

As part of the government's newly found willingness to send ministers jetting off to far-flung places to find out what is actually going on (and gaining credits in the polls for doing so), the Prime Minister should suggest Attorney General George Brandis meet his recently installed counterpart, Attorney General Loretta E. Lynch, head of the US Department of Justice (DOJ).

Ms. Lynch has only been in the office since April but has hit the ground running, in particular to [tackle a long-running sore](#)

– corporate white collar crime, especially bankers who hide behind faceless corporations to cover up malfeasance. To date, the US government has gone after some of the largest banks and has been fairly successful in extracting billions of dollars from them for a wide range of corporate wrongdoing, such as the eye-watering fines on

[Bank of America](#)

and

[Deutsche Bank](#)

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Although these fines have been massive, there has been a nagging doubt that, apart from a few sacrificial scapegoats, no senior executive has been held accountable for misdeeds such as the manipulation of [LIBOR and FX benchmarks](#) or [sanctions busting and money laundering](#). In fact, the Boards and management of the largest financial institutions appear to have shaken off the fines, mainly because it is not them but the long suffering shareholders who pick up the tab.

Nor is Australia immune, as the [New Zealand Tax](#), the Storm Financial and the [local LIBOR \(BBSW\)](#)

scandals have shown. CEOs of local banks have been dragged kicking and screaming to admit that all might not have been well in their extremely lucrative business dealings. And they promise that they will do better in future, provided that the [regulators back off](#)

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The argument of the banks and their industry body, the Australian Bankers Association, appears to be that if only one person was to end up behind bars the whole fabric of the Australian financial system would be rent asunder and the economy would tank. This glosses over the fact that, in the revolving door of banking, directors and managers come and go with regularity (and substantially swollen bank accounts).

Do the Crime, Do the Time

Written by The Conversation

This week, a US Deputy Attorney General, [Sally Quillian Yates](#), sent out a memo to all US criminal and civil federal prosecutors, that radically changes the rules as regards tackling white collar financial crime. In short, rather than starting with the corporation to investigate financial crime, prosecutors are urged to start with the individuals and work up the corporate hierarchy.

Sounds like a minor change but US federal prosecutors have long been given the run around by very expensive, very smart and to date very successful corporate lawyers who know that all they have to do is to 'run the clock down' until the [statute of limitations](#) on such crimes runs out.

The DOJ also has some smart lawyers and recognising that they often get the run-around have added a twist – firms will not be allowed to settle cases unless they also give up those responsible especially those “high-level executives, who are often insulated from the day-to-day activity in which the misconduct occurs”. Ms Yates said:

Effective today, if a company wants any consideration for its cooperation, it must give up the individuals, no matter where they sit within the company. And we're not going to let corporations plead ignorance. If they don't know who is responsible, they will need to find out. If they want any cooperation credit, they will need to investigate and identify the responsible parties, then provide all non-privileged evidence implicating those individuals.

That line - “if they don't know who is responsible, they will need to find out” – puts the onus on firms to stop trying to cover up and to look for culprits themselves. As Ms Yates [joked](#) “we're not going to be accepting a company's cooperation when they just offer up the vice president in charge of going to jail”. Scapegoats everywhere rejoiced.

The DOJ lawyers are not schmucks and know that these changes will be fought by the industry. However, they are relying on the penny dropping at the highest levels that corporate solidarity only goes so far and it might be worth fingering a few senior managers to get the Feds off their backs.

In the USA, the presidential election season with its “run the bums out of town” populist rhetoric will ensure that this message is not lost. Even [Hillary Clinton](#), fearful of being labelled too

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friendly to Wall Street, has jumped on the bandwagon.

Closer to home, our own financial conduct regulator, ASIC head Greg Medcraft, has [expressed his frustration](#) at getting the run-around by the big end of town and has mooted using extreme measures to go after banks who are reluctant to cooperate in ASIC's investigations.

Maybe Mr Brandis could book another few tickets to Washington and take along a few local regulators to see how it is done?

Why might this play out well for the Australian government?

September is UN General Assembly season and Prime Minister Abbott is travelling to the US to attend. Having gained a bit of credibility from his handling of the refugee crisis, and fearing a good kicking on climate change policy, announcing (another) alignment of US/ Australia legal policies might prove popular, with the public if not with the banks.

Luckily, a three word slogan is already at hand – bash the bankers?

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