The Parliament of the Commonwealth of Australia

Review of the Four Major Banks (Fourth Report)

House of Representatives
Standing Committee on Economics

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Canberra

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Chair's foreword

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has revealed shocking examples of behaviour by Australia's four major banks. The conduct has, in many cases, been contrary to law and has fallen well below community expectations.

We have heard that CBA sold junk credit insurance policies to 64,000 customers, charged fees to dead clients, charged double the rate of interest to thousands of its business customers, and was the worst offender for charging customers fees for financial advice they never received.

It was revealed that Westpac has been the most resistant of the four major banks to the supervision of the banking regulator, the Australian Securities and Investments Commission (ASIC). ASIC told Westpac that its loan controls, which should ensure people can only borrow what they have the capacity to repay, were inadequate. Westpac ignored ASIC and continued to offer credit card limit increases to people without verifying their incomes. The issue affected more than a million customers.

ANZ has also come under fire for weak loan controls, particularly in relation to loans submitted by brokers and through its car finance business. We heard that ANZ inappropriately sold loans to more than 300,000 customers, and then repeatedly ignored ASIC's requests to compensate those people.

Some of the most appalling cases of misconduct were revealed during the Royal Commission's scrutiny of NAB's Introducer Program. NAB bankers accepted loan bribes, forged customers' signatures and manipulated incentive programs to generate bonus payments. NAB has been slow to compensate the victims.

In October 2018 the CEOs of Australia's four major banks appeared before the committee for the fourth round of inquiry hearings, which were scheduled shortly after the release of Commissioner Hayne's Interim Report.

Since the committee began its inquiry into the four major banks in October 2016, the Government has undertaken major reforms to the banking and financial sector. These reforms include establishing a one-stop shop for external dispute resolution, the Australian Financial Complaints Authority, and a Banking Executive Accountability Regime, which will impose higher standards of behaviour on senior executives.

The Government has also taken action to improve competition in the banking sector, including reducing barriers to entry for new financial institutions, and establishing a comprehensive credit reporting system. The Government is now awaiting the findings of the final report of the Royal Commission, due by 1 February 2019, which will chart a course for further reform of the banking and financial services sector.

Since the Royal Commission was announced, the banks have increased their focus on remediation and complaints handling, sacked staff and replaced executives. They have moved to break up elements of their vertically integrated business models, including selling off whole divisions that have been particular problem areas, such as wealth management.

Each of the major bank CEOs have made public apologies for the mistreatment of their customers and the policies and programs that caused financial hardship and distress. They have committed to do better, to provide remediation more quickly and to appropriately deal with complaints. However, these apologies will be meaningless unless they are backed up by lasting and real reform.

The banking regulators have been criticised for being too timid. Australians expect the big banks to fear their regulators. ASIC, in particular, needs to be tougher and has relied too much on enforceable undertakings rather than seeking penalties in the courts. This has led to the perception in the community that the banks have been let off 'scot-free', despite the injustices and financial losses suffered by so many of their customers.

The committee notes that that there is a new Chair and Deputy Chair of Enforcement of ASIC who are committed to taking a stronger stance on enforcement, supported by a range of tougher penalties recently introduced by the government.

The messages for the four major banks should already be clear. The pursuit of profit at the expense of their customers' best interests and basic community standards like honesty has been the root cause of widespread misconduct and systemic failings. As a consequence of their own actions, the banks now face a considerable challenge in rebuilding the community's trust and confidence.

Tim Wilson MP
Chair

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Membership of the Committee

Chair	Mr Tim Wilson MP (from 10 September 2018)
	Ms Sarah Henderson MP (to 28 August 2018)
Deputy Chair	The Hon Matt Thistlethwaite MP
Members	Mr Adam Bandt MP
	Ms Julia Banks MP (to 28 November 2018)
	Mr Scott Buchholz MP (to 28 August 2018)
	Mr Trevor Evans MP
	Mr Jason Falinski MP (from 20 June 2018)
	Mr Kevin Hogan MP (to 27 March 2018)
	Ms Ged Kearney MP (from 21 May 2018 to 10 September 2018)
	Mr Craig Kelly MP
	Mr Matt Keogh MP
	The Hon Craig Laundy MP (from 10 September 2018)
	Mr Josh Wilson MP (to 10 May 2018 and from 10 September 2018)
Supplementary Member	Ms Claire O'Neil MP

Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Dr John White
Technical Advisor	Ms Melissa Ljubic
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Terms of reference

On 15 September 2016, the Treasurer requested that the House of Representatives Standing Committee on Economics undertake – as a permanent part of the committee's business – an inquiry into:

- the performance and strength of Australia's banking and financial system;
- how broader economic, financial, and regulatory developments are affecting that system; and
- how the major banks balance the needs of borrowers, savers, shareholders, and the wider community.

In undertaking its inquiry, the committee was asked to hold at least annual public hearings with the four major banks, with a particular focus on the banks' perspectives on:

- domestic and international financial market developments as they relate to the Australian banking sector and how these are affecting Australia;
- developments in prudential regulation, including capital requirements, and how these are affecting the policies of Australian banks;
- the costs of funds, impacts on margins and the basis for bank pricing decisions; and
- how individual banks and the banking industry as a whole are responding to issues previously raised in Parliamentary and other inquiries, including through the Australian Bankers' Association's April 2016 six point plan to enhance consumer protections and in response to Government reforms and actions by regulators.

The committee was also asked to, as appropriate, engage with Australia's key economic regulators and give due consideration to the Government's Financial System Program and other relevant financial sector reforms and reviews.

Abbreviations

ADI	Authorised Deposit-taking Institution
AFCA	Australian Financial Complaints Authority
ANZ	Australia and New Zealand Banking Group
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
BEAR	Banking Executive Accountability Regime
CBA	Commonwealth Bank of Australia
CCR	Comprehensive Credit Reporting
CEO	Chief Executive Officer
FOFA	Future of Financial Advice
GFC	Global Financial Crisis
NAB	National Australia Bank
SME	Small to medium-sized enterprise

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Introduction

Background

1.1 This is the House of Representatives Standing Committee on Economics' fourth report for the committee's review of Australia's four major banks.

1.2 In November 2016, the committee published its first report, which followed the first round of hearings in October 2016. The report contained 10 recommendations to reform the banking sector, including calling for new legislation and other regulatory changes to improve the operation of the banking sector for Australian consumers.

1.3 In a second report in April 2017, following hearings in March, the committee reaffirmed the 10 recommendations of its first report and made an additional recommendation in relation to non-monetary default clauses.

1.4 In a third report in December 2017, following hearings in October, the committee made four new recommendations regarding: dual-network debit cards and tap-and-go payments; the repricing of interest-only mortgages; comprehensive credit reporting; and AUSTRAC procedures.

1.5 The government and the regulators have commenced a significant financial sector reform agenda including recommendations made by the committee on reforms to the banking sector:

- Legislation passed in February 2018 to establish the Australian Financial Complaints Authority (AFCA), creating a one-stop shop for external dispute resolution in the financial sector. AFCA will start accepting complaints from 1 November 2018.

- Legislation was passed in February 2018 for the Banking Executive Accountability Regime (BEAR) to impose higher standards of behaviour on banks and their senior executives and directors, applying from 1 July 2018 for large authorised deposit-taking institutions (ADIs) and from 1 July 2019 for small and medium ADIs.
- Legislation passed in February 2018 to enable all ADIs regardless of their size to use the term 'bank'.
- The second stage of consultation on legislation to implement Open Banking reforms (and the broader Consumer Data Right) to drive competition across the banking system commenced on 24 September 2018.
- Legislation was introduced on 28 June 2018 to increase the ownership restriction applying to financial institutions from 15 to 20 per cent, and to establish a streamlined approval path for new and recent entrants to reduce barriers for innovative new FinTechs into the banking sector.
- Legislation was introduced on 28 March 2018 to mandate the participation of the four major banks in the comprehensive credit reporting (CCR) system, and to enhance the security protections surrounding that information. The data sharing process commenced in September 2018 when the four major banks voluntarily joined the system.

1.6 The committee's mandate from the government to review the banking sector is ongoing, and provides an important mechanism to hold the four major banks to account before the Parliament.

1.7 The fourth round of hearings in October 2018 focused on scrutinising the major banks' response to the shocking revelations highlighted in the Royal Commission's Interim Report.

Conduct of the inquiry

1.8 The committee held three-hour public hearings with each of the four major banks on 11, 12 and 19 October 2018.

1.9 The proceedings of the hearings were webcast over the internet, through the Parliament's website, allowing interested parties to view or listen to the proceedings as they occurred. The transcripts of each of the public hearings are available on the committee's website.

1.10 Following these hearings, the committee sent letters to each of the major banks' Chief Executive Officers (CEOs) seeking responses to questions on notice as well as a range of additional information on specific issues of concern to the committee.

1.11 The banks' responses to these additional requests, excluding information that was provided on a commercial-in-confidence basis, are available on the committee's website.

Reader guide and structure of the report

1.12 Chapters 2, 3, 4 and 5 provide a summary of the main issues covered during each of the committee's public hearings.

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Commonwealth Bank of Australia

Overview of misconduct

2.1 The Royal Commission has revealed shocking cases of misconduct and conduct falling below community expectations by CBA and its subsidiaries in wealth management and financial advice.

2.2 CBA-affiliated financial advisers charged fees to clients who had been dead for years. Its insurance arm rejected trauma claims based on a heart attack definition that was five years out of date.

2.3 In relation to consumer lending, the Royal Commission heard CBA failed to disclose the value of broker commissions to its customers, admitted that its payments to brokers contained an inherent conflict of interest, and acknowledged it was aware of 'significant and wide-ranging compliance issues' in relation to loans submitted by brokers.[1] Despite these red flags, CBA had not addressed gaps in its monitoring processes which would have detected or prevented poor broker behaviour.[2]

2.4 The Royal Commission heard CBA had sold credit insurance policies to about 64,000 customers who 'may not have been eligible to claim benefits under their policy in the event that they suffered temporary or permanent disability or involuntary unemployment. This was because they were not employed when they were sold the policy.'[3]

2.5 It was revealed that approximately 11,059 CBA customers were given personal overdrafts they may not have been able to service because of a programming error. The Interim Report found CBA 'failed to take into

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1 Commissioner Kenneth M Hayne, *Interim Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Interim report), vol 2, p. 25.

2 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 26.

3 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 51.

consideration the declared housing and living expenses' of those customers, which resulted in 'breaches of CBA's responsible lending obligations'.[4]

2.6 CBA admitted to being the worst financial services entity in Australia for charging customers fees for financial advice they never received. The Royal Commission heard CBA 'had paid or offered to pay about $118.5 million in refunds, including interest, to clients who had been charged fees for no service' by CBA's financial advice licensees, CFPL, BWFA and Count.[5]

2.7 It was also revealed that, between December 2011 and March 2017, CBA charged double the rate of interest to some of its business customers.[6] While more than 2,500 customers were compensated, it took CBA about two and a half years after the first overcharging occurred and about 240 days after CBA first identified the issue to pay its customers what they were owed.[7] Furthermore, CBA admitted that it delayed refunding customers as part of a media strategy to minimise the impact on the bank, including scrutiny by this committee at its hearing with CBA on 7 March 2017.[8]

2.8 In addition to the cases examined by the Royal Commission, CBA has been subject to significant penalties for misconduct including:

- In June 2018, the Federal Court approved CBA's $700 million settlement with the Australian Transaction Reports and Analysis Centre (AUSTRAC) over anti-money laundering allegations. This represented the largest civil penalty in Australia's corporate history[9], and
- In May 2018, CBA agreed to pay the Australian Securities and Investments Commission (ASIC) $25 million in relation to rate-rigging.[10]

2.9 CBA has also been subject to a $1 billion add-on to its minimum capital requirement and a court-enforceable agreement to implement 35 changes recommended by the Australian Prudential Regulation Authority

4 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 64.
5 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 161.
6 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, pp. 304-305.
7 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 306.
8 J Frost, 'CBA delayed refunds to avoid scrutiny', *Australian Financial Review*, 25 May 2018.
9 M Han, 'Federal Court approves CBA's $700m penalty', *Australian Financial Review*, 26 June 2018.
10 J Shapiro, 'CBA accepts undertaking over BBSW', *Australian Financial Review*, 10 May 2018.

(APRA)'s prudential inquiry into governance, culture and accountability within the CBA group.[11]

Financial Services Royal Commission

2.10 The committee used the release of the Royal Commission's interim report on 28 September 2018 as an important platform to scrutinise each bank during the public hearings.

2.11 The Commonwealth Bank was the subject of 14 case studies in the Royal Commission's interim report, more than any of the other major banks.

2.12 In addition, CBA was disproportionately represented among complaints received by the committee.

2.13 The committee questioned CBA about the processes it had in place to address the misconduct highlighted in the interim report.

2.14 Mr Comyn acknowledged shortfalls in CBA's capability to mitigate operational risks, non-compliance with laws and regulations, and a lack of importance shown by CBA to customer remediation. Mr Comyn stated:

> There are many examples of where we would like to have done things differently, of course… We were too slow to acknowledge and, particularly, to get to the root cause of those mistakes. We should have taken more preventive action and we should have recognised, as you said, some of the red flags that were visible.[12]

2.15 To address these issues Mr Comyn had instigated a change in management, with six new executives appointed to the leadership team.

2.16 Mr Comyn advised there have been reductions to executive remuneration and greater accountability, in part through the implementation of the Bank Executive Accountability Regime (BEAR).

2.17 In June 2018 CBA announced its intention to demerge its wealth management and mortgage broker businesses into a separate entity.[13] Mr Comyn noted the decision to simplify the structure of CBA would enable each business to focus on its core activities.

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11 Australian Prudential Regulation Authority (APRA), 'APRA releases CBA Prudential Inquiry Final Report and accepts Enforceable Undertaking from CBA', *Media Release*, 1 May 2018.

12 Mr Matthew Comyn, CEO, Commonwealth Bank of Australia (CBA), *Transcript*, 11 October 2018, p. 6.

13 CBA, 'CBA announces intention to demerge wealth management and mortgage broking businesses', *Media release*, 25 June 2018, <https://www.commbank.com.au/guidance/newsroom/demerger-of-wealth-and-mortgage-broking-businesses-201806.html?ei=card-view>, viewed 30 October 2018.

