

## Submission to the Senate Economics Committee

### Inquiry into Competition within the Australian banking sector

The following submission is prepared by D. Lindsay Johnston, sole director of Agtion Consultancy Services Pty Ltd (“Agtion”), 14/10, 229 Macquarie Street, Sydney, NSW.

#### **OVERVIEW**

Agtion is a specialist consultancy practitioner involved in advising and assisting incorporated small businesses and individuals involved in disputes with financial institutions and insurance companies. The company has provided this service since 1999 and as a generalisation the company specialises in the agribusiness sector and its related downstream processing and distribution industries.

Agtion became involved in this specialist consultancy discipline as a result of it, and its associated companies being forced into so called “voluntary receivership” by a major bank in 1996. The companies and I commenced litigation after the companies were released from receivership in 1999. The legal battle against the bank continued until it was resolved in 2007. I am experienced in litigation<sup>(1)</sup> mainly due my need to appear and represent myself in Court, and from my practical experience obtained from working behind the scenes with lawyers in multiple client cases against banks. I offer the inquiry the benefit of my practical observations.

On 26 May 1997, a report prepared by the House of Representatives Standing Committee on Industry, Science and Technology was published. The report was titled “***Finding a Balance: Toward Fair Trading in Australia – Small Business Finance***”<sup>(2)</sup> (“the Fair Trading Report”). I made submissions to that Standing Committee inquiry that were derived from my experiences in the Courts and I articulated the difficulties that individuals, small business proprietors and company directors suffer when in that combative environment against the superior power and resources of a major bank at all levels of litigation or attempted alternate dispute resolution. My submission and many others to that inquiry made it succinctly clear to the Committee that mortgagors, and directors, shareholders and employees of mortgagors and guarantors of indebtedness to banks, faced the unenviable and at times impossible task of competing against the banks’ depth and breadth of access to legal resources and their unlimited access to finance.

Regretfully the Government of the day failed to adopt many of the recommendations published in the Fair Trading Report. See - <http://www.aph.gov.au/house/committee/isr/Fairtrad/report/CHAP5.PDF>

1. Court Judgments: [\[2005\] NSWCA 383](#); [\[2006\] NSWCA 224](#); [\[2004\] NSWSC 363](#); [\[2005\] NSWSC 1360](#); [\[2006\] NSWSC 1278](#).
2. House of Representatives Standing Committee on Industry, Science and Technology report.

## **SPECIFIC ISSUES**

The terms of reference issued by the Inquiry that I have adopted for the purposes of this submission, will be as follows:

1. Any policies, practices and strategies that may enhance competition in banking, including legislative change;
2. the role and impact of past inquiries into the banking sector in promoting reform; and
3. any other related matter.

This submission will concentrate principally and firstly on the incapacity of individuals and small businesses to be competitive during dispute resolution processes and to outline some of the reasons for the banks' significant competitive advantage. I will also comment on the consequential damage that the national interest suffers, the potential and real damage to natural ecosystems and the environment and to the health of the Australian people, all caused by direct, indirect and even perhaps unintended consequences of unfair and uncompetitive practices arising from decisions made by financial institutions and the insolvency practitioners that the banks have appointed. I will recommend to the Inquiry the reforms that I believe are necessary to enable the weaker entity to be competitive at the formation of contract, during a disagreement in respect to terms of contract and should the disagreement be unable to be resolved by an alternative dispute resolution process, to place that weaker party in a position to rightfully and fairly put their case before the Courts on a competitive basis;

The second issue that I will offer my opinion on will be, the impacts of past inquiries that have been established in this Parliament and at the State level and the influences they have had on the banking sector;

The third issue is the usefulness of co-operatives, non-institutional lending and non-profit making financial institutions and their role in promoting competitiveness in the financial services sector; and

Fourthly the impact that the lack of competitiveness in respect to banking practices has on innovation and the commercial development of progressive and sustainable industrial practices.

