

Paul Buckman

P.O. Box 120

Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Fraud

By the

National Australia Bank and The Theft of customer funds

4th of April 2019



Orcid ID

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Abstract

The matters discussed here had their genesis during 1998 and 1999 and relate to instances of theft and fraud engaged in by the National Australia Bank against their customer (Basstech Pty Ltd, acn 006035301 (deregistered 2004)). A long consistent history of matters such as this example saw the establishment of The Royal Commission into the Banking and Financial Services sector (2018). These, the Basstech matters, remain unresolved to this day.

Any resolution of crimes such as these must be enacted through the criminal prosecution of the “Corporation”; that is the corporation is recognised in law as a “corporate citizen, a person before the law”. They have the same rights and powers as the natural person, albeit with increased and disproportionate levels of power. Therefore, they must be prosecuted as a person before the law; to the same extent as the natural person with a heightened penalty to reflect their disproportionate power.

Other questions are explored in this paper, such as; How is it possible in a democratic country that prides itself in its adherence to the principles of equity and to the “rule of law”:

- That in a purportedly “Highly Regulated” industry such as the banking industry, how can a bank universally act in breach of settled law by removing their customers money without the explicit mandate of that customer?
- How can a bank engage in high levels of fraud as detailed in this document in the full and open gaze of ASIC, APRA, the ACCC, the legal profession, the Directors of Public Prosecution (various jurisdictions), and the Supreme Court Jurisdictions of this country?

In light of the evidence to the Royal Commission, its findings, and this paper, the only real question that can now be asked is: “How corrupt is this system and those who are employed within it, in positions of power and trust”.

This paper examines one case of theft and fraud by the NAB (Basstech), the problems and the personality of the corporation and then explores methods of control and prosecution.

At the date of writing the following reports were issued by the ABC.

<https://www.abc.net.au/news/2018-02-22/australia-slips-in-global-corruption-rank/9472114>

<https://www.abc.net.au/news/2017-11-02/former-judges-call-for-federal-icac/9112396>

<https://www.abc.net.au/news/2018-01-10/reports-of-corruption-in-public-service-renew-calls-for-watchdog/9315666>

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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To my family for their undivided support.

Assoc. Prof. Evan Jones University of Sydney

Mr John Salmon Former National Australia Bank Manager and tireless investigator of bank criminal practices.

Both the gentlemen above have spent decades investigating bank malfeasance and have actively supported victims of crime.

This document is also dedicated to the thousands of other victims of bank fraud including but not limited to:

John & Wilma McMinn Qld

Lynton Freeman Qld

Paul Family St George Qld

Rosie Cornell WA

Tony and Lorise Goonan
Singleton NSW

Lionel Potts NSW

The Somersets and
Kabwand Qld

Sante & Rita Troiani Wide
Bay Qld

Bob & Gaile Fullerton
Tullamore NSW

The Walter family and
Palatinat Vic

Ross Delahunty Vic

Tess Lawrence Vic

Keith Smith Qld

Malcolm and Kerry Bishop
NSW

Geoff Dwyer NSW

Mehmet Ali Kay (Anors)
NSW

George and Susan
Muirhead Qld

Mark Burrell

Leo & Margaret McDougall

Charles Chaaya Qld

Narelle Walter

Faye Andrews NSW

Dario Pappalardo Vic

John Carroll (dec). WA

Matt Norman Vic

Patricia Thirup NSW

Barry Kriedemann Qld

And to the thousands of others who remain silent and un-named.

Keep the faith.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Acronyms

ABIO	Australian Banking Industry Ombudsman
ACCC	Australian Consumer and Competition Commission
AGM	Annual General Meeting
APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities and Investments Commission
Basstech	Basstech Pty Ltd acn 006 035 301; now known as acn006035301 Pty Ltd (Liquidated); the object of this fraud.
Burness	Paul Burness formerly of Scott Partners, Malvern Victoria. Accountants and Business advisors. See R&M.
Harty	Brendan James Harty, the Basstech company accountant and convicted criminal. Harty is the former Bairnsdale Branch manager for PFQ.
NAB	National Australia Bank
RBA	Reserve Bank of Australia
R&M	The appointed Receiver and Manager (Paul Burness then of Scott Partners, Malvern Victoria)
PFQ	The service company for the practice “Phillipson Fletcher” of Sale Vic (circa 1999), a Gippsland regional accounting practice, ¹ .
Phillipsons	Phillipsons Accounting Services of Sale Vic (Circa 2018); are not to be confused in any way with PFQ Admin Pty Ltd (PFQ), the service company of Phillipson Fletcher of Sale and Gippsland. Both entities PFQ and Phillipsons are totally distinct and separate
PILCH	The Public Interest Law Clearing House, Melbourne.
USYD	University of Sydney; Sydney, Australia
Victims of Crime	Includes all “persons before the law” the physical person includes the environment and all other infringed social entities and needs. The Natural Person is to be afforded a higher degree of protection.

¹ Phillipson Fletcher Accountants of Sale Vic (service company, PFQ Admin Pty Ltd); have since 1999, undergone a number of transformations and buyouts, not surprising given the length of time between then and now (20 Years).

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120

Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Introduction

This dispute commenced in May of 1999 when a partner of Basstech Pty Ltd ACN 006 035 301 (de-registered 2004), (herein called “Basstech”) uncovered serious instances of financial malpractice within the company. Alan Sampson the Managing Director and part owner of Basstech detected financial malpractice by an employee (a Chartered Accountant). The action that caused that detection was advice from the National Australia Bank that a cheque had been deposited into the company bank account and that it had been dishonoured; the bank’s Bairnsdale branch manager (Matthew Johnston) wished to know how Basstech would cover the amount of that cheque as the wages bill was due by the end-of-week. Mr Sampson demanded the recovery of that cheque for inspection by the Board.

Upon recovery, that cheque was found to have been a personal cheque from the account of Basstechs’ Financial Manager, that Accountant was a person known as Brendan James Harty, formally the Bairnsdale Branch Manager of a Gippsland regional accounting practice known as Phillipson Fletcher (PFQ - now disbanded); at the time of Hartys’ appointment, his former employer and directors of PFQ, knew him to be a chronic gambling addict. PFQ were Basstechs’ appointed financial advisors, tax agent and auditor at that time. When Harty left PFQ to join Basstech, PFQ withheld their knowledge of Hartys’ addiction. A direct breach of their “Duty of Care” obligations. It is pointed out at this juncture that the author (Buckman) is now himself in direct breach of the Crimes Act (1914) Spent Convictions; as criminals have rights.

In May of 1999 the matter became the subject of an internal company investigation which was quickly escalated to the Victoria Police Criminal Investigation Unit at Bairnsdale, Victoria. The investigating officer was Det. Snr. Const. Sharp; the Basstech investigation continued under his supervision.

The final statistics of the fraud investigation are:

Table 1: Statistics - Basstech - Police investigation

	Description	Number	\$ Value
a	Cheques involved in the Theft	184	\$ 234,300
b	Cheques involving forged signatures	152	\$ 238,750
c	Charges laid against Harty	412	\$234,300
d	Charges laid against the National Australia Bank	0	\$A 0.00

Fully realising the seriousness of that situation, the Basstech directors sought the advice of another Chartered Accountant with particular knowledge of administration to guide the company through this period and find a trade-on position acceptable to all relevant parties including creditors and the NAB. His name was Paul Burness then of Scott Partners, Malvern Victoria.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Both Figure 1 and Table 2 chronicle the conduct of fraud against Basstech. They show that the NAB routinely cleared through the Basstech Bank Account (Basstech's "Cash at Bank") cheques legally designated as "False Documents" on a regular and increasing basis without concern.

For the previous sixteen years prior to 1998, cash demands upon the NAB were between \$200 and \$300 per month. If payments to legitimate creditors are ignored then it can be seen that theft by cash or deposit began in around March 1998 just after Harty began his tenure of employment. It is also clearly seen that in November and December of 1998 cash demands upon the NAB rose from a previous 16-year average of \$300 per month to \$37,223.15 in November and \$23,501.73 for December 1998 alone. Any reasonable person should expect that that departure from normality should have put the NAB on enquiry ("Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd [103 Of 1983]," 1983, p. 8, Cons JJ).

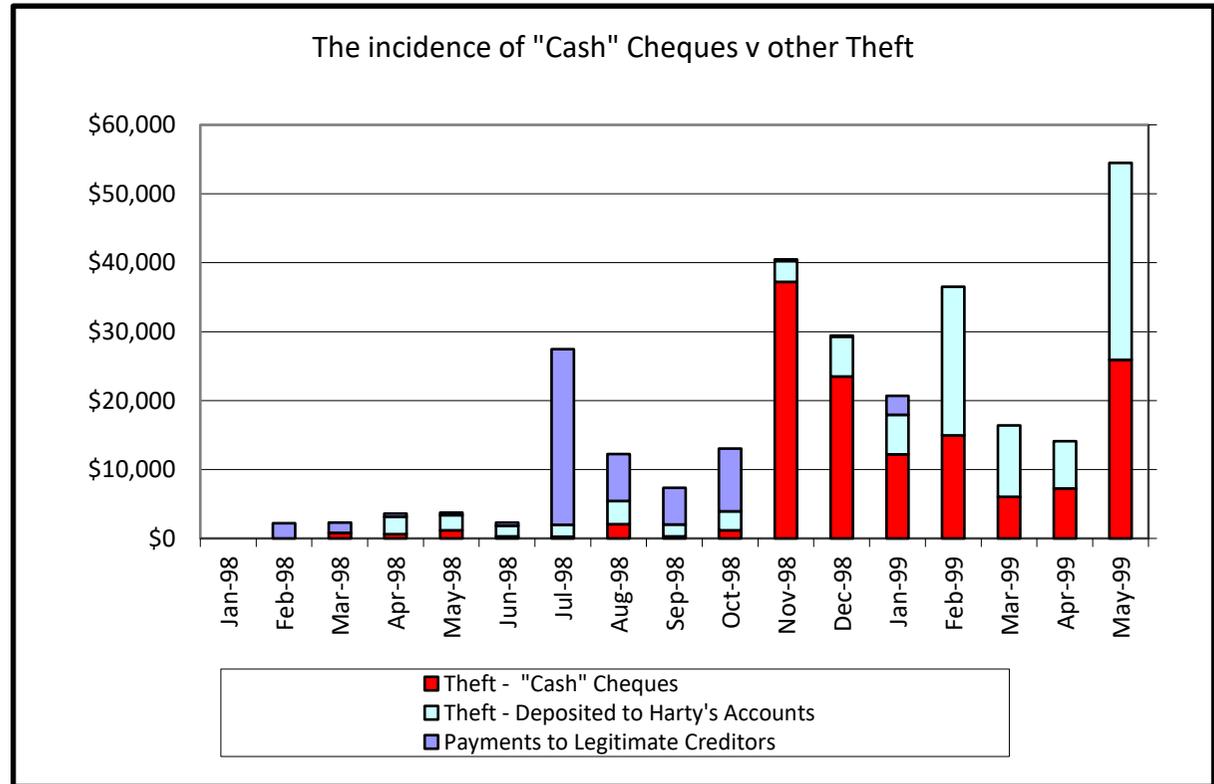


Figure 1: Theft by Category

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Table 2: The incidence of forged cheques by category.

Value of Cheques bearing FORGED signatures Presented to the National Australia Bank and Cleared from the Basstech company account.

Month	1998				1999			
	Cash	Deposits(Harty)	Legitimate Creditors	Total	Cash	Deposits(Harty)	Legitimate Creditors	Total
January				\$ -	\$ 11,188.10	\$ 2,142.77	\$ 201.00	\$ 13,531.87
February				\$ -	\$ 14,955.10	\$ 23,432.54	\$ 154.90	\$ 38,542.54
March	\$ 800.00	\$ 1,284.00	\$ -	\$ 2,084.00	\$ 6,035.00	\$ 3,187.50	\$ 2,748.73	\$ 11,971.23
April	\$ 600.00	\$ 1,990.52	\$ 2,193.67	\$ 4,784.19	\$ 7,232.20	\$ 6,865.00	\$ -	\$ 14,097.20
May	\$ 1,200.00	\$ 1,516.55	\$ 1,500.00	\$ 4,216.55	\$ 25,903.45	\$ 3,740.54	\$ -	\$ 29,643.99
June	\$ 300.00	\$ 990.64	\$ 441.50	\$ 1,732.14				\$ -
July	\$ -	\$ 1,722.01	\$ 394.52	\$ 2,116.53				\$ -
August	\$ 2,150.00	\$ 934.00	\$ 440.64	\$ 3,524.64				\$ -
September	\$ 300.00	\$ 671.53	\$ 25,474.48	\$ 26,446.01				\$ -
October	\$ 1,304.00	\$ 729.70	\$ 6,788.45	\$ 8,822.15				\$ -
November	\$ 37,223.15	\$ 2,059.00	\$ 5,334.67	\$ 44,616.82				\$ -
December	\$ 23,501.73	\$ -	\$ 9,119.17	\$ 32,620.90				\$ -

Total	\$ 67,378.88	\$ 11,897.95	\$ 51,687.10		\$ 65,313.85	\$ 39,368.35	\$ 3,104.63	
				\$ 130,963.93				\$ 107,786.83

Grand Total of forged signatures for 1998/1999 **\$ 238,750.76**

		Total Theft as "Cash"	Total Theft as "Deposits(Harty)"	Paid to Legitimate Creditors
Total theft less legitimate creditor payments	\$ 183,959.03	\$ 132,692.73	\$ 51,266.30	\$ 54,791.73

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

An explanation of the three categories of Table 2, displayed above, is both required and given as follows:

- All cheques were printed by the NAB as standard form books of “Not Negotiable” cheques. Each book holding either 50 or 200 blank cheque forms.
- All cheques in this data set have one thing in common, that is, that all documents bear forged signatures either shown on the signature line or used in the “Cheque Opening” procedure as required by law to “OPEN” a cheque for other purposes.
- Cash: Those cheques written to Payee: “Cash or Petty Cash”; and, as they contain forged signatures cannot be deemed to be for a legitimate purpose.
- Deposit (Harty): those cheques written to Payee: Harty and deposited into one of his bank accounts. Bearing forged signatures, they are legally designated as “False Documents”, charges were laid against Harty for “Making and Using a False Document” in each instance.
- Legitimate Creditors: The value of these cheques did in fact reach their intended and legitimate destination in satisfaction of a legitimate debt. So, in terms of theft in this class of cheque, it does not arise. What remains is that each cheque is legally “a False Document” and should have been intercepted and questioned by the NAB through their normal “Risk Analysis” and “Due Diligence Processes” for which they attract and charge “fee for service” on a monthly basis. The discrepancy between Table 1 (a and b) highlights this point.

The Conduct of Fraud.

It was discovered through the company and Police investigations that the method employed by Harty was to write cheques as payment of legitimate creditor account invoices. The amounts on those cheques represented legitimate invoice amounts. Those “Invoice payments” were processed through the accounting system as having been legitimately paid giving the illusion that they were no longer a company liability. The problem however was that the “Payee” on each cheque was made out to either Payee:

- a) Harty, and deposited into one of his bank accounts; or,
- b) Cash with the banks Cash voluntarily surrendered to him by the NAB

The presumed financial position of Basstech.

During this period (May to August 1999), it appeared on the surface that Basstech was indeed insolvent; and, they were advised by Burness that the company was in danger of “Trading whilst insolvent”, itself a criminal offence. At first glance this may have been true, however the investigation, subsequent data and findings show that the analogy was totally incorrect and could have been easily refuted by any

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

reasonable investigation and analysis by any intelligent and competent Financial Accounting professional, such as Burness was presumed to be.

The National Australia Bank subsequently contracted Burness (Basstech's financial advisor) to act as their appointed Receiver and Manager to take control of the company and to liquidate it in order to disguise and eliminate the banks' financial liabilities to Basstech, its' owners and directors and other creditors; and this he did.

The Basstech Directors' advice to Burness (R&M) from the preliminary investigation
On the 9/9/1999, the directors of Basstech formally requested that the Receiver and Manager investigate the banks' conduct (Buckman, 2007, p. 73) with an intent to recover funds illegally removed from the company bank account by NAB. This request was followed by a second request on the 24/9/1999 (Buckman, 2007, p. 71). Burness responded to those formal requests to investigate on the 27/10/1999 (Buckman, 2007, p. 67) stating that on legal advice *he has refused to investigate the banks' culpability in these events "as they were my appointor"*.

The Basstech business was sold on the 30/9/1999 and liquidated. Later analysis will show that the company was indeed solvent and it should have had a positive cash balance in their bank account at the time of the appointment of Burness as Basstech's advisor; and most certainly by the time of his appointment as R&M.

