Draft Terms Of Reference Royal Commission Banking & Finance

Australian Banking and Finance Sector - In Dire Need Of Reform

Terms of Reference – Banking and Finance System Royal Commission

A Draft for discussion *- Dr Peter Brandson (CEO Bank Reform Now)*

Preamble: The banking system is flawed and faulty. It does not serve the needs or interests of customers, citizens or even the country. This is readily seen when one reviews the billions of dollars' worth of fines major banks around the world have had to pay since the 2008 Global Financial Crisis (GFC). These fines are a fraction of the profits made and usually involve deals that see bankers keep their liberty and their bonuses.

In fact - taxpayers, shareholders and customers end up paying the price for corporate crimes that involve: predatory lending; fraud, forgery; asset stripping of farmers, retirees, small businesses & "unsophisticated" investors; rate rigging; commodity market manipulation; money laundering; drugs & arms trafficking; terrorism funding; financial planner scandals; managed investment scheme scandals; insurance scandals; and tax evasion. All this can only be possible with a political and judicial system that is deliberately charged with protecting and rewarding wrongdoers. This is a systemic problem with politicians, regulators, judges, valuers, ratings agencies and major legal & accounting firms all playing a role facilitating these crimes. This explains why it has been so difficult to bring about a full investigation of the system. There are powerful vested interests that want to maintain the status quo and they appear to have significant power over the political class.

The Australian Big Four banks did not survive the 2008 GFC in the way that has been portrayed by bankers, politicians and the mainstream media. Billions of dollars had to be pumped into NAB and Westpac by the US Federal Reserve. Quantitative easing, bank borrowing guarantees and record low interest rates are a last ditch effort to keep a disintegrating financial system afloat. Asset prices globally are being crudely propped up to give the illusion that all is well.

Our banks are linked to a worldwide Federal Reserve System and their shareholders are in large part foreign banking interests. The Bank of International Settlements (BIS) sits at the top of the pyramid. The system is debt based and has placed all nations into unsustainable never to be repaid debt but our hard earned tax dollars are transferred to pay interest while more and more of our people live lives of quiet desperation. Any ensuing crisis will be exploited to put in place further limitations on Australian sovereignty and deeper austerity measures which will be used to excuse and facilitate the sale of Australian assets to foreign interests.

Our government has the constitutional authority to be involved in the supply of money. Various historical events have managed to transfer this important responsibility to a powerful cartel of private banking interests. It is possible to create a system that allows the "profits" of credit creation to remain with the people. The only way this can work is by having an accountable, transparent and honest monetary system operating in the interests of the citizens and their nation. In addition we must have effective democratic institutions with honest and accountable elected representatives watching over this on our behalf.

This Royal Commission seeks to use its extraordinary powers to fully expose how the system operates. We will hear from the industry players – past and present – as well as bank customers. We will seek to facilitate recompense to bank victims. We will seek to punish bankers and their associates that are found to be criminally abusing their positions. We will investigate proposals that will make the system sustainable, honest and fair.

Note from Bank Reform Now team and CEO - Dr Peter Brandson: We believe the terms below to be a gold standard that covers the key issues requiring investigation while leaving scope for further expansion as the inquiry progresses. Significant research and discussion has helped formulate this

proposal. Many industry and political insiders will much prefer a watered down inquiry if they can't actually stop it altogether. People wanting a proper inquiry will need to make it very clear to all supportive parties and politicians that they want to go for gold. At this point it is clear that One Nation, Katter's Australian Party, Nick Xenophon Team, the ALP and The Greens support a Royal Commission. Let's see which parties and politicians also want to go for gold.

