

# Australian Labor Party Dissenting Report

## Introduction

Again the second hearing of the bank CEO's allowed each member of the Committee just 20 minutes of questions to the bank CEO's. After the first hearing the Labor members said that it was clearer now than ever that a broader inquiry is needed, this policy approach remains true. The only way to achieve any form of justice for the victims of the banks, and the only way to truly shine a light on the practices that drive unethical behaviour in the banking industry is to hold a Royal Commission.

## Deloitte Report

Commonwealth Bank appointed Deloitte to investigate its CommInsure Life Insurance arm following reports by the Four Corners program and Fairfax newspapers of serious misconduct. Those media reports highlighted very concerning allegations of claim denials based on outdated medical definitions and the manipulation of medical files.

The Deloitte report concluded that there were no systemic issues relating to declined claims without interviewing any of the claimants. This was put to CBA CEO Mr Ian Narev

Mr THISTLETHWAITE: It has been reported that no customers were interviewed. That is true, isn't it?

Mr Narev: Yes.

Mr Narev suggests that this does not make the report invalid because of all the other evidence utilised the report's findings. Again this represents evidence of why a broader inquiry with examination powers is patently necessary.

## Scandals Continue

Despite the relatively short-time between the two House Economics Committee hearings the banking scandals kept on coming. A simple collection of the headlines since the last hearings from major news outlets relating to the banking sector shows a bleak picture:

NAB's former star Graeme Cowper's demise now complete - Sydney Morning Herald 07.12.16

NAB accidentally sends 60,000 overseas customers' banking details to wrong email – ABC News 16.12.16

CBA and NAB admit impropriety in foreign exchange trading – Australian Financial Review 21.12.16

NAB pays out \$36.5 million to super customers – Australian Financial Review 02.02.17

CBA facing investor backlash on executive pay – Sydney Morning Herald 07.11.16

Commonwealth Bank criticised for paying lip service on small biz loans – Australian Financial Review 30.11.16

Commonwealth Bank pays extra \$5m in compensation for poor advice – The Australian 05.12.16

Harrowing tales reveal 'worst' flaws of \$44 billion life insurance industry – Sydney Morning Herald 22.02.17

ANZ Bank admits inability to control its Malaysian affiliate – Financial Times 12.11.16

ANZ and Macquarie Bank fined a combined \$15 million for attempted currency price fixing – Business Insider 14.12.16

Ex-ANZ financial adviser Andrew TambyRajah banned for five years – The Australian 12.12.16

ANZ's new 'fairness officer' former Commonwealth Ombudsman Colin Neave to review products – Sydney Morning Herald 15.12.16

Former Westpac banker David St Pierre jailed over \$4 million fraud – News.com.au 09.02.17

ASIC bans former Westpac financial planner – Sydney Morning Herald 28.11.16

ASIC suit over Westpac's super advice 'tip of the iceberg' – The Australian 03.01.17

Westpac's BT sends rejected TPD claims for review – The Australian 04.11.16

Many of these issues were discussed by the committee during the hearings and all the CEO's admitted such behaviour was unethical, inappropriate and in some cases illegal.

## **Structure and Culture**

The Australian Bankers' Association's Sedgwick review into retail banking remuneration was handed down on 19 April 2017. The review makes 21

recommendations around the sales culture, performance management and governance of the banking industry.

One of the headline findings of the Sedgwick report relates to a point that Labor has been consistently making - that the practice of paying incentives linked to sales targets promotes poor outcomes for banking customers.

One of the more significant issues is that sales targets are still used as a performance management measure. That is, if you fail to meet sales or referral targets as a frontline employee you risk being managed out of the business. The review's terms of reference, which were set by the banks, focussed on pay arrangements for the lower three tiers of retail banking jobs and meant Mr Sedgwick was prevented from properly scrutinising middle and senior executive pay and bonuses.

The structure and culture of the big 4 banks still promotes poor customer outcomes and this looks unlikely to change without a Royal Commission exposing the issues.

When Banks were questioned about making their submissions to the Sedgwick Review public, there was some agreement on the basis that commercial-in-confidence information be redacted. However, while some such information has been provided to the Committee for review, it has not been possible to review all such information prior to the tabling of this Report, as such information was provided on a confidential basis to be reviewed in person only after Parliament last adjourned. The actions of Government members of this Committee in requiring the tabling of this Report before the resumption of Parliament in May means that such information may not be reviewed or reported on until late 2017 at the earliest and is completely antithetical to the purpose of the Inquiry, thereby further demonstrating the Government's lack of resolve to apply proper scrutiny to the banks.

## **The Government Members Report Recommendations**

### **Second Report Recommendation 1**

The Chair's report reaffirms its support for all of the recommendations contained in the first report. The Labor members' views of these recommendations, as set out in Appendix B of the first Report of this inquiry, have not changed and are expanded upon below.

### **Second Report Recommendation 2**

The Carnell report's recommendation that non-monetary default clauses be abolished for loans to small business has merit. However, that this is the sole new recommendation to come from the second round of hearings with the Banks and

the first with the Australian Banking Association, is a demonstration of how much the Government merely sees this Inquiry as a means of distracting away from the need for a banking royal commission.

