Australian Citizens Party
Craig Isherwood, National Secretary PO Box 376, COBURG, VIC 3058 **Phone**: 1800 636 432 **Email**: info@citizensparty.org.au **Web**: citizensparty.org.au

MEDIA RELEASE

Thursday, 7 February, 2019

Treasury’s dirty trick in Hayne’s report

Above all else, the banks were desperate that Commissioner Hayne’s final report didn’t recommend structural separation; according to journalist Michael Pascoe, this was the subject of the illegal insider trading leak that caused bank shares to suddenly rise at 11:00 AM on Monday. Treasury, which has a revolving door with the banks, epitomised by Dr Ken Henry who wrote the letter on behalf of the banksthat gave the all-clear for the royal commission on certain conditions, ensured the banks got their way. Former APRA Principal Researcher Dr Wilson Sy, who has direct experience with Treasury’s methods, explains how.

The Australian Treasury has played dirty tricks on the public in the final report of the Hayne Royal Commission (HRC). This was probably why Kenneth Hayne refused to shake hands with the Treasurer Josh Frydenberg on its delivery. The public does not know that the HRC final report was not written entirely by Kenneth Hayne (KH), but substantially by the Treasury.

The dirty trick

A dirty trick is defined in this article as a recommendation which does not follow from the work of the royal commission. The terms of reference specifically forbade the HRC from investigating **system structure**:

> *We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that the matter relates to macro-prudential policy and regulation. …*
>
> ***Macro-prudential policy and regulation*** *means policy and regulation, including as to the structure, role and purpose of financial regulators, that is concerned with containing systemic risk, which can have widespread implications for the financial system as a whole.*

In its investigations, the HRC did exclude system structure issues and concentrated solely on public hearings involving misconduct. Yet without any justification, many recommendations on system structure appeared in the final report. For example, it was recommended that the “twin peaks” model of the regulatory system be retained.

Dirty tricks are used to deceive politicians and the public into believing that the recommendation

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resulted from thorough investigation by the commission. The most important dirty trick is to reject the necessity for the “structural separation” of the financial system, when KH did not include system structure in his work.

Structural separation

The question of separation was only mentioned briefly in the HRC interim report in relation to financial advice:

> *How far can, and how far should, there be separation between providing financial advice and manufacture or sale of financial products?*

This innocent query was among many other questions raised in the final sections of the interim report as an indication of further issues to be addressed and further work to be done. Those questions provided the public with avenues to vent their frustration with the restrictions of the terms of reference. Thousands made submissions for “structural separation” to avoid their wealth being stolen by the system (through “bail-outs” and “bail-ins”) to save the banks. Since the global financial crisis (GFC), many have agitated to safeguard the financial system by “structural separation” of traditional commercial banking from investment banking. The structural separation of the financial system under the US Glass-Steagall Act had protected the world from serious financial crisis for over six decades.

The Treasury has consistently opposed Glass-Steagall type of structural separation and has misled the Australian public into the belief that structural separation of the regulators is relevant and sufficient. Without proper explanation, the final report of the HRC (p. 196) further confuses the issue of structural separation:

> *Enforced separation of product and advice would be a very large step to take. It would be both costly and disruptive. I cannot say that the benefits of requiring separation would outweigh the costs, and the Productivity Commission concluded that ‘forced structural separation is not likely to prove an effective regulatory response to competition concerns in the financial system’. I observe, however, that the Productivity Commission recommended, and I agree, that commencing in 2019, the Australian*

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> *Competition and Consumer Commission (the ACCC) 'should undertake 5 yearly market studies on **the effect of vertical and horizontal integration in the financial system**'.*
>
> *I am not persuaded that it is necessary to mandate **structural separation** between product and advice.*

Emphasis has been added. The above mentioned "separation of product and advice" query in the interim report has been transformed into a recommendation that it is unnecessary to avoid structural separation from vertical and horizontal integration in the financial system. It is a dirty trick to create the appearance that the HRC has made a recommendation against structural separation of the financial system, when it did no work being forbidden by its terms of reference.

How it's performed

How was the dirty trick performed? Reports of most government-commissioned reviews and inquiries are not written by the commissioners. The HRC final report was probably mostly written by the Treasury.

KH and his legal team would have organised all the public hearings, calls for submissions and prepared all the transcripts. All material would have been passed onto the secretariat of the commission, which consists of staff of the Australian Treasury. The secretariat writes the reports based on protocol which conforms to Government templates for commissioned reports. KH and his team would have guided the process with notes and outline drafts of some sections, but the final report would have been written mostly by the Treasury.

Under time pressure with a deadline it would be impossible to read carefully a thousand pages of document. Opportunities for editing the final document may also be limited. The refusal of Kenneth Hayne to shake hands with the Treasurer Josh Frydenberg should raise doubts about the integrity of the report. If indeed a dirty trick has been played then it will be confirmed when the Government counters calls for Glass-Steagall separation with contrary "findings" of the HRC.

Click here for Dr Wilson Sy's September 2018 refutation of Treasury's opposition to banking separation, "Banking expert destroys Treasury arguments against Glass-Steagall".

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What you can do

- Don’t accept a rigged outcome! It is clear that banking separation is the defining issue, so get behind the fight to break up the banks. Don’t allow your MP to hide behind this report as an excuse not to break up the banks, but demand they support the Banking System Reform (Separation of Banks) Bill that Bob Katter introduced into the House of Representatives in June 2018, and which will soon be introduced into the Senate.

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