Draft Terms of Reference:

Implement a commission of inquiry with extraordinary powers to investigate all facets of the banking and finance system. Including, but not limited to, business practices, conduct and culture with regard to:

1) The provision of mortgage lending, including investigation of:
i. the contract terms and nature
ii. the promissory note (the essence of the lender borrower relationship)
iii. the asymmetry of power and knowledge between lender and borrower
iv. the irrevocable power of attorney

v. the falsely held common belief that banks lend to borrowers only money that has been deposited by savers

2) Banks and the vertical integration of their associated services, including:
i. everyday banking, credit cards, financial planning, wealth management and assorted insurance products

ii. conflicts of interest and whether these systems encourage illegal, unethical, predatory and unconscionable business practices

3) Individual bank victims and their experiences of bank activities such as:
i. Predatory lending
ii. Fraud and unconscionable conduct eg asset stripping of farmers, investors, retirees and small & medium sized businesses. *[See explanatory notes for examples of key cases that have supposedly been reviewed by various government inquiries].*

iii. Corrupted dispute resolution procedures including the Financial Ombudsman Service and Farm Debt Mediation structures

4) Groups of bank victims involved in particular scandals such as:
i. CBA – Commonwealth Financial Planning
ii. CBA – Comminsure
iii. CBA / Bankwest
iv. ANZ / Landmark
v. Managed Investment Schemes eg Timbercorp, Great Southern
vi. NAB Wealth
vii. Storm Financial
viii. Trio Capital

5) The salary and remuneration structures for bank staff, CEOs and Directors including:
i. compensation plans
ii. bonus schemes
iii. promotion pathways
iv. other business boosting incentives
v. whether these systems encourage illegal, unethical, predatory and unconscionable business practices
vi. whether these practices cause damage to the interests of clients
vii. whether these practices align with a bank's duty of care to clients
vii. whether these practices are congruent with the Banking Code of Conduct

viii. whether these remuneration systems create an irreconcilable conflict of interest between bankers and their clients

6) The relationship between banks, governments, politicians and political parties, including:

i. donations from banks and related entities to political parties
ii. lobbying activities of banks and related entities aimed at influencing political decision making
iii. the “revolving door” phenomenon whereby influential players in the government and business can swap employment positions lucratively from the private to the public sphere and vice versa

iv. whether these practices have a corrupting influence on decision making

7) The relationships between banks and associated industries and structures involved in the business model of banking and the regulation of banking, including:

i. the receiver, liquidator, insolvency sector – including an airing and rectification of the current anomaly by which the liquidator is under the authority of the borrower at law but acts exclusively under the authority – and in the interests - of the lender de facto.
ii. property valuers
iii. the judiciary, lawyers & law firms
iv. regulators such as ASIC, APRA, FOS
v. ratings agencies and their assessments of financial products
vi. major accounting, actuarial and auditing services
vii. conflicts of interest that are created by these relationships

viii. inquiry into the costs that are borne by bank customers due to these relationships and the practices that they encourage

8) Investigate potential conflicts of interest and inequities regarding the function of the courts in bank related litigation such as:

i. the prevalence and the probity of having judges preside over bank litigation when they have possibly acted regularly for banks prior to their elevation to the bench – and, in particular, for the same bank currently in litigation
ii. the judiciary currently having no requirements of a public listing of assets and financial interests and relationships; this absence deserves exposure and rectification, with subsequent proscription of a judge presiding where there is a manifest personal conflict of interest.
iii. the volume of lawyers with a self-interest in supporting banks makes it very difficult for bank victims to get competent and genuinely independent legal assistance.

iv. the lack of Equality of Arms. When a bank takes on a customer the customer must have equal access to legal expertise. Without this a fair hearing is impossible and justice unobtainable.

9) Investigation of the interactions between banking & related interests, government policy (including taxation) and the price of housing.

10) Investigation of the opportunity cost to the nation of the current debt based monetary system as opposed to a Sovereign Monetary system. The current system sees far too much of the nation’s wealth transferred to banking and associated interests. In other words financial system players are receiving a disproportionate share of the wealth of the nation and its people. Related issues to investigate will include:

i. The role and influence of international government and non-government organisations

ii Whether systems can be developed to enable “profits” from the provision of a well-functioning monetary system to remain with the Sovereign people.

