

# Dissenting Report—Labor members of the committee

## **Introduction**

The third hearing of the Bank CEOs once again proved the farcical nature of these hearings that allow only 10 to 20 minutes each to question the most powerful executives in the country. Each time the CEOs appear before the Committee it reinforces the need for a Royal Commission into banking in Australia.

This is exactly what has happened.

Since the beginning of this process over a year ago it has been clear that the House of Representatives Liberal Government dominated Economics committee was being used as a vehicle for the Turnbull Government to avoid the scrutiny of a Royal Commission. Again and again the Labor members pointed out the futility of this exercise and have questioned how the banks were preparing for a Royal Commission. Labor members of this committee have been vindicated as the Turnbull Government has now agreed to conduct a Royal Commission at the request of the Banks themselves. The letter from the banks to the Prime Minister clearly indicates that the banks themselves knew a Royal Commission was inevitable and have been preparing for one for some time.

## **The poor behaviour of the Big Four Banks**

### *Commonwealth Bank of Australia - Austrac scandal*

One of the biggest scandals in Australia's corporate history is currently playing out in our courtrooms.

The Commonwealth Bank of Australia is currently being prosecuted in the Federal Court by Austrac claiming it breached the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Act.

These money laundering allegations relate to combined cash deposits of over \$624.7 million. Austrac say that the use of CBA's intelligent deposit machines (IDMs) allowed criminals to wash money through the Australian banking system.

CBA's IDMs allowed lots of up to 200 individual notes (around \$20,000 at a time) to be deposited. Transactions of \$10,000 or more must be reported and CBA did not report these transactions on 53,506 occasions between November 2012 and September 2015.

This failure has exposed the Commonwealth Bank, its shareholders and the Australian community to enormous risk.

Worse still is the fear that the CBA will attempt to settle this matter out of court and out of the eye of the public.

Mr THISTLETHWAITE: The concern that I have is that the Commonwealth Bank will settle this matter. There's been one other prosecution under this legislation with Tabcorp. That was settled for a multimillion dollar settlement. It's my view that this will probably settle. I don't have any inside knowledge or anything on that, but this will probably settle, and no-one will actually know what went on here. The Commonwealth Bank will pay some money. You'll pay some money in respect to the shareholder class action. No-one is the wiser about what occurred here. Everything just moves on. The bank says, 'There's nothing to see.'

This cannot and must not be the outcome in this matter.

Two major law firms have launched action in the Federal Court alleging the CBA Board knew about these breaches for over two years and failed to inform investors. The statement of claim filed by the applicants in the class action alleges CBA management knew of the issues with a failure to report above threshold transactions through IDMs with Austrac. Instead of attempting to assure the Australian people that the bank was doing all it can to change its ways, it used the upcoming court proceedings to hide the extent of its deception.

Mr THISTLETHWAITE: Okay. I just want to move on to the issue of the regulator and the market... When were you first informed?

Mr Narev: We were first informed of it at senior executive board level at the time in 2015, having received information – and I think I'm right – actually from the bank about suspicious activity.

Mr THISTLETHWAITE: Who informed you?

Mr Narev: I would need to check on this, but I think this came up through the risk management team.

Mr THISTLETHWAITE: Okay. And how was the board informed, Ms Livingstone? Was it by Mr Narev? Or was it –

Ms Livingstone: That would be through the regular reporting to the risk committee and to the board in terms of the regulatory report. That includes all regulatory breaches.

Mr THISTLETHWAITE: I just want to move to the statement of claim that's been filed by some shareholders. In paragraph 41 of that statement of claim they allege that Mr Toevs, who was the chief risk officer at that time, should reasonably have become aware in the course of carrying out his duties that this was an issue. What's the bank's response to that?

Mr Narev: We've said we're going to defend the claim. Given that that's a specific allegation in the statement of claim, we won't comment on it specifically except to say that the expectation that the board has of me and that the board and I in turn have of all the executives is that they escalate issues that they've identified that should be problematic and make due inquiry.

The Commonwealth Bank clearly know about the size and scope of this matter for over two years and chose not to alert the market, the banks stakeholders or the wider community.

