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Senate Consumer Protection Inquiry: MPs show no appetite for change (Part 2)

By [Evan Jones](#) | 10 June 2017, 5:30pm | [1](#) comments | [📄](#)



(Image via @BankReformNow)

The little heralded Senate Economics Committee Consumer Protection Inquiry is a costly and diversionary ritual, writes Dr [Evan Jones](#) in the concluding part of this two-part investigation.

[[Read Part One](#). where Dr Evan Jones looks at the rottenness within the Financial Ombudsman Service (FOS)]

I HAVE MENTIONED the appearance of ASIC and FOS representatives before the Consumer Protection inquiry hearing on 26 April. Consumer representative groups also appeared before the Committee.

Retail customers are suffering

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Consumer advocate group [Choice](#) set the background scene. They noted, from a survey undertaken, that consumers of financial products are persistently ill-informed regarding the products offered and sold to them. *Choice* found that the mortgage broker sector is particularly suspect, with minor licensing requirements and perennial conflicted-interest recommendations – thus long overdue for a clean-up. *Choice* did note that previous inquiries had made some important recommendations regarding retail consumer protection, then governments had accepted such recommendations, but that they were yet to be implemented (the federal Treasury has other priorities).

Choice noted that there was a fundamental problem with bank culture:



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(competence, integrity) whereas they're getting a white collar spiv. All the subsequent problems stem from that misrepresentation and misunderstanding.

After lunch at the hearing, there appeared representatives of the [Financial Rights Legal Centre](#) (NSW) and the [Consumer Action Law Centre](#) (Victoria). These organisations are at the front end of the community of the impoverished, financially desperate, hopelessly indebted not because of profligacy but because their incomes don't cover basic sustenance.

Susan Quinn of the CALC notes:

'Australia is on the verge of a debt disaster. We have \$32 billion of credit card debt currently accruing interest. We have more 16 million credit card accounts with total limits of more than \$151 billion. These staggering figures are reflected in our experience. Every week our financial counsellors receive at least one call from a person with credit card debt exceeding \$100,000. This extreme level of debt has primarily been driven by grossly irresponsible lending practices as well as unsolicited credit limit increase offers and dubious balance transfer deals [and add-on insurance pressure].'

Quinn noted that the early 2017 [Khoury review](#), initiated by the Australian Bankers' Association itself, recommended that banks should cease the practice of making unsolicited credit card limit increases,



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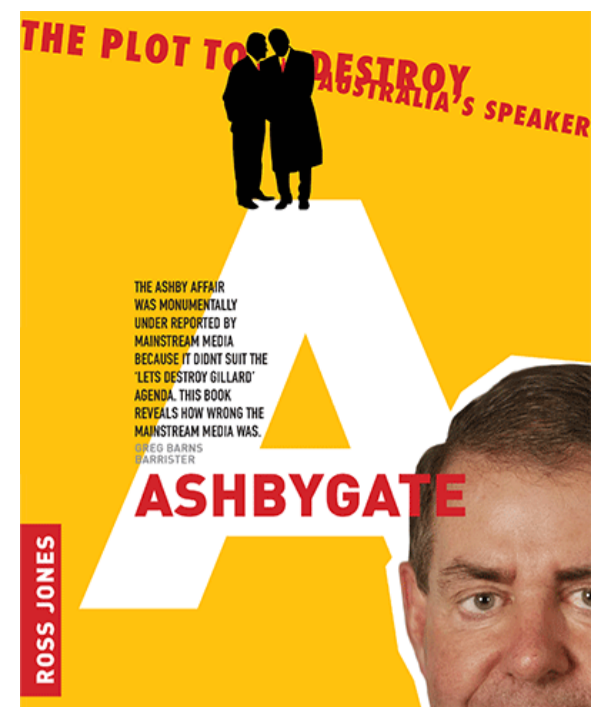
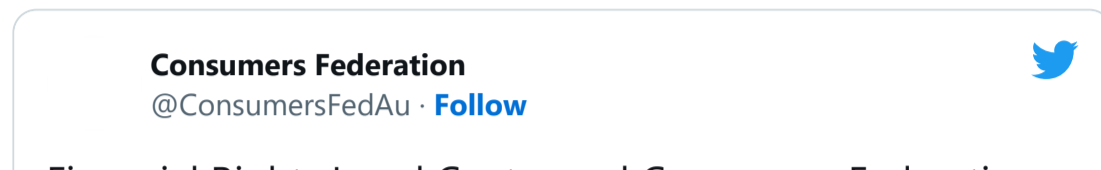
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'But this was rejected by the banks under the guise of preserving "customer choice and preference".'