11) The nature of Investment Banking versus Trading Bank services, including an investigation of:

i. derivative trading
ii. junk bonds
iii. mortgage backed securities

iv. Bail out systems, bail in systems, government guarantees and their effects including that of moral hazard regarding bank behaviour and decision making
v. Bail in bonds
vi. Mortgage bubble
vii. Derivatives bubble
viii. Credit Default Swaps
ix. Fractional Reserve Banking
x. How speculative “casino” investment banking has transferred wealth away from genuinely productive people, firms and countries while directly leading to the 2008 Global Financial Crisis.

xi. Glass Steagall type laws to insulate regular users of saving banks from the above machinations.

12) The proper protections and financial compensation of financial system personnel that expose illegal and unethical practices i.e. Whistleblower protections

13) The investigation of banks and their facilitation of criminal activity including, but not limited to:
i. money laundering
ii. drug trafficking
iii. arms trafficking
iv. terrorism funding
v. interest rate rigging (bank bill swap rate (Australia’s LIBOR scandal) - its effect on the economy as a whole and on the cost of living of all citizens
vi. tax evasion

14) Appropriate penalties and enforcement of penalties on banking and financial system personnel involved in criminal / unethical / predatory conduct. Penalties to consider include:
i. confiscation of ill-gotten assets
ii. jail terms

iii. compensation of bank victims with non-tax-deductible payments made by the guilty personnel and the financial institution where required

15) Any matters relevant to further understanding of the above material and concepts.

Powers of the Inquiry:

This is a comprehensive investigation with wide-ranging powers. All relevant documents regarding any aspect of investigation will be made available by banking and regulatory institutions. Destruction or “loss” of documents will not be tolerated, will be subject to investigation and may lead to penalties where appropriate.

Persons of interest shall be required to appear and answer all questions. Deception and obfuscation will not be tolerated.

All evidence collected will be made available to facilitate compensation to victims and prosecution of criminal actions.

Notes / Explanations / References / Examples regarding issues of import:

A) Investigate the 2008 CBA takeover of Bankwest and allegations of unconscionable foreclosures of Bankwest borrowers, including:

a) all events and evidence relating to the price adjustment and Dispute Notice process which occurred after the takeover; including but not limited to notices issued pursuant to clause 10 (Dispute Notice) of the 2008 Bankwest Share Sale Deed;

b) all events and evidence relating to the Warranty Claim Notice process which occurred after the takeover; including but not limited to notices issued pursuant to clause 16 (Warranty Claim Notices) of the 2008 Bankwest Share Sale Deed;

c) The use of non-monetary default provisions within credit contracts which CBA/Bankwest relied upon to deem customers as impaired pursuant to the provisions of the 2008 Bankwest Share Sale Deed.

d) Investigate the allegations that CBA/Bankwest used unconscionable, misleading or deceptive conduct to cause customer loans to be categorised as impaired as at the 19th Dec 2008. The process of causing these loans to be categorised as impaired as at 19th Dec 2008, can have occurred;

(1) prior to 19th Dec 2008; or

(2) on, or after 19th Dec 2008 using the aforementioned retrospective impairment claim processes in (a) and (b);

e) all events and evidence relating to the capital adequacy of CBA and Bankwest and CBA's wholesale funding obligations of the Bankwest loan book;

f) ascertaining whether the executives of CBA, Bankwest or any of its receivers gave testimony in Parliament that was misleading;

g) ascertaining whether the conduct of Executives and Board members within CBA & Bankwest contravene any points of civil or criminal liability pursuant to the relevant legislation;

h) the role of insolvency practitioners and valuers in the unconscionable foreclosures;

i) the role of the regulators relating to the takeover; and

j) any other relevant information.

B) Investigation of ANZ takeover of Landmark Dec 2009 and subsequent foreclosure of Landmark borrowers will require:

- subpoena all documentation relevant to ANZ purchase and subsequent re-configuring of Landmark borrower facilities.

C) Examination of entire loan process for SMEs / farmers with a view to investigating the potential for entrapment of borrowers will require assessment of:

a) the nature of the contract (especially in the light of recent changes to ‘unfair contracts’ legislation);

b) the nature of facilities (esp short-term, including the now favoured bill facility, for long term purposes, but which facilitate default);

c) the nature of security demanded, including guarantees by principals and other parties;

d) the extent of verbal promises by lending officers, later reneged on or denied;

e) the imposition, often discretionary, of usurious penalty interest rates;

f) the pursuit of the foreclosed borrower to bankruptcy (proscribing the latter's legal redress).