### **Bank Scandals Continue**

A non-exhaustive list of the headline scandals involving the banks makes for very poor reading. Below is a selection of bad news stories for each of the banks since the last time this committee reported.

Even though the Government has finally bowed to pressure to hold a Royal Commission, not one of these scandals was considered significant enough to justify the enquiry. Instead the Prime Minister blamed Labor for its establishment. This list shows just how out of touch the PM is when it comes to this issue.

#### *The Commonwealth Bank*

2 February 2017 – Bankwest, a division of CBA has refunded \$4.9m to 10,800 customers after it failed to take into account customers' offset accounts when calculating interest on home loans.<sup>1</sup>

8 February 2017 – CBA will pay \$23m in compensation to customers who received bad advice from staff at the centre of the bank's financial planning scandal. Over 8,600 customers received advice from financial planners between September 2003 and July 2012.<sup>2</sup>

21 February 2017 – CBA is investigating allegations that it underpaid compulsory superannuation payments to part-time workers working above initially agreed hours. Over 7000 part-time staff are owed millions of dollars in unpaid superannuation entitlements, according to legal advice.<sup>3</sup> Ultimately CBA accepted that it had underpaid the employees.

28 April 2017 – CBA has bowed to public pressure and removed contract terms that allow it to put small business borrowers into default, even if they have not missed a repayment. It will pledge to remove contract terms that allow "non-monetary defaults" by small business customers who have borrowed up to \$3m from the lender.

19 May 2017 – CBA has paid (or offered) \$5,850,827 of (an estimated) \$105,637,587 in compensation for failing to provide general or personal financial advice to customers while charging them ongoing advice fees.<sup>4</sup>

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<sup>1</sup> Clancy Yeates and Georgia Wilkins, NAB and Bankwest forced to repay customers: ASIC, *WA Today*, 2 February 2017, <http://www.watoday.com.au/business/banking-and-finance/nab-and-bankwest-forced-to-repay-customers-asic-20170201-gu3mce.html>.

<sup>2</sup> Jeff Whalley, Payout hits \$23m, *Herald Sun*, 8 February 2017.

<sup>3</sup> Anna Patty, Claim CBA owes super millions to employees, *The Age*, 21 February 2017.

<sup>4</sup> 17-145MR Compensation update: major financial advisory institutions continue refund programs for fees-for-no-service,

3 August 2017 – AUSTRAC initiated civil penalty proceedings in the Federal Court against CBA for serious and systemic non-compliance with the *Anti-Money Laundering and Counter-Terrorism Act 2006*. The proceedings allege over 53,700 contraventions of the Act:

- CBA did not carry out any assessment of the money laundering and counter terrorism financing risk of their Intelligent Deposit Machines before their rollout and took no steps to assess that risk until mid-2015. This was required by the program that CBA had established itself under the requirements of the Act. CBA failed to comply with its own AML/CTF program.
- For 3 years CBA did not comply with requirements to adequately monitor transactions on 778,370 accounts
- CBA failed to give 53,506 threshold transaction reports to AUSTRAC on time for cash transactions of \$10,000 or more through IDMs from 11/2012 to 09/2015
- These transactions represent approximately 95% of the threshold transactions that occurred through CBA's IDMs and had a total value of approximately \$624.7m
- The bank failed to report suspicious matters (either on time or at all) involving transactions totalling over \$77m
- Even after CBA became aware of suspected money laundering or structuring on CBA accounts, it did not monitor its customers to mitigate and manage the risk, including the ongoing money laundering and counter terrorism risks of doing business with those customers.<sup>5</sup>

AUSTRAC alleges that even after CBA became aware of suspicious activity, including being told about it by the AFP, it appears to have permitted accounts to remain open and for transactions to continue flowing through them.

Each breach of the Act carries a maximum penalty of \$18m and a potential fine of \$960bn.<sup>6</sup>

5 August 2017 – One of the money laundering syndicates linked to the CBA compliance scandal worked with drug smugglers who imported methamphetamine worth \$315m, the largest ice seizure in WA history.

The syndicate used CBA to launder more than \$21m according to AUSTRAC.<sup>7</sup>

14 August 2017 – Commonwealth Bank will refund approximately \$10 million to over 65,000 customers after selling them unsuitable credit insurance between 2011 and 2015. The customers were sold 'CreditCard Plus' insurance for credit card repayments, when they were unlikely to meet the employment criteria (i.e. they were unemployed or were students with lower credit limits) and would be unable to claim the insurance.