## **POLICIES, PRACTICES AND STRATEGIES TO ENHANCE COMPETITION**

### **Existing banking policies and practices promote anti-competitive and unfair conduct**

Financial services are ubiquitous and available in many forms across the economy, but in nearly every instance whether an individual consumer of those services likes it or not, the consumer will invariably and in most cases unwittingly use the services of one of the major banking corporations at some time and will either directly or indirectly pay for that service. The market dominance, infiltration and influence over political and economic policy settings by the “big four banks” or the four pillars, as they have been described, has placed them in a position that they are each too big to be allowed to fail and although they are seen to be operating as independent corporations, the members of this oligopoly operate under a public-private-partnership that guarantees their prosperity and dominance. One only has to refer to the haste when the guarantee was announced during the turmoil of the GFC.

A major difficulty that all consumers face is the lack of control and influence with regard to their respective individual contractual outcome, and in the vast majority of cases the consumer does not understand the terms of their contract and simply act on “blind trust” that the final outcome will be favourable. Needless to say there are many instances where the consumer finds themselves in disagreement with their financial institution and it is only then that they realise that the banks’ interpretation of the contract was vastly more complex and onerous than how the consumer first understood. I regard the general lack of consumer education and knowledge as a major driver of anti-competitive conduct within the financial services sector.

Understandably the second tier banks, foreign banks and their subsidiaries, credit and charge card providers, and the credit unions and building societies (“the alternative financial services providers”) all conduct their business relationships with consumers along lines where they at least try to offer services that distinguish them as being different from the big four banks. However, the reality is that unless each of those competitors is able to conduct their business on a “level playing field”, as competitors to the big banks, they can only deliver a more personalised and sometimes marginally more cost effective service. The problem the competitors face is that they usually need to or are forced to utilise the services of the major banks and the costs associated with those transactions are either absorbed into their overhead costs or directly passed on to the individual consumer. Either way the consumer is paying a cost for a service over which they have no control.

It may be argued that the alternative financial services providers are more personal and compassionate in the way they deal with consumers. Although that appears to be true in most instances, and that is a good reason for consumers to deal with those institutions, the pricing that the alternatives can offer is still heavily influenced by the pricing and management conduct of the “big four”.

Private lending is a small financial services instrument that is sometimes available to consumers. In order to make private lending safe and truly cost competitive there will need to be reform of the institutional mechanisms that regulate securities. There appears however, to be scope for growth for this type of service and the other alternatives if major reform can be implemented.

It is my experience that disputes consumers have with financial institutions arise from:

1. A disagreement over pricing and/or whether the pricing or alteration of the pricing is compliant with a relevant term or terms of the contract; and/or
2. the financial institution acting unilaterally and unreasonably without any objective assessment of the consumers’ capacity to service the loan and for it to reduce a credit limit or vary the terms of a loan without either prior written notification or discussion with the consumer. Too often the consumer is told that is was, a “head office decision” or “change of policy”, a done deal and the notes for the decision are confidentially hidden from the consumer in the file. There is also the abuse of process, of a reliance on legal professional privilege to deny consumers access to documents during legal proceedings; and/or
3. confusion over or misuse of a term of the contract (express or implied); and/or
4. personality clashes between bank officers and consumers. Sometimes these disputes escalate to the extent that the dominate party, the bank officer, engages in “bullying tactics” to bring the perceived “delinquent” customer into line.

In many of the cases that I have studied since the mid 1990s, the above outlined course of conduct seems to be common in most disputes. No doubt the changes that occur throughout the economic cycle have some influence on the way banks assess and perceive business performance, but it is inconceivable that the consistency of anti-competitive and unfair conduct by the banks does give rise to the suspicion that customers with good asset bases are being targeted for the purpose of profit exploitation. Essentially four practices seemingly occur as follows:

1. The borrower is offered a deal, sometimes with minimal security and on favourable terms to entice them to borrow more and invest in expansion or to refinance. This may be done at the instigation of either the bank or the consumer; and
2. At a time suitable to the bank, the suggestion is made that the bank requires further security or that its security needs to be reviewed and the consumer is threatened with the withdrawal of facilities if their co-operation is not forthcoming; and
3. After the consumer has provided security to the bank's satisfaction the bank will revise its pricing and demand a margin increase; and
4. Should the consumer resist the attempt by the bank to increase its margin, the bank will threaten to, or carry out enforcement of its securities.

