AUSTRALIAN COMMONWEALTH BANK FRAUD SCANDAL

Nina Tietzel and Pat McGrath
Sat 28 Jun 2014

Investors who have lost their savings are calling for compensation following a fraud scandal that has engulfed the Commonwealth Bank (CBA).

A Senate report into the scandal - which left thousands of customers millions of dollars out of pocket - has criticised the Australian Securities and Investments Commission's (ASIC) handling of rogue financial planners working at the CBA. The Federal Government is resisting the report's call for a royal commission into the bank and the corporate watchdog. Leah Wolfe's mother Joye invested her life savings, worth $75,000, with the Commonwealth Bank, but most of that is now gone. Seven years ago she was suddenly losing $2,000 a day, but when she asked her financial adviser to get the money out of the investments, she was told to keep it where it was.

"[He] said no, no, no, that's fine ... money goes up - $2,000 is lost one day, $2,000 is made the next. You'll be fine, keep your money with us," Leah Wolfe said. Ms Wolfe says the family always had a bad feeling about it, but after hearing news of the Senate report she began wondering if her mother may have been a victim of fraud. She wants answers but says CBA is refusing to give any. "Everybody I spoke to gave me the same scripted line about not being able to give me any information at all," Ms Wolfe said. "It has taken a huge toll on the family. "It's not a matter of money. When people take everything that you work all your life for ... it's not a matter of money, it's a matter of completely shattering a family."

The bank has paid out $51 million in compensation to victims so far, but that could blow out to five times that amount if further claims get through. The bank has made no public statements beyond a brief acknowledgement of the Senate report. It has not responded to requests for interviews from the ABC's PM program. Financial system inquiry already underway: Cormann On Friday Finance Minister Mathias Cormann said another inquiry into the financial system is already underway. "I've had conversations with the senior leadership at the CBA in relation to some of these matters over the past week," Senator Cormann said. "Once I've properly studied the [Senate] report I would expect that I would have some further conversations. "We already have a financial systems inquiry which is currently underway, so without pre-empting the Government's response, obviously that financial systems inquiry's considering the role of ASIC as part of our financial system."

While the Government believes the ongoing inquiry will help lift standards across the industry, it does want to put more pressure on the CBA to do more to help customers that lost money. Senior sources say the bank's response to the committee's report has been "inadequate" and that there needs to be a "mea culpa" from the bank and a "more considered response" to the committee's findings. "I have spoken to (CBA chief executive) Ian Narev about the findings of the Senate Economics Committee today and I am confident that he and the CBA will have more to say by way of a considered response to that report next week," Senator Cormann said. ASIC chairman Greg Medcraft has meanwhile questioned the need for a royal commission.

He told reporters on Friday it was up to the Government to decide whether to push ahead with another inquiry, but he said further investigation would put a strain on the regulator's resources. ASIC funding was cut by 12 per cent in this year's budget. Royal commission expensive, may not result in charges: expert University of New South Wales corporate law professor Dimity Kingsford Smith testified before the Senate inquiry, and believes more investigation would give an insight not only into what happened at the bank, but what allowed it to happen. But she agrees that a royal commission would prove to be an expensive exercise.

"And it doesn't necessarily lead to prosecutions, because any evidence that a royal commission comes up with can only be passed on with a recommendation that charges be preferred ... then it's up to the Director of Public Prosecutions to make the final decisions on the basis of that evidence, and other investigations too, as to whether proceedings should be taken against a person.

"Is the royal commission to further investigate ASIC, or is the royal commission to further investigate the CBA? Now, if you're going to investigate the CBA, ASIC has powers of investigation, very wide and deep powers of investigation, which it could use. "So one alternative to a royal commission is that ASIC begins another stage or phase of investigation over CBA."

http://www.abc.net.au/news/2014-06-27/investors-call-for-compensation-after-cba-fraud-scandal/5556224

CBA ACCUSED OF RIPPING OFF CUSTOMERS AND A COVER-UP

TERRY MCCRANN HERALD SUN JUNE 28, 2014

AUSTRALIA'S biggest and most trusted financial institution, the Commonwealth Bank, is accused of ripping off its customers and then quite deliberately trying to cover it up. Read full story at the following url link:

http://www.heraldsun.com.au/business/cba-accused-of-ripping-off-customers-and-a-coverup/story-fni0d8gi-1226969975829

What they said

Responses to ASIC inquiry report

"We deeply regret that some of our financial advisers did not provide quality advice to customers."

