

This week, Australia hit a new low point in the politicisation of banking regulation.

In a [report](#) into the four major Australian banks, the members of the House Standing Committee on Economics were hopelessly divided along party lines about the answers given to them by the bank CEOs.

The [grilling](#) of the Big Four CEOs was less Stalinist show trial, than an episode of Australia's Got Talent. It was, as ex-CEO of ANZ said, “[a bit of theatre](#)”. If it wasn't such an important topic, the whole episode would be farcical.

The members of the government committee tried their best and have produced a set of ten recommendations, some of which are sensible but others betray a naiveté. For example, in Recommendation 2:

The committee recommends that, by 1 July 2017, the Australian Securities and Investments Commission (ASIC) require Australian Financial Services license holders to publicly report on any significant breaches of their licence obligations within five business days of reporting the incident to ASIC, or within five business days of ASIC or another regulatory body identifying the breach. [In particular,] the consequences for those senior executives and, if the relevant senior executives were not terminated, why termination was not pursued.

A significant breach in banking, if detected within five days, would almost certainly result in someone, somewhere getting fired pretty quickly. It's the misconduct that is not detected for years (such as fraud in financial planning) that really causes the problems for bank customers.

The banks may not even be aware of these issues, even the committee acknowledged this:

[The Commonwealth Bank of Australia](#) was unaware of serious misconduct – including fraud –

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in its financial planning division prior to a whistle-blower going public in 2013.

But the problem goes much deeper than the committee members falling out over what to do - they weren't even looking in the right place. The committee members were asking the wrong questions of the wrong people, and as a result, they got the wrong answers and made the wrong recommendations.

Section 198A of the Australian Corporations Act clearly [states](#) that:

The business of a company is to be managed by or under the direction of the directors.

So, if the buck stops with the board, why did the committee not question the senior directors of the big banks, in particular the chairmen, [senior independent directors](#) and chairs of risk committees?

This is precisely what parliamentary committees in various cases of misconduct in the UK banking system did, such as with [HBOS](#), [LIBOR](#) and [Northern Rock](#) scandals. The [Irish parliament](#) did the same for the directors of their largest banks. And, as a consequence of some very brutal questioning, several chairmen and CEOs of these banks fell on their swords.

The House Committee has been very insistent about “[naming and shaming](#)” lower-level executives who commit misdemeanours, why not directors also?

For one thing, it is easy to name the directors of banks. As their roles, responsibilities, CVs and sometimes pictures appear every year in their company's annual reports. We know how long directors have been in their various roles and, through commentaries in reports, what they are collectively thinking and what remuneration they are receiving.

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Australian CEOs come and go, at [increasingly shorter intervals](#) . But once appointed, directors tend to hang around for some time, often the only constants in a long-running scandal.

Perhaps an example might help.

Just this month David Turner, the chairman of the CBA, announced his retirement. In his last (and only) media interview Mr Turner decried the “Trumpism” that was causing “[bank bashing](#)” in Australia and in an echo of President-Elect Trump himself, blamed the victims:

“And why don’t we like it? Because there’s some element of life that we feel is slightly unequal, that we’re not totally happy about, and here’s a part that, [banks are] a perfect target.”

The only admission from Mr Turner was that “maybe” the bank had been slow to pick up the financial planning scandal in 2014.

A look at Mr Turner’s tenure as a director at CBA might give a clue as to why his testimony to a committee in parliament might give some insight into improving the regulation of banking.

David Turner, a chartered accountant by profession, was first appointed a director of CBA a decade ago. In that time, he has shared the boardroom with two CEOs, Sir Ralph Norris and now Ian Narev. In 2010, Mr Turner was appointed chairman and will pass that role onto Ms Catherine Livingstone, another chartered accountant, on New Year’s Day 2017.

Mr Turner’s elevation to chairman occurred at an interesting time. It was just two months after CBA, along with the other Big Four banks, settled a long-running case with the New Zealand Tax authorities for tax avoidance. It was [collectively the biggest such fines](#) in Australian banking history, CBA [coughed up](#) some NZ\$264 million as part of it.

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In his role as chairman, Mr Turner could not be held to blame for this fine for misconduct, but as a director Mr Turner had signed off on annual reports that insisted that CBA had nothing to answer for in relation to court actions. This was despite that fact that the appeals by CBA and others had been knocked back by [lower-level courts on several occasions](#). A capacity for not smelling the wind appears to be a necessary attribute for a CBA director.

Mr Turner may have been unlucky, but the New Zealand scandal was not the last that came up at CBA board meetings.

In 2008, CBA acquired Bankwest, a subsidiary of the failing Lloyds bank in the UK. Since then, the bank has been mired in fraud allegations, as customers alleged in a parliamentary inquiry that they were [thrown under the bus](#). In an echo of the New Zealand case, the bank's 2016 Annual report, stated the bank expected class actions to be discontinued.

In 2013, whistle blower Jeff Morris brought to the attention of the media the now-famous scandal at [Commonwealth Financial Planning](#). In 2014, CBA instituted a compensation scheme, which today is still mired in controversy over CBA [dragging its feet](#) in paying out customers.

In 2008 a Queensland financial planning firm, Storm Financial, went into liquidation and it was discovered that CBA and most of the other big banks had been lending money to customers to invest with [Storm](#). In 2012, CBA agreed to pay [compensation](#) of A\$136 million to customers over the Storm collapse. In 2016, the Storm scandal is still alive but [running out of steam](#).

In 2014, CBA fessed up to the fact that it had been charging customers for financial advice that had not been given, but as ASIC found this year, the bank has [not been very forthcoming](#) in providing customers with compensation. Of course, CBA can truthfully argue that [all the other major banks are also avoiding it](#).

The start of 2016 brought an even bigger scandal at [Comminsure](#), CBA's Insurance arm, in

which sick and dying customers were refused payouts for their illnesses. This was despite the fact that Mr Turner had [told shareholders](#) at the previous AGM that “we learnt our lessons from the financial advice situation”.

The final indignity for Mr Turner before retirement was, after having handsomely rewarded CEO Ian Narev with an industry-leading pay packet of some A\$12.3 million, the bank’s remuneration report [was knocked back by its shareholders](#). Last year Mr Turner earned considerably less than Mr Narev, but nonetheless [took home](#) a not insubstantial A\$800,000.

While there is no way that Mr Turner can be seen to be involved personally in these scandals, he has been a director and chairman throughout this period. And the questions he and other directors have to answer, is why did they not see these scandals coming and when the scandals erupted, why did the CBA board have to be dragged kicking and screaming into compensating their customers?

Nor is Mr Turner alone in presiding over disasters. The directors of all of the Big Four banks have, as the House Committee report shows, had their own scandals of tax avoidance, bad financial advice and accusations of market manipulation.

Unfortunately, there is no forum, other than a bank’s AGM, where such questions can be posed and answers demanded.

CEOs are only passing through but directors are there for the long-haul. A CEO, such as Ian Narev cannot reasonably be held responsible for the actions or non-actions of his predecessors but as their direct employers, directors can be questioned as to performance of executives and actions taken or not taken to control staff.

Next time, if there is a next time, the senior directors of the Big Four banks should be requested to attend the committee. Furthermore they should be questioned as a group over two days so that better use can be made of the time available and truly systemic issues can be investigated.

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And if a Banking Royal Commission is instituted, the terms of reference should include questioning the key directors in every bank. That will make them sit up and think in the meantime.

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