

Chapter 5

Conclusion

5.1 This inquiry arose in the midst of multiple inquiries into the banking, insurance and financial services sector. The inquiry accepted submissions until March 2017, and the first hearings were held in mid-2017. The evidence from this and other inquiries gave weight to the argument that a royal commission into the sector was urgently needed to investigate systemic issues and illuminate potential breaches of the law, misconduct and behaviour falling below community standards and expectations. The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) was established in December 2017.

5.2 This chapter outlines the circumstances that led to the announcement of the Financial Services Royal Commission, including industry and government positions. It then discusses some of the major themes arising from the Royal Commission's interim report. The chapter concludes with a reflection on the evidence provided to the committee, the committee's view on the work of the Royal Commission and the committee's recommendations.

Lack of industry and government support for a royal commission

5.3 The Financial Services Royal Commission commenced during the course of the committee's inquiry, and its preliminary findings correlate with many of the findings of the committee. As outlined in Chapter 2 and referenced throughout this report, the Financial Services Royal Commission's interim report identified systemic and cultural issues with the banking, superannuation and financial services sector and inadequacies in the regulatory system.

5.4 The issues outlined in this chapter, and those detailed in the Financial Services Royal Commission's interim report, conflict with the position formerly held by the banking industry and the Commonwealth Government.

Major banks

5.5 Prior to the announcement of the Financial Services Royal Commission, representatives from the major banks held the view that a royal commission into the banking industry was unnecessary and the banks were adequately addressing community concerns. The major banks made this case on numerous occasions during the House of Representatives (HoR) Standing Committee on Economics' review of Australia's four major banks. For example, on 8 March 2017, Westpac's Chief Executive Officer (CEO) Mr Brian Hartzler opined that a 'royal commission would be extremely expensive for everybody involved and would not have the benefit of immediate action' and that 'the best way to restore confidence is to address the very

real issues that are raised and take action on them to fix them'.¹ Mr Hartzler added that the industry is:

...operating in a highly regulated environment with tremendously active regulators, as we have seen, and we as an industry have demonstrated and will continue to demonstrate that we are taking these matters very seriously and we are taking action...We have never said there is nothing wrong, and I have nothing to hide.²

5.6 Mr Hartzler further argued that a royal commission would take unnecessary time and resources, and stated that the banks are 'an open book...we have demonstrated through our actions that the legitimate issues that have been raised by the community are being taken seriously and are being addressed'.³

5.7 The Australia and New Zealand Banking Group (ANZ) shared a similar sentiment. When asked whether it could see utility in a royal commission, its CEO Mr Shayne Elliott said that it is 'hard to know exactly what the benefit would be' and that:

...the conduct and the operation of the industry today is better than it was in the past and we're making real progress to restore the community's confidence and trust in our system. We have a very, very important role to play in the economy. I think that should be our primary focus. Yes, we should fix all these things. I personally believe that a royal commission would be distracting.⁴

5.8 In March 2017, the National Australia Bank (NAB) told the HoR Standing Committee on Economics that it did 'not believe a royal commission is necessary because the industry is well governed, well regulated, and is actually addressing the issues that need to be addressed'.⁵ Mr Ian Narev, the former CEO of the Commonwealth Bank of Australia (CBA), stated:

I think the message that the convening of a royal commission would send about policymakers over the last decade, regulators over the last decade and

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- 1 Mr Brian Hartzler, Chief Executive Officer (CEO) and Managing Director, Westpac Group, House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 8 March 2017, p. 14.
 - 2 Mr Brian Hartzler, Chief Executive Officer (CEO) and Managing Director, Westpac Group, House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 8 March 2017, p. 14.
 - 3 Mr Brian Hartzler, CEO and Managing Director, Westpac Group, House of Representatives Standing Committee on Economics, Review of the four major banks (third report), *Committee Hansard*, 11 October 2017, p. 28.
 - 4 Mr Shayne Elliott, CEO, Australia and New Zealand Banking Group (ANZ), House of Representatives Standing Committee on Economics, Review of the four major banks (third report), *Committee Hansard*, 11 October 2017, p. 59.
 - 5 Mr Andrew Thorburn, CEO, National Australia Bank (NAB), House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 3 March 2017, p. 32.

bank management and governments over the last decade would not be positive for the industry, for strength and for the perception of our industry as unquestionably strong.⁶