Commonwealth Bank

"ASIC has used this inquiry process to learn from the people who made submissions, take a close look at how we do things, and then act on all this to do a better job . . ."

Greg Medcraft, ASIC chairman

"The FPA is committed to stamping out inappropriate advice outcomes . . . We are therefore pleased to see all of this hard work - and our subsequent public position - validated by the Australian Senate in its milestone findings today."

Mark Rantall, CEO of the Financial Planning Association

"We will carefully consider the recommendations of the committee . . . We want to get to the bottom of these things, and we want to ensure that investors are as safe as they can be in a market economy."

Prime Minister Tony Abbott

"There has been, and there continues to be, some very bad behaviour in the financial sector."

Bernie Ripoll, opposition spokesman

Compiled by Sinead Mulcahy

ASIC IN ATTACK ON PLANNERS

June 28, 2014 Georgia Wilkins and Ben Butler

- Adele Ferguson: Rebuilding ASIC, the toothless tiger Malcolm Maiden: Case not closed yet following inquiry into CBA scandal
- CBA under pressure over payouts.

The corporate watchdog says it will take action on problems across the entire financial planning industry and is calling for greater powers to take on executives at Australia's biggest banks.

In a response to a scathing Senate inquiry report this week, which called for a royal commission on fraud and allegations of a cover-up at the Commonwealth Bank's financial planning arms, the regulator said it was considering reforms to the way it handled allegations of misconduct.

It comes as the federal government puts pressure on Commonwealth Bank chief executive Ian Narev to make a public statement on the bank's financial planning scandal, after the release of the report on Thursday.

Australian Securities and Investments Commission deputy chairman Peter Kell said the Senate committee's report had exposed problems far beyond the planning divisions of CBA. "This is not just about one firm. ASIC has pointed again and again to the fact there are problems across this industry," he said.

"We've been taking action against a wide range of firms and we will continue to do so because the industry as a whole needs to lift its game. That's very clear from this inquiry." The Senate inquiry has called for a royal commission on fraud, forgery and allegations of a cover-up by CBA's financial planning arms.

It made multiple calls for reforms to ASIC, including changes to its enforceable undertakings. ASIC said it was considering a stronger approach to corporate surveillance, including taking swifter legal action. "Do we always pursue just an enforceable undertaking or do we simply just go to court?" ASIC chairman Greg Medcraft said. "We are really having a rethink about that."

The Senate inquiry report also called for ASIC to put Maquarie Group's financial planning unit, Macquarie Private Wealth, under "intensive surveillance" amid fears shoddy practices could be rife at other firms. Mr Kell said an enforceable undertaking with the bank required it to "dramatically improve the standard of advice". Mr Medcraft questioned the need for a royal commission, saying victims had already had an opportunity to present information to a Senate inquiry. "There has been significant opportunities for people with evidence to present to this inquiry, and there is now the financial system inquiry," he said. "So there have been a lot of opportunities to look at these matters."

Mr Kell said the regulator wanted greater powers to take stronger action against managers and executives of financial firms. "We do not have the strength or ability to do that in the financial advice space at the moment. That is a problem," he said. "We believe that would introduce some incentives for better conduct if not only for the planners or advisers but also the managers and senior executives [who would be] in the firing line if misconduct occurred." Mr Narev is under pressure to respond more fully to the Senate inquiry after comments by Finance Minister Mathias Cormann on Friday. Mr Cormann said he was confident that Mr Narev and CBA would have "more to say by way of a considered response to their report".

It comes as Mr Cormann works to push ahead with changes to the Labor government's Future of Financial Advice reforms. Labor, Greens, consumer groups and industry super funds have opposed the changes on the basis that they could open the door for more scandals. "We've got some good laws that have been put in place as a result of all this bad behaviour that's in this report," opposition financial services spokesman Bernie Ripoll said. "The result of that is the FoFA legislation."

http://www.theage.com.au/business/asic-in-attack-on-planners-20140627-3az4l.html

THE FEDERAL GOVERNMENT IS RESISTING CALLS FOR A ROYAL COMMISSION INTO THE CORPORATE WATCHDOG AND THE COMMONWEALTH BANK.