Needless to say any unfair conduct of a bank has a very destabilising influence on the consumer and often the business is placed under external administration with devastating consequences. At this point the bank has created what I term "self fulfilling prophecies". The bank purposefully creates an issue that it escalates into a dispute and it then makes all the determinations to ensure that the borrower will not be able to refinance unless all of the bank's demands are met. In most instances refinancing or any form of exit is impossible in those circumstances. Consumers in general and small business consumers in particular, either out of ignorance or by the influence and at times the downright use of "bullying" tactics by banks, demand that the consumer will not utilise more than one financial services provider at any given time. I have seen instances of small business operators being threatened by bank managers and told to close an alternative account or suffer the consequence of the primary bank withdrawing its support and enforcing its securities. This type of anti-competitive behaviour by banks has the effect of making small business operators captive to the bank in respect to decision making and forces them to become price takers in respect to the bank's services and subsequently renders them unable to be entrepreneurial, as business should be. It follows that this anti-competitive conduct that restricts innovation must have a negative impact on national productivity.

Worse still, at times banks target whole industries or segments of industries and declare them off limits. Although I concede that a bank has a right, if not a prudential duty to ensure that it protects its depositors' funds, it cannot be allowed to use that requirement as an excuse to embark on unilateral enforcement action, to the detriment of the borrower. There exists an unfair imbalance.

Sadly in the agribusiness sector, if a consumer is in the wrong place at the wrong time the bank is likely to make assessments and then force its decisions onto the consumer. The problem is the way that the bank makes those assessments. All too often a decision will be made from data that is not specific to the consumer's business model and the banks disregard any objective information that may be provided by the consumer. Banks rely heavily on their own "panel advisors" who in turn, due to the banks' financial power, adopt models, based less on objectivity and the likely business performance, but the panel advisors act out of fear that they will be sued should anything go wrong. This is further evidence of the misuse of financial power and abuse of process and results in anti-competitive influences.

In a specific case, a progressive farmer was criticised by a bank for adopting soil carbon sequestration practices. The bank labeled the practice "junk science" and unviable, supposedly based on a report by an "expert" from the bank panel who favoured more conventional and exploitative farming practices. The bank did not believe that the new science and technology would be accepted as mainstream in the future. That farmer might have been ahead of his time but his career in agriculture was cut short by a misinformed decision made by the bank. The question is, can Australia afford to lose its best young and innovative minds from agribusiness and continue to allow banks to be unfair and anti-competitive in the manner that they deal with innovation?

Property valuation terms of reference for mortgage lending purposes are significantly influenced by the banks. Up to five different methods can be applied for valuation of the same property, with each valuation dependent on the terms of reference provided to the valuer. Values of mortgagors' properties for mortgage lending purposes are invariably lowered to the bottom of the possible range and the terms of reference that are adopted deviate from the principle set out in the legal authority *Spencer –v- Commonwealth*<sup>(3)</sup>. It appears that valuers acting conservatively under the influence of their bank appointers adopt a valuation based on a distressed sale outcome of the property being potentially sold as "mortgagee in possession" or by a bank appointed receiver.

3. [Spencer –v- Commonwealth \[190\] HCA 82](#)

Banks invariably use their own in-house valuers or a valuer appointed from their panel who, for the reasons enunciated above and acting on the banks instructions, under value mortgagors' properties. In this case the banks' anti-competitive behaviour is the misuse of restrictive trade mechanisms which deliver property valuation outcomes that protect the banks' strategic plans should there be a change in economic conditions generally, or should a consumer threaten to or actually commence legal action. It is just a further example of the misuse of market and financial power to act unfairly and in an anti-competitive manner to adversely influence, in this specific example, the property owner's right of equity of redemption.

I will conclude my summary of the problematic influences imposed by banks on the regional economies of the various districts that constitute rural and regional Australia by stating the fact that many Governments, local, state and federal have for many years expended significant allocations of taxpayer money to promote rural and regional development and targeted decentralisation schemes. Unfortunately as these commendable programmes were being rolled out, the banks, practicing their unfair and uncompetitive business practices, were undoing a lot of the good public sector work and continue to do so.