2.18 The committee was sceptical about the degree of improvement CBA had achieved given a decade of scandals involving wealth management and CommInsure for example. This sentiment was also observed in the Royal Commission's interim report:

> The evidence that was led in the first round of hearings suggested that the entities examined had done, and were doing, as little as they thought they have needed to do to meet their legal obligations, offering no (or at best, next to no) encouragement to or reward for staff or third parties to pursue the interests of the consumer.[14]

2.19 Mr Comyn acknowledged the committee's scepticism when he stated 'I understand that I and the Commonwealth Bank will be judged on our actions, not by any words or promises that I provide today'.[15]

2.20 Mr Comyn noted CBA was not only addressing the Royal Commission's interim report, 'we have had the benefit of a very thorough review by an independent panel, which was a very critical but fair report'[16] referring to Australian Prudential Regulation Authority's (APRA) prudential inquiry into CBA released in May 2018.

2.21 CBA committed to biannual publication of progress reports towards implementation of the recommendations made in the prudential inquiry. Mr Comyn noted it was important for stakeholders, including the committee, to hold CBA to account as part of rebuilding trust and confidence in the financial services industry.

Reforms to remuneration

2.22 The committee asked CBA for an update on reform efforts to prevent the conflict of interest that can arise from some remuneration structures.

2.23 The committee emphasised a point raised in the Royal Commission's interim report, with reference to ASIC analysis on the role of remuneration in the provision of financial advice:

> They are results that demonstrate the validity of a basic observation of the world: that the choice between interest and duty is resolved, more often than not, in favour of self-interest.[17]

2.24 The committee pressed CBA to explain how it was prioritising the interests of its customers. Mr Comyn informed the committee that as part

14 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 55.
15 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 6.
16 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 3.
17 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 91.

of a fuller implementation of the Future of Financial Advice (FOFA) reforms CBA had removed its exceptions to FOFA and was now ensuring 'all customers are actively opting into an ongoing service provision by our advisers'.[18]

2.25 CBA announced on 9 October 2018 it would take further action to address issues associated with conflicted remuneration by ceasing grandfathered commissions.[19]

2.26 The committee asked CBA about reforms to remuneration for staff. CBA noted it has implemented all but one of the recommendations of the Sedgwick review, which recommended banks remove financial incentives directly linked to sales or the achievement of sales targets. Secondly that eligibility for variable reward reflects a broad range of responsibilities or a balanced scorecard approach.

2.27 Mr Comyn explained 'in the example of a teller, actually there's zero weighting towards financial performance.'[20] For other staff such as customer service specialists in a branch, on a team basis, less than 30 per cent of variable remuneration relate to financial measures such as sales. Mr Comyn asserted this is a substantial change from the past five years.[21]

2.28 CBA informed the committee that the only Sedgwick recommendation yet to be implemented relates to mortgage broker remuneration. The delay is due to the need for cooperation from a broader group of industry participants.

2.29 The committee also asked CBA about reforms to executive remuneration. In his opening address, Mr Comyn noted there have been reductions in executive remuneration when he stated 'executives across the organisation have faced consequences for our failures…there has been a $100 million impact on remuneration.'[22] Mr Comyn also described changes to his own remuneration structure:

> The aggregate of measures that contribute to my overall remuneration have only a 30 per cent linking to financial outcomes. That's approximately half what it has been in prior

18 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 2.

19 CBA, 'CBA takes further action to improve its wealth business', *Media Release*, 9 October 2018 <https://www.commbank.com.au/guidance/newsroom/cba-takes-action-to-improve-wealth-businesses-201810.html?ei=card-view>, viewed 30 October 2018.

20 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 15.

21 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 15.

22 Mr Matthew Comyn, CEO, CBA, *transcript*, 11 October 2018, p. 2.

> years. That's certainly the lowest it's been for a chief executive of the Commonwealth Bank in decades.[23]

2.30 The committee noted this effort but agreed that further reform is necessary to restore community trust in the financial system.

Customer remediation

2.31 The committee was particularly interested in verifying the level of remediation CBA had given to customers affected by its misconduct, particularly associated with issues identified in the Royal Commission.

2.32 Mr Comyn explained in total CBA had '…spent $850 million on a combination of customer remediation, administering that remediation and investing in our advice business.'[24]

2.33 CBA noted approximately $580 million was allocated to improving processes to facilitate remediation in a systemic and comprehensive way for customers who received bad advice. The remaining $270 million was paid in compensation, including interest, to customers who were provided with poor quality advice or charged fees where service was not provided.[25]

2.34 The committee questioned how far back CBA intended to review its customer files to which CBA replied, its approach has been to go back as far as practical when reviewing customer cases.

2.35 CBA informed the committee it would review advice fees charged to deceased estates over the past seven years and would refund with interest any instances where unauthorised fees have been charged.

2.36 The committee also questioned the pace of remediation repeating an observation from the Royal Commission's interim report with regard to financial advice that observed entities had been very slow to remediate customers who have suffered loss or detriment as a result of misconduct or other compliance failures.[26]

2.37 Mr Comyn acknowledged CBA had been too slow to remediate customers when he stated:

> …we absolutely are committed to ensuring that, where we have done the wrong thing by our customers, they are remediated in full and particularly on a prompt basis, which is one of the areas

23 Mr Matthew Comyn, CEO, CBA, *transcript*, 11 October 2018, p. 4.

24 Mr Matthew Comyn, CEO, CBA, *transcript*, 11 October 2018, p. 3.

25 CBA, 'CBA takes further action to improve its wealth business', *Media Release*, 9 October 2018 <https://www.commbank.com.au/guidance/newsroom/cba-takes-action-to-improve-wealth-businesses-201810.html?ei=card-view>, viewed 30 October 2018.

26 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 132.

> where we have been unable to demonstrate the right level of speed in terms of the way we remediate our customers.[27]

CEO actions to address customer complaints

2.38 Throughout the hearing the committee sought to identify the specific actions taken by Mr Comyn to demonstrate he understood the effect of a dispute with CBA for individual customers.

2.39 The committee asked Mr Comyn how many aggrieved customers he had personally met with, to which he responded less than 10.[28]

2.40 Mr Comyn recognised the need for customers to feel like they've had their case heard and informed the committee CBA has reviewed a number of cases. However, Mr Comyn also noted:

> In some instances, there has been a real difference to the way that we have looked at those cases; in others, despite the circumstances being tragic, it's not obvious that the bank could have done something differently.[29]

2.41 The committee intends to follow-up at future hearings on efforts of CEOs to improve complaints handling mechanisms and the pace of remediation.

Complaint handling mechanisms

2.42 The committee asked CBA to outline how it had improved its complaints handling processes. CBA noted that customer complaints and trends in complaints are being analysed more regularly at a senior level.

2.43 CBA was also asked about the level of resources which are directed towards this area of operations and how long processing requests take.

2.44 Mr Comyn noted CBA has a large complaints team and it is CBA's aim to deal with straightforward complaints within five days; however more complex disputes can take longer to resolve.

2.45 As part of a commitment to improve, CBA has established a new customer advocacy team with a staff of around 45 people.[30] The customer advocacy team is intended to give dissatisfied customers an additional internal avenue in which to make their case.

2.46 Mr David Cohen, CBA's Group Chief Risk Officer, described the need for this change when he noted:

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27 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 3.

28 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 21.

29 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 10.

30 Mr David Cohen, Group Chief Risk Officer, CBA, *Transcript*, 11 October 2018, p. 11.

> I think it is fair to say that, for individual customers dealing with a large bank like us when it comes to a complaint, in the past it has been difficult and it has been slow.[31]

2.47 In future hearings the committee will scrutinise the effectiveness of CBA's complaints handling mechanisms.

Bank Executive Accountability Regime

2.48 Executive accountability was a consistent theme throughout the Review of the Four Major Banks, including the fourth round of hearings.

2.49 On 1 July 2018 the Banking Executive Accountability Regime (BEAR) came into effect for the largest authorised deposit-taking institutions (ADIs). Under the BEAR, all senior executives and directors are required to be registered with APRA. In addition ADIs are required to provide accountability maps of the roles and responsibilities of their senior executives.

2.50 CBA responded positively to the introduction of the BEAR, when Mr Comyn noted:

> I do think that the government's introduction of the Banking Executive Accountability Regime was a helpful element. Certainly in our experience, the implementation of that actually forced us to go through a very clear accountability mapping exercise which identified areas of ambiguity that had previously existed.[32]

2.51 The committee was particularly concerned about how the accountability mapping exercise would translate across the whole organisation.

2.52 CBA stated it has extended the BEAR to 90 executives in order to demonstrate increased attentiveness to accountability across the organisation.

Relationship with regulators

2.53 The committee questioned the nature of CBA's relationship with the ASIC, citing the example of an enforceable undertaking for failing to conduct annual reviews for over 31,000 wealth advice clients.

31 Mr David Cohen, Group Chief Risk Officer, CBA, *Transcript*, 11 October 2018, p. 10.

32 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 4.

2.54 The committee noted CBA agreed to a community benefit payment of $3 million and remediation of $90 million with ASIC. The committee was highly critical of this process emphasising an observation in the Royal Commission's interim report that:

> When deciding what to do in response to misconduct, ASIC's starting point appears to have been: How can this be resolved by agreement?
>
> This cannot be the starting point for a conduct regulator.[33]

2.55 CBA agreed that these discussions had been treated like a negotiation but advised this was likely to change.

2.56 On CBA's relationship with APRA, Mr Comyn noted CBA had accepted all of the recommendations from APRA's prudential inquiry.

2.57 Mr Comyn stated CBA has embraced the report as 'a road map for the necessary changes for our organisation'.[34]

2.58 CBA informed the committee of its intention to make up for past complacency, including concerns raised by regulators such as APRA and AUSTRAC.

Competition in the financial system

2.59 The committee asked CBA to comment on the state of competition among banks observing consumer apathy or an unwillingness to switch products or providers has helped the major banks maintain high profits.

2.60 Mr Comyn disputed that claim, noting CBA has observed an increasing level of competition owing to 'the steps that the government are taking in the context of creating greater transparency and ensuring that customers have the ability to more easily compare providers'.[35]

2.61 Mr Comyn provided policy initiatives such as Comprehensive Credit Reporting and Open Banking as examples.

2.62 CBA noted price is one of several factors consumers consider when choosing a financial service provider. Mr Comyn noted 'for some customers, price is not the only determinant of whether they would choose a product provider. I'm sure that extends beyond banking.'[36]

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33 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 277.

34 Mr Matthew Comyn, CEO, CBA, *transcript*, 11 October 2018, p 2.

35 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p 18.

36 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 19.

2.63 However, the committee pointed to findings from the Productivity Commission’s final report into Competition in the Financial System that indicates the major banks maintain considerable market power.

2.64 The Productivity Commission noted the high degree of concentration means:

> Price competition in the banking system is limited. Although institutions claim that they compete in loan markets by discounting, such behaviour is not indicative of a competitive market when price obfuscation is common and discounts are specific to groups of customers.[37]

Small-medium enterprise lending

2.65 Non-monetary covenants are an aspect of lending where the major banks have historically held power over small to medium sized enterprises (SMEs) through complex and one-sided loan contracts.

2.66 The committee has previously recommended action should be taken to abolish non-monetary default clauses for loans for small business.

2.67 The committee asked CBA if it had met all of its commitments in response to recommendations from the Carnell Inquiry in relation to small business lending practices. Mr Comyn stated:

> We supported the recommendations by Kate Carnell's inquiry, and we've implemented those. In some cases we have implemented them beyond the strict recommendations.[38]

2.68 The complexity of some small business disputes was also mentioned in Mr Comyn’s opening statement where he announced the establishment of a dedicated team to assist small business customers.

2.69 However, the committee questioned whether CBA had retreated from certain market segments, notably SME lending.

2.70 CBA did not agree with this characterisation. Mr Comyn noted ‘our view is that, first of all, lending to small business is critical because small business in Australia is a major employer.’[39]

2.71 However Mr Comyn noted CBA had withdrawn from some more obscure methods of financing such as invoice financing:

37 Productivity Commission, ‘Competition in the Australian Financial System’, *Inquiry Report*, No. 89, 29 June 2018, p. 37.

38 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 12.

39 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 12.

> There are many segments of the market that the Commonwealth Bank simply chooses not to participate in, because the interest rates that are being charged—to arguably compensate for the risk—are simply just interest rates we're not comfortable with.[40]

Access to credit

2.72 In an extension to the SME lending questions, the committee asked CBA if lending standards had been tightened and a reduction in lending had occurred as a result of the Royal Commission.

2.73 Mr Cohen clarified that CBA had tightened lending standards, but this was in response to a reassessment of risk following the Global Financial Crisis (GFC) and not necessarily a consequence of the Royal Commission:

> We've not, as a specific result of the royal commission, sought to reduce access to credit. It is the case that, in a couple of sectors where we had seen excessive activity, going back before the royal commission, we had made some strategic decisions to moderate our appetite...[41]

2.74 The committee also discussed the link between the provision of credit and the broader economy to which Mr Comyn noted there is a strong link between banking system and economic conditions.

2.75 Mr Comyn stated:

> No institution is more leveraged to the performance of the Australian economy than the Commonwealth Bank. We are very fortunate that we have had 27 years of uninterrupted economic growth.[42]

2.76 Mr Comyn also said he was not concerned about the recent slowdown in house prices due to the underlying strength of the economy as shown by falling unemployment, strong economic growth and low inflation.

Decision to restructure

2.77 The committee questioned if CBA's decision to demerge its wealth and mortgage broker businesses was affected by the reputational damage suffered as a result of the Royal Commission.

40 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 20.

41 Mr David Cohen, Group Chief Risk Officer, CBA, *Transcript*, 11 October 2018, p. 25.

42 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 18.

2.78 CBA asserted the rationale for the demerger was part of a strategic decision to simplify its business.

2.79 The Royal Commission's interim report was critical of decisions by some entities, including CBA, to restructure their business, as this presented a moving target for the Commission.

2.80 However, CBA affirmed that it is accountable for the advice and mortgage broker businesses until the demerger is complete.

2.81 Mr Comyn emphasised the importance of wealth management services when he stated:

> We also think that, with the wealth management business and the advice industry, notwithstanding the challenges that are faced across all parts of that industry, it's very important that those needs are provided for. [43]

2.82 Following the hearing, on 31 October 2018 CBA announced it had agreed to sell Colonial First State Global Asset Management to Mitsubishi UFJ Trust and Banking Corporation. As a result, Colonial First State Global Asset Management would not be included in the demerger. [44]

2.83 Also on 31 October, CBA announced the appointment of a Chief Executive Officer and a Chief Financial Officer to the proposed demerged entity.[45]

2.84 Following the announcement in June 2018 as part of its decision to demerge its wealth and mortgage broker business, CBA announced a strategic review of CommInsure General Insurance.[46]

2.85 In September 2017, CBA announced the sale of its life insurance business, CommInsure Life to AIA Group Limited.[47] As of 23 October 2018 the divestment was pending regulatory approvals and completion expected in the first half of 2019.[48]

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43 Mr Matthew Comyn, CEO, CBA, *Transcript*, 11 October 2018, p. 29.