Fri 27 Jun 2014,

A Senate inquiry into a fraud scandal that left thousands of customers millions of dollars out of pocket has slammed the Australian Securities and Investments Commission's (ASIC) handling of rogue financial planners working at the Commonwealth Bank. The majority report suggests both organisations should face a royal commission. However, Finance Minister Mathias Cormann says another inquiry into the financial system is already underway.

"I've had conversations with the senior leadership at the CBA in relation to some of these matters over the past week," Senator Cormann said. "Once I've properly studied the report I would expect that I would have some further conversations. "We already have a financial systems inquiry which is currently underway, so without pre-empting the Government's response, obviously that financial systems inquiry's considering the role of ASIC as part of our financial system."

While the Government believes the ongoing inquiry will help lift standards across the industry, it does want to put more pressure on the Commonwealth Bank to do more to help customers that lost money. Senior sources say the bank's response to the committee's report has been "inadequate" and that there needs to be a "mea culpa" from the bank and a "more considered response" to the committee's findings. "I have spoken to (CBA chief executive) Ian Narev about the findings of the Senate Economics Committee today and I am confident that he and the CBA will have more to say by way of a considered response to that report next week," Senator Cormann said.

The Senate report was more than 500 pages with 61 recommendations. Jeff Morris, who exposed some of the wrongdoings at the bank, says the Senate inquiry has done an excellent job but it was limited in the time and detail it could go into. He says a royal commission would help determine how many people lost money through bad advice. "I think the Senate committee see the CBA matter really as the tip of the spear because there are widespread problems throughout the industry and it has been going on far too long and its time that something significant was done about it to reform the industry," he said.

"There are 320,000 clients at Commonwealth financial planning, ASIC themselves back in 2006 realised that 20 per cent of the advice across the industry was no good, yet they did nothing about it. "So if you apply that 20 per cent across the 320,000 there would be 60,000 at CBA alone." Scandal a 'very big wake-up call' for CBA. The committee's chairman, Labor senator Mark Bishop, says ASIC has been complacent in its investigation of the rogue financial planners and further investigation is needed. "We still don't know how many clients have been affected," he said. Nationals senator John Williams, the only Coalition member to endorse all 61 recommendations, told News Radio there should be a broad-ranging royal commission into white collar crime in Australia.

"Many years ago we heard of the robbers with pistols and guns and rifles and now it seems to be biro and a computer the way people a lose their money and are robbed of their savings," he said. Senator Williams says the scandal has been a "very big wake-up call" for the Commonwealth Bank and Macquarie Private Wealth. "We can't go on having people who have worked hard all their life and built up a nest egg and seeing people rob it," he said. Senator Williams says he has had meetings with the Commonwealth Bank and it is reviewing its files and making corrections. ASIC chief says fresh inquiry would strain resources ASIC chairman Greg Medcraft has questioned the need for the royal commission.

He told reporters this morning that it was up to the Government to decide whether to push ahead with another inquiry, but he said that further investigation would put a strain on the regulator's resources. "We've already spent nearly a $1 million on this inquiry, which is equivalent to 10 heads [of staff]," he said. "That's part of the democratic process of accountability and I won't question that, but there is an issue of resources." ASIC funding was cut by 12 per cent in this year's budget.

It has been shedding staff this year, and Mr Medcraft has said in the past that the reduced funding means ASIC investigators will have to pull back from proactive market surveillance and rely more heavily on whistleblowers. Financial Planners Association chief executive Mark Rantall says the association hopes the Senate report will lead to significant industry changes. The inquiry accepted all recommendations made by the association including scrapping the current two-week training course to be a planner in favour of more rigorous testing. "Unfortunately things do go wrong in any profession but we can prove that professional standards and higher education do minimise these types of events and serve to better protect consumers," Mr Rantall said.

http://www.abc.net.au/news/2014-06-27/government-resists-call-for-royal-commission-into-asic-cba/5554394

THE PLAN TO TRANSFORM TOOTHLESS TIGER ASIC

28 June 2014 Adele Ferguson, Ben Butler and Ruth Williams

Jeff Morris is scathing of ASIC. Photo: Brendan Esposito

Amid troubling conclusions from a Senate report this week into misconduct at the Commonwealth was a damning indictment of ASIC. It was four years ago this week that one of the now-famous "ferrets", the group of colleagues who blew the whistle on the Commonwealth Bank's financial planning scandal, died in his sleep at age 36. On Wednesday, at one of the group's old haunts, his surviving mates gathered for a beer and reflection on their actions six years ago - actions that caused great personal stress but culminated in this week's bombshell Senate report calling for a royal commission into CBA's financial planning debacle.

