Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

Interim Report – Submission of the Australian Greens

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1. Introduction

The Commission has laid bare many of the problems in Australia's banking, superannuation and financial services industry. Misconduct involving varying levels of deception, lying and other forms of dishonesty have been shown to be widespread. Fraud and bribery has been uncovered within once venerable institutions.

When announcing the establishment of this Commission, the then Prime Minister, Malcolm Turnbull, said that it would not "put capitalism on trial."[1] That might be true, but the Commission has exposed the worst excesses of capitalism. After all, banks are the arteries of capital, and they've got fat and bloated.

As the Commission highlights, the misconduct uncovered has been driven by the pursuit of profit above customer interest. This is not just a problem of individuals. It is not just 'a few bad apples' as the banks tried in vain to tell everyone for so many years. The misconduct uncovered by the Commission represents a systemic failure.

The problems in Australia's banks are emblematic of the problems in the financial industry the world over. Through globalisation, technology and blind faith in the wisdom of markets, the financial system that has become too big, too complicated and too interwoven to properly serve the interests of consumers or the economy.

Australia has embraced this new order. We are one of the most heavily financialised economies in the world.[2] The banking and finance sector accounts for 9% of GDP and is the largest single sector in the economy.[3] But the increase in the size and scope of banking has not been matched by an increase in financial stability or an increase in the distribution of economic prosperity.

Overwhelmingly, financial complexity has been of more benefit to the finance industry than it has been to consumers or society.[4] Beyond a certain point, an oversized banking and finance sector actually constrains the real economy.[5] And the global financial crisis showed that no-one truly comprehends the level of interconnectedness between complex financial products and everyday life. Risk is everywhere and it's everyone's problem, whether you signed up for it or not.

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[1] Department of the Prime Minister and Cabinet, PM Transcripts: Press Conference with the Hon. Scott Morrison MP, Treasurer, 30 November 2017.
[2] Maddock, *Is the Australian financial sector too big?* ANZ Bluenotes, 16 April 2014.
[3] ABS 5204.0 - Australian System of National Accounts, 2016-17.
[4] See: Kay, *Other people's money: masters of the universe or servants of the people*, 2015.
[5] See: Cecchetti & Kharroubi, BIS Working Papers No 490, *Why does financial sector growth crowd out real economic growth?* February 2015.

The existence of this Royal Commission—the first of its kind since the 1935 inquiry into monetary and banking systems—is a seismic moment. In the lead-up to the announcement of this Commission, a common refrain from those opposing its establishment was that there had been a proliferation of inquiries into the financial system in recent years. While these inquiries have been worthwhile, the policy responses have been incremental and marginal, and have fallen short of what is needed to deal with the magnitude of the problem. The failure of previous inquiries to get to the bottom of the problem was a significant reason why the call for a Royal Commission was so persistent and so strong.

This Royal Commission must think big. In the same way the misconduct is systemic, the response must be systemic. The best way to ensure victims of misconduct by the banks are not forgotten is to undertake reform to stop it happening again.

Summary of Greens proposals

The Greens main proposals[6] are:

- A government provider of everyday banking – a People's Bank.
- A more level playing field for non-major banks.
- Caps on executive pay.
- An expanded scope for the BEAR.
- Structural separation of financial institutions – break-up the banks.
- Genuine income verification by mortgage lenders.
- Restrictions on the ownership of retail grade intermediaries.
- End all value-based commissions on retail grade products.
- End the carve-outs from the best interest duties for retail grade products.
- Re-establish the ACCC as the conduct regulator over retail grade products and services.
- Elevate the standing of the Council of Financial Regulators.
- Establish a Financial Regulators Assessment Board.
- Report by February 2019 but extend so as to undertake further hearings.
- Establish a last resort compensation scheme.
- Increase funding for financial counselling and advocacy centres.

[6] Some of the proposals included in this submission duplicate that detailed in the Greens' submission to the Round 5 hearings on superannuation.

2. Competition and profit

Despite the promised benefits of privatisation and deregulation,[7] and despite thirty-odd years with a largely privatised and deregulated banking system, competition among Australia's banks is far from vigorous. Consumers are paying more for products and services than they should, and banks' profits are well in excess of that which they have earned, either through effort or prudent management of risk. On the contrary, banks' profits have remained excessive in spite of their indifference to customers and their disregard for risk. The conclusion of the inquiry into CBA commissioned by APRA was that "continued financial success dulled the senses of the institution", and that in this environment the "voice" of customers and of risk were being drowned out.[8]

The Productivity Commission recently outlined why competition is so constrained.

> Australia's banking sector is an established oligopoly with a long tail of smaller providers.
>
> The four major banks as a group hold substantial market power, as a result of their size, strong brands and broad geographical reach. This is substantially supported by regulatory settings, which contribute to the major banks' structural advantages.
>
> As a result, the major banks have the ability to pass on cost increases and set prices that maintain high levels of profitability — with minimal loss of market share.
>
> The smaller banks and non-bank financial institutions typically follow the pricing trend set by the major banks, and are not a significant competitive constraint on the major banks' market power.[9]

The Productivity Commission's conclusion after an extensive inquiry into competition in the financial system was that "price competition in the banking system is limited."[10]

The ACCC has concluded similarly during an inquiry into residential mortgage prices.[11] ACCC Chair, Rod Sims, said at the launch of the interim findings that the major banks' interest rate behaviour "resembles synchronised swimming more than it does vigorous competition."[12] The major banks' 'front book/back book' strategy explored during this inquiry is a clear example of how the banks fail to compete on price and how they do this by taking existing customers for granted.

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[7] Interim Report, Volume 1, p78.
[8] APRA, *Prudential Inquiry into the Commonwealth Bank of Australia (CBA) – Final Report*, April 2018.
[9] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.
[10] Ibid
[11] ACCC, *Residential mortgage price inquiry – Interim Report*, March 2018.
[12] Sims, *Synchronised swimming versus competition in banking*, AFR Banking and Wealth Summit, 5 April 2018.

