

Parliament could force banking inquiry despite hostile Coalition, says Senate clerk

 [theguardian.com/australia-news/2016/aug/25/parliament-could-force-banking-inquiry-despite-hostile-coalition-says-senate-clerk](https://www.theguardian.com/australia-news/2016/aug/25/parliament-could-force-banking-inquiry-despite-hostile-coalition-says-senate-clerk)

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25/08/2016

The opposition and minor parties could force a rare and powerful “commission of inquiry” into the banks if the Coalition refuses a royal commission, according to the clerk of the Senate, Rosemary Laing.

And the Senate’s key parliamentary adviser said if the commission of inquiry bill won a majority in both houses it would be an outcome that “any government would find difficult to resist”.

Laing has advised the Greens senator Peter Whish-Wilson that parliament could establish the inquiry, similar to that set up to [investigate former Labor minister and high court justice Lionel Murphy](#) by the Hawke government.

Whish-Wilson immediately warned Malcolm Turnbull that he would pursue the commission of inquiry if the prime minister failed to establish a royal commission. He has written to the opposition leader, Bill Shorten, to offer to work with Labor if its motion passes but the government refuses to support a royal commission.

“If the Turnbull government refuses to act on establishing a royal commission into the misconduct in the financial services sector then I want parliamentarians to know there is another powerful option for us to pursue,” Whish-Wilson said.

“If the executive won’t act on an issue important to the Australian people then the parliament must consider all its options.”

The difference between a royal commission and a commission of inquiry is the latter reports to the parliamentary houses rather than the government of the day.

The Murphy case in 1986 is the only time a parliamentary commission of inquiry has been used and at that time, three judges were appointed to oversee the inquiry to provide independence. They were to investigate the behaviour of Murphy, who was convicted of attempting to pervert the course of justice, a finding later overturned on appeal. But the commission of inquiry was not completed because Murphy was diagnosed with a terminal illness and he died later in the same year.

In a finely balanced parliament, where the government has a one-seat majority in the House of Representatives and a nine-seat deficit in the Senate, the option could force the issue on the government, which has so far resisted a banking royal commission.

Whish-Wilson, a former merchant banker who has long campaigned on bank behaviour, sought the advice from Laing on the little used parliamentary power.

[Laing’s advice](#), which has been seen by Guardian Australia, suggests a commission of inquiry into the banks would be possible although there would be difficulties, such as funding the inquiry or forcing the government to allow debate in the lower house.

“It would be open to the parliament to establish a commission of inquiry, to give it appropriate powers and immunities and to require it to report to the houses rather than the executive government, provided the inquiry was within the powers of the commonwealth as reflected in the constitution,” Laing writes.

“Any such commission would have the powers that the parliament saw fit to give it. They might replicate those of a

royal commission or a parliamentary committee or be specifically designed for a particular purpose.”

Laing notes there could be “numerous” barriers to the inquiry, which needs a majority in both houses.

While the inquiry debate could be held in the Senate, the Coalition would not schedule time for debate in the House where it has much more control over procedure.

Laing notes while several (Coalition) MPs have spoken about crossing the floor on banks, they may be “reluctant to vote against their party on a procedural question”.

Laing notes that even if the commission bill passed, it could be challenged for validity and “costly interference could be run by interests opposed to such an inquiry”.

“Recourse could be had to litigation at every step to frustrate the commission if the opponents were determined and deep-pocketed enough, including challenges by individual witnesses, not to mention challenges to the appointment of commissioners in the first place,” Laing writes.

She said finding appropriate commissioners to run the inquiry would be “problematic”, given most people with the expertise (such as former bankers) would be vulnerable to conflict of interest claims.

She suggests funding the commission would be an issue because in the Murphy case, the inquiry was proposed by the executive government, so funding was not a problem.

The Senate and lower house non-government MPs cannot initiate funding. But she notes on funding “it would be politically difficult for any government to resist the views of both houses expressed in the legislative form”.

“If such a statute were passed, even without the support of the government, it would be a clear indication that the two houses of the parliament, as constituted by elected representatives, were in support of the inquiry,” Laing writes.

“Any government would find it difficult to resist the views of both houses in this form.”

In the Senate, Labor, the Greens and three senators from the [Nick Xenophon Team](#) (NXT) senators, plus Pauline Hanson’s four senators and Jacqui Lambie all support a royal commission – well over the 39 senators needed to pass a bill.

In the lower house, if all the independents and minor party MPs supported a motion, it would require one Coalition MP to cross the floor. Of the 150 seats, the Coalition has 76 seats or 75 once the speaker Tony Smith is removed from the equation.

Labor, Greens MP Adam Bandt, NXT MP Rebekha Sharkie and Katter Australian Party’s Bob Katter all have supported a bank royal commission in the past. Indi independent [Cathy McGowan has said](#) she is open to a royal commission, depending on the terms of reference.

Before the election Labor joined calls by [Whish-Wilson](#), [Nationals senator John Williams](#) and [Nick Xenophon](#) for a royal commission into the financial services industry. Queensland LNP MPs George Christensen and Warren Entsch have both supported the idea in the past.

While Turnbull has promised to force large bank chiefs to [appear before a house committee annually](#), he has resisted calls for a royal commission, though he remains open to a [bank tribunal](#).

Whish-Wilson said while the Greens would support Labor motions for a royal commission (given the Greens had proposed similar motions in the past), the option of a commission of inquiry was a live option.

“Australians overwhelmingly support a royal commission into the financial services sector and are tired of the

excuses and inaction from the Turnbull government,” Whish Wilson said.

“The Greens have led the call for a royal commission into financial scandals such as the \$4bn collapse of Australia’s forestry managed investment schemes, and we propose this option for all parliamentarians to consider.”