44 CBA, 'Divestment of Global Asset Management Business', *Media release*, 31 October 2018, <https://www.commbank.com.au/guidance/newsroom/divestment-of-global-asset-management-business-201810.html?ei=card-view>, viewed 31 October 2018.

45 CBA, 'Key Appointments to lead demerger', *Media Release*, 31 October 2018, https://www.commbank.com.au/guidance/newsroom/key-appointments-to-lead-demerger-201810.html?ei=card-view, viewed 31 October 2018.

46 CBA, 'CBA takes further action to improve its wealth business', *Media Release*, 9 October 2018 <https://www.commbank.com.au/guidance/newsroom/cba-takes-action-to-improve-wealth-businesses-201810.html?ei=card-view>, viewed 30 October 2018.

47 CBA, 'Divestment of Australian and New Zealand Life Insurance Business', *Media release,* 21 September 2017, https://www.commbank.com.au/guidance/newsroom/ASX2-201709.html, viewed 31 October 2018.

48 CBA, 'Divestment of Indonesian life insurance business', *Media release,* 23 October 2018, https://www.commbank.com.au/guidance/newsroom/update-on-life-insurance-divestments-201810.html?ei=card-view, viewed 31 October 2018.

Assistance to farmers

2.86 CBA was asked what kind of special consideration it was giving to drought affected farmers. In response, CBA noted it is allowing repayment holidays for those who are struggling to repay their loans.

2.87 CBA also noted it offered customers flexibility to break term deposits without penalties and allows customers to use their farm management deposits as an offset for their loans.

2.88 CBA informed the committee it has also donated $2 million to drought relief charities while its customers have donated a further $7 million.

3

Westpac Banking Corporation

Overview of misconduct

3.1 The Royal Commission has exposed serious and widespread cases of misconduct and conduct falling below community expectations by Westpac and its subsidiaries.

3.2 It was revealed that it was 'common practice' to fill in documents for loan applicants or guarantors at Westpac. The practice led to an elderly disability pensioner losing her home after acting as a guarantor for her daughter and partner.[1]

3.3 Furthermore, the Interim Report noted that despite the customer's hardship application to the Financial Ombudsman's Service and her 'expressed desire to negotiate what would be, in effect, a life tenancy in the property, Westpac rebuffed the approach and insisted upon exercising its rights under the guarantee.'[2] Westpac ultimately allowed the customer life tenancy of her home, but only after being contacted by Legal Aid New South Wales. Westpac admitted it should have reached this result sooner and had inappropriately applied its hardship policy.[3]

3.4 In September 2018, Westpac was fined $35 million for breaching responsible lending laws. Westpac admitted it wrongly assessed people's ability to service mortgages written between December 2011 and March 2015, instead relying on a benchmark for customer expenses. The issue

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1 C Yeates, 'Westpac fought pensioner's hardship plea', *Sydney Morning Herald*, 22 May 2018, p. 6.

2 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 260.

3 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 260.

affected approximately 260,000 home loans that were approved by Westpac's automated decision system.[4]

3.5 Westpac's loan controls came under scrutiny at the Royal Commission after it admitted it does not independently verify the expenses of car loan applicants applying for finance through car dealerships. The Interim Report noted that 'a licensee's responsible lending obligations are non-delegable. The subcontracting, in effect, of its sales activities to intermediaries cannot be allowed to obscure this fact.'[5]

3.6 The Royal Commission heard that Westpac mailed letters to more than a million customers offering to increase their credit card limits without verifying their incomes or whether they were employed. Despite receiving guidance from ASIC that its processes were inadequate, Westpac maintained practices that were contrary to the guidance provided by ASIC. The Interim Report commented that 'in doing so, Westpac may be seen to have exhibited a preference for profit over what ASIC considered to be appropriate practice.'[6]

3.7 A preference for putting profits before customers was again revealed during the Royal Commission's examination of the conduct of two financial advisers employed by Westpac. The case studies showed that several customers paid Westpac for advice that left them in a worse off financial position.

3.8 The Interim Report noted that one of the causes for the inappropriate advice was 'Westpac's remuneration practices for its employed financial advisers.'[7] This remuneration system rewarded the poor advice provided by the two advisers and incentivised 'only the generation of revenue'.[8]

3.9 To make matters worse, in one case Westpac made 'inadequate offers of compensation' and did not discipline the advisor until almost two years after the initial complaint.[9] In another, Westpac did not report the advisor to ASIC under its statutory obligations, despite the advisor's consistently poor audit ratings and record of policy breaches.[10] During earlier hearings,

4 Australian Securities and Investments Commission (ASIC), 'Westpac admits to breaching responsible lending obligations when providing home loans and a $35 million civil penalty', *Media Release 18-255*, 4 September 2018

5 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 91.

6 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 114.

7 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 186.

8 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 182.

9 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 186.

10 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 186.

Westpac was identified as the most resistant of the four major banks to ASIC's supervision.[11]

Financial Services Royal Commission

3.10 Examples of Westpac's misconduct were the subject of six case studies in the Royal Commission's interim report.

3.11 In response to the Royal Commission's interim report, Westpac CEO and Managing Director Mr Brian Hartzer stated the case studies were confronting and sad. However, given Westpac had provided information to the Royal Commission some of the findings were unsurprising.

3.12 In a previous hearing, Mr Hartzer rejected the need for a Royal Commission, about this position, Mr Hartzer noted:

> Westpac has been involved in some of them [case studies] and not involved in a number of them—there have been case studies and issues that have come out that we didn't anticipate. Reading the report and looking at the detail, particularly in hindsight, and at some of the observations that the royal commissioner has made, I clearly see the value in that process now.[12]

3.13 The committee pressed Westpac to explain the measures it had taken to rebuild customer trust following the Royal Commission. Mr Hartzer informed the committee Westpac had held a half day training session where 'we played tapes of customer complaints to everybody, so you could actually hear the emotion in the voice of people of what they'd gone through'.[13]

3.14 Mr Hartzer noted Westpac already has policies such as a code of conduct and a service promise but rules could not replace the judgment of staff when he stated:

> Rules can't answer all these things, and we have to rely on our people, as the culture bearers, to exercise good judgement and to demonstrate that they are interested in the long-term success of that customer—and, ultimately, that's in the long-term interest of the bank.[14]

11 B Butler, 'Westpac plays cards badly: ASIC', *The Australian*, 26 March 2018, p. 17.

12 Mr Brian Hartzer, CEO and Managing Director, Westpac, *Transcript*, 11 October 2018, p. 53.

13 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 37.

14 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 37.

3.15 The committee noted this response but continued to pursue questions regarding Westpac's efforts to improve remuneration practices and accountability.

Reforms to remuneration

3.16 Issues regarding the incentives created by remuneration structures were raised throughout the hearing, as the Royal Commission made critical observations regarding the role of remuneration. For example:

> All the conduct identified and criticised in this report was conduct that provided a financial benefit to the individuals and entities concerned.[15]

3.17 Westpac noted it had made changes to remuneration to implement the Sedgwick review and as a result referrals and sales targets have been removed from the remuneration structure for tellers.

3.18 Further questions were asked about what changes had been made for middle management. Westpac stated there are other traits that must be displayed such as compliance, accreditation and passing audits described as 'gate-opener' behaviours in order for staff to be eligible for variable remuneration.

3.19 However, Mr Hartzer did not accept the claim that remuneration was the sole cause of misconduct highlighted by the Royal Commission when he stated:

> I think it's clear that, in many of those cases, remuneration can and did play a role in what happened there. But, to answer the question fully, though, I don't agree with the characterisation that the only causal factor here in all of these issues is remuneration.[16]

3.20 The committee criticised the level and composition of the CEO's salary and questioned if the Royal Commission had resulted in any reductions in Mr Hartzer's salary.

3.21 Mr Hartzer admitted a proportion of his variable pay has been 'zeroed out' in the past few years as a result of Westpac's overall performance.

3.22 Perhaps unsurprisingly, Mr Hartzer did not agree with the idea that the variable component of the salaries of bank executives should be regulated. Instead Mr Hartzer noted regulation of this type could make it difficult to recruit high quality candidates given the level of international competition.

15 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1 p. 301.

16 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 60.

Customer remediation

3.23 In Westpac's initial submission to the Royal Commission it indicated that $12.6 million was paid to 205 clients to compensate for bad advice, with a further $1 million in compensation offered but not accepted (as at 29 January 2018).[17]

3.24 Westpac also remediated $2.75 million to 1,996 customers who were affected by the improper conduct of BT advisers between 1998 and 2012.[18]

3.25 During the hearing, the committee asked Westpac how much it had paid out in compensation and how much was set aside for future compensation associated with the wealth management division. Mr Hartzer responded:

> Over the last couple of years, we have made provision for about $117 million for the ongoing advice matter and another $80 million for what we call the advice compliance program.[19]

3.26 The committee asked Westpac to reflect on the consequences for shareholders and the resources devoted to repairing the extensive damage to its reputation as a result of the misconduct exposed during the Royal Commission. Mr Hartzer was frank in his response when he stated:

> I'm sure they're deeply disappointed. The value of Westpac and other banks has fallen dramatically over the last 12 months. There's a variety of reasons for that. Some of it is the P&L impact of the remediation work that we're having to do. I can assure you they're not happy about it.[20]

CEO actions to address customer complaints

3.27 The committee pressed Mr Hartzer on the number of aggrieved customers he had met. Mr Hartzer admitted he had not met with any of Westpac's customers with long standing issues, but agreed that face to face meetings were not a bad idea.

3.28 The committee noted Mr Hartzer's resistance to the label 'bank victim'.

3.29 The committee intends to follow-up at future hearings on efforts of CEOs to improve complaints handling mechanisms and the pace of remediation.

Complaint handling mechanisms

3.30 The committee asked Westpac about reforms to improve a customer's experience when resolving a complaint. The committee particularly

17 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1 p. 115.
18 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1 p. 120.
19 Mr Brian Hartzer, CEO, Westpac, Transcript, 11 October 2018, p. 61.
20 Mr Brian Hartzer, CEO, Westpac, Transcript, 11 October 2018, p. 39.

sought to scrutinise the speed and level of resources devoted to complaint resolution processes.

3.31 As part of his opening address, Mr Hartzer noted many of the Royal Commission's case studies were the result of inefficient and slow responses to customer complaints and a lack of understanding of the main causes, in particular Mr Hartzer stated:

> We worked very hard on dealing with the root causes of complaints, and our complaints volumes have come down dramatically. But what we missed was that, in the percentage of complaints that were still there, there were vulnerable customers or customers where the consequence of what had happened was severe or where the process was stuck in the system and taking too long.[21]

3.32 To improve, Westpac had also reinvigorated its complaints handling training for its frontline staff and created a central team to deal with complaints across all business groups. Mr Hartzer reported that these measures had helped Westpac to provide clear communication to its customers regarding complaint resolution processes.

3.33 In addition, Westpac introduced a new group executive managing a team with well over 100 staff and a centralised internal record keeping system to ensure greater consistency across the organisation.[22]

3.34 The committee was not satisfied with this response, probing for further detail on what customers should expect from the enhanced complaints handling process.

3.35 Mr Hartzer noted Westpac is escalating longstanding or complex cases to more senior levels of the organisation in order to resolve these cases more quickly.

3.36 Mr Hartzer explained this takes the form of a 'long-dated matters' committee which meets at least one a week. The new group executive responsible for complaints handling reports to the board each month on the progress of difficult cases.

3.37 The committee was very interested in the rate at which past cases are being processed. Mr Peter King, Westpac's Chief Financial Officer, provided the following detail:

> To give you a sense, there are about 450 that have been identified and 380 have been closed, so there are still 70 to go, but they're

21 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 38.

22 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 50.

> working on them pretty quickly, and 120 days is broadly the rule of thumb for a long-outstanding issue.[23]

3.38 Mr Hartzer emphasised, where possible, determinations were made in favour of the customer but this is not always possible, particularly in some complex situations.

3.39 To assist customers to resolve their disputes Mr Hartzer noted Westpac created a customer advocate role, independent of the business area, to give customers an avenue to review their complaints.

3.40 Mr Hartzer also acknowledged the value of an external complaint resolution process when he noted:

> We are certainly supportive of the fact that it's important that there is a regime that allows people to get cost-effective access to a legal process in the event that they don't feel like they've gotten a proper hearing.[24]

Bank Executive Accountability Regime

3.41 Westpac was positive about the introduction of the Bank Executive Accountability Regime (BEAR) as it helped to clarify areas of mutual responsibility. Mr Hartzer linked the BEAR to the issues highlighted in the Royal Commission when he noted:

> …I think that's probably where the BEAR regime has been a positive development… One of the learnings out of this royal commission has been that, when we dig into some of the cases and things that have happened, there's been a level of diffused accountability or the accountability hasn't been entirely clear as to who was supposed to do what and so things have fallen between the gaps.[25]

3.42 Mr Hartzer stated about 13 or 14 Westpac executives are directly covered by the BEAR. However, Westpac is using the principles across the company more broadly, particularly to improve the judgment of staff as Mr Hartzer noted:

> We continue to look for ways to expose our broader management team and our frontline people to the things that go wrong, giving them a sense of what they need to watch out for and reminding

23 Mr Peter King, CFO, Westpac, *Transcript* 11 October 2018, p. 54.

24 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 57.

25 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 37.

> them about how they need to exercise judgement and empathy in these situations.[26]

3.43 When asked to elaborate on an example of shared accountability that created risks prior to the introduction of the BEAR, Mr Hartzer cited financial crime.

3.44 The technical nature of managing financial crime and understanding anti-money laundering regulations were specific skills. However, front-line staff needed to be made more accountable for monitoring customer transaction.

3.45 The BEAR required Westpac to define this shared accountability but the committee was critical of Westpac for not making senior executives more accountable for systemic failures prior to the introduction of the BEAR.

Relationship with regulators

3.46 The committee asked questions about the nature of Westpac's relationship with the Australian Securities and Investments Commission (ASIC) and whether it was adversarial.

3.47 To back this claim, the committee cited evidence provided by ASIC to the Royal Commission as part of a case study on unsolicited credit card limit increases offered to Westpac customers.

3.48 Mr Harter strongly refuted the claim Westpac was dismissive of ASIC stating ASIC is in regular contact with Westpac's Board. Although, Mr Hartzer admitted he does not often directly liaise with representatives of ASIC.