All of this is in keeping with the Commission's summary of the market and regulatory fundamentals that go towards explaining why misconduct has been so common and so widespread.[13] While the Greens agree with the Commission's diagnosis, we disagree with the limitations of the following conclusion:

> The law sets the bounds of permissible behaviour. If competitive pressures are absent, if there is little or no threat of enterprise failure, and if banks can and do mitigate the consequences of customers failing to meet obligations, only the regulator can mark and enforce those bounds.[14]

The Greens submit that, in response to the contempt shown for customers, the supremacy of profits, and so as to present some competitive pressures that might jolt the market out of its torpor, the Commission should consider a government-owned bank to 'mark' the bounds of permissible behaviour, as well as other measures that would create a more level playing field for other non-major banks. The Commission is asked to regard the impact of its recommendations on the economy, access to and cost of financial services, competition, and financial system stability.[15] The Greens submit that consideration of the provision of products and services by government are relevant to these directions, as are consideration of the structural and regulatory impediments to competition.

2.1. A government provider

The Commissioner has rightly concluded that:

> The conduct identified and criticised in this report was driven by the pursuit of profit – the entity's revenue and profit and the individual actor's profit. Employees of banks learned to treat sales, or revenue and profit, as the measure of their success.[16]

The problem of profit in the banking system is a perennial issue, and the provision of services by government has been a perennial response. In his dissenting statement to the Royal Commission into the Monetary and Banking System, Commissioner Ben Chifley stated that:

> Banking differs from any other form of business, because any action—good or bad—by a banking system affects almost every phase of national life. A banking policy should have one aim – service for the general good of the community. The making of profit is not necessary to such a policy.[17]

The provision of not-for-profit banking services by the government is not a novel concept. From 1911 until 1991, the Commonwealth Bank was government owned and provided basic and essential

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[13] Interim Report, Volume 1, p. 268.
[14] Interim Report, Volume 1, p. 269-70.
[15] Terms of Reference, section k.
[16] Interim Report, Volume 1, p. 302.
[17] Report of the Royal Commission into the Monetary and Banking System, 1937

banking services across the country. The *Banking Act 1947* (Cth) provided for the nationalisation of all banks. It passed both houses of parliament, although was subsequently ruled unconstitutional.

Across the Tasman Sea, the New Zealand Post Office Bank was established in 1867, sold in 1989, and then re-established in 2002. Elsewhere in the world, government provided banks are commonplace.[18] Germany is the most notable advanced economy with a high proportion of banking undertaken through publicly owned institutions.[19]

In the immediate wake of the global financial crisis, six eminent economists from diverse standpoints wrote an open letter putting forward issues to consider during an inquiry into the financial system.[20] This letter included an open question that well summarises the benefits of re-establishing a People's Bank.

> Should citizens who feel unsure and unqualified to shop wisely in our financial markets be able to access basic savings, payments, and wealth management products that have been vouchsafed by governments as being safe and professionally managed (for example, why can't Australians invest with the Future Fund)? Is there a role for a publicly-owned entity to offer essential services in Australia's finance sector that leverage off unique government infrastructure, such as Australia Post, the tax system, and the government bond market?[21]

The Greens submit that a People's Bank, with the imprimatur of the government, using the existing outlets of government agencies, and offering products on a cost recovery basis, would be able to challenge the existing banking model through price competition in a way that no other new or existing entrant is able to. A People's Bank would not necessarily need to obtain a major share of the market to have an impact. The mere existence of a credible, accessible and widely respected participant in the market providing a baseline is likely to be enough to force changes in the market.

The Greens have proposed a detailed plan[22] that would see the People's Bank provide:

- Savings accounts pegged to the RBA cash rate, with debit cards linked to these accounts also available.
- Term deposits pegged to the Commonwealth bond rate.
- Mortgage tracker accounts pegged to the RBA cash rate.

The design adopted by the Greens is largely based on that proposed by Nicholas Gruen.[23] A particular feature of this design is that it would involve people holding accounts directly with the Reserve Bank

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[18] World Bank, Policy Research Working Paper 8297, *Bank ownership: Trends and implications*, January 2018.
[19] Ibid
[20] Gans et al, *Rules underpin prosperity, Sydney Morning Herald*, 8 July 2018.
[21] Ibid
[22] https://greens.org.au/sites/greens.org.au/files/People%27s%20Bank%202018%20Announcement%20FINALv2.pdf

of Australia (RBA). In the digital age, there is little impediment to individuals to be granted the same privileges as banks in being able to access the RBA directly. This would not mean that the RBA would need to establish a 'shopfront'. Rather, people would hold accounts with the RBA, but the transactions with these accounts would be handled by an intermediatory. The Greens have proposed, as have many others, that Australia Post be the primary government outlet for a People's Bank. However, depending on the design, existing retail banks could also be afforded the opportunity to intermediate the accounts of individuals with the RBA.

Irrespective, the Commission might also consider the provision of services for commercial banks by Australia Post. Australia Post currently processes transactions for commercial banks and is increasingly used by customers of commercial banks as the outlet for physical transactions. However, the discretionary nature of this service has recently come to light following ANZ's unilateral refusal to agree to the revised terms of the service agreement proposed by Australia Post.[24] The Commission might consider whether a condition of being granted a license is that banks are required to allow Australia Post to process basic transactions. The cost of Australia Post providing this service could then be levied on banks. This model would to ensure universal access to physical banking outlets to all Australians.

2.2. A more level playing field

The Greens submit that competition in the banking industry would also be improved if the structural and regulatory advantages afforded to the major banks were addressed. While the Commission is not required to examine macro-prudential policy and regulation, we submit that where a clear link can be made between macro-prudential settings, weak competition and misconduct, then the Commissioner should examine these relationships and consider associated policies.

Wholesale funding advantage

The Productivity Commission has summarised how the major banks' market power begets market power through their wholesale funding advantage, including as a result of them being perceived to be too-big-to-fail.

> With their better credit ratings and a perception of being 'too big to fail', the major banks are able to source funds from investors and depositors at lower interest rates than are smaller institutions. The smaller entities (especially non-ADIs that are unable to accept deposits) both compete against the larger institutions and at the same time rely on them to access some of the funds that allow them to

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[23] Lateral Economics, Submission 39, Productivity Commission Inquiry, Competition in the Australian Financial System, 2017.

[24] ANZ Media Release, *Update on Australia Post discussions*, 15 October 2015.

