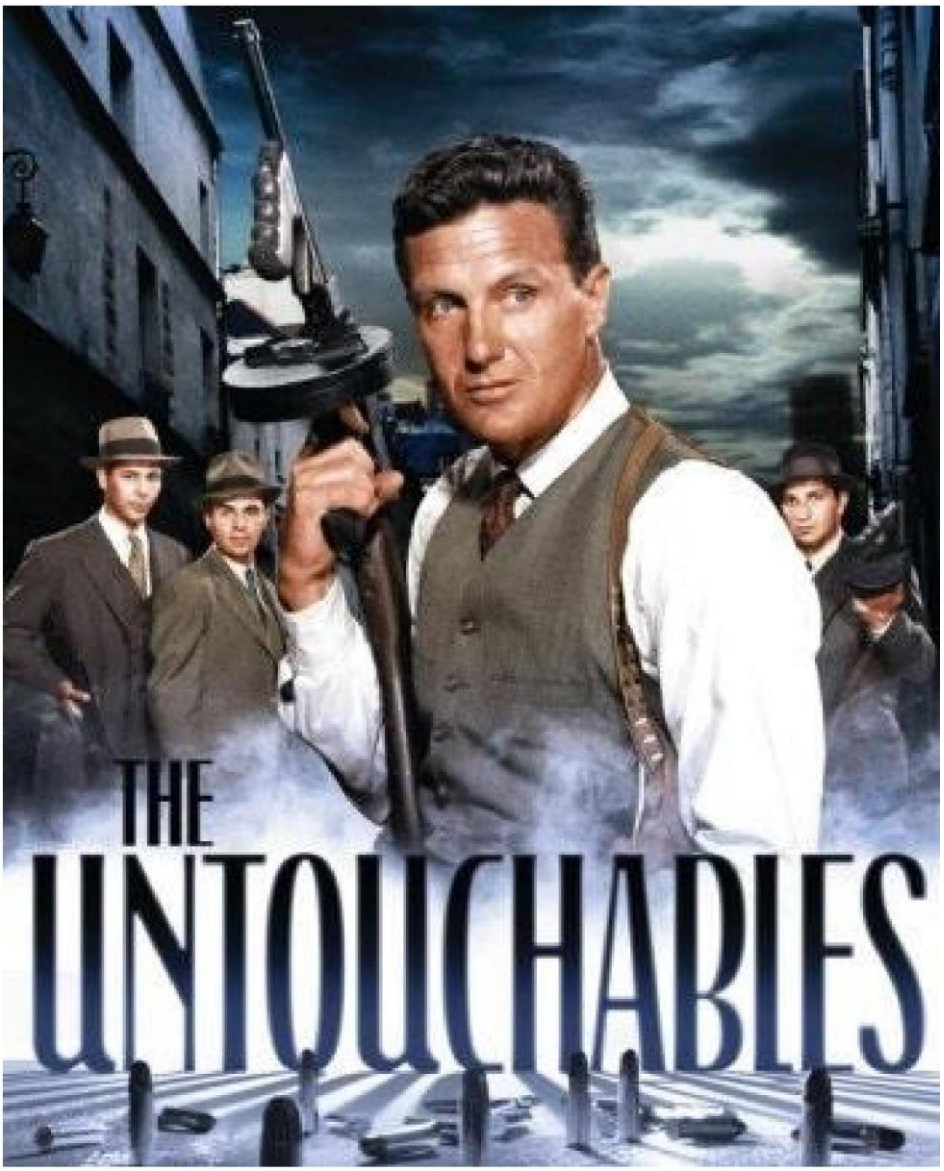

Needed is a bank funded **independent specialist elite federal legal aid team** of incorruptible lawyers to battle the organised impunity within the financial services sector which is facilitated by an inequitable not fit for purpose monetarised justice system infected by self-serving lawyers.

Access to Justice - Equality of Arms

The current redress system attempts to help financial service victims after they have fallen off the cliff and fails in every meaningful way. All pseudo legal bodies and the contemporary justice system are not fit for purpose.

The Australian Attorney General states on the official web site under the heading equality:

> *"...What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of 'equality of arms', which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. The UN Human Rights Committee has found a violation of article 14(1) in a case in which a right of appeal was open to the prosecution but not to the accused..."*

https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx

Financial service victims need timely, proportional, equitable, and affordable access to redress.

