

Financial System Inquiry -- Draft Terms of Reference

The community would probably like some more forthright reference points to guide expectations of ‘public interest’ outcomes and encourage thoughtfully compatible submissions.

Those making submissions could also be encouraged to consider carefully the broader public interest as distinct from promoting their private commercial interests and self-serving regulatory agendas.

Given that the panel will have particular inclinations, the present draft is probably too politely vague. The general community may not be able to articulate heartfelt grievances with the financial system, but issues known to be sensitive could be marked for attention at the outset.

The final terms of reference could give a clearer sense of purpose -- more specific focal points, all to be assessed in a context of promoting the general prosperity and welfare of all the people of Australia.

Suggested amendments

Four illustrative suggestions for more pointed terms of reference are elaborated below.

They are about:

- substituting **‘golden rule’ ethics** for ‘red tape’ regulation – i.e. ‘would you like that done to you?’;
- **‘clear’ and ‘coordinated’ statements of regulatory responsibilities and obligations** -- so that regulatory performance can be openly reviewed by an independent expert agency;
- reassessing ‘untouchable’ **housing policy settings** that divert national savings from productive investment into the ‘current consumption’ of housing assets sold at inflated prices; and
- exploring implications of promoting **‘competition’** – e.g. if subsidies, that banks now barter unfairly from the public purse, were to be withdrawn there would be very sensibly intended, but feared, consequences banks levying **‘full cost bank fees’**.

(1) Consumer protection: golden rule regulation

Consumers of financial services need to be better protected.

As drafted, there is no specific reference to ‘consumer protection’ issues. That sits uneasily with both current community disaffection for ASIC in particular and, implicitly, the ACCC and RBA, to say nothing of corporate attitudes underwriting misbehaviour that “is not illegal yet”.

Those inclined to behave badly might be less likely to do so, or play regulatory evasion games, if there was general provision for regulators to redress behaviour clearly inconsistent with a golden rule.

Golden-rule judgements are simply ethical and rarely complex --‘convictions’ would flow readily enough from the mouths of executives asked to explain why they would like what they did, to others, to be done to themselves, their family and their friends.

There are international fashions in financial system reform and the way could be left open for this inquiry to endorse some concept of a separate ‘consumer financial protection bureau’ along the lines of the new US agency of that name.

(2) Regulatory clarity and co-ordination: ‘not my job’ irresponsibility

The regulatory framework for the financial system lacks ‘clarity’ and ‘accountability’.

Well intentioned references – e.g. sections 4, 6 and 7 -- could be sharpened with more specific recognition of the need to tie ‘real regulatory accountability’ to ‘very clear regulatory responsibilities’. As is, overlapping and confused regulatory responsibilities are evaded and abandoned at the discretion of regulators never asked ‘what have you done about this?’ and ‘why not?’

Appointed regulators, not held accountable in any meaningful sense, soon set their own priorities and ‘corporate’ agendas with ready, ‘not my job either’, explanations as to why entrenched problems are not properly addressed by any one. Equally disturbing, regulators lacking clear and sufficient authority are reluctant to ask other regulators to co-ordinate action: – ‘no-cooperation’ mantras are excused as ‘not my call’ (possibly for fear of pot and kettle ripostes).

Hopefully, this inquiry will investigate, expose, and aim to correct, very real problems arising in key regulators -- RBA, APRA, ASIC, ACCC, ATO et al ---- being ‘unaccountable’ in any meaningful sense for outcomes widely considered ‘poor’ in ‘system efficiency’, ‘competition policy’, ‘consumer protection’ and inter-agency ‘policy co-ordination’.

[Note: ‘monetary policy’ – taken alone -- is not so fraught because professional market accountability is almost immediate in terms of rational-expectations for price stability and other economic indicator outcomes.]

(3) Funding Australia’s growth? – the addiction to housing assets

Diverting savings to higher priced housing leaves less for more productive assets.

This inquiry cannot ignore currently debilitating settings of ‘housing policy’ -- the public should be put on notice that these issues will be addressed.

Nothing beats ‘housing’ in importance as an illustration of the adverse consequences of failing to co-ordinate banking policy with fiscal policy in the broad and both with a raft of other national policy concerns in the detail.

Million-dollar homes of retirees become de-facto super funds: wealthy retiree, owner-occupiers draw full (no means-test) pensions while spending income-supplement loans from prospective heirs or the commercial equivalent, equity-eating, reverse mortgages. Negatively-gear investors, including selfie super-funds, speculating in an under-supplied housing market see banks embroiled and exposed in a ‘Ponzi-like scheme’ founded on public-purse pillows propping up regulators’ bailout obligations.

(4) Competition policy – needed but not wanted

This inquiry needs to clean up issues about competition in retail financial markets.

Decades-long political and regulatory blather about promoting competition in retail banking and financial services has been breathtaking in its blatant insincerity.

Banks leverage their ‘deposit taker’ licence to crush competitors: banks abuse market power arising in both tax-free bartering of ‘free deposits’ for ‘free services’ and similarly exploit domestic ‘joint-venture’ payment-card monopolies operated in association with the, also cartel-like, international card-schemes.

The draft agenda might table, for discussion, the likely consequences of introducing real competition in retail banking markets: e.g. popular banking transaction services may no longer be made available cheaply, with the benefit of a subsidy (unfairly) taken from the public purse. Conversely, banks providing more efficient services, priced to recover actual costs, would reduce total costs. [Free banking for the disadvantaged would still be subsidised but separately.]

There are risks in complacency. As with newspapers, technical innovation in communications may let a ‘competition genie’ out of the bottle. Risk of the ‘competition genie’ not being contained, suggests ‘quick’ is best about putting the retail banking system on a competitively sound footing.

The general community will not blithely accept some consequences of a genuinely competitive banking system. This inquiry might like to ready the community for the reality of allowing real banking competition – not least explaining how benefits will exceed costs.

End piece

An implicit question posed here is about the consequences of the terms of reference being expressed more clearly. No one wants to see an open inquiry ‘directed’ or risk expectations of outcomes disturbing the community -- nonetheless it is, conversely, unlikely that the inquiry will proceed without a prior sense of appropriate purpose. To that end, I would encourage the terms of reference to be expressed more illustratively explicitly.

In my mind, the quicker the better it will be that the community, aided by the media, is put on notice to be open minded about the way some contentious issues are likely to be recognised and resolved.

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