CBA's CEO Ian Narev - our best advocate for a powerful Royal Commission

Summary:
Mark Bishop reminisces about his Senate inquiry into ASIC. Pity he forgets a couple of important points.

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CBA Approach To Senate Inquiry Showed Need for Royal Commission

It started as just another routine Senate inquiry. Disgruntled clients, serious financial losses, no recourse after many years of trying, banks not interested and ordinary people suffering harm.

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Except it still hasn't ended. Two years later the cry for a royal commission into banking services is a critical backdrop to the forthcoming election; a royal commission tailored to provide quick action based on early, interim reports throughout the inquiry and backed up by a commitment by government to act quickly on the recommendations.

I was aware of rising complaints from an increasingly disenchanted community

Despite the multibillion-dollar profits reported even in bad times and supported by government guarantees and licences, I thought the system worked fairly and well.

But halfway through reading many of the hundreds of submissions, I began to get the feeling that something was seriously wrong. Like many Australians my exposure to the major banks had been professional and businesslike.

Now I was being told that the financial arms of major banks had engaged in grossly negligent behaviour, fraud, unacceptable business practices and that the losses involved tens of millions of dollars and thousands of individuals.
Client files had never been created, computer records didn't exist, post-event entries were appended to files, signatures and authorities to invest couldn't be found, senior staff refused to investigate, agents recommended that clients invest in the most complex financial products without adequate explanation.

These activities went on year in, year out. The allegations were almost unbelievable.

Even at this early stage I noted eerie parallels with a long-running set of inquiries that I had chaired over many years into various aspects of military justice.
As in these banking scandals, the military had lost files, partially recreated files and lost evidence; written records were of dubious quality, cultural attitudes in one decade had a different hue in a Senate inquiry, and whistleblowers were penalised, harassed, transferred and dismissed.

Independent review was to be avoided at all cost. Nobody could find a way through the forest of issues.

Basically the banks now face the same set of issues. They profited from the scandals and now want to move on, ignore the fraud and blame someone else.

In both financial services and military justice alike there was only the "odd bad apple" and never systemic misbehaviour.

Bank executives and senior military officers said it so often that it became holy writ and all relevant line officers and management staff repeated the mantra.

Public hearings serve a critical purpose. Particularly Senate hearings. Often they are inquisitorial in nature. Seasoned political operators put aside party differences to find solutions.
Senate inquiries can be uncomfortable times for those under scrutiny.

Bank executives had prepared well. They had a script and stuck to it. Senior counsel and executives acknowledged isolated problems, occasional misbehaviours and the odd mistake on behalf of staff. They pointed to a proud name and polls that demonstrated a reputation of honesty, integrity and trust.

Except that behind the scenes momentum was building.

The press was becoming more critical, parliamentary colleagues were starting to take an interest and seeking explanations, additional clients were putting in further submissions or rebutting the evidence of bank executives, law firms and industry ombudsman bodies started to highlight inconsistencies, omissions and different treatment of similar fact clients.

I had participated in literally hundreds of public inquiries in my time in the Senate and as a legal advocate for 20 years before entering politics.

My views remained open until I read the CBA submission and heard evidence from their counsel and senior executives. I was astonished at their tone, their approach and their refusal to seriously engage in the issues under review.

It was only at this stage that I seriously began to consider the option of recommending to government the instigation of a royal commission.

Some of the developments in the continuing saga of military justice guided my thinking here.

Bitter experience told me that industry was incapable of putting its own house in order.

There was still way too much denial. There was no willingness to accept responsibility.

I knew that cabinet ministers were reluctant to enforce reform. It was likely that the then government had given assurances to the banks.

A solution would not come from within the industry.

There was one intractable issue, however. How does anyone address issues if files don't exist, are incomplete or critical material is absent? How does one come up with a solution that avoids visiting the entire loss on the client?

The answer is a Royal Commission.

The application of legal standards of proof and absence of files or documentation would leave most complaints without prospect of success in any financial investigation or judicial process.
Normal recourse to justice is doomed from the outset.

A royal commission would examine the utility of the doctrine of plausibility as a vehicle for resolving the unresolvable. The application of this doctrine in the military justice matters has offered a solution to thousands of individuals after decades of denial.

It has been the critical circuit breaker that allowed the Australian Defence Force to get on with its business.
Its application offers a legitimate solution to banks and clients alike.

Using this test, an adjudicator would be required to accept an allegation of financial misbehaviour as true if satisfied on the material available that it is plausible.

The financial misdemeanours are so numerous, the attitude of the banks so entrenched, the complainants have been so wronged.

The only solution that will ensure financial justice is an independent, arm's length public examination of the whole banking saga.

Two years ago a Senate committee recommended a royal commission. Then, as now, it is the appropriate outcome.

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Thanks to Mark Bishop for this insider expose of what bankers have been allowed to get away with by successive governments. More pollies are starting to understand ..... there is no alternative. The banks must be investigated and held accountable for the damage they are causing to our people and our nation.

Unfortunately Mr Bishop forgets to mention that he and his colleagues censored submissions to his inquiry into ASIC's performance. In the BRN submission - and others - his committee suppressed damning evidence against NAB. They even removed details of the amount of money the big two political parties received from the big four banks in donations.

It really was just a case of pollies appearing to do something. They knew that any proposed Royal Commission would be knocked back by both the ALP and the Libs. Even so they still only suggested a very limited Royal Commission - just into Financial Planning and just one bank .... CBA. What Mr Bishop finds obvious now was just as obvious back in 2014. **What is called for is a Royal Commission with extraordinary powers that looks at the whole box and dice of the banking and finance system.**

Recently we have seen how hard it is for people to purchase a home [Great work from Four Corners]. This is a classic example of how our lives are made harder by pollies and bankers. Our national and personal wealth is being harvested. Slave Ship Earth has rulers and serfs - do you know where you stand? Perhaps when people begin getting chipped you will.

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