The Victoria Police Investigation

The Police investigation came into effect in the same week that the accounting irregularities were detected by Basstech's managing partner. Its principal focus being to investigate the incidents and prove breach of law and prosecute the offender. This process was diligently undertaken by Victoria Police and the breach of law established with the principle offender (Harty) prosecuted and gaoled.

Partial rectification

The completion of the Police investigation saw the physical (the principal) offender dealt with in a publicly acceptable manner. The problem remaining was that the complainants remained disaffected; they were bankrupt with zero opportunity in focus. All directors experienced bouts of serious depression and for a time were unemployable for a variety of reasons. Members of their families also suffered through this time as they were compelled to live through and manage the resulting emotional and financial fallout. The owners and directors of Basstech lost everything, they lost:

- a) Technical credibility which came from a technically competent company with a pedigree. Once that was destroyed it accounted for nothing.
- b) Management work: they were excluded from consideration – they were failed businessmen.
- c) Technical and professional competence was compromised – it did not exist.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- d) All investments were lost – the business was the owners superannuation.
- e) The owners and directors lost their employment, their ongoing salary through no fault of their own, but due to the criminal conduct of two other entities.
- f) The second party to this fraud walked away free and unencumbered to do it all over again to someone else. Refer the findings of the Hayne Royal Commission into Banking and Finance (2018) for a wider view of NAB conduct.

The Buckman Investigation - Events of 2000 to 2018

From 1999 until sometime after 2008 and building upon the Police Investigation, Buckman continued the process routinely seeking the advice and assistance of ASIC, APRA and the ACCC to no avail. It became apparent that Buckman was either:

- 1. Going about things in the wrong manner; or,
- 2. There was no case for the bank to answer; or,
- 3. There existed serious issues of fraud, collusion and corruption in the banking, legal and regulatory framework.

From that point Buckman renewed his investigation into why his thoughts, beliefs and the public expectation were in fact so wrong. It transpired that the considered “norms” were in fact a blatant fraud upon the public.

The rights of the citizen _ the presumed.

A properly functioning society is comprised of citizenry that genuinely care for each other’s position. We as an egalitarian society think that if “I” should be entitled to do “x” then, by definition, so does every other person, as long as our doing of “x” does not impede or cause undue hardship or inconvenience to any other citizen. As a citizen of this magnificent country, Buckman once believed that:

- a) He had a right to seek and gain reasonable employment (Part or full time).
- b) That he had the right to gain financial reward from that exercise according to the reasonable and contracted rate of pay and conditions.
- c) That he had the right to retain ownership, custody and control of those moneys and the right to acquire property from the use of those funds so legally obtained.

That is not the experience of the victim of financial crime, particularly where an active participant is a bank.

The experienced “RIGHTS” of the Victims of Crime

With the linking of Harty to both these criminal events and to his conviction and incarceration, Buckman, as stated before, is now in direct breach of the crimes Act 1914 – Spent Convictions. Since Harty received less than a three-year sentence for his “misdemeanours” it seems that he is entitled to now claim that it never happened;

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

and any person who now links his crimes to both himself and his goal sentence are in breach of that act. The bankrupted partners of Basstech certainly do not have that luxury. They compete daily with the responsibilities, the continuing costs, and the on-going ramifications of Harty's and the banks' criminal conduct.

It never ends, it never goes away, because this system will not permit it.

Clearly, it would be incorrect to claim that the victims of crime have no rights, because they clearly do – all-be-it notional at best. Everyone else in society has the right to work and earn moneys, and obtain goods and property and retain ownership, custody and control of that property so honestly earned, as stated before.

On the other-hand those who find themselves in a position such as the Basstech partners have the following rights:

1. The right to have all property evaluated and removed by others for their own personal gain and/ or protection, at their sole discretion and authority. In the Basstech case, firstly, by Harty, followed by the NAB; Fact – it happened.
2. The consequential right to be liquidated for one's business, and bankrupted for the individual. Fact – it happened.
3. The right to be silent, to stand mute in all circumstance and occasion. To complain not to any entity including NAB, ASIC, APRA and the ACCC; Fact – it continues to happen; even before the Hayne Royal Commission into Banking and Finance we continue to have the "right" to be ignored, to remain mute.
4. The right to be considered to be unfair and un-reasonable on any occasion should we forget our station and utter an adverse comment or question the accepted orthodoxy.
5. The right to be ignored at every level; including the legal profession, the Offices of Public Prosecution, the Supreme Court system across Australia. Fact – Buckman has been physically escorted from the premises of the Office of Public Prosecution in Melbourne by the Office Manager on two separate occasions.
6. We are no more than insignificant odious little people, devoid of any semblance of intelligence, and having no consequential right to hold, let alone voice an opinion. We are required to stand mute, at all times, on all occasions. Fact – this is our only RIGHT

But no longer will it be accepted.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The fact of Fraud committed by the National Australia Bank

The degree of criminality engaged in by the National Australia Bank can be described with the analysis of six cheques from a data set of 152 cheques bearing forged signatures. Those cheques are shown in Appendices 1 to 6 and the criminality of the banks' actions are founded in settled law as described in the following judgements. Judgements, derived from the Privy Council under British Law that have served as Settled Law in Australian Jurisdictions (since colonisation) and in most other Common Law Jurisdictions across the world. Case law dates beyond the year 1735. The year now is 2019; the history, the precedence is deep.

Legal Precedent: - The notion of Forged Signatures:

1. **National Westminster Bank Ltd v Barclays Bank International Ltd [1975] QB 645 at 666:** Kerr J said "The principle is simply that a banker cannot debit his customers account on the basis of a forged signature, since he has in that event no mandate from the customer for doing so"
2. **Kerr on the Law of Fraud and Mistake 7th ed (1952);** "If a transaction has been originally founded on fraud, the original vice will continue to taint it, however long the negotiations may continue, or into whatever ramifications it may extend: Reynell v Sprye (1852) 1 DM G 660 at 697; Smith v Kay (1859) 7 HLC 750 at 775. Not only is the person who has committed the fraud precluded from deriving any benefit under it, but an innocent person is so likewise, unless there has been some consideration moving from himself: Scholefield v Templer (1859); Johns 155; 4 D & J 429; Tophamp v Duke of Portland (1863) 1 DJ & S 517 at 569 per Turner LJ; Morley v Lougham [1893] 1 Ch 736 at 75
3. The Commissioners of the State Savings Bank of Victoria v Permewan Wright & Co Ltd (1914) 19 CLR 457; Griffith CJ said [at 467]; "In my opinion the words 'Not Negotiable' on a crossed cheque are a danger signal held out before every person invited to deal with it, and are equivalent to saying 'Take care: this cheque may be stolen'. Also see (Tyree, 2002, p. 34.35.34)

Legal Precedent: - The notion of a Duty of Care:

A banker is a professional "man" in the eyes of the law, they act and are required to conduct themselves under that mantra as shown in case law.

1. **Crumplin v London Joint Stock Bank Ltd [1913] 109 LT 856; 19 Com Cas 69:** Pickford J stated "It is no defence for a bank to say that they were so busy and had such a small staff that they could not make inquiries when necessary; they must take the consequences."
2. Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. [1964] A. C. 465 Lord Devlin likened the position of banker and customer to that of solicitor and client p. 530. Lord Denning M.R. did the same in Dutton v. Bognor Regis, treating them both as professional men. Again in relation to professional men and after referring to the solicitor cases Lord Denning M.R. had this to say in Esso Petroleum v. Marden at 819: "In the case of a professional man, the duty to use reasonable care arises not only in contract, but is also imposed by the law, apart from the contract, and is therefore actionable in tort. A professional man may give advice under a contract for reward; or without a contract in pursuance of a voluntary

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

assumption of responsibility gratuitously without reward. In either case he is under one and the same duty to use reasonable care. *In the one case it is by reason of a term implied by law. In the other it is by reason of a duty imposed by law.* (my emphasis)"

3. **Brightman J. in Karak Rubber Co. Ltd v Burden[1972] 1 W.L.R. 602 said, page 628:** "In my view the Achilles heel of the bank's argument, both in the Selangor case (1968) 1 W.L.R. 1555, and in the case before me, is that it is not, and never reasonably could be, asserted that a paying bank with certain knowledge that the authorised signatories are misapplying the company's funds may nonetheless rely on their signatures. If that is axiomatic, and it was conceded so to be in the case before me, it seems utterly irrational to suppose that a bank has an absolute unqualified duty to pay and no duty to inquire despite a deep suspicion, approaching but falling short of a certainty, that the funds are being misapplied. *Once a bank disclaims the untenable position of being in all cases an automatic cash dispenser, whatever the circumstances, there is no rational stopping place short of a contractual duty to exercise such care and skill as would be exercised by a reasonable banker in similar circumstances.* "
4. **Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd [103 of 1983]**, in the Hong Kong Court of Appeal, Cons JJA said on page 8 : "In Selangor United Rubber Estates Ltd. v. Cradock⁽¹⁰⁾, *the directors of a company abused their position as signatories of the company's bank account. Their dealings with the company's monies ought to have put the bank on enquiry. It was submitted however on behalf of the bank, that even so the bank's duty extended no further than to see that the signatories on the particular cheques concerned were those of the authorized signatories.* Ungoed-Thomas J. rejected that submission (at page 1608)

"If this were so then it seems to follow that, even if the bank actually knew that the authorised signatories were misapplying the company's funds, it could nevertheless rely on the signatures. This could be so outrageous as to lie outside the intention and true construction of the mandate.

.... As between the company and the bank, the mandate, in my view, operates within the normal contractual relationships of customer and banker and does not exclude them. These relationships include the normal obligation of using reasonable skill and care. And that duty, on the part of the bank, of using reasonable skill and care, is a duty owed to the other party to the contract, the customer, who in this case is the plaintiff, and not to the authorised signatories. And it extends over the whole range of banking business within that contract. *So the duty of skill and care applies to interpreting, ascertaining, and acting in accordance with the instructions of a customer; and that must mean his really intended instructions as contrasted with the instructions to act on signatures misused to defeat the customer's real intentions.* Of course, omnia praesumuntur rite esse acta, and a bank should normally act in accordance with the mandate".

Ballentine's Law Dictionary defines "omnia praesumuntur rite esse acta" as "All things are presumed to have been done rightly [and regularly (Woodley & Osborn, p. 293)]", which serves to heighten its following statement "and a bank should normally act in accordance with the mandate".

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The analysis of Theft and Fraud by the NAB

Between March 1998 and May 1999 there were 184 cheques the subject of a Basstech and Victoria Police Investigation; of those, 152 cheques bore forged signatures. The following discussion is founded upon Buckmans' evidence (*The evidence of Paul Alan Buckman*, 2001) to, and the judgement of, the County Court Melbourne in 2001 ("The Queen v. Brendan James Harty.," 2001).

The six cheques used in this analysis are representative of all 152 cheques that contained forged signatures, and feature as part of that criminal prosecution detailed above. Of those 152 cheques, 35 were explicitly cleared by NAB staff even though fellow staff members had identified signature and account irregularities; bank colleagues had specifically requested that bank staff "at their account home branch" seriously consider the legality of these transactions.

An analysis of Cheques:

Cheque Number 6548

Cheque number 6548 (Appendix 1) was written on the 12th of November 1998 and cleared by the NAB through the Basstech bank account on the same day for the amount of \$10,173.00. The attributes of this cheque are:

1. The entry on the cheque butt shows a legitimate payment to the Australian Tax Office.
2. The transaction was verified by the NAB on statement page number 888.
3. The cheque Payee is made to "CASH" for \$10,173.00 (above the AUSTRAK reporting limit)
4. The authorising signature differs markedly from the cheque opening signature, a forged signature.
5. The NAB South Melbourne teller commented on the reverse of the cheque "Chq faxed, sig not on system".
6. Result: "Cleared by "David Baker – Bairnsdale Branch, noting the Bairnsdale branch fax number 5152 2764".

From the points above, it is clear that NAB staff had serious reservations about the use of forged (compromised) signatures on a cheque who's value was above the Austrak reporting limit and for "CASH", and a legally designated False Document; yet this cheque was cleared for payment.

Cheque Number 6876

Cheque number 6876 (Appendix 2) was written on the 29th of December 1998 and cleared by the NAB through the Basstech bank account on the same day for the amount of \$2,389.00. The attributes of this cheque are:

1. The entry on the cheque butt is not recorded as the cheque book has not been recovered.
2. The transaction was verified by the NAB on statement page number 899

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

3. The cheque Payee is made to "CASH" for \$2,389.80 being a legitimate creditor amount cleared through the Basstech accounting system as paid.
4. Both the authorising signature and the cheque opening signature are forged
5. The NAB South Melbourne teller has commented on the reverse of the cheque that specific clearance was obtained from "Matthew Johnston, Bairnsdale Branch"; together with the denominations of cash dispensed.
6. The word "Sus" is also inscribed together with "DL".
7. 'Result: "Cleared by "Matthew Johnson – Bairnsdale Branch, noting the Bairnsdale branch fax number 5152 6974".

From the points above, it is clear that NAB staff had serious reservations about the use of forged (compromised) signatures on a cheque for "CASH"; yet this cheque, a legally designated False Document, was cleared for payment.

Cheque Number 6884

Cheque number 6884 (Appendix 3) was written on the 31st of December 1998 and cleared by the NAB through the Basstech bank account on the same day for the amount of \$4,710.15. The attributes of this cheque are:

1. The entry on the cheque butt is not recorded as the cheque book has not been recovered.
2. The transaction was verified by the NAB on statement page number 900
3. The cheque Payee is made to "CASH" for \$4,710.15 being a legitimate invoice amount cleared through the Basstech accounting system as paid.
4. Both the authorising signature and the cheque opening signature are forged
5. The NAB South Melbourne teller has commented on the reverse of the cheque that "sigs ver (Ver - Underlined)" indicating that specific clearance was obtained from the Bairnsdale Branch"; together with the denominations of cash dispensed.
6. Also noted is D/L but no number
7. 'Result: "Transaction cleared by some unknown Member of Bairnsdale staff".

From the points above, it is clear that NAB staff accept on face value any authorisation exhibited in spite of the use of forged (compromised) signatures on a cheque for "CASH" of exceptional value, a legally designated False Document; yet this cheque was still cleared for payment.

Cheque Number 6930

Cheque number 6930 Ref (*The evidence of Paul Alan Buckman*, p. 124) was written on the 4th of February 1999 and cleared by the NAB through the Basstech bank account on the same day for the amount of \$7,764.00. The attributes of this cheque are:

1. The entry on the cheque butt is not recorded as the cheque book has not been recovered.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

2. The transaction was verified by the NAB on statement page number 909.
3. The cheque Payee is made to CASH \$7,764.00 being a legitimate invoice amount cleared through the Basstech accounting system as paid.
4. Both the authorising signature and the cheque opening signature are forged
5. The NAB South Melbourne teller has commented on the reverse of the cheque "Imaging" followed by "auth by Carol" indicating that specific clearance was obtained from the Bairnsdale Branch via fax 5152 6910"; together with the denominations of cash dispensed.
6. 'Result: "Transaction cleared by Carol – Bairnsdale Branch" despite the use of forged signatures.

From the points above, it is clear that NAB staff accept on face value any authorisation exhibited in spite of the use of forged (compromised) signatures on a cheque for "CASH" of exceptional value, and a legally designated False Document; yet this cheque was still cleared for payment.

Cheque Number 6940

Ref (*The evidence of Paul Alan Buckman*, p. 128) Cheque number 6940 (Appendix 5) was written on the 11th of February 1999 and cleared by the NAB through the Basstech bank account on the same day for the amount of \$2,500.00. The attributes of this cheque are:

1. The entry on the cheque butt is not recorded as the cheque book has not been recovered.
2. The transaction was verified by the NAB on statement page number 910.
3. The cheque Payee is made to CASH for the amount of \$2,500.00 being a legitimate invoice amount cleared through the Basstech accounting system as paid.
4. Both the authorising signature and the cheque opening signature are forged
5. The NAB Collins St Melb. teller has commented on the reverse of the cheque "Auth Funds" followed by "Matthew Johnson" indicating that specific clearance was obtained from the Bairnsdale Branch"; together with the denominations of cash dispensed. Also noted are the inscription "D/L"
6. 'Result: "Transaction cleared by Matthew Johnson – Bairnsdale Branch" despite the obvious use of forged signatures.

From the points above, it is clear that NAB staff accept on face value any authorisation exhibited in spite of the use of forged (compromised) signatures on a cheque for "CASH" of exceptional value and a legally designated False Document; yet this cheque was still cleared for payment.

