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?*
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> *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…*

[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?*
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> *Mr Thorburn: No, I don't.*
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> *Mr THISTLETHWAITE: Why?*
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> *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.*
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> *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.*
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> *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.

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

[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.