This really needs to happen at the top of the cliff. Details on how this can be achieved at little cost to the public purse follows:

In financial service related matters there should be a financial service funded scheme that ensures proportional legal equity in this country's court system, which potentially could replace FOS and all other financial service related public and private pseudo legal bodies.

A revitalised and expanded legal aid system backed by federal funds could be used. For example, when a financial service with disproportional monetary advantage initiates legal proceedings against a client or guarantor, it will be required to contribute a non-refundable amount equivalent to their total legal costs to an **independent specialist elite federal legal aid team**, rather than fund FOS or other options. This would mean that the financial service victim would have **timely, proportional, and equitable** legal representation from day one, levelling the legal playing field. If successful a financial service would likely recoup its outlay eliminating a financial penalty.

Such an initiative would likely reduce litigation because the financial service with monetary advantage would no longer be able to use this country's legal system as a weapon against their victims forcing a change in the culture. It would result in a greater degree of fairness and equity resulting in better common law precedent. It would be an incubator for lawyers and judges that have grounding in the force, rather than the dark side of law. It would likely be less expensive for financial services, as well as the public purse. It would be proactive in establishing **"Equality of Arms"** within our legal sector.

It would no doubt be argued by a financial service with the disproportionate advantage, that requiring them to contribute an amount equivalent to their total legal costs to federal legal aid so that their client had equity within the court system would be punitive, but in that case so is the ineffective, not fit for purpose FOS and other industry funded options. It is the plaintiff financial service and only the plaintiff financial service that chooses to use the legal system. The financial service could choose another method to resolve the issue, thus avoiding the legal system and any associated cost. I also believe that such a measure would reduce the burden on

the courts because it would become a solution of last resort and because there would be proportional equity (Equality of Arms) matters would progress in a fairer and a timelier manner.

As a farmer I virtually spent every day developing the farm and therefore it would have been impossible to run the farm and litigation as well. To attempt to match the Bank of Queensland's legal and monetary resources in this country's disproportionate monetarised legal system would have resulted in financial ruin before the matter ever got to trial. My situation is not unique; indeed I would suggest you would be hard pressed to find any submitter, making submissions to the Royal Commission against a financial service, which has not experienced this inequity.

Notwithstanding all the above, remarkably it is possible for the Australian Federal Government to finance a properly funded national legal aid system. The Australian Federal Government is a currency-issuing central government; it is a monetary sovereign, which has the monopoly power to spend debt free money into existence. I would encourage the reader to familiarise themselves with the principles of Modern Monetary Theory (MMT). Sources of this information are Professor Bill Mitchell (Newcastle University), and Economist Doctor Steven Hail (Adelaide University).

It is not however an option that I would advocate because financial services have the financial capacity to match and raise any public additional funds, resulting in what is metaphorically referred to as a lawyer's picnic. The federal government on the other hand cannot claim a properly funded legal aid system is unaffordable.

The financial service funded initiative described above could enable an **independent specialist elite federal legal aid team** within legal aid to develop the knowledge and skills to counter the financial services' corporate legal partners. It could also be instrumental in supplying intelligence to ASIC, APRA and other regulatory bodies in a timely and effective manner improving those organisations effectiveness.

More importantly the initiative would give 'access to justice' to financial service victims that have nowhere to turn and lack the skills to effectively identify the 'real issues' and present them in an equitable and court compliant manner to this country's courts. It would in some way ensure that there was "Equality of Arms."

Where one side has significant monetary advantage, not only do they gain a significant legal advantage, they are also able to finance an out of court monetary settlement in the event that there is a danger of losing in the court, these settlements are generally accompanied by a gag agreement. The precedent that may have been established by a just but adverse judgement to a monetarised plaintiff is never established, which in itself has the effect of corrupting Australian law.

I also say that if there was 'equality of arms' within this country's justice system, the current Royal Commission, and the plethora of inquiries that preceded it would not have been required. I also believe "Equality of Arms" would make redundant FOS and other financial service related public and private pseudo legal bodies.

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Legacy Case Tribunal

As a direct consequence of the lack of 'Access to Justice' there are many aggrieved bank victims, some going back over thirty years, that have been subject to the inequity of this country's disproportionate monetarised justice system. These individuals and enterprises do not have the financial means or the redress mechanisms to have their matters reviewed so as to establish the 'real issues.'

There is an urgent requirement for a Ramsey Review style public Tribunal were aggrieved legacy bank victims can have their matters revisited.