Cheque Number 6973

Ref (*The evidence of Paul Alan Buckman*, p. 144) Cheque number 6973 (Appendix 6) was written on the 2nd of March 1999 and cleared by the NAB through the

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Basstech bank account on the same day for the amount of \$3,569.00. The attributes of this cheque are:

1. The entry on the cheque butt is not recorded as the cheque book has not been recovered.
2. The transaction was verified by the NAB on statement page number 916.
3. The cheque Payee is made to CASH \$3,569.00 being a legitimate invoice amount cleared through the Basstech accounting system as paid.
4. Both the authorising signature and the cheque opening signature are forged
5. The NAB branch disbursing the cash is unclear however tellers' inscriptions indicate that clearance has been secured by remarks on the reverse of the cheque "Ok Carol" followed by "Bairnsdale – fax number 5152 6974" indicating that specific clearance was obtained from the Bairnsdale Branch"; together with the denominations of cash dispensed.
6. 'Result: "Transaction cleared by Carol – Bairnsdale Branch NAB" despite the obvious use of forged signatures.

From the points above, it is clear that NAB staff accept on face value any authorisation exhibited in spite of the use of forged (compromised) signatures on a cheque for "CASH" of exceptional value and a legally designated False Document; yet these cheques were still cleared for payment by the NAB.

Legal Precedent: - Fraud versus Mistake

"Kerr on the law of fraud and mistake"(Kerr, (Reprint 2005), p. 162) states:

"But where a person obtains a contract or other advantage by mistake or misstatements innocently made, he cannot retain the advantages he has gained when he discovers this mistake. If he does so his innocent misstatement becomes from that moment a deliberate misrepresentation, or in other words fraud" ("Redgrave v Hurd 20 Ch D 1," 1881; "Redgrave v. Hurd," 1881) ("Scott v. Coulson, [1903] 2 Ch. 249,") ("Re Glubb [1900] 1 Ch. 354," 1900)

A bank has, by the nature of the contract, a fiduciary relationship and consequential responsibilities to their customer. Kerr (p. 185) further stated:-

1. "Inequality of footing": *"The principle which vitiates a contract with, or disposition of property by, an incapacitated person has been extended to cases where from the particular relation which subsists between the parties, or from the influence which one party has acquired over the other, the freedom of action which is essential to the validity of all transactions is overcome, and the equal footing on which parties to a transaction should stand is destroyed."*
2. "Fiduciary Relationship": *"If the relation between the parties is one of a fiduciary nature, transactions between them are watched by the Court with*

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

more than ordinary jealousy. The duty of a person who fills a fiduciary position being to protect the interests which are confided to his care, he may not avail himself of the influence which his position gives him for the purposes of his own benefit, and to the prejudice of those interests which he is bound to protect. It is a rule of equity that no man can be permitted to take a benefit where he has a duty to perform which is inconsistent with acceptance of the benefit ("Robinson v. Pett (1734), 3 P. Wms. 249,") ("Ex p. Larking (1877), 4 Ch. D 566,") ("Bagnall v. Carlton (1877), 6 Ch. D. 371,").

*Wherever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by the one and the influence which naturally grows out of that confidence is possessed by the other, and this confidence is abused or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation had subsisted. ("Tate v. Williamson (1866), L. R. 2 Ch. 55,61,") ("Bagnall v. Carlton (1877), 6 Ch. D. 371,") The obtaining property or of any benefit through the medium and unconscientious abuse of influence by a person in whom trust and confidence are placed **is a fraud of the gravest character**("Moxon v. Payne (1873), L. R. 8 Ch. 887," 1873).*

3. **"The rule of equity** which prohibits a man, who fills a position of a fiduciary character, from taking a benefit from the person towards whom he stands in such a relation, stands upon a motive of general public policy, irrespective of the particular circumstances of the case. The rule is founded on considerations as to the difficulty which must, from the condition of the parties, generally exist of obtaining positive evidence as to the fairness of transactions which are peculiarly open to fraud and undue influence. **The policy of the rule is to shut the door against temptation**" ("Ayliffe v. Murray (1740), 2 Atk. 59," 1740); ("Robinson v. Pett (1734), 3 P. Wms. 231," 1734); ("Benson v. Heathorn (1842), 1 Y. & C. C. C. 342," 1842); ("Aberdeen Ry. v. Blaikie Bros. (1854), 1 Macq. 461," 1854).

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The knowledge of FRAUD by the National Australia Bank

The fact of direct knowledge of fraud by the NAB cannot be disputed and is derived from:

1. The issue of "Search Warrants" served on the NAB by Victoria Police for the return of specified cheques in consequence of a Victoria Police fraud investigation.
2. Given that the R&M (Burness) has admitted in writing (Buckman, 2007) that he is the agent of the bank
3. Correspondence by Buckman directly with the NAB(Buckman, 2007) including the board of directors, specifically Managing Directors, Ciccuto and Stewart, Chairman of the Board Charles Allen and Graeme Kray

The NAB cannot now claim to be ignorant of the fact of fraud committed on their behalf.

The Culpability of the National Australia Bank

From the discussion above on "The fact of Fraud committed by the National Australia Bank", conduct versus "Legal Precedent" and "The analysis of Theft and Fraud by the NAB" against their customer; it is clear that the following actions were illegal and defy legal precedent, that is, they are of a criminal nature.

The National Australia Bank have:

1. From "An analysis of cheques", have:
 - a. Detected forged signatures in use on 35 of 152 Basstech cheques legally defining those cheques as "a False Document".
 - b. From (Kerr) then a further 117 cheques were cleared without challenge, on the presumption that authorisation was valid when in fact they too were legally defined as "False Documents".
2. Knowingly participated in the act of handling and dealing in stolen property
3. Gained financial advantage by deception by charging Basstech (their customer) "Account Keeping Fees" to manage the companies "Cash at Bank" knowing that they either had no intention of, or capacity to supply such services.
4. Freely gave a thief their own funds in respect of stolen property (a false document) given to them by the thief. The bank then recovered their losses from the Basstech bank account after the event.
5. The bank then charged Basstech account look-up fees in order to qualify that funds were available and to maximise their profit.
6. The bank then charged Basstech interest at their highest rate "the Default Interest Rate" on those moneys illegally removed from their customers bank account. These interest charges and fees ran to approximately \$21,000 over the period March 1998 to September 1999.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

7. The bank then colluded with Basstech's financial advisor (Paul Burness – then of Scott Partners, Malvern Victoria) to take possession of Basstech as R&M and to liquidate said company thereby protecting that bank against liability.

The conduct of this bank in this case should reasonably question this bank's fitness, right and capacity to hold not just Financial Services licences in this country; but it also should question their right fitness and competence to hold "Company Registration".

The banking industry code of conduct has been shown by this case, many other cases and from the "Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 2018" as being the mantra "Delay, Deny, Deceive, Destroy;" annihilate all who question the banks' authority, as

"the bank can never be seen to be wrong".

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The Conduct of the Regulatory and Legal Entities

The experience of the victim of corporate criminal conduct is not a happy one. They are generally ostracised (lepers') who have somehow totally contributed to their own demise.

How is it that in a reputedly highly regulated financial system that operates in Australia; can the conduct unearthed by the "Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 2018" live and prosper unimpeded for decades under the direct clear and open view, and, the active supervision of:

1. Supreme Court Jurisdictions across Australia
2. State and Federal Directors of Public Prosecutions
3. ASIC – The Australian Securities and Investments Commission
4. APRA – Australian Prudential Regulatory Commission
5. ACCC - The Australian Competition and Consumer Commission
6. The Legal Profession
7. PILCH – The Public Interest Law Clearing House

This clearly demands answers from all those involved.

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 2018

Once again despite possessing direct evidence; it seems that many of those that have spent decades investigating and collating factual and verifiable evidence, have once again been required to stand mute. To assume their position as "odious little people". People of the calibre of Mr John Salmon and Assoc. Prof. Evan Jones USYD, and victims of bank fraud generally.

Having said that, submissions have been accepted, and the reports and the public process has been encouraging. It is also clear that the Commission takes its' charter seriously as has been shown by the forthright demeanour and the pursuit of answers to serious questions of conduct and integrity. The quality of information and the forced disclosure by industry of past and continuing criminal conduct does set a positive outcome for the future.

The fear is though, that this is in reality but a forlorn interlude, within the boundaries of past processes of "normality"; and will remain so unless other areas of conduct and practice are interrogated in the same manner. It is feared by all that the hysteria will pass and tomorrow we continue with business as usual.

It is for that reason that the call is made to all in politics, media, and the citizens of this country; to force the extension of this, the Hayne Royal Commission, into a properly constituted ICAC type entity with far wider powers, authority and scope

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

including the right and powers of prosecution. The following issues should be included and mandated.

Supreme Court Jurisdictions

As reported by Jones (Prof., 2007, p. 15) *“Judge Dodds-Streeton disclosed belatedly in the hearing (“NAB v Walter,” 2004) that she was the beneficiary of 8,000 shares in the NAB. Her Honour prefaced the opening of the court case with the acknowledgment of share ownership, but had to correct the details on the second day, altering total share ownership from 3,000 to 8,000 shares. At the then price of \$30 a share, that holding would have been worth a not inconsiderable quarter of a million dollars. Her Honour also informed the Walter family that she held a personal bank-customer relationship with the NAB. Her Honour declined to disqualify herself, declaiming that ‘a fair-minded observer with knowledge of the material facts would not reasonably apprehend that I might not bring an impartial mind to the resolution of the questions to be decided in the proceedings’ (par.199).“*

Beneficiary is a very precise word, it implies that you have not purchased “the property” with your own money honestly earned, it has been given as a gift – why? For what purpose? Does legal precedent apply, particularly “Fraud versus Mistake” above, points 2 and 3.

Potential apprehended bias

Jones (“NAB v Walter,” 2004) Footnote 15, discloses the following: *“As a long-time member of NAB staff, John Salmon sighted in 1962-63 a confidential memo from the Queensland State Manager to the Manager of the NAB Brisbane branch. The memo noted that there had been a recent appointment to the Supreme Court of Queensland bench. The State Manager instructed the Brisbane manager to make discrete inquiries to the new judge, offering him, as a potential favoured customer, ‘concessional banking arrangements’. The prospect that this under the table corruption was merely a past and occasional practice was disabused by the account of a comparable practice to Salmon in 2005 by a solicitor for a medium-sized Brisbane legal firm. The solicitor confessed to Salmon that she was personally embarrassed at the extent of concessional arrangements that the NAB was prepared to give to members of her firm. It is not impossible that Dodds-Streeton J has been the beneficiary of ‘concessional banking arrangements’ from the NAB.”*

Question? Does the following also apply to the Judiciary and legal profession?

Kerr’s (Kerr, (Reprint 2005), p. 185) statement that:- *It is a rule of equity that no man can be permitted to take a benefit where he has a duty to perform which is inconsistent with acceptance of the benefit (“Robinson v. Pett (1734), 3 P, Wms. 249,”) (“Ex p. Larking (1877), 4 Ch. D 566,”) (“Bagnall v. Carlton (1877), 6 Ch. D. 371,”).*

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Bias is also highlighted by the unequal financial position of the parties. On the one hand you have a wealthy powerful Bank with immense resources at its disposal, on the other you have a disgruntled bank customer who by that stage are generally bankrupt. The financial divergence could not be starker. In the middle you have Judges who could well hold compromised financial dealings with that same bank.

This financial bias, is richly highlighted by quotes attributed to Mr Justice Clifford Einstein of the NSW Supreme Court cited in an article by Annabel Hepworth *“The trial judge did say in one of his more than 50 interlocutory judgements that this case was difficult for the court's process to handle, and in practical terms that means if one has enough money, it can be hijacked.”* (Hepworth, 2002). The case, *Idoport v NAB* ran for 222 court days at an estimated cost of \$70 million; *“The court dismissed the claim against the bank on Tuesday after a company associated with Mr Maconochie, Idoport Pty Ltd, failed to make a court-ordered payment of security for the bank's legal costs.”* Hepworth also commented that *“... the trial judge himself has said that the trial is ‘in its infancy’. The merits of the case have not yet been heard.”* (End of quotation)

After 222 court days???

The Legal Profession

Further to Salmons' 1963 observation and a solicitors 2005 confirmation, Buckmans' experience highlights the standards of what must be considered “World's Best Practice” in legal circles.

PILCH – Public Interest Law Clearing House.

Further to (Buckman, 2008, p. 27 & 28) PILCH is a “not-for-profit” entity instantiated, funded and supported by the legal profession to provide pro-bono representation to those who cannot afford it; a laudable initiative and one to be commended.

Buckman was referred to PILCH (for a second time) by the Melbourne County Court on the 21st of November 2007, and was granted an interview. Evidence and copies of materials was taken and PILCH referred the matter to a barrister for review; a very grateful Buckman then related that event to Prof Jones who promptly deflated the euphoric sense of accomplishment with one question. Have you had a look at the PILCH web site? Answer NO.

With Jones' comments in mind Buckman duly logged onto the PILCH web site (http://www.pilch.org.au/html/s01_home/home.asp?dsb=22 circa 11/2007).

1. There were listed a membership list of twenty-nine Law Firms;
2. Of those at least eleven announced proudly, on their web sites, that they were either on retainer to the NAB and/or the banking industry, or had represented them in legal matters.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

3. The National Australia Bank legal services group were listed as major contributors to their efforts.
4. One then turned their attention to the directors of PILCH at that time.
 - a. Of the sixteen directors six represent senior law firms on retainer to the National Australia Bank;
 - b. A seventh, David Milton Krasnostein (President) had been a long-time senior counsel to the National Australia Bank.

On publication of the paper "A Case Study of Fraud"(Buckman, 2008), a copy was sent to both PILCH and Krasnostein as President of PILCH. Mr Michael McKitterick was kind enough to respond on the 22nd of December 2007 with the following advice that: "the submission had been forwarded to Mr Krasnostein. Mr Krasnostein has since seen fit to resign from both the Presidency of the Victorian Bar Council, and as General Council to the National Australia Bank." Both copies of the case study were returned.

The questions that arise here are these:

- Why would a document from Buckman, whose sole legal training consists of a couple of seasons viewing of "Perry Mason circa late 1950's (at the advent of television)" and "Rumpole of the Bailey circa 1980's"; cause such a rushed and significant reaction? These are both prestigious and high-level appointments.
- How can a group of people "Barristers", that consider themselves as the bastion of ethics, equity, honesty and integrity, and who are themselves sworn officers of the justice system; not see that they have direct issues of "Conflict of interest" by being on retainer to or having had represented the interests of banks; yet still attempt to give others "independent advice pursuant to litigation" against the very entity that they receive a retainer or other benefit from?
- How can a professional person on-retainer to an entity possibly hope to give fair, impartial, considered and frank advice to any other party who is in conflict with that bank paying the Barristers benefit (that is, they (the lawyer) are paid to act as agent for that bank against all others)?
- Some of this advice is pro-bono; other advice is not and treated as a chargeable service; is this the gaining of financial advantage by deception? Is this fraud? Remember the "Duty of Care" discussion and settled law discussed in previous sections.

Of course, where do the legislatures look to when vacancies arise in the various court jurisdictions across the country. Is it not the Barristerial ranks of these esteemed and "professional law firms"? *Omnia praesumuntur rite esse acta.*

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Barristers and more senior judicial officers need to understand that the law is the LAW for all citizens; it is not merely their plaything, and they do not own it; its traditions and purpose are far more sacred than that.

But then the bank has learned another valuable lesson here; it is not just above & beyond the reach and scope of the law, it now owns the law, lock, stock and barrel.

The National Australia Bank

In response to Buckmans' letter addressed to Mr John Stewart, Managing Thief, National Australia Bank(Buckman, 2007, p. 12 to 20) on the 17th of November 2005;

1. Outlining the published results by the High Court of the Republic of Ireland in finding the National Irish Bank (a wholly owned NAB subsidiary) guilty and convicting them on charges of tax evasion, theft, fraud, promoting and operating "Bottom of the harbour schemes"
2. Basstech and its' directors directly accusing the NAB in Australia of:
 - a. Detecting and ignoring forged signatures on cheques
 - b. The total failure of the NAB in the exercise of their duty of care obligations to Basstech.
 - c. That they knowingly conspired with a thief to defraud their customer.
 - d. The charging for services not provided, that is, the gaining of financial advantage by deception.
 - e. Colluding with Burness (R&M) to preference the NAB above all other parties.

On the 6th of December 2005 Buckman received a letter from the banks' Office of the CEO, Customer Resolutions, dated the 23rd of November 2005(Buckman, 2007, p. 11). In his reply Glenn Leyden writes "Since the issues raised have previously been responded to, we reiterate the following:

1. As Basstech is/ was in liquidation, any claims made by Basstech must be made by the liquidator;
2. As you have been declared bankrupt, any claims made regarding your personal estate must be made by your Trustee in Bankruptcy.

In analysing this response, one must refer to the R&M (liquidators') statement as to why he will not pursue the NAB; Burness in writing, states that the bank are his appointor, that is he, Burness is the NABs' agent.