3.49 On the interpretation of responsible lending laws, with regards to the Royal Commission's case study, Westpac admitted it had interpreted the laws differently to ASIC.[27]

3.50 Mr Hartzer defended Westpac's interpretation as a legitimate difference of opinion given the high-level nature of the laws. However, Mr Hartzer also stated in future Westpac would not seek to debate the interpretation of laws and regulations with ASIC, rather it would take direction from the regulator.

26 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 51.
27 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 63.

Competition in the financial system

3.51 Westpac was also asked about the state of competition in the financial system, specifically whether a lack of competition created an inertia that benefits Westpac.

3.52 In response, Mr Hartzer asserted relatively few people chose financial services solely based on price. Mr Hartzer also drew on his experience in other jurisdictions noting consumers in the United Kingdom and the United States also consider factors other than price when he stated:

> My experience shows that a relatively small portion of people in financial services are driven solely by price. For people who are, there are lots of choices out there and they can switch—and technology is going to make that even easier over time. In some cases, obviously, it reflects inertia but in other cases it reflects the fact that people view the bank as a service not just as a product.[28]

3.53 The committee pressed Westpac about its profitability and on the higher level of margins Australian banks can maintain compared with the rest of the world.

3.54 Westpac refuted the claim that margins for Australian banks are much higher than the rest of the world. Mr Hartzer asserted 'returns of banks have fallen; the margins have fallen. Customers are benefiting from that.'[29]

Small-medium enterprise lending

3.55 The committee was interested in examining Westpac's view on the threshold at which non-monetary default clauses cannot be applied to small business loans.

3.56 Mr Hartzer noted that loans above the $3 million threshold established by industry could indicate sophisticated borrowers which meant careful consideration of the level of the threshold was required.

3.57 Mr Hartzer also noted the Australian Banking Association has agreed to review this aspect of the banking code which could result in an increase in the threshold.

3.58 When asked about increases in interest rates when the risk profile of SME borrowers changes, Mr Hartzer stated he was comfortable that Westpac was performing within established legal practices.

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28 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 43.

29 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 69.

3.59 The committee was critical of this response and probed this topic at each hearing.

3.60 Westpac also refuted the claim that it has withdrawn from small business lending. Mr Hartzer stated:

> Westpac serves, one way or another, just over 50 per cent of all Australian businesses. It's one of our target businesses. It's a good business. We're investing in that business. We're investing in technology to bring the cost of borrowing down.[30]

Access to credit

3.61 Westpac was asked to comment on the case for simplification of regulation as a potential response to the following observation in the Royal Commission's interim report:

> Good culture and proper governance cannot be implemented by passing a law. Culture and governance are affected by rules, systems and practices but in the end they depend upon people applying the right standards and doing their jobs properly.[31]

3.62 Throughout his testimony, Mr Hartzer argued more regulation would not necessarily prevent the misconduct highlighted by the Royal Commission. Instead of prescriptive responsible lending laws Mr Hartzer was in favour of improving the judgment of Westpac staff, stating:

> When you have an enormous list of specific things you have to do, in an organisation where you're trying to replicate that many thousands of times, it can lead you down a path of a tick-the-box approach. Unfortunately, sometimes the reality of life is that that can lead people not to exercise judgement—'Wait a minute; I've got all these rules but this customer is in a situation where, forget the rules, I need to do the right thing here.'[32]

3.63 While Mr Hartzer accepted a role for regulation, he also stated policy makers should be careful about adding more regulation as this could restrict access to credit, including to small businesses, which often use houses as collateral.

3.64 When asked if Westpac was concerned about the high proportion of interest-only lending on its books Mr Hartzer responded he was not,

30 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 45.

31 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1 p. 320.

32 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 68.

noting 'statistically, for most people with an interest-only loan, the loan amortises at the same rate as a P&I loan.'[33]

3.65 Mr King also noted Westpac had previously pursued investors requesting interest-only loans as part of a particular strategy and since abandoning that strategy the interest-only share of Westpac's mortgage book fell from 50 to 35 per cent in 18 months.[34]

Westpac retaining its wealth management business

3.66 When asked about the decision to retain its financial advice arm, Mr Hartzer noted Westpac had divested its insurance business and BT Investment Management.

3.67 The decision to divest BT Investment Management was taken to alleviate the perception of a conflict of interest given these products were sold to clients of Westpac's financial advice business.

3.68 Mr Hartzer defended Westpac's decision to retain its wealth management services, as Westpac customers wanted a range of services.

3.69 Mr Hartzer also defended the commercial nature of Westpac's business when he said:

> We are a commercial organisation. We want to grow. For people who represent us, part of the job is to help us grow the business—absolutely. But the strategy here is around encouraging people to consolidate their business with us.[35]

3.70 When pressed about the need for further separation of wealth management and lending businesses Mr Hartzer pointed out that misconduct issues were not limited to financial planning.

3.71 Mr Hartzer acknowledged the transition under Future of Financial Advice (FOFA) from product commission payments to a fee-for-service model should have been managed better. However, he noted Westpac was also the first to remove grandfathered commission payments attributable to BT products.

33 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 66.

34 Mr Peter King, CFO, Westpac, *Transcript*, 11 October 2018, p. 52.

35 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 42.

Mortgage brokers

3.72 Mr Hartzer was asked about the size of mortgage broker commissions and noted in general around 60 basis points are paid up front and around 15 basis points in a trail commission.[36]

3.73 Westpac noted that brokers contribute to competition in the banking system and they provide services that customers value in terms of greater visibility (or transparency) across the whole market.

3.74 Mr Hartzer also argued that some mortgage brokers rely on the long term relationships they build with customers while others are more transactional.

3.75 When asked whether a best interests duty should be applied to mortgage brokers, Westpac noted that FOFA style reforms may work but that adding further regulation would increase compliance costs and potentially threaten the viability of some brokers, which may not necessarily benefit consumers.

36 Mr Brian Hartzer, CEO, Westpac, *Transcript*, 11 October 2018, p. 65.

4

ANZ

Overview of misconduct

4.1 Aggressive sales targets and conflicted remuneration were some of the factors contributing to cases of misconduct at ANZ, the Royal Commission heard.

4.2 In relation to home mortgage lending, it was revealed that ANZ 'relied heavily on brokers to make enquiries into the customer's financial situation' and, in some cases 'did not take any steps to verify the customer's general living expenses'.[1]

4.3 Issues of responsible lending were again raised in relation to ANZ's car finance business, including the revelation that the asset finance division responsible for car loans at ANZ was classified as an extreme risk. The division was suspended on the eve of the Royal Commission.[2]

4.4 It was revealed that ANZ repeatedly ignored requests from ASIC to compensate 330,000 customers who had been inappropriately sold savings account loans. ANZ was fined $212,500 for allegedly breaching responsible lending laws by issuing unsolicited preapproved overdraft facilities.[3]

4.5 ANZ was also forced to refund customers $90 million after it found it had charged incorrect interest rates or fees to thousands of customers due to a technical error.[4] The Interim Report noted that ANZ's 'systems or processes were not properly set up to charge the correct rate or fee or to

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1 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 43.

2 B Butler, 'ANZ's 'extreme' risk finance unit', *The Australian*, 23 March 2018.

3 S Danckert, 'ANZ ignored regulator's pleas', *Sydney Morning Herald*, 21 March 2018, p. 6.

4 J Frost, 'ANZ still charging the wrong interest rate', *Australian Financial Review,* 22 March 2018, p. 5.

provide the appropriate discount or benefit.'[5] Furthermore, because ANZ was unable to fix the error, it 'continued to sell the same or similar products, and encounter the same or similar problems, over a period of time.'[6]

4.6 The Royal Commission heard that ANZ made allowances for taking over 7,124 farm loans worth $2.4 billion from Landmark Financial Services in 2010 and that 12 per cent of the loans, worth $273 million, were unlikely to be repaid.[7]

4.7 The Interim Report highlighted 'ANZ's lack of preparation for the very high probability that it would have to deal (as it did) with significant numbers of agribusiness customers experiencing financial difficulties' as the main reason for the poor conduct.[8] It also noted the 'then prevailing culture and practices in ANZ's Lending Services group' contributed to the failings.[9]

4.8 The Royal Commission heard evidence of poor service provided by ANZ to vulnerable customers in remote regions of the Northern Territory. In each of 2016 and 2017, ANZ charged in excess of $1.27 million in informal overdraft fees to account holders in the Northern Territory and in excess of $215,000 in interest on informal overdrafts.[10] It was also revealed that ANZ took four months to open a no fee bank account for an Aboriginal Centrelink customer who was concerned about dishonour fees.[11]

4.9 In addition to the conduct examined by the Royal Commission:

- The Australian Securities and Investments Commission (ASIC) has brought criminal charges against senior ANZ Bank staff and investment banks Deutsche and Citigroup over a $2.5 billion capital raising in 2015[12]
- ANZ is also facing civil action from ASIC for not telling investors that its investment banks had bought $791 million of its shares following the capital raising,[13] and

5 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 77.

6 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 77.

7 J Frost, 'ANZ farming push bungled from start', *Australian Financial Review*, 26 June 2018, p. 1.

8 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 387.

9 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 387.

10 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 481.

11 M Han, 'ANZ takes four months to open no-fee account', *Australian Financial Review*, 6 July 2018, p. 7.

12 P Durkin, J Shapiro & J Eyers, 'Share cartel: ANZ, Deutsche, Citi face charges', *Australian Financial Review Weekend*, 2 June 2018, p. 1.

13 C Yeates & M Beeby, 'ANZ faces civil action over $2.5b share sale', Sydney Morning Herald, 15 September 2018, p. 1.

- ANZ agreed to settle its case with ASIC in relation to rate rigging for approximately $50 million.[14]

Financial Services Royal Commission

4.10 Australian and New Zealand Banking Group Limited (ANZ) was the subject of nine case studies in the Royal Commission's interim report in the first four rounds of hearings.

4.11 In response to the Royal Commission's interim report, ANZ CEO Mr Shayne Elliott acknowledged to the committee ANZ has engaged in misconduct and conduct falling below community standards and expectations.

4.12 Further, ANZ was not sufficiently focused on holding executives to account for failures that harm customers. Mr Elliott described instances where executives had received pay cuts or left the bank but a clear link between poor outcomes and consequences was lacking.

4.13 Ms Alexis George, Deputy CEO of ANZ, reiterated this point when she noted ANZ's previous processes did not clearly record the reasons for reductions in executive remuneration.

4.14 Mr Elliott stressed this would not continue and reinforced the idea that changes are being made when he noted:

> Failings acknowledged by the commission and the lack of satisfactory progress on remediation will have a material impact on executive remuneration this year.[15]

4.15 Given many Australians no longer trust the banks as a consequence of the findings of the interim report, the committee scrutinised how ANZ was making executives more accountable.

4.16 In response, Mr Elliott confirmed ANZ has dismissed around 200 people for misconduct in the past year, including senior management, although not all of these were as a result of misconduct highlighted during the Royal Commission.

4.17 ANZ was pressed on how it is ensuring changes to improve accountability flow though all levels of the organisation to prevent future misconduct from occurring. Like CBA, Mr Elliott noted ANZ has restructured and simplified its business.

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14 Australian Securities and Investments Commission (ASIC), 'ASIC accepts enforceable undertakings from ANZ and NAB to address conduct relating to BBSW', *Media Release 17-393*, 20 November 2017.

15 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 2.

4.18 Mr Elliott acknowledged the decision to simplify ANZ was a strategy to prevent mistakes of the type highlighted by the Royal Commission's interim report.

Reforms to remuneration

4.19 Reform to remuneration was another important line of questioning given the central role remuneration played in creating a culture within the banking industry that prioritised sales over all else, as the interim report noted:

> First, staff and others engaged by an entity will treat as important what they believe that the entity values. Rewarding volume and amount of sales is the clearest signal that selling is what the entity values. What staff and others believe that the entity values informs what they do. It is a critical element in forming the culture of the entity.[16]

4.20 When asked about the reforms to remuneration for frontline staff Ms George acknowledged that previous schemes had emphasised sales. Ms George reported that bank tellers are now assessed on customer service metrics rather than sales.

4.21 The committee questioned the role of referrals in the score cards for bank tellers. While Ms George noted it was normal to assess how staff were helping to expand the business, Mr Elliott agreed referrals could be considered a derivative of sales and promised to review that element of the scorecard.

4.22 Like the other major banks ANZ accepted all of the recommendations of the Sedgwick review and are in the process of implementing all the recommendations, noting there is a delay in mortgage broker remuneration reform.

4.23 To assess the performance of staff, ANZ has a similar process to the other major banks but do not formally refer to certain behaviours as gate-openers. Instead ANZ performs a values assessment that considers characteristics such as integrity and accountability when determining the level of variable remuneration.

4.24 However, ANZ defended the commercial nature of their organisation, noting more senior staff are assessed on financial metrics.

4.25 For example, Mr Elliott explained financial metrics accounted for one quarter of his variable remuneration, while the remaining three quarters is

16 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 55.

determined by other metrics such as customer service and control functions.

4.26 When pressed about the level of his own remuneration, Mr Elliott noted his remuneration was a matter for the board and shareholders to approve. However, Mr Elliott did inform the committee he did not receive his 'full target of compensation' last year.[17]

Customer remediation

4.27 On 8 October 2018 ANZ announced charges of $374 million would affect its full year profit for 2018.[18]

4.28 At the hearing, Mr Elliott referred to this amount as '…a real cost. That's real money. That's their [shareholder's] money that is being paid out.'[19]

4.29 When the committee pressed ANZ on this point, Mr Elliott accepted that funds for remediation belonged to the customers noting, 'I accept that I misspoke there, fair point.'[20]

4.30 However, Mr Elliott went on to state:

> …the bulk of the money is not refunds, actually. The bulk of the money is actually the cost of going back, finding and recalculating the money and doing the dataset. That is the piece I was talking about: the cost of remediation. The work costs significant amounts of money. That was what I was referring to. But you're quite right: the refund money obviously belongs to customers.[21]

4.31 In addition ANZ told the committee it has significantly increased the level of resources devoted to customer remediation. Mr Elliott noted the number of staff for the specialist remediation team increased from 20 or 30 to about 165[22] not including an additional 100 staff working on remediation in the wealth division.[23]

17 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 26.

18 ANZ, 'Update on Customer Compensation and Software Amortisation', *Media release*, 8 October 2018, https://media.anz.com/posts/2018/10/update-on-customer-compensation-and-software-amortisation, viewed 25 October 2018.

19 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 11.

20 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 15.