The Australian Bankers' Association

5.9 The argument that the banking industry is addressing community concerns and is adequately addressing issues through self-regulation was also made by the Australian Bankers' Association (ABA). It submitted that the 'banking industry has heard the concerns of Australians and is committed to taking action so customers receive a better experience'.⁷ Further, the ABA explained that 'trust and confidence in the banking and financial services industry' is achieved through institutional leadership, self-regulation to strengthen accountability, transparency and ethical behaviour, and '[s]trong legal and regulatory obligations which protect consumer interests'.⁸

5.10 The ABA highlighted that Australia's banks 'recognise they haven't always lived up to the community's standards and need to do better' and for this reason, initiatives like the Banking Reform Program strengthen 'cultural and ethical standards and improve the delivery of products and services'.⁹ The Banking Reform Program, established in April 2016, was an initiative developed by the banking sector in partnership with key stakeholders and regulators, and sought to address community concern about governance, conduct and culture of the banking sector.¹⁰

5.11 On 8 March 2017, the HoR Standing Committee on Economics questioned the motivation and timing of the Banking Reform Program with the ABA. The ABA denied that the Banking Reform Program was developed to avoid a royal commission; however, it acknowledged that 'Labor's calls for a royal commission have galvanised the industry' and that the 'threat of a royal commission is...keeping the industry on its toes'.¹¹ The ABA added that it did not think a royal commission to be a good idea, and that it 'is both unnecessary and actually carries some risks'.¹²

6 Mr Ian Narev, former CEO, Commonwealth Bank of Australia (CBA), House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 7 March 2017, p. 16.

7 Australian Bankers Association (ABA), *Submission 15*, p. 1.

8 ABA, *Submission 15*, p. 1.

9 ABA, *Submission 15*, p. 2.

10 ABA, *Independent Governance Expert Report*, Report 8, 17 April 2018, p. ii.

11 Mr Steve Munchenberg, CEO, ABA, House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 8 March 2017, p. 43.

12 Mr Steve Munchenberg, CEO, ABA, House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 8 March 2017, p. 44.

The Commonwealth Government

5.12 The Commonwealth Government also claimed a banking Royal Commission was unnecessary. The Minister for Finance, Senator the Hon. Mathias Cormann, had long maintained that a royal commission was unnecessary, and argued that 'it would recklessly and irresponsibly undermine confidence in our banking system, without actually achieving anything beneficial for bank customers with legitimate grievances'.¹³ Once the Commonwealth Government announced it would proceed with a Financial Services Royal Commission, the Minister for Finance declared it was regrettable that a royal commission had to happen.¹⁴

5.13 Ms Julia Banks MP, member of the HoR Standing Committee on Economics, declared that a 'longwinded royal commission' would only benefit 'banking lawyers' and argued the parliamentary review of the four major banks would 'find agile, flexible, immediate answers for consumers'.¹⁵ On 7 March 2017, Ms Banks asserted that a royal commission would destabilise the banking sector and that 'there will be no practical deliverable outcomes for bank consumers, and, basically, the only beneficiaries will be, quite frankly, the banking lawyers'.¹⁶

Establishment of the Financial Services Royal Commission

5.14 Sustained public calls from consumer advocates and victims of misconduct, multiple parliamentary, government and industry-initiated inquiries and political pressure for the Commonwealth Government to announce a royal commission built over the final months of 2017. Finally, on 30 November 2017, the leaders of Australia's major banks wrote a letter to the Treasurer, the Hon. Scott Morrison MP, stating that they had changed their position and supported a royal commission to end uncertainty and lack of confidence in the sector:

Our banks have consistently argued the view that further inquiries into the sector, including a Royal Commission, are unwarranted. They are costly and unnecessary distractions at a time when the finance sector faces significant challenges and disruption from technology and growing global macroeconomic uncertainty.

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- 13 Senator the Honourable Mathias Cormann, Minister for Finance, Sky New – Sunday Agenda, 9 October 2016, <https://www.financeminister.gov.au/transcript/2016/10/09/sky-news-sunday-agenda> (accessed 22 October 2018).
- 14 Senator the Honourable Mathias Cormann, Minister for Finance, *Doorstop – Mural Hall*, 1 December 2017, <https://www.financeminister.gov.au/transcript/2017/12/01/doorstop-mural-hall> (accessed 22 October 2018).
- 15 Ms Julia Banks MP, House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 8 March 2017, p. 48.
- 16 Ms Julia Banks MP, House of Representatives Standing Committee on Economics, Review of the four major banks (second report), *Committee Hansard*, 7 March 2017, pp. 22–23.