"Then, as now, the cleansing ales brought clarity," says Jeff Morris, the "ferret" who went public with evidence of widespread misconduct inside CBA's financial planning arm - specifically one of the bank's top financial planners, Don Nguyen, who had worked for it since 1999. Six years on, Morris remains scathing of the Commonwealth Bank, his former employer, and how it has handled the fallout from the expanding scandal, exposed by a Fairfax Media investigation. But some of his strongest words are reserved for the Australian Securities and Investments Commission - the so-called watchdog, charged with regulating corporate Australia and policing Australia's corporate laws.

Remaking ASIC

Key recommendations

- An inquiry, such as a royal commission, into the CBA scandal
- "An open and receptive culture" to be fostered within ASIC
- ASIC's surveillance activities to be reviewed and improved
- ASIC to establish an Office of the Whistleblower
- Stronger and more transparent enforceable undertakings
- Reviews of ASIC's performance after "gross malfeasance" is uncovered, to see whether ASIC could have prevented investor losses, with the reviews to be made public
- ASIC to revamp its website
- The government to launch an inquiry into criminal and civil penalties for laws ASIC enforces
- Bolstered skills within ASIC to help it "identify and respond to early warning signs of corporate wrongdoing or troubling trends"
- More funds for ASIC's enforcement operations
- ASIC to review how it handles complaints from retail investors and consumers
- New laws to allow ASIC to immediately suspend financial planners suspected of "egregious misconduct"
- ASIC to be funded by a "user-pays" model
- ASIC to be able to ban advertising of "unsafe products" to retail investors
- The Murray inquiry to consider whether Australia's disclosure regime is adequate for protecting consumers

"... there is a need for ASIC to become a far more proactive regulator ready to act promptly but fairly ...

"This inquiry has been a wake-up call for ASIC. The committee looks forward to seeing how ASIC changes as a result."

The Senate committee on Thursday

"ASIC was a complicit non-participant," Morris says, "not interested in taking on the big players, not really interested in doing their job at all." Morris is not alone. The landmark Senate inquiry that has spent the past year scrutinising ASIC's performance in the CBA matter appears to agree, as do the bulk of the 480-plus submissions. They paint a picture of a timid and opaque regulator, a "toothless tiger" or "gummy shark" when it comes to enforcement. ASIC, the committee found, is too slow to act, lacks transparency and is too trusting of the big end of town.

"The credibility of the regulator is important for encouraging a culture of compliance," it said. "That ASIC is consistently described as being slow to act or as a watchdog with no teeth is troubling." Indeed, for many, this week's explosive decision by the Senate inquiry to call for a royal commission into the CBA epitomises what is fundamentally wrong with ASIC. An inquiry was required, the committee said, because it was not convinced ASIC should be left to manage the scandal and its clean-up. "ASIC has shown it is reluctant to actively pursue misconduct within Commonwealth Financial Planning and Financial Wisdom; rather, it appears to accept the information and assurances the CBA provides without question," the committee said.

CBA's credibility on the financial planning matter now stands in tatters. The committee does have some kind words for ASIC - acknowledging that it has "talented and dedicated employees". But the multiple withering statements issued by the Senate committee - a group of powerful senators from across the political spectrum - underscores the need for reform. For Sean Hughes, immediate past chief executive of New Zealand's Financial Markets Authority and a former ASIC senior executive, "there's a sense of inevitability that ASIC will need to reposition itself to deliver to changing expectations around its performance and efficiency".