21 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 15.

22 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 10.

23 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 20.

CEO actions to address customer complaints

4.32 Throughout the hearing the committee sought to identify the specific actions taken by Mr Elliott to demonstrate he understood the effect of a dispute with CBA for individual customers.

4.33 In his opening statement Mr Elliott told the committee he would meet with customers who had made submissions to the Royal Commission.

4.34 Mr Elliott committed to responding to ANZ customers who contact him directly when he said 'If any customer wants to contact me, my email address is public. It's shayne.elliott@anz.com.'[24]

4.35 The committee intends to follow-up at future hearings on efforts of CEOs to improve complaints handling mechanisms and the pace of remediation.

Complaint handling mechanisms

4.36 The committee questioned how ANZ had improved its complaints handling mechanism, to which ANZ responded that it had increased the degree of visibility its executive have of customer complaints.

4.37 Mr Elliott said the customers who were featured in the Royal Commission's interim report were a priority for review by a team who would reassess ANZ's remediation approach.

4.38 Mr Elliott pointed out ANZ has had a customer advocacy office since the early 2000s and confirmed an increase in the number of cases they are reviewing.

4.39 Mr Elliott speculated this could in part be owing to the publicity generated by the Royal Commission.

4.40 Mr Elliott described a trend where a strong culture of accountability at ANZ had declined over the past decade and the structure of the bank had much to do with the failures:

> We had a very strong matrix management, where it was very difficult to look at conduct in any part of the bank and say: who is the senior executive that is directly accountable for that? By rearranging the way we organise ourselves… we had improved the accountability framework…[25]

4.41 However, despite the changes ANZ had made the committee reaffirmed the bank still had work to do to prove to Australians that it could prevent future misconduct.

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24 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 2.

25 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 4.

Bank Executive Accountability Regime

4.42 ANZ considered implementation of the Bank Executive Accountability Regime (BEAR) as a very useful exercise to help clarify accountability for the 15 to 20 executives covered by the BEAR. Mr Elliott made this view clear when he said:

> I think the BEAR has given us a very valuable tool... We're having conversations as an executive team at this point about exactly how we do a better job at getting frameworks and definitions around accountability.[26]

4.43 Mr Elliott observed ANZ's previous use of matrix style management introduced a degree of complexity which made it difficult to unpick who was accountable when a problem arose.

4.44 Ms George reaffirmed the usefulness of the BEAR as a means of eliminating gaps in accountability when responsibilities are shared among executives when she stated:

> We've gone through hours and hours of case studies around the BEAR to try and figure out if there are any other overlapping responsibilities.[27]

4.45 To confirm to the committee that the BEAR had changed the way ANZ operated, Mr Elliott noted that they have eliminated conflicts such as financial performance metrics which would reduce the incentive for an executive to invest in improving business processes.

Relationship with regulators

4.46 The committee questioned the nature of ANZ's relationship with the regulators, particularly the Australian Securities and Investments Commission (ASIC), citing criticisms highlighted in the Royal Commission's interim report of informality between ASIC and the banks.

4.47 Mr Elliott explained the chief risk officer is the executive with the closest ties to the regulators. Ms George emphasised in general the approach was to be transparent and respectful towards ASIC.

4.48 Mr Elliott did not agree that ANZ should be fearful of ASIC and also rejected the claim that ANZ is 'in bed with ASIC' when he noted:

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26 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 3.

27 Ms Alexis George, Deputy CEO, ANZ, *Transcript*, 12 October 2018, p. 12.

> Yes. Fear is a strong word, but we respect ASIC. There's no doubt that having any kind of action from ASIC against any individual, unit or the general bank is seen in a negative light in the company.[28]

4.49 The committee continued to press on ANZ's past experience with ASIC and its approach to customer remediation citing an ASIC report released in September 2018 which found:

> We identified historical documents from two of these major financial groups that referred to remediation for consumers as a 'distraction'.[29]

4.50 Mr Elliott agreed ANZ had not given due attention to remediation in the past.

Competition in the financial system

4.51 ANZ was also asked about the degree of competition in the financial system and whether a lack of competition allowed ANZ to retain customers despite poor performance at times.

4.52 Mr Elliott asserted there is competition in the banking system which enables customers and the community to hold ANZ to account, when he stated:

> I think the competitive environment is far more intense today than it has been in at least 10 years.[30]

4.53 Mr Elliott pointed to competition from new entrants including digital banks as well as new payments system and wealth offerings. However the committee was unsatisfied with this response, suggesting the concentrated nature of the market resulted in record profits for the banks.

4.54 However, like Mr Hartzer from Westpac, Mr Elliott also disputed the claim that bank profits only ever increase when he observed:

> Margins in banking—the difference between what we pay for deposits and what we lend money out at—have never been lower, and they continue to fall. And that's a sign of competition.[31]

28 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 5.

29 Australian Securities and Investments Commission, 'REP 594 Review of selected financial services groups' compliance with the breach reporting obligation', *Report,* 25 September 2018, p. 8.

30 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 16.

31 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 28.

Small-medium enterprise lending

4.55 The committee raised penalty interest rates for small businesses with ANZ. Mr Elliott explained an increase in the borrower's interest (penalty) rate could be charged if the risk profile of the borrower changes and this is explained to customers when they enter the loan contract.

4.56 The committee also sought to confirm if ANZ had implemented the recommendations of the Carnell review, particularly the removal of unfair contract terms, to which Mr Elliott replied they had.

4.57 On some aspects of the Carnell review, Mr Elliott said he would endeavour to confirm to the committee details such as if ANZ provides borrowers with copies of valuation reports.

Access to credit

4.58 The committee sought to test ANZ's view on the role of further regulation as a means of addressing misconduct. This line of questioning probed an observation in the Royal Commission's interim report which stated:

> Much more often than not, the conduct now condemned was contrary to law. Passing some new law to say, again, 'Do not do that', would add an extra layer of legal complexity to an already complex regulatory regime.[32]

4.59 Mr Elliott postulated a bank executive was perhaps not the right person to ask about the benefits of simplifying the regulatory regime, although he agreed the observations in the interim report were sensible.

4.60 Mr Elliott noted current laws and regulations already present a challenge for businesses to navigate when he stated:

> I can say that I believe, in terms of operating our business, there absolutely is a complexity factor around the law and regulations and the multitude of those and where they overlap and intersect, which has made things complex.[33]

4.61 The committee questioned whether the penalties for misconduct were harsh enough, to which Mr Elliott stated it was sensible to make the punishment fit the crime. However, Mr Elliott suggested greater accountability would be better for all corporations not just banks.

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32 Commissioner Hayne, 'Financial Services Royal Commission', *Executive summary*, p. 2.

33 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 32.

Decision to restructure

4.62 In his opening statement, Mr Elliott told the committee during his time as CEO he has tried to make ANZ a simpler bank.

4.63 An example was the decision in December 2017 to sell OnePath Life Insurance to Zurich Financial Services Australia. The transfer was approved under the *Financial Sector (Shareholdings) Act 1998* on 10 October 2018.

4.64 Mr Elliott recognised that with a simpler business it would be easier to detect and fix misconduct of the type highlighted in the Royal Commission's interim report. For example, in the case study summarising examples of ANZ providing bad financial advice:

> ANZ acknowledged that between 2006 and 2013, more than 10,000 Prime Access customers paid fees for documented annual reviews that were never provided by ANZ financial planners…
>
> ANZ also acknowledged that between June 2007 and August 2016, service fees were deducted from customers' accounts in amounts or at rates in excess of those quoted in their service agreements. This affected approximately 4,035 customers to a total cost of $4.5 million. [34]

4.65 However, the announcement in October 2017 of ANZ's intention to sell its superannuation business OnePath P&I (pensions and investments) to IOOF has proved to be complex.

4.66 The committee asked about the status of the sale to which Ms George replied it is incomplete. Ms George said she was conscious of the legal requirement for ANZ to act in the best interests of the members of its superannuation fund throughout the transition process.

4.67 The committee pointed to failures of governance and compliance by IOOF highlighted during the Royal Commission's superannuation hearings and questioned how the sale of OnePath P&I could be in the best interests of its members. Ms George responded by stating:

> we've had multiple contacts, formally and informally, with the management and with the board of IOOF to inquire about the issues that arose and what they were doing to address those, what they had done to address those in the past.[35]

4.68 In addition, Ms George noted there is an independent trustee board to provide a check and balance against ANZ's decisions.

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34 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 109.

35 Ms Alexis George, Deputy CEO, ANZ, *Transcript*, 12 October 2018, p. 21.

4.69 The committee also pressed ANZ about the fees associated with OnePath MasterFund which reduced the rate of return to below the cash rate.

4.70 On the subject of fee free cash funds, Ms George asserted 95 per cent of ANZ's cash funds do not have fees and customers could freely choose one of those.[36]

Mortgage brokers

4.71 On mortgage brokers, Mr Elliott stated ANZ is the only major bank that does not own a mortgage broker business. However, Mr Elliott acknowledged their importance given more than half of all mortgages are originated by brokers.

4.72 Mr Elliott estimated ANZ pay brokers an up-front commission of around 0.8 per cent and a trailing commission of around 0.2 per cent.[37] Mr Elliott suggested there is room for debate on the structure of commissions for brokers and noted the industry has moved away from volume based commissions.

4.73 Mr Elliott did not give an opinion on whether brokers should be paid a flat fee or a fee for service.

4.74 On the subject of a best interests duty, Mr Elliott considered it an interesting idea. However he went on to defend most brokers as decent and honourable people who build a lifetime relationship with their clients.

Branch closures

4.75 The committee asked ANZ to explain its branch closure policy.

4.76 Mr Elliott noted he had visited Beaudesert to explain why ANZ was shutting their branch and to listen to the concerns of customers. However, the decision to close reflects the reality that fewer and fewer people come into branches.

4.77 Mr Elliott confirmed this claim by referring to research which found multiple demographics prefer to bank at their own convenience. However, Mr Elliott did acknowledge there was a residual group of customers who are unwilling or unable to use technology in this way.

36 Ms Alexis George, Deputy CEO, ANZ, *Transcript*, 12 October 2018, p. 22.

37 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 9.

4.78 Although ANZ had previously closed branches at a rate of 30 to 50 per year, Mr Elliott told the committee he doubted it would continue at that pace over the next 12 months.

Code of conduct for legal disputes

4.79 Throughout the hearing the committee emphasised the importance of efficient dispute resolution processes for customers, particularly those who were not featured as case studies in the Royal Commission.

4.80 Mr Elliott recognised although customers had the option to go to the Financial Ombudsman Service (FOS) and from 1 November 2018 the Australian Financial Complaints Authority (AFCA) these forums were not always easy for customers. Ms George emphasised the customer advocate was a helpful alternative.

4.81 However, the committee noted once a dispute reached court the resources of the banks vastly outweighed those of the customers and it was important to consider measures to help address this imbalance.

4.82 The committee asked if ANZ has acted as a 'model litigant' meaning, it acted in good faith and did not seek to abuse its power.

4.83 Mr Elliott admitted this was not always the case when he said:

> …since my time in leadership, the culture that we have set is that we need to be fair and reasonable and equitable and customer-focused. Do we always get it right? I'm sure we don't.[38]

4.84 To improve the experience of dispute resolution for bank customers the committee tested whether ANZ would commit to a code of conduct for legal disputes.

4.85 Mr Elliott said there was merit in the idea, particularly given he had already made the effort to speak to third-parties, such as law firms, to ensure they met ANZ's expectations. Mr Elliott stated:

> One of the things I've been doing is actually sitting with our legal firm representatives…and I've said: 'These are my expectations of you. You are representing ANZ. You need to live our values and conduct according to my culture and values; not just what you would do for any other bank.'[39]

38 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 31.

39 Mr Shayne Elliott, CEO, ANZ, *Transcript*, 12 October 2018, p. 31.

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National Australia Bank

Overview of misconduct

5.1 The Royal Commission has heard shocking cases of misconduct where NAB has put profits before its customers' best interests. NAB bankers were given envelopes 'stuffed with cash' for loan bribes[1], forged customers signatures and manipulated incentive programs to generate payments for themselves as part of an NAB program designed to capture home loan market share.

5.2 It was revealed that the NAB Introducer Program, which was in operation from 2013 to 2016, provided third parties ('introducers') with commission payments for referring home loan applications to NAB. The Interim Report noted that NAB had reviewed 11,000 files and had identified about 1,360 customers who may have been affected by the misconduct. However, 'NAB could say only that the amount it expected to pay out was between $9 million and $23 million' and had not offered compensation to any affected customers at the time of the hearing in March 2018.[2]

5.3 The Royal Commission heard evidence that hundreds of NAB financial advisors and their support staff falsely claimed to have witnessed more than 2500 forms signed by their customers. Furthermore, while the financial advisers were allowed to keep three-quarters of their bonuses, NAB has been slow to compensate the victims.[3]

5.4 It was revealed that NAB charged a default interest rate of 18 per cent to a farming family as they struggled to recover from flooding and later

1 B Butler, 'Bankers were given envelopes 'stuffed with cash' for loan bribes', *The Australian*, 14 March 2018, p. 1

2 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 13.

3 B Butler, 'NAB slow to compensate victims', *The Australian*, 25 April 2018, p. 17

battled drought. The Interim Report noted that NAB did not tell the customers about its hardship policy, or offer any relief under that policy.[4]

5.5 In addition to the cases of misconduct examined at the Royal Commission:

- NAB has been accused of not disclosing the full extent of a $120 million customer refund to the Australian Securities and Investments Commission (ASIC) for 11 months and attributing the charging of fees for no service as a communication problem with its members.[5]
- In another fee-for-no-service scandal, ASIC has accused NAB's superannuation businesses NULIS Nominees and MLC Nominees of potentially breaching the criminal law on 77 occasions.[6]
- NAB agreed to settle its case with ASIC in relation to rate rigging for approximately $50 million.[7]

Financial Services Royal Commission

5.6 The National Australia Bank Group (NAB) was the subject of four case studies in the Royal Commission's interim report, one for each of the first four rounds of hearings.

5.7 NAB CEO and Managing Director, Mr Andrew Thorburn, described the Royal Commission's interim report as fair and balanced despite the confronting and upsetting issues it exposed for NAB and the Australian banking industry.

5.8 NAB attributed the cause of misconduct to a 'drift' in focus from building relationships with customers to an emphasis on profit. Mr Thorburn stated:

> I've been in banking for 30 years, and I think in the last 20 we've drifted. When you drift, you don't know that it is happening. It looks incrementally sensible, others are doing it and there's a system that reinforces it. Shareholders appreciate it if you're making good and better profits.[8]

4 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p. 418.