Also consider the attitude of the Insolvency and Trustee Service Australia (ITSA); an agency of the Attorney Generals Department Australia, who states in writing the governing philosophy

"The Trustee is still prepared to put the matter to creditors – but there is little hope that any would be prepared to allocate funds to this matter. As we have

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

previously observed, the Trustee does not have the funds to allow it to take this action itself.”(Buckman, 2007, p. 119) Mr Philip Bezemer.

The NAB were Buckman’s and Basstech’s majority creditor by a long margin; It should not therefore be a surprise to anyone to think that the NAB would refuse to voluntarily fund an investigation and prosecution into their own criminal conduct, that is, the Basstech matter. All in all, a very neat process of engineered destruction, designed and enforced by barristers.

The Regulators:

In view of Salmons’ 1962/63 observations and the solicitor’s confirmation in 2005, followed by the findings of the Hayne Royal Commission (2018); it is apparent that these entities were not merely asleep at the wheel at all, they were either lazy, inept, incompetent or totally corrupt.

How else can a Royal Commission find the conclusions which they did? The correspondence between Buckman and each entity is available as follows:

ASIC (Buckman, 2007, p. 74 to 88)

ACCC (Buckman, 2007, p. 89 to 118)

APRA (Buckman, 2007, p. 129 to 133)

ABIO refusal to investigate (Buckman, 2007, p. 125 to 129)

The final conclusion of the Royal Commission found that these entities had failed (refused) to enforce current law and regulations; new laws were not required.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The Corporation

The concept of the corporation grew from the periodic necessity to garner large sums of money for a particular and urgent public enterprise, a public need. In the 18th century such instruments were enacted to manage issues such as government debt (Bank of England charter, East India Company, South Seas Company UK Bubble Act). Indeed, the Bubble Act passed in 1720, also made the creation of joint stock companies (Corporations) a criminal offence; this Act was repealed in 1825. Such entities were instantiated by “Grant of licence by Royal Charter”. They were established generally for a precise purpose and for a particular period of time, at the end of which, they were dissolved, they died, or their licence was renewed for a further period of time.

By the end of the 19th century, driven by the ever-present industrial revolution, large scale projects were born for “the public good”, but they also required large scale funding (e.g. The many railway companies and independent lines that proliferated through that period across the world); some survived, some amalgamated, others perished with great financial gains or losses to those investors. Government will or incapacity to fund these projects saw the proliferation of the corporation as a means to achieve those goals without the direct cost to the public purse.

With the advent of the 20th century and the global conflicts that ensued; a more humane system seemed to emerge, with divergent ideas and philosophies. To this point in 2019, Communism simply did not work (see the demise of the Soviet Union and eastern bloc alliances) with the exception of North Korea and China. However, the Chinese seem to be moving their Communist doctrine in a Capitalist direction. Capitalism however cannot be seen as the Holy Grail, as it too has serious flaws.

The rise of the Corporate Citizen

(Bakan, 2004, p. 172 (28)) At the end of the American Civil War in the 19th century, the US Congress enacted the 14th Amendment to the US Constitution; a piece of legislation designed to secure the rights of African American people and abolish slavery forever in the US. Of the first 288 cases brought before the US Supreme Court under this legislation, all but 19 cases were initiated by Corporations seeking relief and protection under the law as enslaved peoples (Bakan).

So, it came to pass that the Corporation developed and grew into personhood with the same rights as the natural person but devoid of any other humanising characteristics. Other factors such as technology saw a greater level of efficiency possible:

- Air travel became far less costly and faster which meant that you could wake up in London, fly to your New York office and be back in London that night. International commuting was now possible, shrinking International borders.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- Improvements in shipping, containerisation, refrigeration and bulk handling methods meant that more produce could be moved faster with a higher degree of efficiency and precision than before. Shipping could now link and synchronise with road and rail services around the world.
- The revolution in Communication Services and capacity greatly reduced the costs involved in doing business, in fact it had the effect of almost removing National borders. Today you can talk to anyone, anywhere in real time on a hand-held device anywhere in the world.
- Government to Government service and trade agreements have had further dramatic impacts since the introduction of GATT (the General Agreement on Tariffs and Trade) reached in 1948.

The Corporation is now free and unconstrained, no longer subservient to governments anywhere. The effect of GATT removed the “bonds of location” from the corporation. A senior vice president of a Canadian Communications Company, Nortel Networks, Mr Clive Allen had this to say Nortel “*owe no allegiance to Canada.....just because we (the company) were born there doesn't mean we will stay there.....the place has to remain attractive for us to be interested in staying there.*”(Gwyn, 1999)”

- In 1993, National Governments agreed to establish the World Trade Organisation (WTO) and to vest in that un-elected, un-democratic, un-representative entity the right to dictate the conduct of the corporate world and to remove or severely limit the right of Government to attempt to regulate corporate power. So much so that the US Government found the need to seek the approval of the WTO during the drafting of the Sarbanes-Oxley Act 2002. This act was bought forward as a direct consequence of the Enron/ Arthur Anderson debacle. Incidentally, the first criminal prosecution under this act was against the National Australia Bank.

Today, not only does the WTO control and enforce the GATT standards, it also has the power to implement its own new standards and protocols heavily influenced by global business leaders; in effect, dis-barring individual nations and their citizens from legislating their own economic and regulatory measures, that is, in matters of trade and corporate conduct they have usurped those powers from the state. National Governments must reclaim their sovereignty.

The Corporate Personality

The corporation today is recognised in all jurisdictions around the world as a person enjoying precisely the same rights as the natural person, but importantly, without any semblance of a moral compass nor any comprehension of ethics, equity, honesty or integrity. They are built for one purpose and one purpose only, and that purpose is to make as much profit for its own self-interests as possible.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Corporate lawyer Robert Hinkley (Bakan, 2004, p. 37) put it this way *“The corporate design contained in hundreds of corporate laws throughout the world is nearly identical.....the people who run corporations have a legal duty to shareholders, and that duty is to make money”.....[The law] dictates the corporation to the pursuit of its own self-interest (and equates corporate self-interest with shareholder self-interest).....Corporate law thus casts ethical and social concerns as irrelevant, or as stumbling blocks to the corporation’s fundamental mandate.”*

Eminent economist and Nobel Laureate, Milton Friedman said in an interview with Bakan (Bakan, 2004, p. 34) *“A corporation is the property of it’s stockholders.....It’s interests are the interests of it’s stockholders. Now, beyond that should it spend stockholders’ money for purposes which it regards as socially responsible but which it cannot connect to it’s bottom Line? There is but one “social responsibility” for corporate executives,they must make as much money as possible for their shareholders. This is a moral imperative. Executives who chose social and environmental goals over profits – who try to act morally – are in fact, immoral.”* Having said that, Friedman goes on to say *“There is, however, one instance when corporate social responsibility can be tolerated.....when it is insincere”.*

When one views the conduct of the “corporation’s” before the Hayne Royal Commission it corresponds to the above in detail. Any sense of, or any display of, the “Humanising Factors”; ethics, equity, honesty or integrity are thus determined to be illegal – especially if it is genuine. In today’s world in Australia, government instrumentalities and Regulatory Authorities also follow and adhere to that corporate model.

Buckman would point out that the human person does not have the right to “cherry-pick” the laws and regulations that he/she will accept and abide by. Ignorance of the law is no defence, and that means the LAW in TOTAL. How is it then that the corporation has the right to seize upon one sub-sub-clause of the Corporations Act and claim that it over-rides and nullifies every other Act, Regulation and Administrative Decision. Please, explain the equity in this.

The Person minus the Humanising Factors

What is the consequence of producing a “person” without the moderating influence of those humanising traits recognised in the natural person?

(Bakan, 2004) *Dr Robert Hare is an eminent researcher who has studied psychopathic disorders and widely consulted with the FBI and various British and North American Prison services. During those years’ Dr Hare developed the Hare Psychopathy Checklist.* In an interview he was asked by Bakan to apply his checklist to the corporations’ institutional character he found as shown in Table 3, that the Corporation is:

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Table 3: The institutional character of a Corporation (Bakan, 2004, pp. 56,57)

1.	Irresponsible	In an attempt to satisfy the corporate goal everyone else is put at risk
2.	Manipulates everything	including public opinion
3.	Grandiose	always insisting that we're number one, we're the best
4.	A Lack of empathy Asocial tendencies	Their behaviour indicates that they don't really concern themselves with their victims
5.	Refuse to accept responsibility for their own actions	They can never be wrong
6.	Unable to feel remorse	
7.	They relate to others superficially	Their whole goal is to present themselves to the public in a way that is appealing to the public [but] in fact may not be representative of what the corporation is really like.

Dr Hare then follows with *“human psychopaths are notorious for their ability to use charm as a mask to hide their dangerously self-obsessed personalities. For corporations, social responsibility may play the same role. Through it they can present themselves as compassionate and concerned about others when, in fact, they lack the ability to care about anyone or anything but themselves.”*

The Employee of the Corporation

The employee of a corporation is in essence a “normal” person exhibiting all of the human traits known to human-kind. These traits range on one hand from the absolute virtues of honesty and integrity through to the other extreme of a total criminal intellect. Those in the centre are considered to be normal human kind, many are competitive, many have a highly developed sense of “work ethic” and most deploy their efforts for theirs and their family’s good. These are normal people, the humanoids.

There are some however, that have developed a capacity to compartmentalise their lives; in so far as, in one endeavour they are rational normal people, while on the other they exhibit none of those humanoid traits previously discussed. In one role

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

they are the loving husband, wife, father, mother, son, daughter or genuine friend. They directly contribute freely to community objectives and are welcomed, valued and admired for it.

The problems arise when these same “decent people” go to work; they arrive and their alter ego awakens, and the first thing that is placed on the “hat-rack” is their humanity. Once you divorce a person from their humanity, all you are left with is the consummate psychopath as displayed again and again by the palpable indignation exuded by those Regulatory and Corporate executives at the Hayne Royal Commission. It is universally diagnosed as a form of psychosis and, here in lies the problem. The corporate executive has honed the ability to harbour multiple, separate and distinct personalities; with the capacity to switch between them at will. This innate ability to compartmentalise their life makes the corporate executive an exceptionally dangerous person to deal with because in today’s world the corporation forces their will upon government and society; keeping in mind that its life began as the servant of the people by government and legislative pleasure.

The physical problem here for the ordinary person is this:

- a) The ordinary person takes considerable offence at the inference that they are lying. That inference has been known to destroy long lasting friendships and associations. Such is that offence that it is seen as a betrayal of trust.
- b) The corporate person sees this scenario in two distinct ways which they cannot link:
 - i. In their private world they view issues as the normal person, in that instance a) applies.
 - ii. In their Corporate world, they are required to always act in the best interests of, and protect the corporation. Therefore, in the spoken and written word, if that means lying, or advancing a position that is by definition fraudulent; then they are required (by law in their view) to lie.

The problem is that the corporate person operates in two modes, the human (a) and the Corporate (b); these modes are indistinguishable to the normal person. Therefore, and for their own defence, the normal person must consider that the Corporate Person IS ALWAYS lying.

The corporate person cannot have it both ways, as there is no reasonable method of ascertaining the operating mode that the corporate person is in at any particular time. (Are they in normal mode, or are they the corporate psychopath)?

The Corporate Animal at work

It cannot be said that the corporate (the capitalist) model has not been good for the world, because it clearly has. It has garnered the capital and investment from vast sections of society for a common purpose, often the common good, and given rise to exceptional developments in technology and the progress of human kind. It has

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

similarly been the harbinger of the most heinous kind upon humanity. Today it is above and beyond the reach and scope of the law, or so they believe; they have purchased it, they own it. Some of the actions which are to the profit of the corporation would in the past and present, see the natural person tried, convicted and executed for treason among other crimes. What follows are some examples of extreme corporate malfeasance:

World War II

Ford Motor Company, General Motors Corporation, du Pont, Standard Oil and others were large donors to the German Nazi Party before the war and continued to actively support the Party and operate their wholly owned German subsidiaries throughout the war. That is, they profited from both sides.

IBM and the Hollerith machines (Black, 2001, 2002, 2009, 2011). *"IBM and the Holocaust is the award-winning, New York Times bestselling shocker--a million copies in print--detailing IBM's conscious co-planning and co-organizing of the Holocaust for the Nazis, micromanaged by its president Thomas J Watson from New York and Paris"* (Black).

Post World War II

Union Carbide and Bhopal India. *"On December 3 1984, more than 40 tons of methyl isocyanate gas leaked from a pesticide plant in Bhopal, India, immediately killing at least 3,800 people and causing significant morbidity and premature death for many thousands more"* (Broughton, 2005). The holding tanks had been deliberately overfilled; since then, the death toll has been estimated to be in the order of 20,000. Result: no care no responsibility, move the money and assets, bankrupt the company, cut and run.

Esso Longford Victoria gas plant explosion, 1998, Two dead, 8 seriously injured. At the resulting Royal Commission, Esso was cited for falsifying evidence and maintenance records, and, lying to the Royal Commission. They also attempted to lay the full blame for the explosion upon the shoulders of one seriously injured (burnt) employee. No resulting action taken against the company other than a small fine; and no penalty for lying nor falsifying evidence and official company records to a Royal Commission.

Ok Tedi, Papua New Guinea, BHP Billiton Environmental catastrophe impacts 1,000km of the Ok Tedi and Fly River systems. BHP walks away "donating their shares in the project" to the people of PNG; no care, no cleanup, no responsibility. ABC News, Jemima Garretts' article "PNG's Ok Tedi: from disaster to dividends" Updated 7 Jan 2013,

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Challenger Disaster (NASA, 1986). The space shuttle Challenger blew up 73 seconds after launch due to O-ring failure on its rocket boosters. Launch temperatures were expected to be below the tested ratings of those particular O-rings such that the entire company engineering cohort refused to sign-off on the launch documents. So serious was this refusal, that protracted discussions were held between the engineers, their company and NASA. The engineers still refusing to sign-off; were sidelined and the company signed on their behalf, as “O-ring failure” was deemed to be an acceptable risk for the company. Result: all 7 Crew members were vaporised 73 seconds after launch. The engineers who refused to sign-off on the failed launch were blamed for the failure and most never worked in the aerospace industry again, the company – nil consequence.

In the case of corporate criminality, from participation in the industrialised slaughter of millions to knowing and wonton environmental damage, the corporation is immune from prosecution or even blame. They just shrug their collective shoulders, “can’t help bad luck”, and go on to the next event, and bear little cost through the process.

Ford, GM, du Pont, Standard Oil, Coca Cola and others profited greatly by supplying both sides of the second-world war. On cessation of hostilities all the named parties and more petitioned the US Congress for approval to repatriate their profits from Europe. This is interesting because through that same period the natural person, when found to be acting in precisely the same way, met with sentences ranging from life imprisonment to execution for engaging in the very same acts. Compare the difference in treatment between senior members of the Nazi Party and the SS at Nuremburg post 1945 and IBM; one group were executed for crimes against humanity whilst the other (IBM) walked away scot free with their profits intact remembering that both groups were engaged in precisely the same criminal acts.

It has been said that the invasion of Poland and the second world war may well have begun without Hitler, but it could not have begun without Standard Oil², Ford, GM et al.

The corporation – “the consummate psychopath”

An analysis by John C. Coffee and others, show that the corporation has fought long and hard to be recognised and attain equal standing before the law as the natural person. It has however at the same time promoted the philosophy that their only allegiance is to the self-interest of the company and its shareholders. The belief is:

² Standard Oil pioneered “Coal to Oil Extraction” which gave Nazi Germany the fuel required for its military excursions into Western Europe and begin the war from the invasion of Poland in 1939.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- That they must be seen and treated as an equal before the law as is the natural person. Including the right to own and hold property, and the right to act.
- That they must have the absolute right to make money on their terms above all else.
- That their only obligation is to make as much money as possible for the interests of the shareholder, that is the companies' self-interest.
- That they be protected by the law whilst at the same time they have the absolute right to "cherry pick" the laws that they are prepared to adhere to. That adherence being conditional upon their corporate imperatives of the given moment, compliance is but transitory.