> continue competing. A substantial gap also remains between the average operating costs of Australia's major banks and its smaller institutions. [25]

In the wake of the global financial crisis, the IMF prepared a report for the G-20 considering how the public might be compensated for the value of implicit guarantees provided to systemically important banks. [26] The IMF recommended a levy to pay for "the fiscal cost of any future government support to the sector".[27]

The Major Bank Levy introduced in 2017 has gone some way towards addressing these issues. The Explanatory Memorandum to the Major Bank Levy Bill 2017 also stated that:

> The major bank levy will also contribute to a more level playing field for smaller, often regional, banks and non-bank competitors. As the House of Representatives Standing Committee on Economics report on the four largest banks found, the major banks' size and market dominance affords them significant funding cost advantages and pricing power at the expense of their customers.[28]

However, the annual levy rate of six basis points on covered liabilities is short of the value of the wholesale funding advantage extended to the major banks. The RBA estimated the value of this advantage at between 20 and 40 basis point in a 2016 paper.[29] As a result of a number of subsequent changes to the major bank's capital requirements, the Productivity Commission suggested that "the funding cost advantage of the major banks may have reduced from that modelled by the RBA." Nevertheless, the Productivity Commission found that ratings agencies still provide an uplift to the major banks' on the basis of their too-big-to-fail status, which implies that the Major Bank Levy has not covered the full value of the wholesale funding advantages.

The Greens submit that the Council of Financial Regulators should commission an annual estimate of the funding advantage of the implicit government guarantee to the major banks, and that the Major Bank Levy should be adjusted annually to reflect this value.

Mortgage risk weights

The Productivity Commission has also summarised how regulatory settings assist the major banks in maintaining their market power, including the exceptional arrangements regarding mortgage risk weights.

> On one hand, the major banks (as well as Macquarie and ING) use internally developed risk models, approved by Australian Prudential Regulation Authority (APRA), that in effect lower their funding

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[25] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.
[26] IMF, *A Fair And Substantial Contribution By The Financial Sector – Final Report For The G-20*, June 2010.
[27] Ibid
[28] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.
[29] RBA, *RBAFOI-151609 Documents Released.*

> costs compared with all other ADIs, which use APRA's standard risk weighting. On the other hand, it is only the major banks that are required by APRA to hold additional capital because of their size and complexity. This requirement can be costly for the major banks, but it can also support them to the extent that it is viewed by international credit rating agencies as an indirect recognition of their 'too big to fail' status. The net result of these regulatory measures is a funding advantage for the major banks over smaller Australian banks that rises in times of heightened instability.[30]

The Productivity Commission estimated that the major banks' exceptional use of internal risk based (IRB) models equates to a 0.14% reduction in the cost of funding across an otherwise identical loan portfolio.

APRA explains that achieving IRB approval "requires an ADI to have a strong and sophisticated risk management framework and capacity."[31] In 2016, in the wake reports of systemic issues with the major banks lending standards, APRA requested that the major banks undertake an audit of their data policies, procedures and controls relating to mortgage lending. In February 2017, APRA explained why it had singled out the major banks.

> The work was requested of the banks that are authorised to use their internal models for risk rating purposes—that is common knowledge. That is the four major banks and Macquarie. The reason we focused on those banks is that if they do not have their data right then the risk weights are not as accurate as they might otherwise be.[32]

APRA had previously refused to make these targeted reviews public.[33] However, the Commission has published them. The targeted reviews show that the major banks' approach to data collection, analysis and management is neither the strong nor sophisticated approach required by APRA to receive IRB accreditation. UBS went so far as to downgrade its investment advice for Westpac on the back of the Commission's release of these reports.

The targeted reviews show that there is no justification for the major banks to continue to receive differential and favourable treatment by APRA with respect to mortgage risk weights. The Greens submit that this is relevant to the considerations of the Commission because of the competitive advantage that IRB accreditation provides the major banks. The Greens have suggested that all banks should be required to use standardised mortgage risk weights. Failing that, the Commission should consider endorsing the recommendation of the Productivity Commission that standardised risk weights be used for small business lending, and the conclusion that:

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[30] Productivity Commission, *Competition in the Australian Financial System – Final Report,* June 2018.
[31] *Background Paper No. 9: The Regulatory Capital Framework for Authorised Deposit-Taking Institutions (ADIs).*
[32] Senate Economic Legislation Committee, Additional Estimates, APRA, February 2017.
[33] Ibid

> More nuance in the design of APRA's prudential measures — both in risk weightings and in directions to authorised deposit-taking institutions — is essential to lessen market power and address an imbalance that has emerged in lending between businesses and housing.[34]

2.3. Remuneration caps

Culture starts at the top. When the CEOs of banks are rewarding themselves for returns above everything else, then it is not surprising that a culture that prioritises sales and profit above the interests of customers has become a defining feature of banks.

The Commission is to be commended for having emphasised the role of remuneration in the misconduct that has been uncovered, including the role of incentive based remuneration. This is an obvious problem that has been recognised for many years, as is noted by the Commission. Yet it remains unaddressed because the current approach relies on self-regulation.

Put simply, the banking fraternity decides how much they will pay themselves, and they've been quite happy to pay themselves handsomely. Some senior bank executives earn over 100 times the average wage. This practice clearly falls below community standards and expectations.[35] Yet banks have been able to get away with it because they are comfortably insulated from the threat of any serious retribution. A reliance on self-regulation without there being any incentive to self-regulate is next to useless.

In the past, to the extent that they felt compelled to provide a justification, banks would often say that sky-high salaries were required to ensure that best-of-the-best are in charge of these important national institutions. The Commission has debunked this myth: if obscene salaries attract more competent managers, then how is the level of misconduct uncovered by the Commission to be explained?

On the contrary, excessive executive salaries appear to be part of the problem. Beyond a certain point, increased pay does not provide an incentive for executives to perform better or to act in the long term interests of a company or the public.[36] And exorbitant executive pay may also be leading to adverse selection where executives more motivated by personal reward are more likely to apply for a job. In turn, these executives then tend to employ like-minded individuals, thus creating an 'executive club' that re-enforces the culture and behaviours that justify exorbitant executive pay.

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[34] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.
[35] Kiatpongsan & Norton, *How Much (More) Should CEOs Make - A universal desire for more equal pay*, 2014.
[36] Cooper, Gulen & Rau, *Performance for pay - The relation between CEO incentive compensation and future stock*, 2016; Marshall & Lee, *Are CEOs paid for performance? Evaluating the effectiveness of equity incentives*, 2016.