5 S Danckert, C Yeates & R Williams, 'NAB accused of not telling ASIC about $120m refund', *Sydney Morning Herald*, 8 August 2018, p. 1.

6 B Butler & M Roddan, 'ASIC accuses NAB of $100m super rip-off', *The Australian*, 7 September 2018, p. 19.

7 Australian Securities and Investments Commission (ASIC), 'ASIC accepts enforceable undertakings from ANZ and NAB to address conduct relating to BBSW', *Media Release 17-393*, 20 November 2017.

8 Mr Andrew Thorburn, Group CEO and Managing Director, National Australia Bank Group (NAB), *Transcript*, p. 17.

5.9 A theme throughout the inquiry was concern about the extent to which instances of misconduct have either gone unpunished or the consequences have not reflected the seriousness of what has occurred.

5.10 NAB informed the committee that more than ten staff were terminated as a result of the Royal Commission. Mr Thorburn stressed that NAB was being more vigorous in its evaluation of staff over the past year. For example, 700 staff had a reduction in their variable pay. Of these over 300 either were terminated or resigned as a result of investigations into their conduct.

5.11 Mr Thorburn noted the majority of NAB's 33,000 staff act with integrity and the actions of a 'vast minority… have had a tremendous impact on our reputation'[9] However, the Royal Commission's interim report was particularly critical of this idea:

> That generally similar conduct occurred in all of the major entities suggests that the conduct cannot be explained as 'a few bad apples'.
>
> That characterisation serves to contain allegations of misconduct and distance the entity from responsibility. It ignores the root causes of conduct, which often lie with the systems, processes and culture cultivated by an entity.[10]

5.12 Mr Thorburn acknowledged that misconduct identified in the interim report and by the committee was also the result of systemic failures in processes to manage risk and compliance.

Reforms to remuneration

5.13 The committee was particularly critical of executive remuneration and poor accountability. The committee scrutinised NAB about the consequences for executives when misconduct was identified.

5.14 Mr Thorburn responded that senior executives are judged against a performance plan and if they failed to deliver, their variable reward will be reduced. Mr Gall added:

> At the senior level, a number of executives will have deferred compensation—it is earned in previous years. If it's a serious act of malfeasance, they will lose that deferred equity as well.[11]

9 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 14.

10 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, p. 87.

11 Mr David Gall, Chief Customer Officer, Corporate and Institutional Banking, NAB, *Transcript*, p. 5.

5.15 The committee also pressed NAB on their reforms to remuneration structures more generally. Mr Thorburn insisted NAB had improved remuneration structures over time when he stated:

> Since we've been coming here to this committee, we've progressively made changes. And the royal commission has really forced us to look at some of the issues to correct them further.[12]

5.16 However, the committee continued to probe NAB on reforms to remuneration given the strong link between incentives and misconduct highlighted in the NAB introducer case study in the interim report:

> The evidence shows that from as early as April 2015, NAB was aware that one of the potential root causes of the conduct was the Star Sales Incentive program that the relevant bankers were operating under, which rewarded bankers with bonuses for achieving certain targets for the sale of home loans. The investigation of the conduct confirmed that the incentive program was driving inappropriate behaviour.[13]

5.17 Mr Thorburn insisted the performance management system, which 97 per cent of NAB staff are evaluated under, had been reformed. Like the other major banks NAB uses a balanced score card that gives more weight to compulsory customer service and risk measures than the financial or sales component.

5.18 Mr Thorburn assured the committee the variable or bonus pay received by NAB staff was very much dependant on their ability to demonstrate behaviours consistent with NAB's customer-centric values. This included his own remuneration, as Mr Thorburn explained:

> It [the board] looks at my performance and all the issues inside the bank, and the good things the bank has done as well as the mistakes and reputation issues. It takes that into account in determining any variable reward I get.[14]

Customer remediation

5.19 The committee asked for an update on NAB's progress in remediating customers affected by misconduct, particularly those customers affected by NAB's wealth business.

5.20 On 16 October 2018, NAB announced an additional $314 million would be set aside for refunds and compensation to customers affected by issues in

12 Mr Andrew Thorburn, Group CEO, National Australia Bank (NAB), *Transcript*, p. 5.

13 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* vol 2, p 7.

14 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 27.

NAB's wealth business, including advisor service fees, plan service fees the costs of implementing remediation processes and compliance.[15]

5.21 Mr Thorburn also noted over recent years NAB has already provided about $200 million in remediation. However, Mr Thorburn also stated 'I acknowledge that we've taken too long to find it and fix it.'[16]

5.22 The committee pressed NAB on the pace of the remediation arguing that despite acknowledging the misconduct the major banks were far too slow to inform and remediate customers. An observation also made in the Royal Commission's interim report.

5.23 Mr Gall confirmed in the case of planned service fees most customers have been reimbursed. However, NAB was still working through customers who are owed refunds for adviser service fees and some of these clients would not yet have been informed.[17]

5.24 Mr Thorburn advised the committee the delays were due to getting access to data and systems over the past 10 years but given the resources NAB is devoting to remediation; NAB intends to complete this process by 2019.

5.25 The committee also asked NAB whether it was willing to go further than refund customers and provide compensation for the mental health impacts some customers has suffered as a result of their disputes with NAB.

5.26 Mr Thorburn noted this has occurred in some particularly complex farm dispute cases but it was not a regular practice. Mr Thorburn added:

> the compensation does include an additional amount for the emotional grief they've been through. It's not a specific process that's separate to that, but I do think we try to include that to be a bit more generous to cover that.[18]

5.27 The committee asked NAB to report back on the progress of its remediation work including the number of customers who have been remediated and the dollar figures received. Mr Thorburn agreed this could be done at the next round of hearings.

15 NAB, 'NAB announces additional costs for customer remediation matters', *ASX announcement*, 16 October 2018.

16 Mr Andrew Thorburn, Group CEO, National Australia Bank (NAB), *Transcript*, p. 15.

17 Mr David Gall, Chief Customer Officer, Corporate and Institutional Banking, NAB, *Transcript*, p. 14.

18 Mr Andrew Thorburn, Group CEO, National Australia Bank (NAB), *Transcript*, p. 16.

CEO actions to address customer complaints

5.28 Throughout the hearing the committee sought to identify the specific actions taken by Mr Thorburn to demonstrate he understood the effect of a dispute with NAB for individual customers.

5.29 Mr Thorburn estimated he had met with about 20 aggrieved customers to listen to their issues and assured the committee other senior NAB officials have reviewed several more customer files.

5.30 Mr Thorburn, like ANZ CEO, Mr Elliott, gave out his email address so NAB customers could contact him directly and request NAB review their cases. Mr Thorburn stated:

> I come back to my offer that, if there are National Australia Bank customers, I would be happy for them to contact me directly on andrew.thorburn@nab.com.au.[19]

5.31 The committee asked what a customer should expect from NAB if they chose to contact Mr Thorburn, to which Mr Thorburn responded:

> What they should expect from me and from our company is a prompt response and a review within a reasonable period of time to suggest some next steps. Often, that will probably involve suggesting some mediation[20]

5.32 The committee intends to follow-up at future hearings on efforts of CEOs to improve complaints handling mechanisms and the pace of remediation.

Complaint handling mechanisms

5.33 The committee focused on interrogating the improvements NAB had made to complaint handling processes.

5.34 Mr Thorburn noted NAB had introduced centralised a customer complaint and resolution team, resourced with over 100 staff to deal with current customer issues.[21]

5.35 In addition, NAB uses a central system to collect information on all complaints which ensures consistent reporting across the bank.

5.36 Like the other major banks, Mr Thorburn reported NAB has given greater attention to complaints at more senior levels. Monthly reports are discussed at board level and in the case of material remediation; Mr Thorburn reported he has met with senior executives to monitor the progress of these cases.

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19 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 7.

20 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 10.

21 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 11.

5.37 Mr Gall reported to the committee that NAB has roughly halved the time taken to remediate customers.[22]

5.38 Mr Thorburn noted that NAB also has an independent customer advocate, an avenue that helped resolve simpler retail complaints. However, Mr Thorburn observed more challenging complaints can arise in business or farm lending with larger amounts. Mr Thorburn acknowledged NAB would need to help these customers reach a mutually beneficial outcome.

Bank Executive Accountability Regime

5.39 Like the other major banks, NAB was positive about the introduction of the Bank Executive Accountability Regime (BEAR).

5.40 Regarding the implementation of the BEAR, Mr Thorburn stated 'I would say it's more than helpful. It has been really good at helping us understand clarity for accountability for executives.'[23]

5.41 Mr Thorburn told the committee that 22 NAB directors and executives are registered with APRA as part of the BEAR.[24]

5.42 The committee pressed Mr Thorburn to explain how the BEAR has changed NAB's operations. Mr Thorburn stated NAB worked through a series of case studies to identify gaps in accountability. For example, Mr Gall noted the BEAR had been helpful in cases where:

> Typically, it's where the service or the process that we're doing crosses multiple divisions across the organisation. That might be multiple customer divisions, but it might also be end-to-end, so making sure that that accountability is understood right through from the customer-facing to the operations and technology areas.[25]

5.43 Mr Thorburn noted BEAR statements were an important feature of the annual performance discussions he had with NAB executives.

5.44 The committee was assured a senior NAB executive covered by the BEAR was responsible for oversight of the customer remediation process.

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22 Mr David Gall, Chief Customer Officer, Corporate and Institutional Banking, NAB, *Transcript*, p. 29.

23 Mr Andrew Thorburn, Group CEO, NAB, Transcript, p. 12.

24 Mr Andrew Thorburn, Group CEO, NAB, Transcript, p. 12.

25 Mr David Gall, Chief Customer Officer, Corporate and Institutional Banking, NAB, *Transcript*, p. 12.

Competition in the financial system

5.45 The degree of competition in the financial system was also raised in the NAB hearing. The committee sought NAB's view on whether a lack of competition had protected the profitability of the major banks despite scandals prior to the Royal Commission.

5.46 Like each of the CEOs before him, Mr Thorburn asserted there was a strong degree of competition in the financial system. The committee pressed Mr Thorburn on this point, again citing findings from the Productivity Commission's Inquiry into Competition in the Financial System.

5.47 In particular, the committee focused on the combined market shares of the major banks, noting as a group they are the dominant force that controls the market. The Productivity Commission stated that this gives:

> …the major banks the ability to pass on cost increases and set prices that maintain high levels of profitability — without losing market share.[26]

5.48 Mr Thorburn would not engage on this point, rather he focused on NAB's individual performance and listed a range of competitors including:

> You've got brokers, you've got fintech players and you've got foreign banks…We've got new, direct banks getting provisional or full licences from APRA competing against us…There are regional banks at play now. There's Bendigo Bank, Bank of Queensland, Suncorp… so it feels today, as a competitor in the market, it's as tough as it ever was.[27]

5.49 The committee countered with further examples of Productivity Commission research on estimates of the pricing power of Australian-owned banks.[28]

5.50 The analysis showed the four major banks are the dominant force in the Australian market, able to charge prices above their costs. Mr Thorburn responded by noting another observation from the Productivity Commission:

> Banks' net interest margins and return on equity — both important indicators of profitability — declined substantially over

26 Productivity Commission, 'Competition in the Australian Financial System', *Inquiry Report,* No. 89, 29 June 2018, p. 104.

27 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 22.

28 Productivity Commission, 'Competition in the Australian Financial System', *Inquiry Report,* No. 89, 29 June 2018, p. 9.

> the past three decades, as a result of deregulation and the rise of brokers.[29]

5.51 Mr Thorburn characterised deregulation and the rise of brokers as signs of competition. Mr Thorburn also defended the need for a profitable bank for employees, customers and shareholders.

5.52 However, Mr Thorburn acknowledged, profit above all other objectives had led to misconduct and resulted in the opprobrium faced by the major bank CEOs when he stated:

> …we are being punished. Good morning; we're here. I think we have been punished because of what's happened in the last two years, where, by our own admission, we've fallen short of community and customer standards. This committee and the royal commission have laid that bare.[30]

Small-medium enterprise lending

5.53 Mr Thorburn described NAB 'as Australia's largest business bank' because NAB is more rapidly expanding its share of business lending than the other major banks. Mr Thorburn estimated NAB was increasing its growth in business lending by about 4 to 5 per cent.[31]

5.54 Mr Thorburn told the committee that part of the expansion in business lending was owing to the introduction of an unsecured lending facility for small businesses called 'QuickBiz'.

5.55 Mr Thorburn explained the difficulty which prevents some SMEs from obtaining loans is the lack of physical security or three to five years of history.

5.56 However, Mr Thorburn recognised '…a lot of the businesses are good, well-run, cash-flow businesses' therefore when questioned on this topic he asserted NAB was active in the business lending market.[32]

5.57 The committee sought to confirm if NAB had implemented the recommendations from the Carnell review, particularly the removal of non-monetary default clauses. Mr Thorburn confirmed NAB had implemented the recommendations.

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29 Productivity Commission, 'Inquiry into Competition in the Australian Financial System', *Final Report*, August 2018, p. 115.

30 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 22.

31 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 12.

32 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 6.

5.58 Mr Thorburn highlighted the special concession NAB made to agribusiness customers including ending the use of default interest rates for farmers in drought-declared areas.

5.59 However, the committee pressed NAB to explain why it had not extended this concession more broadly to all businesses in drought affected areas. Mr Thorburn explained:

> We dealt with what we knew and could in a fast way, which was: agri-clients in drought-affected areas, because drought-affected is one particular part, but agri-clients, because of the nature of their cash flow and commodity prices and things like that, are particularly vulnerable. So that is why we did that.[33]

5.60 Mr Thorburn informed the committee he was awaiting a broader review of default interest rates and more could be done to assist customers noting '…we've become too complex. There are too many products and too many specific legal clauses not in plain English. I do acknowledge that.'[34]

Access to credit

5.61 The committee asked NAB for its view on the need for further regulation in the financial system noting the observation made in the Royal Commission's interim report:

> I begin from the premise that breaches of existing law are not prevented by passing some new law that says 'Do not do that'. And given the existing breadth and complexity of the regulation of the financial services industry, adding any new layer of law or regulation will add a new layer of compliance cost and complexity. [35]

5.62 Mr Thorburn agreed there is a case for simplification of existing regulation noting 'We're collecting a lot of information. We're sending it to different agencies and regulators. They could be coordinated more.' [36]

5.63 Mr Thorburn also affirmed the need for greater enforcement of existing laws and higher penalties but cautioned very harsh penalties could restrict the supply of credit. Mr Thorburn observed:

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33 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 24.