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19 May 2017.

<sup>5</sup> AUSTRAC, AUSTRAC seeks civil penalty orders against CBA, 3 August 2017.

<sup>6</sup> James Eyers, AUSTRAC allegations are jaw-dropping, *Australian Financial Review*, 4 August 2017.

<sup>7</sup> Nino Bucci, Syndicate linked to bank scandal behind \$315 million drug haul, *The Age*, 5 August 2017.

## *Westpac*

15 March 2017 – ASIC accepts enforceable undertaking from Westpac to address “inadequacies” in wholesale FX business. ASIC was concerned that between 1 January 2008 and 30 June 2013, Westpac failed to ensure that its systems and controls were adequate to address the risks relating to instances of inappropriate conduct identified by ASIC. Westpac employees on several occasions disclosed confidential details of pending orders to third parties and identified customers using code names.<sup>8</sup>

25 March 2017 – Head of Wealth Management Martyn Wild, who was responsible for \$34bn of investments in Westpac’s wealth management business, left Westpac on 24 March 2017 after allegations of inappropriate behaviour toward two female staff members. He had previously been disciplined for breaches of Westpac’s code of conduct.<sup>9</sup>

9 May 2017 – APRA will force banks to hand over life insurance claim data by the end of the financial year to impose better standards on the sector. BT Financial Group has a claims rejection rate of 37%.<sup>10</sup>

9 May 2017 – Westpac’s wealth management arm BT Financial Group increased the premiums on its in-force life insurance policies by 11% for the six months ending 31 March 2017, while gross written premiums across the general insurance division rose by 2% during the same period.<sup>11</sup>

19 May 2017 – Westpac paid estimated \$2,670,479 in compensation it owed to customers for failing to provide general or personal financial advice to customers while charging them ongoing advice fees.<sup>12</sup>

8 June 2017 – Sudhir Sinha, a former Westpac financial planner, has been banned from providing services for 5 Years from 2 June 2017. An ASIC investigation established that he systematically failed to meet his ongoing advice service obligations over a period of six years while he was employed by Westpac. As at 28/2/17, Westpac has remediated \$1,473,914 to clients for Mr Sinha’s conduct.<sup>13</sup>

19 July 2017 – ASIC has banned financial adviser Jason Atkins for three years. ASIC found that Mr Atkins provided advice to clients to establish SMSFs and use

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<sup>8</sup> 17-065MR ASIC accepts enforceable undertakings from Westpac and ANZ to address inadequacies within their wholesale FX businesses, 15 March 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-065mr-asic-accepts-enforceable-undertakings-from-westpac-and-anz-to-address-inadequacies-within-their-wholesale-fx-businesses/>.

<sup>9</sup> Elizabeth Knight and Georgia Wilkins, Senior Westpac executive goes after misconduct, *The Age*, 25 March 2017, <http://www.smh.com.au/business/banking-and-finance/senior-westpac-executive-departs-after-behavioural-misconduct-20170324-gv5shd.html>.

<sup>10</sup> Michael Roddan, Regulator puts life insurance industry on notice of policy checks, *The Australian*, 9 May 2017.

<sup>11</sup> Michael Roddan, Insurance claims hit BT Financial’s profit, *The Australian*, 9 May 2017.

<sup>12</sup> 17-145MR Compensation update: major financial advisory institutions continue refund programs for fees-for-no-service, 19 May 2017.