To quote Robert Monks, (Bakan, 2004) a senior business leader and a person that has turned around the fortunes of many Fortune 500 companies around the world. He said in an interview with Joel Bakan *"For a corporation, compliance with the law, like everything else, is a matter of costs and benefits"....."Again and again in America we have the problem that whether [corporations] obey the law or not is a matter of whether it's cost effective,.....If the chance of getting caught and the penalty are less than it costs to comply, our people think of it as just another business decision.....Executives when deciding whether to comply with or break a law, behave rationally and make cost effective decisions.....which means they ask, What's the penalty, what's the probability of being caught, how much does that add up to, and how much does it cost to comply and which one is bigger?"*(Bakan, p. 79)

In another interview with Bakan, Professor at Law, Bruce Welling says (Bakan, 2004), *"if a corporation is convicted and fined in a court of law it is of little consequence,"* he states the logic this way. *"The practical business view is that a fine is an additional cost of doing business. A prohibited activity is not inhibited by the threat of a fine so long as the anticipated profits from the activity outweigh the amount of the fine multiplied by the probability of being apprehended and convicted. Considering the amount of the average fine, deterrence is improbable in most cases. The argument is even more obvious regarding prevention and recidivism. The corporation, once convicted and fined, will simply have learned how to cover it's tracks better."*(Bakan, p. 80)

The perception that the corporation cannot be held to account or prosecuted for breach of law in the same fashion as the natural person, in scope and scale must change. There are vast differences between the natural person and the corporation:

- The natural person: they have a soul, a mind, a will, a persona. They possess a capacity to act in a concerted manner, to know right from wrong and a capacity to empathise with their fellow beings and indeed others in the animal kingdom. It is called humanity.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- The corporate person however has been described as follows: (Coffee, 1981b) *“Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked.”* Edward, First Baron Thurlow (1731 – 1806); reputedly adding in a stage whisper *“and God, it ought to have both”* (Coffee, p. 386; Footnote 1)

There was a time when the corporation was indeed constrained by prosecution, not by the law of the land, but by ecclesiastical courts who imposed penalties from fines to excommunication; that is the company lost the right to trade anywhere in the Christian (Catholic) world. Pope Innocent IV forbade the excommunication of corporations upon the logic that *“since the corporation had no soul, it could not lose one”* (Coffee, 1981b, p. 386; Footnote 2)

Going forward, the Corporation must be treated as the consummate psychopath in every way, and when condemned, must be fined and punished heavily. It at the same time however, should be encouraged to insert the missing “Human Values”, a sense of humanity and morality in all its dealings. How can that seemingly wishful thought be achieved? many think it either improbable or, impossible. Others though, believe that it is not only desirable but highly achievable. This is discussed at length in the next section based upon the writing of John C. Coffee “No Soul to Damn: No Body to Kick: An Unscandalized Inquiry into the Problem of Corporate Punishment”. *Michigan Law Review*

It is clear from the discussion above, the testimony of ASIC, APRA, ACCC to the Hayne Royal Commission, coupled with the lack of adequate fines by judicial systems across the world, suggests that there is a collective unease in prosecuting and imposing severe sanctions on a corporation due to the wider impact that those sanctions have upon innocent people, (externalities or collateral damage). It is also clear from evidence given to the Royal Commission by NAB, Commonwealth Bank, Westpac, ANZ, AMP and others, proves that the corporations do not fear detection, conviction, nor fines for malfeasance, including direct criminal conduct. This predisposition to inaction is also inherent within the various worldwide legislatures, including Australia’s. Therefore, clearly the “Deterrence Philosophy” has not worked.

To summarise the problems inherent in the Corporate Behavioural Perspective, Coffee suggests:

- that the corporation is not a single entity,
- There are multiple levels of management within any corporation and each manager has their own level of delegated authority which gradually decreases as one descends the management structure.
- The corporation has an expectation that each manager throughout the management structure will have the companies “best interest” at heart even to the point where the company’s self-interest surpasses the local managers self-interest.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- Each manager therefore, has potentially his own elements of self-interest which at times compliments and at other times directly conflicts with the corporations' self-interest; and becomes contrary to that company's self-interest.
- Prosecution of the offending lower order manager is difficult because of the layering and dilution of responsibility through the levels of management.
- Lower order managers are discouraged from alerting senior management of potential illegality or acts that have been committed on the companies' behalf.
- Each management layer closes ranks with the consequence that illegality is concealed³ or at least difficult to detect and quantify.

Consequently, the potential for a successful prosecution of an individual employee is extremely low and rarely attempted.

"The managers greatest fear however from research and observation, is the hostile takeover of their company because through that process many middle-to-senior management positions are made redundant" (Coffee, 1981b). Given the above, it is clear that the existing "solutions" do not and can never work.

The problem of Corporate prosecution - John C Coffee

Coffees' solution identifies the inhibiting factors to effective corporate punishment as well as the methods that could be employed to cause the corporation and their corporate executives to behave in a socially acceptable and honest manner. The analysis of these inhibitors leads to an example solution that is of high merit and could well be enhanced.

In his analysis, Coffee highlights four main areas of contention which severely degrade the effectiveness of corporate regulation and prosecution. These areas are: The Deterrence Trap; The Behavioural Perspective; The Externality Problem; and, the Nullification Problem.

The Deterrence Trap

The deterrence trap is the expectation that high and severe cash penalties will deter the Corporate person from committing a crime. This belief is a fallacy for reasons already explored, the executive thinks rationally and is only deterred if the expected penalty is considerably more than the expected profit multiplied by the possibility of detection and conviction. In simple terms, if the expected profit (from an action) were \$1M and the chance of getting "caught and convicted" were 25 %; then the

³ Who falsified the Esso Australia, Longford maintenance records following the Longford Gas Explosion, and produced those false records as evidence to the Esso Longford Royal Commission?

What Penalties if any came from the action of the "Falsification of Official Records"?

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

subsequent fine would need to be \$4M to cancel out the benefit. This process is aligned to the long held and trusted accounting concept of the “time value of money”.

In reading Coffee, there are a number of complicating factors that compromise the effectiveness of a cash-fine:

1. It is totally dependent upon the size and capacity of the corporation to pay it. The NAB would be far more able to pay a multi-million dollar fine than a local (regional) crane hire company. A huge fine for one corporation is a miniscule fine for another.
2. The totality of the fine may well tip a corporation over the line to where it now trades whilst insolvent, itself a criminal offence.
3. The ability for corporations to conceal criminal behaviour is at the core of this problem.
4. Rates of detection and apprehension are typically low across the world. See the Banking Royal Commission (The Royal Commissioner Mr Kenneth M. Hayne) and the charging of fees for financial advice to dead people. The fact is that most victims of corporate crime will never know that they have been transgressed against.
5. The consequential fallout from a severe fine, can impact innocent parties. This may see the corporation either fail or reduce its operations and growth capacity. It is not beyond openly campaigning to (blackmailing) politicians, the community and others threatening to close certain factories in the community should the fines go ahead. This by design will only serve to harm other innocent parties; employees, creditors, and/or the regional economy; while garnishing outrage and open hostility toward a court (judge and jury, itself an undesirable outcome).
6. The fundamental reality behind corporate criminal activity is that the financial and profit stakes are high. The payment of a few thousand dollars in bribery may win a multi-million-dollar contract ⁴. A failure to report a “safety defect” can avoid a multi-million-dollar product recall.
7. The blackmail problem. The derivation of this problem is that a corporation and its’ executives may not have been aware that they were behaving illegally, or, the conduct was marginal at best. Some overzealous person may well have an issue with it and threaten prosecution. The corporation may decide to act in a pragmatic way in a plea of “No Contest”, accept the fine as a cost of doing business and move on. This is also undesirable as it devalues the intent of the system. The corporation may well have won their case in a

⁴ Securrency Australia/ Note printing Australia – wholly owned subsidiaries of the Australian Federal Reserve Bank – bribery of foreign government officers Reserve Bank of Australia (2019)

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

costly and protracted court case; however, this pragmatic approach may have risen and been accepted by the company as the least cost option.

How does a court resolve these conflicting issues and maintain an equitable and consistent environment whilst maintaining the trust and faith of the people in the law?

The Behavioural Perspective

The behavioural dynamic is a complex one once again as we see differing perceptions in direct competition. The corporate philosophy dictates that “every” employee of the company “must” always act in the best interests of the company. But that person has limitations (within themselves and imposed by the corporation). Their sphere of influence narrows as one drills down through the management layers through delegation and dilution of responsibility.

At any particular management level, the manager has from one side “profit/production targets” to be met within tight time frames; whilst on the other, are the physical capacity issues of available staff and resources, and the economic environment locally. The manager knows full well that failure is not an option as that could cost them their job. So, given the limit on time and resources at hand, it is little wonder that short cuts or other dubious methods come into play, as a consequence, the managers short-term interests prevail.

Therefore, at this point in time, the managers productivity meets the companies benchmark and on that point his interests are loosely aligned with that of the company; the reality is though that the manager is acting more in his own self-interests than that of the corporation. For example, a manager has two ways to handle a tank of toxic “stuff”, it is odourless and colourless:

1. He can take the route of the socially responsible member of society and dispose of the “stuff” in a socially and environmentally responsible manner. Time consuming, high cost remediation process and government controls at every point.
2. He could let a “valve become broken” and let “the stuff” empty into the river and fix the valve later. In the unlikely event they are even discovered, the chance of meaningful prosecution and conviction is about 1 in 10. Cost almost \$zero, solution immediate, highly attractive.

Of course, directors and managers at higher levels do not want to know “How”, their only concern is “Do something about it, it is a liability” and your budget is \$pityfully small, use your ingenuity; all they want to know is that it is solved and at what immediate cost to the bottom line, the smaller the better.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The local managers focus is very short term and skips from one crisis to the next, there is always another crisis/ deadline around the corner whose timeframe is immediate, and a bad outcome will threaten their job.

“To sum up”, says Coffee(1981b, p. 399), “in the modern public corporation it is not only ownership and control that are divorced (as Berle and Means⁵ recognized long ago), but also strategic decision-making and operational control. In an era of finance capitalism, the manager responsible for operational and production decisions is increasingly separated by organization, language, goals, and experience from the financial manager who today plans and directs the corporation's future.⁶ This tends both to insulate the upper echelon executive (who may well desire that the sordid details of "meeting the competition" or "coping with the regulators" not filter up to his attention) and to intensify the pressures on those below by denying them any forum in which to explain the crises they face. This generalization helps to explain both the infrequency with which corporate misconduct can be traced to senior levels and the limited effort made to date within many firms to develop a system of legal auditing which approaches the sophistication of financial auditing.”(Coffee)

Targeting the individual officer or employee

The local manager in today's large corporate world operates in their own insular world, often far removed from the corporate headquarters by thousands of kilometres or indeed countries. Financial dictums are delivered “communicated” with little other guidance as to how to achieve them. Manufacturing and operations have become the delegated responsibility of the local manager in a loose management arrangement because more senior management do not want to know “How or Why”. Their only interest is “How Much”. This portrait of the pathological corporation shows that an employee's self-preservation rules every time for the individual, it is basic human instinct.

The Externality Problem

Problems of externality are both a simple concept and largely one of criminal intent.

The fundamental premise (Bakan, 2004; Coffee, 1981b, p. 400) is simple, “If one takes all the income, and pays none of the costs (externalises them); then, what one is left with is 100% profit. The process of externalisation is then “the moving of as much of the corporations' cost base and liability onto some other independent and separate entity”, and, do not care who that is.

⁵ (Coffee, 1981b, p. 393 Footnote 23;)

⁶ (Coffee, 1981b, p. 399 Footnote 44;)

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

One sees this often; the Australian Construction Industry. A builder is awarded a contract to build a multimillion-dollar complex; they sell apartment's and other "Floor Space" and collect the revenue from those sales; that money disappears, in the meantime suppliers and tradesmen supply goods and labour to get the project to a "phase". The builder goes broke leaving hundreds of "tradies" and suppliers in debt. The costs to the builder are now externalised. Common practice within the Australian building industry, anecdotal as it may be, any routine interview with any building trades-person will highlight this activity, "phoenix rising" is a problem in the industry.

Our manager friend above and his tank of toxic "Stuff" has just externalised the costs and liability of his company onto someone else by "someone overlooking" the "broken valve", doesn't really care who, the waste problem is not his anymore – its off the property -externalised. Exxon-Valdez and the actions authorities had to take to coax Exxon into at least contributing to the clean-up of a problem of their making is emblazoned across academic research and environmental agency reports. As is the culpability and the response of Union Carbide post the Bhopal disaster. That company was stripped and liquidated, all costs and liabilities have thus been externalised, costs and responsibility now neither the problem of the corporation nor of its owners.

The Nullification Problem.

Whilst there is a measure of evidence linking some judgements to the personal gain of members of the judiciary, that can in no way taint the general conduct of the judicial process. The general Legal practices, who are by and large mere corporate entities themselves, could well be another problem. Where such breaches of ethics, equity, honesty and integrity happen, then they are of a criminal nature and are the subject of another section.

The nullification process involves the response of the judicial system to breach of law, adjudicating in an exceptionally difficult domain and one easily exploited for gain by all contesting parties.

In general terms it must be accepted that those involved in jurisprudence⁷, are people of the highest calibre. The sanctity of the law must be absolute, and the independence of the judicial system brings humanity and civil order to the conduct of people (and must include corporations) within any society.

⁷ Jurisprudence provides a focus on the general principles of law, the operation and function of law in society and the comparative study of law across history, cultures and nations.
<https://sydney.edu.au/law/study-law/postgraduate-areas-of.../jurisprudence.html>

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

As these “Principled Officers” of the law adjudicate through time, they are by necessity sensitised to both circumstance and severity which inevitably leads, if justice is to prevail, to a range of sentences prescribed for the same type of offence over that time. The same is true for the corporate offender where there are vastly different positions in terms of the severity of offending, the capacity to pay, further complicated by the downstream effects upon innocent people; that is, of a downgrade in that firms’ capacity to trade and grow, the effect upon local employment, and other consequential economic fallout that will affect that local economy. Which is the better alternative an inconsequential ineffective fine, or, A heavy fine that truly breaks the deterrence barrier and which causes the company to ban similar practices; But, the consequence of that huge fine will most likely be the closure of a factory which employs most of the region.

In weighing-up the issues and their subsequent side effects it is little wonder that the average fine is basically insignificant to the corporation, it rarely nullifies the profit gained and hence it is not a deterrent. It rarely satisfies the public anger; it sometimes causes the corporation to stop and re-think if only to determine better ways to cover its tracks. A fine or economic sanction is seen by the corporation as merely an additional cost of doing business, and, that cost burden can easily be passed onto suppliers, customers and the community; that is, externalised.

The Prosecution of the Corporation in Australia

The common view of the regulatory authorities here in Australia follows the dictum that the corporation lacks the requisite “mens rea and actus reus” to commit a crime; therefore, they cannot be prosecuted. They are considered to be a dumb inanimate object, no more than a pile of bricks on the street corner (this statement has been made in this context). This fallacy has been re-examined in many Anglo-American jurisdictions as Coffee reports.

In his discussion of “*Corporate Criminal Responsibility: A Pragmatic Reassessment*” Coffee states “*Civil law countries have rejected the idea of corporate criminal responsibility on the ground that the corporation lacks the requisite mens rea to commit a crime.*” (Coffee, 1981b, p. 444 and Footnote 153) *In contrast, the federal rule within the United States has been that of respondeat superior: crimes committed by an agent, within the scope of his authority, in order to benefit the corporation create criminal liability for the corporation*”(Coffee, 1981b, p. 444 and Footnote154).

Indeed, the primary doctrine grew out of the Nuremberg War Crimes prosecutions at the end of the second world war. Argument followed that a legitimate defence was that the defendant “was just following orders” and as such could be held neither responsible nor accountable for his actions. That argument was dispelled and the doctrine of “Command Responsibility” was enforced. This in effect dictated that the subordinate reasonably knew that their actions were in fact criminal; whilst their

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

superiors hold vicarious liability because “they should have known of and stopped the practice”.

The view of Australian jurisdictions must shift their reliance from mens rea, to the doctrine of respondeat superior in order to change the behaviour of the corporation at every level, this will in turn greatly assist in countering the nullification problem by bringing the errant corporation sharply into focus in terms of criminal and vicarious liability for the actions of their staff. It will be found then that the convicted corporation will be more likely to act decisively in disciplining wayward managers and staff. It will also bring the need for “Legal Auditing” into clear focus; equal in importance, if not ahead of “Financial Auditing”.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The doctrine of Mens Rea vs Respondeat Superior

Osborn's Concise Law Dictionary 11th Ed. defines the relevant doctrines as follows:

Actus reus (Woodley & Osborn, 2009b): The elements of an offence excluding those which concern the mind of the accused. The phrase:

“derives, I believe, from a mistranslation of the Latin aphorism *Actus non facit reum nisi mens sit rea* Properly translated this means ‘an act does not make a man guilty of a crime unless his mind be also guilty.’ It is thus not the *Actus* which is *reus* but the man and his mind respectively.”