Hughes says the report is one of three catalysts that could drive significant strategic change for ASIC. "The committee did acknowledge ASIC's very broad mandate, the clear commitment of its staff and [potentially] unrealistic expectations by some consumers about its mandate as their protector. "This report may well create a timely opportunity for ASIC to review its regulatory model and its capability to address and respond to emerging risks." Hughes argues that addressing the recommendations is the first step in a broader conversation around what kind of regulator and regulatory services the market needs, wants and is willing to pay for.

"Maybe this is the time to debate whether ASIC should and can be a consumer protector. Or should it focus instead on encouraging well-performing markets and sustained economic growth? Can or should ASIC hold the pen for investors before they commit their funds?" As Melbourne University corporate law expert Ian Ramsay observes, the report is not "criticism without solution". Indeed, the 553-page report, released on Thursday, contains a radical blueprint for how ASIC should be rebuilt into a faster, more aggressive, more transparent regulator - a regulator that is both feared by those who would consider misconduct, and trusted to identify and hunt down wrongdoers - even if it means going head to head with the big end of town.

The 61 recommendations are designed to rebuild public confidence in the regulator, right the wrongs of the CBA scandal, and investigate other financial institutions including Macquarie Private Wealth. It recommends spinning off ASIC's registry operation - staffed by hundreds of people in rural Victoria - to give it sharper focus. This is a "no-brainer", says former senior ASIC officer Pamela Hanrahan, now a securities law expert at Melbourne University. It calls on a significant increase in the money ASIC has for enforcement - and for the introduction of a user-pays model for sectors the watchdog regulates.

Civil and criminal penalties should also be reviewed, with an eye to increasing them, and ASIC's powers over financial planners should be substantially beefed up - including the draconian power to immediately ban planners suspected of "egregious misconduct causing widespread harm to clients". The Senate committee also wants the regulator to make better use of independent advisers, to better review its own performance and to make more information public. Even ASIC's labyrinthine and out-dated website has been singled out as needing a revamp. For senator Mark Bishop, the chairman of the Senate inquiry, its recommendations on enforceable undertakings - or EUs - are the most significant for ASIC's future.

In fact, the driving force for the Senate inquiry into ASIC - which kicked off a year ago - was its poor handling of the Commonwealth Bank financial planning scandal and the wash-up with the EU that ASIC had used to try to fix the issue. EUs are negotiated settlements struck between ASIC and entities that have transgressed - they include no admission of wrongdoing but contain agreed measures the company must meet. EUs save time and money spent on court actions - but to investors and consumers, they can appear to be a slap on the wrist. In theory, ASIC monitors the EU to ensure it is being complied with.

But in CBA's case, it emerged that the bank had not complied - which came as a surprise to ASIC. The committee has called for stronger, more transparent and more closely monitored EUs. "This regulation would enable the regulator to go in and check [that] the EU is being completed, that organisational change is happening and that culture is changing," Senator Bishop says. Last month, after it became clear that the EU regime had failed dramatically in the CBA case, ASIC took the significant step of imposing conditions on the bank's financial services licences - forcing the bank to review compensation for more than 4000 customers. ASIC has admitted it was too trusting of the CBA.

"We're reviewing our approach," chairman Greg Medcraft said on Friday. "If we have something like an agreement, it's always going to have to be public from now on. If there's an independent observer … that has to be appointed by us. "Once we put these enforceable undertakings in place, they actually are a fairly substantial amount of work to monitor them, ongoing. "So we are thinking about our approach - do we always pursue just an enforceable undertaking or do we simply just go to court?"

It's rethink time. "WHAT ASIC is, and they don't realise it, is an anachronism, fighting a 1960s concept of costly, prescriptive regulations in an electronic financial services industry that has its fair share of 21st century crooks and toxic products," says Geoff Slater, a barrister who has worked on a slew of high-profile corporate collapses. Perhaps recognising this, the committee has subtly asked the regulator to make sure it has the right people in the right jobs. One of the recommendations calls on ASIC to examine its "triage" system - how it decides which matters to urgently pursue - to ensure its officers have the skills and experience to know when a matter needs attention.

And it has pointed to the need for ASIC to change its culture - so that "those managing complaints and reports who wish to draw to the attention of senior officers what they perceive as a potentially serious matter are encouraged to do so". There is clearly a lack of experience in the wealth management, retail and banking sectors. There have been complaints that some of the commissioners are career bureaucrats with little or no in-house experience in compliance.