D) Previous government inquiries and cases highlighting particularly heinous crimes:

i. 2012 - The post-GFC banking Sector Inquiry – Featured CBA / Bankwest Scandal

à Final Report

à Submissions - e.g. **Mr Trevor Eriksson** (PDF 260KB) (CBA / Bankwest), **Mr Sean Butler** (PDF 296KB) (CBA / Bankwest)

ii. 2013 – The performance of the Australian Securities and Investments Commission

à Final Report

à Submissions - e.g. **Ms Jean Andersen** (PDF 99 KB) (CBA); **Dr Barry Landa** (PDF 266 KB) (NAB); **Mr Tony Rigg** (PDF 127 KB) (CBA), **Claire & Chris Priestley** (PDF 317 KB) (NAB)

iii. 2016 - Impairment of Customer Loans

à Final Report

à Submissions – e.g. **Dr Barry Landa** (PDF 28 KB) (NAB), **Mr Anthony Thomas Rigg** (PDF 98 KB) / (PDF 2183 KB) (CBA), **Mr Michael Sanderson** (PDF 424 KB) (BOQ), **Mr & Mrs Philipp and Lynne Kreutzer** (PDF 277 KB) (NAB), **Ms Suzi Burge** (PDF 44 KB) (CBA), **Ms Jean Andersen** (PDF 237 KB) (CBA), **Ms Faye Andrews** (PDF 174 KB) (NAB), **Mr Sean Butler** (PDF 342 KB) (CBA / Bankwest), **Ms Rita Troiani and Ms Janine Barrett** (PDF 125 KB) (NAB), **Mr & Mrs Rodney & Ioanna Culleton** (PDF 218 KB) (ANZ), **Mr Adrian Beamond and Ms Deborah Smith** (PDF 278 KB) (ANZ), **Mr Trevor Eriksson** (PDF 291 KB) (CBA / Bankwest), **Mr Chris Evanian** (PDF 7394 KB) (CBA / Bankwest)

iv. Other Noteworthy Cases - likely to be confidential in any inquiries to date:

Rory O'Brien (CBA / Bankwest) - Developer Rory O'Brien sues Bankwest / CBA lied to NSW sheriff over BankWest loan / Developer Rory O'Brien settles Bankwest dispute

Jim and Debbie Barker (CBA) - CBA court battle: Couple whose home was repossessed says bank forged signature

Giulia Mandarino (CBA) - CBA was aware of fraud allegations

Thomas Brookes (ANZ) - ANZ Bank exposed falsifying documents & stealing family's home

Patricia Thirup (NAB) - Mortgage fraud scandal

Erica Biritz (NAB) - A NAB act of treachery comes back to bite the bank

Malcolm Taylor (NAB) - NAB not off the hook in butchered docs deal

v. Evan Jones Reports on what governments and their inquiries appear to miss:

To fix Australia's banking culture: Start sending bank CEOs to gaol

The Dark Side of the Commonwealth Bank

Illusion and Reality at the National Australia Bank

E) Explanations of credit creation

Modern Money Mechanics – the Federal Reserve Bank of Chicago

Money Creation In The Modern Economy – The Bank of England

F) The GDP conundrum. When a bank writes up dodgy loans or sells a useless insurance policy the nation's GDP increases. Similarly GDP is boosted when bushfires destroy properties that are subsequently rebuilt or when governments purchase weapons used to destroy properties in other nations. The point being that GDP is not a good way of measuring prosperity, wellbeing and happiness of ordinary people. Any growth, movement of capital or business activity - whether useful of not - enriches upper echelon financial interests. Bank Reform Now has discussed this key point before. A properly functioning banking and finance system must serve the interests of the people. Reforming the system after an effective inquiry will improve many facets of our nation including the time people have to spend enjoying their lives free of much of the financial stresses and strains that have been imposed on them.