However, it is now in the national interest for the political uncertainty to end. It is hurting confidence in our financial services system, including in offshore markets, and has diminished trust and respect for our sector and people...

We now ask you and your government to act to ensure a properly constituted inquiry into the financial services sector is established to put an end to the uncertainty and restore trust, respect and confidence.¹⁷

5.15 The same day, the Turnbull Government announced the establishment of the Financial Services Royal Commission.¹⁸ The Royal Commission was officially established on 14 December 2017.¹⁹

5.16 Despite the Commonwealth Government's longstanding objection to a royal commission and claims it was unnecessary, the Royal Commission's findings to date have been profound and have revealed significant issues in the conduct and culture of financial services in Australia.

The Financial Services Royal Commission's interim findings

5.17 On 28 September 2018, the Royal Commission released an interim report outlining policy related issues from its first four rounds of hearings. The interim report made no recommendations, but rather raised questions about how particular issues identified to date could be resolved.

5.18 The interim report criticised the financial sector, declaring that misconduct was too often driven by greed and 'the pursuit of short term profit at the expense of basic standards of honesty'.²⁰ The interim report highlighted the inadequacies of

17 Joint CEOs and Chairs letter, 30 November 2017, <https://media.anz.com/posts/2017/11/joint-ceos-and-chairs-letter> (accessed 1 November 2018).

18 The Hon. Scott Morrison MP, Treasurer, 'Royal Commission – Banks and financial services: Joint media release with The Hon Malcolm Turnbull MP, Prime Minister,' *Media release*, 31 November 2017; Lucy Sweeney and Louise Yaxley, 'Malcolm Turnbull backflips on banking royal commission after big four call for inquiry to restore public faith', *ABC News*, 30 November 2017, <https://www.abc.net.au/news/2017-11-30/banking-royal-commission-announced-by-pm-after-big-four-letter/9209926> (accessed 1 November 2018).

19 David Chau and Emily Clark, 'Banking royal commission: How did we get here?', *ABC News*, 30 November 2017, <https://www.abc.net.au/news/2017-11-30/banking-royal-commission-how-did-we-get-here/9210248> (accessed 1 November 2018); SBS News, "'We've put customers first': PM defends not setting up banking royal commission sooner", *SBS News*, 22 April 2018, <https://www.sbs.com.au/news/we-ve-put-customers-first-pm-defends-not-setting-up-banking-royal-commission-sooner> (accessed 1 November 2018); Adele Ferguson, 'Nationals senator Barry O'Sullivan pushing on with banking royal commission bill', *Australian Financial Review*, 19 November 2017, <https://www.afr.com/business/banking-and-finance/nationals-senator-pushing-on-with-banking-royal-commission-bill-20171119-gzods2> (accessed 1 November 2018).

20 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), *Interim Report*, Volume 1, September 2018, p. xix.

regulators, and explained cases of misconduct 'either went unpunished or the consequences did not meet the seriousness of what had been done'.²¹

5.19 A snapshot of revelations made since the commencement of the Financial Services Royal Commission is briefly outlined below:

- It was revealed that a CBA financial planning business had been charging deceased clients fees for financial planning advice, with at least five employees admitting they had knowingly done so.²²
- Issues were revealed relating to the lending practices of the banks, in particular for farmers²³ and people with gambling addiction.²⁴
- ASIC announced it would pursue the major banks and AMP as part of its 'fee-for-no-service' investigation. ASIC advised the Financial Services Royal Commission that so far \$260 million had been refunded to customers who were wrongly charged fees, with the expectation that total refunds would equate to over \$1 billion. ASIC confirmed the likelihood of legal proceedings over the matter.²⁵
- The effectiveness of the Australian Prudential Regulation Authority (APRA) and ASIC was questioned, including considerable delays by the banks to report significant breaches²⁶ and the lack of regulatory oversight dedicated to superannuation trustees. One example involved ANZ bank tellers selling superannuation products, which accrued \$3.6 billion in funds under ANZ's

21 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. xix.

22 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 122; Stephanie Chalmers, 'Commonwealth Bank charged fees to customers who had been dead for a decade, royal commission told', *ABC News*, 19 April 2018, <https://www.abc.net.au/news/2018-04-19/cba-charged-fees-to-customers-who-had-died-commission-hears/9675922> (accessed 5 November 2018).