The review also recommended that banks should adopt an "ability to repay" criterion for credit card issue, which the banks formally agreed to, but which remains in limbo.



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predatory home loans, the brick wall facing insurance claims, and predatory "debt management" firms:

'I just want to mention responsible lending and home loans. The responsible lending laws came in in 2011, and I have had enormous concerns about compliance with the responsible lending laws for home loans since they came in. In other words, my contention is that none of the lenders and certainly none of the major banks are complying with the law as it stands. It turned out I was correct, because ASIC has launched action against Westpac, and the other banks have all agreed to change their practices. That means, in effect, that we have had very lax responsible lending in the home loan market for six years. And before that it was just a free-for-all of poor lending unfortunately.'

On insurance claims handling, Lane noted:

'... insurance companies make money by not paying claims. This is obvious. So there is a built-in incentive. Even if staff are not directed, they know that you get a perverse incentive to not pay claims. We see that the law as it currently stands and the General Insurance Code of Practice do not adequately deal with this issue. We have had several inquiries. At the end of the day, we need legislative reform to sort this out, because there is a perverse incentive not to pay claims, to wear people down and to make sure that people just give up, and it needs to change.'

Lane on general compliance:



In the code of banking practice review, the consumer movement asked the banks to agree that they would comply with [Regulatory Guide 209](#) by ASIC. Alarmingly, the reviewer decided to not even consider that. ... all the banks flatly refuse to comply with the regulatory guide put out by the regulator, and the reviewer flatly refused to even recommend that they should...

'It is extremely alarming that to date we have not got an agreement through the banks to comply with the regulatory guide. They have the bulk of the lending. They should be complying with the regulatory guide to the letter. ... It is urgent and important. Currently ASIC is taking action, but at the end of the day we need a positive indication from all the lenders that

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The generally sedate character of the hearing was broken by Katherine Lane's increasing agitation.

By this time, she was almost hysterical with fury:

'I do not think there is any doubt. There is still widespread evidence of people being given debts they cannot afford to repay. ... There are a whole heap of people who have debt that is unmanageable and unaffordable, and that is right through credit cards, personal loans, home loans and even investment loans. It goes across the entire gamut. It is not as bad as before we had regulation, which is something positive to say. Interestingly enough, we have the best responsible lending laws in the world. What has failed here is enforcement...

'But we also have a cultural problem, an attitude problem. They all sat down and said, "Well, we don't have to comply with Regulatory Guide 209."

Lane envisaged (accurately) that interest rates rises were likely and that more victims will be flooding their offices again.

It's also not surprising that the CALC and the FRLC have had to fight to have their funding maintained. Perhaps ScoMo's bank levy can be

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A screenshot of a tweet from the Financial Rights Legal Centre (@financialrights). The tweet text reads: "financialrights.org.au Financial Rights Legal Centre Advice and advocacy for consumers in financial stress." It was posted at 9:08 PM on June 8, 2017. The tweet has 1 like and options to Reply and Share. A button at the bottom says "Read more on Twitter".

Parliamentary and political culture

The Senate Economics Committee Consumer Protection Inquiry is the umpteenth Parliamentary inquiry into bank malpractice and related issues. So what's going on?

What is going on is a ritual, a costly and diversionary ritual.

