BRN Senate Submission - exposes the corporate protection racket

Summary:
Yet another Senate inquiry into ASIC has been running this year. We believe ASIC has failed in its role. A corporate watchdog that hasn't got teeth will never do the job required. Corporate crimes will only diminish when perpetrators face serious consequences and punishments for their crimes & misconduct. ASIC should be subject to significant reform or axed. Corporate crooks need to know that their victims will be properly compensated and their ill-gotten gains will be confiscated as they are being placed in a jail cell.

This approach puts in place a powerful incentive for companies and their staff to participate in the market with honesty and higher level ethics.

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re: Senate Economics Committee inquiry - Australian Securities and Investments Commission (ASIC) investigation and enforcement.

BRN welcomes the opportunity to contribute to this inquiry. We will first make a few comments regarding the Terms of Reference.

Most of these terms directly relate to the “market,” its efficiency and how regulations and their enforcement might impact on the operation of this market. There seems to be an implication here that if ASIC does it’s purported job properly, income to various industries might be impacted in a way which harms company and shareholder profits.

Terms of Reference:

The capacity and capability of the Australian Securities and Investments Commission to undertake proportionate investigation and enforcement action arising from reports of alleged misconduct, with particular reference to:
a. the potential for dispute resolution and compensation schemes to distort efficient market outcomes and regulatory action;
b. the balance in policy settings that deliver an efficient market but also effectively deter poor behaviour;
c. whether ASIC is meeting the expectations of government, business and the community with respect to regulatory action and enforcement;
d. the range and use of various regulatory tools and their effectiveness in contributing to good market outcomes;
e. the offences from which penalties can be considered and the nature of liability in these offences;
f. the resourcing allocated to ensure investigations and enforcement action progresses in a timely manner;
g. opportunities to reduce duplicative regulation; and
h. any other related matters.

Bearing in mind that many do not understand how markets work we will spend some time here wrestling with that issue and how it relates to ASIC’s purported role of making sure that corporations function in a way that doesn’t harm participants in the market.

It is the government’s responsibility and duty to ensure that corporate criminals are not tolerated. Australia requires corporate watchdogs with teeth. The impression many have is that the laws favour white collar criminals.

Australia is a "paradise" for white-collar criminals because of its soft punishment of corporate offences - ASIC chairman Greg Medcraft (2014)

The institutions - for example ASIC, AFCA and APRA - that are supposed to investigate corporate criminal behaviour appear to have terms of reference and an entrenched culture that favours the criminals.

In this submission I will be taking a wide-ranging view because my concern is the system as it currently operates. ASIC and its very well documented inadequate performance is part of a wider problem which is political and structural. Limited terms of reference are often used to limit the appropriate investigation and hide issues of import. Without proper investigation there is no hope of a proper solution. Your aim should be to make sure that ASIC can provide effective oversight and protection of citizens from corporate misconduct and the criminals involved.

We live in a market-based economy and some commentators believe that it is inappropriate to interfere – this is not the case. There are legitimate reasons for proper oversight of the market by bodies such as ASIC. The structures need to promote honesty and integrity in the market while

preventing and prosecuting fraud and other crimes. We should not be concerned at all if proper oversight and the resulting honest business practices lead to lower corporate profits and shareholder dividends. Massive profits can be made via criminal and harmful activities. Empires were built on slavery and other abuses.

Here I will review some basic concepts regarding markets and important truths about human nature particularly as it relates to money.

The solutions that most people and organizations put forward show that there is a poor understanding about what a market is and how it operates and interacts with people. Due to this misunderstanding the solutions that are proposed have little chance of success and will often make problems worse.

Markets – what are they and how do they work?

Some people and organizations have an aversion to markets. What they fail to realise is that the markets aren't good or bad they just are. A market really is just a reflection of the sum total of the millions of decisions that people make on a daily basis when dealing with each other. You cannot control or abolish markets without damaging people in some way. Markets in fact are much like a natural law – like gravity. The power of markets exists no matter what people do or say about them. While ever people have goods or skills that others need or desire people will work out ways of trading – ideally in a mutually beneficial way.

One of the many benefits of living in freedom is that people can interact with each other without interference. In a civilised society the law's primary purpose is to ensure that these interactions are voluntary and free from the use of force, fraud or coercion.

The terms free trade and free markets are often bandied about – there is no such thing as a totally free market. Government policies and regulations should aim to keep the market honest. In Australia ASIC is one of the most important mechanisms put in place to do that job.

Pricing in the market helps determine the best use of resources. The supply of - and demand for resources helps to set the price. This feedback loop is very effective but distortions can sneak into the picture – crime or government regulation will change market conditions. Market adjustments to the new conditions may in certain circumstances even bring negative results to people or in some cases result in the exact opposite of what was intended by the manipulation.