In my case, one of the businesses operated by the family company group was a stockfeed mill located in a regional city. The business had employed up to 22 people and was servicing a market from Southern Victoria to the New England district of New South Wales. As manager of the business I had chosen to target ruminant livestock producers as the main market, and in particular "drought feed" sales. The bank appointed receiver, immediately after his appointment, shut down the business, sacked all the employees and eventually sold the plant and equipment and other components of the operation on a "to be dismantled and removed at the purchasers' cost" basis. The business had taken twenty years to build and was still growing but was dismantled and sold for a fraction of its operational value. Needless to say, not only did that industry lose a competitor which had been successful and profitable for twenty years, the market place also lost a valuable supplier during the long succession of drought years that followed and the region where the stockfeed mill was based lost the benefit of that employment. The loss was all caused by a misconceived and unilateral decision by the bank acting without the benefit of a Court order or any other judicial determination.

In another case study, an enterprising dairy farming family wanting to add value to their produce, made application for approval to establish a processing factory on their farm. All approvals were granted and construction began.

The farm was unencumbered and the family applied for a loan from a subsidiary bank of one of the majors. Only a portion of the farm was mortgaged and the loan was freely granted. The business grew and eventually employed about 12 people in an isolated rural community and the manufactured product from the business was marketed across three states. The business had also received assistance from the State Government and the local council and it had been awarded for its excellence. I investigated the business and considered the operation to be successful in every respect. Despite the success of the business, the bank served a notice onto the business owners demanding repayment of the loan only a few months after it had made further advances against the original security. The business owners had refused the bank's demand for further security and they invited me to investigate their dispute. In this case I discovered that the bank's security documentation was defective and unenforceable and without any justification whatsoever the bank then used its financial power to "bully" the customer, refusing to negotiate or discuss the matter unless it was done on a lawyer to lawyer basis. Needless to say, the matter had developed into a very bitter dispute by that stage and a great deal of personal animosity existed between the local bank manager and the asset manager for the bank, and the business owners. The bank used that personal animosity issue as its excuse to refuse to negotiate with the customer. The matter ended up in the Courts with the business owners conducting their own defence and the bank succeeded in obtaining judgment on the debt, but failed in its bid for a possession order. The business owners, who had done nothing wrong, suffered health problems, the business suffered financially due to the unwarranted distraction and for family and health reasons the owners discontinued their battle in the Courts. Eventually, after the bank was subjected to a barrage of adverse publicity surrounding its misconduct, the family was able to directly negotiate with the bank and obtain an acceptable settlement. By the time settlement was achieved however, the business had closed, the farm had been sold and the employees in a small rural community had all lost their jobs. I regard this case study as a classic example that demonstrates how a bank, by abusing its financial power as a litigant, can corrupt and abuse court processes and waste the courts time at the expense of the taxpayer. Similar accounts have been told by numerous other former business owners and managers located all over Australia<sup>(4)</sup>.

