Hegarty and Sims (1979) found that the likelihood of an unethical action occurring increased when the potential rewards were greater. As a result, it is expected that the larger the potential reward from an illegal act, the more likely the intent to engage in that particular activity. Therefore, it is hypothesised that:

H8e: The greater the potential rewards that might result from a transgression of marketing law, the more likely that a firm will consider transgressing marketing law in the future.

Figure 3.7 summaries the antecedents of future marketing law transgression that have been outlined in section 3.5:

Figure 3.7: The Antecedents of Future Transgression

This model of transgressing marketing law also recognises that previous transgressions play an important role in decisions regarding future transgressions. It is expected that firms' experiences regarding previous transgressions will impact on the likelihood of future transgressions occurring. Changes to perceptions of risk and the introduction of more comprehensive compliance programmes have already been identified as two major consequences of a transgression having been detected. Thus,

in order to test the link between past and future transgressions, the impact of whether a previous transgression has been committed or not was tested in relation to perceptions of risk, the existence and comprehensiveness of a compliance programme, and future marketing behaviour.

Perceived risk has already been hypothesised as an antecedent of having previously transgressed the law as well as of future behaviour. It is likely that this relationship between perceived risk and future behaviour is influenced by whether the firm has previously been caught transgressing or not. Having re-evaluated the perceived risk subsequent to detection, a firm may still decide either that further transgression is viable and, therefore, re-offend, or that it is too risky and cease the behaviour. It would be expected that the hypothesised relationship between risk and future behaviour would be affected by whether a firm had previously transgressed. Therefore, the interaction effect between risk and the detection of a previous transgression on future behaviour was investigated, and it is hypothesised that (see Figure 3.8):

H9: Firms with higher perceptions of risk that have previously been caught transgressing marketing law are less likely to consider transgressing marketing law in the future than those firms with higher perceptions of risk that have not previously been caught transgressing.

As discussed previously, there is no consensus over whether having a compliance programme actually has any effect on firm behaviour (McKendall et al, 2002). So, even if a firm introduces or upgrades a compliance programme as a result of a transgression having been detected, the literature is inconclusive as to whether this

would prevent future transgressions. Despite this uncertainty, because compliance programmes are designed to prevent illegal behaviour and firms are often expected to introduce a compliance programme after a transgression has been detected (LeClair et al, 1997), it is expected that previously being caught transgressing will impact on the relationship between the existence and comprehensiveness of a compliance programme and future behaviour. Therefore, the interaction effect between compliance and the detection of a previous transgression on future behaviour was investigated, and it is hypothesised that (see Figure 3.8):

H10: Firms with a more comprehensive compliance programme that have previously been caught transgressing marketing law are less likely to consider transgressing marketing law in the future than those firms with a more comprehensive compliance programme that have not been caught transgressing.

Figure 3.8 summarises the proposed relationships between whether a firm has previously been caught transgressing marketing law, perceived risk of detection, compliance programme, and future transgressions of marketing law:

Figure 3.8: Proposed Relationships between Previously Caught Transgressing Marketing Law, Perceived Risk of Detection, Compliance Programme, and Future Behaviour

3.6. Linking Knowledge to the Model of Marketing Law Transgression

The theory behind motive, opportunity, and control in illegal corporate behaviour was only designed to reflect intentional illegal behaviour, whereas Baucus (1994) recognised the importance of unintentional illegal behaviour, which occurs through acts of omission rather than commission. Marketing managers are not always aware of which marketing activities are unethical (Ferrell and Gresham, 1985): *“Ethical issues are ever present in uncertain conditions where multiple stakeholders, interests and values are in conflict and laws are unclear”* (Trevino, 1986, p. 601). Knowledge of the law is an important concept in unintentional illegality. There is evidence to suggest that, for many, particularly smaller firms, there is inadequate knowledge of business law (Peterson, 1997; 2001a; 2003), which in turn, may lead to unintentional

illegal behaviour. Given that ignorance of the law is considered no excuse by the legal system, such firms are just as liable as those that intentionally break the law. Loe et al (2000) noted that, since previous research has failed to investigate the impact that knowledge of the law has on illegal corporate behaviour, a significant opportunity for study exists. Therefore, the concept of knowledge was linked to future behaviour (see Figure 3.9), leading to the hypothesis that:

H11: Firms with higher levels of marketing law knowledge are less likely to consider transgressing marketing law in the future than firms with lesser knowledge.

Knowledge does not exist in isolation, but is most likely influenced by other factors and previous experiences of the firm. Whilst the literature is largely undecided as to the existence of a direct relationship between compliance programmes and transgression, there is wide agreement that the establishment of codes and programmes of compliance are effective means of developing a positive ethical environment (McKendall et al, 2002). The main purpose of a compliance programme is to raise knowledge of legal issues throughout a firm through policies, training, and education (Wells, 1995). This should, in turn, reduce the likelihood of a transgression occurring. Of particular relevance, Soutar et al (1994) found that the existence of formal programmes had a positive effect on the ethical culture of Australian firms. Therefore, it is hypothesised that:

H12: Firms with a more comprehensive compliance programme will display higher levels of marketing law knowledge than firms that have a less comprehensive compliance programme.

External control variables such as effective regulatory enforcement have been described as important environmental conditions that can influence knowledge of ethical situations (Weaver et al, 1999b). It is likely that, where a firm perceives the chances of getting caught to be high, or where regulatory agencies have a strong presence in the industry, firms will develop a greater legal knowledge to ensure that marketing law is not transgressed, either accidentally or intentionally. Conversely, where such perceived risk or presence of regulatory agencies does not exist, there is less motivation or need to obtain greater knowledge. Fritzsche and Becker (1983) found that, as the consequences of an action became more severe, ethical perceptions became more 'positive'. Laczniak and Inderrieden (1987) and Dabholkar and Kellaris (1992) found that, as outcomes became more negative, ethical perceptions improved. Therefore, as shown in Figure 3.9, it is hypothesised that:

H13: Firms with higher perceptions of risk of transgression detection will display higher levels of marketing law knowledge than firms with lower perceptions of risk of transgression detection.

As summarised in Figure 3.9, it is proposed that, in addition to directly affecting future behaviour, both the perception of risk of detection and the existence of a compliance programme can influence a firm's knowledge of the law. When firms have higher levels of knowledge, the chance of future transgressions is reduced.

Figure 3.9: Proposed Relationships between Knowledge and Future Transgression

Combining all the components of the model (previous transgressions, consequences, future transgressions, and knowledge) results in the development of a comprehensive and dynamic model of the antecedents and consequences of being caught transgressing marketing law. This model is shown and discussed in the next section.

3.7. Model Overview

This chapter has outlined the conceptual development of the research model (see Figure 3.10). Precisely how the model works depends upon whether the transgression (past or future) is intentional or unintentional. If the transgression is intentional then it occurs as a result of certain conditions of motive, opportunity, or control (for specific components, see Figure 3.11). If the regulatory agencies detect the transgression, the firm will either be punished or reprimanded and let off with a warning. This leads the

firm to re-evaluate its perceptions of the risk of detection and, in particular, whether it is worth engaging in further transgressions, given the ongoing conditions of motive, opportunity, and control. If the firm decides it is worth the risk, then further transgressions may occur. If the firm decides it is not worth the risk, then they may introduce a compliance programme, or look to improve its knowledge of the dangers of transgressing marketing law through other means. Regardless of which method is used, the likelihood of future transgressions should be reduced.

Figure 3.10: Process Model of Transgressing Marketing Law

If the transgression is unintentional, it may be due to a lack of knowledge of the law (for specific components see Figure 3.11), or to other conditions of motive, opportunity, or control. If the transgression is detected, the firm will be punished or let off with a warning. This should significantly increase perceptions of risk, which should result in increased knowledge of the legislation, especially if a compliance programme is then introduced. As a result, further transgressions should be less likely.

The right-hand side of the conceptual model recognises that transgressing and getting caught are not the same thing and that, if regulatory agencies do not detect the transgression, then the behaviour is likely to continue. Since it cannot be measured, this is not specified in any of the hypotheses. Nevertheless, Clinard and Yeager (1980) suggested that there is no evidence to suggest that undetected transgressions differ in any way from those that are. Likewise, knowledge is also included as an antecedent of a previous transgression in the conceptual model. In the same way as greater knowledge of the law should reduce the likelihood of illegal future marketing behaviour occurring, it is expected that knowledge should have reduced the likelihood of a previous transgression occurring (Baucus, 1994; Peterson, 2001a). Measurement issues mean that the level of knowledge that existed in a firm prior to a transgression cannot be determined. These issues are further discussed when the measurement model is introduced in Chapter 5.

Figure 3.11: Component Model of Transgressing Marketing Law

3.8. Conclusion

In this chapter, a comprehensive dynamic model of transgressing marketing law has been developed. This model was largely based on McKendall et al's (2002) theory of motive, opportunity, and control, as well as including elements from Baucus and Near (1991), Baucus (1994) and a range of research conducted in the illegal corporate behaviour and business ethics fields. This research suggested a range of potential antecedents of illegal firm behaviour, for both the past and future. Motive variables include profitability, market-share, and competition. Opportunity variables include firm size, industry behaviour, and industry sector. Control variables include potential risk, sanction, and reward. In addition to these antecedents the potential consequences that follow a transgression being detected and punished by regulatory agencies were considered, based on the work of Gazley et al (2005). The work of Baucus (1994) and Peterson (1997; 2001a; 2001b; 2003) informed the knowledge component of the model. The next step is to test the model empirically. Chapter 4 presents the methodology and results of the secondary data analysis, while Chapters 5 and 6 outline the methodology and results of the primary data analysis.

Chapter 4: Secondary Data: Methodology and Analysis

4.1. Introduction

The choice of the research paradigm in which one chooses to operate depends on a number of factors, including the researcher's world view, nature of the problem, research question(s), research objectives, and the potential audience (Creswell, 1994). Previous research on illegal corporate behaviour has been almost exclusively quantitative in nature (i.e. Baucus and Near, 1991; Hill et al, 1992; McKendall and Wagner, 1997; McKendall et al, 1999; McKendall et al, 2002). This is possibly due to the sensitive nature of the topic, with respondents preferring anonymity and confidentiality. Moreover, a body of literature exists on the antecedents of illegal corporate behaviour, with theories that can form the basis of objective testing of these antecedents. Therefore, from this perspective, quantitative research was appropriate.

Hill et al (1992) believed that the inconsistent previous results from illegal corporate behaviour research were partly due to methodological problems, leading to the call for alternative methods. With the exception of McKendall and Wagner (1997), previous research has tended to use either secondary data or a survey instrument to collect the required data, rather than both. This current research utilised a combination of both approaches, similar to McKendall and Wagner (1997), in order to exploit their combined benefits. This chapter describes the methodology and results obtained of the secondary data phase of this research, while Chapters 5 and 6 describe the methodology and results of the primary data phase.

Secondary data can “*provide valuable insights and lay the foundation for collecting primary data*” (Malhotra, 1999, p. 113). In particular, it can help with defining the research problem, developing an approach to the problem, and developing the research design. Secondary data may also help answer certain research questions and assist in the interpretation of primary data (Malhotra, 1999). The secondary data phase of this research achieved both of these goals. Because the primary data phase of this research was cross-sectional, it was inadequate for dealing with changes over time. Therefore, secondary data were used to develop an initial understanding of the extent to which multiple transgressions have occurred in Australia. This assisted in developing an understanding of the dynamic nature of the model, which informed the primary data research phase. In addition, while the major purpose of this section was not hypothesis testing, rather to explore the phenomenon of repeat transgression, where data from the primary research phase were either insufficient or unavailable, the secondary data helped evaluate hypotheses relating to firm size, industry sector, and the effect of the number of previous transgression on future transgressions.

Data pertaining to the rates of re-offending by firms were collected from the Australian Competition and Consumer Commission (ACCC). The patterns of all repeat offences from 1993 to 2006 were investigated, analysing the rate of re-offending by firms listed in these documents using life tables and Cox proportional hazard models. Hazard models are an important modelling technique, providing insights into the entire historical process of the area of interest (Tang et al, 2004). These techniques have traditionally been used in medical research to determine mortality rates, but in recent times have been increasingly used in marketing (Gupta, 1991; Leszcyc, 1992) and recidivism analysis (DeJong, 1997; Wilson, 2005). The

purpose of this analysis was to determine the risk of future offending, given the occurrence of a previous transgression and other antecedent conditions within the time period of investigation. By using this technique, the extent of re-offending could be determined, as well as some of the factors that might influence the risk of future transgression. The first part of this chapter provides background information on event history analysis, in particular, hazard models. Secondly, it outlines the methodology used. Lastly, the results of the analysis are detailed, starting with basic life table data followed by the Cox regression hazard model analysis that determined the influence of covariates on the multiple transgression data.

4.2. Event History Analysis

Event history data detail the number, timing, and sequence of events, when individuals change from one state to another (Mayer and Tuma, 1989; Leszcyc, 1992). In this research, for example, the change of state consisted of shifting from having not re-offended to re-offending. Additionally, event history data can contain covariates that are thought to influence the nature and timing of changes in state. These covariates often represent characteristics of the individuals or units being studied (Mayer and Tuma, 1989). The methods used to test such data are referred to as event history analysis. Such analyses can be simply descriptive of the change process, and are illustrated using life tables. This research, however, also looked to explore the differences in event history between different types of firms (i.e. the impact of the covariates). When conducting event history analysis, both the time domains and the state space must be defined. The time domain, for example, could be

age, historical time, or duration in a particular state. The state space refers to the outcome being studied. In this research the time domain was the time taken in years for a firm to re-offend during the period of observation (1993-2006), with re-offending as the state space.

Most models of event history are defined by the transition rate. The transition rate measures the “*probability per unit of time that an event or transition occurs in an infinitesimal interval of time among those at risk during the particular time interval in question*” (Mayer and Tuma, 1989, p.11). For this research, the transition rate represented the chance that a firm would re-offend within the time period in question. Such models are also concerned with the impact of time and covariates on that rate. This involved examining how the length of time since the first offence occurred impacted on the likelihood that a firm would re-offend and in what ways the covariates affect this likelihood. These transition probabilities can be analysed using hazard models, commonly used in biology, sociology, engineering, and economics (Leszcyc, 1992), which are described in the next section.

4.2.1. Hazard Models

In its simplest form, event history analysis is a study of the time taken for a single event to occur for a group of homogeneous individuals (often referred to as survival analysis). The term survival analysis comes from medical research, whereby researchers would look at the time until the death of a patient after they have been given an experimental treatment, the event is often referred to as the ‘failure event’. The time period of interest is referred to as the survival time or hazard rate (Leszcyc,

1992). Hazard models have also been applied to a wide range of other subject areas, including demographic research (i.e. time in employment, time until divorce) (Allison, 1995), research into business failures (Shumway, 2001; Parker et al, 2002), and time until a company exits a market (Leszcyc, 1992). Most relevant to this research, hazard models have been used in studies of marketing (i.e. repeat purchase behaviour) and recidivism (time until a re-offence occurs) (Leszcyc, 1992; DeJong, 1997; Wilson, 2005).

4.2.2. Hazard Models and Recidivism

Hazard models have become an increasingly popular tool in analysing rates of re-offending or recidivism. Previous research in this area has focussed on ‘ordinary’ crime by individuals, such as theft or murder, as opposed to corporate crime, although the basic theory remains the same. Such research measured the time until the failure event as the duration before an offender is rearrested or returned to prison after being arrested in the first instance or released from prison. Hazard models have also been used to test the impact of individual characteristics on the likelihood of re-offending, such as age, gender, education, and severity of punishment (Allison, 1995; DeJong, 1997; Wilson, 2005).

4.3. Cox Proportional Hazard Model: Covariates and Censoring

Hazard model and survival analysis techniques are also effective in addressing the way in which firms evolve over time, as well as studying the effects of multiple, continuous, or categorical attributes (covariates) on the event in question. In the case of this research, the focus was to study the effect on the hazard rate of the type of sanction, industry sector, number of previous transgressions, and whether the firm was public or private. When investigating the impact of covariates on the hazard rate, one useful method is to estimate a Cox proportional hazard model, which is able to isolate the influence of specific covariates. The Cox model determines the likelihood that a re-offence will occur in the next instant, based on its non-occurrence until that point in time. The values for the covariates being studied are then compared to a baseline hazard, the rate when all covariates are set to zero.

A major advantage of the Cox model is its ability to handle observations that are censored. Many of the firms that offend once within the period of observation do not re-offend. That is not to say that a firm will not re-offend in the future, outside the period of observation. These cases are referred to as censored observations (Wilson, 2005). Random censoring may also occur in situations where a firm has gone out of business or been acquired, or where data is unavailable. In static models, such firms are considered not to have re-offended. However, with the Cox model, all information beyond the 13 year period of this study was censored. Even though there will be members of the population that have not re-offended by the end of the time period of interest, the Cox model recognises that there is still a probability they will do so at some point in the future (Wilson, 2005). This removes any sampling bias that might

result from not taking censored variables into account (Shumway, 2001; Parker et al, 2002).

4.3.1. Repeated Events

Because many survival analyses have focused on human morbidity, procedures have tended to be directed towards individuals experiencing an event only once. However, in many other situations within the social sciences and marketing, events occur more than once. An example in marketing would be repeat purchase behaviour (Leszcyc, 1992). The same applies to recidivism. That is, within the period of observation of this research, some firms will have re-offended more than once. There are two ways in which repeated events can be considered. Firstly, a separate analysis can be done for each year. In that case, an analysis could be done annually from the time of the first offence until the first re-offence. Then, for the firms that re-offended again, an analysis would be done for each year between the first and second re-offences. This would continue until the number of firms becomes too small to perform a reliable analysis. One problem with this approach is that it can be inefficient and time consuming, as it involves multiple analyses, making it difficult to create an overall picture of events. Additionally, because there are more numbers to interpret, the opportunity for ambiguity is greater. This leads to the second method of analysing repeated events, which overcomes the problems outlined above. Here, each time period is treated as a separate event. So, for a firm that has re-offended twice, the time between when the first offence occurs and when it first re-offends is treated as one event and the time from the first re-offence to the second re-offence is treated as

another. These are all ‘pooled’ together and only one model is estimated for the entire data set (Allison, 1995). This is the method used for this research.

4.3.2. Methodology: Data Entered into the Model

All enforcement actions by the ACCC and court cases that resulted in a formal sanction have been reported in publications, with data available from 1993 to 2006. The information contained in these publications outlined: 1) the name of the firm, 2) the year in which the transgression occurred, 3) the type of action that the firm faced, and 4) the type of penalty received. For this research, the ‘failure event’ was defined as a firm receiving an official sanction from the ACCC or the courts, having already received a sanction for a previous offence within the time period being investigated (1993 – 2006). The time domain was the number of years from the time an offence was officially announced by the ACCC in the case of undertakings and settlements, and when a judgement was released in the event of court cases. A potential limitation is that this information depends upon the time taken by the ACCC to release the information and the time taken for a case to appear before the courts, which may vary between cases. The assumption was made that any behavioural changes would only occur after the final verdict was released.

As noted above, in cases where firms re-offended more than once, the period between each event was treated separately. In cases where firms offended only once within the period of the observation, the record was censored. For firms that did re-offend, the record for the time period from their last offence to the end of the study was also censored. In all censored cases, regardless of how many offences a firm had

previously committed, the probability of re-offending still exists in the future; it had simply not occurred by the end of the period of observation, 2006.

The covariates that could be tested were limited by the information available in the data sets. Because many of the firms included in the model were not publicly listed, it was not possible to gather detailed information regarding their characteristics. Based on the available information, the covariates tested were: 1) type of previous sanctions, 2) whether the company was public or not, 3) industry sector, and 4) the number of previous offences. The type of sanction received can help determine the effectiveness, or otherwise, of various control measures, as more severe sanctions should reduce the hazard rate. It is generally believed that the greater the severity of a punishment, the more likely the subject to refrain from re-offending (DeJong, 1997; Wilson, 2005). In terms of public companies, because, in Australia such companies are often larger, inferences can be made as to the potential impact of firm size and provide a test of H7a (*larger firms are more likely to consider transgressing marketing law in the future than smaller firms*). Industry sector can indicate whether firms in certain industries are more likely to re-offend than others, as has been suggested in the literature (Clinard and Yeager, 1980; Baucus and Near, 1991). This also helped test H7b (*firms operating within certain industry sectors are more likely to consider transgressing marketing law in the future than firms in other industry sectors*). Lastly, the number of previous transgressions, which can give an indication of the risk of another transgression occurring, as suggested by Baucus and Near (1991), was used to test H7d (*the more previous transgressions a firm has had detected, the more likely the firm will consider future marketing law transgressions*).

As described above, time to re-offend was the dependent variable, while type of punishment, type of company, industry type, and the number of previous transgressions were the independent variables (or covariates). The type of punishment was a categorical variable, based on whether a firm received 1) a conviction from the courts, or 2) had to provide a written undertaking to cease engaging in illegal behaviour. Whether a firm was a public company or not was represented by a simple dichotomous dummy variable, with 1 representing 'yes' and 0 representing 'no'. All firms in the experiment that were listed on the Australian stock exchange were considered to be public companies, those firms not listed were considered to be private. In terms of industry, firms were divided into four broad categories: retail, manufacturing, services, and importer/wholesaler. Where the industry could not be determined, the data was classified as missing and removed from the analysis. Lastly, the number of previous offences was treated as a continuous variable, ranging from 0 on the first offence, to 1 on the second offence, and so forth.

4.4. Results

This section outlines the results obtained from the hazard model analysis of Australian firms that were found guilty by the courts, or provided a written undertaking to cease illegal behaviour, for breaching parts four and five of the Trade Practices Act (1974). In addition to helping address hypotheses pertaining to firm size, industry sector, and number of previous transgressions (H7a, H7b and H7d), it provides a better understanding of the extent to which re-offending occurs and also clarifies some of the factors that could influence the transgression process.

4.4.1. Life Tables

A life table provides a basic analysis of the distribution of time between two events, which was useful to examine the extent of firm re-offending and the likelihood that this would occur in a given year following a first offence. As noted earlier, in some cases, the second event does not occur (i.e. a firm does not re-offend) and these events are censored, which is why traditional analyses such as regression are not always appropriate. The life table subdivides the period of observation into separate time intervals. For each time interval, all individuals that remained in the study until that period commenced were used to determine the likelihood that a terminal event (re-offence) would occur in that interval. The probabilities calculated for each interval were combined to determine the overall probability that a terminal event would occur at different points in time (SPSS, 2006). In the case of this research, the period of observation was the 13 years between 1993 and 2006. Firms entered the study if they had been caught transgressing during that time. However, if they did not transgress again, the observation was censored. If the firm transgressed a second time (re-offended) within that period, a terminal event was deemed to have occurred. That particular firm then re-entered the study as a separate event. If another offence did not occur, the data was censored. The overall time period was divided into one year intervals. For each year after an initial transgression, the number of firms that had not transgressed again (the terminal event), which were still in the study, were used to calculate the probability that a firm would re-offend in that year.

When using life tables, it is assumed that the probability of an event occurring is only dependent upon time after the initial event, i.e., the chance of a firm re-offending is

based upon the time taken since the first offence, and the probabilities are presumed to be stable in relation to absolute time. Therefore, firms that entered the study at different times should behave in a similar manner (e.g. a firm that first offended in 1997 was assumed to behave in a similar manner to a firm that entered the study in 2004). It was also assumed that there were no systematic differences between censored and non-censored cases.

Reference to Table 4.1 shows that the first column outlines the number of firms that entered each interval, i.e. the number of firms that had not transgressed or been censored before that year. There were 714 firms that entered the study (the number that transgressed at least once between 1993 and 2006), but, by the beginning of the twelfth year, only 54 firms remained in the study, because firms had either re-offended by this time or been censored. In the second column, 'the number withdrawn during this interval' shows the cases that were censored during that particular interval. These were firms that did not engage in a repeat transgression prior to the end of the study time period of 2006. It should be noted that because, firms entered the study in different years, throughout the time period of interest (1993 to 2006), the number of years before a case was censored was not constant. For example, a firm that first transgressed in 2005 but did not transgress again before 2006 was censored after one year, while a firm that first transgressed in 1996 but did not transgress again before 2006 was censored after 10 years. For these censored cases, the outcome was unknown, since it was uncertain if they transgressed or will transgress again at some point after the study was completed. The way that SPSS handles censored cases is to treat each one as a half case, so, for the third year time interval, instead of 464 firms entering the next time interval, there were $464 - (0.5 \times 37)$ or 445 firms. These figures

are listed in the ‘number exposed to risk’ column. The column entitled ‘number of terminal events’ represents the number of firms that engaged in a repeat offence within the time interval (SPSS, 2006). Thus, for example, 28 firms re-offended one year following a previous transgression.

