

Coalition Senators' Additional Comments

General comments

1.1 Coalition Senators acknowledge that the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) has shone a light on systemic problems in our financial system.

1.2 However, Coalition Senators disagree with the committee view that, since the inquiry was opened in 2016, 'the only solution to solving the fundamental flaws in the banking and financial services sector is a royal commission'. It must be stressed that, since its election in 2013, the Government has been proactively taking steps to reform the financial services sector, long before this inquiry was opened.

Financial System Inquiry – 'Murray Inquiry'

1.3 Coalition Senators commend the Government making good on their promise to undertake a broad-based review of Australia's financial system by commissioning the Financial System Inquiry (FSI) in 2013, barely three months after they were elected. The FSI was 'charged with examining how the financial system could be positioned to best meet Australia's evolving needs and support Australia's economic growth. Recommendations will be made that foster an efficient, competitive and flexible financial system, consistent with financial stability, prudence, public confidence and capacity to meet the needs of users'.¹

1.4 The FSI Final Report was released on Sunday, 7 December, 2014, and the Government's response to the inquiry was released on Tuesday, 20 October 2015.

1.5 Coalition Senators note that the Government accepted all but one of the 44 recommendations from the FSI, and began immediately to action a series of reforms to ensure Australia has a safe and stable world-leading financial system. Coalition Senators also note that the government's response included unprecedented improvements to consumer protection, banking stability, governance and supporting transparent technologies.

1.6 Coalition Senators are at pains to point out that Bill Shorten, as Assistant Treasurer (14 September 2010 to 14 December 2011) and as Minister for Financial Services and Superannuation (14 September 2010 – 1 July 2013), trenchantly opposed a financial system inquiry, despite its obvious deficiencies. This was despite consistent advice given to the Rudd-Gillard-Rudd Governments between 2009 and 2013 from both experts and its own Treasury that an inquiry into the financial services sector was necessary.

1.7 Coalition Senators wish to highlight that Mr. Shorten and the Gillard Government rejected the need for a sweeping inquiry into the banks despite being informed by Treasury that 'many countries are reviewing financial regulation

1 The Hon Mr Joe Jockey MP, [former] Treasurer, 'Financial System Inquiry', *Media release*, 20 December 2013.

frameworks and making substantial changes'.² It was the Commonwealth Government that recognized the need to have the inquiry and the assertion that it has 'had to backpedal, and now acknowledge that systemic problems exist' is false.

Competition Policy Review – 'Harper Review'

1.8 Coalition Senators also commend the Liberal-Nationals Government for commissioning the Competition Policy Review (Harper Review) on 4 December 2013. The Review's Final Report was handed down on 31 March 2015, and the Government released its response on 24 November 2015.

1.9 The Harper Review recommended that the misuse of market power prohibitions should be:

re-framed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market.³

1.10 Coalition Senators note the Turnbull Government's support and implementation of the recommendation through the Competition and Consumer Amendment (Misuse of Market Power) Act 2017, which came into effect on 23 August, 2017. This important reform has allowed the ACCC to be able to examine whether the process of vertical integration is anti-competitive. Coalition Senators wish to stress the importance of this reform, noting the public concerns expressed about potentially anti-competitive vertical integration in the banking sector.

Establishment of the Australian Financial Complaints Authority

1.11 Coalition Senators note that, back in April 2016, the Government established a panel of eminent persons to review the role, powers and governance of all of the financial system's external dispute resolution and complaints schemes and will assess the merits of better integrating these schemes to improve the handling of consumer complaints.

1.12 The panel's review (the Ramsay Review) found that:

- the existence of multiple external dispute resolution (EDR) schemes with overlapping jurisdictions means that it is difficult to achieve comparable outcomes for consumers with similar complaints;
- multiple EDR schemes give rise to a duplication in costs for both industry and ASIC;

2 Christopher Joye, 'Bill Shorten has unconvincing case for a royal commission', *Australian Financial Review*, April 11 2016. Available at <https://www.afr.com/business/banking-and-finance/bill-shorten-has-unconvincing-case-for-a-royal-commission-20160410-go2t9p> (accessed 15 November 2018).

3 Ian Harper, Peter Anderson, Su McCluskey and Michael O'Bryan, *Competition Policy Review*, Final report, March 2015, p. 62.

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- consumers and small businesses do not have adequate access to EDR as the existing monetary limits on access to EDR and the existing caps on compensation that can be awarded are too low; and
 - there are long-standing problems with the arrangements for resolving superannuation complaints in the SCT.

1.13 The Ramsay Review has led to the establishment of the Australian Financial Complaints Authority (AFCA). This new 'one stop shop' is a single EDR body to replace the Financial Ombudsman Service, the Credit and Investments Ombudsman, and the Superannuation Complaints Tribunal.

1.14 The AFCA opened for business on 1 November, 2018.

ASIC

1.15 Coalition Senators note that the Government commissioned a review into ASIC's capabilities in July 2015, from which all of the recommendations were accepted and implemented.

1.16 Coalition Senators note the Government's financial support package given to ASIC in 2016, long before this inquiry was opened, which gave them \$127.2 million for the purposes of better protecting Australia's consumers. The broad reform measures equipped ASIC with stronger powers and funding to enhance surveillance capabilities, better enabling our corporate watchdog to combat misconduct in Australia's financial services industry and bolster consumer confidence in the sector. The reform measures came as a response to the ASIC Capability Review.