23 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, Chapter 6; Daniel Ziffer, 'Banking royal commission: ANZ "empathy" too late for farmers already forced off their land', *ABC News*, 1 July 2018, <https://www.abc.net.au/news/2018-07-01/banking-royal-commission-hears-the-pain-of-farmers/9924334> (accessed 22 October 2018).

24 Financial Services Royal Commission, *Interim Report*, Volume 1, September 2018, p. 54; Daniel Ziffer, 'Banking royal commission: Fees for the dead and cash bribes—the greatest shocks (so far)', *ABC News*, 8 September 2018, <https://www.abc.net.au/news/2018-09-08/banking-royal-commission-biggest-scandals/10214238> (accessed 22 October 2018).

25 Financial Services Royal Commission, final transcript for Day 35, P.R. Kell, p. 5254, ln 31–34, and p. 5255, ln 35–41; Sue Lannin, 'Banking royal commission: Banks and AMP face criminal charges and \$1b in fee-for-no-service scandal', *ABC News*, 17 August 2018, <https://www.abc.net.au/news/2018-08-17/apra-under-fire-for-failing-to-police-superannuation-industry/10129612> (accessed 22 October 2018).

26 Stephanie Chalmers, 'Banks take 1726 days to realise they've broken the law: ASIC', *ABC News*, 25 September 2018, <https://www.abc.net.au/news/2018-09-25/asic-reveals-how-long-banks-take-to-report-breaches/10302894> (accessed 22 October 2018).

management. ASIC forced the ANZ to stop this conduct, and issued a fine of only \$1.25 million.²⁷

Personal accounts—calls for an extension to the Royal Commission

5.20 The Financial Services Royal Commission generated significant interest in the community, and subsequently received 10,140 submissions as at 28 September 2018.²⁸ Despite the large number of submissions received, the Financial Services Royal Commission has only heard from a limited number of witnesses selected to provide personal accounts of their experiences with the banks. One of the primary concerns about the Financial Services Royal Commission's work is that it has not heard sufficient evidence from victims in regional areas.²⁹ For this reason, there have been calls for the Financial Services Royal Commission to be extended in order to hear from victims of financial sector misconduct.³⁰

The position of the banks after the release of the interim report

5.21 By October 2018, after the release of the Financial Services Royal Commission's interim report, the major banks had changed their position on the Royal Commission completely. On 11 October 2018, the HoR Standing Committee on Economics re-commenced its review of Australia's four major banks. This was the first time a parliamentary committee had heard from representatives from the major banks since the release of the Royal Commission's interim report.

5.22 The CBA explained that the Royal Commission had illuminated 'failures of judgement, failures of process, failures of leadership, and in some instances, greed'. It acknowledged that it was too slow to address these issues, and its 'capability has been inadequate in critical areas, particularly operations risk and compliance'.³¹ The CBA had consequently appointed six new executives, and those across the bank have:

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- 27 Daniel Ziffer, 'Banking royal commission: Super once-over scrapes off a truckload of dirt', *ABC News*, 27 August 2018, <https://www.abc.net.au/news/2018-08-27/royal-commission-super-once-over-scrapes-off-a-luck-of-muck/10168906> (accessed 22 October 2018).
- 28 Financial Services Royal Commission, *Public submissions – fast facts*, 28 September 2018, <https://financialservices.royalcommission.gov.au/Pages/default.aspx> (accessed 25 October 2018).
- 29 See, for example, The Hon. Bill Shorten MP, Opposition Leader, 'Labor Will Give Victims a Voice in Bank Reform', 2 October 2018, http://www.billshorten.com.au/labor_will_give_victims_a_voice_in_bank_reform_tuesday_2_october_2018 (accessed 1 November 2018); *Editorial*, 'Banking royal commission does not go far enough', *The Canberra Times*, 29 September 2018, <https://www.canberratimes.com.au/national/act/banking-royal-commission-does-not-go-far-enough-20180928-p506q7.html> (accessed 25 October 2018).
- 30 See, for example, *Editorial*, 'Banking royal commission does not go far enough', *The Canberra Times*, 29 September 2018, <https://www.canberratimes.com.au/national/act/banking-royal-commission-does-not-go-far-enough-20180928-p506q7.html> (accessed 25 October 2018).
- 31 Mr Matthew Comyn, CEO and Managing Director, CBA, House of Representatives Standing Committee on Economics, Review of the four major banks (fourth hearing), *Committee Hansard*, 11 October 2018, p. 1.