Table 4.1: Life Table Results of Repeat Offending by Australian Firms

Survival Variable: Time (Years)

Interval Start Time	Number Entering This Interval	Number Withdrawn During Interval	Number Exposed to Risk	Number of Terminal Events	Cumulative Proportion Surviving at End	Hazard Rate
0	714	59	684.5	0	1	0
1	655	84	613	28	.954	.047
2	543	70	508	9	.938	.018
3	464	37	445.5	8	.921	.018
4	419	37	400.5	9	.9	.023
5	373	56	345	6	.884	.018
6	311	56	283	1	.881	.004
7	254	44	232	3	.87	.013
8	207	29	192	1	.865	.005
9	177	42	155	1	.86	.007
10	132	54	105	1	.851	.01
11	77	23	65.5	0	.851	0
12+	54	52	28	2	.791	*

The hazard rate represents the likelihood of a firm re-offending within that time period. The results show that the greatest amount of re-offending occurred one year subsequent to the first offence (5%), followed by the fourth year (2.3%), then the second and third years (1.8% each). The cumulative proportion surviving represents an estimate of the probability of a firm reaching the end of a particular time period without re-offending. For example, there is a 95% chance of a firm not re-offending after the first year, dropping to a 79% chance after eight years.

Figure 4.1 illustrates how the survival rate decreases over time as more firms transgress or are censored. The chance of not offending drops most steeply after the first year, before easing slightly up until six years, before easing further subsequent to that.

Figure 4.1: Survival Function of Repeat Offending by Australian Firms

4.4.2. Cox Proportional Hazard Model Results

In addition to the life tables, adding predictor variables to determine covariates' impact on the time until a re-offence occurs was also of interest. The Cox regression method was the most appropriate method for achieving this, since it handles censored cases and can provide estimated coefficients for all covariates included in the model. It was assumed that all observations were independent, and that the hazard ratio was proportionate across time. In Cox regression, the hazard function is used to estimate

the risk that a terminal event (in this case, re-offending) will occur. This is the potential for a re-offence to occur per time unit in a particular year, given that the firm has not re-offended up to that point. Predictor variables were then added to the model and expressed in terms of the hazard function (SPSS, 2006).

Table 4.2: Parameter Estimates between Covariates and Time until Re-offence for Australian Firms

Covariate	Estimate	Std. Error
Number of Previous Transgressions	0.409**	0.124
Public/Private	-1.545**	0.342
Industry (Manufacturer)	Base Case	
Industry (Retail)	0.563	0.411
Industry (Service)	0.515	0.363
Industry (Importer)	-0.186	0.495
Type of Previous Sanction	-0.083	0.288

As seen in Table 4.2, the only two variables to reach significance were the number of previous offences and whether the firm was public or private. The hazard rate was significantly higher for public firms than private firms, suggesting that the chance of a public firm re-offending is greater than for private firms. Given that public firms tend to be larger this provides weak support for H7a.

Figure 4.2 shows the difference in hazard rate between public and private firms:

Figure 4.2: Hazard Function for Public and Private Firms

In addition, a positive relationship was found to exist between the number of previous offences that had been detected by regulatory agencies and the risk of re-offending. This suggests that firms with a higher number of previous convictions are more at risk of re-offending in a given year, which supports H7d. No relationship was found to exist between the type of sanction a firm had previously received and the risk of re-offending. Interestingly, nor was any relationship found to exist between industry sector and the risk of re-offending, thus there is no support for H7b. This hypothesis is further investigated in the primary data analysis.

4.5. Discussion of Secondary Analysis Results

The results indicate that only two variables, namely the number of previous transgressions detected by regulatory agencies and whether a firm is public or private, had an impact on the hazard rate. The relationship pertaining to the number of previous transgressions supports the findings of Baucus and Near (1991), who suggested that, in certain firms, a culture of transgression develops, causing repeated transgressions to occur (Baucus and Near, 1991). The danger for such firms is that, as the number of transgressions increases, such behaviour is seen as 'the way things are done' and becomes acceptable. To overcome such problems the issue of internal compliance in particular becomes important. This could perhaps be dealt with through the use some sort of compliance programme. However, as reported by Soutar et al (1994), unless management actively engages in attempts to change the company culture, such programmes will most likely not be effective. This might result in the occurrence of future transgressions.

The relationship between hazard rate and whether a firm is publicly listed or not suggests that size of the firm may have an impact. Generally, Australian publicly listed companies are larger, more established firms. Such firms may be more likely to have developed a culture of transgression. As a result, as has been previously proposed and demonstrated in the literature (Cochran and Nigh, 1987; Dalton and Kesner, 1988; Baucus and Near, 1991; McKendall et al, 1999), these findings suggest that larger firms are more likely to transgress multiple times. The primary data analysis in Chapter 6 looks at this relationship in more depth.

Surprisingly, industry sector was found to have no influence on the hazard rate. This may simply be because the industry categories were too broad, meaning it is possible some specific industry differences were not apparent. This result may also support the findings of Laczniak and Inderrieden (1987) and Akaah and Riordan (1989), that transgressing marketing law transcends industry type. Lastly, it is interesting that the type of previous sanction was found to have no influence on the hazard rate. This suggests sanctions are not necessarily having the desired effect. Whether a firm is convicted by the courts or receives a warning does not appear to affect the rate of re-offending. This result suggests that current deterrence measures may not be effective. However, this analysis only looks at the differences between two relatively broad types of sanctions. The primary data phase of this research looks further at the role of deterrence, as well as at a wider range of potential sanctions.

4.6. Conclusion

This chapter has provided a description of the methods used in the analysis of the secondary data. It has provided a background to the use of event history analysis, in particular, the use of hazard models to analyse repeat events over time. In addition, the particular hazard model used in this research (the Cox regression method) has been described along with a discussion of the impact of censored data. The variables used in the model (whether the firm was public or private, industry sector, and number of previous transgressions), were then outlined. The second part of this chapter described the results from the data analysis of rates of re-offending by Australian firms between 1993 and 2006. The results showed that, when a re-offence

does occur, it tends to be reasonably soon after the initial offence. In addition, the risk of a re-offence occurring is influenced both by whether a company is publicly listed or private, and by the number of detections of previous offences on the part of a firm. These results will be discussed further in Chapter 7. While the secondary data analysis helped test some hypotheses (H7a, H7b, and H7c), the main focus was on exploring the phenomenon of repeat transgression. Having established its existence, the next chapter describes the methodology used for the collection of primary data to test the hypotheses.

Chapter 5: Primary Research Methodology

5.1. Introduction

Having developed the research model in Chapter 3 and discussed the secondary data phase in the previous chapter, the purpose of this chapter is to outline the methods used to test, refine, and validate the model for the primary data collection phase. Some previous research, such as that by Baucus and Near (1991), has been based entirely on secondary data. There are three main reasons why such an approach was not utilised for this research. First, this thesis was focussed on a wide range of firms, including private firms that are not publicly-listed, for which secondary data were not readily available. Secondly, many of the organisation-level covariates, such as the extent and comprehensiveness of a compliance programme and perceptions of risk, could not be determined through the available secondary sources. Thirdly, secondary data can only be used for investigating previous transgressions; it cannot predict future behaviour. Therefore, consistent with the viewpoint advanced by McKendall and Wagner (1997), a combination of secondary and primary data were collected to obtain the required information.

In line with the work of McKendall and Wagner (1997) and McKendall et al (2002), the primary data collection phase of this research was mostly cross-sectional, rather than longitudinal. A longitudinal approach is most effective when secondary data across time is readily available (i.e. Baucus and Near, 1991), but, as discussed above,

such data was not available for this research. As a result, a cross-sectional survey was deemed appropriate.

In this chapter, a brief overview of the data collection methods and sample sets used for the different components of the model are first provided, followed by a description of how the survey was administered. The measurement model is then introduced, with a detailed description of how the variables in the model were measured. Next the questionnaire design and the data collection procedures are outlined. Lastly, a response analysis from both the pre-test and main survey is provided.

5.2. Overview and Target Population

The primary data collection phase could be divided into three main components: 1) previous transgressions, 2) the consequences of the detection of previous transgressions, and 3) the likelihood of engaging in future transgressions of marketing law.

5.2.1. Previous Transgressions and Consequences

As per Baucus and Near (1991), firms were divided into two groups: those deemed to have previously transgressed marketing law and those deemed to have not. As a result, there were two target populations:

- 1) The head of marketing in firms that had been caught by the ACCC for transgressing Part four (anti-competitive) and/or Part five (misleading advertising/ product quality) of the Australian Trade Practices Act (1974), as determined by enforcement publications, between 1993 and 2006.
- 2) The head of marketing in firms that had not been caught by the ACCC for transgressing the laws described above, as determined by enforcement publications, between 1993 and 2006.

A key word is ‘caught’, since it could not be determined whether a firm had actually transgressed if the transgression had not been detected.

Because the focus of this research was marketing-related law, it was deemed important that the respondent should be the person who makes marketing decisions for the firm. In most cases this was the marketing manager or, in some cases, the sales manager. However, this research also involved surveying many smaller firms that did not have a dedicated marketing manager, in these cases, the research was directed at the person responsible for the marketing function.

The Kriesberg (1976) rational actor model formed the basis of measurement. Under this rational actor model, illegal behaviour is treated as if it was made by one single entity – the firm. Therefore, “...*the entity itself is the decision-maker, the decision-making process is activated by corporate problems, framed by corporate alternatives, and guided by corporate values*” (Kriesberg, 1976, p. 1101). While it was recognised that individuals exist, they were combined into a unitary decision-making process.

Therefore, while individual managers responded to the questions in the survey, they were deemed to be operating and responding on behalf of the firm, rather than themselves.

Each group received an identical survey instrument and were asked questions that determined the organisational and environmental characteristics of their firm and industry. By looking at the differences between the two groups, it was possible to determine which variables influenced previous detected transgressions. In addition, because this research viewed the phenomenon of interest to be a dynamic process, it built on the existing literature by using the data collected in this phase to determine how firms' behaviour changed subsequent to a transgression being detected by regulatory agencies. However, there are some limitations with this method. Most importantly, there is the issue of time-ordering of the dependent and independent variables, as noted by McKendall and Wagner (1997). Thus, the data collected in this phase were also used to investigate potential future behaviour.

5.2.2. Future Behaviour

To further test the dynamic nature of the model, data were also collected on potential future transgressions of the Trade Practices Act (1974). The collection of data for this aspect of the model was based on research conducted in the field of business ethics (Weber and Gillespie, 1998). Both target populations outlined in the previous section (those previously caught transgressing marketing law and those who had not) were exposed to legal and illegal scenarios and asked to rate the likelihood that their competitors would consider engaging in the described activities, depending upon

various combinations of risk, reward, and likely penalties (external control variables). Future behaviour was also linked with motive, opportunity, control, and knowledge variables. In order to measure knowledge, respondents were asked to assess the legality of a range of legal marketing scenarios, in addition to those provided to measure future behaviour, based on Peterson (2001a).

A future behaviour elicitation approach has the advantage of overcoming the problems associated with simply measuring previous transgressions outlined above; issues of time-ordering do not influence the data, since both the independent and dependent variables are measured at the same time. This method is not without its own limitations, however, as it only measures intent and not actual behaviour (Weber and Gillespie, 1998). There are also issues of social desirability bias, whereby people may attempt to appear “*more altruistic and society-oriented than they actually are*” (Chung and Monroe, 2003, p. 291). These issues are discussed in more detail later in the chapter.

5.3. Sample Selection

This section describes how the samples from each target population were derived.

5.3.1. Previous Transgressors

Court reports provided details of all cases that have come before the judiciary for breaches Parts four and five of the Trade Practices Act (1974). Based on these records,

all firms that had been convicted by the courts between 1993 and 2006 were included in the sample. A court case is, however, only one form of redress available to regulatory agencies. Many firms are not taken to court but instead required to provide a written undertaking to cease the behaviour, and/or provide reparation. McKendall and Wagner (1997) have noted that a limitation of previous research is that it has generally only included court cases. Accordingly, this thesis also drew primary data from the ACCC, which publishes a list of all firms that have provided an undertaking during a particular year. This data was readily available from 1993 until 2006 (ACCC, 2007). All firms included in this database were included in the sample. Firms that had gone out of business or experienced a change of ownership were removed from the dataset, resulting in a sample of 234 firms.

5.3.2. Non-previous Transgressors

Another 800 firms across all states, firm sizes, and industry sectors derived from the REACH Australian Business Database were also included in the sample. These firms had not been sanctioned by the ACCC or the courts for breaches of the Trade Practices Act (1974) between 1993 and 2006. The REACH database was selected since it contained a wide range of names and addresses of marketing managers from a variety of firm types across Australia. A stratified sampling procedure was used to ensure a representative sample of 800 firms across all states, relative to the population size. This number was chosen in order to get the total sample size close to 1000. No restrictions were placed on firm size or industry sector to ensure responses were received from a wide variety of firms. Any firm on that list that also appeared on the list of firms caught transgressing between 1993 and 2006 was removed.

5.4. Method of Administration

As outlined in the previous section, the sample included a range of firms from a wide geographic area. The cost and time that would be required for personal (face to face) or telephone interviews of such a large number of respondents put these methods beyond the realms of this study. Therefore, a mail survey was deemed the best means, since a great deal of information can be collected from widely scattered populations at low cost (Jobber and O'Reilly, 1996). This technique also allows the respondent to complete the instrument on his or her own time, and not feel pressured (Jobber and O'Reilly, 1996). Given that this research dealt with an area that could be described as sensitive (i.e. illegal behaviour), it was deemed important that the survey be conducted anonymously (Aaker et al, 2007), which, ruled out the use of an email or online survey, since that can be used to identify respondents. It was hoped that the anonymity that a mail survey provides would not only encourage response, but also reduce the bias in response. Poorly conducted mail surveys are often characterised by low response rates. This can limit the range of analytical techniques that can be used, and also result in non-response bias (Jobber and O'Reilly, 1996), which occurs when those who do respond differ in some way from those who do not. If a mail survey is conducted well, however, response rates of 60% can be obtained (Gendall, 2000; Finn et al, 2004; Gendall, 2005). In order to overcome issues associated with response rates, various methods, in addition to maintaining anonymity, were employed, as discussed later in this chapter. Having discussed issues of sampling, the next section will outline variable measurement.

5.5. Measurement of the Variables

In this section, the measurement model is introduced, with an explanation of how it differs from the conceptual model introduced in Chapter 3. This is followed by a detailed description of how the variables in the model were measured.

5.5.1. Measurement Overview

Figure 5.1 provides the measurement model, which differs slightly from the conceptual model introduced in Chapter 3. This is either due to the inability to measure and test certain variables in the conceptual model, or the way that certain variables were measured:

Figure 5.1: Measurement Model

The conceptual model represented the overall transgression process, whilst the measurement model excludes the aspects of the conceptual model that could not be measured. The dependent variable ‘previous transgression of marketing law’ in the conceptual model is labelled ‘caught transgressing marketing law’ in the measurement model, due to the fact that researchers can only identify transgressions that have been

detected and reported by regulatory agencies. The inability to measure transgressions that occur, but are not detected by regulatory agencies, also means that the right hand side of the conceptual model (see Figure 3.10) is not included in the measurement model. In addition, the dependent variable 'future transgression' is labelled as 'behavioural intent' in the measurement model, since the measure of future behaviour used only reflects intent to engage in a certain behaviour and not actual behaviour. This is further described in the next section.

The knowledge variable is not included in the measurement model as an antecedent of a previously detected transgression of marketing law. This is because it is considered to be subject to time-ordering effects. A firm's current level of knowledge may differ from what it was prior to a transgression, since experiences associated with having previously been caught transgressing may lead to increased legal knowledge. The conceptual model recognises that knowledge may affect past transgressions; however, measurement issues mean it was not possible to determine whether this effect occurs.

The remainder of this section describes how the variables used in the model were measured. Table 5.1 summarises the variables included in the model (for more specific measurement details, see Appendix 1).

Table 5.1: Variables Included in the Model

Type	Label	Description
Dependent Variables	Caught Transgressing	Whether a firm has previously been caught transgressing marketing law
	Behavioural Intent	Likelihood of engaging in potentially illegal future marketing behaviour
Design Variables	Small Fine	Existence of a small fine
	Large Fine	Existence of a large fine
	Publicity	Potential for adverse publicity
	Reward	Potential rewards
Covariates	Profitability	Profits in relation to competitors
	Market-share	Market-share in relation to competitors
	Level of Competition	level of industry competition
	Number of Competitors	Number of (direct) competitors within an industry
	Size	Firm size (number of fulltime employees)
	Industry Sector	Industry sector
	Industry Transgression	Perceived level of transgression by other firms in the industry
	Risk of Detection (ACCC)	Perceived likelihood a transgression will be detected by the ACCC
	Risk of Detection (Competitor)	Perceived likelihood a competitor will report a transgression
	Compliance	Existence and comprehensiveness of a compliance programme
	Knowledge	Knowledge of marketing law

5.5.2. Measurement of the Dependent Variables

This research was concerned with the factors that influenced an initial transgression of marketing law, and those that might lead to intent to engage in future illegal marketing behaviour. Therefore, as illustrated in Figure 5.1, the two main dependent variables of interest were 1) Whether the firm had been caught transgressing marketing law by the Australian Competition and Consumer Commission (ACCC) in the past, and 2) intent to engage in future illegal marketing behaviour. There were other secondary dependent variables such as perceived risk of detection, compliance

programme, and knowledge; however, as these variables were both mediating and independent variables, they will be described in the corresponding section.

a) Previous Transgressions of Marketing Law

As with previous research into corporate illegality, the measure of previous transgression only reflects transgressions that have been detected and reported by regulatory agencies; therefore, the variable is referred to as *caught transgressing marketing law*. It could be expected that a number of transgressions occurred that remained undetected by regulatory agencies. Clinard and Yeager (1980) suggested that this could cause the number of transgressions to be understated by between 25% and 33%. Clinard and Yeager (1980) posited that no evidence existed to suggest that those transgressions not detected in any way differ from those that had.

It was also recognised in this research that firms deemed not to have been caught transgressing marketing law may have transgressed at some point prior to 1993 (when the data set commenced). The fact that a firm has not been caught transgressing marketing law within the last 13 years suggests that the firm can effectively be classed as a non-transgressor. It was assumed that, because the conditions and culture existing at the time of any earlier transgression would likely have changed, events associated with that transgression will have been forgotten.

As discussed previously, consistent with Baucus and Near (1991), potential respondents were divided into two groups: those firms that had been caught transgressing marketing law and those firms that had not. A firm that appeared in

court records, or that had provided a written undertaking, for having breached Parts four or five of the Trade Practices Act (1974), between 1993 and 2006 was deemed to have been caught transgressing marketing law. Having previously been caught transgressing marketing law was therefore treated as a dichotomous variable. Firms had either been caught transgressing marketing law within the time period of interest, or had not. However, while the variable was dichotomous, there was an expectation that the underlying construct being studied was continuous (this will be discussed further in Chapter 6).

b) Future Behaviour (Behavioural Intent)

In order to test a dynamic model, in addition to determining whether a firm had previously been caught transgressing marketing law, it was also necessary to measure intent to engage in future illegal marketing behaviour.

It is very difficult to observe or measure the actual decisions or actions that lead to ethical conflicts. This is an issue that has long influenced business ethics research. Measuring future behaviour is, in effect, measuring intention to behave in a particular manner. As a result, intent has been extensively used in ethics research (Weber and Gillespie, 1998). According to the theory of planned behaviour, there are three relevant variables: belief, intention, and behaviour. Intent is considered to be the “*immediate determinant of behaviour*” (Weber and Gillespie, 1998, p. 449). Intent has not always been found to be a constant predictor of behaviour (Sutton, 1998; Armitage and Conner, 2001). Ajzen (1988), however, has shown that a strong link exists between intention and action, while Hunt and Vitell (1986) and Sparks and

Hunt (1998) believe that intention is a good predictor of actual ethical behaviour. Therefore, the stronger the intent to engage in a particular action, the greater the likelihood the behaviour will occur (Weber and Gillespie, 1998). Despite these mixed findings, this research followed the approach of previous ethical studies (e.g. Sparks and Hunt, 1998; Weber and Gillespie, 1998; Cohen et al, 2001; Chung and Monroe, 2003) in assuming that intent is an appropriate predictor of behaviour.

The sensitivity inherent in questions regarding legal and moral behaviour can complicate such research (Trevino, 1986). Thus, in most cases, such data has been gathered through the use of self-report questionnaires (Morris et al, 1995). Researchers have tended to provide respondents with scenarios that represent various ethical and legal dilemmas (Baumhart, 1961; Fritzsche and Becker, 1983; Morris et al, 1995). Scenarios have previously been successfully utilised in research investigating ethical behaviour by firms (e.g. Chonko and Hunt, 1985; Singhapakdi and Vitell, 1991; Singhapakdi and Vitell, 1992; Sparks and Hunt, 1998), and were also adopted in this research to measure the potential for illegal future behaviour. The advantage of this approach is that scenarios provide a context and a common frame of reference that is the same for all respondents when responding to survey items (Dubinsky et al, 1992; Kohut and Corriher, 1994). Questions relating to a situation elicit responses that closely resemble how a respondent would utilise their knowledge in a real life situation (Dickinson and Shaver, 1982). Hunt and Vitell (1986) suggested that behavioural intentions can be measured by asking the respondent to express the likelihood of performing the described behaviours. The ability to measure potential future behaviour is one of the major advantages of using a survey instrument with scenarios.

Examples of previous scenarios used in the literature were not appropriate since they did not specifically apply to the Trade Practices Act (1974). As a result, it was necessary to develop them *de novo*. This was accomplished with the assistance of information from the ACCC. Respondents were provided with four scenarios: two were legal and the other two were illegal (See Appendix 2). One legal and one illegal scenario related to Part four (anti-competitive provisions) of the Trade Practices Act (1974), while the other legal and illegal scenarios related to Part five (misleading advertising and product quality) of the Trade Practices Act (1974). In terms of Part four, the first scenario dealt with price-fixing and the other with copycat pricing behaviour. In terms of Part five, the first scenario dealt with the use of fine print in promotions and the other with the use of puffery.

Respondents were first asked to rate their perception of the legality of the scenario on a five point scale anchored by 'obviously legal' and 'obviously illegal', as per Peterson (2001a). This forced respondents to make a judgement regarding potential firm behaviour, based on their knowledge of the law and how confident they were in that assessment. This measurement was important since firm behaviour should depend on the perception of legality, regardless of whether it is right or wrong. Additionally, this allowed for the impact of unintentional and intentional behaviour to be separated out. For example, a respondent who knows a scenario is illegal, and intends to engage in that behaviour, can be deemed to be intending to breach the law, whereas a respondent who believes an illegal scenario is legal, and intends to engage in that behaviour, can be deemed to be likely to transgress the law unintentionally. What was being measured was intent to engage in a certain marketing behaviour, based on

respondents' assessment of the legality of the scenario. Therefore the variable was labelled *behavioural intent*.