<sup>13</sup> 17-178MR, ‘ASIC bans former Westpac adviser for five years,’ 8 June 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-178mr-asic-bans-former-westpac-adviser-for-five-years/>.

limited recourse borrowing arrangements to fund the purchase of the properties by their super funds in breach of the FoFA best interests obligation. Mr Atkins was a former corporate authorised representative of Magnitude Group, which is a subsidiary of Westpac from May to December 2015.<sup>14</sup>

22 August 2017 – ABC’s *Four Corners* says that it has obtained Westpac’s most recent performance expectations that required lending staff to complete between 6 and 9 home loan requests per week. If targets were exceeded staff could earn bonuses of \$6000 per quarter. Current and former bank staff said that if they did not meet the lending targets, they were “performance managed out of the bank”, according to the report.<sup>15</sup>

## ANZ

15 March 2017 – ASIC accepts enforceable undertaking from ANZ to address “inadequacies” in wholesale FX business. ASIC is concerned that between 1 January 2008 and 30 June 2013, ANZ failed to ensure that its systems and controls were adequate to address the risks relating to instances of inappropriate conduct identified by ASIC. ANZ employees on a number of occasions, disclosed confidential details of pending orders to third parties and identified customers using code names.<sup>16</sup>

19 May 2017 – ANZ has paid \$43,818,571 of an estimated total of \$52,431,572 in compensation for failing to provide general or personal financial advice to customers while charging them ongoing advice fees. The largest component of ANZ’s compensation program related to fees customers were charged for the ‘Prime Access’ service where ANZ could not find evidence of a statement of advice or record of advice for each annual review period.<sup>17</sup>

16 June 2017 – Robert Hutchinson, an authorised representative of RI Advice Group Pty Ltd (a subsidiary of OnePath and ANZ) from 14/5/2007-30/11/2012 has been permanently banned from providing financial services.

10 August 2017 – ANZ will pay an additional \$10.5m in compensation to 160,000 superannuation customers for breaches within the OnePath group between 2013 and 2016 mainly in relation to incorrect processing of superannuation contributions and failing to deal with lost inactive member balances correctly.<sup>18</sup>

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<sup>14</sup> 17-241MR ASIC bans former Magnitude Group adviser, 19 July 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-241mr-asic-bans-former-magnitude-group-adviser/>.

<sup>15</sup> Jonathan Shapiro, Bank staff ‘managed out’ if targets missed, *Australian Financial Review*, 22 August 2017.

<sup>16</sup> 17-065MR ASIC accepts enforceable undertakings from Westpac and ANZ to address inadequacies within their wholesale FX businesses, 15 March 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-065mr-asic-accepts-enforceable-undertakings-from-westpac-and-anz-to-address-inadequacies-within-their-wholesale-fx-businesses/>.

<sup>17</sup> 17-145MR Compensation update: major financial advisory institutions continue refund programs for fees-for-no-service, 19 May 2017.

<sup>18</sup> 17-266MR ANZ pays further \$10.5 million to consumers for OnePath breach, 10 August 2017.

14 August 2017 – ASIC has banned financial adviser Travis Bryon McLean from providing financial services for 5 years. ASIC banned Mr McLean after reviewing his files relating to the period that he was an authorised representative of Millennium3 Financial Services Pty Ltd (2006 to 2014).<sup>19</sup>

23 August 2017 – ASIC has permanently banned former financial adviser Neil Bruce Trower from providing any financial services. Mr Trower is a former representative of Millennium3 Financial Services Pty Ltd, which is ultimately owned by ANZ.<sup>20</sup>

### *National Australia Bank*

3 March 2017 – NAB paid \$25m overall in compensation to victims of dodgy financial advice. \$7m of that went to 102 customers of one former NAB financial planner, Graeme Cowper. Mr Cowper was allowed to resign, paid \$185,000 and given a letter of recommendation.<sup>21</sup>

2 May 2017 – ASIC suing NAB (and Westpac and ANZ) in the Federal Court over alleged manipulation of the bank bill swap rate.<sup>22</sup>

19 May 2017 – NAB has paid (or offered) \$4,641,539 of (an estimated) \$5,027,383 in compensation for failing to provide general or personal financial advice to customers while charging them ongoing advice fees. NULIS Nominees (NAB's superannuation trustee) has not paid any of the (estimated) \$34,720,614 that it owes to date.<sup>23</sup>

2 June 2017 – Ex-NAB financial planner Patrick Mitchell permanently banned from the financial services industry after pleading guilty to misappropriating \$2.3 million from a client.