...faced consequences for our failures. Some have been terminated and there has been a \$100 million impact on remuneration. Accountability has not been clear enough inside the Commonwealth Bank. To address this, we have extended the government's new Banking Executive Accountability Regime across more than 90 executives.³²

5.23 Westpac's address to the committee referenced issues concerning remuneration, complaints handling, the fee-for-service model and culture in the banking sector. Its CEO, Mr Hartzler, who 12 months ago held the view that a royal commission 'would not have the benefit of immediate action',³³ admitted that 'we weren't quick enough to identify and fix the problems, and we accept the consequences of this delay'.³⁴

5.24 ANZ's CEO, Mr Elliot, who had once stated that the conduct of the banking sector was 'better than it was in the past'³⁵, acknowledged on 12 October 2018 that the:

...interim report lays out conduct of a standard below what the community expects and, at times, what the law requires. These observations have rightly dismayed and disappointed Australians. We have acknowledged to the commission that ANZ has engaged in misconduct and conduct falling below community standards and expectations.³⁶

5.25 On 19 October 2018, NAB's Group CEO and Managing Director Mr Andrew Thorburn admitted that industry has moved its primary focus away from customers and towards profits, has failed to plan long-term, has rewarded wrong behaviours and lost 'local connections we previously had with customers'.³⁷ Mr Thorburn disclosed that 700 employees have had a reduction in their variable pay, and

32 Mr Matthew Comyn, CEO and Managing Director, CBA, House of Representatives Standing Committee on Economics, Review of the four major banks (third report), *Committee Hansard*, 11 October 2018, p. 2.

33 Mr Brian Hartzler, CEO and Managing Director, Westpac Group, House of Representatives Standing Committee on Economics, Review of the four major banks (third report), *Committee Hansard*, 11 October 2017, p. 28.

34 Mr Brian Hartzler, CEO and Managing Director, Westpac Group, House of Representatives Standing Committee on Economics, Review of the four major banks (third report), *Committee Hansard*, 11 October 2018, p. 35.

35 Mr Shayne Elliott, CEO, Australia and New Zealand Banking Group (ANZ), House of Representatives Standing Committee on Economics, Review of the four major banks (third report), *Committee Hansard*, 11 October 2017, p. 59.

36 Mr Shayne Elliott, CEO, ANZ, House of Representatives Standing Committee on Economics, Review of Australia's four major banks (fourth hearing), *Committee Hansard*, 12 October 2018, p. 1.

37 Mr Andrew Thorburn, Group CEO and Managing Director, NAB, House of Representatives Standing Committee on Economics, Review of the four major banks (fourth hearing), *Committee Hansard*, 19 October 2018, p. 2.

over 300 have had their employment terminated, or have left as part of NAB's investigation into employee conduct.³⁸

Committee view

5.26 The large number of recent inquiries into the banking, insurance and financial services sector demonstrates the systemic problems inherent in the current system. This committee has been of the view since the beginning of the inquiry that the only solution to solving the fundamental flaws in the banking, insurance and financial services sector is a royal commission with the ability and the resources to examine the system as a whole and to make broad structural recommendations.

5.27 The issues raised in this inquiry regarding the current consumer protection system include: lack of funding for financial counselling and legal services; lack of documentation for consumers to prove misconduct; and lack of enforcement on the part of regulators and external dispute resolution services. Evidence raised allegations of misconduct in specific areas of the banking, insurance and financial services industry, including:

- financial advice;
- mortgage broking;
- loans and credit contracts;
- property valuations and foreclosure;
- insurance;
- the conduct of financial entities engaging with Aboriginal and Torres Strait Islander groups;
- credit card limits;
- gambling limits and credit;
- consumer leases and payday loans;
- debt management firms; and
- the conduct of receivers, administrators and liquidators.

5.28 The committee's findings in this report align with many of the issues that have been identified by the Financial Services Royal Commission to date. This outcome comes as no surprise to the committee; victims of banking misconduct have long advocated for a royal commission into the financial services sector, and the committee commenced this inquiry to add further weight to their arguments. However, despite their calls for action, banking representatives and the Commonwealth Government have continually objected to this demand.