Behavioural intent was measured using the widely used approach in business ethics of asking respondents to rate the likelihood that they (or in this case 'their competitors') would engage in the behaviour described in the scenario on a seven point scale (Cohen et al, 1993; Cohen et al, 2001; Chung and Monroe, 2003). A third-person or 'other people' approach was used, since sensitive information was being elicited (Aaker et al, 2007). This is a projective technique whereby respondents are asked to respond based on their perspectives of how another person or group of people might act. Under projection theory, when the target is projected to a 'typical other', responses tend to reflect self behaviour: "*It is expected that respondents project their unconscious biases into ambiguous response situations and reveal their own attitudes*" (Fisher, 1993, p. 304). Respondents were, therefore, asked about the likelihood that 'their competitors' would engage in the action in the hope this would provide a more realistic response about the likelihood that a firm would engage in such behaviour itself. Third-person techniques were also utilised to reduce the occurrence of social desirability bias (discussed in the next section). For each scenario, behavioural intent was measured for different combinations of potential rewards, fines, and publicity.

c) Social Desirability Bias

The potential existence of social desirability bias considered to be prevalent in self-reporting survey research was also recognised (Cohen et al, 1993). Social desirability

bias is the “...*tendency of individuals to underestimate the likelihood they would perform socially undesirable actions and to admit to socially desirable ones*” (Chung and Monroe, 2003, p. 291). In effect, this bias can be measured as the difference between how individuals intend to behave and their perception of how others would behave in the same situation. Previous research (e.g. Randall and Fernandes, 1991; Chung and Monroe, 2003) has shown that individuals tend to believe they are more ethical than their peers. This is because individuals want to appear more altruistic and honest than they actually are (Chung and Monroe, 2003). Ensuring confidentiality or anonymity is considered one of the best ways of reducing the likelihood of social desirability bias (Randall and Fernandes, 1991; Chung and Monroe, 2003). This research was totally anonymous, which was clearly explained to potential respondents, along with assurances that none of the findings could be linked back to them in any way. However, Randall and Fernandes (1991) found that such steps do not completely eliminate the occurrence of social desirability bias, whereas third- person techniques have been successfully used (Fisher, 1993). This is another reason why a third person approach was used to measure behavioural intent. However, as this still may not be entirely effective, it was important that the existence of such bias be measured (Jo, 2000).

Despite the fact that self-report data has been used in 90% of empirical journal articles in ethics, only one of the 96 articles published between 1960 and 1991 attempted to measure the bias. Chung and Monroe (2003) suggested that research should attempt to measure the existence of any social desirability bias. In order to test for this, in addition to rating their competitor’s likely behaviour, half the respondents were asked to rate the likelihood that they would also engage in the same behaviour (Cohen et al,

1993; 2001; Chung and Monroe, 2003). This allowed for the variance in behavioural intent, due to social desirability bias, to be taken into account when the analysis was conducted. It is possible that the difference between competitor and own firm behaviour may reflect differences due to reasons other than social desirability. For example, it may be that competitors are actually more inclined to engage in illegal behaviour, or that firms genuinely believe their competitors are more likely to transgress. Regardless of the reason, however, the error was still accounted for in this analysis.

5.5.3. Measurement of the Independent Variables

Having discussed the measurement of the dependent variables, in this section the measurement of the independent variables is outlined, starting with those variables manipulated in the vignettes, followed by the other antecedent conditions tested.

a) Manipulated Variables

For each of the scenarios, pertaining to the influence of control variables on future behaviour, described in Section 5.5.2, respondents were presented with a series of vignettes using six different combinations of the size of fine, potential publicity, and potential rewards that could result from getting caught transgressing marketing law. The purpose of this approach was to determine the impact that the deterrence control variables of punishment and reward have on future illegal marketing behaviour. As is seen in Table 5.2, this was an orthogonal rather than a perfect design, meaning that some data was lost. This was deemed necessary in order to simplify the questionnaire,

since a perfect design would have made the survey too long and too complicated, which may have adversely impacted response rates and data quality (Karren and Woodard-Barringer, 2002).

Table 5.2: Combinations of Fine, Reward, and Publicity

Vignette	Fine	Reward	Publicity
1	Low	Low	
2	High	High	
3	High	Low	
4	Low	High	
5	None	Low	Adverse
6	None	High	None

Two major types of negative outcomes that might result from a transgression being detected and punished are the imposition of a fine and the generation of negative publicity (Petty, 2000). The two potential fine sizes provided were: low = \$50,000 and high = \$100,000 for the scenarios pertaining Part four of the Trade Practices Act (1974) (anti-competitive conduct) and low = \$5,000 and high = \$20,000 for the scenarios pertaining to Part five of the Trade Practices Act (1974) (misleading advertising). These figures were based on Australian court data regarding the size of fines levied over a period of 10 years, in combination with expert opinion. The options also recognised the difference in severity between breaches of Part four and Part five, since fines are generally higher for a breach of anti-competitive provisions. The two types of publicity provided to respondents were ‘adverse publicity’ and ‘no publicity’.

In order to gather a relative measure of the rewards that could result from a particular activity, an increase in annual revenue of a certain percentage was used. The types of

rewards provided to respondents were low = 2% of annual revenue and high = 15% of annual revenue. A percentage was used to indicate reward to allow for the fact that dollar amounts might have differing impacts on different firms. For example, a \$10,000 reward would most likely have limited impact on a large multinational corporation yet might be seen as a sizeable benefit by a small firm. Respondents were asked to rate the likelihood that they would engage in a particular action for various combinations of the above.

b) Other Antecedent Conditions

As illustrated in Figure 5.1, information was also gathered on the existence of conditions of motive, opportunity, and control within the firm and its industry. These variables were performance (profitability and market-share), competition (level and number), firm size, industry sector, perceptions of incidents of industry transgression, perceptions of the risk of detection, the existence and comprehensiveness of a compliance programme, and knowledge of marketing law.

Firm performance was measured by asking respondents to state profitability and market-share in relationship to their main competitors. As with Morris et al (1995), a relative measure of profitability was chosen since an actual amount could mean different things to different firms. For example, a \$1,000,000 profit might be considered sizeable for a small firm but small for a large multinational corporation. It was expected that intent to engage in illegal future behaviour would depend on performance relative to what the individual firm would consider to be a good or bad result, meaning actual performance figures would not provide a valid comparison.

Respondents were asked to rate both profitability and market-share on a five point scale, anchored by ‘much more than my competitors’ and ‘much less than my competitors’. Pre-testing suggested that some (mainly smaller) firms were largely unaware of their performance relative to their competitors. To prevent guessing, and potentially biasing the results, a ‘don’t know’ option was also provided (Aaker et al, 2007).

Two measures of competition were used. One measured a firm’s number of direct competitors and the other measured the perceived level of competition within the industry. The number of competitors is a more objective measure, and respondents were provided with six categories from which to choose. However, the number of competitors does not necessarily indicate the level of competition since some markets with only a few competitors might be highly competitive whereas other markets with more competitors may not strongly compete or are considered to be weak competitors (Szwajkowski, 1985). As a result, the perceived level of competition was also measured; this is a more subjective measure since it depends on the respondent’s opinion. As with profitability and market-share, it was believed that respondents would make decisions based on their perceptions of the competitiveness of their industry. The level of competition was rated on a five point scale anchored by ‘extremely competitive’ and ‘extremely uncompetitive’.

As a measure of firm size, respondents were asked to state the number of employees (full time equivalent) working for their firm within Australia. Number of employees was chosen over other measures such as sales and assets since it is the measure most commonly used in organisational studies (Baucus and Near, 1991). Firms were

provided with grouped categories from which to choose, in case they were not aware of the exact number of employees in their firm. These were 1 to 5, 6 to 20, 21 to 50, 51 to 100, 101 to 500, and 501 plus. In order to measure industry sector, firms were provided with seven industry classifications from which to choose: retailer, manufacturer, construction, transport operator, service provider, importer/wholesaler, and other. To measure perceptions of incidents of industry transgression, respondents were asked to rate their perceived likelihood that firms within their industry would transgress marketing law. This was recorded on a five point scale anchored by 'highly likely' and 'highly unlikely'.

Based on Cole (1989), the perceived risk of detection was measured by the extent to which the respondent believed that a transgression committed by a firm in their industry would be detected by the ACCC or reported by another competitor. A five point scale anchored by 'highly likely' and 'highly unlikely' was used. The measurement of the extent to which a firm uses a compliance programme was based on a scale developed by Wells (1995). Respondents were asked to rate the extent to which employees are not only educated and trained in aspects of marketing law but also follow pre-specified procedures when conducting promotional and pricing activities. For each of these items, respondents were asked to rate how likely they would be to use different components of a compliance programme on a five point scale anchored by 'extremely likely' and 'extremely unlikely'.

The measurement of knowledge was based on scales developed by Peterson (2001a), whereby respondents were provided with a legal scenario and asked to rate the legality of that scenario on a five point scale anchored by 'highly illegal' and 'highly

legal’. The number of correct responses was then totalled to generate a ‘knowledge score’. (See Appendix 2 for an example of the instrument that formed the basis of this survey).

5.6. Questionnaire Design

This section describes the wording and layout of the survey instrument used to collect the information described in the previous section.

5.6.1. Wording and Order of Questions

Vocabulary that was simple, direct, and could be easily understood by all respondents was used in the questionnaire (Malhotra, 1999). The instructions were clearly outlined at the beginning of each section and whenever the manner for answering questions changed. The questions were also kept as short as possible, without making them too ambiguous, in order to ensure the respondent completed the questionnaire.

Both Malhotra (1999) and Aaker et al (2004) suggest that the first questions are “*crucial in gaining the confidence and co-operation of the respondents*” (Malhotra, 1999, p. 309). These questions should be “*simple, interesting and non-threatening*” (Malhotra, 1999, p. 309). Thus, the first section of the survey contained the questions about respondents’ perceptions of the legislation, the extent to which they consulted lawyers, and the compliance procedures they had in place. These questions were considered less sensitive and more straightforward to answer. From here, the natural

progression was to test respondents' actual knowledge of marketing law. It was decided to separate Parts four and five of the Trade Practices Act (1974) into separate sections, so respondents were focussing on only one aspect of the Trade Practices Act (1974) at a time. Because of the more sensitive nature of these questions, the scenarios and vignettes regarding potential future behaviour were placed at the end of the section of the relevant part of act. Questions regarding firm and industry characteristics were posed in the final section, since these questions are generally considered to be more sensitive. This way, respondents were less likely to be alienated, since they were involved in the project at that point and had developed trust and confidence in the study (Malhotra, 1999; Aaker et al, 2004).

5.6.2. Layout

The questionnaire was presented in double sided A5 booklet form. Not only did this approach give the instrument a professional look, it was intended to give the impression the survey was shorter than it actually was. Results from previous research on the influence of questionnaire length on response rates have been mixed; however, Heberlein and Baumgartner (1978), Yu and Cooper (1983), and Yammarino et al (1991) all found that shorter length can increase response rates. Based on these findings, and given that business respondents are likely to be time-sensitive, every effort was made to keep the task as short as possible. The final length was 15 pages. Size 12 font was used for the questions and size 8.5 font was used for the response options. These font sizes were chosen both for their compactness and readability. Readability is important, since the advantages of brevity can be lost if the survey is difficult to read. The questionnaire was divided into four sections and questions were

numbered. Instructions were made clear and concise and included at the beginning of each section or wherever a change in answering method was required. The majority of answers required a simple circle or a tick. A cover letter was provided, giving a brief outline of the research in a way designed to ensure respondents understood the purpose of the survey and the methods used to ensure the anonymity of responses. The names of the researchers and their affiliation (Victoria University of Wellington) were also provided. The cover page included the Victoria University logo to attest to the legitimacy of the project (see Appendix 2).

5.7. Ethical Approval

Approval for this research was obtained from the Victoria University Human Ethics Committee. Anonymity meant that participants' consent could not be obtained as it could lead to the identification of respondents. It was assumed that, by returning the survey, respondents consented to participate. As part of the cover letter respondents were informed as to the purpose of the research, the anonymity of responses, and the usage of data (See Appendix 2).

5.8. Data Collection Procedures

As mentioned previously, 234 surveys were sent to those firms that had been caught transgressing marketing law, while 800 surveys were sent to those that had not been caught, resulting in a total of 1,034 surveys being distributed. The survey instrument

was slightly different for each of these groups, in order for the researcher to recognise the difference, whilst preserving anonymity. Additionally, half the respondents were randomly assigned a survey that asked them to rate the likely behaviour of theirs as well as their competitor's firm, while the other half received a survey that asked them to rate only their competitor's behaviour. This was done in order to determine whether social desirability bias was an issue.

To ensure statistically valid results, it is important that a good response rate be attained. Although mail surveys can have low returns, a response rate of 60% or more can be achieved (Gendall, 2000; Dennis, 2003; Finn et al, 2004; Gendall, 2005). The problem is that response rates are hard to predict (Aaker et al, 2004). There is also evidence that the response rates of small business owners are 'notoriously low' (Dennis, 2003), a particular issue given the importance of the responses of small businesses to this research. Dillman (1978) in his 'total design method' proposed a range of techniques, which have been trialled by other researchers, together with other aspects of mail surveys, in order to increase response rates. Such techniques include telephone notification, follow-up notices, questionnaire design, questionnaire length, and various forms of monetary and non-monetary incentives (Dillman, 1978; Yu and Cooper, 1983; Cavusgil and Elvey-Kirk, 1998; Gendall, 2000; Finn et al, 2004; Gendall, 2005). The results have been mixed, with some studies finding that certain methods work, while other studies find that they do not. One problem faced with the use of these techniques is the increased cost, which can negate the main benefit of using a mail survey in the first place (Cavusgil and Elvey-Kirk, 1998). Given the budgetary constraints of this research, and the added expense associated with conducting an international survey, it was not possible to use all the techniques

suggested by Dillman and others. However, various techniques for enhancing the response rate were still utilised in order to obtain as high a response rate as possible given the budgetary constraints, as discussed below.

5.8.1. Anonymity

Given that the subject matter could be described as sensitive, it was important that the research be entirely anonymous (Aaker et al, 2007). As noted previously, anonymity is also a means of reducing the likelihood of non-response bias. The problem with anonymity is that it significantly adds to the research cost, since reminders have to be sent out to all respondents, even if they have already answered the survey. This is because anonymity means the researcher is not aware of who has responded. Despite this problem, given the relatively sensitive subject matter, providing complete anonymity was deemed essential for this survey. To ensure respondents were aware that the survey was anonymous, it was noted in italics on the cover letter and underlined in bold at the top of the survey instrument.

5.8.2. Incentives

Monetary incentives are generally considered to be more effective than non-monetary incentives (Yu and Cooper, 1983; Yammarino et al, 1991; Jobber and O'Reilly, 1996), however, the use of non-monetary incentives has also been a popular means of attempting to increase response rates (Jobber and O'Reilly, 1996). Jobber and O'Reilly (1996) found that, for example, giving respondents a ballpoint pen increased response rates by 12 percentage points. Logistical and legal issues meant that it was

not possible to provide a monetary incentive, so respondents in this study were also provided with a ballpoint pen. Furthermore, respondents were given the opportunity to receive a summary of the completed study. In order to preserve anonymity, respondents were requested to e-mail the researcher separately in order to receive a copy of the results.

5.8.3. Follow Ups

Numerous studies, including Yu and Cooper (1983), Fox et al (1988), and Yammarino et al (1991), have found that sending reminder notices has a significant positive effect on response rates, particularly with institutional respondents (Yammarino et al, 1991). Based on this evidence, reminder postcards were sent to all firms that received the survey instrument. Because the survey was anonymous, the postcards had to be sent to all who received the initial survey, including those who had already completed it. To minimise annoyance, the card was also worded as a thank you note to those who had already responded (see Appendix 3 for an example). The cost of having to send out reminders internationally to every respondent meant that a second reminder (or third mail-out), which included a new questionnaire, could not be sent.

5.8.4. Personalisation

Since the database used for the firms that had not been caught transgressing marketing law included the name of the marketing manager, in these instances the cover letter was personally addressed. For the firms that had been caught transgressing marketing

law, an attempt was made to determine the name of the marketing manager from secondary data sources. Where a name could not be determined or there was no specialised marketing manager, the letter was addressed to the person responsible for the marketing function.

5.8.5. Other Methods

The cover letter attempted to appeal to each respondent's conscience by emphasising that this was student research, and that their answers were considered important (Cavusgil and Elvey-Kirk, 1998). Additionally, a business reply envelope was included with all questionnaires.

5.9. Pre-Testing

Pre-testing is considered an important stage in the instrument development process (Hunt et al, 1982), and involves the use of a small pilot study to determine the effectiveness of the survey instrument. A pre-test helps determine whether the researcher's expectations will be met in terms of the data collection process and the information gathered. The pre-test allows any deficiencies, such as poorly worded, loaded or double barrelled questions, to be corrected (Aaker et al, 2004). It has been suggested that the pre-test process should start with personal interviews, followed by a pilot study utilising the intended means of administration (Hunt et al, 1982). Therefore, a thorough pre-test of the research instrument was conducted on a small sample of the target population prior to it being distributed to the final sample.

5.9.1. Interviews

The instrument was first reviewed by someone considered knowledgeable in survey design, who identified issues such as poor wording, the existence of double barrelled questions, and inadequate instructions. The survey was also reviewed by people knowledgeable about the Trade Practices Act (1974). These people were asked to identify any factual errors in the questions or available responses and to identify any other issues that might have been missed. This process resulted in some minor adjustments to the survey instrument, such as rewording questions and clarifying instructions.

The next stage of the pre-test involved conducting interviews with managers from four organisations that represented the target population. Since it was expected that different types of firms would have unique issues, these interviews were conducted with managers from a large firm, two small firms, and a non-profit organisation. The 'debriefing approach' was used whereby the participants were asked about their impressions after they had undertaken the survey (Hunt et al, 1982). Pre-test participants were provided with the questionnaire and allowed to look through it in their own time, so they would not feel pressured by having someone watch over them as they answered questions that could be seen as sensitive. The participants were first briefed on what they should look out for (i.e. areas of confusion, misleading questions, inadequate response options, questions they would be uncomfortable answering). Since a problem with this approach is that issues encountered early in the session can be forgotten, respondents were asked to note down any issues as they occurred. The researcher then discussed any problems or comments the interviewee

had, as well as gaining other impressions regarding the questionnaire length and how likely they would be to respond. Each session lasted approximately 30 minutes. This process again resulted in some minor adjustments to the questionnaire, mainly rewording questions and answer options, and further clarification of instructions.

5.9.2. Mail Pre-Test

Having conducted the interviews, the next phase of the pre-test was to send the survey to a small selection from the overall sample. The main purpose of the mail pre-test was to test the administration method, gain an impression of likely response rates, and determine whether the required information was being obtained. Hunt et al (1982) suggested that response rates achieved in the pre-test are indicative of those that will be achieved in the main survey. It was important that the pre-test sample did not use up a significant share of the main target population. As a result, the sample was limited to 80 firms, 20 that had previously been caught transgressing the Trade Practices Act (1974) and 60 that had not. These firms were randomly selected from each Australian state (relative to size) from the respective databases. The pre-test was conducted as if it was the main survey. A reminder card was sent out two weeks after the initial contact. The results of the pre-test led to some minor changes to the instrument, which are outlined below.

5.10. Pre-Test: Response Analysis

The formula used to calculate the response rate was:

Number of usable responses received/total sent – (non-contacts - dummy addresses - ineligible).

Out of 80 surveys, the pre-test resulted in 17 usable responses; the response rate was 17/80 – 6 or 23%.

5.11. Changes Resulting From the Pre-Test

One issue that arose from the pre-test was that respondents tended to rate the environment in which they operated as being highly competitive. This finding suggested that there might be a self-reporting bias, so a more objective measure of the number of direct competitors was introduced. Additionally, some respondents appeared to have misinterpreted the instructions with regards to the scenario questions and vignettes. These questions were reworded and the instructions clarified to ensure the respondents were fully aware of what was required. It also seemed that some respondents were not aware the survey was anonymous. As a result, the anonymity of their answers was further emphasised in the cover letter and survey instrument.

5.12. Main Survey

Once the changes had been made, the main survey was sent out in the same manner as for the pre-test to 1034 respondents. Reminder cards were sent to all respondents two weeks after the main survey was sent out. Respondents were given five weeks to reply, at which point the survey was closed. An analysis of the respondents is provided in Chapter 6.

5.13. Main Survey: Response Analysis

A total of 172 useable responses were received, resulting in an overall response rate of 18% (see formula above):

$$= 172/1034-66$$

$$= 17.7\%$$

A total of 32 responses were received from firms that had been caught transgressing the Trade Practices Act (1974), creating a response rate of 32/225 or 14%. A total of 140 responses were received from firms that had not previously been caught transgressing, creating a response rate of 140/785 or 18%. This difference in response rates may be because firms that had been caught transgressing marketing law were slightly less willing to respond to the survey or because not all surveys to firms that had been caught transgressing were personally addressed. The response rate is comparable to other research into sensitive ethical behaviour by corporate executives.

For example, Schlegelmilch and Robertson (1995) obtained 7-12%, Barnett and Valentine (2002) 12.5%, and Hoffman et al (1991) 21.5%. The response rate was also likely influenced by the nature of the topic, since ethical and legal behaviour can be a sensitive issue. Many respondents were likely to have been unwilling to reveal their legal or ethical behaviour or to provide information that could potentially be incriminating (Trevino, 1986; Randall and Gibson, 1990).

5.14. Non-Response Bias and Missing Data

A relatively low response rate leads to the potential for non-response bias, when respondents who respond to the survey are in some way different to those who do not. When non-response bias occurs, it cannot be said that the results apply to the population (Gendall, 2005). While the best way of reducing the likelihood of such bias is to reduce non-response itself (i.e. obtain a high response rate), this can be expensive. Therefore, it may be more economical to estimate the non-response bias and accept a lower response rate (Armstrong and Overton, 1977). As has already been outlined, cost issues meant that for this research it was not possible to utilise some tactics for increasing response rates.

One way to measure non-response bias is to use the time trends extrapolations method. Under this method it is assumed that those who respond later are similar to non-respondents (Armstrong and Overton, 1977). Based on this, an analysis was conducted using the 41 variables to be used in the final analyses to test for differences between early and late respondents. Early responses were considered to be those

received within the first week after the survey was sent out and late responses those received from five days after the reminder notice was sent out. The results of the t-tests showed no significant differences (at the 0.05 level) between the mean responses of the early and late respondents for all 41 variables (See Appendix 4 for the full results). This lack of a significant difference provides an indication that the sample might not suffer from non-response bias. It must be noted, however, that late respondents are only used to approximate non-respondents; they are not the same. It cannot, therefore, be fully concluded that the sample does not suffer from non-response bias. Other methods, such as directly asking non-respondents why they did not respond, could not be used due to the anonymous nature of the survey.

Missing data are defined as items with no response. The amount of missing data contained in the useable sample were largely minimal (ranging from 1% to 7 %). Where missing data occurred they were handled using pairwise deletion, which *“attempts to use all available data by discarding cases on an analysis-by-analysis basis”* (Peugh and Enders, 2004, p. 528). Newsome (1996) found pairwise deletion to be more effective than other techniques, such as listwise deletion, mean substitution, and imputation procedures.

5.15. Chapter Summary

This chapter has outlined the methodological procedures that were used to gather the primary data. The primary data collection phase consisted of a survey that investigated the factors that might influence a firm having previously been caught

transgressing marketing law, the consequences to a firm of transgression detection, and potential illegal future marketing behaviour. This was achieved through a mail survey of marketing managers of Australian firms that had been caught by the ACCC for breaches of the Trade Practices Act (1974) and firms that had not. A range of techniques, including reminder notices, anonymity, incentives, and personalisation were used to try and improve the response rate. A pre-test was initially conducted, involving interviews with experts and members of the target market as well as a pilot test on a small sample. Based on this, some minor changes were made to the survey instrument. The main survey was then sent to 1034 respondents, with an 18% response rate being obtained. The next chapter outlines the results of the research described in this chapter.

Chapter 6: Quantitative Analysis: Survey Results

6.1. Introduction

This chapter describes the results of the quantitative survey already outlined in Chapter 4. The first part of this chapter provides basic descriptive statistics of the results obtained in the survey and describes the characteristics of the respondents. Secondly, the results of the hypotheses associated with the factors that have impacted on previously detected transgressions of marketing law are reported. Thirdly, the dynamic nature of the model is investigated by reporting the results of the hypotheses associated with behaviour after a firm has been caught transgressing, and the hypotheses associated with the factors that influence behavioural intent. Finally, the results of further exploratory analysis conducted to separate unintentional and intentional illegal firm behaviour are reported.

6.2. Descriptive Statistics

This section provides details of the survey results, in terms of the firm and industry characteristics of the respondents.

