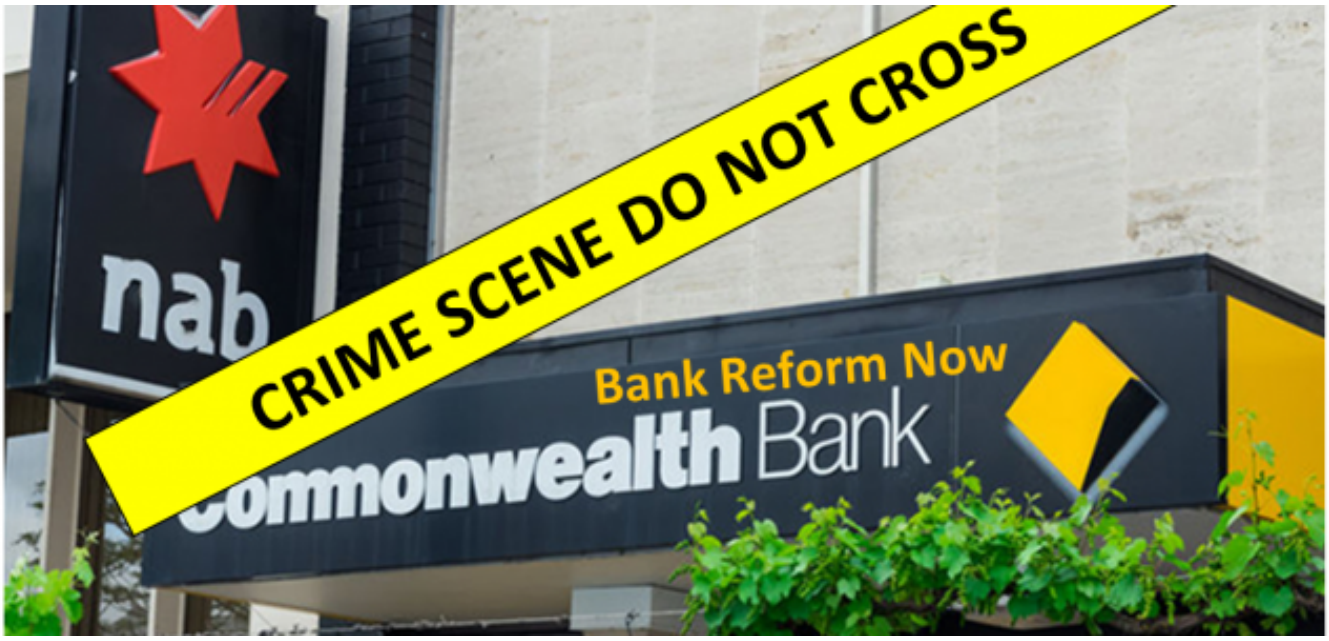
Commissioner Hayne must take appropriate action

Summary:
Banking Royal Commission exposes NAB and CBA as committing criminal acts. There is a pattern here. The banks will soon respond and deny they have engaged in criminal actions. What will Commissioner Hayne do about it? Maybe he could ask for more power and time because what has been exposed so far is no surprise at all This is bread and butter banking. There is a depth of criminality that has not been touched. An extended Royal Commission will see his colleagues in law investigated as well as liquidators and other accomplices in deep banking. It won't be pretty.

Coming soon - the BRN Petition to Extend the Royal Commission. Let your local pollies know - the banking royal commission has only scratched the surface - it will be an issue at the Australian Election 2019.

Article Information**Category:** Banking News
Author: Ben Butler & Michael Roddan
Source: The Australian
Date First Published: 24 Aug 2018

Posted ByPeter Brandson
26 Aug 2018 - 11:16am



Banking Royal Commission - "CBA and NAB Committed Crimes."

The nation’s largest lender, Commonwealth Bank, committed more than 13,000 crimes

and the National Australia Bank also broke criminal laws, counsel assisting the banking royal commission, Michael Hodge QC, said on Friday night.

And the regulators responsible for overseeing the nation's $2.6 trillion super pile, the **Australian Prudential Regulation Authority and the Australian Securities & Investments Commission, have also been tarred as failures in a scathing submission** to commissioner Kenneth Hayne by Mr Hodge, who suggested a new regulator may be needed to clean up the sector.

While the royal commission has been told it is open to find numerous instances of criminal breaches of financial services laws by bank-run retail super funds, the inquiry fell short of recommending significant findings against union-and-employer-backed industry funds, such as AustralianSuper, which were hauled in to give evidence at the hearings earlier this month.