### **First Report Recommendation 1**

It is notable that the Government members of the committee continue to hold to their recommendation for the creation of a banking tribunal, when Government Ministers have backed away<sup>1</sup> from the Prime Minister's promise last year to create one. This dysfunction is typical of this Government's desperate, floundering attempts to distract attention away from the need to hold a Royal Commission into the banks. A range of stakeholders expressed deep concerns about the prospect of a banking tribunal which may deliver worse outcomes for consumers. The current Credit Industry Ombudsman, Raj Venga, stated publicly that a new banking tribunal would be a huge mistake. The appropriateness of the structure relating to the board and members of the tribunal remain in doubt, while the nature of any decisions that the tribunal would make may require the body be invested with full judicial power. This is further complicated by the suggestion that lawyers not be permitted to be involved. Merely preventing lawyers appearing in a tribunal will not create a level playing field. Funding for legal assistance for customers would be of greater assistance in levelling the playing field. As can be seen, the Committee's recommendation, which it has reiterated, raises more questions than it answers.

### **First Report Recommendation 2**

While Labor believes there is a clear need for more and better public reporting of breaches of corporate law or licensing requirements within financial institutions, this recommendation as outlined in the Government members' report unfortunately has holes and is symbolic of the Turnbull Government's rushed and slap-dash approach to the entire inquiry.

### **First Report Recommendation 3**

Recommendation 3 proposes the creation of a new team within the ACCC, without any further funding or resourcing, an issue that has been outlined by ACCC Chairman in discussing the limited number and scope of market studies conducted to analyse levels of competition. Without further resources this recommendation is not workable.

### **First Report Recommendation 6**

This recommendation highlights the confusion of the Turnbull Government in considering the licensing requirements for ADIs and for a 'two phase' licensing process. The proposal appears superfluous in light of evidence provided in a

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<sup>1</sup> See, for example, ABC, 6 December 2017, Tom Iggulden, 'Government backs away from banking tribunal, implements another ombudsman instead'.

separate hearing by Mr Byres, Chairperson of the APRA who clarifies that the licensing requirements are not necessarily acting as an impediment to be an ADI.

### **First Report Recommendation 7**

It would be more appropriate to recommend that APRA direct banks to audit their risk management systems. Otherwise, AFSL holders are required to have adequate risk management systems and APRA-regulated institutions are currently required to have systems for identifying, measuring, evaluating, monitoring, reporting, and controlling or mitigating material risks that may affect its ability or the ability of the group it heads, to meet its obligations to depositors and/or policyholders.

### **First Report Recommendation 9**

Labor agrees that additional transparency measures are needed but once again raises concerns about the workability of this recommendation as formulated in the report. A properly formulated recommendation would need to focus on breaches that relate to client files or work performed on behalf of or in relation to a client.

### **The House of Representatives Economics Committee is no substitute for a Royal Commission.**

Nothing has substantially changed since the first hearings. If anything, many more troubling examples of poor banking culture and misconduct have come to light. This inquiry exists as a mechanism to avoid further scrutiny through a broader inquiry. Each member of the committee still gets around 20 minutes to question the Bank CEO's. The Coalition members report fails to again answer why Australia should not have a Royal Commission into the banks?

Through the questions in writing process over both the first and second hearing thousands of documents have been provided by the banks that remain sealed. These secret documents deserve greater scrutiny. This is made worse by the Government members' belligerent attitude to the second report, by tabling the report out of session when most committee members have not been given adequate opportunity to review this documentation, which for many would require significant travel time to Canberra.

Furthermore, it is of concern that for both this and the First Report of the Committee, the Government members have used their numbers to force premature reporting timelines upon the Committee. The difficulty of which was highlighted when the day after the first report was tabled in Parliament the banks started announcing increases in their interest rates. Once again, an unreasonably short reporting period has been foisted on non-Government members of this Committee by Government members, the necessity of which remains to be seen but which will no doubt become all too apparent in the not-to-distant future. In any event, such conduct of this Inquiry further reaffirms the Labor Members' view in support of our recommendation.

## **Labor Members' Recommendation**

As the Labor members recommended after the first hearings, we again urge the Government to take responsibility, stop defending the banks and establish the systematic, thorough and transparent investigation that only a Royal Commission can provide.

Such a Royal Commission into the financial services industry should examine issues such as:

- how widespread instances of illegal and unethical behaviour are within Australia's financial services industry;
- how Australia's financial services institutions treat their duty of care to their customers;
- how the culture, ethical standards and business structures of Australian financial services institutions affect the behaviour of these institutions;
- whether Australia's regulators are really equipped to identify and prevent illegal and unethical behaviour;
- comparable international experience with similar financial services industry misconduct and best practice responses to those incidents; and
- other events as may come to light in the course of investigating the above.

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**Party**

**Madeleine King MP, ALP**   **Matt Keogh MP, ALP**