6.2.1. Firm Size and Performance

Table 6.1 illustrates the size of the firms that responded to the survey, in terms of the number of full time employees. The options provided in the survey were condensed to three categories: small, medium, and large.

Table 6.1: Firm Size (Number of Employees) of Respondents

Firm Size		Frequency	Percent
	Small (1-20)	30	17.4
	Medium (21-100)	77	44.8
	Large (101+)	57	33.1
	Total	164	95.3
Missing		8	4.7
Total		172	100.0

The majority of respondents tended to be medium- to large-sized firms. The greatest number of responses came from medium-sized firms (21 to 100 employees) with 44.8%.

Table 6.2 illustrates the profitability and market-share of the firms that responded to the survey:

Table 6.2: Performance Levels (Profitability and Market-share) of Respondents

Profitability		Frequency	Percent
	Much Less	9	5.2
	Slightly Less	30	17.4
	About the Same	55	32.0
	Slightly More	32	18.6
	Much More	17	9.9
	Don't Know	20	11.6
	Total	163	94.8
Missing		9	5.2
Total		172	100.0
Market-share		Frequency	Percent
	Least	4	2.3
	Below Average	20	11.6
	Average	41	23.8
	Above Average	69	40.1
	Market Leader	28	16.3
	Total	162	94.2
Missing		10	5.8
Total		172	100.0

In terms of profitability, 32% of respondents rated their profitability as being about the same as their competitors, 22.6% rated their profitability as being less than their competitors, and 28.5% rated it as being more than their competitors. In terms of market-share, however, the results are skewed towards higher levels of dominance. Over half, or 56.4%, of respondents rated their market-share as being greater than average, while only 13.9% rated it as below average. The remaining 23% rated it as about average.

6.2.2. Use of Compliance Programmes and Risk of Detection

When asked about the extent to which employees within the firm were made aware of marketing regulations during a given year, 45.9% said that it was either somewhat unlikely or extremely unlikely, 14.5% said that it was neither likely nor unlikely,

while the remaining 34.3% said that it was either somewhat likely or extremely likely (see Table 6.3).

Table 6.3: Compliance (The Likelihood of Employees being Made Aware of the Trade Practices Act)

Made Aware of TPA		Frequency	Percent
	Extremely Unlikely	36	20.9
	Somewhat Unlikely	43	25.0
	Neither Likely or Unlikely	25	14.5
	Somewhat Likely	29	16.9
	Extremely Likely	30	17.4
	Total	163	94.8
Missing		9	5.2
Total		172	100.0

A similar pattern of results exists for the extent to which employees were provided with guidelines on the legal aspects of promotional and pricing activities. These results demonstrate a tendency towards respondents either not having a compliance programme, or a less comprehensive or less consistent programme (see Table 6.4).

Table 6.4: Compliance (The Likelihood of Employees Being Provided With Guidelines Regarding the Trade Practices Act)

Promotion Guidelines		Frequency	Percent
	Extremely Unlikely	46	26.7
	Somewhat Unlikely	32	18.6
	Neither Likely or Unlikely	24	14.0
	Somewhat Likely	28	16.3
	Extremely Likely	33	19.2
	Total	163	94.8
Missing		9	5.2
Total		172	100.0
Pricing Guidelines		Frequency	Percent
	Extremely Unlikely	41	23.8
	Somewhat Unlikely	27	15.7
	Neither Likely or Unlikely	21	12.2
	Somewhat Likely	38	22.1
	Extremely Likely	36	20.9
	Total	163	94.8
Missing		9	5.2
Total		172	100.0

In terms of the perceived risk that a transgression would be detected, respondents believed there to be a slightly above average concern that a transgression within their industry would be detected. As illustrated in Table 6.5, 26.8% of respondents believed that it was either unlikely or highly unlikely that the Australian Competition and Consumer Commission (ACCC) would detect a transgression, while 32.6% believed that it was possible, and 37.2% believed it was either likely or highly likely. In terms of the likelihood that a competitor would report a transgression, 33.7% of respondents believed that it was either highly unlikely or unlikely, 29.7% believed it was possible, while 31.4% believed that it was either likely or highly likely (see Table 6.5).

Table 6.5: Respondents' Perceptions of the Risk of Detection (by ACCC and Competitor)

Risk of Detection (ACCC)		Frequency	Percent
	Highly Unlikely	13	7.6
	Unlikely	33	19.2
	Possible	56	32.6
	Likely	39	22.7
	Highly Likely	25	14.5
	Total	166	96.5
Missing		6	3.5
Total		172	100.0
Risk of Detection (Competitor)		Frequency	Percent
	Highly Unlikely	23	13.4
	Unlikely	35	20.3
	Possible	51	29.7
	Likely	36	20.9
	Highly Likely	18	10.5
	Total	163	94.8
Missing		9	5.2
Total		172	100.0

This shows that respondents are slightly more concerned about being caught transgressing marketing law directly by the ACCC, rather than being reported by a competitor.

6.2.3. Industry Details

a) Industry Sector

Table 6.6 illustrates the industry sectors represented. Manufacturers and service providers accounted for 23.8% and 21.5% of respondents respectively. The small number of responses from transport operators and construction firms meant that these variables were combined with services and manufacturers respectively for the analysis.

Table 6.6: Respondents by Industry Sector

Industry Sector		Frequency	Percent
	Retail	23	13.4
	Manufacturer	41	23.8
	Construction	12	7.0
	Transport	6	3.5
	Services	37	21.5
	Importer/Wholesaler	18	10.5
	Other	27	15.7
	Total	164	95.3
Missing		8	4.7
Total		172	100.0

b) Competition

Two measures of competition were used: 1) perceptions of the level of competition, and 2) the number of direct competitors. The results are illustrated in Table 6.7.

Table 6.7: Competition in the Respondents' Industry (Level and Number)

Level of Competition		Frequency	Percent
	Extremely Uncompetitive	5	2.9
	Uncompetitive	6	3.5
	Average	27	15.7
	Competitive	57	33.1
	Extremely Competitive	68	39.5
	Total	163	94.8
Missing		9	5.2
Total		172	100.0
Number of Competitors		Frequency	Percent
	None	1	0.6
	1 to 5	55	32.0
	6 to 10	37	21.5
	11 to 20	37	21.5
	21 to 50	13	7.6
	51+	18	10.5
	Total	161	93.6
Missing		11	6.4
Total		172	100.0

In terms of the level of competition, respondents tended to claim that they operate in highly competitive industries. The results show that nearly 40% of respondents rated their industry as being extremely competitive, while only 2.9% rated it as being extremely uncompetitive. As noted previously, it was posited that there may be a self-report bias, so respondents were also asked to indicate the number of direct competitors they had. Here the results are slightly different, 54.1% claimed to have fewer than 11 competitors, 21.5% claimed to have 11 to 20 competitors, and 18.1% claimed to have 21+ competitors.

c) Perceived Incidents of Industry Transgression

Respondents tended to consider that transgressions were uncommon within their industry. This is shown by the fact that 46.5% believed that transgressions occur either rarely or never, although only 1.7% believed that they never occur. Only 15.7% believed that transgressions occur often or extremely often (see Table 6.8).

Table 6.8: Respondents' Perception of Incidents of Industry Transgression

Industry Transgression		Frequency	Percent
	Never	3	1.7
	Rarely	77	44.8
	Sometimes	55	32.0
	Often	25	14.5
	Extremely Often	2	1.2
	Total	162	94.2
Missing		10	5.8
Total		172	100.0

6.2.4. Knowledge of Marketing Law

Figure 6.1 illustrates the distribution of results for legal knowledge:

Figure 6.1: Overall Knowledge of the Trade Practices Act

The overall average number of correctly-answered scenarios in the survey was 11.6 out of 20 or 58%. This is slightly lower than the average scores reported by Peterson (2001a). When separated into misleading advertising and anti-competitive conduct, the average score for misleading advertising was 7.1 out of 13 or 55%, and for anti-competitive conduct 4.5 out of 7 or 64%. This contradicts the North American findings of Bowal and Wanke (1998) and Peterson, (2001a), who found knowledge of antitrust issues in particular to be worse.

6.3. Antecedents of Previous Transgressions

This section describes the results from the analysis of differences, in terms of conditions of motive, opportunity, and control, between firms that have been detected and sanctioned by the courts or the ACCC for previous transgressions of marketing law (Parts four and five of the Trade Practices Act 1974) and those that have not. These results highlight the factors that led to firms being caught transgressing marketing law in the past. The first part of this section outlines the logistic regression techniques used to analyse the data, before describing the results for each condition: motive, opportunity and control.

6.3.1. Multinomial Logistic Regression

Since the dependent variable (whether a firm has previously been caught transgressing marketing law) was discrete and binary (that is there were only two possible outcomes with no ranking) rather than continuous, a binary choice model was required (Greene, 2003). When the dependent variable is categorical and the independent variables are a mixture of categorical (factors) and continuous (covariates), a multinomial logistic model is the best means of data analysis (SPSS, 2006), as such models have been successfully applied to discrete choice processes in fields such as econometrics, transportation, and marketing (Abe, 1999).

The dependent variable (whether a firm has been caught transgressing marketing law or not) was assumed to be dynamic, and falling on a continuum. Therefore, this variable took the form of an index function model (Greene, 2003). A transgression

can range from not occurring, to being very minor, to being very major. The assumptions were made that regulatory agencies only act when they deem a transgression to have been of significant severity and that, while, in some cases, firms that transgress above that level of severity will not be caught, most are. The degree of transgression can be represented as y . The point at which a transgression is deemed to be severe enough is y^* . Where the severity of the transgression is below y^* then the transgression is deemed to be minor and effectively not to have occurred.

Therefore: if $y < y^*$, then transgression = 0, if $y \geq y^*$, then transgression = 1.

Thus, 0 represented a firm that had not previously been caught transgressing marketing law (or where the severity of transgression was minimal) and 1 represented a firm that had previously been caught transgressing marketing law (where the transgression was above the threshold of severity). While the observed variable, being caught transgressing marketing law or not, was coded as a dichotomous variable, the underlying construct being measured was assumed to be continuous.

The independent variables (firm size, the number of competitors, and industry sector) were all treated as fixed factors. Profitability, market-share, level of competition, perceived risk of detection, existence and comprehensiveness of a compliance programme (compliance programme), and perceived incidents of industry transgression were treated as covariates in the multinomial logistic model, since the differences between response options were considered to be meaningful. All variables used to represent conditions of motive, opportunity, and control were included in the

same regression equation. Results are shown in Table 6.9, with the findings for motive, opportunity, and control each described in more detail below.

Table 6.9: Parameter Estimates for Having Previously Been Caught Transgressing Marketing Law

Factor	Estimate	Std. Error
Intercept	1.413	3.164
Motive		
Profitability	-0.385	0.306
Market-share	-0.210	0.364
Number of Competitors (0-5)	-1.615	1.251
Number of Competitors (6-10)	-4.882**	1.540
Number of Competitors (11-20)	-0.634	1.171
Number of Competitors (21-50)	-22.302	0.000
Number of Competitors (51+)	0(a)	.
Level of Competition	-1.303**	0.493
Opportunity		
Firm Size (Small)	1.303	0.787
Firm Size (Medium)	-2.399**	0.897
Firm Size (Large)	0(a)	.
Industry Sector (Retail)	-1.125	1.016
Industry Sector (Service)	-0.393	0.860
Industry Sector (Importer/Wholesaler)	0.250	1.137
Industry Sector (Manufacturer)	0(b)	
Perception of Incidents of Industry Transgression	-0.055	0.475
Control		
Perceived Risk of Detection (ACCC)	0.222	0.411
Perceived Risk of Detection (Competitor)	0.847*	0.334
Compliance Programme	0.426**	0.136

(a) This parameter is set to zero because it is redundant.

* = $p < 0.05$, ** = $p < 0.01$

6.3.2. Motive

As seen in Figure 6.2, the three motives hypothesised to impact on having previously been caught transgressing marketing law were: profitability, market-share, and competition. The actual results are shown in Table 6.9.

Figure 6.2: Relationships between Motive and Having Previously Been Caught Transgressing Marketing Law

It was hypothesised that firms facing greater pressure from poor profitability would be more likely to have been caught transgressing marketing law than more profitable firms. However, the results show no relationship between profitability and having previously been caught transgressing marketing law. This suggests that firms with lower profitability relative to their competitors are not more likely to have previously been caught transgressing marketing law and, thus, H1a is rejected. Similarly, it was hypothesised that firms with lower market-share would have a greater motive to transgress marketing law than firms with higher market-share. The results, however, show that there is no relationship between market-share and having previously been caught transgressing marketing law. As a result, H1b is rejected. Lastly, firms facing increased competitive pressures were hypothesised to be more likely to have previously been caught transgressing marketing law than firms facing less competitive environments. The effects of the level of competition and the number of competitors within an industry were both investigated. The results show that the level of competition does have an impact on having previously been caught transgressing marketing law. In terms of the number of competitors, firms with 6-10 competitors are less likely than firms with 51+ competitors to have been caught transgressing marketing law. However, for both measures, the relationship is in the opposite

direction to that which had been hypothesised. It was hypothesised that firms facing more intense competition with a greater number of competitors would be less likely to have been caught transgressing the law, whereas, in fact, the opposite is the case. Firms that have fewer competitors and face less intense competition are more likely to have been caught transgressing marketing law. Therefore, while a relationship does exist between having previously been caught transgressing marketing law and competition, H1c is not fully supported, due to the direction of the relationship. The possible reasons for this will be discussed in Chapter 7.

6.3.3. Opportunity

As seen in Figure 6.3, firm size, industry sector, and perceived incidents of industry transgression were hypothesised to be factors that created an opportunity for a previous transgression of marketing law to have occurred (and been detected). The results are illustrated in Table 6.9.

Figure 6.3: Relationships between Opportunity and Having Previously Been Caught Transgressing Marketing Law

It was hypothesised that larger firms would be more likely to have been caught transgressing marketing law than smaller firms. The results show a relationship exists

between firm size and having previously been caught transgressing marketing law. Further analysis of the results reveals that only medium sized firms are less likely than large firms to have been previously caught transgressing marketing law. There is no significant difference between large firms and small firms and medium and small firms. This result provides partial support for H2a.

It was also hypothesised that certain industry sectors are more prone to having been caught transgressing marketing law than others. The results, however, show that no such differences exist, meaning H2b is rejected. Lastly, it was hypothesised that the greater the extent to which respondents believed other firms were transgressing marketing law within their industry, the more likely they were to have been caught transgressing themselves. The results show no relationship to exist, meaning H2c is rejected.

6.3.4. Control

It has generally been proposed in the literature that firms with higher risk perceptions of transgression detection and those with more comprehensive compliance programmes are less likely to have been caught transgressing the law. However, as outlined in Chapter 3, it was expected that, in this instance, due to time-ordering effects, the result would be the opposite (see Figure 6.4). As seen in Table 6.9, this hypothesis is supported since the results show a significant relationship between the control variables (perceived risk and compliance) and having previously been caught transgressing marketing law. These results show that firms that believe the risk of detection is higher, and firms with more comprehensive compliance programmes, are

more likely to have previously been caught transgressing marketing law than firms with lower perceptions of risk and less comprehensive or no compliance programmes. In terms of risk, it must be noted that a relationship only exists for the risk of a competitor reporting a transgression rather than it being directly detected by the ACCC. Based on these findings, H3a is partially accepted and H3b is fully accepted. As noted earlier, perceptions of risk and the use of compliance programmes can be influenced by time-ordering effects. These results suggest that risk and compliance may be *consequences* of having previously been caught transgressing marketing law. This is further expanded in Section 6.4.

Figure 6.4: Relationships between Control and Having Previously Been Caught Transgressing Marketing Law

6.3.5. Summary of Previous Transgression results

Table 6.10 outlines the results of the hypotheses pertaining to previously detected transgressions of marketing law. All hypotheses associated with conditions of motive are rejected. Although a relationship was found to exist between competition and having previously been caught transgressing marketing law, it is in the opposite direction to that hypothesised. Firm size is the only opportunity variable to have an impact on having previously been caught transgressing marketing law. Both control

variables (risk and compliance) were found to have an impact on having previously been caught transgressing marketing law, which is most likely explained by issues of time-ordering.

Table 6.10: Summary of the Findings Related to Having Previously Been Caught Transgressing Marketing Law

Hypothesis	Factor	Accept/Reject
Motive		
H1a	Profitability	Reject
H1b	Market-share	Reject
H1c	Competition	Wrong Sign
Opportunity		
H2a	Firm Size	Accept
H2b	Industry Sector	Reject
H2c	Perception of Incidents of Industry Transgression	Reject
Control		
H3a	Compliance Programme	Accept
H3b	Perceived Risk of Detection	Accept

6.4. Changes in Behaviour after a Transgression is Detected

Figure 6.5: Relationships between Having Previously Been Caught Transgressing Marketing law, Risk, and Compliance

As seen in Figure 6.5, it was hypothesised that firms that had been previously caught transgressing marketing law would be more likely to have a more comprehensive

compliance programme and perceive the risk of future detection as higher than those firms that had not been caught. Table 6.11 illustrates the results.

Table 6.11: The Results of the Relationships between Having Previously Been Caught Transgressing Marketing law, Risk, and Compliance

Independent Variable	Dependent Variable	F Statistic
Caught Transgressing	Perceived Risk of Detection	12.798**
Caught Transgressing	Compliance Programme	25.933**
Independent Variable	Dependent Variable	T Statistic
Risk of Detection	Compliance Programme	8.229**

*= $p < 0.05$, ** = $p < 0.01$

As noted in the previous section, the direction of the relationship provides further support to the notion that risk and compliance are *consequences* of a transgression being detected. To further test this hypothesis, the impacts of having previously been caught transgressing marketing law on a firm's perceptions of the risk of detection and the existence and comprehensiveness of a compliance programme were tested. Since both the dependent variables (risk of future detection and the existence and comprehensiveness of a compliance programme) were continuous and the independent variable (whether a firm has been caught transgressing marketing law) was dichotomous, an Analysis of Variance (ANOVA) was performed (Malhotra, 1999).

In terms of the risk of detection, the mean score on the one to five scale (with one representing 'low risk' and five representing 'high risk') for firms that had been previously caught transgressing marketing law was 3.8, whereas, for firms that had not been caught previously transgressing, the mean score was three. This difference is significant at the 0.05 level (see Table 6.11), suggesting that firms that have

previously been caught transgressing marketing law perceive the risk of detection to be greater than those that have not, thus supporting H4a.

Regarding the existence and comprehensiveness of a compliance programme, the mean score on a one to fifteen scale for firms that had been previously caught transgressing marketing law was 11.6 (with one representing 'no system of compliance' and 15 representing a 'comprehensive system of compliance'), while the mean score for firms that had not been caught was eight. This difference is significant at the 0.05 level (see Table 6.11), suggesting that firms that have been caught transgressing marketing law have more comprehensive systems of compliance than firms that have not been caught. Therefore, H4b is accepted.

In addition to the direct link between having previously been caught transgressing marketing law and the existence and comprehensiveness of a compliance programme, it was also hypothesised that perceptions of the risk of detection would also influence the extent to which a firm used a compliance programme (see Figure 6.6).

Figure 6.6: Relationship between Risk and Compliance

Linear regression was used to test the relationship between the two continuous variables. As seen in Table 6.11, the results indicate a direct positive relationship between risk and compliance. This suggests that, as a firm's perception of the risk of

detection increases, the more comprehensive a firm's compliance programme will be, meaning that H5 is accepted. Table 6.12 summarises the findings outlined in this section in terms of acceptance of hypotheses.

Table 6.12: Summary of the Findings between Having Previously Been Caught Transgressing Marketing Law, Risk, and Compliance

Hypothesis	Independent Variable	Dependent Variable	Accept/Reject
H4a	Caught Transgressing	Perceived Risk of Detection	Accept
H4b	Caught Transgressing	Compliance Programme	Accept
H5	Perceived Risk of Detection	Compliance Programme	Accept

6.5. Impact of Motive, Opportunity, and Control on Future Behaviour

To this point, the analysis has focussed on the factors that led firms to transgress marketing law in the past and the resulting changes in firms' perceptions of risk and the existence and comprehensiveness of compliance programmes that resulted from the transgression detection. The final facet of this analysis was to determine the factors that might influence behavioural intent and how previous transgression detection might affect some of these relationships. The three main questions were:

1. How much do Australian firms vary in their (mean) intent to transgress marketing law?
2. Do the effects of motive, opportunity, and control, lead to different levels of behavioural intent?

3. How do firms that have previously been caught transgressing marketing law compare in terms of (mean) intent and in terms of the strength of the relationship between risk, compliance, and behavioural intent?

The use of hierarchical linear models, using the mixed procedure in SPSS was deemed the best approach to answer these questions. A brief review of mixed models is provided in the section below.

6.5.1. Mixed Models

As outlined in Chapter 3, some of the hypotheses deal with nested variables. These which occur when “*processes occurring at a higher level of analysis are influencing characteristics at a lower level*” (Luke, 2004, p. 1), that is, when individual respondents are influenced by the contexts within which they operate (Luke, 2004). For this research, interest centred on the effect that the higher level context of a firm having previously been caught transgressing marketing law would have on the individual lower level relationships between conditions of control and behavioural intent. This analysis, therefore, required a multilevel approach. Multilevel modelling techniques (also known as hierarchical linear models) have become an increasingly popular means of analysing nested data (Peugh and Enders, 2005).

In addition, this research also recognised the importance of both aggregate and individual level analyses. In most cases, models are either estimated at the aggregate level or separately for each individual. Both aggregate and individual level models, however, are subject to a number of limitations. The problem with aggregate models is that the restriction on differences in response across individuals is too severe.

Conversely, individual level models allow individuals arbitrarily to vary in their preferences and, by estimating regression individually for each respondent, the estimates can become unstable. In addition, individual level estimates also tend to have large standard errors, which suggest high uncertainty (Elrod and Winer, 1982; Elrod and Haubl, 1998).

In recognition of the limitations associated with both individual and aggregate level approaches, there has been a trend towards mixed models that combine the accuracy of aggregate models with the flexibility of individual level models: “*The Linear Mixed Models procedure expands the general linear model so that the data are permitted to exhibit correlated and non-constant variability. The mixed linear model, therefore, provides the flexibility of modelling not only the means of the data but their variances and covariances as well*” (SPSS, 2006, p. 34). Such models are also capable of handling hierarchical structures with nested data. Thus, the mixed procedure in SPSS was deemed an appropriate analytical tool, since it performs multilevel analysis while also showing aggregate and individual level effects.

In a mixed model, responses are considered to represent the sum of both fixed and random effects. If an effect is considered to influence the mean of the population, it is fixed. If, however, the effect is associated with a ‘sampling procedure’ then it is random. In a mixed model, random effects only influence the covariance within the data. Accordingly, the aggregate or mean effect across all firms for the impact of conditions of motive, opportunity, and control on behavioural intent can be determined, as well as how individual firms differ in their responses around that mean. In most research, it is the fixed effects that are of primary interest and which will

determine whether the hypotheses are supported or rejected. However, it is important to adjust for the covariant structure of the data, which is an important advantage of the mixed procedure (SPSS, 2005).

6.5.2. Mixed Model Results: Hypothesis Testing

This section describes the aggregate results from the testing of hypothesised relationships between motive, opportunity, control, and behavioural intent. While all variables were tested in the same model, the results are described separately. The first part of this section looks at the impact of motive and opportunity on behavioural intent, before investigating the impact of the control variables and the effect having previously been caught transgressing marketing law has on these relationships. Lastly, the proposed relationships between risk, compliance or knowledge, and behavioural intent are investigated.

Table 6.13: Model Fit Statistics

Akaike's Information Criterion (AIC)	16122.129
Hurvich and Tsai's Criterion (AICC)	16122.148
Bozdogan's Criterion (CAIC)	16166.454
Schwarz's Bayesian Criterion (BIC)	16160.454

Table 6.13 shows the model fit statistics using Akaike's Information Criterion, Hurvich and Tsai's Criterion, Bozdogan's Criterion and Schwarz's Bayesian Criterion. The parameter estimates are outlined in Table 6.14.