G) Well off nation or well off banks? Genuine reforms will lead to a more honestly run banking system. The banks will not be able to benefit from criminal and unethical business practices. They will become less profitable - therefore lower dividends, less capital gains and less CEO pay will become the norm. This is not a problem. Banking and the monetary system is a utility that helps people trade goods and services. The people involved in this system do not have any right to a disproportionate share of the nation's wealth. The pay for people in this and associated industries will normalise to a far more realistic level along with their profits and influence on society. Investors will be free to direct their capital and interest to profitable and hopefully useful business ventures. This change is long overdue and will lead to a much better way of life for the vast majority of people.

H) Elements of a Contract

1. Offer - One of the parties made a promise to do or refrain from doing some specified action in the future.

2. Consideration - Something of value was promised in exchange for the specified action or non-action. This can take the form of a significant expenditure of money or effort, a promise to perform some service, an agreement not to do something, or reliance on the promise. Consideration is the value that induces the parties to enter into the contract.

The existence of consideration distinguishes a contract from a gift. A gift is a voluntary and gratuitous transfer of property from one person to another, without something of value promised in return. Failure to follow through on a promise to make a gift is not enforceable as a breach of contract because there is no consideration for the promise.

3. Acceptance - The offer was accepted unambiguously. Acceptance may be expressed through words, deeds or performance as called for in the contract. Generally, the acceptance must mirror the terms of the offer. If not, the acceptance is viewed as a rejection and counteroffer.

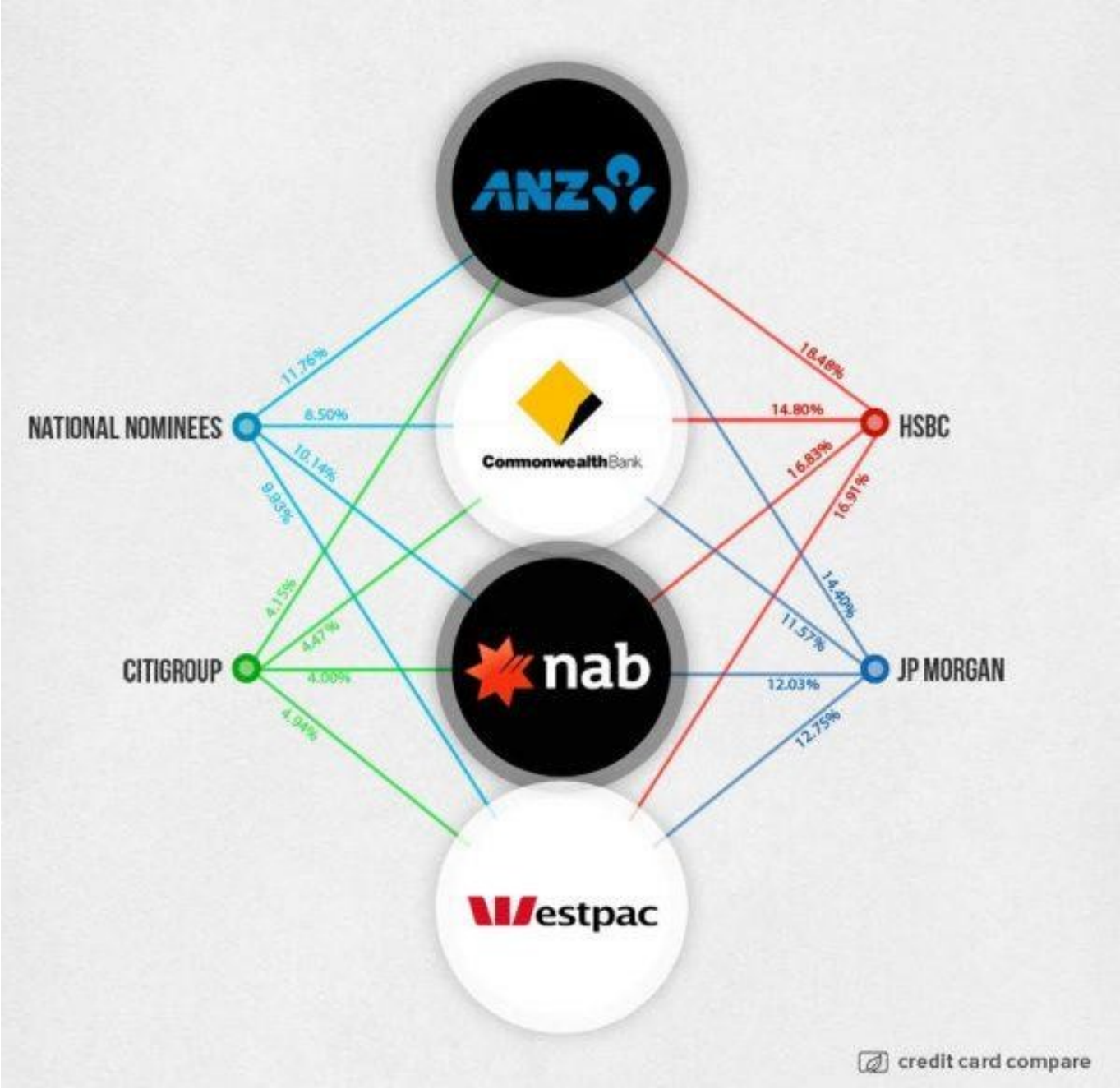
If the contract involves a sale of goods (i.e. items that are movable) between merchants, then the acceptance does not have to mirror the terms of the offer for a valid contract to exist, unless:

