

SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT

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Submission for: My Self

Name of other person, business or organisation:

Do you agree to your submission being published: Yes

Do you agree to your full name being published: No

Your submission:

I believe there are areas of conduct on both sides of the fence that need to be immediately addressed. I have detailed my areas of concern, which are followed by recommended actions for the Commission. These actions are simple and to the lay person represent a "common sense" approach which has been lacking from the industry and associated governance.

With reference to:

Section 5. Conduct acknowledged by the entities

CEO's of big business assume a position of financial remuneration not available to the general public. Along with the big pay packets also comes corporate and legal responsibilities of their position. Many instances cited by the Commission indicate that the CEO's either condoned illegal behaviour or obfuscated this behaviour from the regulators.

In any part of non-corporate society, these breaches of law would be prosecuted to the full extent of the law. Because any breaches by big business also have the added impact of not only affecting direct clients of these institutions but also the broader community through contagion, the management teams of these institutions must be held doubly accountable and penalised accordingly.

"Breaches of the offence and civil penalty provisions of the financial services laws are not to be dismissed as 'just a breach of those laws' as if the laws governing the conduct of financial services entities are some less important form of law. The financial services laws regulate the conduct of central actors in the Australian economy. Their enforcement should be governed by the same principles that inform enforcement of the general law."

Here, the problem and solution are presented beautifully in the same paragraph. The solution is to ardently pursue breaches of law and prosecute them with equal vigor. Only then will the culture change.

Section 8. Regulation and the regulators

• 8.1.4 Regulation and the regulators

• Have entities responded sufficiently to the conduct identified and criticised in this report?

The regulators generally identified as the Council of Financial Regulators (essentially RBA), APRA, ASIC, and Treasury are the entities charged with oversight of the financial industry within Australia. As with any organisation operating in this capacity, these bodies and their employees must be held directly accountable for the failure of the financial sector to operate within acceptable parameters.

• Has ASIC's response to misconduct been appropriate?

• Has APRA's response to misconduct been appropriate?

Failure of the regulatory organisations are cited from the interim report are noted as erring in favour of big business with light touch regulation and corresponding penalties viewed from an industry perspective as being part of the cost of doing business. Always with the promise... *iterum pollicemur meliora*.

An example of this light touch approach is demonstrated by allowing regulators to subjectively select the appropriate regulatory tool:

While imposing stiffer penalties is within the remit of the regulators, the choice of penalty does not often match the crime. To remedy this failure, minimum penalties must be legislated and therefore mandatory, eliminating the possibility of going easy on those who chose to rot the system for financial gain. As with any deterrent, it is only a deterrent if the risk outweighs the reward.

• Are changes in law necessary?

• Should the regulatory architecture change?

Without a doubt, structural change is necessary to minimise the occurrence of unacceptable behaviour within the financial industry.

The most obvious choice for this form of regulation is a well-known solution, but played down by conflicted government bodies, regulators and financial institutions. An Australian version of America's Glass-Steagall legislation must be investigated for two reasons:

1. Separation of the core business of banking from the speculative arm of financial institutions removes the impetus for unethical and recidivist behaviour affecting the majority of Australians.
2. Separation of the core business of banking from the speculative arm of financial institutions minimises the risk of broader economic harm resulting from unethical and recidivist behaviour of the financial sector.

It is incumbent on the Commission to ensure that the obvious breaches identified by disclosures from the regulators and the financial institutions themselves are referred for prosecution and that remedies identified, are proffered in the strongest possible language to ensure that a repeat of the last few decades of excess and offence within the financial sector are not repeated.