But, besides all else, there is simply no justification for bank executives, who run a business that has a privileged position within society, is effectively an essential service, and that has a clear social responsibility, to be paying themselves the ridiculous salaries that they have been.

The Greens submit absolute limits should be established on the remuneration payable to bank executives, and have nominated that a cap be set at ten-times the average wage for base remuneration and a further five-times the average wage for variable remuneration. Further, the Greens submit that the Bank Executive Accountability Regime (BEAR) should be extended to cover all institutions that provide simple and essential financial products and services, or other retail grade products (see further exploration of these concepts below).

Australia would not be a pioneer in establishing executive pay caps. In 2016, Israel agreed to establish a cap on executive pay in the banking and insurance sector at 35 times the wage of the lowest paid worker in the company.[37] The Knesset's Finance Committee Chairman, MK Moshe Gafni, explained the merits of the legislation.

> Financial corporations are different from other entities. They are part of a monopoly and they were given a license to handle the public`s funds, and they give themselves salaries that are excessive and disproportional to the returns they bring."[38]

3. Business models

At the core of the problems with the modern banking and finance is the rise of universal banking, where everything from saving accounts to derivatives trading is under the one roof. As outlined by the Commission, this has been characterised in Australia by development of the big-four banks into vertically integrated institutions during the late 1990s and early 2000's.[39]

This privatised and deregulated model has failed in banking for the same reason it has failed in so many essential services: it is built on the fallacy of the efficient-market hypothesis. The efficient-market hypothesis has been the economic orthodoxy in most of the western world for most of the last thirty-odd years. The efficient-market hypothesis justifies a *laissez-faire* approach to financial market regulation. Subscription to the efficient-market hypothesis is reflected in the architecture of Australia's financial system that is, by and large, the product of Keating-era deregulation; and that was bedded down through the 1997 Wallis Financial System Inquiry and the legislative response to it.

[37] The Knesset, *Finance Committee approves bill limiting the pay of executives in financial corporations*, 17 March 2016.
[38] Ibid
[39] Volume 1, p 79

The efficient-market hypothesis puts store in the idea that well-informed individuals will act rationally and seek out the best deal for themselves; and, in doing so, these individuals will bring discipline to the market and ensure that asset prices reflect their underlying value. In other words, the system will be self-regulating.

This is nonsense. To start with, most Australians either don't have the time, wealth or inclination to warrant spending their evenings poring over financial reports. Most people only ever want or need basic banking services at a fair price. And even if people are up for playing the market, then it is going to take some effort get in a position to compete with these financial behemoths, all the more so given the ever increasing complexity of modern finance. In the words of the Commission "there is always a striking asymmetry of power and information between bank and customer that favours the bank."[40]

Instead, universal banking has allowed banks to pray upon customer's trust and loyalty to them. The vast bulk of instances of misconduct revealed by the Commission have been within vertically integrated institutions. Whether people wanted to play in the market or not, banks have made a habit of talking customers into buying products they don't understand or don't need.[41]

Basic banking: simple and essential products and services

The Greens submit consideration of the structure of banking businesses—and concurrent consideration of the regulatory architecture—would be well informed by a distinction being made between the *simple and essential* products and services that the vast majority of Australians use (retail banking, superannuation and insurance), and the more *complex and selective* activity that is the domain of big business, the wealthy, and the adventurous.

This distinction would create the concept of 'banking between the flags' that comes with a high level of consumer protection: *caveat vendor* to a greater extent, and *caveat emptor* to a lesser extent. As the providers of an essential service, banks, superannuation funds and insurance institutions should be obliged to make all reasonable efforts to ascertain a customer's circumstances and the suitability of the products offered to them. People should be able to deal with banks, superannuation funds or insurance firms with confidence that their best interests are being attended to.

This is not to say that individuals and small business should be blithe to the risks they are taking on. But there should be limitations on what individuals and small business are expected to understand when consuming basic banking products.

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[40] Volume 1, p 269
[41] See: Akerlof & Shiller, *Phishing for phools: the economics of manipulation and deception*, 2015.

To make an analogy with buying a car, consumers need to be conscious with how much they are spending and what basic features they want, but they are not expected to understand the mechanics of the vehicle in any detail. As is the case with most retail consumption, in the words of the ACCC, the products should “do all the things someone would normally expect them to do.”[42]

The Greens submit that the starting position for the regulation of simple and essential products and services should be based on this principal. Accordingly, carve-outs given to particular products and services that are simple and essential (e.g. insurance from unfair contract terms; life insurance and investment property from financial advice standards) should be abolished.

3.1. Structural separation

The Commission has well detailed the inherent conflicts of interest within vertically integrated institutions. It has long been evident to observers of the financial sector that vertical integration is at the heart of a large number of instances of misconduct with the financial sector. This was evident during the Senate’s landmark inquiry in the conduct of ASIC that uncovered problems within the CBA’s financial planning arm.[43] It was also evident within misconduct revealed prior to the Royal Commission within the financial planning arms of other institutions, including those involved in forestry managed investment schemes.[44]

The Greens submit that these conflicts and the incentives to cross-sell and subsidise within vertically integrated institutions cannot be sufficiently regulated so as to prevent the myriad ways in which consumers can be unfairly or unknowingly disadvantaged. It is simply too difficult for legislators and regulators to identify, and act to prevent, all of the opportunities that arise within integrated institutions to do something other than act in the best interests of consumers, be it by subtly but consistently directing existing customers towards in-house products, or by exploiting the loyalty and inertia of customers with excessive fees and charges. The profit motive is simply too strong and structural separation is necessary to curb its worst excesses.[45]

The Greens submit that financial institutions should be constrained through ownership to being one of the following:

- an authorised deposit-taking institution (bank);
- an APRA regulated superannuation fund;
- an insurance provider, including life insurance and general product insurance; or

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[42] https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees
[43] Senate Economics Reference Committee, *Performance of the Australian Securities and Investments Commission*, 2014.
[44] Senate Economics Reference Committee, *Bitter Harvest: Agribusiness managed investment schemes*, 2016.
[45] See: Akerlof & Shiller, *Phishing for phools: the economics of manipulation and deception*, 2015

- a provider of other financial services, including wholesale and retail wealth management, investment banking, shadow banking, hedge funds, self-managed super funds, financial markets, and auditors and liquidators.

