

It may be the effect of the election but the regulation of banking in Australia appears to be descending into farce.

Just last week, maybe in anticipation of adverse events to come, the Australian Financial Markets Association (AFMA) [quietly announced](#) that it was getting out of the BBSW benchmark business:

“...benchmark administration has now evolved to a point where it is appropriate for it as an industry body to step away from the function of being a benchmark administrator.”

In itself, this step-back would be in line with international practice. However ever since the BBSW manipulation scandal first erupted [several years ago](#), AFMA has doggedly argued that BBSW could never be manipulated (even though overseas regulators had already detected it). It also argued that even if there was manipulation it was no big deal and that the system is changing so it [definitely could not be gamed](#). Now they have thrown in the towel, stating:

“AFMA will begin the process to identify an alternative benchmark administrator over coming months and enable the transfer of BBSW administrator responsibilities to another entity in a reliable manner.”

Groups that had patently failed to administer the benchmarks in other jurisdictions have [been stripped of this responsibility](#).

But obviously not in Australia where AFMA, rather than the federal government minister responsible, gets to pick the administrator. Surely the process should be run by ASIC as it's the markets regulator?

The administrator should be independent but importantly, in the case of Australia, one of the members of the “independent” AFMA Benchmark Committee is Westpac managing director,

Colin Roden.

According to claims made by ASIC, Mr Roden is reported as telling a colleague, in extremely colourful terms on recorded phone conversations, that he had tried to manipulate the interest rate market:

“I know it’s completely wrong but f— it, I might as well, I thought f— it. We’ve got so much money on it we just had to do it, right?”

But some believe that such bravado was just boys (and girls) being boys. In an interview, the new CEO of Westpac Brian Hartzler, just laughed it off. “We think there are perfectly reasonable explanations as to what that could refer to,” he said. One such reason, he ventured, was that it was a heavy trading day “after an Easter long weekend”.

Mr Hartzler should know that such a situation is precisely when manipulation would have the best returns, especially if the situation has been set up beforehand.

The Westpac traders had insider information (a knowledge of their net positions) and bought or sold securities [with no purpose other than to nudge](#) the benchmark rate to produce a profit for themselves. Other jurisdictions have fined banks billions of dollars in fines for similar “shenanigans”, the term used by Westpac traders.

What is ASIC playing at? They have made serious claims in the Federal Court, but as yet have not posted them on their website (could there be an election taking place?).

ASIC have taken a different route to other regulators, in going after banks’ culture and it isn’t working. The fines proposed by ASIC are pitiful, some A\$1 million per offence, when publicised cases showed that a bank could make A\$2 million off just one manipulation.

So why don't the banks, just give in? Because it doesn't end with fines, as the [latest settlement](#) of over US\$320 million by seven US banks' pension funds shows. The banks are playing for keeps, whereas ASIC appears to playing to keep their jobs.

Elsewhere in the circus that is Australian banking regulation, the Australian Prudential Regulation Authority (APRA) has just had a cream pie chucked in its face.

In May 2015, as required by APRA, the National Australia Bank (NAB) released its risk report for the March quarter, the so-called APS 330 report. In that report NAB increased its reported Operational Risk Weighted Assets (RWA) by some 9.5% to A\$40 billion. However, unlike movements in credit risk RWAs in the same report, no further information was given to shareholders as to why operational risk had such a jump.

This week, the [redoubtable Adele Ferguson](#) gives us a clue.

In April 2015, the NAB Board were given a 3-star audit report (the worst kind), which basically concluded that operational risk management at the bank was a shambles. When informed by NAB, APRA would have demanded an increase in RWA which would account for the sudden increase.

But APRA should have known well before the audit report arrived. As part of the Advanced Measurement Approach rules, NAB would have had to seek approval from APRA for its internal models and risk management processes.

So why was APRA caught by surprise when the audit report showed up very serious problems? And more importantly, why did APRA not publicise actions it had taken? Basically because APRA have dropped the ball, given NAB the OK to put in a new system, without monitoring it.

NAB's reporting of its operational risk RWA is an unexplained anomaly. It remains a suspiciously round A\$40 billion to this day, whereas logic and past history would show that Operational Risk RWAs bounce around each quarter, if only a little bit.

It could be argued that the calculation of the RWA figure for NAB is conservative, but if the calculation was so deficient then who would know whether a figure in the air number is conservative or not?

If the remediation of the problem is almost complete, as NAB management claim, then the RWAs should in theory reduce, rather than stay at a speculative \$40 billion. Since unnecessary capital actually costs money, shareholders should be informed, one way or the other.

The regulation of banks has become a political football, and instead of being referees, regulators have become players, albeit unwittingly. But regrettably, the regulators are mere amateurs in this game with neither the resources nor it appears the nous to take on the big institutions.

Yet another problem pushed off to July 3rd?

Read more <http://theconversation.com/banking-regulation-descent-into-farce-59514>