

ASIC's CommInsure pass shows why badly behaving bankers will never fear jail time

Written by The Conversation

In October 2014, the Australian Securities and Investments Commission (ASIC) Chairman, Greg Medcraft, was [pretty forthright](#)

This is a bit of a paradise, Australia, for white collar criminals.

Just a day later, reportedly after a phone call with Finance Minister Senator Mathias Cormann, he [attempted to clarify](#) his remarks.

I correct that. Basically the point is that we want to make sure we don't become a paradise.

But as with much of what it has tried to do in the past five years, ASIC has been spectacularly unsuccessful, aiding the creation of a white-collar paradise, rather than hindering it.

But what would a white-collar hell hole look like? Mr Medcraft, gives us his perspective:

The thing that scares white-collar criminals is going to jail and that's what scares them everywhere in the world...The penalties, particularly civil penalties, in Australia for white-collar offences are basically not strong enough, not tough enough. All you're doing is giving them a slap on the wrist [and] that is not deterring people.

So since 2014, has ASIC been working assiduously to jail and fine white collar criminals, so they won't do it again? Not in this paradise - ASIC hasn't. Two examples, just this month, illustrate this.

First, ASIC has just [released](#) its long-awaited report into the CommInsure scandal [unearthed](#)

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originally by the ABC and Fairfax.

In summary, the ASIC report says that: Yes, CommInsure was using out of date medical definitions to deny claimants who were dying; Yes, CommInsure had to pay out millions to claimants who were found to have valid claims after all; Yes, CommInsure's systems were inadequate and could not be properly audited.

But also no, there is no evidence of undue pressure on doctors to change their opinions; Yes, the firm's claims processes were less than "best practice"; Yes the claims processes were inconsistent; No, there was no evidence that medical opinions were altered.

ASIC concluded that everything, despite evidence of unfeeling and incompetent behaviour, was legal!

And what punishment did ASIC mete out for such atrocious behaviour? In the sternest tones, Mr. Medcraft sent CommInsure a quiet little [note](#) asking them to "engage an independent expert by July 2018 to conduct an implementation review", into recommendations by a half dozen "independent inquiries".

ASIC is telling CommInsure to do what it should have been doing all along. Let's forget the past and mistreatment of customers, it's paradise for firms that prey on the sick and dying.

But it's not enough to be legal.

In the UK, Payment Protection Insurance (PPI) was, and is, perfectly legal. But that did not stop UK regulators [forcing banks](#) to pay some £23 billion (and counting) in remediation to customers for mistreatment of claimants who were sold inappropriate PPI contracts. ASIC is still reviewing the local insurance industry's marketing and sales practices, but don't hold your breath.

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ASIC [claims](#) it has asked the government for more powers to tackle bad behaviour of the type exhibited by Commlnsure as regards claims, but is still waiting on the reply.

However, ASIC does not have to wait. Back in 2015, ASIC [put its hand up](#) to be the “conduct regulator” and defined “conduct risk” as:

The risk of inappropriate, unethical or unlawful behaviour on the part of an organisation’s management or employees.

This means that ASIC does not have to prove illegality, merely inappropriate or unethical conduct, to take action. Having shelled out millions of dollars buying off mistreated claimants, not even Commlnsure would claim that their behaviour was either appropriate or ethical.

But rather than do its job on tackling misconduct, ASIC has chosen to hide behind a shabby, legalistic defence.

Another example comes from mid-March, when ASIC [announced](#) that it had accepted an “enforceable undertaking” with Westpac and ANZ regarding manipulation of a key Foreign Exchange (FX) benchmark. This is where the bank voluntarily enters into a binding agreement to do certain tasks that settle a contravention of the law. In this case failing to ensure that their systems and controls were adequate to address risks relating to the manipulation of the FX.

Just a few months ago, ASIC had [accepted](#) a similar enforceable undertaking with the other banking pillars, the National Australia Bank (NAB) and the Commonwealth Bank. So, all four of the Big Four banks were implicated in manipulating key FX benchmarks. This is despite the claims by their CEOs, at the now-regular [senate committee hearings](#), that there was, to their knowledge, no “systemic” misbehaviour.

So what were the four banks accused of? Using Westpac as an example of the sort of conduct found by ASIC in all of the banks, over a period from 2008 to 2013, Westpac staff: disclosed

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confidential customer information to their mates in the market; disclosed the banks' own positions to supposed competitors; changed their own positions after receiving insider information; and colluded with external parties to fix the market for their own profit. Similar, insider trading and collusion was reported for other banks.

In overseas jurisdictions, [regulators](#) hit banks with over US\$10 billion of fines for exactly the same misconduct, and also [fined and banned](#) traders. In [Europe](#), such conduct has been made officially illegal.

So what did ASIC do to scare the local white-collar wannabees?

They did not fine the banks nor bar the traders, but agreed with the banks that they would make "community benefit payments" of between A\$2.5 and A\$3 million each to support "financial literacy". Yes, you heard right- \$3 million for charity.

No fines, no sackings, no remediation for customers who were duded, no resignations, no cutting of bonuses, no apologies from the board. No repayment of ASIC's legal fees (which the taxpayer picks up). No, just A\$3 million measly dollars – a tiny amount compared to the banks' billion dollar profits.

No wonder it's paradise for white-collar criminals when the policeman has gone off snorkelling.

On the other hand, maybe there's some genius in ASIC's madness (for not rocking the boat)?

With Brexit, bankers are already starting to jump from the [City of London](#), where better to set up shop than in Sydney or Melbourne?

No nasty Financial Conduct Authority, handing out big fines, just ASIC. No obnoxious Prudential Regulation Authority, just sleepy old APRA. No parliamentary committees [harping on](#) about

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breaking up the banks. No
[laws to stop market manipulation](#)
. And most definitely, no
[Banking Royal Commissions](#)

We can already see the [marketing campaign](#)

It's paradise for white-collar criminals down here, where the bloody hell are you?

Read more <http://theconversation.com/asics-comminsure-pass-shows-why-badly-behaving-bankers-will-never-fear-jail-time-75059>