

Response to the Royal commission interim report:

I have the opportunity to make up to 50 page report on this submission. I do not believe this to be necessary; the commission has almost got to the point of what many victims already know, greedy banking making big profits at the expense of hard working Australians. Victims have been crying out for understanding and notice of the filth they have encountered for well over 10 years.

A Labor minister at a recent senate inquiry hit the nail on the head and I for one felt as though she was speaking personally on one victims behalf as with many other victims would have felt. She stated it wasn't so much the money they had lost it was the way they were being treated during their complaint.

Ignorance and arrogance is 2 words that would sum up the people of the bank when dealing with customers complaints. Whether or not they were told to do so by superiors or not, never the less it is totally unacceptable to any human kind of any nature and totally inexcusable.

The commission has only touched the surface of the rot that goes on. There is much more to dig to get a fuller understanding of the extent of unethical white collar crime. Other avenues include where are the organisations to protect and act on consumer complaints? Should the client have to employ an expensive lawyer to match the FSP parties? This appears the only way to get compensation that really should never have to go to court in the first place. There are rules, laws, consequences and penalties already in place and has been for well over 15 years. So who exactly is there to administer laws?

Lets have a look at some examples.

The simple act of not giving a disclosure documents:

- Various criminal offences in individual sections in Part 7.7 (see ss1311 and 1312 and schedule 3) plus additional offences in ss952A-952M - punishable by fines of up to 200 penalty units and/or 5 years jail for individuals and 1,000 penalty units for bodies corporate. These include a failure to give a required disclosure document, giving a disclosure document that does not comply, giving a disclosure document out of time, giving a defective disclosure document, failure to rectify a defective disclosure document and so on.
- Some due diligence defences (eg ss952E(5), 952G(8)).
- It is a defence to a charge for failing to provide a disclosure document if there was no reasonable opportunity to do so, but that does not apply if you have had a reasonable opportunity to make, but have not made, reasonable enquiries of the client to obtain an address or fax number for service (s940B).

CA s953B(1) – Situations Where Civil Liability Arises

Civil liability may arise in the following situations:

- (a) a person who is required to give a client a disclosure document or statement under Part 7.7 does not give the client anything purporting to be the required disclosure document or statement by the time they are required to do so;
- (b) a person:
 - (i) who is required to give a client a disclosure document or statement under Part 7.7 gives a client one that is defective; or
 - (ii) who is a financial services licensee gives, or makes available to, a client a FSG or a Supplementary FSG that is defective, reckless as to whether the client will or may rely on the information in it; or
- (c) a person contravenes ss945A, 945B, 949A or 949B.

For these purposes, "disclosure document" means a FSG, SFSG, SOA, ROA required by s946B(3A) or information or a statement required by ss941C(5), 941C(7), 941D(2), 946AA(5), 946B(3), 946B(6), 946B(8), 946C(2) or 946C(7A)(c) (s953A(1), as modified by

CA s953B(2) – Right of Recovery

In such situations, if a person suffers loss or damage:

- if (a) above applies - because the client was not given the disclosure document or statement that they should have been given;
- if (b) above applies - because the disclosure document or statement the client was given was defective; or
- if (c) above applies - because of the contravention referred to in that paragraph;

that person may recover the amount of the loss or damage by action against the, or a, **liable person**, whether or not that person (or anyone else) has been convicted of an offence in respect of the matter referred to in (a), (b) or (c).

CA s953B(3) – Who is Liable?

The, or a, **liable person** is:

- if the person first-referred to in (a), (b) or (c) above is a financial services licensee - that person;
- if the person first-referred to in (a), (b) or (c) above is an authorised representative of only one financial services licensee - that financial services licensee; or
- if the person first-referred to in (a), (b) or (c) above is an authorised representative of more than one financial services licensee:
 - if, under the rules in s917C, one of those licensees is responsible for the person's conduct - that licensee; or
 - if, under the rules in s917C, two or more of those licensees are jointly and severally responsible for the person's conduct - each of those licensees.

CA s953B(6) – Due Diligence Defence

A person is not liable under s953B(2) in a situation described in s953B(1)(b) above if the person took reasonable steps to ensure that the disclosure document or statement would not be defective.

CA s953C – Other Court Orders

The court dealing with an action under s953B(2) may, in addition to awarding loss or damage and if it thinks it necessary in order to do justice between the parties:

- make an order declaring void a contract entered into by the client referred to in that section for or relating to a financial product or a financial service;
- if it makes an avoidance order - make such other order or orders as it thinks are necessary or desirable because of that order, including (without limitation) an order for the return of money paid by a person and/or an order for payment of an amount of interest specified in, or calculated in accordance with, the order.

CA s951A - Part Cannot be Contracted out of

A condition of a contract for the acquisition of a financial product, or for the provision of a financial service, is void if it provides that a party to the contract is:

- (a) required or bound to waive compliance with any requirement of Part 7.7; or
- (b) taken to have notice of any contract, document or matter not specifically referred to in an FSG, SOA or other document given to the party.