(*Haughton v Smith* [1973] 3 All E.R. 1109, per Lord Hailsham, L.C.)(Woodley & Osborn, p. 14)

Mens rea: (Woodley & Osborn, 2009b) The state of mind expressly or impliedly required by the definition of the offence charged. There is a presumption that it is an essential ingredient in every criminal offence, liable to be displaced either by the words of the statute or by the subject-matter with which it deals. Many minor statutory offences, however, are punishable irrespective of the existence of mens rea; the mere intent to do the act forbidden by the statute is sufficient. If a particular intent or state of mind is an ingredient of a specific offence, that must be proved by the prosecution; but the absence of mens rea generally is a matter of defence. See INTENTION; MALICE; AFORETHOUGHT; RECKLESSNESS.(Woodley & Osborn, p. 268)

Respondeat superior: (Woodley & Osborn, 2009b) [Let the principal answer] Where the relationship of employer and employee exists, the employer is liable for the acts of the employee committed in the course of his employment. See EMPLOYER AND EMPLOYEE; VICARIOUS LIABILITY; STRICT LIABILITY.(Woodley & Osborn, p. 361)

Mens Rea and Actus Reus

The Human

In terms of the natural person, Mens rea and actus reus has been central to the prosecution of criminal behaviour for centuries. Its principal construct being that the human person has a head (incorporating a brain) that is capable of determining right from wrong, that is, he has a moral compass and that person must have the

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

presence of mind to know whether or not what they are doing is fundamentally wrong; that they have the capacity to reason.

The Corporation

The corporation is also legally defined as a "Person before the Law" however they exhibit none of the traits of the human person as discussed. Instead they are a "person" ruled by committee (the Board of Directors). Table 4 shows a comparative view of both.

Table 4: The Person vs The Corporation

	The Person	The Corporation
Head	The brain, provides reason, direction and control. The guiding will and mind of a person's actions.	The board of directors including the Chairman and Managing Director. This group are the guiding will and mind of the corporation. No action can occur legally without the delegated authority to act "By Order of the Board".
Control Systems	The Nervous system, Circulatory, Renal, Lymphatic systems etc. The person nourishes itself through the act of eating ie the Digestive system.	Line of Management and Control. Methods, Policies, Procedures, Codes of Conduct. A corporation nourishes itself through trade.
Extremities The appendages	Arms, Legs, Fingers and Toes	Sales office 1, Sales office 1+n Factory 1, Factory 1 + n
Comparative size	A single unit A citizen of a country	A huge bureaucracy of from tens to many thousands of individuals often multi-national in scope. No borders.
Capacity to do harm.	Minimal, detection is common and often swift, followed by prosecution. Deterrence is most often effective.	Un-measurable, detection is rare, apprehension and prosecution exceptionally rare and ineffective. Deterrence – Never. It's Just a cost of doing business.

Respondeat Superior

The corporation has been, in all Common-Law jurisdictions created as "a person" albe-it a "virtual, or an Artificial person" by the stroke of a legislative or regulatory pen,

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

As discussed and displayed in Table 4. Under these conditions it is not appropriate to consider or appraise the conduct of a constructed entity, a virtual person, under the doctrine of Mens Rea and Actus Reus.

The corporation does however have a real and effective “guiding will and mind”; that is its’ “Board of Directors”. As a matter of principal and daily rule, nothing can happen within the corporation without the exercise of delegated power and authority to act being bestowed upon all employees within their scope of responsibility. This delegated power and authority to act is given “by Order of the Board”; and that document forms part of all “position descriptions and employment contracts”.

It is therefore appropriate and desirable to consider wrongful conduct by the corporation and/or their officers and employees in a different context and light, that is through the lens of “Respondeat Superior”. For the corporation mens rea is not really appropriate due to the fact that it is a “person” run by a committee; which member of the committee carries the prerequisite mens rea and actus reus to convict anyone for a criminal act done upon their behalf and for their profit. That virtual person (the corporation), being a “constructed being” and having a “guiding will and mind (the board of directors)”, has therefore a constructed personality, and therefore the subject of an altered persona which should also include an altered doctrine of culpability.

It is therefore both highly desirable and appropriate that the corporation be seen through the lens of “Respondeat Superior” for both the public good and the clean administration of the Law and a civil society. For the Corporation, it is therefore more appropriate to apply the doctrine of Respondeat Superior.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Future Directions

If the notion of capitalism is to succeed and thrive into the future, which it should because of the exceptional benefits that it has brought to humanity, it must be constrained and infused with a sense of that humanity. This will not be to its detriment, but it will be to its salvation. History is strewn with the carcasses of despots, dictators and psychopaths who have conducted themselves in a way which ignores that humanity, the people will not accept it for long. The corporation as highlighted in the Hayne Royal Commission, for these reasons, is doomed unless it finds that sense of morality, it must change and change by self-will, and it is not too late for it to do so.

The corporation, like the errant person must be brought to heel; and answer for its sins as and when they occur by diligent authorities.

The John C. Coffee solution(Coffee, 1981b)

From the dawn of time until the end of the twentieth century humankind had no real concept of virtual reality. That changed at the end of the twentieth century with the development of Hollywood style Sci-Fi movies and animation. That concept is now well understood within the community and humanity at large and the corporation is indeed one of those created entities, and, it has been in operation from at least the thirteenth century.

Yet, we still legislate and adjudicate, as if they were a real person in the flesh. The real problem is that they are not, they are, and always have been, a “virtual Person” given licence to operate by the stroke of a political or regulatory pen. We have then proceeded to attempt to govern that virtual person (the clinical psychopath), devoid of all humanity, as a “natural person”.

The first step must be to apply the doctrine of Respondeat Superior to all investigation and prosecutorial matters involving the corporation or those that operate under the corporate model, including Regulators and other government instrumentalities.

Coffee proposes that:

1. Most “Cash” fines be converted to “Equity” fines(p. 413) which overcomes the previously discussed obstacles and places the penalty directly upon those who deserve the imposition of penalty.
2. The use of Adverse Publicity(p. 424).
3. The use of the Public Prosecutor and the “Class Action”⁸ in tandem(p. 434).

⁸ Coffee refers to this as Public and Private Enforcement, the Public and the Private Attorney Generals (Class Actions).

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

4. Corporate Plea Bargaining(p. 440)

The Equity Fine

Justification for this strategy is that it largely removes the obstacles already discussed. It removes or eliminates:

- The Deterrence Problem,
- the Behavioural Problem and
- the Nullification problem.
- Plus, it places the cost of the fine directly upon those who control and run the corporation, those who make its' decisions; that is, its owners (shareholders), its directors, senior management, and all other management particularly where they hold stock options as bonuses.
- It removes the capacity of the corporation to spill (externalise) the costs onto other innocent people, be they customers (higher prices), employees (loss of jobs), the local economy (factory closures), or society at large.
- It gives the victims of crime a direct interest in the conduct of the corporation through the "Equity shareholding" from the fine. Should the victims and the "Compensation Scheme Manager" deem it appropriate, they could force board renewal through the size of their holding and the legal rights that they hold in terms of board appointments.

The Criminal Code of Australia generally imposes a maximum sentence of 10 years imprisonment, and/or a fine in the case of the natural person. Therefore, in the case of a Corporation given the capacity of the corporation to do excessive harm and their predisposition to do so, both a gaol term and deterrent fine are appropriate in all cases.

Table 5 shows the proposed difference in approach in the incarceration of the corporation as opposed to the natural person. This proposal follows from previous discussions on the corporate personality and the "Virtual Person". It is imperative that an effective method of imprisonment for the corporation be available to the judiciary for the proper administration of the law and the maintenance of public trust and respect in the process.

Table 5: Personal vs Corporate incarceration.

Prison conduct	The Person	The Corporation
The prisoner resides	State Prison	Normal Corporate premises (every corporate property becomes a virtual prison)

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Prison conduct	The Person	The Corporation
Under the direction of	Prison Governor (who decides what each prisoner's routine will be).	Penal Administrator Who has "right of veto" over all board and management decisions
Control	When you get up, when you eat, when you perform your ablutions. Every aspect of your life is under the control of the Prison Governor	Penal administrator has the right to: <ul style="list-style-type: none">• intercede in management decisions• Must authorise current and future legal action after an independent review based upon notions of ethics, and equity of the proposed action.
Responsibility	For the health and welfare of the person, food, eating and hydration	The board retains full responsibility for the operation of the enterprise from a financial and operational perspective (subject to veto). The corporation nourishes itself through trade.
Restraint of trade	Yes	No
Parole	Reduction of sentence permissible under existing guidelines	Reduction of sentence permissible under strict guidelines

As corporate malfeasance will generally also involve considerable financial misdemeanours both a gaol sentence and an equity fine are appropriate.

An example of the "Equity fine" process is as follows. A cash fine is established by a court of law during the sentencing process where the cash fine is totalised in line with:

- The true value of a "Deterrent Cash fine" keeping in view the true cost of money, that is the Past, Future and Present value of money. This component is composed of two parts [*authors' Interpretation*]:

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- The losses sustained by the immediate victim of crime in that particular case or series of cases or events. It also evaluates and includes the value each victim of crime requires to restore their quality of life and comfort. This is an interim payment only; the balance is to be payable from the Compensation Fund.
- Plus, the deterrent fine levied to dissuade the corporation from further offending.
- That deterrent fine is then converted to “Shares” of a per each value determined by the VWAP method of the shares traded prior to the sentencing hearing. Those designated shares shall be equal to all others in respect to dividend distribution except that they have first claim on payment. They are also eligible to participate in any Dividend Reinvestment Plan.
- The shares designated as part of the Equity Fine are not to be sourced from the “Market”, instead they are to be issued by the company.
- Those shares are to be classed as preferential shares.

The properly constituted “Victims of Crime Compensation Fund” (overseen by a Royal Commissioner) will have the sole responsibility to compensate all victims of criminal activity. It should not be awarded to the state.

On conviction

- The company is given a Gaol sentence where their conduct is under the direct control and veto of the Penal Administrator.
- The company MUST emblazon on their letterhead and on all public documents including business cards, in a prominent position the words “Under Penal Administration”. Those words must also be displayed unimpeded in all public areas of their occupied premises. That message shall continue to be displayed for the lifetime of the sentence.
- The Royal Commissioner shall, for the life of the sentence, enjoy the right of veto on any and all board and management decisions should they conflict with standards of equity, ethics and integrity.
 - Shares held by the Royal Commissioner will permit him at his pleasure to appoint directors to the company should he believe that that course of action is warranted.
 - All existing legal action is to cease pending a review and “authorisation to proceed” based upon notions of fairness, ethics and equity. All parties including the customer are to be heard.
- The determination of an adequate deterrent fine which could be converted to an equity fine.
- The “Equity Fine” would tend to remove the Nullification problem by providing the court with a tangible outcome for those that have been adversely affected, whilst protecting the companies operational funding and cash flow.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The presiding judge may not have the scope or “capacity to enforce an Equity Fine” however having given the corporation the “Large Deterrent Cash Fine” it is quite feasible that that judge would have the latitude to seek advice from defence council in requesting a submission outlining a “different approach, or a mix of other options” that would maintain the integrity of the deterrent fine without adversely harming the capacity of the company to continue its operations. Such an approach would provide the judge with the opportunity to both issue a real and strong deterrence; and at the same time provide immediate relief to the victims of the crime, without the threat or the possibility of externalising the “the fines (costs)” onto innocent parties. It would also provide the corporation with “a least cost option”; preserving its operational “cash-flow” and removes the downsizing pressures that would naturally flow from a strict and large cash fine. It could also provide the corporation with some security against hostile take-over, that is with the “Compensation Funds” agreement.

Should an international corporation seek to move assets or liquidate their subsidiary in the local jurisdiction (Bhopal India), then those assets, and the assets of the parent company and all subsidiaries, should be frozen immediately and the company compulsorily nationalised. Any outstanding costs including rehabilitation of company occupied or impacted sites, and compensation to victims, should be totalised and prosecuted on a Government to Government or International Court level.

The use of Adverse Publicity

The deterrent effect of adverse publicity against a corporation is considered by the author as marginal at best. Given its character, its inability to take responsibility or to show remorse, its lack of compassion, its insistence that it can do no wrong; then, adverse publicity is shed like water of a ducks back. All the corporation need do is to increase its advertising budget until the negative publicity goes away, and given time and enough money, it will. Public shaming cannot and will never work because the corporation has no sense of morality or shame.

The use of the Public Prosecutor and the “Class Action”⁹ in tandem

The Public Prosecutor: In general, the biggest problem as pointed out by Royal Commissioner Hayne¹⁰ in his final report, was that the Regulatory Authorities failed in their duty to prosecute corporate malfeasance under existing law, new legislation was not necessary which serves to heighten a move away from mens rea and actus reus to the discipline respondeat superior.

ASIC have never shown any willingness in the past, to fully investigate let alone prosecute matters raised with them in this or any other matters. The ACCC, once

⁹ Coffee refers to this as Public and Private Enforcement, the Public and the Private Attorney Generals.

¹⁰ The Hon Kenneth Hayne AC QC

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

had a spine under the guidance and leadership of Professor Allan Fels^{11 12}, on his removal, his replacement Graeme Samuel¹³, rapidly set about the jellification of the ACCC Regulatory spine. APRA show little interest in banks' malfeasance against their customer or indeed criminal conduct, their sole concern seems to be that no-one defrauds the banking institutions. APRA's complaints are handled in secret and once a complaint is lodged it vanishes into the ether. Today, one cannot visit any regulatory office and lodge complaints or discuss evidence personally, all complaints must be lodged on-line so that the matter may be dealt with administratively. That way Regulatory Officers have no need to be disturbed or sullied by odious troublesome little folk.

The Private Prosecutor (The Private Attorney General): The major problem with the "Class Action" is that most of the major law firms who undertake them are themselves a corporation subject to the same behavioural patens as all other major corporations. They are as a corporation principally concerned with their own self-interest. Any research into the effectiveness of class actions in recovering losses for victims will show that the major portions of any damages award goes directly into the coffers of the law firms.

A recent example, the class action against the law firm Slater and Gordon 2018 saw a person who invested \$7,620 to buy 2,000 shares in Slater and Gordon, join Morris Blackburns'(MauriceBlackburn.com.au, 2019) class action and received \$160.97 from a "total Settlement Sum of \$36.5 million"¹⁴. When one views the Court Judgement one finds that the *Loss Assessment Formula*¹⁵ from the judgement has been heavily redacted thus disguising the true level of plunder by the Private Prosecutor, themselves, a corporation.

¹¹ Allan Herbert Miller Fels AO is an Australian economist, lawyer and public servant. He was most widely known in his role as chairman of the Australian Competition and Consumer Commission from its inception in 1995 until 30 June 2003. [Wikipedia](#)

¹² <https://law.unimelb.edu.au/about/staff/allan-fels>

¹³ Graeme Julian Samuel AC is an Australian businessman. He was the Managing Director and head of the Melbourne office of M&A advisory firm Greenhill Caliburn, and is a member of the Australian National University Council. [Wikipedia](#)

¹⁴ Email from Morris Blackburn "PRIVILEGED & CONFIDENTIAL – Update on the Hall/SGH Settlement Distribution" dated 21/5/2018 16:51

¹⁵ *The "Loss Assessment Formula means the formula by which losses are calculated as contained in Confidential Schedule B to this SDS(Federal Court of Australia, 2018)"*

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Conclusion:

All Regulatory and Statutory Authorities in Australia in current times operate under the corporate model, long-gone is the notion of “Civil or Public Service”. As such they and all errant corporations should be investigated and prosecuted under the discipline of *Respondeat Superior*.

The benefit of this determination will be to encourage corporations and Regulatory Authorities to implement legal auditing in the same way and to the same extent as financial auditing within their organisations. If the director is to be held liable for the actions of an employee then the director will be more likely to censure employee malfeasance, and to more readily rectify consumer and social complaints.

The future of the Royal Commission

The present Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry 2018, should be instantiated as the Investigation and Prosecution Authority of all areas identified above with increased powers stripping ASIC, APRA and the ACCC of their investigative and prosecutorial roles; and, reporting directly to the Parliament of Australia. The incompetence, collusion and corporate protection provided by these existing “Regulators” must cease.

All hearings, submissions and evidence to the Royal Commission should be held in the public domain in order to preserve and restore public trust and confidence in the “sanctity of the law” and of the Regulatory Regimes that govern society.

The role of the Royal Commissioner should also include oversight of Securities held and traded by or on behalf of those listed in that section “*The prosecution of those in Statutory and Regulatory positions*” below.

The Royal Commissioner should have an oversight role, and sole responsibility and management of any future “Victims of Crime Compensation Authority” managed solely for the benefit of the victims of crime.

The Reserve Bank of Australia

In order to annihilate the potential for corrupt payments and inducements, the RBA should be empowered and ordered to act as banker in all respects to:

- All Judicial and senior Court Officers,
- Politicians, senior advisors and staff,
- Regulatory Authorities, their Commissioners and senior managers
- Law Enforcement Officers

The RBA is to take over all existing loans. Interest rates and fees may well be at an attractive (discounted) level to induce the change. Once set-up the change must be mandatory and a condition of employment.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Charges which should be laid against the NAB

It has been said that these events took place twenty years ago and as a consequence a six-year statute of limitations applies.