But there are questions about how ASIC can lift its performance in the wake of $120 million of budget cuts it must absorb in the next four years. The committee has pushed for a complete overhaul of ASIC's funding system to a "user-pays" approach - a system of industry levies designed to reflect the cost of regulating each industry or profession. It means industries such as the financial planning sector, auditors and insolvency workers will have to pay more.

For instance, auditors cost ASIC about $6 million a year to regulate but only pay a combined $425,000 in fees; Australian Financial Services licensees cost ASIC an estimated $108 million a year to regulate but only pay $3.7 million in fees. But while the user-pays funding system for regulation sounds fool-proof - make those who generate the work pay for the work - some, including Professor Ramsay, call for caution. He points to the risk of so-called regulatory capture, when a regulator becomes conflicted, too close to and "captured" by the companies and sectors it is supposed to be policing.

One area where ASIC's performance has escaped criticism is in market supervision, where it has claimed regular scalps for insider trading and other crimes. There, a user-pays system has been in place for four years, since ASIC took over responsibility for market supervision from the Australian Securities Exchange in 2010. It was a "fundamental change", says Doug Clark, from the Australian Stockbrokers Association. Australia's broking firms now pay ASIC $14 million a year to be supervised - and, not surprisingly, the ASA wants the model extended to other groups like financial planners.

"We are not convinced that we are the only regulated entities in the market that should be subject to it," Clark says.It is the scandal-plagued financial planning industry that is the target of several of the inquiry's most significant recommendations - including the plan for ASIC to be able to immediately revoke a financial planning licence. More broadly, it has called for a review of civil and criminal penalties that can be levied against those who breach the laws that ASIC is supposed to enforce.

THE Senate committee's report raises fundamental questions about the kind of regulator ASIC needs to be. It has called for more checks and balances over ASIC, an organisation known for its lack of transparency. It suggests creating a pool of "approved independent experts" to call on when it has concerns with poor compliance in a specific company. But it also wants ASIC to be more critical of and honest with itself - proposing, for example, that it conduct an internal review after any court loss, along with an independent review of the investigation. And there are big recommendations around the very philosophy that underpins how ASIC operates.

They include a call to action for the Murray inquiry, currently engaged in the mammoth task of reviewing Australia's financial system. Almost 20 years ago, Murray's predecessor, the Wallis inquiry, guided Australia's regulators to a light-touch approach, including the principle of disclosure - that investors should not be protected from risk, but given information about the potential risks and rewards of financial products.

It was the dominant approach during the tenures of ASIC chairmen Jeffrey Lucy and Tony D'Aloisio, who ran ASIC in the decade leading up to the global financial crisis. But the complex products spruiked in the pre-GFC days - and the more than $73 billion worth of losses suffered by Australians - exposed the short-comings of the disclosure regime. Even now, despite the lessons of the GFC, financial products are only becoming more complex and opaque, amid doubts about ASIC's ability to regulate this market. "We are increasingly realising that our regime based on disclosure, in a world of complex products and challenges with financial literacy, is increasingly inadequate," says Professor Ramsay.

The ASIC inquiry called on Murray to examine Australia's disclosure-based regime and, crucially, whether it provided for adequate protections for consumers. And it called on the Murray inquiry to examine whether ASIC should have the ability to "protect" unsophisticated investors from unsafe products. Dr Hanrahan says the ASIC report has issued a clear challenge for the ongoing Murray inquiry.

"Community expectations about the extent to which people are protected as consumers in the financial system are not being met, so the [Murray inquiry] needs to consider that," she says. "It's all very well to say the market should work ... but if it's not meeting community expectations about the level of protection then we need to revisit that."

The report and its findings will prompt some similar soul searching by ASIC's current chairman, Greg Medcraft, and his staff who have seen the organisation's credibility trashed. After catching up with his fellow whistleblower, Jeff Morris just hopes the report leads to real change. "As we parted on the footpath, the two surviving Ferrets agreed that the journey we began six years ago has a way to go yet," he says.

http://www.smh.com.au/business/we-can-rebuild-it-the-plan-to-transform-toothless-tiger-asic-20140627-3az4m.html