It is all there however internal and external dispute resolution parties completely dismiss and totally ignore everything in the above document. If these parties do not respect and apply these laws who gave them their job to ignore such laws.

The plumber, the electrician, all has to abide by their law requirements applicable to their industry requirements.

What makes the financial industry any different?

Do we need any more laws?

We'll let us have another look:

CA s1041F(1) - Inducing Persons to Deal

A person must not, in this jurisdiction, induce another person to deal in financial products:

- (a) by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive;
- (b) by a dishonest concealment of material facts; or
- (c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if:
 - (i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and
 - (ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to the other person, or a class of persons that includes the other person.

See *NCSC v Monarch Petroleum NL* (1984) 2 ACLC 256

"Dishonest" is defined in s1041F(2) to mean: (a) dishonest according to the standards of ordinary people; and (b) known by the person to be dishonest according to the standards of ordinary people.

Consequences of Breach

- Criminal offence punishable by:
 - in the case of an individual, 10 years' jail and/or a fine equal to the greater of: (a) 4,500 penalty units; or (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence, 3 times that total value; and
 - in the case of a body corporate, a fine equal to the greatest of: (a) 45,000 penalty units; or (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence, 3 times that total value; or (c) if the court cannot determine the total value of those benefits, 10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence (s1311).
- Ss1041A, 1041B, 1041C and 1041D are financial services civil penalty provisions (s1317E) - civil penalty of \$200,000 for individuals and \$1,000,000 for corporations (s1317G(1A)) and compensation orders in favour of anyone suffering loss or damage (s1317HA).
- Liable to pay damages to anyone who suffers loss or damage as a result of a contravention, along with any other person "involved in the contravention" (s1041I).
- Injunctions (s1324).
- Order to disclose information or publish advertisement (s1324B).
- Compensation orders (s1325).
- If person infringing is a licensed dealer or its representative - cancellation or suspension of licence (ss915C(1)(a) and 912A(1)(c)) or banning order (s920A(1)(e)) for breach of a financial services law.

Again it is all there!

And another:

CA s1041G - Dishonest Conduct

- A person must not, in the course of carrying on a financial services business in this jurisdiction, engage in dishonest conduct in relation to a financial product or financial service (s1041G(1)).
- For these purposes, "dishonest" means:
 - dishonest according to the standards of ordinary people; and
 - known by the person to be dishonest according to the standards of ordinary people (s1041G(2)).
- Criminal offence punishable by:
 - in the case of an individual, 10 years' jail and/or a fine equal to the greater of: (a) 4,500 penalty units; or (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence, 3 times that total value; and
 - in the case of a body corporate, a fine equal to the greatest of: (a) 45,000 penalty units; or (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence, 3 times that total value; or (c) if the court cannot determine the total value of those benefits, 10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence (s1311)
- Civil liability for damages to anyone who suffers loss or damage as a result (s1041I)
- Injunctions (s1324)
- Order to disclose information or publish advertisement (s1324B)
- Compensation orders (s1325)
- If person infringing is a licensed dealer or its representative - cancellation or suspension of licence (ss915C(1)(a) and 912A(1)(c)) or banning order (s920A(1)(e)) for breach of a financial services law.

Again it is all there!

The law!

The consequences!

The punishment!

Of interest the last lines order to disclose or publish information. When has this ever been acted on by all FSP on all occasions? There is an adviser who worked for a very popular media personality who committed no less than 20 breaches of the corporations act and over 6 acts of fraud. Yet there has been no mention of this to any existing clients or public of this adviser as they struggle to come to terms with what they have experienced. To this day it continues to be covered up.

Again the laws are there. No need for any new laws.

Enforcement and punishment is what is missing.

The ASIC has a lot to answer for in this department.

Today the financial filth has come to head because of a royal commission. So how is it possible that the banks have gotten away with it for so long? It would be very hard to dismiss potential corruption within the various parties who should be investigating, exposing and administering the law and other parties who should promote compensation within the applicable laws. This is what I believe the commissioner needs to examine on exactly how the banks were getting away with the filth without being over seen.

There does not need to be new laws.

Yes the commissions have done a reasonable job thus far but the victims already know of the findings. There are questions many victims want answered and after such a long time it would be reasonable to expect them now!

The question will remain how the FSP got away with this for so long when there are laws and penalties in place.

There are several components that need to make up the missing links.

People, organisations within those missing links need to be heavily questioned to get a fuller understanding of how we have come to a Royal Commission into the Financial services conduct.

Those such as the ASIC, APRA, and FOS [who over a number of years has been on the edge of the spotlight of potential misconduct, as they are under the ASIC scrutiny it would be reasonable to suggest the ASIC also has not lifted a finger on any concerns of impacted victims of suspect determinations.]

Further questioning by the commissions will unearth the cover ups and which will then have an impact on how the commissioner wishes to move forward and never let this happen again.

Thank-you for giving me the opportunity to submit my concerns and thoughts.

Kind regards

I thank the party for access and use of the publication of laws.