4. ABC Four Corners – Banks Behaving Badly – 10 March 1997



In respect to existing banking policies and practices, the macro reform issue is more difficult to analyse and dissect. In order to deliver tangible benefits to consumers one needs to understand that modern banking includes the complexity of balancing multiple trading activities, some of which are speculative, with traditional banking practices. The banks are not just in the business of banking any longer, but now into wealth management, currency trading, share broking and insurance of all kinds. With this in mind together with the fact that many directors of public companies hold multiple appointments, and that these positions as directors and CEOs are interchangeable across corporate boundaries, has made anything to do with financial services in Australia, if not the World, so complex that no one dare touch it, or suffer the consequences. Recently a CEO of a bank, in response to allegations made by consumer groups in respect to profiteering or price gouging, said that he was running a business for profit, that the bank was not a welfare provider and the public was reminded that their superannuation funds have a significant stake the bank's shareholding. These are my words, but I believe those words accurately summarise the sentiment that the bank CEO made in his statements recorded in the public domain. Recently another CEO of a bank<sup>(5)</sup> publically criticised a proposal by a member of the House of Representatives to regulate fees, to the effect that the members' proposal was a "*slippery slope*" and that it would hurt customers' access to ATMs, particularly in marginal areas. I assume that he meant the outer suburban, regional and rural areas. The same CEO was also reported to say "*It's very easy to give away someone else's property. This sort of stuff we've seen in eastern [bloc] countries prior to the fall of the Iron Curtain, when people's property rights were abrogated. People should start to think, where does this lead next?*" Maybe we do have reason to fear something, perhaps it is the ever increasing complexity of international and trans-national banking with the participants' reliance on CDOs and the like that has corrupted the current banking model in such a way that it has the potential to impoverish entire nations if the avarice of banks and their senior executives and officers is not controlled, or at least properly regulated. The legal authorities that cite judgments determined in the courts in respect to that CEO's bank, suggest that it has had a long history of offending the property rights of its customers. If that CEO meant that the bank should be allowed to operate from a privileged position and not be subjected to scrutiny, then truly it is likely that the Australian big banks are out of control and it must be that they do adhere to the belief, that they are a law unto themselves and that at least their senior management believe they should be immune from the moral, ethical and legal standards that regulate our society.

5. Report – Sydney Morning Herald – CBA boss slams fees criticism – Clancy Yeates - November 16, 2010

I conclude this section almost where I began. Through Australian citizens' various superannuation funds, each of us, almost without exception, find ourselves indirectly and without our consent investing in or being forced to deal with major banks in some way. The "spin doctors" who drive the propaganda disseminated from the major banks are quick to remind critics that if there is any potential tampering of banks' conduct, that there will be negative consequential influences that will flow into the households of retirees and those looking to their superannuation to fund their retirement. The spin doctors never fail to point out that there will be a political downside for any politician who dares take on the banks.

Surely the people deserve a better system of banking and insolvency regulation that will force a bank and/or its receiver to act firstly in the national interest. The law must force them to open up their conduct to public scrutiny and then face the competitive pressures that other businesses face to produce the best possible outcome in the national interest and in particular, if applicable, to assist the disadvantaged districts of rural and regional Australia.

#### **Proposals to promote competitive and fair banking conduct**

Neither individual nor think tank comprising experts will have all the answers. Only a Royal Commission with its wide powers of inquiry can provide the best possible recommendations.

I offer to the Inquiry my suggestions for reform. I only ask that my opinions be placed on the public record for potential debate and consideration by the community, as I believe that meaningful reform can only be achieved after proper debate has taken place and each stakeholder has been granted their opportunity to put forward their ideas.

The global financial crisis and the Government guarantee that followed has demonstrated beyond doubt that banking is a public-private-partnership. In such circumstances it is only proper that the "public" part in that partnership demand a social contract with the profit driven banks. The social contract should provide at a minimum, access to "fee free" credit accounts for wage earners and for people on regular low incomes, portability of credit accounts, exit fee free discharges from loans and cost free access to ADR for individuals and small businesses and a mediation process regulated by national (or at least complimentary) legislation modeled on the New South Wales *Farm Debt Mediation Act* (as amended)<sup>(6)</sup>.

6. [Farm Debt Mediation Act \(1994\)](#)

In a circumstance where a mediation fails, or the bank declares for any reason thereafter that it intends to pursue enforcement action, the Court should at first instance determine at the bank's cost, whether the matter was mediated in good faith and whether each party exercised the right, without restriction to competitively and fairly participate at the mediation.

If the Court determines that a bank failed to mediate in good faith and that it interfered in any way with its weaker opponent's right to mediate on equal terms, the dispute should be referred back to mediation. The onus should be on the bank to prove to the Court that it did mediate or attempt to mediate in good faith and that it acted fairly at all material times during the process of pre-mediation and mediation.

