Royal commission takes a step closer to bank separation

By Elisa Barwick

The Financial Services Royal Commission has raised problems associated with the structure and integration of financial services, despite terms of reference precluding it from looking into "macro-prudential" policy, i.e. which includes the regulatory architecture of the banking system.

Following its Round 5 hearings on superannuation, the royal commission asked for public submissions regarding structural issues causing problems for superannuants. The report issued at the close of that round asked: "Are there structures that raise inherent problems for a superannuation trustee [bank, fund manager, etc.] being able to comply with its fiduciary duties." It went on to ask whether there is "an inherent conflict of interest" raised by vertically integrated super trustees, especially when it comes to integration with financial advice businesses: "Is it possible to say that these conflicts are ever manageable?"

"If certain structures do raise inherent problems, is *structural change of entities, mandated by legislation* or otherwise, something that is desirable?" (Emphasis added.)

By raising structural issues the royal commission is converging on the necessity for bank separation—the most widely discussed pathway to structural reform for Australia's banks. After the second round of hearings on financial advice, the banks had been asked by the royal commission to justify why they should be allowed to continue to operate across a multitude of financial service categories, i.e. as vertically integrated enterprises. Structural factors such as this have arisen in virtually every round of hearings, but this is the first time the commission has sought submissions from the population. The royal commission will consider changes to the "broader infrastructure of the superannuation system" and whether the regulators, with roles as presently allocated, are operating appropriately.

The CEC's submission to the royal commission advocated that banks should not own superannuation funds, and that Glass-Steagall bank regulation is the starting point for effective structural reform in order to ensure our financial system can weather the storms ahead. More than ever before, the environment is primed for a parliamentary Glass-Steagall debate.

Potemkin regulators

Ongoing criticism of Australia's financial regulators betrays the same. In a 10 September report on the Australian Securities and Investments Commission (ASIC), the Standing Committee on Economics of the House of Representatives delivered a stinging assessment. As the "regulator responsible" for ensuring trust and transparency in financial dealings, the evidence of shocking bank misconduct heard by the royal commission puts ASIC in the spotlight, the report said. "ASIC needs to be tougher. The community expects the big banks and others to fear their regulator", committee chair Liberal MP Sarah Henderson concluded.


The Guardian

Our regulators fail to protect the vulnerable from the greedy. Let's find out why

Richard Denniss

Neoliberalism's best trick was convincing us that 'empowering' citizens to shop around would deliver better services at a lower cost

This *Guardian* article featured a CEC demonstration outside the royal commission.

According to the 22 September *Australian*, Treasurer Josh Frydenberg recently asked, "If ASIC knew about this activity, this unlawful conduct, why didn't they take action and why has this culture been allowed to permeate?" If we are to believe that former banker Frydenberg was also unaware, it is yet another illustration of why there is no alternative to top-down structural separation of everyday banking from all other financial activity. Policing the banks cannot be left to the discretion of an individual or an organisation; it must be enshrined in law.

Peter Kell, who spearheaded investigations into misconduct at ASIC for the last seven years, described the problem as a "profound challenge", and according to the *Australian* he pointed to deeper structural conflicts associated with institutions both creating and selling financial products, i.e. vertical integration. "There are also questions about some of the structural conflicts that have been raised in the royal commission … whether they might be better managed or whether they *should be removed altogether*." (Emphasis added.)

CBA financial planning scandal whistleblower Jeff Morris told the *Australian* that we need to start over if we want decent bank regulation. Pointing to the revolving door between ASIC and the banks, he said the regulator is simply too close to the big end of town. Australia's regulatory structure "was like a movie set with a facade of buildings, it was all fake [a.k.a. a Potemkin Village]. The problem was all the big players in the industry knew this and it suited them."

Former head of the Australian Competition and Consumer Commission (ACCC) Graeme Samuel was scathing on the regulators in a discussion with Fairfax media on 22 September. Like the House of Reps economics committee, he stressed that ASIC and APRA (the Australian Prudential Regulation Authority) must be "totally feared, for their independence, their

Boot 'shonks and profiteers' out of super!

In an article for the 24 September *Australian Financial Review* National Secretary of the Transport Workers' Union, Michael Kaine, called for the eradication of the big banks from Australia's superannuation system.

Paltry interest and stinging fees have hurt the retirement savings of Aussies, Kaine said, and close to $1 billion disappeared due to banks charging fees for no service. Banks have taken advantage of the fact that most people take little or no notice of their super accounts.

While he defended the current compulsory superannuation system, Kaine was adamant that making it work depends upon "removing banks and for-profit funds from the system".

"The grand theft the banks have perpetrated on our superannuation accounts is driven by an irresolvable conflict", said Kaine. "Under corporations law, companies have an obligation to act for their shareholders. But under the superannuation act, superannuation trustees must act solely in the best interests of their members."

