

s.22(1)(a)(ii)

From: s.22(1)(a)(ii)
Sent: Friday, 1 December 2017 5:12 PM
To: Kelly, James; Williamson, Elizabeth
Cc: Brown, Diane; Lonsdale, John; Gaetjens, Philip; Fraser, John (Secretary); Morrison, Scott
Subject: ABA comments [SEC=PROTECTED]

Hi both

As discussed, below are the issues the ABA through Anna Bligh raised s.22(1)(a)(ii)
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Many thanks

1. Lending. Concerned that ToRs do not include non-ADI lenders and mortgage brokers.
2. Flagged preference for limiting ToR as to how far back can go.
3. Want to confirm the Cmr may choose not to inquire into cases – i.e. has the discretion not to inquire and can exercise this discretion where cases are too far back/too long ago.
4. Confirm impact on foreign banks. This will relate to conduct by and incidence of events in Australia? Any further? Overseas? No one is seeking to exclude foreign banks, but curious to know extent that someone like HSBC would be subject to review of cases or conduct that occurred abroad?

s.22(1)(a)(ii)

Taxation, Foreign Investment & Financial Services
Office of the Treasurer
The Hon. Scott Morrison MP
Parliament House, Canberra

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THE HON CHRIS BOWEN MP

**SHADOW TREASURER
MEMBER FOR McMAHON**

1 December 2017

**The Hon. Scott Morrison MP
Treasurer
Parliament House
Canberra ACT 2600**

Dear Mr Morrison

I write to you regarding the Government's decision to establish a Royal Commission into the banking, superannuation and financial services industries, and the release of the proposed Terms of Reference for the Royal Commission.

Let me be clear from outset, if the Turnbull Government does not get this right from the start, we will only see a continuation of the financial scandals, lack of justice for victims of financial malfeasance and systemic risks that are contributing to the uncertainty for the financial services sector.

Labor has been calling for a Royal Commission into the banking and financial sector for over 600 days. While the Government considers calling a Royal Commission a "necessary but regrettable" decision, Labor believes it is regrettable that the Government had spent 18 months fighting Labor's call for a Royal Commission, letting rorts and rip-offs continue ignoring the ongoing pleas of families and small businesses. If the Government had supported Labor when this was first raised, a Royal Commission would be completed by now, with its recommendations being implemented.

Pushing this aside, for the Royal Commission into the financial services sector to serve its true purpose and give voice to the many victims of bank misconduct, it is paramount that the final terms of reference are comprehensive, broad-based and that all relevant parties be consulted. This is evidently not the case thus far.

Just this morning in a worrying sign the Australian Securities and Investments Commission, the corporate regulator and agency tasked with regulating financial sector conduct, confirmed that it had not been consulted on the draft terms of reference.

Given Labor has been calling for a Royal Commission for 18 months, in order to maintain the public's trust in the process, it is essential that there be bipartisan agreement on the terms of reference. As the Australian Bankers' Association has said "Bipartisan agreement on a properly constituted inquiry" is the best way forward.

The terms of reference must enable the Royal Commission to investigate the rorts and rip-offs to the fullest extent possible, including issues associated with the culture of the banks, and executive remuneration. It is also critical that consultation with banking victims' groups occurs, to ensure that the victims are able to tell their stories. We also believe there should be strong protections put in place for whistle-blowers.

On matters relating specifically to the current draft terms of reference, we seek the removal of section 5 in the current terms of reference which specifically exempts the Commission inquiring into, or making recommendations on, macro-prudential policy, regulation or oversight. As you are aware, I have previously made clear that the terms of reference of any Royal Commission into the banks should include looking at the financial regulatory architecture, particularly given the lack of parliamentary scrutiny over recent changing roles and responsibilities of our regulatory agencies. It is essential these changes are well understood to the public given the risks that are inherent with a highly indebted household sector.

Given the concerns raised by victims groups, we also believe that the terms of reference should make clear that the Royal Commission is empowered to look into the conduct of liquidators where this relates to the financial services sector.

Labor supports the broad-based financial services focus that is suggested in the proposed terms of reference, in fact Labor from the start made clear that a Royal Commission into the financial services sector would include insurance and superannuation. However we have serious concerns about the narrow focus on industry superannuation funds and what former NSW Liberal leader and Industry Super Australia chairman, Peter Collins, has labelled a "political driven" agenda. This comes as the Minister for Immigration and Border Protection said that industry super funds will face more scrutiny, given they have "union members and what not on the board".

Australians will be rightly concerned if such a narrow focus into industry funds simply means fulfilling a Liberal Party agenda against industry funds and the union movement.

Labor acknowledges the appointment of former High Court Justice Kenneth Hayne and his judicial expertise. Labor believes given the twelve months the

Government has given the Royal Commission to complete its task that it should also consider appointing other commissioners to support the heavy workload that ranges across the financial services sector. This is a model that has served the Royal Commission into Institutional Responses to Child Sexual Abuse well.


It would also allow the Government to remove this part of section 4 of the draft terms of reference: 'And, the Commission may choose not to inquire into certain matters otherwise within the scope of this Inquiry, but any such decision will be the Commission's, alone.'

The Government through the announcement materials or subsequent public comments from yourself or the Prime Minister has failed to articulate the need for this sub-section. The appropriate level of resourcing including number of commissioners should be provided to support a thorough investigation of all of the terms of reference.

For a successful and comprehensive Royal Commission into the financial services sector to now occur, it is critical that the Opposition is formally consulted, along with other stakeholders, including all regulators and the banking victims' groups.

Failure to consult will raise serious concerns and doubts about the way in which the Royal Commission is constituted, given that the Government has spent the last 18 months doing everything to avoid one.

Yours sincerely,



CHRIS BOWEN MP