

## What the Royal Commission can do if the banks don't play ball on evidence

Written by Anna Olijnyk, Lecturer, Adelaide Law School, University of Adelaide

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At the [first round of hearings](#) of the Financial Services Royal Commission, the counsel assisting, Rowena Orr QC, was unimpressed with the material some of the banks have provided. The Commonwealth Bank provided two submissions, the first of which, according to Orr:

...adopted a high level and general approach, which meant that it did not disclose the totality of the conduct that it has engaged in...

The CBA's second submission was no more helpful: it consisted primarily of a large number of spreadsheets. Orr said these were "not in a form which made it possible to easily understand the type and the scale", of CBA's conduct.

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CBA wasn't alone; the National Australia Bank also won a mention from Orr for "failing to grapple with the task" set by the commissioner.

Can the Royal Commission do anything to get more useful information out of the banks? There are two issues here: what the Royal Commission can make the banks do, and what it has to ask the banks to do.

## What can the Royal Commission make the banks do?

The Royal Commission has several powers under the [Royal Commissions Act 1902](#) that might be used here. Failure to comply with the Royal Commission's requirements under these powers is punishable by up to two years' imprisonment.

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The Royal Commission can require the banks to produce documents. But this is not a power to make the banks create new documents to help the Royal Commission.

The Royal Commission can require witnesses to give evidence. Using this power, the Royal Commission could make key personnel within the banks attend the Royal Commission and answer questions about the bank's conduct.

It can also require a person to provide information, or a statement, in writing. This is probably limited to matters the person already knows about; it's not a power to order a person to conduct investigations to provide a full picture of a bank's conduct.

## What the commission can ask for

Quite apart from its coercive powers, the Royal Commission can ask the banks to provide the material it wants, in the form it wants. In fact, the commissioner wrote to the banks the day after the commission was established, inviting them to make submissions. It was in response to this invitation that CBA and NAB provided the documents Rowena Orr QC referred to on the first round of hearings.

The Royal Commission could ask the banks, for example, to provide as much or as little detail as the commission needs; to create summaries or chronologies of events; to explain how to interpret technical documents; to provide a full account of a specified event.

It would then be up to the banks as to whether (and when) they comply with the requests.

The banks have [announced](#) their intention to cooperate with the Royal Commission. Given this, it would be surprising to see the banks defying any reasonable requests for additional documents or information without giving a good reason.

But it's not quite as simple as "ask and it shall be given you". Banks hold millions of documents.

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Each bank stores its documents in a system that suits the bank's operational needs, and is unlikely to align with the Royal Commission's priorities. A request to collate all documents on a given topic might take the bank many hours of searching and analysis across multiple databases. The banks then may have to return to the Royal Commission to clarify what is required.

There's nothing to stop the Royal Commission using both coercive and cooperative techniques. It may, for example, ask banks to provide an overview of the handling of certain complaints, and then require the banks to produce certain documents mentioned in that summary.

But a combination of asking and demanding may be needed to get the information the Royal Commission needs.

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