Table 6.14: Parameter Estimates for Behavioural Intent

Factor	Estimate	Std. Error
Motive		
Profitability	-0.079	0.054
Market-share	0.269**	0.72
Number of Competitors (0-5)	-0.287	0.241
Number of Competitors (6-10)	0.005	0.257
Number of Competitors (11-20)	-0.473	0.258
Number of Competitors (21-50)	-0.389	0.311
Number of Competitors (51+)	0 (a)	0
Level of Competition	-0.116	0.081
Opportunity		
Firm Size (Small)	-0.273	0.229
Firm Size (Medium)	0.279	0.169
Firm Size (Large)	0 (a)	0
Industry Sector (Retail)	-0.094	0.238
Industry Sector (Service)	-0.605**	0.195
Industry Sector (Importer/Wholesaler)	0.776**	0.229
Industry Sector (Manufacturer)	0 (a)	0
Perception of Incidents of Industry Transgression	0.13	0.1
Control		
Small Fine	-0.392**	0.093
Large Fine	-1.414**	0.117
Publicity	-0.771**	0.119
Reward	0.426**	0.08
Risk of Detection (ACCC)	-0.117	0.089
Risk of Detection (Competitor)	0.067	0.075
Compliance	-0.109**	0.025
Compliance * Caught Transgressing	0.195**	0.072
Risk of Detection (ACCC) * Caught Transgressing	-0.573*	0.234
Knowledge	0.101**	0.005

(a) This Parameter is set to zero because it is redundant

* = $p < 0.05$, ** = $p < 0.01$

a) Impact of Motive on Behavioural Intent

Similar to the hypotheses pertaining to previous transgressions, it was expected that lower profitability, lower market-share, and higher levels of competition would create pressure and motive for engaging in future illegal marketing behaviour (see Figure

6.7), with Table 6.14 outlining the results. As was the case with having previously been caught transgressing marketing law, no relationship exists between profitability and behavioural intent. Therefore, H6a is rejected. In terms of market-share, however, unlike having previously been caught transgressing marketing law, a relationship exists with behavioural intent, although the relationship is in the opposite direction to that which was hypothesised. This suggests that firms with higher market-share are more likely to engage in illegal marketing behaviour than those with lower market-share, and higher market-share might, in fact, represent an opportunity to transgress the law. H6b is thus rejected due to the direction of the relationship.

Figure 6.7: Relationships between Motive and Behavioural Intent

Two measures were used to rate industry competition: 1) level of competition, and 2) number of direct competitors. In terms of both measures, no relationship was found to exist with behavioural intent. Based on these findings, H6c is rejected.

b) Impact of Opportunity on Behavioural Intent

Figure 6.8 illustrates the proposed relationships between conditions of opportunity and behavioural intent, with the results shown in Table 6.14.

Figure 6.8: Relationships between Opportunity and Behavioural Intent

Larger firms were hypothesised to be more likely to engage in future illegal marketing behaviour than smaller firms. While size of the firm has some impact on having previously been caught transgressing marketing law, it has no impact on behavioural intent. Thus, H7a is rejected.

Some relationships were found to exist between industry sector and behavioural intent. Importers and wholesalers are more likely than manufacturers to consider engaging in illegal marketing behaviour, whilst firms in the service industry are less likely to consider engaging in such behaviour than manufacturers. There is no difference between manufacturers and retailers or firms in the 'other' category. Based on these findings, H7b is partially accepted. However, no relationship was found to exist between perceived incidents of industry transgression and behavioural intent. Therefore, H7c is rejected.

c) Impact of Control (Perceived Risk and Compliance) on Behavioural Intent

It is evident from the standardized coefficients in Table 6.14 that the control variables account for the greatest average variance in behavioural intent. The existence of a

large fine accounts for the greatest share, followed by publicity and reward. All the control variables, with the exception of perceived risk, account for the top five factors impacting on behavioural intent.

Two analyses were conducted within the mixed model to determine the impact of perceptions of risk and the existence and comprehensiveness of a compliance programme on behavioural intent. The first analysis was to ascertain the direct effects that risk and compliance have on behavioural intent (see Figure 6.9).

Figure 6.9: Relationships between Risk, Compliance, and Behavioural Intent

The second analysis was to ascertain how having previously been caught transgressing marketing law influences the relationship between risk, compliance, and behavioural intent (see Figure 6.10).

Figure 6.10: Interaction Relationships

As seen in Table 6.14, in terms of direct effects, no relationship exists between perceived risk and behavioural intent, meaning that H8b is rejected. However, the relationship between the interaction of having previously been caught transgressing marketing law and the perceived risk of future detection is significant (at the 0.05 level). Thus, for firms that have previously been caught transgressing marketing law, where the perceived risk of detection is higher, behavioural intent is lower. As a result of this finding, H9 is accepted.

As seen in Table 6.14, in terms of the direct relationship between the existence and comprehensiveness of a compliance programme and behavioural intent, a negative relationship was found to exist. This suggests that, overall, behavioural intent is lower in firms with more extensive compliance programmes, meaning that H8a is accepted. When looking at the interaction between having previously been caught transgressing marketing law and compliance on behavioural intent, a relationship was also found to exist (see Table 6.14). In this situation, however, the relationship is positive, as opposed to the negative relationship seen with the direct effect. This suggests that, for firms that have previously been caught transgressing marketing law, behavioural intent is higher where there is a more comprehensive compliance programme in place.

It is likely that such firms only develop a compliance programme because it is a requirement of any sanction they have received, and, as such, may have little impact on actual behaviour, especially if such firms are predisposed towards transgressing and not concerned the risk of future detection. H10 is thus rejected, due to the direction of the relationship.

d) Impact of Control (Fine, Publicity, and Reward) on Behavioural Intent

As seen in Figure 6.11, the potential of receiving a fine or adverse publicity were hypothesised to reduce intent to engage in future illegal marketing behaviour, while potential rewards were hypothesised to increase the likelihood of such behaviour.

Figure 6.11: Relationships between Fine, Publicity, Reward, and Behavioural Intent

Because the size of the fine contained three possible categories (none, low, and high), it was coded as two dichotomous dummy variables, with 0, 1 representing a high fine, 1, 0 representing a low fine, and 0, 0 representing no fine. As a result, size was represented in the model by two variables: ‘small fine’ and ‘large fine’. Since revenue and publicity only had two categories (low and high), they were each coded as

dummy variables, with 0 representing no publicity or low revenue and 1 representing adverse publicity or high revenue.

As expected, the existence of a small fine, the existence of a large fine, and the level of publicity all have a negative impact on behavioural intent. Higher fines and the possibility of adverse publicity reduce intent to engage in future illegal marketing behaviour (see Table 6.14). Therefore, both H8c and H8d are accepted. According to the standardised co-efficient, the existence of a large fine accounts for a greater change in levels of behavioural intent than publicity. Likewise, as expected, a positive relationship exists between potential rewards and behavioural intent. This shows that future illegal behaviour is seen as more attractive when the likely rewards are greater, which supports H8e.

e) Impact of Knowledge

Because two of the scenarios used to measure knowledge depicted legal behaviour and two of the scenarios depicted illegal behaviour (See Appendix 1), the results were coded on a one to five scale based on the extent to which the respondent correctly assessed the scenario's legality, with five representing 'knowledgeable' and one representing 'no knowledge'. For example, a respondent would receive a five for knowledge if they identified an illegal scenario as being 'obviously illegal' or a legal scenario as being 'obviously legal'. This was repeated for the four scenarios. Each response was coded as one if it corresponded to a legal scenario and negative one if it corresponded to an illegal scenario. These were then multiplied by the knowledge score, so that respondents would receive an overall score ranging from negative five

to five. A score of negative five designated that the respondent knew an illegal scenario was illegal and a score of five designated knowing that a legal scenario was legal. This allowed for the impact of knowledge to be investigated for both legal and illegal scenarios simultaneously.

The results show a positive relationship between knowledge and behavioural intent (see Table 6.14). This suggests that, in situations where knowledge of the legality of an illegal scenario is higher, the likelihood of engaging in that behaviour is lower. Likewise, in situations where knowledge of a legal scenario is higher, the likelihood of engaging in that behaviour is higher. This supports H11 and suggests that unintentional illegality is more likely to occur in situations where legal knowledge is poorer.

f) Summary of Behavioural Intent Results

Table 6.15 illustrates the hypotheses that were accepted or rejected. No hypotheses pertaining to conditions of motive were fully supported. While a relationship existed between market-share and behavioural intent, it is in the opposite direction to that proposed. In terms of conditions of opportunity, industry sector was found to have an impact on behavioural intent. However, there was no relationship found to exist with firm size or perceived industry transgression. All hypotheses in relation to the control variables were supported, with the exception of perceived risk of detection, although a relationship does exist when the risk of detection is combined with having previously been caught transgressing marketing law. Knowledge of the law also has an impact on behavioural intent.

Table 6.15: Summary of the Findings Related to Behavioural Intent

Hypothesis	Factor	Accept/Reject
	Motive	
H6a	Profitability	Reject
H6b	Market-share	Opposite Sign
H6c	Competition	Reject
	Opportunity	
H7a	Firm Size	Reject
H7b	Industry Sector	Partial Accept
H7c	Perception of Incidents of Industry Transgression	Reject
	Control	
H8a	Compliance	Accept
H8b	Perceived Risk of Detection	Reject
H8c	Fine	Accept
H8d	Publicity	Accept
H8e	Reward	Accept
H9	Perceived Risk of Detection * Caught Transgressing	Accept
H10	Compliance Programme * Caught Transgressing	Opposite Sign
H11	Knowledge	Accept

6.6. The Relationship between Compliance, Risk, Knowledge, and Behavioural Intent

As seen in Figure 6.12, it was hypothesised that knowledge of the law would be greater in the firms with more comprehensive compliance programmes and where perceptions of the risk of a transgression being detected by regulatory agencies are higher:

Figure 6.12: Relationships between Compliance, Risk, Knowledge, and Behavioural Intent

The results obtained are outlined in Table 6.16:

Table 6.16: Parameter Estimates for the Relationships between Risk, Compliance, Knowledge, and Behavioural Intent

Independent Variable	Dependent Variable	Estimate	Std. Error
Perceived Risk of Detection	Knowledge	0.513*	0.201
Compliance Programme (Overall)	Knowledge	0.060	0.053
Compliance Programme (Employee Education)	Knowledge	0.444*	0.212

* = $p < 0.05$, ** = $p < 0.01$

To investigate the relationship between the two continuous variables of compliance and knowledge, a multiple linear regression was employed. No relationship was found between overall compliance and knowledge; however, a positive relationship was found to exist between compliance and knowledge in terms of employee education (one aspect of a compliance programme). This suggests that firms that have more comprehensive compliance programmes (in terms of employee knowledge) have greater knowledge of marketing law than those with less comprehensive programmes, meaning H12 is partially supported. Linear regression was also used to analyse the relationship between perceived risk of detection and knowledge of marketing law, and

a positive relationship was found to exist. This suggests that, when firms perceive the risk of detection to be high, their knowledge of the law is greater, supporting H13. Previous findings (H11) have shown that increased knowledge reduces intent to engage in future illegal marketing behaviour. The results also suggest that, in addition to the direct impact of compliance programmes on future behaviour, they may also have an indirect impact through knowledge. This suggests that knowledge of the law may act as a mediating variable between perceived risk or compliance and behavioural intent. Table 6.17 summarises these findings.

Table 6.17: Summary of the Findings for the Relationships between Risk, Compliance, Knowledge, and Behavioural Intent

Hypothesis	Independent Variable	Dependent Variable	Accept/Reject
H11	Knowledge	Behavioural Intent	Accept
H12	Compliance Programme	Knowledge	Partial Accept
H13	Perceived Risk of Detection	Knowledge	Accept

6.7. Social Desirability Bias

As noted earlier, there is a danger that respondents might tend to under-report their intent to engage in socially undesirable behaviour, in relation to others (Chung and Monroe, 2003). To account for this, some respondents were asked to rate the likely intent to transgress of both of their own firms' and their competitors. Responses were coded as dummy variables, with those relating to how the respondent would behave coded as 0 and those relating to their competitor as 1. This was included as part of the mixed model, which resulted in a positive relationship ($t=9.977$, $p<0.01$). This finding

suggests that respondents believe their competitors are more likely to transgress than they themselves, possibly indicating the existence of social desirability bias.

6.8. Covariance and Social Desirability Bias

To this point the analysis has been conducted at the aggregate level, that is the mean effect across all firms. It is now prudent to consider the covariance around those means at the firm level for the manipulated variables: punishment (fine/publicity), reward, and whether a respondent was answering from their own perspective or their competitors. This covariance also has an impact on the aggregate model. By analysing variance components, the contribution of the random effects on the total variance in the dependent variable can be determined (SPSS, 2006).

In the past, one problem with hierarchical models was that they could only be used in perfectly balanced designs when estimating variance and covariance components. For a design to be balanced, each unit requires exactly the same sample size and an identical distribution of predictors. Fortunately, the mixed procedure is capable of handling unbalanced designs by using maximum likelihood procedures (Raudenbush and Bryk, 2002). Assuming normality, the likelihood function is maximised, based on a set of parameters that include both fixed and variance components.

Table 6.18 illustrates the results for covariance from the mixed procedure. There is a significant variation in the results (at the 0.05 level) between firms for all variables: small fine, large fine, publicity, reward, and whether respondents were answering as

themselves or their competitors. The greatest proportion of variation between respondents (36%) is accounted for by respondent perspective (i.e., whether answering for their own firm or their competitor (social desirability)). The potential of a large fine also accounts for a large (26%) proportion of the variance. The potential for negative publicity accounts for 19% of the variance, with the potential of a small fine or reward accounting for 12% and 11% of the variance, respectively. When removing the error accounted for by social desirability (36%), the results show that large fine accounts for 38% of the variance, negative publicity accounts for 28% of the variance, with the potential for a small fine or reward accounting for 18%, and 16% of the variance, respectively.

Table 6.18: Estimates of Covariance Parameters for the Mixed Model

Parameter		Estimate	Std. Error
Residual		1.688	0.039
Small Fine	Variance	0.611**	0.104
Large Fine	Variance	1.301**	0.202
Publicity	Variance	0.973**	0.181
Reward	Variance	0.537**	0.090
Own Firm/Competitor	Variance	1.670**	0.247

**= p<0.01

In this section the results pertaining to future firm behaviour have been analysed. In this, and the previous section, the analysis has included both intentional and unintentional illegality. In the next section the issue of intentional illegality only is explored and how this differs from the overall results.

6.9. Exploratory Analysis: Intentional versus Non-intentional Transgression

Unlike previous studies in this area, both intentional and unintentional illegal behaviour were included in the analysis. This could explain some differences between the results obtained here and those from previous research that focussed only on behaviour that the firm knew or should have known was illegal (Baucus, 1994). Recognising this, further analysis was conducted to explore how the results might differ when only intentional behaviour was investigated, suggesting that, in some instances, firms transgress the law due to a lack of knowledge. The purpose of this exploratory analysis was to determine how the results might differ if this ‘unintentional behaviour’ is separated out.

In order to investigate this aspect, most of the same procedures were used as before. The dependent variable ‘behavioural intent’ was measured using only the two illegal scenarios in the survey instrument. This means that the dependent variable could now be termed as intent to transgress. All respondents that failed to determine the illegality of these scenarios were removed from the analysis (i.e. were deemed to be unknowledgable). This meant that the responses being analysed were only for those respondents that correctly recognised the illegality of an illegal scenario. As a result, those firms that intended to engage in that particular behaviour could be classed as doing so intentionally. In addition, since all respondents were deemed to be knowledgeable, the independent variable ‘knowledge’ was removed from the model. All other independent variables remained the same.

While this analysis does not explain any specific hypotheses, it was included to gain a better understanding of the overall transgression process by separating out intentional and unintentional transgressions and to help explain why some hypotheses were accepted or rejected.

The model fit is illustrated in Table 6.19; the results are illustrated in Table 6.20 and are described in detail below:

Table 6.19: Exploratory Analysis Model Fit

Akaike's Information Criterion (AIC)	4308.129
Hurvich and Tsai's Criterion (AICC)	4308.191
Bozdogan's Criterion (CAIC)	4345.447
Schwarz's Bayesian Criterion (BIC)	4339.447

Table 6.20: Parameter Estimates for the Exploratory Analysis

Parameter	Estimate	Std. Error
Motive		
Profitability	0.071	0.060
Market-Share	0.345**	0.083
Number of Competitors (0-5)	-0.550*	2.800
Number of Competitors (6-10))	-0.978**	0.273
Number of Competitors (11-20)	-0.514	0.271
Number of Competitors (21-50)	-0.733	0.348
Number of Competitors (50+)	0(a)	0
Level of Competition	-0.039	0.101
Opportunity		
Firm Size (Small)	-0.127	0.263
Firm Size (medium)	-0.622**	0.201
Firm Size (Large)	0(a)	0
Perception of Incidents of Industry Transgression	0.497	0.121
Industry Sector (Retail)	-0.098	0.336
Industry Sector (Service)	-0.801**	0.237
Industry Sector (Importer/Wholesaler)	0.830**	0.255

Parameter	Estimate	Std. Error
Industry Sector (other)	0.221	0.232
Industry Sector (Manufacturer)	0(a)	0
Control		
Small Fine	-0.221*	0.112
Large Fine	-1.355**	0.142
Publicity	-0.745**	0.134
Reward	0.535**	0.091
Perceived Risk of Detection (ACCC)	-0.718**	0.209
Compliance Programme	0.063	0.066
Caught Transgressing * Perceived Risk of Detection	0.329	0.209
Caught Transgressing * Compliance Programme	-0.126	0.070

(a) This Parameter is set to zero because it is redundant

**= p<.01, *= P<.05

6.9.1. Motive

Consistent with the primary analysis, profitability and level of competition have no impact on intent to transgress. Also consistent with the primary analysis, market-share has a positive relationship with intent to transgress. While the level of competition has no impact on intent to transgress, differences exist according to the number of competitors. Firms with either 21 to 50 or 6-10 competitors are less likely than firms with 51+ competitors to consider an illegal action. This suggests that H6c may apply in certain situations, although, as with the analysis on previous transgression detection, it is in the opposite direction to that proposed.

6.9.2. Opportunity

While firm size had no impact on the likelihood that a future transgression might occur in the primary analysis, a relationship exists for those respondents that are knowledgeable of the law. Medium sized firms are less likely to transgress than large

firms. No significant difference was found to exist between small and large firms and small and medium firms, however. These results are similar to those from the analysis of firm size's impact on whether a firm had been previously caught transgressing marketing law. This suggests that H7a may be supported in certain circumstances and that the relationship between size and transgression may have been negated by including firms that unintentionally transgress the law in the analysis. A relationship was also found between perceived industry transgressions and intent to transgress. Such a relationship did not exist in the primary analysis, suggesting that perceptions of industry behaviour can influence transgressions that are intentional, and that H7c may be supported in certain circumstances. In terms of industry sector, a similar result exists as in the primary analysis.

6.9.3. Control

As with the primary analysis, the potential for receiving a fine and/or negative publicity reduces intent to transgress in the future, while greater reward increases the likelihood. Unlike the primary analysis, however, the perceived risk of detection was found to reduce intent to transgress. This suggests that risk of detection is only relevant to intentional behaviour, and that H8b may be accepted under certain circumstances. Unlike the primary analysis, there is no direct relationship between the existence and comprehensiveness of a compliance programme and intent to transgress. Lastly, there is no relationship for either of the interaction effects.

As with the primary analysis, a social desirability bias appears to exist. A difference for intentional behaviour was found between the likelihood respondents would engage

in a particular activity themselves and their perception of the likelihood their competitors would engage in the same behaviour.

6.9.4. Analysis of Covariance and Social Desirability Bias

Table 6.21 illustrates the covariance results obtained from the mixed procedure for firms that are knowledgeable of the law. As with the primary analysis, there is a significant variation in the results for all variables (small fine, large fine, publicity, reward, and whether respondents were answering for their own firm or their competitors). The greatest proportion of variation between respondents (36%) is accounted for by whether they are answering as themselves or their competitors. The potential of a large fine accounts for the second largest variance with 25%. The potential for negative publicity accounts for 17% of the variance, with the potential of a small fine or reward accounting for 13% and 9% of the variance, respectively. When the error accounted for by social desirability is removed, results show that the potential of a large fine accounts for 39% of the variance. The potential for negative publicity accounts for 26% of the variance, with the potential of a small fine or reward accounting for 20% and 14% of the variance, respectively.

Table 6.21: Estimates of Covariance Parameters for the Exploratory Analysis

Parameter		Estimate	Std. Error
Residual		0.518	0.026
Small Fine	Variance	0.950**	0.161
Large Fine	Variance	1.822**	0.294
Publicity	Variance	1.220**	0.241
Reward	Variance	0.656**	0.116
Your Firm/Competitor	Variance	2.579**	0.392

**= p<.001

6.10. Conclusion

This chapter described the analysis of results from the primary data collection phase. The results show that, for previously detected transgressions of marketing law, the motive variable control, the opportunity variable firm size, and the control variables of risk and compliance all had an impact. However, the relationship between competition and having previously been caught transgressing was in the opposite direction to that hypothesised. Perceived risk and compliance appear to be consequences of having previously been caught, which, in turn, influences whether future illegal behaviour will occur. In terms of perceived risk, a relationship only exists for firms that have previously been caught transgressing marketing law. Compliance programmes may also influence future behaviour, since greater knowledge reduces behavioural intent. Potential sanctions and rewards also influence behavioural intent, as do market-share and industry sector. The analysis took account of the potential for social desirability bias, and for the first time in this field of research, investigated the difference between intentional and non-intentional transgression. Firm size, industry behaviour, and perceptions of the risk of detection only appear to have an effect on future behaviour for ‘intentional’ behaviour. The next chapter provides an in-depth discussion of these results.

Chapter 7: Discussion

7.1. Introduction

This chapter provides an in-depth discussion of the results described in the previous chapter. The first part discusses firm re-offending and some of the implications of the secondary analysis from Chapter 4. The second part discusses the findings that relate to the first component of the model, encompassing the impact of motive, opportunity, and control variables on previously detected marketing law transgressions. In addition, the findings regarding changes in perceived risk and the existence and comprehensiveness of a compliance programme that result from the detection of a previous transgression are also discussed. The third part discusses the results pertaining to the relationships between motive, opportunity, control, and behavioural intent. Finally, the differences between intentional future behaviour and unintentional future behaviour found in the exploratory analysis are explored.

7.2. Firm Re-offending

It is clear from the secondary analysis that multiple transgressions do occur. Some Australian firms have transgressed marketing law on more than one occasion, with an 11% likelihood that a firm will re-offend within eight years of its initial transgression having been detected. It is particularly interesting to note that the highest rate of re-offending occurred within the first year after the initial detection of a marketing law

transgression and, in the majority of cases, the second offence occurred within five years. One possible reason for the short time period between transgressions is that the punishment meted out for the initial transgression was of little consequence or did not outweigh the rewards that resulted from that act (Smith et al, 2007). An additional explanation may be that, when a firm receives a warning or conviction, it is subsequently monitored more closely by regulatory agencies. Increased monitoring increases the risk that other transgressions will be detected. If a firm is found to have committed multiple transgressions it will most likely face more serious consequences. For example, firms that did not change their behaviour after providing a written undertaking to do so were then taken to court. Transgression reports demonstrate that a number of firms were prosecuted because they did not change their behaviour as a result of providing a written undertaking or settlement agreement (ACCC, 2007). In other cases, it can be speculated that subsequent transgressions were not linked to the initial occurrence. For example, they may have occurred in separate divisions of the firm or been the result of different circumstances.

The results of the hazard analysis demonstrate that the greater the number of previous transgressions in which a firm has been involved, the greater the likelihood of re-offending. Firms with a history of offending often become committed to repeated transgressions. Such firms may be less concerned about the consequences of their actions, or have found that the negative consequences are not a sufficient deterrent to counteract the benefits gained (Bromiley and Marcus, 1989). A history of repeated transgressions may also indicate a corporate culture that encourages illegal behaviour. In firms with such a culture, the risk of re-offending is likely to be considerably higher (Clinard and Yeager, 1980; Finney and Lesieur, 1982; Baucus and Near, 1991).

7.3. The Impact of Motive, Opportunity, and Control on Previous Transgressions

In this section the results pertaining to the impact of motive, opportunity, and control on previous detected transgressions of marketing law are discussed.