He was sentenced to 8 years jail in March after being found guilty of 25 counts of stealing in the course of his role as a financial planner at Garvan Financial Planning, an MLC subsidiary.<sup>24</sup>

17 July 2017 – Clydesdale Bank (UK) is facing legal action alleging that thousands of small business customers were fraudulently mis-sold a loan product that destroyed their businesses and torched potentially billions of pounds. Clydesdale was wholly owned by NAB between 2002 and 2012. These loans were investigated

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<sup>19</sup> 17-270MR ASIC bans Queensland financial adviser, 14 August 2017.

<sup>20</sup> 17-277MR ASIC permanently bans former Queensland financial adviser, 23 August 2017.

<sup>21</sup> Adele Ferguson, 'I'm just a broken-down old shearer' – CBA faces grilling over CommInsure, *Canberra Times*, 4 March 2017, <http://www.canberratimes.com.au/business/banking-and-finance/im-just-a-brokendown-old-shearer--cba-faces-grilling-over-comminsure-20170303-guq7qm.html>.

<sup>22</sup> Richard Gluyas, A lose-lose situation, *The Australian*, 2 May 2017.

<sup>23</sup> 17-145MR Compensation update: major financial advisory institutions continue refund programs for fees-for-no-service, 19 May 2017.

<sup>24</sup> Georgia Wilkins, Ex-NAB planner banned after stealing \$2.3m, *Canberra Times*, 2 June 2017.

by the UK regulator in 2014, which found that NAB and Clydesdale Bank had behaved badly.<sup>25</sup>

4 August 2017 – Former NAB financial adviser Shane Thompson has been charged with two counts of forging financial planning documents during the course of his employment at NAB. He was banned in 2016 for 7 years from providing financial services and credit activities.<sup>26</sup>

### **Executive accountability and the BEAR**

Over the course of the Bank Inquiry it has been made clear that there needs to be an executive accountability scheme which adequately penalises those executives that engage serious misconduct.

This is evidenced by issues such as the Bank Bill Swap Rate rigging allegations levelled against ANZ, NAB and Westpac; the falsification of loan documents by the banks and the wrongful advice provided by bank financial planners to unwitting consumers.

Labor members of the Committee hold serious concerns about the efficacy of the government's proposed Banking Executive Accountability Regime which falls short of the expectations of the community.

Labor acknowledges evidence given to the Parliamentary Joint Committee on Corporations and Financial Services which, similarly to the House Economics Committee, has ASIC oversight powers. In its last hearing with this committee, ASIC acknowledged the obvious shortcomings of the government's proposed BEAR scheme which only seeks to impose penalties on executives in instances of prudential misconduct.

“...we have seen instances of egregious conduct which have been damaging to consumers and where one of the causal factors may have been management failures which don't tip the balance to become a prudential systemic issue and so we would like to have more power to intervene in relation to those.”

When asked the vast majority of consumer conduct related matters are below the threshold in the BEAR, ASIC stated:

“The vast majority of consumer conduct matters are definitely below that threshold... As to whether in the vast majority of consumer problems there's significant failures of management that might justify banning, it's probably still the case that there are a significant number that fall below the prudential threshold.”

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<sup>25</sup> Adele Ferguson, NAB faces grief from UK lawsuit, *Australian Financial Review*, 17 July 2017.

<sup>26</sup> 17-260MR Former NAB adviser charged with forging documents, 4 August 2017, <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-260mr-former-nab-adviser-charged-with-forging-documents/>.

## **ATM Fees**

The Labor members of the committee noted that the decisions by each of the four major banks to cut foreign ATM fees were made on a weekend, Sunday 24 September 2017, in very quick succession.

KEOGH: On the day the Commonwealth announced it was removing that fee for non-customers of the bank to use an ATM they did that in the morning. By 1.53 pm ANZ announced it was cutting that fee. By 2.31 pm you [Westpac] announced you were making the same cut, and NAB cut at 3.12 pm.

We acknowledge that, while this was a positive outcome for consumers, all the major banks had done the required background research and modelling to determine that the removal of the bank fee was feasible but that ANZ, Westpac and NAB decided not to implement this change until another bank did.

When asked why the bank had not considered the removal of the fee sooner, Brian Hartzler - Westpac said:

“Frankly, because we think it's a legitimate fee. We know that customers are happy it's gone but, in a broader context, there's been a move for many years to try and remove cross-subsidies in the banking system.”