For-profit "pirates" must not be allowed "to loot our retirement savings", concluded Kaine. Super fund managers must have "only one master—the members of your fund".

rigor, their commitment and their intolerance to bad behaviour".

Allan Fels, who preceded Samuel at the helm of the ACCC, said ASIC "has been failing for 20 years and I have no reason to believe it's going to get better." Fels, who has spoken out about the need for bank separation, said that "The depth and severity of the problems uncovered point to the need for deeper solutions—solutions that address serious conflicts of interest."

A 19 September *Guardian* article, "Our regulators fail to protect the vulnerable from the greedy. Let's find out why", shows the climate for proper structural regulation is growing. Richard Denniss, the chief economist for the Australia Institute, wrote that our "watchdogs are little more than lap dogs" and called for a royal commission into regulatory culture including the regulator's collusion with the banks.

"When it comes to border protection, recreational drug use and welfare fraud, Australians have been told that we need 'tough cops on the beat' and 'zero tolerance'", Denniss wrote. "But when it comes to billion-dollar corporations ripping off vulnerable people, we are told we need to *engage in dialogue to create a culture of voluntary compliance*. It's not just income that is unevenly distributed in Australia, it is oversight and punishment, and it's time we inquired into why." (Emphasis added.)

The royal commission will release its interim report on 28 September, which although only expected to cover the first four rounds of hearings may provide some clues of what it will recommend in its final report due 1 February 2019. Following the interim report the commissioner will invite submissions on policy issues identified. A final round of hearings will be held from 19 November in Sydney and 25 November in Melbourne on "policy questions" arising from previous hearings. As bank CEO's are expected to be called, *Sydney Morning Herald* reports this has been dubbed "Judgement Day" by Citibank analysts.

During the commission's hearings on superannuation there were indications from Hayne and senior counsels assisting, Rowena Orr and Michael Hodge, that criminal proceedings would be recommended. In the sixth round of hearings on insurance, Hayne called small fines to financial service companies "a very low cost of doing business", suggesting financial retribution is not enough. Most interesting, however, will be what Hayne will say about banking structure.

Bank victim horror stories

Throughout September and early October, activist group Bank Reform Now is releasing a series of "Bank Victim's Horror Stories" told by 35 victims who convened at Parliament House on 14 August. Almost 200 other bank victims attended the event at the invitation of Senator Fraser Anning. Event organiser Leon Ashby, a staffer for Senator Anning, conducted 35 short interviews with the victims in the one-and-a-half hour forum, none of whom were heard by the royal commission. The event's aim was to extend the Financial Services Royal Commission and expand its terms of reference.

If strict Glass-Steagall banking separation and uncompromised regulators were in place, these and most other horror stories would likely never have occurred. Glass-Steagall separation would prohibit commercial banks from trading in mortgage-backed securities, credit-default swaps, and other explosive financial derivatives. Crime, forgery, and dishonesty have always existed in banking, but the structural model of vertical integration, securitisation of loans (on-selling debt), and the revolving door of regulators and bank executives, encourages such crime and guarantees such horror stories to be common place.

Below are excerpted transcripts of 5 of the 35 case studies currently featured at https://www.bankreformnow.com.au/bank-victims on the Bank Reform Now website. Throughout Leon Ashby is identified as '**LA**'.

Michelle Matheson (MM)—victim of RHG Mortgage Corporation

LA: How long have you been trapped in mortgage fraud with RHG Mortgage Corporation, previously known as RAMS? [Following the sale of RAMS to Westpac in late 2007, the business was restructured, with a change in name from RAMS to RHG Limited occurring shortly thereafter.]

MM: It will be 11 years next month.

LA: As a first home buyer, what type of loan product did they provide to you?

MM: They provided a small business style loan and the bank's agent and bank's lending manager obtained an Australian Business Number without my knowledge.

LA: When did you notify the bank there was an issue with the loan and serviceability?

MM: I contacted the bank less than six weeks after moving in, to let them know that something was wrong. They denied that there were any issues and claimed they had applied due diligence. That was October 2007.

LA: After waiting two years for FOS [Financial Ombudsman Service] to determine your matter, why couldn't you accept your FOS Determination that was in your favour?

MM: The Determination would have left my children and me homeless, the FOS apportioned liability, 50 per cent onus on the bank for their wrongdoing and 50 per cent onus on me for failing to protect myself from their wrongdoing. There's no appeal mechanism for any of these dispute schemes.

LA: Could you have protected yourself from their wrongdoing?

MM: No … the bank's employees and their agents added another bundle of pages to the original loan application after obtaining our signatures. These pages contained fraudulent information including the increase of my income by $55,000, a rental property I never owned, $100,000 in savings that didn't exist. I was never provided with these pages of the application.

LA: Has RHG Mortgage Corporation been mentioned at all during the Royal Commission?