(a) the terms of the acceptance significantly alter the original contract; or

(b) the offeror objects within a reasonable time.

4. Mutuality - The contracting parties had "a meeting of the minds" regarding the agreement. This means the parties understood and agreed to the basic substance and terms of the contract.

I) Ownership Structure of the Big Four Australian Banks.



HSBC, the biggest shareholder in each of the Big Four, is one of the major international banks with a very well-known and publicly documented record of criminal activity. See:

Banking Giant HSBC Sheltered Murky Cash Linked to Dictators and Arms Dealers

Gangster Bankers: Too Big to Jail – How HSBC hooked up with drug traffickers and terrorists. And got away with it

J) By 2015 more than 23% gross corporate incomes (17% of total business incomes) were going to the finance sector. This is totally unjustifiable, unreasonable and not conducive to a just society.

Source: Australian Bureau of Statistics, 5206.0, *Australian National Accounts*, Table 7: Income from Gross Domestic Product (GDP), Current Prices

The first table is a summary done several years ago. The second table updates the figures for the last few years. Note: Gross mixed income is income of unincorporated businesses.

Australia: Gross Business Income at Current Prices (Selected) $ million

Date	Gross Operating Surplus				Gross Mixed Income		
	Non-Fin'l Corp'ns	Financial Corp'ns	Total Corp'ns	Fin'l / Total Corp'ns %		GOS Corp'ns & GMI	Fin' Tota
1980-81	26260	1413	27671	5.1	19268	46939	3.0
1991-92	78680	9614	88295	10.9	39298	127593	7.5
2012-13	291276	73092	364369	20.1	119257	483626	15.

Australia: Gross Business Income at Current Prices (Selected) $ million

Date	Gross Operating Surplus				Gross Mixed Income		
	Non-Fin'l Corp'ns	Financial Corp'ns	Total Corp'ns	Fin'l / Total Corp'ns %		GOS Corp'ns & GMI	Fi Tot
2009-10	261122	62465	323586	19.304	108675	432261	14.
2010-11	295308	65297	360606	18.108	116863	477469	13.
2011-12	308675	66558	375232	17.738	120364	495596	13.
2012-13	291828	73211	365040	20.056	122736	487776	15.
2013-14	305167	79354	384523	20.637	121129	505652	15.
2014-15	290601	83973	374574	22.418	130657	505231	16.
Dec-15	142193	43866	186058	23.577	70301	256359	17.

File Attachments: Draft-Terms-of-Reference-Banking-Royal-Commission-BRN(updated).pdf

Source URL (modified on 16 Sep 2018 - 8:14am): https://bankreformnow.com.au/node/295

© Bank Reform Now™ - Australian Non Profit Organsiation - campaigning to put a stop to predatory, unconscionable banking practices.