Similarly, ANZ acknowledged that it was motivated primarily by competitive pressure rather than consumer demand.

Shayne Elliot, ANZ CEO - “We were prepared; we had looked at all the scenarios; we had all the information available. So making the decision wasn't that difficult. We were confronted with a competitor who had done something, so we were able to act really quickly.”

## **Bankwest workforce in WA**

At the end of September the CBA's legislative safeguard, which sought to ensure that Bankwest jobs stayed in WA, lapsed leaving the 3500 Perth-based staff unsure of their future.

When asked whether the CBA had any intention of reducing the number of management branch or staff at Bankwest in Western Australia, the CBA said:

Ian Narev, CBA CEO - “Bankwest will do what every business does – focus on doing the right thing for customers and be efficient. But we don't have wholesale plans to redeploy any of the staff from Bankwest to [Australian Technology Park, Sydney] or other Commonwealth Bank areas.”

## **The Government Members' Recommendations**

The Government members report offers four recommendations. These recommendations yet again miss the mark. They show that this committee's investigations into the banks were designed to distract from the need for a Royal

Commission rather than provide any real answers to the problems facing Australia's banking system.

The first recommendation relates to merchants gaining the ability to send tap-and-go payments from dual-network debit cards through the channel of the customer's choice by 1 April 2018. The recommendation suggests that the Payments System Board should take regulatory action to require this to occur. The Labor members of the committee support this recommendation.

Recommendation 2 asks that the Australian Competition and Consumer Commission analyse the repricing of interest-only mortgages that occurred in June 2017. While recommendation 3 asks that the Government introduce legislation to mandate participation in Comprehensive Credit Reporting as soon as practicable. Recommendation 4 recommends that the Attorney-General review the threshold for transaction reporting because of the AUSTRAC CBA case.

The Labor members of the committee do not oppose these recommendations. The recommendations taken in isolation make sense however when viewed with the overall picture of scandals, rorts and maladministration occurring in the industry make no sense. These recommendations, much like the use of this committee to stave off a Royal Commission, are patently inadequate.

### **Labor Members Recommendation**

In the past two reports the Labor members have made only one recommendation. That the Government take responsibility, stop defending the banks and establish the systematic, thorough and transparent investigation that only a Royal Commission can provide.

Unlike most of the Government member's recommendations, and as with Labor's recommendation for increased accountability for banking executives, this recommendation has been adopted by the Government. Similarly, it has only been a half-hearted fulfilment of what is required.

It was clear from the Prime Minister's and Treasurer's announcement that a royal commission would be held into banking that it was done at the behest of the big four banks, that the terms of reference were drafted in concert with them and that the effectiveness of the royal commission has been neutered by the limited timeframe provided to the Commission to complete its necessary and extensive work. This is in many ways only the royal commission we called for in name only.

On this basis, Labor Members of the House of Representatives Standing Committee on Economics participating in the Review of the Four Major Bank **note** that:

- The Government has now adopted the consistent and singular recommendation of Labor Members that the Government establish a Royal Commission into the big four banks, but has failed to take up the opportunity to conduct a thorough investigation by limiting the timeframe, and with inadequate terms of reference.

- The Government has not adopted many of recommendations made by Government Members participating in the Review of Four Major Banks, demonstrating the futility of the farcical exercise that has taken place over the last 18 months and has only resulted in an ad hoc and inadequate response to the malfeasance of the four major banks.

Labor Members of the House of Representatives Standing Committee on Economics participating in the Review of the Four Major Bank recommend that:

1. The Government appoint more commissioners to deal with the Royal Commissions workload.
2. The Government extend the terms of reference for the Royal Commission to include matters that Labor has been calling for including;
  - Culture of the banks and executive remuneration.
  - Consultation with banking victims' groups .
  - Protections for whistle-blowers.
  - Regulation or oversight and the overall regulatory architecture.
  - Conduct of liquidators where this relates to the financial services sector.
  - Remove the draft term 'And, the Commission may choose not to inquire into certain matters otherwise within the scope of this Inquiry, but any such decision will be the Commission's, alone.'

**Hon Matt Thistlethwaite MP**  
**Deputy Chair**

**Mr Matt Keogh MP**

**Ms Madeleine King MP**

