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Making the case for more financial regulation

It's time for a royal commission into banking regulation

Published: November 8, 2017 1.32pm AEDT

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When did ASIC's Greg Medcraft learn about the alleged money laundering at the Commonwealth Bank? AAP

The handling of recent financial scandals show that regulators are confused about what they do, or should do. And as a result the regulation of the financial system, which is vital to a strong functioning economy, is just not working effectively.

We can see the problem in the recent testimony to the House Economics Committee. Recounting the sequence of events that led the Commonwealth Bank to inform regulators of the alleged breaches of money-laundering legislation, CBA Chair Catherine Livingstone said:

We were having board meetings at the time I was being called to Canberra by the Treasurer. When the board meeting, which went over multiple days, finished, which was lunchtime on the Wednesday, I immediately phoned the other two regulators, ASIC and APRA.

This raises a raft of questions. Having known about the allegations of money laundering since 2015, why did CBA not inform the regulators until August 2017? Why did the treasurer warn CBA before CBA talked to the two regulators? When did the Treasurer first hear of the money-laundering breaches? And why did the treasurer not instruct AUSTRAC (an agency of the Attorney General's department) to inform ASIC and APRA?

In a previous parliamentary hearing, Greg Medcraft, Chairman of ASIC, had said:

I met two days before with the chairman of the Commonwealth Bank, the chair of risk and the chair of the audit committee... There was no mention of what happened. Then I saw the announcement and, about a week later, the chair called me in to apologise. Timeliness and transparency are big issues in this one

So, either ASIC and/or APRA were aware of the allegations of money laundering at CBA and took no action until prompted by the treasurer, or the communications between the various agencies of government are not working as planned. Either way, this is no way to regulate a modern financial system.

Even more regulatory confusion

Just as he is due to leave his role as head of ASIC, Greg Medcraft managed to end two high profile cases with modest wins.

Both ANZ Bank and NAB have settled with ASIC for their parts in manipulating the BBSW interest rate benchmark. Although the settlement remains to be approved by the Federal Court.

Westpac remains the hold out, and the prosecution's case has opened in the Federal Court.

But in the euphoria at ASIC, a niggling question remains – what about the Commonwealth Bank?

For some time, Medcraft has warned that action against CBA had not been ruled out and that information was being gathered. Recently Medcraft confirmed that the regulator had “plenty of time” to take action against CBA.

This also raises a number of questions. Not least why ASIC has not filed claims against CBA or announced that there would be no action taken against the bank. If CBA has no case to answer then ASIC should come out and exonerate the bank and relieve its long-suffering shareholders.

But if CBA has even a minor case to answer, and the regulator has held off hoping that the bank would settle without going to court, then ASIC may have been much too clever for their own good.

As a result of a shareholder action following the alleged money-laundering scandal, ASIC is now looking at whether the CBA board “complied with continuous disclosure laws when it decided not to alert investors to the suspicious behaviour”.

This leaves ASIC in an extremely difficult position - looking at a possible failure to disclose the money-laundering scandal at CBA, while at the same time hinting that CBA may have done the same thing with BBSW.

But ASIC is not the only regulator to be operating in the dark. The latest Banking Executive Accountability Regime (BEAR) legislation only adds to the confusion on how best to regulate financial services.

When questioned in recent Senate Estimates about the regulatory impact statements that have been done for new BEAR legislation, Helen Rowell, deputy Chair of APRA, replied that she personally had “not seen them; I couldn’t say whether anyone else within APRA has seen them”.

This is despite the fact that APRA has been given an extra A\$40 million over four years to handle the new legislation - for what, and where did this figure come from?

Again, this is no way to regulate a banking system. The confusion around what regulators do and how they do it, must be sorted out.

Where next?

The most obvious answer to clearing up this mess is to initiate a royal commission that looks specifically at banking regulation. In particular, what form a modern banking regulation system should take; which regulators should do what; what the responsibilities of parliament, ministers and regulators should be; and how regulators should share information and tackle common problems (such as banking culture).

Such a royal commission should concentrate on clearing up issues of regulatory philosophy, structure, legal requirements and administration. Whether or not there is an all-purpose banking royal commission, the failures in the current system have to be remedied.

Of course, the government has only got itself to blame for getting in this mess.

The government’s own Murray Inquiry into the Financial System made a recommendation that could have helped. The inquiry recommended the establishment of a new Financial Regulator Assessment Board (FRAB), which would:

advise government annually on how financial regulators have implemented their mandates. Provide clearer guidance to regulators in Statements of Expectation and increase the use of performance indicators for regulator performance.

Sounds sensible? Not to the government, as it chose to accept all of the major recommendations of David Murray's inquiry except for this one.

And, instead of having one professional body that looks at the performance of regulators, there has been a nonstop procession of "independent" inquiries, by banks themselves, the banking industry and even regulators. No big picture, just a patchwork of unconnected recommendations. And undoubtedly more to come.

An opportunity missed.

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