There is little collective memory. At the hearing, Senators Ketter and Hume did most of the questioning.

Liberal Senator [Jane Hume](#) is new to the game. She appears to have done no homework, save for reading an ASIC report (narrow and self-interested). Labor Senator [Chris Ketter](#) was a member of the 2015-16 [Impairment of Customer Loans inquiry](#) and was an active participant at those hearings, but none of that experience seems to have carried across.

Those Parliamentarians with collective memory fail to use it. Senator Xenophon has known about the extent and depth of bank malpractice for well over a decade. His own law firm has handled such cases. As noted above, Xenophon got hot under the collar a year previously regarding a FOS staffer fabricating a diary note for the purposes of a court case. The 26 April hearing was an ideal opportunity for Xenophon



to remind FOS' head, Shane Tregillas, of that matter and its implications for the integrity of FOS operations. Xenophon's only concern here, asked of all witnesses, was their views on the merits of a compensation scheme of last resort.

Nationals Senator [John Williams](#) is not on the Consumer Protection inquiry, because he is a member of the contemporary [Select Committee on Lending to Primary Production Customers](#). This is an appropriate location. Williams' experience of bank malpractice goes back 30 years, to the time his farming family fell foul of the CBA's involvement in the foreign currency loans scam. But as a long time member of the Senate Economics Committee, veteran of multiple banking inquiries and recipient of endless victim complaints, his questions and comments

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...there has also been heavy questioning of some cases, on a departmental basis, at a special [Parliamentary Economics Committee hearing](#) in March (designed by Turnbull to head off a royal commission). Is this aggro merely MPs grandstanding? But there's capacity there, so it's a mystery.

The centre of gravity in these standing committee inquiries should be victim submissions, not least because victims have no other means of being heard. There should be an initial interrogation of victim submissions, of hearings devoted to a representative sample of victims (and/or their agents), and only then an interrogation, assertive, of the alleged guilty parties and the negligent regulators regarding the precise details of the crimes exposed.

Regrettably, even that procedure is not enough. The hearings of the [Impairment of Customer Loans inquiry](#) devoted considerable time to hearing from select victims and their agents. Alas, those hearings were diverted by the theatrics of Phillip Ruddock, who played his own game of Hypotheticals. Ruddock was early seen as a great hope by the activist group of CBA/Bankwest victims, credited with playing a key role in having the inquiry established, but Ruddock then catered more to his own vanity than to the expectant victims. In this case, the victims came



and put the crimes upfront, but nothing came of it. Worse. This was a second failure after a comparable process at the 2012 [Post-GFC Banking inquiry](#).

Behind this ritual is an evident severe disconnect. Let us presume that the typical pollie has the smarts to discern the nature of the problem in front of her/him. But it appears that the political class *in toto* does not want to know.

Geez Louise
@Turlow1 · [Follow](#)

The Australian banking sector: Predatory and untouchable

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Is it the endless lobbying of the banks (and others) in Canberra? Is it a matter of individual MPs falling into line with party agendas? Financial institutions donate to both sides of Parliament.

The Liberal Party has a special affinity with the banks (the NAB heavily financed John Howard's victory in 1996, CEO [Don Argus](#) expecting that Howard would overturn the Four Pillars policy), an affinity that transcends mere filthy lucre. The Labor Party is hamstrung by its weighty contribution to comprehensive financial deregulation that gave us the monster we enjoy today. Recent Labor caucuses have an [inability to acknowledge](#) that the grand father figures Hawke and Keating might have got it wrong.

Is it a matter simply of self-interest? As a bank victim emphasised to me, remember that every member of parliament (and every lawyer and judge) has a banking connection. Are MPs merely safeguarding that personal relationship?

The case of Barnaby Joyce is instructive. Farmer Bruce Freeman of Stanthorpe Queensland was brutally foreclosed by the NAB around 2003. Freeman wanted to subdivide their property but was denied by the NAB. The NAB lent the mortgagee-in-possession purchaser 100 per cent of the sale price and permitted the purchaser to immediately subdivide the property, from which he cleared his indebtedness.