34 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 25.

35 Commissioner Hayne, 'Financial Services Royal Commission', *Interim report,* Vol 1, pp. 289-290.

36 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 28.

> The role of a bank is to manage and take risk. We're always going to be, in the case of a customer extending credit, making a judgement and it may not work out. What you don't want to have is penalties which are so severe that the bank actually steps back from doing what it fundamentally should do, which is extend credit into the economy.[37]

5.64 The Royal Commission’s interim report acknowledged banks play a special role in the economy by providing credit.

5.65 However the interim report observed the ability of banks to set their risk appetite, meaning they can decide to whom they lend and on what terms, gives them significant power over an individual customer. [38]

5.66 The committee weighed the need for banks to provide credit and comply with regulations when questioning NAB on the need for further regulation to make banks more accountable. In response, Mr Thorburn asserted ‘regulation isn't the panacea.’[39]

5.67 Mr Thorburn rejected the connection between the tightening of credit during the GFC and the misconduct highlighted in the Royal Commission. Mr Thorburn instead attributed the misconduct to failures in bank systems to prevent fees for no service, for example ‘what we did wrong…we didn't have proper controls and we didn't raise them and fix them fast enough.’[40]

5.68 When pressed to explain how the banks could fix previous issues and prevent them from reoccurring without further regulation, Mr Thorburn repeated the point about simplification and enforcement:

> I think we've got more regulation today than we've had, yet we've still got problems. I think they could be simplified, and we could be held to account a bit more.[41]

Mortgage brokers

5.69 On the role of mortgage brokers, Mr Thorburn observed their rise in popularity since the mid-1990s filled a gap left by the banks, ‘the banks weren't really focused on existing clients and really wanting to deal with them and help them.’[42]

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37 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 28.

38 Commissioner Hayne, ‘Financial Services Royal Commission’, *Interim report,* vol 1, p. 269.

39 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 32.

40 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 31.

41 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 32.

42 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 20.

5.70 Mr Thorburn observed mortgage brokers now originate more than 50 per cent of home loans, cementing their place in the home loan market; however, he conceded some changes are necessary.

5.71 When asked if a best interests duty should be applied to mortgage brokers Mr Thorburn endorsed mortgage brokers stating 'increasingly, they're becoming more licensed and more professional.'[43]

5.72 Mr Thorburn emphasised NAB takes its responsible lending obligations seriously and does not rely on brokers to assess the suitability of loans for its customers:

> We make that decision ultimately as to whether we'll extend credit to the customer. We look at their income. We definitely go through, in a great deal of detail, their expenditure to make sure they can afford it. [44]

5.73 The committee asked NAB for its view on whether a fee for service would be a more appropriate remuneration structure for brokers rather than an upfront and trail commission. Mr Thorburn replied:

> …when the Sedgwick report was done, there was a conversation about: should they be paid an up-front fee for a simple and a complex loan, and should we make it clearer, when we pay a trail to them—obviously that's disclosed—what they need to do for that? I think those things, right now, are under really serious investigation by our bank and also by the industry itself.[45]

Branch closures

5.74 In his opening address, Mr Thorburn told the committee NAB is reviewing its branch network and considering new ways to retain face-to-face banking.

5.75 For example, NAB reversed its decision to close branches in Narooma and Dungog in regional NSW. In addition, NAB has put a moratorium on the closure of 130 branches in drought affected areas.[46]

5.76 Mr Thorburn noted NAB employees around 7,000 people in its retail branches.

43 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 10.
44 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 20.
45 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 10.
46 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 8.

Code of conduct for legal disputes

5.77 The committee asked NAB if it was a model litigant, meaning it had never used its superior resources to dissuade a customer from taking legal action.

5.78 Mr Thorburn admitted he could not confirm NAB had never been overbearing in a legal dispute, noting:

> In most cases we get it right but I'm absolutely certain that in some cases we have been more overbearing and more technical and more legal than we should have been, and that is something that I would like to step into and address as we go forward.[47]

5.79 Mr Thorburn also agreed it was a good idea to develop a standard to ensure customers had a better experience during a dispute resolution process.

Tim Wilson MP
Chair
5 December 2018

47 Mr Andrew Thorburn, Group CEO, NAB, *Transcript*, p. 6.

A

Appendix A – Hearings and Witnesses

Thursday, 11 October 2018—Canberra

Commonwealth Bank of Australia

Mr Mathew Comyn, Chief Executive Officer

Mr David Cohen, Group Chief Risk Officer

Westpac

Mr Brian Hartzer, Chief Executive Officer

Mr Peter King, Chief Financial Officer

Friday, 12 October 2018—Canberra

Australia and New Zealand Banking Group

Mr Shayne Elliott, Chief Executive Officer

Ms Alexis George, Deputy Chief Executive Officer

Friday, 19 October 2018—Canberra

National Australia Bank

Mr Andrew Thorburn, Chief Executive Officer

Mr David Gall, Chief Customer Officer, Corporate and Institutional Banking

Additional comments—Labor Members of the committee

The Government and the Banks – 'we don't need a Royal Commission'

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has provided a shocking insight into the actions of the Australian finance sector. Appalling examples of unethical and illegal behaviour have shown that this Commission was not only justified, but undeniably needed.

The Liberal and National Parties opposed the Royal Commission at every opportunity. In fact these hearings with the major bank CEOs were setup as a mechanism to avoid just that.

For over 600 days the then Treasurer, Scott Morrison, actively led the resistance against Labor's call for a Banking Royal Commission, labelling it a "populist whinge" and voting against it 26 times. He has no concern for the victims of banking scandals.

Other Government members of this Committee have adopted the same approach in defending the banks from the scrutiny of a Royal Commission.

> *Ms BANKS: The Turnbull government wants this robust inquiry rather than a lofty, convoluted royal commission, because we are a pragmatic government…*[1]

At the time, one MP even went as far as congratulating the banks for their record profits.

> *Mr BUCHHOLZ: Gentlemen, can I congratulate you on your last quarterly results, $1.6 billion over the 13- week reporting period. Thirteen weeks is an impressive effort so congratulations; it is a lot of money. I really appreciate your opening comments that the bank is listening and taking actions.*[2]

CEOs and the Royal Commission

During the first banks hearings (October 2016), Mr. Thistlethwaite asked Brian Hartzer why Westpac was trying to avoid a Royal Commission.

Mr Hartzer's response:

> *We think that we have a robust regulatory framework. We are acknowledging the issues we have. We are fixing the issues. We do not see a whole lot of value in spending several years to run a process that ends up with a document and then recommends actions which we can take now.*

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[1] Standing Committee on Economics, 04/10/2016, Annual review of Australia's four major banks

[2] Standing Committee on Economics, 03/03/2017, Review of Australia's four major banks

Similarly during third bank hearing (October 2017) Shayne Elliott was asked why ANZ was trying to avoid a Royal Commission.

> *Mr Elliott : I personally believe that a royal commission would be distracting.*

During the second bank hearing (March 2017), Andrew Thorburn was asked why NAB was trying to avoid a Royal Commission.

> *Mr THISTLETHWAITE: Would you not be better off, from a customer or a shareholder perspective, agreeing to a royal commission?*
>
> *Mr Thorburn: What I have said before is what I will say here today: we do 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.*

The former CEO of the Commonwealth Bank, Ian Narev, provided a similar opinion noting that

> *Mr Narev : 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 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.*
>
> *Mr THISTLETHWAITE: Pardon my cynicism, Mr Narev, but you guys have done a pretty good job of destroying confidence in the banking industry over the last decade, haven't you?*[3]

Now, the bank CEOs having seen the scandals uncovered over the past year were all asked if they believed Labor's position, calling for a Royal Commission was justified.

CBA

> *Mr THISTLETHWAITE: Given the misconduct that's been uncovered in the royal commission, does the Commonwealth Bank now accept that you were wrong to oppose a royal commission?*
>
> *Mr Comyn: Yes, we do*

Westpac

> *Mr THISTLETHWAITE: Mr Hartzer, when you last appeared before the committee, you said that you were opposed to a royal commission… Do you still hold that view?*
>
> *Mr Hartzer: I think it's very clear, with all the things that have come out and the quality of that work that's been done, that the royal commission has been a very valuable process. It's been a very painful process for banks…*

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[3] Standing Committee on Economics, 07/03/2017, Annual review of Australia's four major banks

ANZ

> *Mr THISTLETHWAITE: When you last appeared before us in October 2017 you said: I personally believe that a royal commission would be distracting.*
>
> *Mr Elliott: No. I've said on the record that I was wrong, and it has been reported in the press.*

NAB

> *Mr THISTLETHWAITE: Mr Thorburn, when you appeared before the committee last year, I asked you a question regarding the need for a royal commission. Your response was: 'What I have said before is what I say here today. We do not believe a royal commission is necessary because the industry is well governed, well-regulated and actually addressing the issues that need to be addressed.' Do you still hold that view?*
>
> *Mr Thorburn: No, I don't.*
>
> *Mr THISTLETHWAITE: Why?*
>
> *Mr Thorburn: Because I got it wrong.*

The Labor opposition has been completely vindicated in calling for a Royal Commission including in the recommendation of six of the Labor members' additional comments to this Committee's report Review of the Four Major Banks (First Report) of 24 November 2016.

It's a shame the government and the banks did not agree to this earlier.

Over 10,000 Submissions to the Royal Commission

There are now more than 10,000 submissions to the Royal Commission. Of those submissions just 27 people have been asked to give evidence. There are thousands of bank victims looking to have their story heard. The Royal Commission simply has not had enough time to hear oral evidence from them all.

The terms of reference laid down by Scott Morrison provide an unreasonably short timeframe. This is just another example of him protecting the banks and covering up for them.

Labor has repeatedly said that the Royal Commission has done an excellent job within the timeframe that the government set for it. However, given the huge numbers of unanswered submissions the Labor members take this opportunity to call for more time for the Royal Commission to allow banking victims to tell their story. The public needs to hear and understand the lived experience of the misconduct of the banks.

During the hearings Clare O'Neil noted:

> Ms O'NEIL: …Mr Comyn… you're probably aware that, of 10,000 submissions, just 27 people have had the opportunity to tell their stories. I don't think that's sufficient…

Labor has said that the Royal Commissioner needs to consult on recommendations with the banking sector and victims groups to ensure there are no unintended consequences flowing from the significant shake up expected.

Labor is also calling on the government to ensure customers outside of the major cities already visited by the Royal Commission aren't left out of the process. Hearings should occur in regional areas and the only way to do this is by extending the Royal Commission.

Recommendation 1:

That the Government establish a mechanism to give bank victims who have not been called to give evidence to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry an opportunity to tell their stories to the Commission. Such additional hearings should take place in city and regional locations.

Conflicted remuneration and sales targets

For years it has been pointed out that the practice of using front line staff to sell, refer or push products onto customers causes a range of serious problems for bank customers. Most people who visit their bank are unaware of the motivations behind the staff actions and they are definitely unaware of targets set by employers that must be met in order to achieve incentive payment targets or to avoid disciplinary action.

The four major banks all claim that they have reformed this practice by removing incentive payments from frontline staff.

The underlying problem persists and employees are still judged based on a range of metrics, which includes requirements for referral and conversations with customers. Failure to achieve these goals will result in adverse action against the employee up to, and including, dismissal.

Conflicted remuneration is one of the biggest issues in the finance sector and has been for many years. The problem with conflicted remuneration is that the employee is influenced by personal incentives, meaning the individual puts their own profit ahead of the interests of the customers they are supposed to be serving.

Labor's FOFA changes banned conflicted remuneration and trailing commissions for financial advice. The Sedgwick Review has seen some limits on incentives for front line staff. Neither of these reforms covers executives, senior managers or even branch managers. Nor do they cover a range of other sales related positions such as business bankers, rural bankers, marketing and product designers, mortgage brokers or 'introducers'.

In his interim report Commissioner Hayne identified that lack of a ban on conflicted remuneration for managers and those that set culture means that the limitations on more junior staff are essentially meaningless:

> *"Much attention is given in the Sedgwick Review, and in other reports looking at the connection between culture and remuneration, to the remuneration of front line staff. But, as already noted, the general scheme of remuneration by base salary plus incentive payments has been applied at every level of employment within most banks.*
>
> *It is important, therefore, to recognise that providing senior management with incentives based on sales or revenue and profit will inevitably affect how senior management acts with respect to more junior members of staff. It will always be in the interests of any manager (no matter how senior) to have subordinates carry out their work in a way that will allow the manager to achieve whatever incentive targets have been set for that manager.*
>
> *It follows, then, that eliminating incentive based payments for front line staff will not necessarily affect the ways in which they are managed if their managers are rewarded by reference to sales or revenue and profit. The behaviour that the manager will applaud and encourage is behaviour that yields sales or revenue and profit. The behaviour that is applauded and encouraged sets the standards to be met and forms the culture that will permeate at least that part of the entity's business.*

The Labor members of the committee strongly agree with Commissioner Hayne. After years of criticism, countless hearings, enquiries and reports, it is astonishing that the banks have not come to the same conclusions.

Banks still acting against community expectations

The Royal Commission has outlined a great many failures, often resulting in changed banking practices once these are uncovered. The Australian Banking Association (ABA) announced just a few days before the first hearings for this report that the major banks would no longer charge fees to dead people.

Another of the defective bank practices that still occur is the practice of 'introducers' in the sale of home loans. Introducers are a program where third parties such as retail outlets are used to convince people of the value of a product. The Royal Commission heard that NAB had used gym instructors and tailors as introducers who were paid commissions on home loan sales to customers. One introducer, believed to be a tailor, received $488,000 in commissions in just one year. There is no indication that NAB will stop the practice – it still has over 1,400 introducers on their books. There is no recognition that introducers would need to be trained, have any qualifications or act in the best interest of their customers. It seemingly doesn't occur to NAB that it is wrong for these people to receive secret commissions and for the bank to try to monetise a community position of trust.

Expansion of the BEAR

The Government introduced the *Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018* into the Parliament on 20 February 2018 following the recommendation of this Committee in its report, "Review of the Four Major Banks (First Report)" of 24 November 2016 that "the committee is committed to increasing executive accountability in the financial sector." [4]

This legislation is a start, but the Financial Services industry, in particular the banks, require legislation to make executives much more accountable to discourage misconduct that affects customers, as is the case in the United Kingdom.