Negative end results in a particular market are often due to the poor decisions and choices made by the people involved. The market just reacts to the environment it is operating in. These types of results should not be considered "market failure."

For example, if people demand to eat junk food you will find places that supply junk food on every street corner.

If people refuse to pay the price needed for clean production of goods we will live and suffer with polluted air, soil, and water.

If people demand high wages in their own country without increasing their productivity - and at the same time choose to purchase products supplied with the use of slave labour from authoritarian (and usually poorer) countries they will find their jobs hard to hold onto.

If governments spend excess dollars into the economy while central banks keep interest rates low, asset prices will rise. Ludicrous bubbles will form in the share and property markets.

If governments bring in hundreds of thousands of workers from overseas this will aggravate and perpetuate unaffordable housing while putting unwanted pressure on services and infrastructure. Extra supply of labour puts downward pressure on wages and upward pressure on prices of goods and services – as you would expect in a market.

If governments allow foreign investors to purchase Australian properties. Australians will find it harder to purchase homes. Prices will rise. Many homes are mothballed and therefore not available for rent or purchase. If governments don't allow enough land to be made available for housing that restriction in supply will also contribute to unaffordable housing.

The above three paragraphs make a pretty good case showing that government policies have led directly to the housing affordability crisis …… and we haven't even touched on the taxation policies that bring their own unhelpful distortions to the problem.

Politicians and governments influenced by corporations – often in a corrupt manner - can lead to the most amazing profits as well as horrific abuses, perverse incentives, and unintended consequences. The key areas which come to mind are the effects of donations from the arms industry, Big Pharma and the banks. The policies that come out of these dealings force citizens to pay for death and destruction. Most people want to live in peaceful freedom. They don't choose to have their wealth handed over to warmongers and others that profit from the geopolitical games of imperialism.

Banks want to close branches and bring about the end of cash for several reasons. A big one is to lock people into a system where banks get a cut of every single transaction made in the country. Transaction fees will of course rise when people don't have the cash alternative. Political donations are a good investment if it stops the government from interfering in the banks' business model and goals. Watch this issue carefully as it could be one of the biggest market manipulations in Australian corporate history. Just imagine if the Big Four banks are colluding to force the abolition of cash via branch closures, removal of ATMs, and directing staff to force customers into the digital net.

The above examples are not demonstrating "market failure!" They are, in large part, markets adjusting to government failure. In fact, this really demonstrates that the government often work in lockstep with various corporate players to manipulate markets in ways that are detrimental to citizens – families, small businesses, workers, taxpayers, and, consumers.

A properly functioning corporate regulator should have the powers and ability to manage dispute resolution, order compensation where appropriate, and put in place penalties that outweigh the profits of the various forms of misconduct.

Using one of the above issues as an example – when ASIC and the government see bankers abusing their position to implement an agenda that is clearly against the public interest the required response is essential, obvious, and simple - investigate the issue properly and put in place a competing banking service that serves the people's interests. The banks can then continue to close as many branches as they like while people choose to bank where they like – at the people's bank set up through the licensed Post Office network.

People, Power, and Money

Most people understand that to really prosper and get ahead financially it is necessary to work hard and smart at making a living – this usually involves supplying goods or services to satisfy the needs and desires of others in the community. Unfortunately, there is a large subgroup of able-bodied people who will do almost anything for money – except work honestly. This group can be described in many ways - parasites, conmen, criminals are just some of the terms commonly used.

Now there are the petty fraudsters and criminals who would steal $50 from your grandmother or a teenager's new bike – but the colourful characters we are concerned with here are in a whole different league. Basically, the way they operate is simple – any place where large amounts of money are concentrated in a savings or investment arena - they will be there - and any place where large amounts of money are ready for spending - they will be there. Many of these types are what we refer to as corporate criminals. These sociopaths will masquerade as businessmen, lawyers, book-keepers, bureaucrats, workers' union representatives and even politicians – but they are really just abusing their position of power and influence in order to access other people's money – legally and illegally.

Several examples of the sorts of saved money these creatures congregate around include:

superannuation funds, corporate profits, investor's funds and charities.

Money for spending that attracts these people includes private building projects, government infrastructure projects, and military spending.

Another favourite way for unscrupulous "businesses" to increase their profits is to capitalise the profits and socialise the costs of production. Thus, we see companies produce goods and make super profits because they are not held responsible for the social, economic, and environmental consequences of their business practices. The classic examples include industries that pollute the air and water – they get the profits of production, but the people bear the health and financial costs of disease and disability or the cost of cleaning up via government (taxpayer) funded solutions.

