



**The Committee Secretary
Senate Standing Committee on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA**

29 December 2022

**RE: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION INVESTIGATIONS AND
ENFORCEMENT**

Dear Committee Members

I refer specifically to the items (b) & (c) in your Terms of Reference.

I hold a law doctorate and am a globally published author in this field. I have included for you as part of this submission a copy of my book *'Corporate Governance in Non-Bank Financial Entities'* and a copy of the *Law and Financial Markets Review* which contains two of my relevant papers at pp 81 & 162. Also included is a further paper published in the *Law and Financial Markets Review* *'[W]hither Australia? Will Parliament Act?'*. Section 9 is particularly pertinent to the present Terms of Reference.

Item (b)

I submit that present 'policy settings that deliver an efficient market but also deter poor behaviour' are anything but. Poor behaviour continues in the financial services and products sectors despite the plethora of publicly funded commissions and inquiries.

The present regulatory architecture is not fit for purpose. The empirical analysis published in the *Law and Financial Review* (p 81) analyses why this is so. There needs to be substantive reform, not more tinkering at the edges. The analysis of comparative jurisdictions in Chs 6 & 7 of my book provides some regulatory solutions.

Item (c)

I submit that ASIC cannot meet the expectations of 'government, business and the community with respect to regulatory action and enforcement', even with a vastly expanded budget.

The reasons why are described in Ch 7 of my book and in the LFMR papers. ASIC has a broad mandate and operates under a deficient regulatory framework. That research also quantifies the macro- (on the national economy) and micro-economic effects (on financial consumers) of inaction. It is these negative impacts that result in ASIC not meeting expectations.

Until these issues are properly addressed within a reformed market conduct regulatory framework, ASIC will always be subjected to criticism, some undeserved.

Should the committee see fit, I am willing to make myself available in person to assist its deliberations. My biography is attached. In the meantime, the committee should be under no illusion that reforms to date have changed the culture of market operators sufficiently to deter egregious behaviours in financial markets. ASIC will continue to be the scapegoat for a poor and internationally uncompetitive financial products and markets regulatory system.

Yours sincerely


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New publication:

Litigation Financing - Untangling the Gordian Knot - The future of Law Reform

<https://blr.scholasticahq.com/article/38725-litigation-financing-untangling-the-gordian-knot-the-future-of-law-reform>

***Bond Law Review* (2022) 34(3)**

Attachments:

- David Millhouse, 'Corporate Governance in Non-Bank Financial Entities', Lexis Nexis Butterworths 2019.
- *Law and Financial Markets Review* (2019) 13(2-3) 81 'From Campbell to Hayne: [W]hither Australia? Australian Financial Regulation and Supervision at a cross-roads'.
- *Law and Financial Markets Review* (2019) 13(2-3) 162 'Empirical Analysis supports the Hayne long run reform thesis'.
- *Law and Financial Markets Review* (2019) 14(2-3) 84 'W[h]ither Australia? Will Parliament Act?'
- Dr David Millhouse, Biography