The cross-selling of bank owned superannuation and insurance has been a feature of the misconduct uncovered through this inquiry. The model proposed by the Greens would remove the inherent conflicts for the cross-selling of these products within vertically integrated institutions.

This would not prevent these institutions from selling other products altogether, only to stop them from manufacturing and selling in-house products. For example:

- Banks could still sell investment into (retail-grade) unit trusts (managed investment schemes).
- Banks could still offer mortgage insurance.
- Superannuation funds could and should still include group (life) insurance within default funds.

The Greens submit that the distinction between banks, superannuation and insurance is appropriate for the following reasons:

- Banks are unique as the recipients of deposits, and the issuers of loans against these deposits. These savings and loans facilities provide for the everyday management of cash by individuals and small business. Consumers have a high level of engagement with their banks and the products they are provided.
- Superannuation funds have a very specific role as the managers of (mostly) compulsory savings for retirement. As illustrated in the Round 5 hearings of the Commission, consumer engagement with superannuation funds is very low. This reflects that many people have a set and forget approach to superannuation.
- Insurance is altogether different to banking and superannuation in that it provides relatively affordable protection against financial loss in the case of adverse events by pooling risk.

3.2. Financial system stability

Consideration of the structure of financial sector institutions cannot and should not be constrained to a consideration of misconduct alone. The Greens submit that the Commission should give close consideration to the impact on financial system stability and the economy more generally that arises from universal banking.

The Murray Financial System Inquiry identified four sources of systemic risk to Australia.[46] The first two—our reliance on foreign capital and our susceptibility to shocks in foreign markets—are largely inescapable and beyond the scope of this inquiry. The government can help mitigate the impact of these risks, but it can do little to stop them manifesting. The second pair—the concentration in the market and the exposure of banks to housing—are domestic in origin and intimately linked to the existing business model of banks.

Too-big-to-fail

Despite the promise of the efficient-market hypothesis, universal banking has failed to provide much in the way of market discipline or protection against the build-up of systemic risk. Instead, universal banking encouraged market concentration, resulting in individual banks having even more power, and becoming 'too-big-to-fail' and riddled with moral hazard. With the government compelled to act as a lender of last resort, too-big-to-fail banks have been more willing to take risks. That was the global financial crisis.

The issues associated with too-big-to-fail received significant attention in the wake of the global financial crisis, including the imposition of levies on systemically important banks. The OECD Secretariat also considered the risks associated with 'horizontal integration', and recommended the structural separation of retail banking from investment banking.[47] This addresses the proliferation of counterparty risk through derivatives contracts within systemically important banks that are the beneficiaries of implicit and explicit government guarantees. It says to banks: if you want to play in the securities market, then you're on your own.

Too-big-to-manage

Consideration of the business models of banks also requires consideration of whether universal banks are simply too-big-to-manage: in the ever more complicated world of modern finance, can executives and directors ever be expected to get their heads around all of the workings of vertically and horizontally integrated institutions?

This issue also emerged in the wake of the global financial crisis as an accompaniment to too-big-to-fail. However, it has not been given the same level of attention as too-big-to-fail, particularly in the Australian context. A recent paper by Deloitte explores the issue of managing universal banks given

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[46] *Financial Systems Inquiry – Final Report*, 2014.
[47] See: Blundell-Wignall, Atkinson & Roulet, *Bank business models and the separation issue,* OECD Journal: Financial Market Trends, Volume 2013/2, 2014.

that "post-crisis it is more difficult than ever before."[48] A recent study undertaken by officials at the US Federal Reserve of Richmond concluded:

> that larger banking organizations are more exposed to operational risk. Specifically, larger banks have higher operational losses per dollar of total assets, a result largely driven by their failure to meet professional obligations to clients, or from the design of their products.[49]

In considering whether banking behemoths are too-big-to-manage, the Greens also submit that the issue of worker and customer representation within the governance structures of banks might be considered. Worker and customer representation is a common feature in corporate management in many parts of Europe. It is a natural question to ask: if banks had a greater range of voices sitting around the board room table would the Commission be uncovering such systemic and widespread misconduct?

Exposed to housing

The build-up of housing debt within Australia economy represents a massive failure of banking regulators over the last twenty years. Instead of using the global financial crisis as a catalyst to re-order the financial system, governments allowed banks to continue to pump money into asset bubbles. A crisis founded on loose lending standards and a build-up of private debt has been responded to with loose lending standards and a build-up of private debt.

Property bubbles are now a world-wide. But Australia is a world leader in overpriced housing and household indebtedness. Since 2008, housing debt to household income has increased from around 110% to around 140%.[50] The market for land is being turbo-charged by generous tax incentives and record low interest rates. But the banks have played their part too and have built business models "heavily exposed to developments in the housing market."[51]

The banking-property complex has created a number of economic problems, the enormity of which is difficult to understate. Firstly, the decline in homeownership rates is contributing to an increase in wealth inequality.[52] This is not just a moral issue: inequality is widely recognised to be a drag on growth.[53]

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[48] Deloitte, Centre for Regulatory Strategy, Too complex to manage? Global bank governance in a structurally reformed world, September 2007.
[49] See: Curti & Mihov, Federal Reserve Bank of Richmond, *Diseconomies of Scale in Banking: Evidence from Operational Risk*, 2018; Kay, *Other People's Money: Far too much of a good thing*, 2015.
[50] Jericho, *We can't take on any more debt – so what else will drive the economy?* The Guardian, 20 February 2018.
[51] *Financial Systems Inquiry – Final Report*, 2014.
[52] Productivity Commission, *Rising inequality? A stocktake of the evidence*, August 2018.
[53] See: https://www.imf.org/external/np/fad/inequality/

Secondly, the banking-property complex is drain on productivity, restricting private capacity to spend in other areas of the economy, and redirecting capital away from businesses and infrastructure. The Reserve Bank has insured around $250 billion worth of bank assets through the Committed Liquidity Facility[54] to address the mismatch in the ratio of government debt to bank debt within the Australian market.[55]

Finally, as identified above, banks are not diversifying their risk. This is not surprising. Banks have been creaming it off home loans. Since the global financial crisis, the average margin between the RBA cash rate and standard mortgages interest rates—the spread—has doubled from just below 2% to now just below 4%.[56]

The Greens submit that the banking-property complex is relevant to the Commission's considerations not only because of the weight of the associated economic issues, but also because it cannot be disentangled from the business structures of the major banks. Within vertically and horizontally integrated major banks, mortgage brokers are owned by the very banks whose loans they are recommending, and these banks then securitise these mortgages and on-sell them through in-house brokers. Not surprisingly, they have been happy to write home loans to anyone with a pulse. This the natural response of institutions who are the beneficiaries of implicit and explicit government guarantees that underwrite this model, as well as tax settings that create incentives to invest in housing, and regulatory settings that create incentives to lend for housing.