In summary, I recommend the Inquiry investigate the following additional suggestions:

- The protection of the *National Consumer Credit Protection Act* (2009) should be extended to include all small businesses;
- All appointments of insolvency practitioners to administrations and personal bankruptcies will be by order of the Court. The onus of proof that insolvency exists and that external administration is necessary will rest with the applicant;
- All parties with an interest in an insolvency application, such as trade unions and individual employees, superannuation funds, shareholders and directors, unsecured creditors and secured creditors should each receive notice of any impending application and have the right to appear before the Court. The Court should have wide discretionary powers (including, but not limited to all interested parties participation in the mediation in compliance with the terms of a social contract) and make its determinations with regard to the competing interests of the parties and to the relevance, if any of a social contract;
- Shareholders of the banks should determine without exception, the remuneration packages and "golden handshakes" provided to CEOs and all senior executives;
- APRA should be granted greater regulatory powers over all banks that do business in Australia to ensure that a parent and/or any subsidiary company is not participating in business activities that may risk either depositors funds or any Government guarantee;
- Directors of banks must not hold any other directorships in public companies or large private companies whilst ever their bank directorship is current;

- Insolvency appointments should be regulated by an independent body to ensure that there is no favoritism by practitioners in respect to their appointers and other vested interests and to eliminate fee gouging of affluent administrations;
- Lawyers acting in external administrations to be appointed by an independent process;
- National or complementary property law setting out the same rights and responsibilities in all jurisdictions of mortgagors and mortgagees;
- A national legal mechanism to make mortgages completely portable between competing mortgagees with the only cost being an administration fee for registration of the alternative mortgagee's interest on the folio identifier;
- Encourage superannuation funds and wealthy entities and individuals to engage in first registered mortgage lending on the basis of the portable access created by the reform process;
- Access available to credit unions, building societies and any other competitor who can comply with the prudential requirements to operate a financial institution to have access to cheque dealing, foreign exchange dealing and clearing facilities generally that are independent and free from the big four banks. This may require direct government financial assistance ;
- The elimination of all impediments to directors directly representing their company's legal interests in all judicial jurisdictions; and
- Donations to political parties and to politicians' campaign funds by banks should be banned.

I hold a strong conviction that only a Royal Commission into banking practices, procedures and policy, examining as much as possible at the macro and micro levels in Australia and internationally, can determine the best recommendations. If the Senate Inquiry is minded to make a recommendation that a Royal Commission should be appointed, then I am of the view that it should also examine in parallel the conduct of insolvency practitioners (at all levels of external administration and personal insolvency) and the potential to improve access to, and to reduce the cost and improve the efficiency of legal services and make similar recommendations to improve the practices and procedures of the various court jurisdictions.

The terms of reference for a Royal Commission should be recommended by a body specifically established specifically for that purpose with its membership drawn from consumer groups and the Law Reform Commissions relevant to the various jurisdictions.

## **THE ROLE AND IMPACT OF PAST INQUIRIES INTO THE BANKING SECTOR PROMOTING REFORM**

In 1994, the New South Wales Parliament passed into law the *Farm Debt Mediation Act* (1994). Ineffective, as the legislation first was in respect to its intended purpose to curtail bank excesses, and that it was possibly counterproductive in its early years, this at least was an attempt by the legislature in that jurisdiction to recognise that there was a serious and dangerous competitive imbalance between the banks and the farmer/consumer of the banks' services. The Act, after numerous amendments to it, now provides some protection to the business of farming and functions within the expectations of its intended purpose.

At the time the *Farm Debt Mediation Act* became law, banks had faced years of vitriolic criticism and allegations of misconduct ranging from fraud and perjury during court cases, and to the likely possibility that at least one bank, Westpac, was insolvent. I do not propose to comment on the veracity of the allegations, but wish to highlight the fact that serious allegations had been made and to explore some of the responses that came from the legislatures.

At the state level not much appears to have happened other than the passing of *Farm Debt Mediation Act*, however some members of the Parliament continued to actively expose elements of bank misconduct and allegations of unfair and unreasonable business practices. I personally made submissions to some of those parliamentarians who, although being empathetic could do no more than keep the issues alive in Hansard. I believe that most state governments at that time were more interested in disposing of their state banks and each state government had a vested financial interest with potential legal consequences arising from state bank conduct that made it easier to let the market sort itself out. The 1990s, similarly to the past couple of years saw a period of considerable consolidation with the acquisition of smaller and less competitive banks by the major four. Significantly the public spotlight was and still is focused on allegations that bank misconduct is a serious issue. Prima facie this suggests that bank pricing and business practices are not yet regulated to a standard that complies with public expectations.