In his closing submission, which followed two weeks of hearings into super earlier this month, Mr Hodge also floated **"desirable" changes such as banning all commissions in superannuation and prohibiting all ongoing service fees, and extending best-interests obligations from the super trustee to all related parties in a corporation dealing with a super fund.**

Mr Hodge said it was open to Mr Hayne to find that CBA "was right to acknowledge" to APRA that it had committed 13,000 criminal offences by failing to transfer members from a high-fee fund to a low-fee MySuper fund by a deadline of January 1, 2014.

The failure resulted in further breaches of civil provisions of superannuation and corporate laws, he said. The banks have a week to respond to Mr Hodge's submission.

Mr Hodge said **NAB committed a criminal breach of superannuation laws because its superannuation trustee company, NULIS, failed to make sure the super funds it controlled were run solely for the benefit of members.**

This was "by deducting amounts from the fund for a purpose that was not for one of the core or ancillary purposes set out in that provision", he said.

He said NAB also committed crimes by failing to report serious financial service licence breaches to ASIC within 10 days and civil breaches by engaging in misleading and deceptive conduct.

"The misconduct … may be attributable, at least in part, to the culture and governance practices within the NAB Group," Mr Hodge said. He threw doubt on evidence given by NAB head of wealth Andrew Hagger about a phone call with ASIC commissioner Greg Tanzer during which Mr Hagger failed to tell Mr Tanzer the bank's compensation bill over its fees for no service scandal would be much bigger than previously thought.

"We submit that Mr Hagger's description of the call as 'open and transparent' is not accurate," Mr Hodge said.

"It is also submitted that Mr [Paul] Carter, Ms [Nicole] Smith and Mr Hagger from NAB demonstrated a lack of insight into the problems with the conduct of NAB Wealth and the trustee and an unwillingness to acknowledge problems with the behaviour of the entities for which they were responsible, including behaviour that had continued until recently or in a few cases still continues," he said.

"Assessed as a whole, it is submitted that this behaviour indicates a disregard on the part of the NAB Group for members of the relevant superannuation funds, for regulators and for the law."

The corporate regulator is planning to ask the Commonwealth Director of Public Prosecutions to launch action against NAB on its behalf.

Mr Hodge also blasted IOOF chief executive Chris Kelaher for giving evidence in which he "appeared to lack insight into why the conduct of IOOF was problematic; how [superannuation subsidiary] IIML had preferred its own interests to the interests of the members of the superannuation fund; why the

concerns of APRA were well-founded; or the fundamental obligations of a trustee and the directors of a trustee".

Mr Hodge said AMP breached a bevy of sections of SIS Act that ensured funds operated in the best interests of members and managed conflicts of interests between divisions of the business. Mr Hodge said it was open to find that AMP was "unable or unwilling" to terminate deals between its divisions even where the fees and charges of were so high they eroded investment returns.

The evidence heard by the commission suggested "that the approach of neither APRA nor ASIC to regulation of superannuation entities is sufficient to achieve specific or general deterrence", he said.

"The **evidence suggests that APRA is reluctant to commence court proceeding and to take public enforcement action.**

"Its approach to dealing with the intransigence of IOOF could not be considered to be effective in achieving deterrence or generating the development of insight on the part of IOOF.

"It might be thought APRA's objective of ensuring financial system stability is not readily reconciled with being an effective conduct regulator."

He said that when dealing with CBA "it might be thought that if the largest company in Australia by market capitalisation is negotiating with ASIC on the premise that it could seek to persuade ASIC to issue a media release rather than insisting upon an enforceable undertaking, after ASIC has provided a document outlining the **contraventions that ASIC believed CBA had engaged in, that suggests the collapse of ASIC's regulatory authority".**

ASIC's failure to take legal action against ANZ over a breach "may also send a message to the regulated population that ASIC lacks authority", he said.

The country's largest super fund, the $140bn industry fund AustralianSuper, was completely exonerated by the royal commission, recommending no conduct "constituted misconduct or conduct falling short of community standards and expectations".

Mr Hodge only questioned whether "political advertising" was "consistent" with the intention behind the "sole purpose" test, after questioning AustralianSuper boss Ian Silk about a TV commercial depicting banks as foxes in the super henhouse.

The commission recommended to no findings against union fund Energy Super, despite a scuppered merger with anti-union fund Equip that was thought to be in the best interests of members.

However, Hostplus' attempts to keep members with low balances in the $40 billion super fund and for sending allegedly misleading letters to members, which chief executive David Elia admitted was "sloppy", was open to findings of conduct falling below community expectations.

Melbourne-based Catholic Super's failed merger with a rival Sydney-based Catholic super fund was not misconduct, Mr Hodge recommended.

However, the fund may have breached rules requiring declaration of conflicts.

Source - The Australian - Ben Butler & Michael Roddan

Source URL (modified on 26 Aug 2018 - 11:47am): https://mail.reformnow.com.au/node/480