The Commission has already had an impact on this front. The first round of hearings—including the release of APRA's targeted reviews—has exposed a fallacious approach to mortgage lending, especially by the major banks. A regulator unambiguously tasked with consumer protection (see below) would and should ensure that lenders undertake proper verification of a borrower's expenses. It follows that the widespread use of the Household Expenditure Measure cannot be justified for mortgage lending.

Further, a regulator tasked with considering the financial position of households would know that measuring lending standards by the rate of default is a false indicator in today's economic climate. The cash rate in Australia has been at the record low rate of 1.5% for more than two years. If default rates were anything other than low during this period then that would be cause for enormous concern. And the persistence of ultra-low interest rates is itself a result of the level of household debt in the economy.

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[54] APRA, *Aggregate Results on the Committed Liquidity Facility*, September 2018.
[55] Debelle, *The Committed Liquidity Facility*, APRA Basel III Implementation Workshop 2011, Sydney, 23 November 2011.
[56] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.

3.3. Intermediaries and retail investors

The Commission has well identified the inherent conflict where product issuers are also the intermediaries of these products. The Greens submit that, again, the policy response to this issue would be well informed by distinguishing between simple and essential (retail) products and services, and those which are more complex and selective (wholesale).

In the case of investment products, such a distinction already exists between retail and sophisticated (wholesale) investors. However, there is no framework to ensure its consistent application. In fact, the Commission details how, through the establishment of ASIC and the subsequent Corporate Law Economic Reform Program, the Wallis-era reforms provided for a more uniform treatment of intermediation, and placed no restriction on the ownership of intermediaries or the offering of wholesale grade products to retail investors. Instead, this approach placed faith in the efficient-market hypothesis, and in mandatory product disclosure being adequate to protect retail investors.[57]

The scandal that was forestry managed investment schemes (MIS) is a tragic example of what can happen when wholesale grade products are sold to retail investors. Forestry MIS was a Ponzi scheme built up on the back of a tax break. When it collapsed tens of thousands of ordinary Australians lost their money, a network of fast-and-loose financial practices were exposed, and farming communities around the country were left reeling by the rapid acquisition and then abandonment of agricultural land.[58]

The widespread sale of hybrid debt/equity securities is a live example of retail consumers being sold a complicated product without due understanding of the risk that they are taking on. Former ASIC Chairman, Greg Medcraft, explained:

> They are banned in the United Kingdom for sale to retail. I am very concerned that people don't understand, when you get paid 400 basis points over the benchmark, that is extremely high risk, and I think that, because they are issued by banks, people feel that they are as safe as banks. Well, you are not paid 400 basis points for not taking risks, and I do think this is, frankly, a ticking time bomb.[59]

The Greens submit that the intermediaries of retail grade products, including mortgage brokers and financial advisors, should be separately owned from the institutions who originate the products they sell, save for the provision of financial advice by superannuation funds regarding the asset allocation of a member’s contributions within that fund. The Greens also submit that retail grade intermediaries

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[57] Interim Report, Volume 1, p77.
[58] See: Greens Dissenting Report, Senate Economics Reference Committee, *Bitter Harvest: Agribusines managed investment schemes*, 2016.
[59] Senate Economic Legislation Committee, Supplementary Budget Estimates, ASIC, October 2017.

should be individually licensed so as make them individually accountable, and should be required to hold professional indemnity insurance.

It follows that value based commission structures are not appropriate when dealing with retail grade products, and that intermediaries should be subject to the best interest duty in the same way that product producers are. The Commission should recommend a clean slate for commissions on all past, present and future sales of banking, superannuation, insurance or any other retail grade products. Value based commissions for all retail grade products should be prohibited, including ending the current carve-outs for certain products, and ending the grandfathering of subsequently banned commissions.

4. The regulators

One of the most striking findings of the Commission is that the misconduct uncovered was "contrary to existing laws".[60] The inescapable conclusion is that the regulators have failed. The Commission has well detailed the shortcomings of ASIC and APRA, and their failure to "mark and enforce"[61] the bounds of permissible behaviour.

This is not to say that changes to existing laws or powers are not required, or that budget cuts have not impacted upon the regulators' ability to do their job. But at the heart of the problem is that both ASIC and APRA have conflicted mandates, and that this has exacerbated a soft-touch approach and has further exposed them to regulatory capture. The Greens submit that is the result of a regulatory system that is broken, and that an overhaul of the regulatory architecture is required.

Conflicted mandate

The ASIC Act does not give the regulator a primary objective other than to enforce the laws it is empowered to enforce. However, the Act asks ASIC to, inter alia, strive to:

> maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
>
> promote the confident and informed participation of investors and consumers in the financial system.[62]

Very recently, this was further expanded to include consideration by ASIC of:

[60] Volume 1, p 269.
[61] Volume 1, p 270.
[62] *Australian Securities and Investments Commission Act 2001*.

> effects that the performance of its functions and the exercise of its powers will have on competition in the financial system.[63]

APRA is given a clearer primary responsibility, namely prudential regulation. Nevertheless, in doing so:

> APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia.[64]

ASIC's conflicted mandate came about at its inception, when the Howard Government implemented the recommendation of the Wallis Financial System Inquiry and took consumer protection powers for the financial sector away from the ACCC. The thinking was that a specialist financial regulator would be better able to understand financial products and services. The wisdom of this decision has been questioned ever since. One the key members of the Wallis Inquiry, Professor Ian Harper, recently admitted that it was likely to have been a mistake to disempower the ACCC, saying:

> We placed too much faith in the efficient market hypothesis and in light touch regulation.[65]

And:

> With the benefit of hindsight and what's been coming out at the royal commission, the weaknesses of the specialist approach we took to regulation are also evident.[66]

Prof. Harper's comments highlight that the 'all things to all people' approach to regulators is an extension of the logic that says banks too can be 'all things to all people'. It is steeped in a belief in the efficient-market hypothesis, and that, through the rational application of the law, a financial regulator will treat consumers and banks alike.