It is of critical importance that these individuals and enterprises have appropriate legal representation, firstly to establish a prima facie case and secondly to enable the 'real issues' are presented to the tribunal in a concise and impartial manner.

An ideal body to carry out this preliminary work would be an **'independent specialist elite federal legal aid team'** described earlier. This would enable the team to develop skills and collect intelligence that would make it more effective in current and future cases. Information and intelligence collected could be passed on to regulatory bodies such as ASIC and APRA improving their effectiveness.

It's likely if such a tribunal was initiated the financial services that know they have exposure, would make an attempt to settle with their aggrieved victims rather than be exposed to the expense and scrutiny of a public tribunal.

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From:	Michael Sanderson <michael@oits.com.au>
Sent:	Thursday, August 9, 2018 3:23 PM
To:	'FSRCenquiries@royalcommission.gov.au'
Subject:	Re: Conduct of the Commission
Attachments:	Disease looking for a cure.pdf

Attention:

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

My name is Michael Francis Sanderson, as an ex-farmer subject to a non-monetary default to the Bank of Queensland (BOQ), I have made five online submissions on a diverse range of issues. Submission reference numbers PWF.0001.0001.0187/0308/0425/2015/2178. I have also made the effort to attend in person most of the commission's public hearings.

Despite the commissioner's reassurance, I am compelled to express my concerns regarding the conduct of the Royal Commission to date. The Commissioner has stated categorically *"...the public submissions to the Commission are very important... And every one of them – and I mean every one of them – is read..."*

In spite of the Commissioner's assurance, and based on the content of public hearings to date and case studies publically reviewed, I am concerned many poignant issues are not being addressed by the inquiry. The reason why these issues are not being addressed appears connected to two problems. Firstly the narrow terms of reference and secondly the short time afforded to the Commissioner to conduct the Inquiry. That the Commissioner has not requested amendment of either of these to address the public's concerns speaks volumes and is concerning to all victims I am in contact with. What is required from the commission is no less than what the commission requires from the witnesses that appear before the commission, the truth, the whole truth and nothing but the truth.

The commissioners stated that he must consider *"... the proper functioning of the financial services entities with which I am dealing is critical to the Australian economy...".* It should not be lost on the commissioner that banking is a service that is a conduit between the agent of the Federal Government as currency sovereign, the reserve bank, and individuals and businesses that produce the real resources of that economy. It should also be recognised that banks do not produce real resources, they as licensed issuers of credit through the prudent use of this power, can facilitate the production of real resources but are not producers themselves. Examples of the banking service unnecessarily destroying productivity of real resources in the Australian economy has been evident despite the limited stage managed case studies that the commission has explored to date.

It would seem that the commission has no intention to inquire meaningfully into the agents that the banks engage as part of their day to day business. They include, but are not restricted to receivers, controllers, accountants, valuers, and lawyers. The case was made at one of the public hearings that the commission was unable to consider receivers because receivers act for the debtor and as such are not covered by the commission's terms of reference. That technically is correct except the banks as power of attorney for the debtor appoints and instructs the receivers, and as such the receivers act for the bank. Notwithstanding the commissioner can ask for a variation of the 'Letters Patent' to overcome such an impasse.

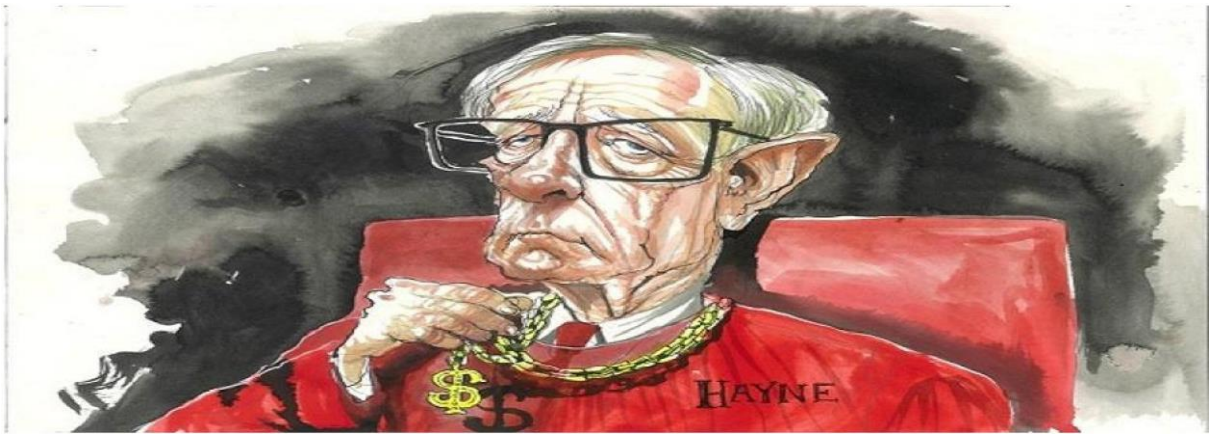
Finally I make the case; the only reason this royal commission is required is because the conduct of the judicial system has fallen below community standards and expectations and as such is not fit for purpose. Lack of access to timely, proportional, and equitable justice enables the banks to act with impunity and that impunity is fundamental to the misconduct that the commission has exposed to date as well as the misconduct that the commission has yet to expose.