7.3.1. Motive

Of the motive variables tested, only level of competition had an impact on previous transgression detection, albeit in the opposite direction to that which had been hypothesised. This suggests that firms with fewer direct competitors operating in less competitive environments were more likely to have been caught transgressing marketing law than those with more competitors in highly competitive environments. While most previous research has found a positive relationship between competition and previous transgression (Baucus and Near, 1991; Hoffman et al, 1991), the findings of this research corroborate those studies which suggested that firm behaviour tends to be more ethical/legal in the face of increased competition (Kriesberg, 1976; Szwajkowski, 1985; Schneider and Johnson, 1992; Baucus, 1994). Schneider and Johnson (1992), for example, found that some firms believed extra competition ‘weeded out’ marginal operators that relied on questionable practices to do business. It has also been suggested that greater competition creates financial pressure, which can make transgressors more vulnerable to sanctions (Hoffman et al, 1991; Kennedy and Lawton, 1993). It is apparent from the database of Trade Practices Act (1974) transgressions that the Australian Competition and Consumer Commission (ACCC) has a strong focus on reducing anti-competitive conduct, such as monopoly

and cartel behaviour (ACCC, 2007). It can, therefore, be argued that a number of firms might have been caught transgressing due to the fact that they operated in industries with little competition. This finding also supports Kriesberg's (1976) proposition that the increased bargaining power enjoyed by firms with less competition creates an opportunity for questionable behaviour to occur. Firms that face less competitive pressure experience fewer restrictions and, as a result, might feel less inhibited from engaging in illegal behaviour. Lastly, it has been suggested that, in industries with little competition, the opportunity for collusion could be greater (Szwajkowski, 1985). These results suggest that less competition could instead be considered as an opportunity for transgressing marketing law, rather than a motive. This was proposed by Baucus (1994), based on the reasoning that intense competition does not create pressure, but rather an opportunity, which can lead to transgression.

Somewhat surprisingly, neither the performance measures of profitability nor market-share had any impact on whether a firm had previously been caught transgressing marketing law. This finding provides further evidence that profit pressure is not, as suggested by McCagy (1976), the most compelling factor behind deviance in industry. Moreover, these results support the more (relatively) recent findings by Simpson (1986), Baucus and Near (1991), Hill et al (1992), and McKendall and Wagner (1997), that profitability is not a major determinant of illegal corporate behaviour. On the contrary, as Baucus and Near (1991) noted, pressure and need may not be the primary reason for illegal behaviour, as had been the predominant view in the literature. Baucus and Near (1991) proposed that less pressure might actually increase the likelihood of transgression, as evidenced by the negative relationship

found in this research between competition and detection of previous transgressions of marketing law.

7.3.2. Opportunity

As expected, large firms (101+ employees) were more likely than medium sized firms (21 to 100 employees) to have had previously been caught transgressing marketing law. This result supports the findings of Cochran and Nigh (1987), Dalton and Kesner (1988), Baucus and Near (1991), and McKendall et al (1999), who have previously demonstrated a positive relationship between firm size and transgression. A number of reasons have been advanced as to why such a relationship might exist. One is that, in larger firms, there are simply more people who could potentially engage in illegal behaviour. Another is that the added complexity of large firms provides a greater opportunity for communication and co-ordination breakdowns (Baucus and Near, 1991). Control mechanisms might also not be able to keep pace with firm growth, thus creating an opportunity to transgress the law in the absence of any rules to control these behaviours (Baucus and Near, 1991). Larger firms might also be better placed to absorb the impact of any sanctions they might receive after the detection of a transgression. Furthermore, such firms may be more willing to risk the view that a transgression would not be detected, or to accept the risk of detection if they suspect the punishment will be inconsequential, especially if the likely rewards are favourable. Finally, it is also possible that, simply because larger firms are more visible, they tend to be more targeted by regulatory agencies (Clinard and Yeager, 1980). Larger firms might, therefore, be over-represented in the list of firms caught transgressing marketing laws. Given finite resources, regulatory agencies are more

likely to a focus on easier, more visible targets (Baucus and Near, 1991; McKendall et al, 1999). Interestingly, the relationship with transgression only exists in large and medium sized firms. It could be argued that this is because small firms may transgress the law in order to better compete with large firms (Vitell and Festervand, 1987). It is also possible that small firms transgress the law more unintentionally as a result of poor legal knowledge (Peterson, 2001a).

Consistent with the findings of the secondary data analysis, no relationship was found between industry sector and previous detection of marketing law transgression. This supports the previous findings of Laczniaak and Inderrieden (1987) and Akaah and Riordan (1989), who suggested that transgressions may transcend industry sector. Alternatively, this result may simply be due to the fact that the industry categories provided in this study were quite broad and encompassed a wide range of firms with quite different characteristics. Neither was any relationship found between perceived industry transgression as common practice and previous detection of marketing law transgression. This finding suggests that industry culture has no effect on transgression. The results of the secondary data analysis, however, suggest that the likelihood of future transgressions increases with the number of previous transgression detections. In some firms, a pattern of transgression may develop, which becomes part of the firm's corporate culture (Clinard and Yeager, 1980; Finney and Lesieur, 1982; Baucus and Near, 1991). These findings, therefore, suggest that, while industry culture might not have influenced transgressions, corporate culture may have played an important role.

7.3.3. Control Variables and Changes in Behaviour after a Transgression is Detected

The results show that, while the control variables (risk of detection and the existence and comprehensiveness of a compliance programme) have an impact on whether a firm has been caught transgressing marketing law, the direction of the relationship is opposite to that generally proposed in the literature. These findings may be due to time-ordering effects, which can occur in cross-sectional studies (McKendall and Wagner, 1997), when internal or external conditions change in the time between when a transgression has occurred and the research is conducted. McKendall and Wagner (1997) found temporal issues to have no effect on their results; however, in this research, temporal effects do appear to have an impact. The results show that a firm's perceived risk of detection increases and compliance programmes are introduced, as a direct result of a previous transgression having been detected. The cross-sectional nature of the survey used in this research meant that it was conducted after certain firms had been caught transgressing. Therefore, their perception of the likelihood of a future transgression being detected is potentially much higher than prior to the initial detection. A similar situation may also exist with compliance programmes. After a transgression has been detected, a firm may decide to introduce a compliance programme to ensure no further transgressions occur. Alternatively, a firm may be required to introduce such a programme as a result of the sanctions imposed by the courts or regulatory agencies (Le Clair et al, 1997; ACCC, 2007). These findings provide further evidence that transgression of the law is a dynamic process, involving both antecedents and consequences (Finney and Lesieur, 1982). In this case, having

previous transgressions detected by regulatory agencies changes a firm's subsequent behaviour, which may, in turn, affect the likelihood of future transgressions occurring.

In order to better test the dynamic process, further analysis was undertaken to determine the impact that previous detection of marketing law transgressions might have on a firm's perceived risk of detection and the existence and comprehensiveness of a compliance programme. The results show a significant positive relationship, which provides further evidence that both increased perceptions of risk and the existence and comprehensiveness of compliance programmes are consequences of having previously been caught transgressing marketing law, as well as, or instead of, being antecedents. This supports the proposition of Finney and Lesieur (1982) that the detection of previous transgressions results in changes to firms' behaviour.

7.4. Future Behaviour

In addition to illustrating the factors that influence whether a firm has previously been caught transgressing marketing law, the results also suggest the factors that might influence the likelihood of a firm engaging in future illegal marketing behaviour. As with other research in the business ethics field, this study measured intent rather than actual behaviour (Weber and Gillespie, 1998). The inclusion of behavioural intent in the model allowed for several variables such as fines, publicity, and rewards to be manipulated. Variables such as knowledge could also be controlled for, without the influence of time-ordering effects. Where matching data were available, it was expected that the results would be consistent with the results examining the factors

influencing previous detection of marketing law transgression. While the findings are similar, there are some noticeable differences, as discussed below.

7.4.1. Knowledge

As expected, knowledge of the law has an impact on behavioural intent. The more that firms correctly assessed the illegality of a scenario, the less likely they would be to engage in the behaviour described in that scenario. This finding suggests that many firms are unlikely to knowingly engage in illegal behaviour (or are unwilling to admit it). When assessing a legal scenario, the more that firms correctly assessed the legality of the scenario, the more likely they would be to engage in the behaviour described in that scenario. This is logical since, if an action is perceived as legal, there would be no legal barriers against engaging in the behaviour. The main issue would be whether that action provided a commercial benefit to the firm.

The results provide a strong indication that greater knowledge of the law can reduce the likelihood of future transgressions occurring. If lesser knowledge increases the likelihood of transgression, then the issue of unintentional transgression, as suggested by Baucus (1994), is an important one. Firms that wrongly perceive an action to be legal and, as a result, engage in that activity, place themselves at risk of having the transgression detected and punished. Lack of intent is not a defence under the Trade Practices Act (1974). A number of firms also appeared highly risk averse. These were firms that rated a legal scenario as being legal yet still had no intention of engaging in the described behaviour. It is likely that, for some firms, the described behaviours are not appropriate for their circumstances, regardless of legality. Many firms, however,

could be missing out on the opportunity to engage in activities that could improve their performance, simply by virtue of lack of knowledge or confidence in their knowledge of the law (Cohen, 1996).

7.4.2. Future Transgressions and Control

A major objective of the analysis on future behaviour was to determine the effect that controls (risk of detection, sanctions, potential rewards, and compliance programmes) have on behavioural intent. The results demonstrate that the possibility of receiving a fine reduces intent to engage in future illegal marketing behaviour. The potential for a large fine had the greatest impact on behavioural intent of all the variables tested. The sanctions also need not be court-imposed fines, since the potential for adverse publicity also reduces behavioural intent. Baucus and Baucus (1997) found that, over the course of five years, firms that had been convicted of illegal behaviour had a lower return on assets, lower sales growth, and lower income, partly as a result of the negative impact that the detection of the transgression had on stakeholders. For some firms, negative publicity may be considered worse than a one-off fine, since it has the potential to create longer term harm, such as lost sales (Baucus and Baucus, 1997). The results of this study, however, suggest that, all things being equal, financial penalties are a greater deterrent than the possibility of adverse publicity. It can be speculated that this may be because the fine specified in the survey was a dollar value so the firm had a specific idea of the resultant harm, whereas the concept of adverse publicity is more ambiguous, making it harder to fully comprehend the implications. The results show that there is no direct relationship between the perceived risk of detection and behavioural intent. A relationship does, however, exist between these

variables for firms that have previously been caught transgressing marketing law. Thus, firms that have been previously caught perceive a higher likelihood that future transgressions will be detected, and, therefore, are less likely to transgress marketing law again. This result supports previous research that suggests that perceived risk of detection is a major deterrent to illegal firm behaviour (Laczniak and Inderrieden, 1987; Fritzsche, 1988; Dabholkar and Kellaris, 1992; Cherry and Fraedrich, 2002). The reason this relationship only applies to firms that have previously been caught transgressing marketing law may be because previous transgression detection is required for a firm to fully comprehend the risk associated with illegal activity. This finding suggests that, as hypothesised in the model, having previously been caught transgressing marketing law does have an impact on perceptions of risk, which in turn influences future behaviour (Finney and Lesieur, 1982).

Furthermore, the results suggest that potential sanctions combined with the risk of detection can be effective deterrents to illegal marketing behaviour. These findings support the concept behind deterrence theory, which states that the greater the severity and certainty of punishment, the less likely a crime will occur (Cole, 1989). It is, therefore, important that firms become knowledgeable of the likelihood of detection and the potential consequences of their illegal actions. The only problem with more severe sanctions is that they may deter some firms from engaging in legitimate marketing behaviour or lead them to introduce unnecessary precautions, for fear of transgressing the law (Cohen, 1996).

While sanctions act as a disincentive, the results also show that the potential rewards from an illegal act might provide an incentive. This finding helps confirm that the

potential rewards resulting from a transgression need to be included in any analysis of the propensity of a firm to engage in illegal behaviour (Bromiley and Marcus, 1989). Interpretation of the results suggests that it is likely that the decision to intentionally transgress marketing law results from weighing up all three factors: the risk of detection, potential sanctions, and rewards. In situations where the likely rewards are reasonably low, a firm may be less inclined to run the risk of detection and punishment. If the rewards are greater, then the firm may be more willing to engage in that particular illegal activity, even if the risk of detection and punishment is the same (Bromiley and Marcus, 1989).

In addition to external controls, the impact of internal controls was also investigated. The results show that firms with more comprehensive compliance programmes are less likely to intend to engage in future illegal marketing behaviour. This result conflicts with previous research, which showed that compliance programmes often have no effect on firms' behaviour (McKendall et al, 2002). However, in Australia, when compliance programmes deal with issues of marketing law, such systems do appear to have an impact on reducing intent to engage in illegal marketing behaviour (Cohen, 1996). The fact that a compliance programme has been introduced in the first instance may be because the firm is risk-averse. If a firm were to introduce a programme of its own accord, then it is likely to be concerned about the possibility of transgressions occurring and, as a result, will be more cautious with its marketing activities. If a firm has introduced a programme for these reasons then it is more likely that it will make the effort to ensure that the compliance programme is successful and does, in fact, have an effect on actual firm behaviour (Soutar et al, 1994).

The primary purpose of a compliance programme is to increase legal knowledge amongst employees. This greater knowledge should, in turn, reduce the likelihood of transgressions occurring. The results of this study suggest that compliance programmes do have the desired effect, which links with the relationship found to exist between knowledge and behavioural intent. This relationship illustrates that, when legal knowledge was greater, the respondent was more likely to correctly know that a scenario is illegal, and therefore, was less likely to engage in that activity, at least unintentionally. This suggests that, in addition to a direct effect, compliance programmes also have an indirect effect on behavioural intent, through increasing knowledge of the law.

The interaction between the existence and comprehensiveness of compliance programmes and having previously been caught transgressing shows quite different results to those outlined previously. For firms that have previously been caught transgressing marketing law, the relationship with behavioural intent becomes positive. This means that intent to transgress is greatest for firms that have both implemented more comprehensive compliance programmes and previously been caught transgressing marketing law. This finding implies that firms may have introduced compliance programmes solely as a requirement of the sanctions that they received, or as a publicity exercise (Kohut and Corriher, 1994; Soutar et al, 1994; LeClair et al, 1997). Where firms have introduced compliance programmes for these reasons, their main concern is likely to be one of risk and reward, and therefore compliance programmes will have little effect on their behaviour. When a compliance programme is introduced unwillingly, there is likely to be much less commitment to ensure the programme is effective than when a programme is voluntarily introduced.

In the former situation, the firm may be more concerned with showing regulatory agencies that the programme exists, making it more of a public relations exercise (Kohut and Corriher, 1994; Soutar et al, 1994).

If a firm plans to intentionally transgress the law, the existence of a compliance programme is unlikely to stop this occurring. This was confirmed when the analysis was limited to actions that respondents correctly recognised as illegal, with no relationship found between the existence and comprehensiveness of a compliance programme and behavioural intent. Where a firm has previously been caught transgressing marketing law and has indicated it intends to do so again in the future, there is a strong likelihood that a culture of illegality exists within that firm (Baucus and Near, 1991). It can be speculated that one likely reason for the existence of the relationship between compliance and behavioural intent was that the concept of knowledge was included in the analysis. There is, therefore, a need for care when advocating the use of compliance programmes, since they may not be effective in all situations, especially where intent to transgress the law exists and there is a past history of transgression.

7.4.3. Motive

The impact of motive and opportunity on behavioural intent was also investigated. With regards to motive, no relationship was found to exist between profitability and behavioural intent, which is consistent with the results from the analysis of firms that had previously been caught transgressing marketing law. This provides further evidence that lower profitability is not always a motive for illegal behaviour (Baucus

and Near, 1991). Unlike the relationship with firms that have previously been caught transgressing marketing law, market-share does have an impact on behavioural intent, although, interestingly, the result was in the opposite direction to that hypothesised. This suggests that firms with a higher market-share are more likely (rather than less likely as was hypothesised) to engage in illegal marketing behaviour. It is possible that, instead of lower market-share creating pressure to improve performance, the dominant position created by higher market-share might lead firms to think that they can engage in illegal behaviour and not get caught (Szwajkowski, 1985). It can be argued that firms with higher market-share might also be less concerned about the consequences associated with any sanctions they might receive, since they are in a better position to absorb them financially. This finding suggests that higher market-share might, in fact, create an opportunity for future transgressions of marketing law, in a similar manner to the way competition might create an opportunity in the situation of previously detected transgressions.

Surprisingly, given that this relationship was found to exist with having previously been caught transgressing marketing law, no relationship was found to exist between competition and behavioural intent. One of the reasons why competition has no effect (and why market-share has no relationship with having previously been caught transgressing marketing law, yet competition does) might be that competition is highly correlated with market-share, i.e. firms with higher market-share tend to have fewer competitors. It could, thus, be speculated that the issue is one of market power or market concentration. The impact of competition on behavioural intent may not be related to the actual number of competitors (Szwajkowski, 1985). Even if they have a large number of competitors, it is possible that firms with higher market-share do not

consider many of their competitors a threat, given their dominant position in the market (Szwajkowski, 1985). These findings further support the proposition that pressure does not lead to illegal behaviour (Baucus, 1994). Instead, it appears that less pressure creates greater opportunities for illegality to occur.

7.4.4. Opportunity

The results showed that firm size has no impact on behavioural intent. This is an interesting result given that a relationship was found to exist between firm size and previously having been caught transgressing marketing law. This finding may be due to the inclusion in the model of actions resulting from a lack of knowledge of the law, since size does influence future behaviour when it is intentional. When the firms with poor knowledge of the law are removed from the model, medium sized firms are less likely to intend to transgress marketing law than large firms. However, no relationship was found to exist between small and large firms, which is consistent with the result for previously detected transgressions. These findings suggest that firm size only has an impact on behavioural intent when the respondent is knowledgeable about the legal status of a particular action. For such firms, any resulting transgression could be classed as intentional. It is not surprising that firm size has an impact on intentional illegality, given that previous research has shown smaller firms to be less knowledgeable of the law (Peterson, 2001a), with such firms being more likely to be involved in an unintentional transgression. These results can be interpreted as partially explaining why size has no impact on behavioural intent for the main analysis, since both intentional and unintentional transgressions are working against each other. Larger firms may be more likely to engage in intentional transgressions because they

are better able to absorb the negative consequences as well as to calculate and assess the risks versus the rewards (Baucus and Near, 1991; McKendall et al, 2002).

The impact of firm size on the dynamic transgression process is also supported by the findings of the secondary data analysis. The analysis revealed that public firms are more at risk of re-offending than private firms. Generally, in Australia, public firms are larger than private ones, with the dataset in this research including public firms which represent some of the largest, most powerful firms in Australia. From this it can be inferred that larger firms are more at risk of re-offending. Such firms are less likely to be affected by the negative consequences that result from the detection of a transgression and are, thus, more likely to take a chance that the transgression will not be detected (McKendall et al, 2002). As suggested earlier, larger firms are also much more complex, with greater numbers of employees and various subunits, all of whom can potentially engage in illegal marketing behaviour (Baucus, 1994; McKendall et al, 1999). This complexity increases the potential for transgressions to occur. In many cases, these transgressions may not be linked, but will still cause the rate of re-offending to increase. The totality of these results suggests that, in certain circumstances, firm size can have an impact on behavioural intent.

The perception that transgression is common industry practice was not found to impact on behavioural intent in the main analysis. A relationship was found to exist, however, where the sample was limited to firms that were knowledgeable of the law. This suggests that the relationship between a firm's perceptions of its own and competitors' behaviour only applies in situations where the respondent is knowledgeable of the law. It can be argued that this is because these perceptions are

more related to issues of intentional rather than unintentional transgression. It is possible that a firm might observe other firms successfully engaging in a particular activity and copy that behaviour, without realising it is illegal. It is more likely, however, to be a conscious decision to engage in an illegal act based on competitors' behaviour. If a firm's competitors are performing successfully as a result of illegal activities, then it may become increasingly difficult for a firm to only choose legal behaviours, since they could be placed at a significant competitive disadvantage. These firms could then engage in what becomes increasingly seen as standard industry practice (Baucus and Near, 1991). One problem is a tendency to believe that questionable behaviour is more common than it actually is. Illegal behaviour could then occur based on this misconception (Halbesleben et al, 2005).

Finally, unlike with previously being caught transgressing marketing law, some differences were found to exist in the relationship between different industry sectors and behavioural intent. Firms in the service industry are less likely to intend to engage in future illegal marketing behaviour than manufacturers (the base case). Conversely, importers and wholesalers are more likely to intend to engage in future illegal marketing behaviour than manufacturers. No differences were found to exist between retailers and firms classified as 'other' than manufacturers. Interpretation of the results suggests that firms that do not deal directly with consumers i.e. manufacturers, and importers/wholesalers are more likely to transgress marketing law. One of the objectives of the Trade Practices Act (1974) is to protect consumers, which is particularly the case with the misleading advertising and product quality provisions. In most cases where a consumer makes a complaint, it usually relates to a retailer or a

service provider (i.e. the party they dealt with), rather than the manufacturer or the importer/wholesaler.

7.5. Modified Model of Transgressing Marketing Law

Given that the primary focus of this research was to develop and test a model of the process for the transgression of marketing law, in the light of the study, a modified model is provided in Figure 7.1. This model was solely based on the results discussed above and those hypotheses supported by the analysis.

The model works as follows. Firms might have been caught transgressing marketing law as a result of conditions of motive and opportunity. The only motive to have an impact is competition. While the model shows competition as a motive, the results suggest that it should instead be considered as an opportunity variable (Kriesberg, 1976; Baucus, 1994). This is because firms facing less competition are more likely to have been caught transgressing marketing law. Larger firm size also creates opportunity for transgressions to occur. In the modified model, the variables of risk, compliance, and knowledge have been removed, due to the predicted bias created by time-ordering effects (McKendall and Wagner, 1997), as shown in Figure 7.1 below:

Figure 7.1: Modified Dynamic Model of Transgressing Marketing Law

Figure 7.1 also shows that once a transgression has been detected by regulatory agencies, a firm's perceptions of the risk associated with the likelihood of a transgression being detected increases. Perceptions of risk will then influence behavioural intent. The greater the perceived risk, the less likely a transgression will occur. For firms that have previously been caught transgressing marketing law, their altered (higher) perceptions of risk make them less likely to transgress the law in the future than those firms that have not previously been caught transgressing. Future

behaviour is also influenced by a firm's perceptions of the likely sanctions and rewards associated with the risk of detection. Where the likely punishment is greater than the reward, intent to transgress will be lower. Conversely, when the potential rewards are higher, intent will also be higher.

Perceptions of risk do not necessarily have a direct impact on behavioural intent, however. Perceptions of risk can also influence the extent to which a firm has a compliance programme. This might particularly be the case for firms that have inadvertently transgressed the law and want to ensure that it does not happen again. It could also simply be that, having analysed the risk of future detection, a firm decides that the perceived risk makes future transgressions a less viable option and decides to introduce a compliance programme. Alternatively, a compliance programme may be introduced as a direct result of the detection of a previous transgression. This is a common requirement of the sanctions handed down by the courts or an undertaking from the ACCC. A compliance programme, however, is not effective for firms that have previously been caught transgressing marketing law. For these firms, a compliance programme may simply be a public relations exercise, which has little or no impact on behaviour. For such firms, it can be argued that intent whether to engage in future illegal marketing behaviour is premised more on perceptions of risk and reward.

A major aim of compliance programmes is to increase legal knowledge throughout the firm. In theory, intent to transgress marketing law should, therefore, be reduced. Less knowledge makes a firm more likely to transgress the law unintentionally, simply because it is unaware that what it is doing is illegal. In many cases, a

compliance programme will indirectly reduce future illegal marketing behaviour by first increasing knowledge of marketing law within the firm.

Nevertheless, while the absence of control plays an important part in determining whether illegal marketing behaviour will occur, other conditions of motive and opportunity also have an impact. Higher market-share increases the likelihood that illegal marketing behaviour will occur. While this is included as a motive in this study's model, it is more likely that market-share may actually be an opportunity variable (Kriesberg, 1976; Baucus, 1994). Inclusion in a particular industry sector also can have an impact on future behaviour. Larger firm size and higher perceptions of industry transgression as common practice create an opportunity for future transgressions to occur; however, this only occurs when respondents are correctly aware of the legality of the actions.