The problem with this approach is that there is an inherent conflict between conduct regulation and system regulation. In respect of APRA, this was adroitly identified by Counsel Assisting in his Opening Address to the Round 5 hearings:

> First, it is not obvious that it is possible to separate public enforcement action from a regulator properly undertaking conduct regulation. Secondly, there may be an inherent tension between, on the one hand,

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[63] *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Bill 2018.*
[64] *Australian Prudential Regulation Authority Act 1998.*
[65] Martin, *'Benefit of hindsight': ASIC may have been wrong body to protect consumers*, Sydney Morning Herald, 24 April 2018
[66] Ibid

> maintaining stability and, on the other hand, the destabilising effect for one or more entities of public enforcement action.[67]

In other words, what's good for markets is not necessarily what's good for customers.

Regulatory capture

A soft-touch approach to regulation is also a complement to the efficient-market hypothesis. As noted above, a belief that markets will be self-regulating is inherent to the efficient-market hypothesis. It follows that a regulator need not be heavy-handed, all the more so when they are required to 'balance' the outcomes for consumers and banks.[68]

And it is natural for regulators with a conflicted mandate taking a soft-touch approach to work closely with the very institutions they are regulating so as to understand the impacts of any possible enforcement on the institutions and to "accommodate the expressed wishes of the entity".[69] The unedifying spectacle of ASIC consulting on the wording of media releases with the very banks they were supposedly reprimanding is a textbook example of regulatory capture.

The problems with this are obvious and run deep. Primarily, as documented by the Commission, there is a lack of deterrence. It's not surprising that the banks have behaved as if they are untouchable. In respect of ASIC, Allan Fels, the inaugural Chair of the ACCC, put it bluntly: they "are not feared".[70] Another former Chair of the ACCC, Graeme Samuel, said similarly:

> "The regulators have got to be totally feared, for their independence, their rigor, their commitment and their intolerance to bad behaviour, and they have not been feared for that – neither ASIC nor APRA."[71]

4.1. A new architecture

As forecast above, the Greens submit that a reorder of the regulatory architecture should be informed by a distinction between simple and essential products and services, and more complex and selective activity. In the case of simple and essential products and services, distinction should be made between conduct regulation and system regulation, and that these two distinct responsibilities be given to separate regulators. This would make it clear that, where is it *caveat vendor* to a greater extent, and *caveat emptor* to a lesser extent, that there is a regulator with an unambiguous mandate to protect consumers, including through the fostering of competition.

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67 Royal Commission, Monday 6 August 2018
68 Economics Legislation Committee, Budget Estimates, ASIC, May 2018.
69 Volume 1, p 280.
70 ABC AM, Thu 9 Aug 2018
71 Irvine, *'Stop being bastards': how the royal commission could reform banks*, Sydney Morning Herald, 22 September 2018.

This is the distinction made in the so-called Twin Peaks model where one regulator is:

> responsible for regulating to prevent financial crises (the prudential regulation peak), the other to ensure good market conduct and consumer protection (the good conduct peak).[72]

The Greens propose that:

- The ACCC be the conduct regulator for retail banking, superannuation, insurance, retail grade intermediators (financial advisers and mortgage brokers), and the sale of other retail grade products and services.
- APRA would continue to be the system (prudential) regulator, but no longer be required to balance this with competition or consumer objectives.
- ASIC would be the conduct and system (market integrity) regulator over the remainder of the financial system.

This is not a conclusion that the Greens came to in haste. Throughout the Senate inquiry into the conduct of ASIC, the Greens were critical of the performance of ASIC, but largely supportive of the institution. Faith in public institutions is important to the operation of the financial system. However, the Commission's hearings have shown that the current structure is no longer defensible.

ACCC is already the conduct regulator over almost every other market place. The objects of the Competition & Consumer Act that directs the ACCC are unambiguous.

> The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.[73]

Whether conduct regulation over simple and essential products and services is entirely provided for by the Competition & Consumer Act would require further consideration. Irrespective, the ACCC should be also given the power to enforce the provisions of the Banking Code of Practice and other financial services industry codes of conduct under Part IVB of the *Competition and Consumer Act 2010*.

There is a large body of support for reinstating the ACCC as the primary conduct regulator, particularly in the wake of the findings of the Commission.[74] As noted above, support for this model is being hinted at by Prof. Harper, and is be clearly advocated for by the inaugural Chair of the ACCC, Allan Fels. Another clear supporter is former chief economist at ASIC, Alan Erskine, who has examined the regulatory architecture in detail, and says that:

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[72] Schmulow, *South Africa joins the club that regulates financial markets through 'Twin Peaks'*, The Conversation, 29 April 2018

[73] *Competition and Consumer Act, 2010.*

[74] Durkin, *Pressure builds to unleash ACCC on the banks*, Australian Financial Review, 14 October 2018.

> The ACCC should receive the competition mandates currently held (and generally ignored) by APRA and other regulators.[75]

The government has tacitly acknowledged the ACCC's suitability for the role of conduct regulator when it tasked them to inquire into any impact the Major Bank Levy had on mortgage rates.[76] The Commission itself has highlighted the distinct difference in approach between the ACCC and ASIC in respect of the implementation of the new laws regarding unfair contact terms.[77] The Productivity Commission recommended the ACCC be appointed as competition champion over financial services, though did not recommend any further changes to regulatory responsibilities.[78]

In taking on responsibility for competition and consumer regulation, the ACCC should also be tasked with considering the impact that banking and finance is having on the wellbeing of households. As has been discussed above, the financialisation of everyday life has been considered intrinsically good by adherents to the efficient-market hypothesis. But the reality is that the last thirty-odd years have resulted in an increase in debt and risk exposure carried by households, and this is reshaping the very nature of society.[79] Yet, at the moment, this is largely outside the consideration of financial system regulators. As former Productivity Commission chair, Peter Harris, recently noted, "there is no entity charged to think about cost to consumers."[80]

The Greens consider that, in the case of complex and selective products and services, ASIC could continue to be both a conduct and system (market integrity) regulator given that participants in these markets are expected to be more informed and more active, and the products concerned are more likely to require specialist understanding. That is not to say that no consumer protections exist, just that it is more clearly a case of 'buyer beware'.