This country's courts are unaffordable and out of reach for those that have suffered detriment as a result of misconduct by financial services entities.

The 'Letters Patent' states the Commissioner must inquire into: *"...the effectiveness of mechanisms for redress for consumers of financial services who suffer detriment as a result of misconduct by financial services entities..."* and as such the commission must enquire into the abject failure of the justice system.

Please find attached a note 'Disease Looking for a Cure', that I produced for public consumption which addresses issues of redress, rather the complete lack of timely, proportional, and equitable redress. This attachment should be read in conjunction with this email.

Yours Faithfully
Michael Sanderson
0421176997



The Banking Royal Commission

The Disease looking for a Cure

MICHAEL SANDERSON • TUESDAY, 7 AUGUST 2018

Commissioner Kenneth Hayne stated in his opening statement to the 5th round of public hearings:

"...I know that there are those that are disappointed that their cases have not been examined publicly, and every one of those persons can rightly say that their case is unique. I know that. But it is critical to recognise that the Commission is not a court and cannot and will not adjudicate on the rights and wrongs of particular cases...The Commission's task is to inquire, and the Commission cannot and does not make any decisions about whether those who have been affected by misconduct should have some remedy. Only the courts can make binding decisions of that kind..."

The word redress was not mentioned by the Commissioner; indeed the word redress was not mentioned once, not a single time all day by anyone, the issue of redress is mentioned however in the terms of reference.

The terms of reference states the Commissioner must inquire into:

"...the effectiveness of mechanisms for redress for consumers of financial services who suffer detriment as a result of misconduct by financial services entities..."

If we look at the hundreds of pages of transcripts for 40 days of public hearings the word `redress' has only been mentioned twenty nine times at eight of the forty hearings.

The Commissioner stated in his opening statement above, that only the courts can make binding decisions regarding remedy. The reality is that remedy via the courts in their contemporary metamorphose, is not a form of redress; indeed the banks use our courts as a weapon.

The courts on the other hand should be effective mechanisms for redress, if they are not the courts do not fulfill their only function, the administration of justice. The reality is that our courts are unaffordable and out of reach, and are not fit for purpose.

The Australian Bar Association (ABA) stated in its submission to the Access to Justice Arrangements draft report:

"...Large Court fees threaten the continued existence of the Courts, undermine the rule of law, and prohibit all but the very rich from access to them..."

There has been some airing by the Banking Royal Commission of other forms of redress such as the not fit for purpose FOS, and farm debt mediation, which despite its intent has been described as intimidating and lacking in equity. These forms of redress are effective tools for the banks and do not offer timely, proportional and equitable redress for the bank victim.

The ABA also stated in its report:

"...Although dispute resolution is an important component of the system, alternative dispute resolution provides none of the wider influences generated by the public way in which Courts resolve disputes according to law. Accordingly, although ombudsman or ADR processes are often cheap and fast, they do not create "law" and ought never be confused with the public role and function of the Courts..."

The commission has released its agenda out to the end of November and the issue of redress has not been on that agenda in the past nor is it on any future agenda.

The question must be asked, is Commissioner Kenneth Hayne and his legal counsel as officers of the court out of touch, or worse, don't wish to identify that the cause of the Royal Commission is the absence of timely, proportional, and equitable redress via the court system for those that have suffered detriment as a result of misconduct by financial services entities.

By asking an individual that is part of the legal system that has caused the requirement for a Banking Royal Commission to act as Commissioner, are we asking the disease to find a cure?