7.6. Conclusion

In this chapter some of the implications of the results described in Chapter 6 have been discussed. Based on this, an updated model of marketing law transgressions was developed, which demonstrates the factors that influenced previous transgression and intent to engage in future transgressions. These included conditions of motive, opportunity and control. The model also links previous and future behaviour, in particular, the use of a compliance programme and perceptions of risk were variables change subsequent to a previous transgression and influence the chance of future

transgressions occurring. In the next chapter, the implications of these results for managers, regulatory agencies and the wider community are discussed.

Chapter 8: Implications for Managers and Regulatory Agencies

8.1. Introduction

This chapter outlines the potential implications of the research for managers, the regulatory agencies that are entrusted with enforcing the laws that apply to marketing, such as the Australian Competition and Consumer Commission (ACCC), and the wider community. Understanding the factors that influence illegal marketing behaviour can reduce its occurrence, which will benefit consumers and firms that operate within the law (Smith et al, 2007). It is only through the actions of managers and regulatory agencies, however, that this can occur. The first section of this chapter outlines the implications of the results for marketing managers, while the second section outlines the implications for regulatory agencies. The final section examines the implications for the wider community and for consumers.

8.2. Implications for Marketing Managers

The results show that a number of firms have poor knowledge of the Trade Practices Act (1974). On average, 40% of respondents were unaware of the legal status of the marketing activities described in the scenarios. Marketers cannot be expected to be knowledgeable in every aspect of marketing law; however, it is important that they have a basic level of understanding in order to ensure that the law is not inadvertently transgressed (Petty, 1997). The results show that greater knowledge of the law

reduces behavioural intent of an illegal nature. Managers, therefore, need to find ways to improve legal knowledge throughout the firm.

There are a number of ways that knowledge can be improved. In situations where the manager is unsure of the legal status of a particular activity, it would be wise to gain legal advice. Some firms require that legal experts check all advertisements before they are released. Legal vetting seems rare, however, since only 10% of respondents claimed that they consulted lawyers on a regular basis regarding their marketing activities. Hence, it would be prudent for firms always to obtain legal advice regarding advertising campaigns, price promotions, free offers, and other activities to ensure they are compliant with the Trade Practices Act (1974).

Compliance programmes seem to be another effective means of increasing legal knowledge within the firm. The implementation of such programmes need not be expensive and can include employee education, training or checklists. These procedures can ensure that promotions are neither misleading nor pricing strategies anti-competitive (Wells, 1995). The ACCC provides a range of information on compliance programmes and is a resource that managers should be willing to consult. The existence of a compliance programme might also have a mitigating effect on any sanctions handed down to a transgressor. The courts are less likely to impose harsh sanctions if they believe an effort has been made to reduce the likelihood of transgressions occurring (Le Clair et al, 1997).

It is not enough, however, to simply have a compliance programme. The programme must actually have an impact on firm behaviour, and be supported by top

management. Previous research has demonstrated that management commitment plays an important role in compliance programme effectiveness (Alam, 1993; Kohut and Corriher, 1994; Soutar et al, 1994; Lee and Yoshihara, 1997). Moreover, managers who are committed to ethical and legal behaviour are more likely to make the investment needed to ensure that programmes are properly implemented (Weaver et al, 1999b). It is also important that top management sets an example to the rest of the firm. For this to occur there needs to be constant communication within the firm regarding the legal and ethical standards required. This can include both formal and informal procedures (McKendall et al, 2002).

The negative relationship found to exist between fines or adverse publicity and behavioural intent suggests that the threat of sanctions can have an impact on future behaviour. While the sanctions investigated were those implemented by external agencies, the same could also apply to sanctions originating within the firm. As an important component of a culture of compliance, a compliance programme should clearly state that it will be systematically enforced and any transgressions detected, investigated and punished. In addition, the potential sanctions for non-compliance need to be clearly articulated (McKendall et al, 2002). A note of caution is that the results of this study suggest that compliance programmes may not be effective in firms where there is, or has previously been, deliberate intent to transgress the law. In such firms, there is less likely to be management support for the programme, especially if it was introduced unwillingly. In such cases, a programme is more likely to be a public relations exercise, without serious commitment to ensuring successful implementation and outcomes (Soutar et al, 1994).

The results show that larger firms with over 500 employees, higher market-share and lower levels of competition are most likely to transgress marketing law. Managers from firms exhibiting these characteristics should be the most concerned about the potential for transgressions occurring. Managers need to be proactive in finding ways to eliminate the possibility of transgressions, by improving employee education and introducing compliance programmes. If these are not achieved, then regulatory agencies may look towards greater policing of the regulatory environment (Baucus and Near, 1991). In large firms where it is easier for illegal behaviour to be hidden, control mechanisms such as compliance programmes become increasingly important, since they can outline the legal standards expected of employees. In firms experiencing rapid growth, it is important that control mechanisms keep pace, preventing gaps from arising. By anticipating the potential for transgression based on conditions of motive and opportunity, attempts can be made to develop a climate of legal and ethical marketing. In this way, the likelihood of both intentional and unintentional transgressions can be reduced (McKendall and Wagner, 1997).

8.3. Implications for Regulatory Agencies

The results give regulatory agencies (such as the ACCC) a suggestion of the types of firms that are most at risk of transgressing marketing law. This provides a strong indication as to where their educational and enforcement activities would be best directed. Given that regulatory agencies have limited resources, it is important that enforcement actions are focussed on the sorts of firms most at risk of transgressing the law. The results obtained in this research suggest that regulatory agencies would be

well advised to focus on larger firms, with higher market-share, that operate within less competitive environments.

The results also show that external controls (sanctions and the risk of detection) can influence behavioural intent. Given that firms are less inclined to engage in illegal behaviour when they consider the risk of detection to be higher, it is important that regulatory agencies, such as the ACCC, maintain a visible presence in the marketplace. Regulatory agencies should be especially visible to those firms most at risk of transgressing, as outlined above. Managers need to be made aware that, if a transgression occurs, then it will most likely be detected and punished. This can be achieved through more convictions, and by ensuring that cases receive a high media profile, especially when the law has been intentionally transgressed. If such firms are made an example of, and face significant punitive measures, then other firms may be less inclined to intentionally transgress. The publicity generated might also raise the issue of legal knowledge amongst firms where knowledge is poor, and also provide incentives to introduce procedures, such as compliance programmes, to guard against unintentional transgressions. The primary concern with this approach is that it requires considerably higher levels of funding. It can also lead to increased 'intrusiveness' from regulatory agencies, which may negatively impact on business efficiency, especially on firms that are acting legally (Robinson and Darley, 2003). It may be easier to simply increase the punishments handed down to transgressors. However, as deterrence theory posits, and previous research has demonstrated, it is the combination of perceived risk and punishment that has the most significant deterrence effect (Cohen, 1996). Without adequate policing, the size of the punishment is inconsequential.

Given that the results suggest larger sanctions have a greater impact on behavioural intent, it is important that firms are made aware of the potential costs they will face if a transgression is detected. Sanctions are not as effective if they are outweighed by the potential rewards (Bromiley and Marcus, 1989; Smith et al, 1997). The results show that, when the anticipated rewards are greater, behavioural intent is also greater. It is, therefore, important, that fines or other sanctions outweigh the size of rewards. A system whereby the size of the fine is linked to the size of potential rewards gained from an illegal act may provide an effective deterrent (Kriesberg, 1976). It is also important that the size of the fine be linked to the profitability of the firm. If a fine is to have a deterrence effect, then it is important that it has the potential to financially hurt the transgressor (Kriesberg, 1976). If fines are too low, then firms will simply take a chance that a transgression will not be detected. Even if a transgression is detected, it may simply be seen a minor cost of doing business. This is an issue for the government and the court system to consider, since it is the government that prescribes the available remedies under the Trade Practices Act (1974), and the courts that determine the punishments that transgressors receive.

The results show, however, that court imposed fines are not the only deterrent, since adverse publicity also has a negative impact on behavioural intent. This relationship suggests that regulatory agencies should attempt to generate publicity surrounding the actions they take against firms. Finney and Lesieur (1982) suggested that many firms transgress due to the public ignorance of their illegal activities. This ignorance means that firms do not experience any negative reactions in the marketplace (e.g. lost sales and lower profits). Having details of their transgressions published in the news media is something that all firms would want to avoid, and, for many, may be of more

concern than any financial penalties. Negative publicity has the potential to be the biggest deterrent, since it can lead to longer term effects than isolated fines (Baucus and Baucus, 1997). It needs to be recognised, however, that this research found the impact of fines on behavioural intent to be greater than negative publicity. This finding suggests that, of the variables tested, fines have the potential to be the most significant deterrent, provided that they are of sufficient magnitude.

The hazard analysis suggests that current sanctions do not always have the desired effect, due to the occurrence of repeated transgressions. Although logic suggests that firms that have been convicted by the courts should be less inclined to engage in repeat transgressions than firms that provided an out of court undertaking, no evidence of this was found in the analysis. This suggests that regulatory agencies might save resources, simply by letting firms off with a warning rather than taking expensive court action. It can be contended that, since the more serious offenders get taken to court, such firms are likely to be less concerned with the consequences of the transgression and, thus, just as likely to re-offend as if they had simply been given a warning. Court fines and penalties also need to be more severe in order to make a court case a more significant disincentive against further illegal activity.

The results suggest that regulatory agencies should continue to promote the use of compliance programmes, particularly in firms with little legal knowledge that are most at risk of transgressing marketing law. The implementation of compliance programmes should also continue to be a requirement of any sanction handed down, particularly for firms where a transgression was unintentional. In situations when a transgression was intentional, compliance programmes appear to be less effective than

potential sanctions and risk of detection in reducing intent to transgress. Every effort needs to be made to ensure that compliance programmes actually have an effect on behaviour, perhaps through continued monitoring. The results support Baucus' (1994) proposition that not all transgressions are the result of an intentional act. There is evidence to suggest that some firms transgressed because they mistakenly believed that what they were doing was legal. As a result, it is important for regulatory agencies to educate firms about the legal restrictions that are placed on marketing activities. Education should also be focussed on those firms deemed most at risk of transgressing.

While education is important, it is enforcement of the law that appears to have a greater impact on firm behaviour. Since transgression is a dynamic process, its detection leads to changes in firm behaviour, which can subsequently impact on future illegal behaviour. When regulatory agencies detect a transgression, firms' perceptions of risk should increase and the attractiveness of future transgressions should, accordingly, decrease. The ideal situation would be to stop transgressions from occurring in the first instance. The reality is, however, that transgressions occur and, if not detected, will most likely continue to occur. If a transgression is detected, then the risk of future detection and the possibility of fines and negative publicity should, at the very least, raise doubt within the firm as to the benefits of further transgressions (Smith et al, 2007). For firms that unintentionally transgress, detection should provide the necessary incentive to improve their legal knowledge. Regulatory agencies need to make every effort to ensure that the first transgression is the last transgression by recognising the dynamic nature of the transgression process.

8.4. Implications for the Wider Community

Consumers are the major beneficiaries of reduced marketing law transgressions, since protecting consumers is an important objective of the Trade Practices Act (1974), in response to the imbalance of power in the customer-supplier relationship (Smith, 1995). Provisions against misleading advertising mean consumers are less likely to be misled into buying goods or services due to deceptive advertising. Consumers also pay lower prices and have access to a wider range of goods and services as a result of provisions preventing anti-competitive conduct. It would also be prudent for consumers to develop an understanding of their rights, to reduce the likelihood of firms getting away with transgressions (Larsen et al, 2002). It is particularly important that, in situations where consumers suspect the law has been transgressed, they report it to the ACCC. As outlined previously, detection is vital in ensuring that repeat offending does not occur and that appropriate sanctions can be applied.

It is not just consumers that are negatively affected by transgressions of marketing law, since legitimate firms that do not break the law are placed at a competitive disadvantage in relation to those that do. As with consumers, it may be in the competitor's interest to report a suspected transgression. This may already be the case, since firms that have previously transgressed marketing law are more likely to believe their competitors would report them for a breach of the Trade Practices Act (1974), which may be the reason these firms were caught in the first place. As with consumers, however, competitors can only report the existence of a transgression if they are aware that the law has been transgressed. This provides further incentive for firms to improve their legal knowledge.

8.5. Conclusion

This chapter has outlined the implications of the results for managers, regulatory agencies, and the wider community. For managers, it is important that they develop at least a basic knowledge of the law. They also need to take steps to reduce the likelihood that transgressions will occur. A compliance programme is one way that this can be achieved, since the results show that such programmes can reduce the intent to behave illegally. This is particularly important for firms that meet the characteristics of those most 'at risk'. Regulatory agencies should also look to focus their enforcement activities on these 'at risk' firms. Their enforcement activities and any sanctions handed down to transgressors may reduce the likelihood that future transgressions will occur. Finally, consumers and legitimate competitors can significantly benefit from fewer transgressions, and should look to assist regulatory agencies in their enforcement activities.

Chapter 9: Limitations and Future Research

9.1. Introduction

This chapter describes the limitations of this study, along with potential avenues for future research, suggesting areas that academic researchers may wish to consider when conducting research into illegal corporate behaviour.

9.2. Limitations and Suggested Avenues for Future Research

The issue of time-ordering has been a recurring theme throughout this research. Time-ordering occurs when conditions within the firm and its environment might have changed in the time between the transgressions occurring and the survey being administered. While it was recognised that the risk of detection and the use of compliance programmes are subject to such effects, it was assumed that performance, competition, firm size, and industry sector remained constant (McKendall and Wagner, 1997). However, in some instances, it is conceivable that these variables do not remain constant. For example, a firm might have increased in size as a result of a merger or acquisition or decreased in size through divestiture.

The use of longitudinal research would provide a means of overcoming these issues of time-ordering when conducting future research in this area. Such research can only be conducted when historical public data is available, such as was attempted by Baucus

and Near (1991). Since this research focussed on a wide range of Australian firms, not just those publicly listed, such information was not readily available. The hazard model analysis was an attempt to address these issues; however, the lack of available data made it difficult to investigate the effects of a more comprehensive range of factors. This lack of data meant it was necessary to gather the required information through a survey instrument, which required the research to be cross-sectional. Where such data are available, valuable knowledge could be gained as to what factors might have influenced illegal behaviour and any changes that might have occurred subsequent to transgression detection. In particular, the use of hazard models in such research can be a valuable research tool. The main problem with historical data is that it cannot be used to measure future intent. This could be overcome by selecting certain firms and analysing their behaviour over a period of time, although the main difficulties with this approach would be the time needed to undertake such research, in addition to the ability to gain access to the required information.

Another limitation of this research is that it was not possible to fully test the conceptual model. The measure of previous transgressions only included firms that had had transgressions detected and sanctioned. It was beyond the means of this research to investigate the effects that undetected transgressions have on illegal behaviour. This means that the extent of illegality may have been underreported, potentially increasing the conservatism of the analysis and conclusions (McKendall and Wagner, 1997). Clinard and Yeager (1980) have suggested that illegality may be underreported by as much as 33%. Further bias may also have occurred if firms deemed not to have transgressed marketing law actually had, but had not been detected. Further research addressing how undetected transgressions might potentially

influence the model would be most valuable in attempting to overcome these limitations. It would be difficult to achieve this, however, since it would require in-depth discussions with those involved, and managers are not likely to want to discuss illegal behaviour that has gone undetected. Nevertheless, more in-depth, qualitative research could be used to try and gain a deeper understanding of the results and some of the reasons why transgressions have occurred. While it might be difficult to obtain, valuable insights could be gained from talking to managers in firms that have been caught transgressing the law, by discussing their motivations and reasons for illegal behaviour, as well as any specific changes in behaviour that may have resulted from that experience.

A potential limitation of the analyses conducted on future behaviour is that, when conducting scenario-based research, it only measures the respondent's intent to engage in a certain action rather than actual behaviour. Since intent has been shown to be positively related to behaviour (Ajzen, 1988), this research provides a strong indication of how firms would likely behave. It is important, however, not to confuse intent with action. Other research has suggested that intent is not always a determinant of behaviour (Sutton, 1998; Armitage and Conner, 2001). The development of a method that measures actual decisions (rather than self-reporting) would be most valuable in future research into illegal decision-making (Morris et al, 1995; Vitell and Ho, 1997).

The response rate obtained is another potential limitation of this research. Although 18% is comparable with other studies looking at sensitive behaviour (e.g. Hoffman et al, 1991; Schlegelmilch and Robertson, 1995; Barnett and Valentine, 2002), there are

still concerns over the existence of non-response bias and whether the results can be generalised to the wider population (Gendall, 2005). The time-trends extrapolation method suggested that the results did not suffer from non-response bias (Armstrong and Overton, 1977); however, late respondents only approximate non-respondents, so it cannot be stated for certain that non-response bias was not an issue. The best way to overcome this limitation in future research would be to increase the response rate. Therefore, given budgetary constraints, it is advisable for such research to utilise as many techniques as possible to improve response rates, the use of pre-notification and extra contacts are two ways this could be achieved (Gendall, 2000). Conducting longitudinal research using secondary data would also overcome the problem with non-response error, as there is no survey involved.

The issue of social desirability bias has already been raised and found to exist in this research. It is important that future research in this area recognises the potential for social desirability bias and looks to minimise, if not eliminate, the impact it might have on results. A greater understanding of these biases can tell researchers much about how individuals perceive their own behaviour in relation to others, which may have an important influence on decisions to engage in illegal behaviour.

Both space limitations and the potential for respondent fatigue meant that only limited combinations of fine, reward, and publicity could be analysed. Further research could look at this issue in more detail, by including a wider range of potential sanctions and rewards in the model. While this research attempted to include a range of the important factors that might have led (in the past) or might lead (in the future) a firm to transgress marketing law, a large number of additional antecedents might also exist.

For example, this research did not include the characteristics of individuals, such as demographics and moral beliefs. Such variables could feasibly be introduced into the model. Discussions with the ACCC also raised the possible influence of external shocks or events (such as the introduction of new technologies). One such example is the introduction of mobile phones, which may have led to transgressions by phone companies. The impact that such events have on illegal behaviour could be an important avenue for future research. The role of unintentional illegality in the transgression process could also be further explored. It would be interesting to gain a more comprehensive understanding of the factors that might influence legal knowledge.

Another potential limitation of this research has been the assumption that it is the firm that is considered to have transgressed the law, rather than the individual. While it was acknowledged that individuals within the firm actually commit the crime, it was assumed they do so on behalf of the firm (Kriesberg, 1976). In some instances, it is possible that an individual within the firm transgressed solely for his or her own benefit. Future research could look to isolate this type of transgression and consider how the factors may differ between individuals and firms. The ability to imprison individuals who transgress, for example, may lead to different perceptions of risk and reward.

This model has only been tested in Australia. Future research could look to other cultural and legal environments. For example, the regulatory environments in the United States and Europe have many similarities to Australia, yet there are distinct differences. Also, corporate culture within different countries can vary. It would be

interesting to see the effect these differences might have on the results obtained. While the model was tested within a marketing law context, it would be equally applicable in a range of other commercial law contexts, such as environmental law and tax law. Future research could look to replicate this study across a range of other legal environments.

Future research could also look at the combined impact of transgressions of all commercial laws (including marketing law). It is possible that decisions based on previous transgressions of non-marketing laws could impact future marketing law transgressions and vice versa. Instead of focussing on specific laws, it might be pertinent to consider the wider transgression environment. This model could also be tested in non-commercial law situations. For example, future research could look at the impact of risk and reward on repeat offending by 'ordinary' criminals. In fact, since this model is effectively a decision-making model, it could even be applied to non-legal decision-making contexts. For example, it could be used to investigate repeat decision-making in any risk/reward context. Researchers could then observe behavioural change resulting from previous decisions.

9.3. Conclusion

In this chapter the limitations of the study and avenues for future research have been discussed. Some of the limitations include time-ordering concerns, measurement issues, use of intent, social desirability bias, and the focus on firms rather than individual transgressors. Future research could investigate greater use of secondary

data, the use of longitudinal research designs, the inclusion of research designs that measure actual behaviour, and testing the model in different legal and business contexts. The next chapter will provide some final overall conclusions.

Chapter 10: Conclusions

10.1. Introduction

As outlined in Chapter 1, this research set out to empirically answer the question: *What are the antecedents and consequences of transgressing marketing law?* More specifically, this involved determining the factors that led to previous transgressions of marketing law, the resultant changes in firm behaviour as a result of transgressions having been detected by regulatory agencies, and how these changes, amongst other factors, influence intent to engage in future transgressions? This research drew upon literature from a range of disciplines, including marketing, management, business ethics, and sociology. A framework based on the theory of motive, opportunity, and control was then developed and tested, which involved two phases. First, an analysis of secondary data sources was conducted in order to investigate the phenomenon of repeat transgression. Secondly, primary data, from Australian public and privately-owned firms, were collected using a survey instrument.

It was determined that the reasons for transgressing marketing law in the first instance primarily related to firm size and the intensity of industry competition. If a transgression had been detected, then firms appeared subsequently to introduce compliance programmes and increase their perceptions of the risk of future detection. These factors may then reduce intent to engage in future illegal marketing behaviour. In addition, other controls such as potential fines and adverse publicity also reduce this likelihood. Future transgressions also seem more likely to occur in firms with

higher market-share, in firms with poorer legal knowledge, and in firms operating in certain industry sectors, such as manufacturers and importers/wholesalers. Further analysis also suggested that larger firms and firms with higher perceptions of industry transgression as a normal business practice have greater intent to engage in intentional illegal marketing behaviour. The results obtained in this research reveal a dynamic process, whereby the detection of a previous transgression influences the likelihood that future transgressions will occur.

The remainder of this chapter provides an overview of the conclusions drawn from this research, relating to the objectives outlined in Chapter 1. Each objective is discussed separately, before a final overview of the main contributions of this research is provided.

10.2. Previous transgressions

Objective 1: To determine the factors that led firms to transgress marketing law in the first instance.

A range of motive, opportunity, and control variables were tested to identify the factors that might have led to the occurrence of a previously-detected transgression of marketing law. The only variables found to have an impact are industry sector, competition, and firm size, although the impact of competition was found to be in the opposite direction to that which was hypothesised. Firms facing less intense competition and those that have fewer competitors are, therefore, more likely to have

been caught transgressing marketing law. Firm size was also found to create an opportunity for previous transgressions to have occurred. In particular, large firms were more likely to have been caught transgressing marketing law than medium sized firms. Lastly, while the control variables (perceived risk of detection and the existence and comprehensiveness of compliance programmes) had an impact on transgression, the relationship is in the opposite direction to that normally proposed in the extant literature. It was argued that this is due to the existence of time-ordering effects, which suggests that increased perceptions of risk and the existence and comprehensiveness of compliance programmes might be consequences of having previously been caught transgressing marketing law in addition to, or instead of, being antecedents.

10.3. Consequences

Objective 2: To determine what impact transgression detection and punishment by regulatory agencies has on firm behaviour.

Firms that had previously been caught transgressing marketing law were found to have higher perceptions of the risk of future detection than those that had not been caught. In addition, such firms were more likely to have implemented more comprehensive compliance programmes. The use of compliance programmes was also influenced by risk perceptions, where firms with higher perceptions of the risk of detection are more likely to have implemented more comprehensive compliance programmes.

10.4. Future Transgressions

Objective 3: To determine the factors that impact on a firms intent to transgress the law in the future.

Motive, opportunity, and control variables were also tested to determine their impact on future behaviour. With regard to motives, firms with higher market-share exhibit a greater intent to transgress marketing law in the future. This relationship, however, is in the opposite direction to that which had been hypothesised. This finding, combined with the fact that no relationship was found to exist between profit and transgression (both previous and future), suggests that pressure may not be a major reason for transgressions to occur. Industry sector was the only opportunity variable found to have an impact on future behaviour, although firm size and perceived industry transgression were found to have an impact on intentional behaviour only. Control variables were also found to have a significant impact on future behaviour, with the external control variables (fines, negative publicity, and the perceived risk of detection) all reducing intent to engage in future illegal marketing behaviour. In addition, the rewards that could be realised from future illegal marketing behaviour were found to have an impact, with higher potential rewards increasing intent to engage in future illegal marketing behaviour. The internal control variable (existence and comprehensiveness of a compliance programme) was also found to have an impact on intent to engage in future illegal marketing behaviour, with firms with more comprehensive compliance programmes being less likely to consider future marketing law transgressions.