Serious Financial Crime taskforce

1.17 Coalition Senators congratulate the Government on establishing the Serious Financial Crime Taskforce (SFCT).

1.18 Since the establishment of the SFCT in 2015, 740 reviews and audits have been completed, and liabilities have been raised in excess of \$562 million. Five people have received custodial sentences following prosecution and there are currently 30 criminal, civil and intelligence matters in progress.

Royal Commission

1.19 Coalition Senators note the abundance of testimony of misconduct from the Royal Commission which dates back to the previous Labor Government, who steadfastly opposed an inquiry into the financial system.

1.20 For example:

- 'Between 2011 and 2014, a car finance broker had arranged loans for customers that did not meet Esanda's lending criteria by writing the application in the name of an individual who did not own or have possession of the vehicle, but who agreed to guarantee the loan. ANZ accepted that the systems that Esanda had in place at the time were ineffective to detect this and therefore failed to meet community standards and expectations. ANZ has also

accepted, in litigation brought by ASIC, that it failed to take reasonable steps to verify the income figures.⁴

- 'NAB also acknowledged processing or administration errors in relation to consumer lending during the relevant period. For example, NAB acknowledged that on 24 November 2010 and 15 April 2011 two separate failures of the customer account processing systems occurred, with the 2011 incident resulting in approximately 70,000 customers not receiving expected payments into their accounts.⁵
- 'NAB acknowledged that between 2007 and 2010 customers with NAB Visa debit cards were being incorrectly charged reference or overdraft fees.⁶

Conclusion

1.21 Coalition Senators note the preponderance of evidence showing that the Government has been working diligently to implement greater consumer protection in the banking, insurance and financial sector.

1.22 These reform measures began long before there were calls for a Royal Commission, and long before this inquiry was opened to build political momentum for a Royal Commission.

1.23 Coalition Senators wish to highlight the hypocrisy of those who opened this inquiry, noting that they staunchly opposed a broad-based financial system inquiry while they were in government.

1.24 The Coalition Senators also want to reject the assertion that the Royal Commissioner is not satisfying his terms of reference by excluding South Australia, Western Australia and Tasmania from holding hearings. Further, Coalition Senators also reject that the Royal Commissioner has only heard from 27 victims.

1.25 The Royal Commissioner has absolute discretion to hold hearings in any state. The fact that he has chosen not to hold hearings in some states does not in any way suggest that the Commissioner is not fulfilling his terms of reference. The Coalition Senators reject any suggestion to the contrary.

1.26 Similarly, the suggestion that the Commissioner can only consider evidence orally does not make sense. The Commissioner has confirmed that every submission the Royal Commission has received has been read and is being considered as part of his final recommendations. Again, the Commissioner has absolute discretion as to how he is to receive evidence and Coalition Senators reject any suggestion that he has not considered the written submissions or that he has somehow erred in the way that he has decided to conduct the Commission.

4 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), *Interim Report*, Volume 1, September 2018, p. 45.

5 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), *Interim Report*, Volume 1, September 2018, p. 50.

6 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), *Interim Report*, Volume 1, September 2018, p. 50.

1.27 Coalition Senators note Recommendation 1 of the chair's report, which recommends that the Royal Commission be given an extension of time to report. The Coalition rejects this recommendation to the extent that it does not support the Commissioner asking for more time before more time is granted.

1.28 The Coalition note that in the response to the Parliamentary Joint Committee on Corporations and Financial Services report dated 4 May 2016 (Report), the Commonwealth Government announced that it had directed The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) to undertake an inquiry into the adequacy of the law to address concerns raised by the Parliamentary Joint Committee on Corporations and Financial Services in its report, 'Impairment of Customer Loans'. The Government released and responded to ASBFEO's report on 2 February 2017.

1.29 Further, a number of the recommendations made by the PJC's report have subsequently been addressed by the 2019 Banking Code of Practice through requirements for:

- simplified, improved disclosure of loan terms and conditions and loan approval processes and outcomes for small businesses;
- increased notice periods for small businesses for enforcement proceedings and decisions on rollover;
- the introduction of 'covenant light' contracts to eligible loan products, which reduce the number of specific events of non-monetary defaults and remove financial indicator covenants as triggers for default; and
- improved arrangements to address conflict of interest issues between investigating accountants and receivers, and provision of information about entitlements to access dispute resolution.

1.30 A number of recommendations in the PJC report are being considered by the Royal Commission including:

- appropriateness of charging of default interest;
- circumstances where a lender may appoint an external administrator (such as a receiver, receiver and manager, or agent of the mortgagee in possession);
- gaps in protections in the 2019 Banking Code of practice as it relates to SMEs and Agri-business lending;
- the need for a national system for farm debt mediation; and
- valuation practices around agricultural lending.

1.31 The Coalition Senators also note that the terms of reference for the Royal Commission enable it to look at the conduct of financial services entities including the conduct of anyone acting on behalf of these entities which includes receiver, a receiver and manager and an agent for mortgagee in possession.

1.32 The Commission has looked into the appointment of receivers during its fourth round of hearings on remote and regional issues in respect of agri-business

lending and has sought submissions in relation to appropriate circumstances for the appointment of receivers in its Interim Report.

1.33 The Coalition Senators reject Recommendation 2 and given the timing of the Royal Commission, recommend waiting for its recommendations.

1.34 In relation to Recommendation 3 of the Chair's report, Coalition Senators wish to emphasise that the Commonwealth Government has already committed increased funding for community legal and financial counselling services dealing with victims of financial misconduct.

Senator Jane Hume

Deputy Chair