38 Mr Andrew Thorburn, CEO and Managing Director, NAB, House of Representatives Standing Committee on Economics, Review of the four major banks (fourth hearing), *Committee Hansard*, 19 October 2018, p. 3.

5.29 Prior to its establishment, the CEOs of the four major banks all conveyed messages that a royal commission would have no benefit, and the banks had nothing to hide. They argued that a royal commission would be a distraction and that the industry was well regulated. The Australian Bankers' Association maintained that a royal commission was unnecessary and claimed that trust and confidence are achieved through institutional leadership and self-regulation, along with adherence to laws and regulatory obligations that protect consumers. Australia's major banks only admitted that a royal commission was necessary because 'political uncertainty' was 'hurting confidence' in the sector.

5.30 The Commonwealth Government, by delaying the decision to establish a royal commission and insisting until the last moment that such a commission of inquiry was unnecessary, has hindered efforts to address longstanding issues of misconduct in the financial services sector. At the commencement of this inquiry, the Commonwealth Government declared that it opposed the inquiry 'because the government has taken and continues to take strong action to improve consumer outcomes in the financial services sector'.³⁹ It also argued against a royal commission, claiming this would only benefit banking lawyers without producing any deliverable outcomes for consumers. The Minister for Finance contended that a royal commission was both reckless and irresponsible, and would not achieve anything for bank customers.

5.31 It was not the weight of substantial evidence that misconduct had occurred, nor the findings of multiple inquiries, nor calls from consumer advocates that led to the Commonwealth Government's decision to establish a major commission of inquiry into the financial services sector. Only internal political pressure from within the Government's own ranks and a letter from Australia's major banks calling for an end to uncertainty led, finally, to the Commonwealth Government announcing the establishment of the Royal Commission.

5.32 The long-held position by the banking sector and the Commonwealth Government that a royal commission was unnecessary has since been discredited by the work of the Financial Services Royal Commission and the consistency of its findings with the evidence provided to this committee. These investigations have revealed a culture of greed, misconduct and inadequate regulatory oversight. Subsequently, the major banks and the Commonwealth Government have had to backpedal, and now acknowledge that systemic problems exist. The Royal Commission's work has brought to light actions by some of the largest, most respected financial service providers in the country that may amount to misconduct, deliberate withholding of information from ASIC and even what may be, in some instances, breaches of the law. The regulatory and legal repercussions of the Financial Services Royal Commission are yet to manifest fully.

5.33 While delayed in its onset, the Financial Services Royal Commission appears to have taken a comprehensive and forensic approach, and taken into account a broad cross-section of consumers of various financial products and services. However, some

39 Senator James McGrath, *Senate Hansard*, 29 November 2016, p. 3568.

of the areas addressed in this inquiry have not yet been examined by the Royal Commission. It seems unlikely, given the extent of misconduct and behaviour below community standards that has been indicated in public evidence so far, that the Royal Commission will be able to adequately cover issues in the financial sector beyond more than a few brief snapshots in the time that it has been allocated and the small number of witnesses that it has called in public hearings. The committee notes that the Royal Commission has only heard from 27 victims even though it received over 10,000 submissions and has not held any hearings in South Australia, Western Australia and Tasmania. Given the extent of misconduct identified in the Royal Commission's work to date, the committee considers that the Royal Commission should be granted an extension of time beyond February 2019 to examine particular aspects of misconduct in greater detail.

Recommendation 1

5.34 The committee recommends that the Commonwealth Government give the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry an extension of time to report.

5.35 To date, the Royal Commission has stated that it will not be examining receivership, consumer leases, payday loans or in-store credit arrangements because these do not fall within the terms of reference of the Royal Commission, as they do not fit the definition of a financial services licensee or entity.⁴⁰ A number of financial counselling and legal services bodies highlighted in evidence to this inquiry that payday loans and consumer leases are a major issue for consumers from lower socio-economic backgrounds, who can least afford high interest rates and penalties. Because of the gap in the Royal Commission's terms of reference, the Senate has referred an inquiry to this committee to investigate these issues more closely. The committee will inquire into credit and financial services targeted at Australians at risk of financial hardship, in particular payday lenders and consumer lease providers, unlicensed financial service providers such as 'buy now, pay later' providers, debt management firms, debt negotiators, credit repair agencies and personal budgeting services. The committee is required to report by 22 February 2019.