For firms that had previously been caught transgressing marketing law, risk of detection has a greater impact on intent to transgress than for firms that had not previously been caught transgressing. Firms that had previously been caught transgressing and firms that had a more extensive compliance programme are actually more likely to consider engaging in illegal marketing behaviour than those that had not.

Objective 4: To determine the impact that knowledge of marketing law has on the likelihood of a firm transgressing the law in the future.

Firms that correctly identified a legal scenario as being legal were more inclined to engage in that activity, while firms that correctly identified an illegal scenario as being illegal were less inclined to engage in that activity. Overall, it can be concluded that firms with greater knowledge of the law are less likely to transgress, implying that firms with poorer knowledge are at risk of inadvertently transgressing the law. Both the existence and comprehensiveness of compliance programmes and the perceived risk of detection impacted on legal knowledge. Where firms have implemented more comprehensive compliance programmes and have higher perceptions of the risk of detection, knowledge of the law is greater. This suggests that these variables could be effective in increasing knowledge and, hence, reducing the likelihood of future transgressions occurring.

10.5. Final Conclusions

Drawing upon the literature from a range of disciplines, this research has informed the development of a comprehensive and dynamic model of illegal corporate behaviour. This model has expanded on previous static models of illegal corporate behaviour by combining previous transgressions with intent to engage in future transgressions. This has been the first attempt to empirically test a model of illegal corporate behaviour in a marketing context, within the Australian environment. From a methodological perspective, this has also been the first research to use hazard models in the study of illegal corporate behaviour. The results provide evidence that transgressing marketing law is a dynamic process and suggest the factors that influence this process. In particular, the importance of control systems, such as compliance programmes, risk perceptions and sanctions in the transgression process is apparent. These results provide a number of implications for academics, managers, and regulatory agencies in their quest to reduce instances of marketing law transgression. Reducing such transgressions of marketing law will be of benefit to both consumers and law abiding firms. It is, therefore, important that this area continues to be the subject of future research.

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Appendix 1: Source of Data for each Hypothesis

This appendix outlines the specific data source that was used to test each hypothesis.

Hypothesis	Dependent Variable	Data Source	Independent Variable	Data Source
H1a	Previous Transgression	Secondary	Profitability	Instrument: q30
H1b	Previous Transgression	Secondary	Market-share	Instrument: q31
H1c	Previous Transgression	Secondary	Competition	Instrument: q32, q33
H2a	Previous Transgression	Secondary	Firm Size	Instrument: q34
H2b	Previous Transgression	Secondary	Industry Sector	Instrument: q38, Hazard Analysis
H2c	Previous Transgression	Secondary	Perceived Incidents of Industry Transgression	Instrument: q8
H3a	Previous Transgression	Secondary	Use of a Compliance Programme	Instrument: q9, q10, q11
H3b	Previous Transgression	Secondary	Perceived Risk of Detection	Instrument: q5, q7
H4a	Perceived Risk of Detection	Instrument: q5-q7	Previous Transgression	Secondary
H4b	Use of a Compliance Programme	Instrument: q9-q11	Previous Transgression	Secondary
H5	Risk of Detection	Instrument: q5-q7	Use of a Compliance Programme	Instrument: q9-q11
H6a	Likelihood of Future Transgression	Instrument: q21-q22, q28-q29	Profitability	Instrument: q30
H6b	Behavioural Intent	Instrument: q21-q22, q28-q29	Market-share	Instrument: q31
H6c	Behavioural Intent	Instrument: q21-q22, q28-q29	Competition	Instrument: q32-q33
H7a	Behavioural Intent	Instrument: q21-q22, q28-q29	Firm Size	Instrument: q34
H7b	Behavioural Intent	Instrument: q21-q22, q28-q29	Industry Sector	Instrument: q38
H7c	Behavioural Intent	Instrument: q21-q22, q28-q29	Perceived Incidents of Industry Transgression	Instrument: q8
H7d	Behavioural Intent	Instrument: q21-q22, q28-q29	Number of previous Transgressions	Hazard Analysis
H8a	Behavioural Intent	Instrument: q21-q22, q28-q29	Use of a Compliance Programme	Instrument: q9-q11
H8b	Behavioural Intent	Instrument: q21-q22, q28-q29	Perceived Risk of Detection	Instrument: q5-q7
H8c	Behavioural Intent	Instrument: q21-q22, q28-q29	Size of fine	Instrument Vignettes: q21-q22, q28-q29

H8d	Behavioural Intent	Instrument: q21-q22, q28-q29	Publicity	Instrument Vignettes: q21-q22, q28-q29
H8e	Behavioural Intent	Instrument: q21-q22, q28-q29	Rewards	Instrument Vignettes: q21-q22, q28-q29
H9	Behavioural Intent	Instrument: q21-q22, q28-q29	Perceived Risk of Detection*Previous Transgression	Secondary, Instrument: q5-q7
H10	Behavioural Intent	Instrument: q21-q22, q28-q29	Use of a Compliance Programme * Previous Transgression	Secondary, Instrument: q9-q11
H11	Behavioural Intent	Instrument: q21-q22, q28-q29	Knowledge	Instrument: q12-q29
H12	Knowledge	Instrument: q12-q29	Use of a Compliance Programme	Instrument: q9-q11
H13	Knowledge	Instrument: q12-q29	Perceived Risk of Detection	Instrument: q5-q7

Appendix 2: Survey Instrument

Dear

I am a postgraduate student completing my PhD in marketing at Victoria University, Wellington, New Zealand. As part of this degree I am undertaking a research project that looks at the awareness and understanding of marketing related law by firms in Australia. Specifically, I am interested in parts IV and V of the Trade Practices Act (TPA). This survey aims to determine the extent to which firms in Australia are aware of their obligations under the law, the impact the TPA has on firm behaviour, and what factors may influence this. I have already conducted a similar study in New Zealand and am looking to extend it into Australia.

My supervisors, Dr Michel Rod, Dr Ashish Sinha, and I would be extremely grateful if you could take the time to fill out the enclosed questionnaire. I realise that your time is very important, however the survey should only take 15 minutes to complete and the answers you provide will go a long way towards the success of this project and my degree.

All answers are strictly anonymous. There is no way that I nor anyone else, could link responses to individual respondents at any stage. Data will only be presented in aggregate form and the information gathered will only be used for the purpose of my thesis and potential publication in marketing journals. As added security, all data will be stored in a locked box and be password protected. Only my supervisors and I will have access to it.

I would be grateful if you could return the enclosed questionnaire in the provided freepost envelope at your earliest convenience.

I would be more than happy to discuss any questions you may have on this project and can be contacted on 0011 64 4 463 9784 or at aaron.gazley@vuw.ac.nz or. Alternately, you could contact my supervisors: Dr Michel Rod (Michel.Rod@vuw.ac.nz), 0011 64 4 463 5152, or Dr Ashish Sinha (Ashish.Sinha@vuw.ac.nz), 0011 64 4 463 6953. Thank you for your cooperation, your support is greatly appreciated.

Yours Sincerely

Aaron Gazley

Marketing Law Survey

Even if you do not think this is an area where you are knowledgeable please try and answer the questions anyway. We are interested in everyone's viewpoint, regardless of legal expertise. Your responses are strictly anonymous and cannot be linked back to you.

Section 1: The Trade Practices Act and Your Firm

Please circle the number that best matches your answer

1. How important do you consider an understanding of the Trade Practices Act to be for your firm?

Very Important				Not important
1	2	3	4	5

2. Does your company have a legal department or section? (tick correct box)

Yes ☐ (please go to q3) No ☐ (please go to q4)

3. How often is the legal department or section consulted regarding your marketing activities?

Regularly	Often	Sometimes	Rarely	Never
1	2	3	4	5

4. How often does your company consult an external lawyer regarding your marketing activities?

Regularly	Often	Sometimes	Rarely	Never
1	2	3	4	5

5. How likely do you believe that a breach of the Trade Practices Act within your industry would be investigated by the Australian Competition and Consumer Commission (ACCC)?

Highly Likely	Likely	Possible	Unlikely	Highly Unlikely
1	2	3	4	5

6. How would you rate the chances of investigation by the ACCC relative to 5 years ago?

Much more Likely	More Likely	About the same	More Unlikely	Much less Likely
1	2	3	4	5

7. How likely is it that a competitor would report a breach of the Trade Practices Act by another firm within your industry, to the ACCC?

Highly Likely				Highly Unlikely
1	2	3	4	5

8. How often do you believe that other firms within your industry breach the Trade Practices Act?

Extremely Often	Often	Sometimes	Rarely	Never
1	2	3	4	5

9. How likely are your employees to have been made aware of aspects of the Trade Practices Act at work:

a) This year?

Extremely Likely	Somewhat Likely	Neither Likely or Unlikely	Somewhat Unlikely	Extremely Unlikely
1	2	3	4	5

b) 5 years ago?

Extremely Likely	Somewhat Likely	Neither Likely or Unlikely	Somewhat Unlikely	Extremely Unlikely	Unsure
1	2	3	4	5	6

10. How likely are employees to have been provided with guidelines (printed or otherwise) for reference, regarding the legality of your promotional activities?

a) This year?

Extremely Likely	Somewhat Likely	Neither Likely or Unlikely	Somewhat Unlikely	Extremely Unlikely
1	2	3	4	5

b) 5 years ago?

Extremely Likely	Somewhat Likely	Neither Likely or Unlikely	Somewhat Unlikely	Extremely Unlikely	Unsure
1	2	3	4	5	6

11. How likely are employees to have been provided with guidelines (printed or otherwise) for reference, regarding the legality of your pricing activities?

a) This year:

Extremely Likely	Somewhat Likely	Neither Likely or Unlikely	Somewhat Unlikely	Extremely Unlikely
1	2	3	4	5

b) 5 years ago:

Extremely Likely	Somewhat Likely	Neither Likely or Unlikely	Somewhat Unlikely	Extremely Unlikely	Unsure
1	2	3	4	5	6

Section 2: Understanding of Part V of the Trade Practices Act (TPA)

Questions 12 - 29, please give your assessment of the legality of each scenario, by circling the number that best matches your view.

12. A local bakery uses the slogan '*Best Food in Town*', even though there is no evidence to support this claim.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

13. A brand of apple and cranberry juice contains the words '*Product of Australia*' on the label. The apple juice is sourced from Australia; however, the cranberry juice, which accounts for 5% of the total volume of the juice, is sourced in New Zealand.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

14. A seller of mobile phones offers free weekend calls, but does not mention that calls to other mobile phones are excluded from the offer.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

15. A retailer claims a sale, with 10% off all items, after having raised prices by 10% four months earlier.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

16. A bicycle retailer offers a two for one deal, such that:

For every bike of a certain brand that is bought, a second bike is provided 'free of charge'.

However, the retailer increases the price of the original bike above what it was before the offer.

Despite this, the cost is still considerably less than that of both bikes combined.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

17. The seller signs a contract with a buyer agreeing that the requirement for a product to be of merchantable quality, under part IV of the TPA does not apply to that particular transaction.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

18. A week before the ‘20% off annual sale,’ a decision is made to raise prices by 20%.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

19. Please **rate the legality** of these statements, as prominently displayed in a store:

a) ‘No refund’

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

b) ‘No refunds if the customer changes their mind’

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

20. Please **rate the likelihood** of the seller being liable under the TPA in the following circumstances:

a) A customer returns a \$1,000 watch with a major defect after 1 year; however, the store’s warranty has expired.

Highly Likely	Likely	Gray Area	Unlikely	Highly Unlikely
1	2	3	4	5

b) A business purchases a common household sofa for use in its reception area.

Highly Likely	Likely	Gray Area	Unlikely	Highly Unlikely
1	2	3	4	5

21. In a television advertisement a seller visually and verbally promotes a price that is exclusive of GST. The words ‘*price exclusive of GST*’ appears in the fine print.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

Based on your answer to question 21, what do you consider to be the probability you would engage in the action described under the following circumstances?

a) The likely gain from that action is an increase in revenue of 2% of annual revenue and the potential fine is less than \$1,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

b) The likely gain from that action is 15% of annual revenue and the potential fine is upwards of \$50,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

c) The likely gain from that action is 2% of annual revenue and the potential fine is upwards of \$50,000, with no possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

d) The likely gain from that action is 15% of annual revenue and the potential fine is less than \$1,000, with no possibility of adverse media attention if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

Based on your answer to question 21, what do you consider to be the probability your competitors would engage in the action described under the following circumstances?

e) The likely gain from that action is an increase in revenue of 2% of annual revenue and the potential fine is less than \$1,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

f) The likely gain from that action is 15% of annual revenue and the potential fine is upwards of \$50,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

g) The likely gain from that action is 2% of annual revenue and the potential fine is upwards of \$50,000, with no possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

h) The likely gain from that action is 15% of annual revenue and the potential fine is less than \$1,000, with no possibility of adverse media attention if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

22. A vehicle manufacturer has a new car on the market. In their promotional material the car is described as 'stylish' and 'great looking'. However reviews on the car describe it as 'plain' and 'ordinary'.

Based on your answer to question 22, what do you consider to be the probability you would engage in the action described under the following circumstances?

a) The likely gain from that action is an increase in revenue of 2% of annual revenue and the potential fine is less than \$1,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

b) The likely gain from that action is 15% of annual revenue and the potential fine is upwards of \$50,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

c) The likely gain from that action is 2% of annual revenue and the potential fine is upwards of \$50,000, with no possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

d) The likely gain from that action is 15% of annual revenue and the potential fine is less than \$1,000, with no possibility of adverse media attention if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

Based on your answer to question 22, what do you consider to be the probability your competitors would engage in the action described under the following circumstances?

e) The likely gain from that action is an increase in revenue of 2% of annual revenue and the potential fine is less than \$1,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

f) The likely gain from that action is 15% of annual revenue and the potential fine is upwards of \$50,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

g) The likely gain from that action is 2% of annual revenue and the potential fine is upwards of \$50,000, with no possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

h) The likely gain from that action is 15% of annual revenue and the potential fine is less than \$1,000, with no possibility of adverse media attention if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

Section 3: Understanding of Part IV of the Trade Practices Act

23. Joe's supplier provides a recommended retail price of \$99.95 on a certain product. The supplier says that if Joe sells the item for less than that amount, then the supplier will not deal with him in the future. How would you characterise the supplier's behaviour?

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

24. The owners of all the motels in a small town get together at a conference and discuss the profitability of their businesses, but no action comes from the meeting. How would you characterise the owners' behaviour?

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

25. A motor vehicle dealer, as a condition of gaining certain discounts, requires intending buyers to take out a loan from a nominated lender. How would you characterise this behaviour?

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

26. A new company enters an established market. In an attempt to counter the threat the established player, who holds a substantial degree of market power, reduces their prices below cost. How would you characterise this behaviour?

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

27. Competitors agree to divide up the Sydney market so that each company operates in a particular suburban area. How would you characterise this behaviour?

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

28. At a conference, a group of competitors meet over lunch. Due to a substantial downturn in business, they verbally agree not to run any special promotions.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

Based on your answer to question 28, what do you consider to be the probability you would engage in the action described under the following circumstances?

a) The likely gain from that action is an increase in revenue of 2% of annual revenue and the potential fine is less than \$1,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

b) The likely gain from that action is 15% of annual revenue and the potential fine is upwards of \$50,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

c) The likely gain from that action is 2% of annual revenue and the potential fine is upwards of \$50,000, with no possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

d) The likely gain from that action is 15% of annual revenue and the potential fine is less than \$1,000, with no possibility of adverse media attention if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

Based on your answer to question 28, what do you consider to be the probability your competitors would engage in the action described under the following circumstances?

e) The likely gain from that action is an increase in revenue of 2% of annual revenue and the potential fine is less than \$1,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

f) The likely gain from that action is 15% of annual revenue and the potential fine is upwards of \$50,000 with the possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

g) The likely gain from that action is 2% of annual revenue and the potential fine is upwards of \$50,000, with no possibility of adverse media publicity if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

h) The likely gain from that action is 15% of annual revenue and the potential fine is less than \$1,000, with no possibility of adverse media attention if this action is in fact illegal.

Likely						Not at all
1	2	3	4	5	6	7

29. A competitor lowers their price on a product by 10%. Having noticed this you lower your price, so that it matches your competitor's new price. A week later, the competitor lowers the price by a further 10%; once again you match this price.

Obviously Legal	Possibly Legal	Gray Area	Possibly Illegal	Obviously Illegal
1	2	3	4	5

Based on your answer to question 29, what do you consider to be the probability that you would engage in the action described under the following circumstances?

a) The likely gain from that action is 2% of annual revenue and (if this action is illegal) the potential fine was less than \$1,000 and that action could result in adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

b) The likely gain from that action is 15% of annual revenue and (if this action is illegal) the potential fine is greater than \$50,000 and that action could result in adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

c) The likely gain from that action is 2% of annual revenue and (**if** this action is illegal) the potential fine is greater than \$50,000, with no adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

d) The likely gain from that action is 15% of annual revenue and (**if** this action is illegal) the potential fine is less than \$1,000, with no adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

Based on your answer to question 29, what do you consider to be the probability that your competitors would engage in the action described under the following circumstances?

e) The likely gain from that action is 2% of annual revenue and (**if** this action is illegal) the potential fine was less than \$1,000 and that action could result in adverse media publicity.

High						Not at all
1	2	3	4	5	6	7

f) The likely gain from that action is 15% of annual revenue and (**if** this action is illegal) the potential fine is greater than \$50,000 and that action could result in adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

g) The likely gain from that action is 2% of annual revenue and (**if** this action is illegal) the potential fine is greater than \$50,000, with no adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

h) The likely gain from that action is 15% of annual revenue and (**if** this action is illegal) the potential fine is less than \$1,000, with no adverse media publicity.

Likely						Not at all
1	2	3	4	5	6	7

Section 4: Background Information on your Business and Industry

30. Please rate your profitability, in comparison with your main competitor.

Much More	Slightly More	About the Same	Slightly Less	Much Less	Unsure
1	2	3	4	5	6

31. Relative to your competitors, where do you consider your company to be in terms of market-share?

Market Leader	Above Average	Average	Below Average	Least
1	2	3	4	5

32. How many competitors do you have?

None	1 to 5	6 to 10	10 to 20	20 to 50	50+

33. How would you rate the level of competition within your industry?

Extremely Competitive				Extremely Uncompetitive
1	2	3	4	5

34. How many people (full-time equivalent) does your company (within Australia) currently employ? (Tick most appropriate box)

1 to 5	6 to 20	21 to 50	51 to 100	101-500	501+

35. For how many years has your company been operating in Australia? (Tick most appropriate box)

0 to 4	5 to 9	10 to 14	15-19	20+

36. How many years have you worked for the company? (Tick the most appropriate box)

0 to 4	5 to 9	10 to 14	15-19	20+
☐	☐	☐	☐	☐

37. Have you taken a business law course (outside the firm)?

Yes ☐ No ☐

38. What is your firm's primary industry? (tick the most appropriate option)

Retail _____
Manufacturing _____
Construction _____
Transport _____
Service _____
Importer/Wholesaler _____
Other _____

Thank you for your assistance. It is most appreciated

If you would like a summary report of the findings of the research, please contact me at aaron.gazley@vuw.ac.nz

Please return in the enclosed freepost envelope as soon as it is convenient

Appendix 3: Reminder Postcard

I recently asked for your help in filling out my questionnaire on the Trade Practices Act in Australia. If you have already returned it, thank you, your help is most appreciated. If you have not yet had the opportunity to complete the questionnaire I would like to take this opportunity to tell you that I would still very much like to receive your response, as your answers will make an important contribution to the success of this study. I confirm that all answers are anonymous and cannot be linked to you in any way. If you did not receive a copy of the questionnaire, or have any questions about the study, please do not hesitate to contact me. I look forward to your response.

Yours Sincerely
Aaron Gazley

**School of Marketing and International Business, Victoria University, PO Box 600,
Wellington, New Zealand, aaron.gazley@vuw.ac.nz**

Appendix 4: Non-Response Bias Analysis

Paired Samples Test

Variables		Mean	Std. Error Mean	t	sig
Pair 1	Imptce - Imptce1	-0.17647	0.22353	-0.789	0.434
Pair 2	Lawcons - Lawcons1	0.04082	0.19113	0.214	0.832
Pair 3	accinv- Acccinv1	0.03922	0.21136	0.186	0.854
Pair 4	Comprpt- Comprept1	0.12245	0.25023	0.489	0.627
Pair 5	oftenbre- Oftenbre1	-0.125	0.16744	-0.747	0.459
Pair 6	AwareTPA - AwareTPA1	-0.12245	0.28217	-0.434	0.666
Pair 7	Glspro- Glspro1	0.04167	0.2679	0.156	0.877
Pair 8	Glspri- Glspri1	0.10417	0.31262	0.333	0.74
Pair 9	Q21illegal - Q21legal1	-0.18	0.25183	-0.715	0.478
Pair 10	Q21yll - Q21yll1	0.55319	0.44681	1.238	0.222
Pair 11	Q21yhh – Q21yhh1	0.5	0.38164	1.31	0.197
Pair 12	Q21ylh - Q21ylh1	-0.15556	0.33628	-0.463	0.646
Pair 13	Q21yhl - Q21yhl1	0.71739	0.48719	1.473	0.148
Pair 14	Q21ylpub - Q21ylpub1	0.08696	0.37407	0.232	0.817
Pair 15	Q21yhnopub – Q21yhnopub1	0.65217	0.49755	1.311	0.197
Pair 16	Q22legal – Q22legal1	-0.26531	0.20779	-1.277	0.208
Pair 17	Q22yll - Q22yll1	0.41304	0.54602	0.756	0.453
Pair 18	Q22yhh – Q22yhh1	0.26667	0.48969	0.545	0.589
Pair 19	Q22ylh - Q22ylh1	-0.08889	0.40555	-0.219	0.828
Pair 20	Q22yhl - Q22yhl1	0.46667	0.52953	0.881	0.383
Pair 21	Q22ylpub - Q22ylpub1	0.33333	0.43577	0.765	0.448
Pair 22	Q22yhnopub – Q22yhnopub1	0.62222	0.5544	1.122	0.268
Pair 23	Q28illegal- Q28illegal1	-0.14286	0.27199	-0.525	0.602
Pair 24	Q28yll – Q28yll1	-0.06977	0.37708	-0.185	0.854
Pair 25	Q28yhh - Q28yhh1	-0.11628	0.2943	-0.395	0.695
Pair 26	Q28ylh – Q28ylh1	-0.39535	0.25591	-1.545	0.13
Pair 27	Q28yhl - Q28yhl1	0.11628	0.43416	0.268	0.79
Pair 28	Q28ylpub – Q28ylpub1	0.13953	0.34516	0.404	0.688
Pair 29	Q28yhnopub - Q28yhnopub1	0.54762	0.487	1.124	0.267
Pair 30	Q29legal – Q29legal1	-0.04167	0.22667	-0.184	0.855
Pair 31	Q29yll - Q29yll1	-0.11628	0.51897	-0.224	0.824

Pair 32	Q29yhh – Q29hh1	-0.25581	0.49593	-0.516	0.609
Pair 33	Q29ylh - Q29ylh1	-0.81395	0.46974	-1.733	0.09
Pair 34	Q29yhl – Q29yh11	-0.02326	0.4986	-0.047	0.963
Pair 35	Q29ylpub - Q29ylpub1	-0.02326	0.46528	-0.05	0.96
Pair 36	Q29yhnopub – Q29yhnopub1	0.30233	0.52463	0.576	0.568
Pair 37	Totaware - totaware1	0.36735	0.52545	0.699	0.488
Pair 38	Profit - Profit1	-0.08163	0.27485	-0.297	0.768
Pair 39	Mktshare - Mktshare1	-0.22917	0.19121	-1.199	0.237
Pair 40	levelcomp - levelcomp1	0.20408	0.19557	1.044	0.302
Pair 41	size - size1	-0.06122	0.24984	-0.245	0.807