This cannot reasonably apply to FRAUD. Fraud by its' very nature is a set of circumstances, actions, events that by their very nature set out to deceive. Even if the initial action is one of mistake by a party, "*they cannot continue to retain those gains once that mistake becomes known. Should they do so then from that moment on the innocent mistake becomes fraud*"(Kerr, p. 162). Furthermore Kerr states that "*Fraud vitiates everything, even judgements and orders of the court.*" (Kerr, p. 3). How then, can FRAUD possibly have a "statute of limitations"; Fraud is indeed a powerful circumstance if it possesses the capacity to overturn "Judicial Decisions".

The R&M (Burness, then of Scott Partners) was told in writing in September of 1999 that grounds for an action against the NAB existed (Buckman, 2007, pp. 7 - 64). Burness at that point in time, took legal advice and advised Basstech in writing that he "Cannot take an action against the Bank as they are my appointor (Buckman, p. 67 of 135)" Therefore as Burness conducted himself as their agent, the NAB cannot be said to be ignorant of their participation in fraud ("Selangor United Rubber Estates Ltd v Craddock [1968] 1 W.L.R. 1555," 1968, p. 1577). That is, the directors of the NAB are "*fixed with the knowledge of their appointee*"; Burness the R&M, and other direct advice and evidence from Buckman as noted above. The National Australia Bank are also in direct receipt of Search Warrants issued against them for the return of cheques the subject of a Victoria Police Fraud investigation in 1999.

The National Australia Bank have:

1. Knowingly used "false documents" to defraud the banks' customer of in excess of \$238,750. The bank willingly exchanged their "Cash" for "False Documents (Forged Cheques)" then recovered their losses from the Basstech bank account. That act is also the gaining of financial advantage by deception; and therefore "knowing Theft".
2. Being an accessory to theft and fraud,
 - a. Being knowingly concerned with and dealing in the proceeds of crime.
 - b. The knowing conversion of stolen property to cash
 - c. Being an accessory to theft and fraud both during and after the fact on 152 separate occasions of cheques bearing forged signatures.
 - d. False accounting.
3. The gaining of financial advantage by deception in that the bank removed in excess of \$21,000 of Basstech's "cash at bank" by:
 - a. Charging Basstech "Account Keeping Fees" for the provision of "Management and Due Diligence" services knowing full well that they either had no intention of, or, had no capacity to provide such account management services.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- b. Charging Basstech excessive interest at their default interest rates on the moneys that they illegally removed from the Basstech account.
 - c. Charging Basstech other fees and charges at their sole discretion such as "Account Lookup Fees" (\$50) in response to transactions illegally enforced.
4. Knowingly conspired with a thief to defraud his employer and the banks' customer. The Banks' detection of forged signatures should reasonably be expected through the exercise of their "due diligence" processes. Indeed, the bank physically detected those events on 35 separate and documented occasions – yet still cleared each and every transaction without enquiry from their customer.
5. Knowingly conspired with Basstech's financial advisor (Paul Burness) to defraud the company and its owners and directors. Burness giving written advice that he will not pursue the bank as they were his appointor. In *Freeman v NAB [2002]*, (Spender J) stated at [5] *"it has been said that the receiver and manager is the agent of the mortgagor, not the agent of the bank."* Therefore, he had a professional duty of care due to the company and its' board; his and the banks' true customer.

Both the NAB and Burness had a "Duty of Care" to Basstech; as a "professional man", in the same way that a banker or solicitor is positioned in respect of their client. Lord Devlin ("*Hedley Byrne & Co Ltd v Heller & Partners Ltd*," 1964) using the authority of Lord Denning M.R. in both *Dutton v Bognor Regis* and *Esso Petroleum v Marden* said *"In the case of a professional man, the duty to use reasonable care arises not only in contract, but is also imposed by the law, apart from the contract, and is therefore actionable in tort. A professional man may give advice under a contract for reward; or without a contract in pursuance of a voluntary assumption of responsibility gratuitously without reward. In either case he is under one and the same duty to use reasonable care. In the one case it is by reason of a term implied by law. In the other it is by reason of a duty imposed by law"*.

In Basstech, Burness has knowingly conspired with the National Australia Bank to protect the banks interests and to disguise the banks culpability and liabilities to their client and all other related parties. He bestowed preferential consideration upon the NAB; to the detriment of other creditors and all other parties.

Burness has then and directly engaged in theft and fraud by:

- a. Taking possession of the company (Basstech) its' business and assets under false pretences.
- b. Taking possession of money and stock the property of the company.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

- c. Selling-off the business and assets of Basstech undervalued and under false pretences.
- d. Gained financial advantage by deception by applying his fees and charges to impose and protect the banks' will.
- e. Distributing that assembled income from the liquidation of Basstech to the National Australia Bank.

Contrary to the wishes and direction of the Basstech Board of Directors.

The prosecution of those in Statutory and Regulatory positions

Should any Commissioner, Director, Officer or employee of any jurisdiction including but not limited to:

- All Court &/or Justice Jurisdictions their officers and employees
- The Office of Public Prosecutions Federally and in each State and Territory.
- ASIC – The Australian Securities and Investments Commission
- APRA – Australian Prudential Regulatory Authority
- ACCC - The Australian Competition and Consumer Commission
- Those involved in the administration and/ or prosecution of the Law,
- Those elected to the Legislatures of all Local Government, State and Federal Houses of Parliament, and their staff.

Be found to have received any benefit what-so-ever including but not limited to property (including securities, goods, services or gifts including Concessional Banking arrangements), should be summarily sacked pending prosecution for:

1. Bringing their jurisdiction into dis-repute, and compromising that entities capacity to perform their statutory function, an office that they hold in trust on behalf of the people of Australia.
2. Receiving and/ or giving corrupt payments.
3. Reducing their jurisdiction to no more than a wholly owned subsidiary of the paying entity for personal profit.
4. They should be “banned persons” in all respects and barred entry to the political arena, Corporate Governance or any other civil appointment.
5. They should be expelled from all professional entities and boards of registration; be they Legal, Accounting, Engineering, Health that is from all Professional Societies and regulated Associations.

Never to work in a position of “Trust” again. They should not be merely stood down on full pay pending investigation.

Prosecution of Banking Corporations: the way forward

This paper proposes a course of action in-line with Coffees' arguments, modified slightly to provide:

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

1. An adequate level of deterrence for a corporation to engage in criminal conduct in the first instance.
2. Restore public trust in business.
3. Restore public trust and confidence in the judicial and court system;
4. To restore the "Sanctity of the Law".
5. Protect innocent third parties from the effects of the possible "externalisation" of legal sanctions

In principle,

1. Prosecution must proceed under the doctrine of "respondeat superior"; this must follow given the evidence presented to the Hayne Royal Commission, and the total distain shown by all regulatory and corporate leaders to that Royal Commission and its Council Assisting.
2. A "National Victims of crime compensation fund" should be instantiated under the direction of the Royal Commissioner (The Royal Commissioner Mr Kenneth M. Hayne).
3. The scope and scale of malfeasance is known to go back decades¹⁶, involving:
 - a. Considerably large sums of money
 - b. The total destruction of peoples' lives and wellbeing,
 - c. The harmful effects upon local economies and innocent third parties.

Therefore, and limiting the scope of this paper to Australian Bank's alone¹⁷, the following should be put into effect given the scale of offending identified to date. It is the authors position that the scale so far identified runs much further and deeper than that identified to date before Royal Commissioner Hayne. The scope of offending:

- a. Must be quantified against each of the identified offenders to date.
- b. Any additional offences to be the subject of further proceedings.
- c. Those matters identified in (a) are to be dealt with as a "block prosecution" against each offender.

Upon sentencing the following is suggested:

1. The offending institution is to be fined a sum that will permit the immediately identified victims the scope and ability to resume a reasonable and comfortable quality of life.
2. Each financial institution is to receive a substantial Equity Fine to be held for the lifetime of the sentence, or, until the Royal Commissioner is satisfied that

¹⁶ 20 years in the Basstech case alone. Others go back to the 1980's.

¹⁷ The process of philosophy is applicable to all Corporate entities and conduct

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

the offender has rehabilitated, this sentence should mirror sentences given to the natural person.

3. The Royal Commissioner should reserve the right to dispose (sell down) of shareholdings; keeping in mind the stability of the share price and the market in general once parole is granted or the imposed sentence completed.
4. Further breach of law should see further applications of even higher Equity Fines which will serve to deter or at least reduce the rate of recidivism.
5. Directors and senior managers should be deemed not fit and proper persons to hold office for the duration of the company sentence.
6. Remove the right of directors to “take as advisory” shareholder decisions at AGM’s including votes cast on motions of Remuneration. This will remove the directors “first right of plunder” of the corporations’ profits.
7. Directors and Executive remuneration packages should be reviewed and bought back in line with community standards and expectations, and under the direct control of the shareholders.
8. Directors removed from office should have their bonus payments and share options reviewed and adjusted according to and in-line with the circumstances of dismissal and the real company performance that they have overseen¹⁸.
9. If necessary, the shareholders must gain the right to order their board of directors to prosecute and recover those over payments.
10. Shareholders must be given the right to hire and fire any or all directors found to be in breach of the shareholders’ direction.

Table 6 shows an example of a fine structure applied in response to the Hayne Royal Commission and its effect upon the funding model of any proposed “Victims of Crime Compensation Fund”. Note: it is by nature independent of any government funding or support. It is a model only and is open for debate and consideration.

Table 6: Proposed Fine structure

Bank Name	Shares Issued (Billion)	Value Billions \$	Equity Fine		Cash Fine \$	Last Dividend	Ongoing Revenue \$ PA
			%	Shares			
Commonwealth	1.77	\$ 125.35	25%	442500000	\$ 300,000,000	\$ 4.31	\$ 1,907,175,000
NAB	2.78	\$ 67.27	25%	695000000	\$ 300,000,000	\$ 1.98	\$ 1,376,100,000
Westpac	3.45	\$ 90.46	25%	862500000	\$ 250,000,000	\$ 1.88	\$ 1,621,500,000
ANZ	2.86	\$ 76.60	25%	715000000	\$ 200,000,000	\$ 1.60	\$ 1,144,000,000
				Total	\$ 1,050,000,000		\$ 6,048,775,000

Evidence from the Hayne Royal Commission shows that the level of offending has been high, consistent and over many decades. There will be billions of dollars required to adequately compensate the thousands of victims of crime, and required

¹⁸ See the collapse of Murray Goulburn, AMP after privatisation

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

over a substantial period of time, decades. Not all victims of financial crime have been identified to date.

The funding model as shown has the following benefits:

1. The cash fines are limited and conservative and will provide immediate relief to the immediately identified victims.
2. The Cash and Equity fines will provide the seed funding necessary to commence the operation of the Victim of Crime Compensation Fund. This will allow the fund to begin the process of returning the victims life to normality.
3. The funding will be enhanced at each and every share distribution through the Equity fine, and/or the sell-down of the "Compensation Fund" shareholding.
4. If the fines above are accepted then initial funding will be \$1billion paid by those who are culpable and liable; that means that there are no demands upon the public purse, and, the immediately identified victims can proceed with life. It is expected that there will be some residual funds available in this block to permit an initial payment to be made to other subsequent victims of crime once identified.
5. Initially, eligible victims will receive quarterly to annual payments, until their claims are met in full, keeping in mind the time value of money.
6. These modest fines will largely maintain each banks cash reserve's meaning that it will have minimal impact upon growth, employment and the economy.
7. The Equity Fine estimated \$6billion, based upon historical, published share distribution rates per annum, will provide for continued funding in coming years, which means that continued funding is independent of government coffers. The costs and the penalty reside with the culprit.
8. Share value will be diluted which will affect the individual investors value. Affected shareholders will reasonably feel disadvantaged, true, however investing does have its risks and the shareholders may well then demand more say and control over the company they own.
9. In the case of recidivism further Equity Fines could see the Royal Commissioner elect to force board changes and appoint the Commissions own board representatives. Should criminal matters continue, then there is always the threat of nationalisation, which should always be an option.
10. An Equity Fine, as discussed by Coffee, will be difficult for the company to externalise, they are stuck with it, the victims are now joint shareholders.

The benefit for the banking and finance sector is that, by this approach, all immediate claims against them are managed away and will no longer hinder the company's operations. Board and management renewal can proceed and focus on the business, its obligations to its shareholders (which now includes the victims), and the real interests of its customers, and to the economy at large. An additional benefit to the corporation is that with the agreement of the Compensation Fund (the victims), the corporation could see a high level of protection against the hostile take-over.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

The litigation of every case, on a case by case basis, is eliminated removing the cost and workload on the judicial system. Also eliminated is another instance of an unedifying and outrageous spectacle reminiscent of the “James Hardy v Bernie Banton” asbestos injustice.

A properly constituted Victims of Crime Compensation Authority must be instituted with the focus of providing the victim of crime with the greatest protection and return. Any payments to these people should be advised to the ATO and decreed to be tax exempt.

The implementation of this structure and of the Equity Fine:

- Will protect the corner-stone of the national economy and the Banking System, from the offender’s own excesses.
- Will protect local economies from the externalisation problem associated with normal fines. The threats to company profitability, “cash flow” and growth are removed
- It will provide an ongoing method of management and effective resolution of customer complaints and relief to the victims of crime.
- It will force the adoption of humanity and legal auditing upon the corporation.

because it now becomes in its narrow self-interest to do so.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendices: - Cheque Analysis

Appendices 1 through 6 represent direct extracts from the pages of the sworn evidence of Paul Alan Buckman to the County Court, Melbourne (*The evidence of Paul Alan Buckman, 2001*) in this matter.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendix 1: Cheque Number 6548

Charges		Clearance Date: 12/11/1998	
Theft	167	Cheque Number: 6548	
Make a False Document	168		
Use a False Document	169		

Bank Clearance Detail - Basstech A/c		Transaction details from Brendan James Harty's Accounts.	
Butt Detail	Cheque Detail	Date Cleared	Bank Name:
Date: 12/11/1998	12/11/1998	12/11/1998	
Payee: Australian Tax Office	Cash	Statement Page Number	Branch:
		888	
Amount: \$10,173.00	\$10,173.00	Cleared Amount	BSB & Account:
		\$10,173.00	!

Cheque Butt	Signatory	Valid Signature	<input type="checkbox"/> Destination Account Confirmed
	<input type="checkbox"/> Alan Sampson	<input type="checkbox"/> Alan Sampson	<input checked="" type="checkbox"/> Signatures Forged
	<input type="checkbox"/> Elke Sampson	<input type="checkbox"/> Elke Sampson	<input type="checkbox"/> Valid Payment to B Harty
	<input checked="" type="checkbox"/> Paul Buckman	<input type="checkbox"/> Paul Buckman	<input type="checkbox"/> Valid Payment of Account
	<input checked="" type="checkbox"/> Brendan Harty	<input checked="" type="checkbox"/> Brendan Harty	

Comments
Presigned cheque, Cash endorsement forged Authorised David Baker Bairnedale Bank endorsement on reverse - "Chk Faxed Sigs not on system" Butt and cheque face different Fax from Robyn Bond of the Australian Taxation Office confirms this cheque was never received by the ATO - refer fax dated 27/2/2001.