5.36 Evidence provided to this inquiry also outlined concerns about administration, receivership and the practices of liquidators. The Parliamentary Joint Committee on Corporations and Financial Services tabled a report into the impairment of customer loans in May 2016. The Parliamentary Joint Committee recommended that if the banks and the Australian Banking Association did not address issues surrounding valuation reports, including providing borrowers with copies of these reports, the Government should introduce appropriate legislation and regulations. The Parliamentary Joint Committee also recommended that receivers be 'required to take every reasonable step' to ensure that 'assets are sold at or as close to listed market value as possible' in accordance with the appropriate prudential standard, and that

40 Financial Services Royal Commission, final transcript for Day 35, Ms Rowena Orr, 2 July 2018, p. 3695, ln 26–33; Financial Services Royal Commission, final transcript for Day 30, Ms Rowena Orr, 25 June 2018, p. 3077, ln 41–44.

ASIC administer a strong penalty regime to govern breaches of section 420A of the *Corporations Act 2001*, which requires a controller to take all reasonable care to sell property for no less than its market value or, where this is not available, the best price that is reasonably available.⁴¹

5.37 This committee reiterates its support for these recommendations. The committee notes that the Australian Banking Association has expressly addressed the issue of valuations in its 2019 Banking Code of Practice. However, the Commonwealth Government is yet to respond to the Parliamentary Joint Committee's recommendations. The committee considers, given that two and a half years have passed since the report was tabled, and the Financial Services Royal Commission's terms of reference have excluded issues related to receivership, administration and the conduct of liquidators, there is no reason for the Government to have delayed responding to the report's recommendations.

Recommendation 2

5.38 The committee recommends that the Commonwealth Government provide a response to the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into the impairment of customer loans.

5.39 Evidence provided to this inquiry emphasised the importance of adequately resourcing financial counselling and legal services. These services often deal directly with consumers experiencing failures in the consumer protection system and may assist consumers from lower socio-economic backgrounds, Aboriginal and Torres Strait Islanders and consumers who have limited literacy and resources to prepare applications for external dispute resolution. In other words, these services may assist consumers who are in severe financial distress and need to access dispute resolution the most. Further, these services often contribute to law reform and policy development and assist ASIC with identifying systemic problems. As a result, it is essential that community legal and financial counselling services be adequately funded, particularly while the work of the Royal Commission is still ongoing.

Recommendation 3

5.40 The committee recommends that the Commonwealth Government consider increased funding for community legal and financial counselling services dealing with victims of financial misconduct.

5.41 The work of the Financial Services Royal Commission is an important step in the right direction. The committee anticipates that the Royal Commission will make recommendations relevant to many of the areas of concern raised in this inquiry, and the committee will continue to observe the Royal Commission's work in those areas. It is for this reason that the committee has determined not to make specific policy recommendations, but iterates that there is a need for serious reform to the entire

41 Parliamentary Joint Committee on Corporations and Financial Services, *Impairment of customer loans*, May 2016, p. 123, Recommendation 9; Australian Prudential Regulation Authority, *Prudential Standard APS 220: Credit Quality*, January 2015, <https://www.apra.gov.au/sites/default/files/141120-APS-220.pdf> (accessed 8 November 2018).

financial services system. Consumers must be properly protected from the endemic greed that has corrupted the financial services sector.

5.42 Previously, the common response from financial entities to proven instances of misconduct found by regulators was either that it was the fault of a few 'bad apples', or that misconduct may have occurred in the past but due to recent reforms and changes by the financial entities, protections for consumers are now greatly improved. These reforms and changes may have occurred, but they do not change the fact that misconduct and unethical behaviour by individuals and organisations has left a trail of ongoing destruction, featuring ruined businesses, impacts on health and relationships, financial problems and even bankruptcy on the part of affected consumers.

5.43 Finally, the committee recognises the considerable toll that negative experiences with the banking, insurance and financial services sector have had on consumers' physical, emotional and mental health, in addition to the financial losses that many submitters and witnesses outlined in their evidence. Many financial entities have systematically engaged in practices that amount to misconduct, fall below community expectations of ethical conduct and even contravene the law, in some instances.

5.44 Despite the Commonwealth Government's longstanding objection to a royal commission and claims that it was unnecessary, the Royal Commission's findings to date have been profound and have revealed significant issues in the conduct and culture of financial services in Australia. Ordinary Australians should never have had to bear the burden of this misconduct for so long; a royal commission was long overdue.

Senator Chris Ketter

Chair