At some stage, Freeman's wife rang then Senator [Barnaby Joyce's](#) St George office to seek assistance. She spoke to the Senator's wife, who apparently advised that the Joyce could not help disaffected NAB



customers as he had NAB mortgages of his own. It is relevant that the NAB has a [comprehensive exposure](#) in Queensland by virtue of its acquisition of the then Bank of Queensland in 1922 and the Queensland National Bank in 1948; the NAB distinguished itself by its bastardry after the [deregulation of the dairy industry](#) in 2000.

In 2006-07 when Freeman was seeking assistance for their plight, a collaborator investigated Joyce's banking relationship. This investigation disclosed that Joyce and his wife then held two mortgages with the NAB, contracted in 1998 and 2000. These were linked to Joyce's acquisition of properties in St George Queensland, ironically previously owned and occupied by the NAB itself – a manager's residence and adjacent branch office respectively

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I am privy to a letter that Joyce, then MP for New England, sent in reply to Claire and Chris Priestley, Walgett Shire NSW victims of the NAB, in May 2014. Joyce gave his condolences for their plight, but could only recommend that they approach the FOS for assistance. Given the FOS' history of complicity with its funder members, a fact that should be known to Joyce and his fellow National Party members, Joyce's response is both glib and cynical.

Joyce's silence is representative of the Party he now leads. Apart from internal grumblings by Senator John Williams and MP [Warren Entsch](#), the National Party cares more about the health of the mining sector than about its farming constituents facing banking and general corporate predation. The National Party Parliamentary members are essentially a self-serving rabble.


Whatever the reasons for a political and Parliamentary culture devoid of bite, it is deeply entrenched and there is no sign of a rebel publicly breaking ranks from the collective lassitude.

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What happened to small business?

Apart from EOS raising in passing the issue of its jurisdiction limits for

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Part of the problem is that the small to medium-sized enterprise (SME) sector, naturally, is a vast canvas of businesses linked only by its size (and that varies enormously). There is no natural institutional representation of the sector that such inquiries can call on for representative comment. The Council of Small Business of Australia ([COSBOA](#)) is near comprehensively useless.

The silence regarding SMEs is perennial and deep-rooted. ASIC doesn't want to know, repudiating its legislated responsibilities under [s12 of the Corporations Act](#). The relative media silence on SME/farmer victimisation complements the blank picture.

It reflects the fact that, in these Parliamentary hearings, SME victim submissions don't appear to register. As noted above, even in those hearings where SME victims are given the privilege to appear as witnesses, their testimony doesn't appear to register.

As I noted in my submission to this inquiry, nobody in authority sees fit to delve into the character of the bank to SME/farmer borrower contractual relationship. It is a relationship of profound asymmetry, a relationship ripe (by design) for corrupt abuse by the bank lender.

The most cursory inquiry would confront that a bank lends on security rather than on business prospects. A farming family naturally loses both business and residence (and often a multi-generational history of emotional attachment to place), but so do all SME families. On the street, derelict, recipients of NewStart or a pension at best, is the lot of all SMEs foreclosed by the banks. And the judiciary is happy to legitimise this practice and go off to a liquid lunch then sleep soundly without a qualm.



Nobody in their right mind would start a family business in Australia that relies on bank finance.

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...implement necessary, or necessary, measures that impede them
continue to reign.

In the interim, there will be many more victims, more scandals, more diversionary mechanisms set up. I remain pessimistic that a banking royal commission will ever be established, certainly with the appropriate coverage and personnel that would give it the requisite teeth. The necessary seismic change will probably not happen until corrupt bank officers (that is, those acting against customers, rather than the bank itself) and CEOs are indicted on criminal charges and given a punishment commensurate with their crimes.

As I noted in August 2015: *'To Fix Australia's banking culture: [Start sending bank CEOs to gaol](#)'.*

Shirley Green
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