

## Banks enlist legal eagles for likely inquiry 'tsunami'

**EXCLUSIVE**

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**The big four banks now see the prospect of a royal commission or similar inquiry as almost inevitable and have enlisted the nation's top commercial law firms and senior counsel in readiness.**

**The move comes as disgruntled Nationals members, who are angered by the government's management of religious rights in the same-sex marriage debate, continue to flag their support for a commission of inquiry into the banks and have renewed their threats to cross the floor of the House of Representatives if Malcolm Turnbull fails to take action on the issue before the final parliamentary fortnight starts next Monday.**

**Queensland senator Barry O'Sullivan plans to introduce a private members bill — co-sponsored by the Nationals, Labor, the Greens and crossbench parties — that would establish a commission of inquiry, with the same powers as a royal commission but reporting to the parliament.**

**Queensland backbencher George Christensen has given the Prime Minister written notice that he will vote for an inquiry in the lower house.**

**The government's ability to hold back the push for a royal commission has been weakened by the citizenship fiasco that has forced two of its members, former deputy prime minister Barnaby Joyce and Bennelong member John Alexander, to resign their seats and fight by-elections.**

**The government already lacks the numbers in the Senate, where Senator O'Sullivan's proposed bill is likely to pass, while its numbers are in jeopardy in the lower house.**

Resources Minister Matt Canavan, also a Queensland Nationals member, yesterday defended the right of his party's backbenchers to advance policies at odds with the government and sought to downplay the significance of losing a vote on the issue.

"We in the Nationals fully support the autonomy of backbenchers to bring their views and issues that they see as important to the Australian people to the parliament. I have great respect for both George Christensen and Barry O'Sullivan," he said.

Senator Canavan said although he did not agree a royal commission was warranted, he appeared to accept the possibility it may win the support of parliament.

"I think it is an exaggeration to say it would be a major setback to the government. It is an issue that has been around in the Australian policy space now for some time, the government has a certain view and if the parliament was to decide otherwise then we will deal with it when it comes."

Mr Christensen has asked Mr Turnbull to reconsider his opposition to a royal commission, and also the government's endorsement of cuts to penalty rates. "I support a royal commission or commission of inquiry into the banks," he said. "And I'm going to vote accordingly."

The final two weeks of parliament are the danger zone for the government. It does not

control the numbers in the Senate and a bill establishing an inquiry would pass with the support of Labor, the Greens and crossbenchers.

In the lower house, the Coalition's numbers have been reduced to 73 of the 150 seats, or 74 including the casting vote of Speaker Tony Smith. Even if Mr Joyce is successful at his election, he would have to wait until returns were finalised before retaking his seat, which may take two or three days, leaving at least six sitting days where the government is in a clear minority.

The government's numbers would be tested first on suspending standing orders to debate a private member's bill and then when it came to a vote.

Labor has 69 seats and is confident of gaining the support of the five crossbenchers. Mr Christensen crossing the floor would provide a clear majority, even if Mr Smith used his casting vote.

Mr Smith has said he will not "manufacture a majority" for the government. He is highly likely to at least let the issue be debated.

The stance of the Nationals has angered the banks. "So what we're seeing is the Nationals throwing their toys out of the cot because they didn't get their way on same-sex marriage," a senior banker said.

"The direct cost of a royal commission will be in the hundreds of millions but the economic cost because of the distraction will be in the billions.

"The country has no idea of the tsunami that's about to hit."

*The Australian* can reveal

some of the big four have established separate internal teams to handle the preparations and conduct of the inquiry.

The aim is to ensure senior management are not distracted from running the business.

The teams include both internal and external lawyers, with senior counsel understood to have been kept on retainer since Bill Shorten unveiled his electorally popular royal commission policy in the lead-up to last year's federal election.

National Australia Bank has retained Herbert Smith Freehills, Commonwealth Bank has appointed Clayton Utz, Westpac is using Allens and ANZ Bank has Ashurst.

Some banks are habitual users of the same firm. Allens, for example, is also in Westpac's corner for the Federal Court case involving alleged manipulation of the benchmark rate, the bank bill swap rate.

ANZ used Ashurst to help settle its version of the same ASIC allegations for \$50 million, the bank fees class action that was decided by the High Court, and the high-profile Oswal case.

Commonwealth Bank is also considered to be battle-ready because of its long list of completed and part-finished regulatory reviews.

An APRA-appointed prudential inquiry is under way into the bank's governance and culture, while the Austrac money laundering debacle has spawned a class action, an ASIC investigation into disclosure practices and a Federal Court case brought by the financial

intelligence agency.

A royal commission is not the only way to examine bank behaviour, with Greens senator Peter Whish-Wilson having explored the option of a statutory commission of inquiry in August last year with the clerk of the Senate, Rosemary Laing.

In an email obtained by *The Australian*, Ms Laing told Senator Whish-Wilson that a statutory commission of inquiry into the financial sector would report to the parliamentary houses rather than the government of the day.

The only precedent is the 1986 commission of inquiry into misbehaviour by High Court judge Lionel Murphy.

While parliament could give the commission appropriate powers and immunities, Ms Laing said there were numerous parliamentary, constitutional and legal barriers.

First, the validity of the legislation could be challenged by anyone "with standing".

"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 the commissioners in the first place," she said. "Identification of appropriate commissioners would be problematic and those with the requisite expertise would be vulnerable to conflict of interest claims for any previous involvement with the industry. "The first barrier, however, is that the legislation must pass both houses."