The Commonwealth Government however, was keen to be seen to be inquiring into ways to avoid the near catastrophe of the aftermath of the recession of the early 1990s that was likely to have been caused by the excesses of the banks and their reckless lending in the 1980s.

Enter the Financial System Inquiry (“the Wallis Inquiry”) and the House of Representatives - Fair Trading Inquiry. At least the Wallis Inquiry appears to have achieved something beneficial in the national interest. It is reported that the Government of the day overwhelmingly adopted his report and established APRA. In his speech titled, “APRA: Some Reflections on Where We Have Been and Where We are Heading”<sup>(7)</sup> Jeffrey Carmichael provides a succinct insider’s account of the processes and the difficulties encountered during the reform process.

It is likely that without APRA and its regulatory framework the Australian economy may not have emerged as unscathed from the GFC. Unfortunately the other reforms recommended by Wallis to regulate business conduct through the establishment of ASIC and to provide the ACCC with increased powers over pricing, appear to have not been successful. The mere fact that ASIC, on the rare occasion that it does prosecute a body or individual involved in financial services or insolvency malpractice, fails to secure a conviction or penalty worthy of mention, suggests that the current law may not be appropriate to deal with the nature of the misconduct, or that the regulator is not able to perform its duty.

Unfortunately apart from the recommendations of Wallis to improve the prudential regulation of banks it is likely that the two inquiries have done nothing but pave the way for a reduction in competition and make the consumer more vulnerable to price gouging by the big four, whilst they each profit from the safety of publically funded guarantees and good prudential regulation.

It appears from my reading of historical accounts that the recommendations of the numerous inquiries and the Royal Commission of 1936, have as a generalisation, not been adopted and passed into legislation to protect the consumer from anti-competitive and unfair conduct by banks.

7. APRA: Some Reflections on Where We Have Been and Where We are Heading. Jeffrey Carmichael – Saturday, 29 August 1998 – [www.apra.gov.au/speeches/98\\_05.cfm](http://www.apra.gov.au/speeches/98_05.cfm)

## RELATED INFLUENCES RESTRAINING REFORM

The threat from the banks to reformist ideals is real and has had consequential influences for the entire community for most of the past century and in the past the banks have caused major damage to individual politicians and to political parties and political idealism. In the book *“The Battle for the Banks”*<sup>(8)</sup> A.L. May, the author, carefully and skillfully demonstrates how, with the use of their massive power of organisation, the trading banks of the day brought down the Chifley Government and embraced the support of groups like the League of Rights and that the aftermath from those times changed the mood of the political landscape perhaps for decades, particularly in respect to any willingness to reform the banks and curtail any excesses. It appears to me in 2010 that the very fear that the banks themselves spread during their campaign in 1949, that being competition and free enterprise would be crushed by the Chifley proposal, has now turned, and it is the banks operating in the comfort of their oligopoly that diminishes opportunities for individual enterprise and lowers the competitiveness of the economy.

The opportunity for reform of the banking system may be better now than at any time in history, I just hope that the expressed willingness of the Labor Party, the Coalition and the Australian Greens that I will call tri-partisan support for reform, will deliver the reform that is not just necessary for the benefit of the Australian people, but that the reform may provide some lead for banking and insolvency reform internationally.

The question is how long does the Australian community have to suffer loss of its productive assets, have its wealth and competitiveness diminished, suffer damage to the nation’s natural and urban environment and allow some individual citizens’ health and lives to be destroyed by banks and insolvency practitioners acting unfairly and overall working against the national interest?

I sincerely hope, for the sake of the Australian people, our economy, our environment and generally in the Australian national interest, that a Royal Commission will be appointed and thereafter reform of financial services and insolvency practices will be forthcoming and that the tri-partisan commitment for change will remain strong in the face of the obvious backlash that will be launched by the powerful banks and their associated self interest group supporters.

8. [The Battle for the Banks – A.L. May – Sydney University Press 1968 \(ISBN 10: 0424057808\)](#)