Additional comments and related matters

Corporations are aided in corrupt behaviour by their links to political parties. Political donations are an associated area that requires reform. Firstly, we need to be clear that no business or corporation gives money to a political party without expecting the gesture to be helpful in some way to their business. BRN has proposed that no individual can donate more than $1,000 per year to the party of their choice – and they should only be able to donate to one party.

Businesses (and unions) should not be able to donate at all. Fundraisers such as $20,000 per plate dinners where a businessman can sit at a minister's or shadow minister's table are not acceptable. The beauty of our proposed system is that the only way for parties to raise donations is by earning trust and respect from ordinary voters. This is done by displaying integrity, honesty, and wise policy formulation - good for our democracy and good for our people.

ASIC's role could be expanded to include oversight of corporate interactions with governments, parties, and politicians.

Also good for our democracy would be reform of political advertising – political parties should not be permitted to use advertising companies at all. We don't want the party with the best ads on TV to govern us. We need the party with the best people and policies. "Advertising" should only consist of ministers discussing policies and facts – simple and clear. If a politician (and party) cannot do this without a slick marketer holding his or her hand they clearly are unsuited to the job.

Every candidate that runs for election should have a web page hosted on the AEC website. On that page there can be a video explaining their policies and some related information. The AEC runs ads in print, radio, TV and web portals giving the link to the site where the information can be found. Voters can visit the site to find out what their candidates stand for and offer.

Another benefit of these policies is that political parties will not need the volume of donations that are now undermining our politics and democracy.

The 2008 Global Financial Crisis was just a warm up

If governments continue to make it easy for corporate criminals to operate with virtually no fear of the law you will continue to find people being ripped off and lives destroyed. You will also set the stage for even worse financial turmoil than was experienced in 2008 – indeed it will be worse than 1928. The upper echelons of industry - for example the CEOs and Directors of banks - must be held accountable. This can only be done if ASIC (or a superior new entity) has the necessary powers and the willingness to use those powers in the interests of citizens.

As a society progresses, develops, and becomes more prosperous its people should find it easier to look after their needs – particularly the critical needs of housing and food. They should find it easier to have more free time. It should be easier to get the balance right between work and family.

Market based economies have delivered the goods to a certain extent – we all have the potential for better lives – far better than those our grandparents knew.

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So why is it so hard for people to get ahead and improve their lives right now? Why has the progress that capitalism promised not been delivered? Simple – we have been robbed! The parasites have followed the money and are stealing it from right under our noses. Regulatory bodies like ASIC have let the people down. If it wasn't for the corrupted financial system and its interaction with poor government policy the cost of living would be around 30 to 50% less than it is now.

The number one reform requires us to realise that banking is a utility. BRN refers to the reform required as a Sovereign Monetary System. A savings bank is a simple operation that is actually not that profitable. Government has allowed the banks to profit from credit creation. There are only two ways to sort this out. One is totally unacceptable …… nationalising the banks. Therefore our politicians must support and facilitate the alternative …… a National Australia Post Savings Bank. The private banks would have to compete. Their operations would gradually change. The risky speculative banking services would be available for those who want it. Most people will want a people's banks. The profits of credit creation must be returned to the people.

Reform is required but it must be done thoughtfully and carefully to moderate the significant reduction in property and share values that are likely in 2023. I would suggest that if house values go down the banks should bear the losses as part of the reform process – not the people who have been ripped off, often by predatory business practices. This is a tough job, but it must be tackled using wisdom, compassion, and bravery. Has Australia got the leadership that can deliver this?

Key Points:

1. ASIC is not fulfilling its legislative responsibilities and obligations

2. ASIC is not held accountable for its failures and its culture

3. ASIC does not collaborate and work effectively with other regulators and law enforcement bodies

4. ASIC's complaints management policies and practices are not effective. The aim seems to be to let the dissatisfied victim - who has had little help in seeing justice done - let off some steam and then be left to pick up the pieces of their shattered life while ASIC neatly files the complaint. Most complaints are not investigated at all (please see research presented by economist John Adams).

5. Corporate and private whistleblowers are dissuaded from coming forward because they have seen in the past how the regulatory bodies do not give them the respect or protection they are due

6. It is the government's job to make sure unsavoury people and businesses can't get away with the use of force, fraud, and coercion to enrich themselves. This is the purpose of the Law.

7. It is not a concern if regulation, investigation and punishment lead to decreased profits. It is very easy for corporations to make additional profits if they are allowed to engage in criminal activity and various forms of corruption.

8. Market manipulation too can lead to additional profits. ASIC must be resourced to keep an eye on this as well as how government itself can be involved in these types of manipulations.

9. Corporate misconduct must lead to appropriate penalties. Victims must be compensated. Perpetrators must lose the proceeds of the crime and lose their freedom when a jail term is determined to be appropriate. Proper penalties will discourage the misconduct.

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