MM: No, not at all, not once. I know there is a very large group of customers of RHG Mortgage Corporation that are dealing with these types of issues and unlawful conduct, most have already lost their homes, but no one will investigate this second tier lender.

Goran Latinovich (GL)—victim of Westpac

LA: Did your finance broker successfully steal eight cheques all for amounts over $100,000 through Westpac's system thereby depositing over $1.2 million into an account that he could access?

GL: Yes.

LA: Was Westpac supposed to ask you about amounts

as large as these before they transferred the funds?

GL: Yes.

LA: Were the written amounts in your handwriting?

GL: No.

LA: Were the signatures forged?

GL: Yes.

LA: How do you suspect the theft was achieved when banks should have been on the lookout for such actions?

GL: It would appear that Westpac staff concealed and aided the fraud.

LA: What was the consequence of the theft?

GL: Losses in excess of $20 million dollars, the project, future income, our homes … everything was lost.

LA: What has Westpac done about the matter?

GL: Absolutely nothing. They refuse to acknowledge the fraud and they deny that I ever reported criminal activity within my account.

LA: Can you afford justice?

GL: With 16 cents left in the account? No.

Lewis Tomcsanyi (LT)—victim of NAB

LA: Lewis, did you have a dispute with NAB and go to court and won 97 per cent of your claim?

LT: Yes.

LA: Did NAB comply with that court decision?

LT: No.

LA: Did NAB appoint receivers to then come onto your property attempting to take control of the asset?

LT: Yes.

LA: Did you warn the bank you were prepared to defend your asset and you were later charged with a firearms offence which you pleaded not guilty to and spent ten months in jail?

LT: Yes.

LA: Another court hearing happened sometime later—what was the verdict?

LT: NAB was found in breach of the court order, but it was all my fault—case dismissed.

LA: Are you still in possession of your farm?

LT: Yes.

LA: You described securitisation to me as the separation of the traditional marriage of the title to the debt. So instead of one agreement, there are now two. The agreement with the bank and those that buy the debt and the agreement between the customer and the bank where the customer loses all their rights to their assets and the bank can sell them as they see fit and it does not relate to an amount of money at all—is that correct?

LT: Yes.

Craig Caulfield (CC)—victim of CBA

LA: Craig, did you have a decline in your income causing you to try to renegotiate your loan?

CC: Yes.

LA: How many times would you have approached the bank to try to get a meeting?

CC: Many times.

LA: How many years did that take?

CC: Six years—2010 to 2016.

LA: Has the bank admitted any wrongdoing with your documents?

CC: No, even though the documents have 27 fraudulent or incorrect entries, my signature is cut and paste, and my driver licence number is not correct.

LA: Can you afford justice?

CC: No.

LA: Were you so frustrated that your mental health deteriorated and you attempted suicide?

CC: Yes.

LA: Let's try a survey—who is a bank victim? [Bank victims raise hands.]

LA: Of those who put their hand up—who had severe depression and had suicidal thoughts due to their banking issue? [Majority remain with raised hands.]

LA: That indicates about 50 per cent of bank victims potentially become suicidal. Has the royal commission looked at that aspect of the impact of bad banking practices?

CC: No.

LA: What would you like to say to Commissioner Hayne regarding the importance of extending the royal commission?

CC: When you have been battling to be heard for many years, we need the commission to deal with every issue and obstacle that banks have put in our way. The Royal Commission into institutional sexual abuse of children took five years with seven commissioners to hear several thousand victims. We believe we deserve the same respect.

Sheril Morris (SM)—victim of La Trobe Financial

LA: Sheril, Did you have a loan with La Trobe Financial that you fell behind in payments and interest due to a marriage breakdown and a family death?

SM: Yes.

LA: When you were foreclosed on what was your plan?

SM: I contacted someone who previously had offered to buy our land and got a verbal agreement to buy it for $250,000.

LA: When the contract was ready to sign, was the price dropped to $230,000 take it or leave it?

SM: Yes.

LA: Was it because La Trobe raised issues of uncertainty that caused you to not sign the contract for $230,000?

SM: Yes.

LA: When the property was auctioned, what happened?

SM: The person I had the verbal agreement with bought it for $110,000—leaving me with a shortfall of $168,000.

LA: When La Trobe organised valuers, what values did they give?

SM: $80,000—well under the unimproved value of $136,000.

LA: Did La Trobe charge 35 per cent interest on arrears when they said it was 3 per cent?

SM: Yes.

LA: Did La Trobe take default judgment and apply the legal cost to the loan when a default judgment was already put in place by Coastal & Hinterland Financial Services and was still valid?

SM: Yes.

LA: Did La Trobe create a shortfall of $4,531.22 on the payout, which allowed them to stop the sale going through?

SM: Yes.

LA: Does La Trobe's conduct deserve investigation by the Royal Commission?

SM: Yes, they are a very corrupt and deceptive financial organisation.