Cooperation and oversight

The Greens submit that two further changes to the regulatory architecture should be made to ensure better cooperation between regulators, and better public oversight of regulators.

The Council of Financial Regulators should be elevated.[81] An independent Chair should be appointed and minutes of the meetings should be published in a similar vein to those of the Reserve Bank of Australia. Further, the ACCC should be given a permanent position on the Council. This is largely in accord with the recommendation of the Productivity Commission who noted that the Council has the

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[75] Erskine, *Funding Australia's Future: Regulating the Australian Financial System*, 2014.
[76] ACCC, *Residential mortgage price inquiry – Interim Report*, March 2018.
[77] Volume 1, p 281.
[78] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.
[79] See: Bryan & Rafferty, *Risking Together: How finance is dominating everyday life in Australia*, 2018.
[80] Durkin, *Pressure builds to unleash ACCC on the banks*, Australian Financial Review, 14 October 2018.
[81] See: Erskine, *Funding Australia's Future: Regulating the Australian Financial System*, 2014.

capacity to "generate timely and trusted debate" among regulators.[82] Such debate would all the more important if and when a clear distinction was made between conduct and system regulation.

The Greens also submit that a Financial Regulator Assessment Board be established to advise Government annually on how financial regulators have implemented their mandates, as recommended by the Murray Financial System Inquiry.[83]

5. Justice and redress

The Commission would be well aware that the existence of this inquiry is in no small part a result of advocacy by aggrieved customers seeking justice for the harm inflicted upon them by banks and other financial services providers. Many of these customers, understandably, see this Commission as a means to provide them with satisfactory resolution. For many, simply having their case heard before the Commission and having the banks admit to their misconduct would a consolation.

The Greens appreciate the difficulty that the Commission faces in this respect, having received in the order of 9,000 submissions outlining instances of misconduct, and being tasked with considering the causes and remedies of this misconduct within a twelve month period. However, there is no point in the Commission undertaking this inquiry if the government and parliament does not respond. Unfortunately, the nature of modern politics is that the impetus for reform can quickly wane. The Greens support the Commission reporting by February 2019, to the extent that it is confident in doing so, so that the government and parliament can consider and implement the Commission's recommendations as quickly as is practicable.

Nonetheless, the Greens support an extension to the Commission's inquiry to allow for the examination of a greater number of individual cases, as well as further examination of particular issues, including the role of receivers and administrators, the collapse of forestry managed investment schemes, and the conduct of Commonwealth financial service providers.

The Greens also submit that the Commission should make recommendations in relation to external dispute resolution (EDR) mechanisms and a compensation scheme of last resort, advocacy on behalf of customers through these processes, as well as what can reasonably be done to redress outstanding instances of past misconduct.

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[82] Productivity Commission, *Competition in the Australian Financial System – Final Report*, June 2018.
[83] *Financial Systems Inquiry – Final Report*, Recommendation 27 — Regulator accountability, 2014.

External dispute resolution

The first step for customers seeking remediation should be a well-functioning EDR body. The establishment of the Australian Financial Complaints Authority (AFCA) as single and compulsory EDR body promises to improve this process for customers. The previous system of multiple EDR bodies was plagued with problems, including, in the case of the Financial Ombudsman Service, a broad discretion to exclude disputes[84] and inadequate funding.[85] Many of these problems extended from the regulator having little capacity to direct the functioning of privately-established EDR bodies beyond a binary decision to approve or not approve an EDR scheme. Accordingly, AFCA's success will depend heavily on the relevant regulator using the directions powers provided to it to ensure the proper function of the organisation in the interests of consumers, including powers to make directions on the limits of eligible claims and the funding of the organisation.[86]

Last resort compensation scheme

While a well-functioning EDR scheme will provide adequate resolution in many cases, history has shown that it will not provide for all cases, most notably where institutions become insolvent. The Greens support the establishment of a last resort compensation scheme to provide remedy in these circumstances based on the design features recommended in the supplementary final report of the Ramsay review into external dispute resolution and complaints framework.[87] This last resort compensation scheme must be well targeted so as to avoid moral hazard, and should accompany other measures identified in the Ramsay review, in particular the requirement for intermediaries to have professional indemnity insurance.

However, this would not provide redress for many past victims of misconduct. The Commission would well understand the legal and constitutional difficulties in revisiting cases that have previously been resolved, regardless of how unjust the outcome was. Nonetheless, the Greens submit that the Commission should consider how past disputes might be remedied; and how currently solvent and operating institutions might be expected, if not compelled, to reopen cases where the commission has reasonable grounds for a finding against these institutions, and where customers have not been adequately compensated. For example, in the case of forestry MIS, the Commission should consider how the banks who lent money to these schemes, and who profited from these schemes, might be asked to act upon their moral responsibility to provide redress to the victims of these schemes.

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[84] Maddocks, *Excluding a dispute – what can the Financial Ombudsman Service consider?* 2015.
[85] Economics Legislation Committee, Additional Estimates, ASIC, February 2016.
[86] See: *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018*.
[87] Ramsay, Abramson & Kirkland, *Review of the financial system external dispute resolution and complaints framework – Supplementary Final Report*, September 2017.

The Ramsay review identifies options to provide redress for past disputes for individuals and small business. Within these options, the Greens suggest that the Commission considers whether the ACCC could be tasked as the body to scope and re-examine past disputes, and to make recommendations for remedy.

Funding for advocates

Through this inquiry, the Commission would have come to appreciate the work undertaken by financial counselling and advocacy centres. These centres do an admirable job providing legal assistance to the victims of the banks. However, they are not able to provide assistance for all of the viable cases that they are presented with. The Ramsay review identified the inability to access legal assistance as an impediment to some individuals and small business receiving adequate redress.

Funding for financial counselling and advocacy centres should be increased to enable greater access to legal assistance; and this increase in funding should be provided for by the banking and financial services industry. APRA, ASIC and AFCA are all funded through arms-length industry levies. A similar approach to the funding for financial counselling and advocacy centres should be considered appropriate given their essential role in providing redress.