



Whistleblowers Australia

PO Box 129, Wollongong NSW 2500

**“All it needs for evil to flourish is
for people of good will to do nothing”**

Edmund Burke

26 October 2018

The Honourable Kenneth Hayne AC QC

Commissioner

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

By email via

<https://financialservices.royalcommission.gov.au/Public-submissions/Pages/default.aspx>

Dear sir,

I am writing to you with one area of inquiry in mind, which I would like you to consider, as it lies at the heart of what has been uncovered to date. I will be brief.

It is fair to say that absent the very public *work of whistleblowers* over years, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Commission) would not exist. And that the information supplied by whistleblowers to employers, regulators, the media and politicians has played a significant role in opening up lines of inquiry for the Commission. CBA whistleblower Jeff Morris is a case in point. Ben Koh's case is another. Then, there are the many, who remain anonymous contributors to the Commission's work.

The Commission has extracted significant admissions of criminal wrongdoing from executives and others, who exploited any and every opportunity for profit. Theirs was an open, brazen business model that relied on co-opting and compromising their employees, who mostly obliged by looking the other way – like the regulators.

I am writing because it is one thing to say I agree that what I did was wrong, but without delving more deeply, we don't know whether those executives acted in concert with others and if so, to what extent it was recognised, recorded or what? What laws, regulations and individuals were identified as a threat to their plans and if so, why? What was done to neutralise those threats? To what extent did subordinate staff rely on doing as they were told or were there other factors at play? What were they? And how much did a 'nod and a wink' pass for good governance?

These are just some of the things I would like the Commission to explore. I want those executives and others grilled about **why** they thought it was okay to do what they did, before drilling down on what would have persuaded them to do things differently - because there will be a next time, unless we prepare for it.

For example, what would those executives and or others have done *had the law at the time*:

- empowered a whistleblower to go to the press at their call *without* penalty;

- compensated a whistleblower where the information s/he disclosed implicated them in wrongdoing whether by omission or commission;
- tied their remuneration to say no more than (10) times the wage of the lowest paid worker and excluded share options and or other incentives,
- held them criminally liable for knowingly seeking to compromise and or corrupt others, either directly or indirectly and
- held them personally liable for a proportion of any fine or penalty imposed on the company by a regulator and or court

In some circumstances the same line of inquiry should apply to executives and others from regulators ASIC and APRA, as they appear to have ignored information provided by (eg) the [REDACTED] whistleblowers.

If the laws and regulations are not changed to *empower* the one group that can be relied upon to put the public's interest ahead of their own – the whistleblowers - the company, its whistleblowers and customers and the wider society will continue to cop the cost of executive greed, dishonesty and criminality. It must change and change, now.

I look forward to hearing what they have to say.

Yours sincerely,

Cynthia Kardell

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Cynthia Kardell

[REDACTED]

National President

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