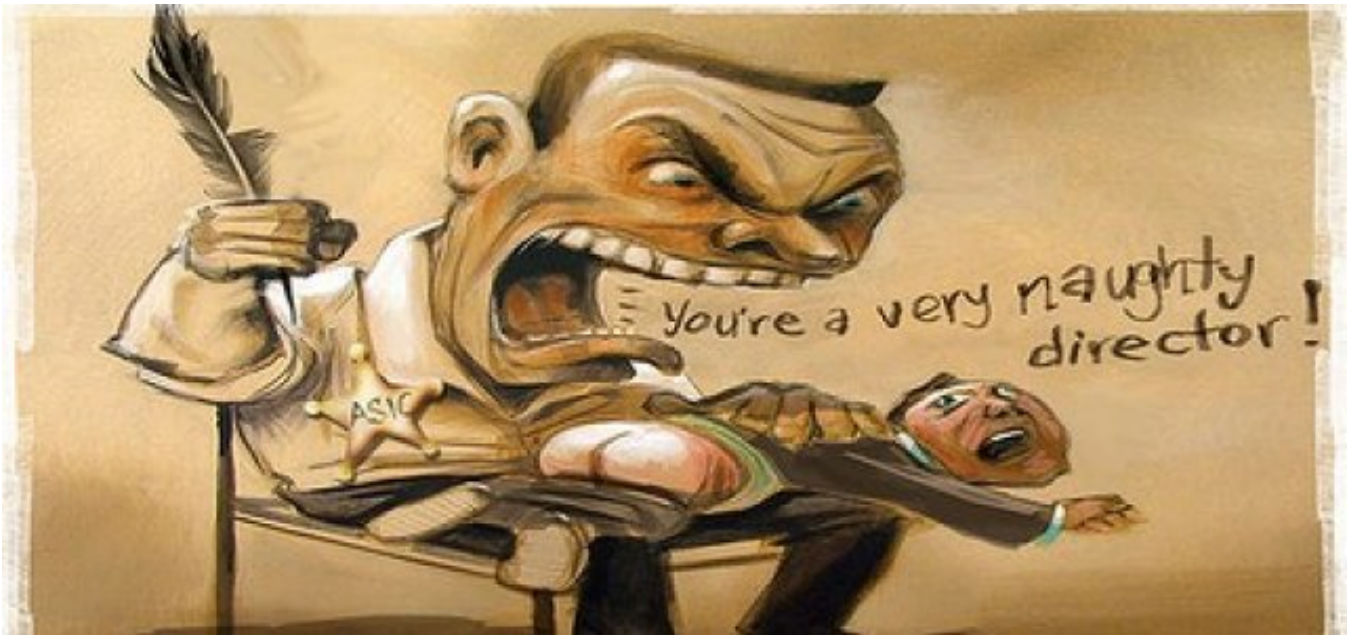
Bank Conduct Must Be Properly Investigated

Summary:
Governments allow bankers to get away with criminal activity because the penalties are far less than the proceeds of the crimes. Serious bank crimes require serious penalties.

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A Ban Is No Deterrent For Bad Behaviour

Anybody up for a spot of fraud? How about some forgery for good measure? Doctoring the odd file perhaps?

That's the ticket. Be a hero among your peers. Beam with delight as you win cash bonuses and the

prized Sales Legend of the Month Award for flogging the most high-fee product to unwitting retirees. Don't worry, you won't be prosecuted. There is one rule, though, you have to work for a big bank. No point being a 16-year-old schoolgirl trying to pull off an April Fools' prank.

You should be warned there is a chance that you may get a ban. A lot has to go wrong though. First, there would need to be a stubborn bunch of whistleblowers prepared to sacrifice their careers, do the wrong thing and dob you in. Even then the odds are stacked in your favour. When the whistleblowers go to the authorities, you can count on the authorities to vacillate at worst or duck for cover at best.

All right, there was evidence before the Senate inquiry this week that the authorities did do something in the case of Commonwealth Bank. But that took 3½ years.

And that was a ''black swan'' event. It is not merely enough for those goodie-two-shoes types to tattle to the authorities. They have to go to the media, too, to ensure there is enough noise to wake the authorities from their repose.

So the whistleblowers will need to find a journalist somewhere, someone keen to duel with the bank's PR people and lawyers. Then the editors in the media organisation will have to risk losing advertising - a big ask in the current environment - not to mention combat the defamation menace from the cuff-linked pettifoggers.

So the odds are still in your favour as, even if the media organisation manages to tell the story in intelligible form, it is unlikely to be picked up by other media organisations as, one, they rely on advertising too, and two, it wasn't their yarn so you can count on them ignoring it.

OK, they might pick it up, but only if your name is Clive Palmer or Julia Gillard - or he of the resplendent abdominals and the abhorrence of business-class flying, Bob Carr.

In the event that your name is not Clive, Julia or Bob, the story runs, the whistleblowers lose their livelihoods, a public outcry ensues and the authorities actually do something, you may have to suffer, wait for it .. a ban.

Don't fear, you won't be prosecuted, just slapped on the wrist with a warm lettuce. But by then, as was the case with the CBA, you may already have been promoted!

Disagreeably, you and your bank may have to endure a tad more reputational risk, say, if a firebrand senator such as John ''Wacka'' Williams sees fit to push for a public inquiry.

Even then, as seen in the Senate inquiry on Thursday, your overlords at the bank would label your doings ''inappropriate''. You would not be a fraudster, merely an ''inappropriatester''.

As for the bank, there is nil chance of prosecution. It might have to endure some enforceable undertakings. These EUs are in lieu of prosecution and they are beauties because the bank only has to sign stuff promising not to be naughty again.

No more fraud, forgery, or misleading and deceptive conduct for instance, but who knows, that doesn't proscribe a spot of grand theft auto or serial arson unless expressly stipulated by the coven of lawyers concocting the undertakings.

For the whole unfortunate affair to be taken any further there would need to be adverse findings from the inquiry, then, heaven forbid, action taken to address said findings. As we know, there is rarely any nexus between adverse findings and actual reform.

Besides, the EU doesn't have to carry an admission of fault on behalf of your bank. It's an undertaking, not a finding.

Lovely; all over red rover? Except perhaps for the ambulance chasers. Maurice Blackburn did run a class action against CBA and won a settlement for some victims - though small cheese for a $126

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billion bank. The winnings from churning and burning far surpass the penalties.

This is the nub of it. The deterrent for bad behaviour is minuscule. As every schoolkid knows, getting caught is not good, but being pinged for 5¢ in pocket money ... whatever!

Appearing before the senate, CBA whistleblower Jeff Morris said in compelling terms this week that the scandal was not about a rogue salesman, nor was it confined to one bank. It was a systemic issue. It was about culture and commissions and the failure of regulation.

The banks can ill afford for even their most rogue operators to be prosecuted before the courts. Inevitably, the Nuremberg defence would be invoked. The manager would be dragged in, the internal processes tested, the manager's managers, richly remunerated for the profitable endeavours of their underlings, would be put in the box. The whole bank would be put in the box.

And now we wait for a detailed response from the corporate regulator to the testimony of James Wheeldon, the former insider at the Australian Securities and Investments Commission who explained how the banks influence the regulators to recast the laws in their favour. We await more in interest than in hope.

Websites For More Information: SMH Article - A Ban Is No Deterrent For Bad Behaviour
http://www.smh.com.au/business/a-ban-is-no-deterrent-for-bad-behaviour-20140411-36ih9.html

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