The Parliamentary Joint Committee on Corporations and Financial Services reported on its Inquiry into the life insurance industry on 31 March 2017. That committee report also notes the following in relation to the BEAR.[5]

> On 24 November 2017, the Senate Economics Legislation Committee recommended that the BEAR legislation be passed with the implementation date to be extended to one year from the passage of the bill. That committee also argued that:
>
> > Consumer protections are just as important as prudential matters in establishing and maintaining community trust in the financial sector. While the BEAR is a welcome and important start, the committee believes that, in time, heightened accountability obligations should be extended to non-ADI firms in the financial sector and also to matters that affect consumer outcomes (as has been done in the United Kingdom).[6]

ASIC has noted previously that the current BEAR proposal is restricted to banks. In contrast, in the United Kingdom the regime applies to financial services more generally, and involves a co-regulatory model. As a result, bank executives are accountable for misconduct affecting customers, therefore giving it more strength to regulate effectively.[7] Indeed, ASIC called for such an extension to the BEAR in its appearance at the Royal Commission last month.

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[4] Standing Committee on Economics, "Review of the Four Major Banks", Report, page 20.

[5] Parliamentary Joint Committee on Corporations and Financial Services, Report, Life Insurance Industry, Chapter 3, page 46.

[6] Senate Economics Legislation Committee, Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017 [Provisions], November 2017, p. 29.

[7] Parliamentary Joint Committee on Corporations and Financial Services, Report, Life Insurance Industry, Chapter 3, page 44.

Furthermore, as discovered in these hearings, four bank CEOs when asked were not opposed to greater powers under the BEAR.

CBA

CBA acknowledged that an acceptable expansion of the BEAR would be to ensure expectations are accountable for systemic failures affecting customers.[8]

Westpac

Westpac had no difficulty with extending the BEAR to include customer related conduct matters.[9]

ANZ

ANZ expected the BEAR to evolve so that banking executives are held personally accountable ford breaches affecting customer conduct issues.[10]

NAB

NAB had no difficulty with the BEAR holding executives personally accountable for conduct matters.[11]

Recommendation 2:

That the BEAR's heightened accountability obligations for bank executives be extended to also cover matters that affect consumer outcomes.

Hon Matt Thistlethwaite MP **Deputy Chair**	**Mr Matt Keogh MP**	**Mr Josh Wilson MP**	**Ms Clare O'Neil MP**

[8] Mr Matthew Comyn, CEO, CBA, *Transcript,* 11 October 2018, page 15.

[9] Mr Brian Hartzer, CEO, Westpac, *Transcript,* 11 October 2018, page 49.

[10] Mr Shayne Elliot, CEO, ANZ, *Transcript,* 12 October 2018, page 27.

[11] Mr Andrew Thorburn, CEO, NAB, *Transcript,* 19 October 2018, page 27.

Additional comments—Australian Greens member of the committee

As stated in the Chair's report, the fourth round of hearings of the review of the four major banks has focused on the banks' response to the Royal Commission's Interim Report. This is appropriate. The point of a Royal Commission was to be able to undertake an exhaustive inquiry of the industry in a way that parliamentary committees have neither the time nor resources to do.

However, the Greens are concerned that there is a gulf developing between the rhetoric about reforming the financial sector, and the commitment to actually reforming the financial sector. Bank bashing is not an end unto itself. Policy reform is the goal.

The Chair's report fails to make any recommendations for reform, despite all of the evidence considered during the fourth round of hearings. While some members of the committee might be relying on the Royal Commission's Final Report to provide definitive guidance, this does not and should not preclude parliamentarians from putting recommendations, particularly through the committee process. That is what we are elected to do.

The best way to ensure victims of misconduct by the banks are not forgotten is to undertake reform to stop it happening again.

The Royal Commission is laying bare many of the problems with Australia's banking and financial system. Fraud, bribery, lying and dishonesty have been an all too common in stories of misconduct within once venerable institutions.

This conduct has been driven by the pursuit of profit above customer interest. But it is not just a problem of individuals and culture. It is a failure of structure and a failure of regulation. The banking system has become too complicated and too interwoven to properly serve the interests of consumers or the economy.

Overwhelmingly, financial complexity has been of more benefit to the finance industry than it has been to consumers or society.[1] The GFC showed that no-one truly comprehends the level of interconnectedness between complex financial products and everyday life. Risk is everywhere and it's everyone's problem, whether you signed up for it or not.

The Greens want to overhaul the structure of banking and finance and the regulatory and governance system so that it serves people rather than serving itself.

We are now one of the most heavily financialised economies in the world.[2] The banking and finance sector accounts for 9% of GDP and is the largest single sector in the economy.[3] An oversized banking and finance sector can even constrain the real economy.[4]

The growth in the size and scope of banking has not been matched by an increase in financial stability or in the distribution of economic prosperity. In fact, both risk and economic inequality have increased.

Reordering the institutions

At the core of the problem with the current system of banking and finance is the rise of universal banking, where everything from saving accounts to derivatives are created and sold under the one roof.

Most people only ever want or need basic banking services at a fair price. Yet universal banking has allowed banks to pray upon customers' trust and loyalty to them. This is because universal banking creates an inherent conflict of interest within institutions. When a bank can make more profit by selling more products to their customers, then history has shown the bank's interest will prevail over the customer's interests.[5]

In Australia, the big-four banks acquired and developed wealth management businesses that both create financial products as well as sell them through financial planners and superannuation funds. Within these vertically integrated institutions, staff have been routinely been encouraged to cross-sell a bank's products, regardless of the needs of the person walking into their local branch.

The deregulation that created universal banking also failed to ensure market discipline or protection against systemic risk through market concentration. These mergers brought our banks enormous political power; they are 'too-big-to-fail' and riddled with moral hazard. They know governments will get them out of a tight spot, so they are more willing to take risks, which only increases the likelihood of a financial crisis.

In Australia, too-big-to-fail has helped the whole economy become hostage to an inflated property market. The banks have pushed up property prices by getting loose with lending standards and writing ever bigger loans. This means that the next person looking to buy a house has had to borrow even more money to stay in the market, which in turn means greater bank profitability.

Australia's household debt is now at world-record levels.[6] The big-four dominate with an almost identical business model of mortgage dependency.[7] ACCC Chair, Rod Sims, recently said that the major banks' interest rate behaviour "resembles synchronised swimming more than it does vigorous competition."[8]

The banks are creaming it off home loans with no due regard for the systemic risks they have created. They are reaping super profits and paying themselves obscene salaries. Since the GFC, the average margin between the RBA cash rate and standard mortgage interest rates—the spread—has doubled from just below 2% to now just below 4%.[9] Meanwhile the Reserve Bank has insured the liquidity of around $250 billion worth of bank assets because the economy is neck-deep in property.[10]

Back to basics banking

The Greens want to bring banking back to basics. To get the economy working for people instead of the finance industry, we would end universal banking in Australia. Instead, a financial institution will only be able to own and operate financial services in one of these four exclusive classes:

- **Deposit and loan banks** that provide basic banking for individuals and business, including savings accounts, credit cards, mortgages and business lending.
- Large-scale **superannuation** funds, including default funds and choice funds.
- **Insurance**, including life insurance and general product insurance.
- **Complex and sophisticated** financial products tailored to high net worth individuals and large businesses. It includes wholesale and retail wealth management products used for investment banking, shadow banking, hedge funds, self-managed super funds, financial markets, and auditors and liquidators.

Doing so would distinguish between the **simple and essential** products and services that the vast majority of Australians use—deposits and loans, superannuation and insurance—and the more **complex and selective** activity that is the domain of big business, the wealthy, and the adventurous.
This split will create a high level of consumer protection and a low level of financial system risk.

Re-ordering the regulators

This new regime will require a realignment of the regulatory authorities. The Royal Commission has exposed the failure of financial regulators to prevent misconduct. In particular, the Australian Securities and Investment Commission (ASIC) has not been up to the task. ASIC has prosecuted only one financial services licence holder in the last decade.[12] The banking fraternity does not fear ASIC. They are almost indifferent to its existence, as evidenced by AMP's flagrant deception regarding the conduct of its financial planning arm.

While budget cuts have impacted upon ASIC's ability to do its job, various reviews into the corporate regulator have found that the problems go beyond a lack of funding. A recent government review found that ASIC's culture was "more defensive, inward looking, risk averse and reactive than is desirable for a conduct regulator".[13] Similarly, a 2014 Senate Inquiry concluded that ASIC was a "timid, hesitant regulator, too ready and willing to accept uncritically the assurances of a large institution".[14]

A core problem with ASIC is that is has a conflicted mandate. ASIC is tasked with ensuring the efficiency and strength of the financial system as well as its fairness and integrity. These two objectives are frequently at odds with each other. What is good for markets is not always good for customers.

ASIC's conflicted mandate came about at its inception, when the Howard Government took consumer protection powers for the financial sector away from the Australian Competition and Consumer Commission (ACCC). The wisdom of this decision has been questioned ever since. One the key members of the Wallis Inquiry which recommended this structure, Ian Harper, recently admitted that it was likely to have been a mistake to disempower the ACCC.[15] ASIC's former chief economist, Alan Erskine, has also called for the reinstatement of the ACCC's powers over the financial sector.[16]

The Australian Prudential Regulation Authority (APRA) has a similarly conflicted mandate that requires it to take into account stability, efficiency and competition. The lax lending standards exposed by the Royal Commission and the state of Australia's housing market point to a failure of any financial regulator to be safeguarding individual homeowners.[17] Instead, it has been the ACCC and the Productivity Commission which have both recently highlighted the lack of competition within the mortgage market in Australia.[18]

A return to a strong consumer watchdog

The Greens want to see the ACCC reinstated as the conduct regulator with responsibility for ensuring consumer protection and competition within savings and loans banking, superannuation and insurance, as well as well as over retail-level intermediators such as financial planners and mortgage brokers. This would include transferring powers currently vested with ASIC and APRA to the ACCC. The government has tacitly acknowledged the ACCC's suitability for the role of conduct regulator when it tasked them to inquire into any impact the Major Bank Levy had on mortgage rates.[19]

APRA would continue to be the system regulator with prudential oversight over ordinary banking, superannuation and insurance, as well as investment banking. ASIC would continue to be the conduct and system regulator over the remainder of the financial system that is tailored towards sophisticated and wholesale clients.

The Greens would also reform the relationships between regulators and the regulation of regulators themselves. The Greens would give the ACCC a permanent position on the Council of Financial Regulators, along with ASIC, APRA, the Reserve Bank and Treasury, appoint an independent Chair, and require the Council to publish minutes and make public statements regarding decisions of the Council.

The Greens would also implement one of the few recommendations of the Financial Systems Inquiry that the government failed to accept, namely the creation of a Financial Regulator Assessment Board (FRAB) to advise Government annually on how financial regulators have implemented their mandates.[20]

Who this approach would affect

This policy would require banks to divest themselves of financial advisory and brokerage services, such as CommSec and Nabtrade. The Greens would also ensure that the wealth management companies that the banks are selling are split so that superannuation is separated from product issuance and financial planning. A failure to do so would still leave an inherent conflict of interest within essential service providers.

Within the remaining complex and selective components of the finance industry, separation would be primarily on the basis of whether products are retail grade or investment grade, and whether customers are retail investors or sophisticated investors, as it currently is.

But the Greens would introduce a range of measures to increase protections for retail consumers including:

- Financial planners will have to establish an industry-wide indemnity scheme.
- Financial planners will have to be individually licenced and need to be owned and operated separate from any product issuance firms if they are to call themselves a financial planner.
- Mortgage brokers will need to be owned and operated separate from any lending institution.
- Financial planners and mortgage brokers will no longer be able to receive commission-based sales.

Westpac:
It would have to divest its wealth management arm, BT Financial Group, and break-up superannuation, insurance and wealth management.

ANZ, CBA and NAB:
ANZ, CBA and NAB are on the way to divesting their wealth management arms. But they will be compelled to finish the job and also have to divest their trading platforms.

Macquarie Bank:
It will no longer be able to operate as a retail bank (ADI) and investment bank.

AMP:
It will have to break-up. Currently it is an ADI, as well as offering superannuation, insurance and wealth management. It will need to choose one area to operate in.

MLC:
Currently owned by NAB, but is being sold off. In addition to this it will have to break up superannuation, insurance and wealth management.

OnePath:
Currently owned by ANZ, but is being sold off. In addition to this it will have to break up superannuation, general insurance and wealth management.

It is time to break up the banks.

Mr Adam Bandt MP

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[1] See: Kay, *Other people's money: masters of the universe or servants of the people*, 2015.
[2] Maddock, *Is the Australian financial sector too big?* ANZ Bluenotes, 16 April 2014.
[3] ABS 5204.0 - Australian System of National Accounts, 2016-17.
[4] Cecchetti & Kharroubi, BIS Working Papers No 490, *Why does financial sector growth crowd out real economic growth?* February 2015.
[5] See: Akerlof & Shiller, Phishing for phools: the economics of manipulation and deception, 2015.
[6] IMF, Global Financial Stability Report, October 2017.
[7] See: Financial System Inquiry: Overview – Box 5: Systemic and housing risk in Australia, 2014.
[8] Sims, Synchronised swimming versus competition in banking, AFR Banking and Wealth Summit, 5 April 2018.
[9] Productivity Commission. Competition in the Australian Financial System – Draft Report, January 2018.
[10] The Reserve Bank has established a Committed Liquidity Facility to, in effect, grade bank issued securities as high-quality liquidity assets under the rules of the Basel Accord. Australia is unusual in having had to establish such a facility as a result of the high ration of private debt to public debt.
[11] Irvine, Yeates, Danckert & Hunter, *'Stamp out this behaviour' - banks should not offer advice says Fels*, Sydney Morning Herald, 18 April 2018.
[12] Royal commission into misconduct in the banking, superannuation and financial services industry, Witness statement of Louise Anne Macaulay, Senior Executive Leader, ASIC Financial Advisers Team.
[13] Chester, Gray, & Galbally, Fit for the future: A capability review of the Australian Securities and Investments Commission – A report to Government, December 2015.

[14] The Senate Economics Reference Committee, Performance of the Australian Securities and Investments Commission, June 2014.
[15] Martin, *'Benefit of hindsight': ASIC may have been wrong body to protect consumers*, Sydney Morning Herald, 24 April 2018.
[16] Erskine, Funding Australia's Future: Regulating the Australian Financial System, July 2014.
[17] Bryan, *New type of poverty hurting middle class*, Sydney Morning Herald, 26 April 2018.
[18] ACCC, *Residential mortgage products price inquiry, Interim report*, 15 March 2018; Productivity Commission, *Competition in the Australian Financial System – Draft Report*, January 2018.
[19] ACCC, Residential mortgage products price inquiry.
[20] Financial Systems Inquiry: Final Report, 2014, Recommendation 27 — Regulator accountability, 2014.