Public Comment regarding HIH Royal Commission Report

By Malcolm Turnbull
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The Report of the HIH Royal Commission has exposed as completely false the campaign waged against myself and Goldman Sachs by Counsel Assisting the Commission, Mr. Norman O'Bryan.

Justice Owen has rejected O'Bryan's proposed adverse findings against Goldman Sachs and those associated with it.

O'Bryan's conspiracy theory rested upon one great lie: that Goldman Sachs believed FAI to be "worthless" but told the FAI Board it was, on the contrary, a valuable company. O'Bryan based this allegation by misunderstanding, or misrepresenting, some internal memoranda and draft working papers developed within Goldman Sachs prior to the HIH takeover. Inexplicably, he paid scant regard to the presentation Goldman Sachs actually made to the FAI Board.

However, far from there being any inconsistency between the internal memoranda and the Board Presentation, Justice Owen concluded that the respective analyses were "practically identical. " (p221)

His Honour could have made no other finding as this is perfectly obvious from even the most cursory comparison of the relevant documents. Had that comparison been made by Mr O'Bryan, millions of dollars would not have been wasted on matters quite irrelevant to the collapse of HIH.

Justice Owen also exploded O'Bryan's theory that Goldman Sachs had withheld financial information from the FAI Board, which had it been revealed, may have caused the takeover not to proceed.

His Honour again noted (p221) that the Directors were aware that Goldman believed large write downs of assets would be required in any alternative recapitalisation of FAI and, he also noted, that the Directors (and auditors) were aware of the premium overhang from the reinsurance contracts.

In terms of the impact of the FAI acquisition upon HIH, Justice Owen concludes (p. 246) that "there is no clear evidence that the overall value of FAI's assets was materially misstated at the time of the takeover." The negative impact of the FAI acquisition, he concludes, stemmed from the under provisioning for claims. This underprovisioning for claims was not something Goldman Sachs had any knowledge of, nor has it ever been suggested that it did.

While these findings by the Commission are therefore welcome, I have very grave reservations about the conduct of certain of certain of those assisting the Royal Commission.

It was always obvious that Goldman Sachs' role in the FAI/HIH affair was at best a footnote. It was always obvious that the view of FAI presented to the Board of FAI by Goldman Sachs was, as the Judge said, "practically identical" to the previous analysis performed by Goldman Sachs personnel when a principal investment was being considered.

Yet many weeks of the Commission's time was wasted pursuing Goldman Sachs. That this was a waste of time is amply demonstrated by the fact that the discussion of the events with which Goldman Sachs was connected occupies 9 pages out of the 1500 pages of the Report!

A further feature of this Royal Commission which merits serious examination was the relationship between the Commission staff and the press. In my view this was intimate, if not incestuous.

The practice by Counsel Assisting of giving regular, often daily, briefings to selected journalists has already been the subject of considerable criticism. In my view, Counsel assisting the Commission often chose to pursue matters which were newsworthy, rather than relevant, and were duly rewarded with glowing headlines.

It would be naïve to imagine that any attention would have been paid to Goldman Sachs and myself if I had not been a well known Australian businessman and the Honorary Treasurer of the Liberal Party. Wild allegations about Malcolm Turnbull sell more newspapers than the dull, but highly relevant, minutiae of actuarial accounting, reinsurance losses, the vagaries of Californian workers compensation and the underpricing of insurance products.

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