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## HIH: Moral hazard

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THERE'S a sad and weary tone to Justice Neville Owen's report on the HIH debacle.

For all the breaches of law and flaws of system he identifies, for all the thoughtful remedies he advances, the core problem is something he simply cannot fix. Australia's worst corporate disaster, Owen suspects, was at heart a profound failure of morality.

Day after day, men gave dismal accounts of themselves in Owen's chamber. There were men who toadied and men who jockeyed, lazy men and reckless men and grasping men who could find an invoice in any given situation. There were men who provided appalling advice, loads of them, and some followed up with letters which mixed obsequious pleasantries with demands for urgent payment.

"From time to time as I listened to the evidence," Owen writes, "I found myself asking rhetorically: Did anyone stand back and ask themselves the simple question – is this right?"

What can a \$40 million royal commission hope to achieve in the face of such monstrous moral hazards? How much can jail terms and systemic reforms accomplish, when the problem appears so deeply rooted in human nature?

Punishment is an especially loaded issue. Owen senses the vengeful public mood, even sympathises with it to a degree, but he believes scalps are the wrong way to measure his work. Hunting down crooks was the least of his duties, and one he performed "without enthusiasm".

The greed was spectacular. Everywhere there were men with contempt for other people's money and yet nothing but lust for money to call their own. They had a disturbing attitude to what they regarded as small sums – anything up to, say, \$6 million.

Some of them weren't even witnesses before the commission but merely names that existed in abstract, faceless players in this or that regrettable episode. They lived in London or Monte Carlo or maybe on some island in the Caribbean, and their sole professional function in life was to deal with money – source it, shift it, grow it, hide it, work it. These men lived in a vacuum.

"In an ideal world," Owen continues, "the protagonist would begin the process by asking: Is this right? The end of the process must, of course, be in accord with the prescriptive dictates, but it will have been informed by a consideration of whether it is morally right."

Clearly, HIH did not work that way.

The apparent moral dilemma went beyond individual men in HIH's employ to afflict entire professions (of men) on the outside. Ray Williams' insurance company was a fee-takers' picnic.

Merchant bankers were the object of a few snide remarks from the witness box and it was

easy to see why. HIH's financial adviser, Colin Richardson, held Williams' hand through a series of dreadful transactions.

These included the FAI takeover, a \$590 million loser on Owen's estimate, and the Allianz joint venture, which strangled cash flow and effectively killed the company.

"In one instance, the financial adviser sought to downplay the significance of the role by describing it as 'purely executionary'," Owen writes.

"I am not sure what that means. If it means no more than ensuring that all of the 'paperwork' was in order then the amount of fees levelled in respect of the transaction seems difficult to justify".

Lawyers did enough to reinforce their declining reputations. They ignored blatant conflicts of interest and provided advice on how to "get around" provisions in the Corporations Act.

Owen finds it "disappointing" that members of his own profession were involved in what he called the "dash for cash" in HIH's dying days.

Accountants emerge as the masters of sneaky tricks. Book cookers were rife, and some of the instruments they employed – legitimate tools of their trade – were decidedly shonky.

Goodwill was the worst offender, an intangible and largely discretionary asset which surged while real assets were squandered. In time, it came to represent fully half of all HIH shareholder funds.

Wrestling with this nonsense during last year's hearings, Owen suggested goodwill was the jewellery box HIH raided whenever its accounts needed dressing up. Refining his thinking in this week's report, he writes: "Goodwill became something of a repository for the unpleasant and unwanted consequences of poor business judgment."

But much bigger concepts than goodwill took a battering.

"I am becoming less and less comfortable with the phrase 'corporate governance'," wrote Owen, "Not because of its content but because it has been so widely used that it may become meaningless. Corporate governance is becoming something of a mantra. Unless care is taken, the word 'ethics' will follow suit."

All told, his report offers prosecutors 56 promising cases, including possible criminal charges against Williams, Rodney Adler and Brad Cooper.

It's a modest result, way down on the 1000-plus adverse findings recommended by the commission's lawyers, but Owen is not apologising for his restraint.

"I hope that readers of the report will not be preoccupied with blame," he writes, probably because blame cures nothing.

The Government, on the other hand, is promising heavy courtroom action. There will be a taskforce and maybe even a special prosecutor.

"The public can rest assured of this," Treasurer Peter Costello said on Wednesday in a hairy-chested response to the report. "Investigative agencies will be tasked by this Government to bring anybody who has broken the law to trial."

This is a big claim in itself, and even if it were to prove true, the public would be wrong to assume all the bad guys are going to pay. Owen, familiar by now with the entire cast of

miscreants, makes no such boast.

Instead, and more reasonably, he hopes the reforms he has proposed will go some way towards preventing a repeat of Australia's worst corporate catastrophe.

HIH collapsed in March 2001 with debts reckoned at \$5.3 billion and terrible consequences for countless Australians.

Owen's 61 proposed reforms, like his 56 referrals to prosecutors, are modest and well-targeted. Many of them are about tweaking and tightening existing structures, although the Australian Prudential Regulation Authority will feel some real heat. His recommendations to scrap the APRA board, replace it with an executive committee and completely overhaul the organisation were accepted by the Government the day the report was released.

In what he describes as a "dirigiste age", choked with rules and proclamations and oppressive codes of conduct, Owen is not inclined to create more of the same.

"There is no doubt that regulation is necessary: peace, order and good governance could not be achieved without it. But it would be a shame if the prescription of corporate governance models and standards of conduct for corporate officers became the beginning, the middle and the end of the decision-making process."

The other thing is that you cannot legislate for goodness, which appears to have been the missing ingredient.

In a passage which has absolutely nothing to do with criminal referrals or regulatory overhauls, Owen makes his point:

"I think all those who participate in the direction and management of public companies, as well as their professional advisers, need to identify and examine what they regard as the basic moral underpinning of their system of values. They must then apply those tenets in the decision-making process.

"The education – particularly at tertiary level – should take seriously the responsibility it has to inculcate in students a sense of ethical method.

"Right and wrong are moral concepts, and morality does not exist in a vacuum."

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