Face of Cheque

Back of Cheque

Trace Number

Figure 2: Cheque Number 6548 12/11/1998

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendix 2: Cheque Number 6876

<u>Charges</u>		Clearance Date: 29/12/1998	
Theft	242	Cheque Number: 6876	
Make a False Document	243		
Use a False Document	244		

Butt Detail		Cheque Detail		Bank Clearance Detail - Basstech A/c		Transaction details from Brendan James Harty's Accounts.	
Date		29/12/1998		Date Cleared	29/12/1998	Bank Name:	
Payee:		Cash		Statement Page Number	899	Branch:	
Amount:	\$0.00	\$2,389.80		Cleared Amount	\$2,389.80	BSB & Account:	/

Sorry no Image	Signatory	Valid Signature	<input type="checkbox"/> Destination Account Confirmed <input checked="" type="checkbox"/> Signatures Forged <input type="checkbox"/> Valid Payment to B Harty <input type="checkbox"/> Valid Payment of Account
	<input checked="" type="checkbox"/> Alan Sampson	<input type="checkbox"/> Alan Sampson	
	<input type="checkbox"/> Elke Sampson	<input type="checkbox"/> Elke Sampson	
	<input type="checkbox"/> Paul Buckman	<input type="checkbox"/> Paul Buckman	
	<input checked="" type="checkbox"/> Brendan Harty	<input checked="" type="checkbox"/> Brendan Harty	

Comments:
Counter signature forged
Signature line forged
Teller marks & phone clearance from Matthew Johnson
Cashed South Melbourne
Cheque book and butt missing

Face of Cheque

Back of Cheque

Figure 3: Cheque Number 66876 29/12/1998

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

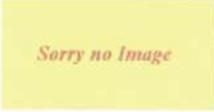
Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendix 3: Cheque Number 6884

<u>Charges</u>		Clearance Date: 31/12/1998
Theft	246	Cheque Number: 6884
Make a False Document	247	
Use a False Document	248	

Butt Detail		Cheque Detail		Bank Clearance Detail - Basstech A/c		Transaction details from Brendan James Harty's Accounts.	
Date		31/12/1998		Date Cleared	31/12/1998	Bank Name:	
Payee:		Cash		Statement Page Number	900	Branch:	
Amount:	\$0.00	\$4,710.15		Cleared Amount	\$4,710.15	BSB & Account:	

Cheque Butt

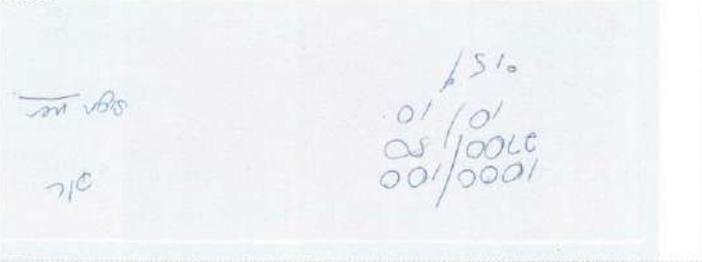
	Signatory	Valid Signature	<input type="checkbox"/> Destination Account Confirmed <input checked="" type="checkbox"/> Signatures Forged <input type="checkbox"/> Valid Payment to B Harty <input type="checkbox"/> Valid Payment of Account
	<input checked="" type="checkbox"/> Alan Sampson	<input type="checkbox"/> Alan Sampson	
	<input type="checkbox"/> Elke Sampson	<input type="checkbox"/> Elke Sampson	
	<input type="checkbox"/> Paul Buckman	<input type="checkbox"/> Paul Buckman	
	<input checked="" type="checkbox"/> Brendan Harty	<input checked="" type="checkbox"/> Brendan Harty	

Comments:
Counter signature forged
Signature line signature forged
Tellers marks suggest that signatures were verified
Cashed Western Branch
Cheque book and butt missing

Face of Cheque



Back of Cheque



Trace Number

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Figure 4: Cheque Number 6884 31/12/1998

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendix 4: Cheque Number 6930

Charges: Theft 290 Make a False Document 291 Use a False Document 292		Clearance Date: 4/02/1999
		Cheque Number: 6930
Butt Detail	Cheque Detail	Bank Clearance Detail - Basstech A/c
Date: 3/02/1999	Payee: Cash	Date Cleared: 4/02/1999
Amount: \$0.00	\$7,764.00	Statement Page Number: 909
Cheque Butt		Cleared Amount: \$7,764.00
Sorry no Image		Transaction details from Brendan James Harty's Accounts.
		Bank Name:
		Branch:
		BSB & Account: /
		<input type="checkbox"/> Destination Account Confirmed
		<input checked="" type="checkbox"/> Signatures Forged
		<input type="checkbox"/> Valid Payment to B Harty
		<input type="checkbox"/> Valid Payment of Account
		Signatory
		<input checked="" type="checkbox"/> Alan Sampson
		<input type="checkbox"/> Elke Sampson
		<input type="checkbox"/> Paul Buckman
		<input checked="" type="checkbox"/> Brendan Harty
		Valid Signature
		<input type="checkbox"/> Alan Sampson
		<input type="checkbox"/> Elke Sampson
		<input type="checkbox"/> Paul Buckman
		<input checked="" type="checkbox"/> Brendan Harty
		Comments:
		Counter signature forged
		Signature line signature forged
		Phone clearance Carol
		Cheque book and butt missing
Face of Cheque		
Back of Cheque		
Trace Number		

Figure 5: Cheque Number 6930 4/2/1999

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendix 5: Cheque Number 6940

Charges: Theft 300 Make a False Document 301 Use a False Document 302		Clearance Date: 11/02/1999
		Cheque Number: 6940
Butt Detail	Cheque Detail	Bank Clearance Detail - Basstech A/c
Date: 11/02/1999	Payee: Cash	Date Cleared: 11/02/1999
Amount: \$0.00	\$2,500.00	Statement Page Number: 910
Cheque Butt		Cleared Amount: \$2,500.00
Sorry no Image		Transaction details from Brendan James Harty's Accounts.
		Bank Name:
		Branch:
		BSB & Account: /
		<input type="checkbox"/> Destination Account Confirmed
		<input checked="" type="checkbox"/> Signatures Forged
		<input type="checkbox"/> Valid Payment to B Harty
		<input type="checkbox"/> Valid Payment of Account
		Signatory
		<input checked="" type="checkbox"/> Alan Sampson
		<input type="checkbox"/> Elke Sampson
		<input type="checkbox"/> Paul Buckman
		<input checked="" type="checkbox"/> Brendan Harty
		Valid Signature
		<input type="checkbox"/> Alan Sampson
		<input type="checkbox"/> Elke Sampson
		<input type="checkbox"/> Paul Buckman
		<input checked="" type="checkbox"/> Brendan Harty
		Comments:
		Counter signature forged
		Signature line signature forged
		Phone authority Matthew Johnson
		Cashed 460 Collins St Melbourne.
Face of Cheque		
		
Back of Cheque		
		
Trace Number		

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Figure 6: Cheque Number 6940 11/2/1999

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Appendix 6: Cheque Number 6973

Charges		Clearance Date: 2/03/1999
Theft	348	Cheque Number: 6973
Make a False Document	349	
Use a False Document	350	

Butt Detail	Cheque Detail	Bank Clearance Detail - Basstech A/c	Transaction details from Brendan James Harty's Accounts.
Date	2/03/1999	Date Cleared	2/03/1999
Payee:	Cash	Statement Page Number	916
Amount: \$0.00	\$3,569.00	Cleared Amount	\$3,569.00
Cheque Butt	-	Bank Name:	
		Branch:	
		BSB & Account:	

Signatory	Valid Signature	<input type="checkbox"/> Destination Account Confirmed
<input checked="" type="checkbox"/> Alan Sampson	<input type="checkbox"/> Alan Sampson	<input checked="" type="checkbox"/> Signatures Forged
<input type="checkbox"/> Elke Sampson	<input type="checkbox"/> Elke Sampson	<input type="checkbox"/> Valid Payment to B Harty
<input type="checkbox"/> Paul Buckman	<input type="checkbox"/> Paul Buckman	<input type="checkbox"/> Valid Payment of Account
<input checked="" type="checkbox"/> Brendan Harty	<input checked="" type="checkbox"/> Brendan Harty	

Comments:
Counter signature forged
Signature line signature forged
Phone auth Carol
Cheque book and butt missing

Sorry no image

Face of Cheque



Back of Cheque



Trace Number

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Figure 7: Cheque Number 6973 2/3/1999

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Bibliographies

Joel Bakan



Filmmaker **Writer, Co-Creator, Associate Producer**

Joel Bakan is an author, filmmaker and a professor of law at the University of British Columbia whose work examines the social, economic, and political dimensions of law. A former Rhodes Scholar and law clerk to Chief Justice Brian Dickson of the Supreme Court of Canada, with law degrees from the universities of Oxford, Dalhousie, and Harvard, Bakan has won numerous awards for his scholarship and teaching, worked on landmark legal cases and government policy, and served frequently as a media commentator.

His critically acclaimed international hit, *The Corporation* (Free Press, 2004) – the basis of THE CORPORATION film – electrified readers around the world (it was published in over 20 languages), and became a bestseller in several countries. His latest book, *Childhood Under Siege*, was released in August 2011 and was also widely translated (for sale on the [Hello Cool World webstore](#) in USA & Canada). Bakan's highly regarded scholarly work also includes *Just Words: Constitutional Rights and Social Wrongs* (University of Toronto Press, 1997), as well as textbooks, edited collections, and numerous articles in leading legal and social science journals.

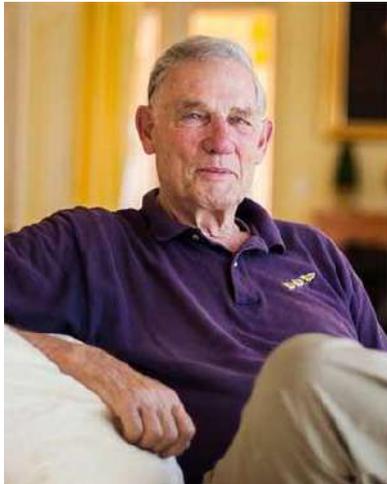
Bakan is an accomplished public speaker who addresses business, government, academic, and activist audiences around the world. Also a professional jazz guitarist, he grew up in East Lansing, Michigan and now lives in Vancouver, Canada with his wife, Rebecca Jenkins.

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Robert Monks



Robert A. G. Monks is the Founder and Chairman of ValueEdge Advisors. He is a globally respected author, and pioneering practitioner in corporate governance. Mr. Monks is an advisor to Trucost, the environmental research company and is a co-founder of GMIRatings (formerly The Corporate Library). He is also the founder of Lens Governance Advisors, a law firm that advises on corporate governance in the settlement of shareholder litigation. Mr. Monks was the founder and president of Institutional Shareholder Services, Inc., now the leading corporate governance consulting firm, advising shareholders with assets in excess of \$1 trillion on how to vote their proxies. He founded the investment fund known as LENS, which since 1992 has developed the

“institutional activist” mode of investment. Mr. Monks served as the President of Henley Management College’s Center for Board Effectiveness from 2000 to October 2003. He is also the board chairman of Governance for Owners – G40 – for both the London and U.S. based share-ownership services venture which has initially focused on a European fund informed by the principles of value to be added by proper governance.

He is a graduate of Harvard College, Cambridge University and Harvard Law School. He was a partner in a Boston law firm and served as vice president of Gardner Associates, an investment management company. He was president and chief executive officer of C.H.Sprague & Son Company, a coal and oil concern and served as a board member and chairman of the Board of The Boston Safe Deposit & Trust Company and the Boston Company. He served as director of the United States Synthetic Fuels Corporation through appointment by President Reagan who also appointed him one of the founding Trustees of the Federal Employees’ Retirement System. He served in the Department of Labor as Administrator of the Office of Pension and Welfare Benefit Programs having jurisdiction over the entire U.S. pension system.

Mr. Monks has co-authored three books with Nell Minow including, *Power and Accountability* (Harper Business, 1991), *Corporate Governance* (Blackwell Publishing, 1995), the 5th edition is scheduled to be published in spring 2011, and *Watching the Watchers* (Blackwell Publishers, 1996). He wrote *The Emperor’s Nightingale* (Capstone, April 1998), *The New Global Investors: How Shareowners Can Unlock Sustainable Prosperity Worldwide* (Capstone, May 2001) and *Corpocracy* (Wiley, 2007). With Alexandra Lajoux he wrote, *Corporate Valuation for Portfolio Investment*, (Wiley, 2011). His latest books include *Citizens DisUnited: Passive Investors, Drone CEOs and the Corporate Capture of the American Dream* (2013) and *Trusting Harvard: The Cost of Unprincipled Investing* (2014). Mr. Monks was also the subject of a biography chronicling the corporate governance

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

movement – A Traitor to His Class – by Hilary Rosenberg published by Wiley in 1999. Mr. Monks' first novel, Reel and Rout was published by the Brook Street Press, February 2004.

Mr. Monks has received a number of awards and accolades in the course of his distinguished career, including:

2013 Frankel Fiduciary Prize from the Institute for Fiduciary Standard

2008 Directorship 100 Hall of Fame Award from the Directorship Magazine

2007 Outstanding Financial Executive Award

2004 Special Award for Corporate Accountability from the Investor Relations Magazine

2002 International Corporate Governance Award from the ICGN

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Professor Bruce Welling

BSc (R.M.C.) LLB (U.W.O.) LLM (London) Ph.D. (Bond).



Professor Welling specializes in corporate law. His book *Corporate Law in Canada: The Governing Principles* (Butterworths Canada 2d ed. 1991) is the leading Canadian treatise on the subject. He has written two other books on corporations and companies, as well as *Property in Things in the Common Law System* (Scribblers Publishing Australia 1996). He is a member of the National Academy of Arbitrators and Counsel to Anissimoff & Associates, a London Patent and Trademark firm. He conducts classes in Corporate Law, Conflict of Laws, and Property, but when the surf's up he can often be found at dawn in the lineup at the Alley off Currumbin Point.



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Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

Robert D. Hare

Researcher



hare.org

Robert D. Hare, C.M. is a researcher in the field of criminal psychology. He developed the Hare Psychopathy Checklist, used to assess cases of psychopathy. Hare advises the FBI's Child Abduction and Serial Murder Investigative Resources Center and consults for various British and North American prison services. [Wikipedia](#)

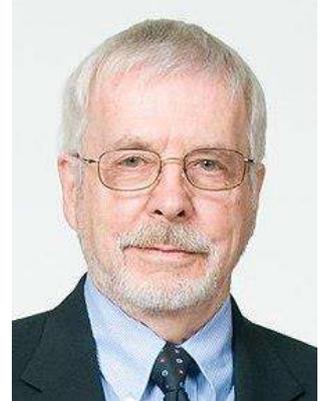
Born: 1932 (age 87 years), [Calgary, Canada](#)

Spouse: [Averil Hare](#) (m. 1959)

Award: [Order of Canada](#)

Children: [Cheryl Wynne](#)

Education: [University of Alberta](#) (1960), [University of Alberta](#)



Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

John Coffee, Jr.



John C. Coffee Jr¹⁹. is the Adolf A. Berle Professor of Law and director of the Center on Corporate Governance at Columbia Law School. He is a fellow at the American Academy of Arts & Sciences and has been repeatedly listed by the *National Law Journal* as among its “100 Most Influential Lawyers in America.”

Coffee has served as a reporter to The American Law Institute for its Corporate Governance Project; has served on the Legal Advisory Board to the New York Stock Exchange; and as a member of the SEC’s advisory committee on the capital formation and regulatory processes.

Coffee is the author or editor of several widely used casebooks on corporations and securities regulation, including *Securities Regulation: Cases and Materials*, (with Hillary Sale), 2015, (13th edition); *Cases and Materials on Corporations* (with Jesse H. Choper and Ronald J. Gilson), 2013, (8th edition); and *Business Organizations and Finance*, (with William Klein and Frank Partnoy), 2010, (11th edition).

His scholarly books include *Entrepreneurial Litigation: Its Rise, Fall, and Future*, Harvard University Press, 2016; *Gatekeepers: The Professions and Corporate Governance*, Oxford University Press, 2006; *Knights, Raiders, and Targets: The Impact of the Hostile Takeover*, (with Louis Lowenstein and Susan Rose-Ackerman), Oxford University Press, 1988; and *The Regulatory Aftermath of the Global Financial Crisis*, (with Ellis Ferran, Niamh Moloney, and Jennifer G. Hill), Cambridge University Press, 2012.

According to a recent survey of law review citations, Coffee is the most cited law professor in law reviews over the last 10 years in the combined corporate, commercial, and business law field. In 2015, *Lawdragon* listed him on its 100-member “Hall of Fame” list of influential lawyers in the U.S.

¹⁹ <https://www.law.columbia.edu/faculty/john-coffee-jr>

Paul Buckman

P.O. Box 120 Phone: 0417 451 406

Tinamba Vic. 3859 Email: paul.buckman@bigpond.com

About the Author

Paul Alan Buckman.



Born 1950 in Wollongong New South Wales, Australia.

Died: Yet to be assessed.

Left school in year 9 as he could not see the benefit of an education. That was conditional (from his father) that he gained a job within a month of the end of that school year (1965).

He commenced work at the local steel works as a messenger boy at 15 years of age; where he found that he was working beside fellows of his age now (60's plus). This is where he finally determined the value of an education. From there he enrolled in night school the following year (1966), to complete his "Year 10" completing the School Certificate requirements. From there he commenced a lifelong program of study and self-improvement; largely propelled by the needs of the job at hand.

He concluded trade training as an Electronics Technician with the Royal Australian Airforce in 1972; serving in Australia between 1970 and 1976. He then went on to various jobs until his appointment as a senior technician with an oil-industry exploration and data logging company in Australia (Gearhart Inc), leaving in 1989.

From there he pursued a career in small business joining Basstech in 1994 until its demise in 1999.

Today, at 68 years of age (Jan 2019) he is a third-year undergraduate student engaged in a Bachelor of Engineering Mechatronic Systems (Hons) degree at Federation University Australia; Gippsland, Victoria campus. At the same time, he is engaged in various mentoring roles with fellow and younger students.