

Banking inquiry told it does not have powers of royal commission

 [theguardian.com/australia-news/2016/sep/09/banking-inquiry-told-it-does-not-have-powers-of-royal-commission](https://www.theguardian.com/australia-news/2016/sep/09/banking-inquiry-told-it-does-not-have-powers-of-royal-commission)

Gabrielle Chan

09/09/2016

A parliamentary library paper has contradicted the claim by small business ombudsman Kate Carnell [that her banking inquiry has the same powers as a royal commission](#).

“Whilst the Australian Small Business and Family Enterprise Ombudsman has powers to seek information, these powers are not as significant as those of a royal commission,” the advice says.

“The powers of a royal commission are underpinned by the criminal code so that criminal offences arise where a person fails to comply with a requirement of the royal commission.

“In addition the royal commissioner has powers to apply for warrants to search property or to arrest a person. The ASBFE ombudsman has no equivalent power.”

The Greens treasury and consumer affairs spokesman, senator Peter Whish-Wilson, accused Carnell of giving cover to the banks and again called on the Coalition to set up the royal commission.

“The small business ombudsman has been caught out doing a Wizard of Oz routine, pretending the powers of her inquiry into small business loans are the same as a royal commission,” Whish-Wilson said.

“Ms Carnell was quick to come out publicly against the need for a royal commission, well before she was given this new task. Ms Carnell needs to stop giving cover to the government’s attempts to avoid a royal commission and do her job by standing up to the banks.”

But Carnell said she was not trying to “pretend” her bank inquiry was a broad-based royal commission, given the terms of reference were very tight and she had 11 weeks to complete the inquiry.

“It is clear what we are here for and we are not trying to pretend we are broad-based royal commission,” Carnell told Guardian Australia.

“We can subpoena people to turn up and do all the sorts of normal things that a royal commission can do, which in terms of this inquiry is all that is necessary to be used. I can’t believe the banks won’t turn up.”

Like a royal commission, her inquiry had no capacity to award compensation, she said.

Both the Greens and Labor went to the election calling for a royal commission following [a series of bank scandals](#) involving financial advisers, life insurance products and [rate-rigging allegations](#).

While the National party senator John Williams has campaigned hard within the Coalition partyroom for a royal commission, [the Coalition has](#) moved to head off an inquiry with four separate measures.

The government [restored an amount of funding](#) to the Australian Securities and Investments Commission, announced it would [compel bank executives to appear](#) at least once a year before a parliamentary committee and then promised to establish a bank victims tribunal, though details have yet to be released.

Most recently, the government set up the Carnell inquiry to look at a limited number of small business cases that arose from a parliamentary inquiry, noted for their “questionable treatment” by the banks.

Carnell's inquiry will look at the adequacy of the law and consider whether regulations go far enough to protect small business customers.

"We have royal commission powers in situations like this and we plan to use them; we will conduct hearings and will use the powers set out in our legislation to require banks to appear and to provide us with the documentation that we need to thoroughly conduct this inquiry," [Carnell said when it was announced](#).

According to the parliamentary advice, unlike the ombudsman, the powers of a royal commission are underpinned by the criminal code, giving it the power to summon witnesses to give evidence or produce documents. Failure to do so has a maximum penalty of \$1,000 or six months' jail.

The ombudsman can require a person to provide a statement and specified documents – failure to comply is punishable by a \$2,400 fine.

A royal commission can obtain search warrants, while the ASBFEO has no equivalent power. A royal commission can also issue an arrest warrant for witnesses failing to attend under summons. The small business ombudsman has no equivalent power, nor has it power to allow for legal cross-examination.

It is an offence when a person gives false or misleading evidence to a royal commission, punishable by a fine of up to \$20,000 or five years' jail but the ombudsman has no equivalent offence.

A royal commission has a number of other offences, such as those relating to bribing witnesses, which have no equivalent offences under the powers of a small business ombudsman.

Whish-Wilson said the government's moves to avoid a royal commission had become farcical.

"The Turnbull government refuses to face the reality that only a full-blown commission, with coercive powers to compel witnesses and evidence, can get to the bottom of cultural problems in the financial sector," he said.

"Using a dispute resolutions body to stamp out financial wrongdoing misses the point. Any dispute resolutions body will focus on narrow interpretations of justice."

But Carnell said her inquiry would recommend any new regulations that might be needed, and allow small businesses to tell their stories, in public if necessary.

She said some customers might want redress, some "may just want the bank to say sorry".

"It also needs to be as user-friendly as possible and because they are small businesses, often with no money, they are not going to be lawyered up and nor should they be," Carnell said.

"The banks will have lawyers but we have to make sure process is not intimidating."

Labor's financial services shadow Katy Gallagher said the Carnell inquiry was limited to the 23 individual matters it was asked to examine, rather than the systemic inquiry into the financial system that a royal commission would provide.

Gallagher said a royal commission would allow a thorough investigation into past wrongs, allow victims' stories to be heard and give recommendations to strengthen the financial system.

"The Carnell inquiry won't achieve any of these outcomes all of which are so badly needed," she said.