

The [government's new laws](#) to tackle manipulation of the bank bill swap rate may seem like a crackdown on badly behaving bank employees but in reality the Australian Securities and Investments Commission (ASIC) hasn't used the full force of the law in the past to prosecute. So perhaps it's time Australia followed the lead of the US and UK who are really using law to hold banks to account.

The bank bill swap rate (BBSW) is used to set rates on hundreds of trillions of dollars worth of transactions, including interest rates on credit cards, student loans and mortgages. Banks also use the swap rate to determine the cost of borrowing from one another.

[Three of Australia's big four banks, ANZ, Westpac and NAB](#) were accused of manipulating this rate. These latest measures, which include civil and criminal liability for bankers found guilty, come six years after [the scandal first broke](#).

ASIC takes too long to prosecute

ASIC has dragged its feet so spectacularly on prosecuting this rate rigging, misconduct affecting [A\\$20 trillion worth of financial products](#). In respect to some of the alleged wrongdoing, the clock has run out, and ASIC is now no longer able to prosecute. Added to that, it was not ASIC that uncovered the BBSW scandal in the first place.

The information was first volunteered by BNP Paribas. And while ASIC's colleagues in the UK have brought down [fines in the billions of dollars against UBS, RBS and Barclays for similar offences](#), ASIC is yet to dock a dime from our titans of finance.

There have been plenty of legal avenues where ASIC could have pursued the banks. For example, under [section 12.2 of the Schedule to The Criminal Code Act, 1995](#) which allows a court to hold a corporation criminally liable for the criminal misdeeds of its employees. I know of no cases where ASIC has sought to prosecute under this provision.

Another is [section 11CA \(2\)\(e\) of the Banking Act, 1959](#) . This would allow APRA to remove members of the Board of a bank, and appoint their own nominee, if that bank has demonstrated corporate governance failures. Since 1998 when that provision was enacted, APRA has used it a total of zero times.

It seems the regulators are scared to take on the big banks. For one thing they fear that a misstep could precipitate panic in the market, resulting in a bank run leading to a financial crisis. And if our regulators are ever in any danger of forgetting that, [the Australian Bankers' Association is quick to remind them.](#)

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How this differs to the US and UK

While Australian regulators have been taking their time, regulators in the UK have brought to trial and [achieved convictions](#) .

Regulators [in the US have arrested](#) , among others, British citizens, such as Mark Johnson, HSBC's global head of foreign exchange and Stuart Scott, then head of FX trading in Europe, for manipulating rates while they were in transit in the US.

Deutsche Bank is staring down the barrel of a US\$10 billion fine, in the US, for [malpractices it allowed to take place in Russia](#) . Banks in the UK and Switzerland have been fined billions of dollars by US authorities for rigging rates in countries other than the US. All that is required is for the US Department of Justice to detect a malpractice or a fraud that can be shown to have affected US investors.

Already there is legal action in the US in the form of a class action suit against [our banks for BBSW rigging.](#)

This could garner unwanted attention from US authorities and that could be actual punishment for Australian bankers.

Add to that the possibility that Australian bankers may find themselves under arrest when they pass through the US at any stage in the next five years, and one starts to put into perspective just how badly our regulators have done their job. Ironically, it's US, not Australian authorities

New laws on bankers behaving badly don't matter in light of ASIC inaction

Written by The Conversation

that Australian banks need fear, because of allegations of dishonest rigging of an Australian market, all of which allegedly took place in Australia.

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