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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**People of Australia's Commission of  
Inquiry (Banking and Financial Services)  
Bill 2017**

**No.     , 2017**

*(Mr Katter)*

**A Bill for an Act to establish a People of Australia's  
Commission of Inquiry into banking and financial  
services in Australia, and for related purposes**



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1 **A Bill for an Act to establish a People of Australia’s**  
2 **Commission of Inquiry into banking and financial**  
3 **services in Australia, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**  
6

7 **1 Short title**

8 *This Act is the People of Australia’s Commission of Inquiry*  
9 *(Banking and Financial Services) Act 2017.*

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.

6

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 20	The day the Consolidated Revenue Fund is appropriated under an Act to the Treasury to fund the People of Australia's Commission of Inquiry (Banking and Financial Services).	

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7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.  
11 Information may be inserted in this column, or information in it  
12 may be edited, in any published version of this Act.

13 **3 Simplified outline of this Act**

14 This Act establishes the People of Australia's Commission of  
15 Inquiry (Banking and Financial Services).  
16 The Commission has the same powers as a Royal Commission.

17 **4 Definitions**

18 In this Act:

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- 1           **APRA** means the Australian Prudential Regulation Authority.
- 2           **ASIC** means the Australian Securities and Investments  
3           Commission.
- 4           **banking or financial services provider** means an entity that  
5           provides banking or financial services including:
- 6           (a) an entity that carries on a banking business (within the  
7           meaning of the *Banking Act 1959*) in Australia; and
- 8           (b) an entity that carries on a financial services business (within  
9           the meaning of Chapter 7 of the *Corporations Act 2001*) in  
10           Australia; and
- 11           (c) an entity that, in Australia, carries on the business of  
12           undertaking liability, by way of insurance (including  
13           reinsurance), in respect of any loss or damage, including  
14           liability to pay damages or compensation, contingent upon  
15           the happening of a specified event, including:
- 16           (i) a general insurer (within the meaning of the *Insurance*  
17           *Act 1973*); and
- 18           (ii) an entity that carries on a life insurance business (within  
19           the meaning of the *Life Insurance Act 1995*) in  
20           Australia; and
- 21           (d) an entity that engages in a credit activity (within the meaning  
22           of the *National Consumer Credit Protection Act 2009*).
- 23           **Commission** means the People of Australia's Commission of  
24           Inquiry (Banking and Financial Services) established under section  
25           5.
- 26           **consumer** means a person to whom a banking or financial services  
27           provider provides a service in Australia.
- 28           **Judge** means a Judge of the High Court, of a court created by the  
29           Parliament or of the Supreme Court of a State or Territory.
- 30           **Treasury** means the Department administered by the Treasurer.
- 31           **unethical conduct** includes:

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- 1 (a) the generation of profits by a banking or financial services  
2 provider in a manner, or to an extent, that:  
3 (i) unreasonably disadvantages consumers, or has the  
4 potential to unreasonably disadvantage consumers; or  
5 (ii) is detrimental, or has the potential to be detrimental, to  
6 the Australian economy; and  
7 (b) the payment of remuneration packages to officers or  
8 employees of a banking or financial services provider that:  
9 (i) do not reflect the value of the work done by those  
10 officers or employees for the provider; or  
11 (ii) do not reflect the value of the contribution of those  
12 officers or employees to the service provided by the  
13 provider to consumers; or  
14 (iii) are detrimental, or have the potential to be detrimental,  
15 to the Australian economy; or  
16 (iv) are detrimental, or have the potential to be detrimental,  
17 to consumers; and  
18 (c) the adoption of business practices that:  
19 (i) unreasonably disadvantage consumers, or have the  
20 potential to unreasonably disadvantage consumers; or  
21 (ii) are detrimental, or have the potential to be detrimental,  
22 to the Australian economy; and  
23 (d) any other unethical conduct.

24 ***unlawful conduct*** includes:

- 25 (a) conduct that constitutes an offence under a law of the  
26 Commonwealth, or of a State or Territory; and  
27 (b) conduct that constitutes a contravention of a civil penalty  
28 provision under a law of the Commonwealth, or of a State or  
29 Territory; and  
30 (c) conduct that would attract any other penalty under a law of  
31 the Commonwealth, or a State or Territory, including a  
32 breach of a standard or licence condition; and  
33 (d) conduct that is not in accordance with duties under the  
34 general law, including duties in equity.

1 **Part 2—Establishing the People of Australia's**  
2 **Commission of Inquiry (Banking and**  
3 **Financial Services)**  
4

5 **5 People of Australia's Commission of Inquiry (Banking and**  
6 **Financial Services) is established**

- 7 (1) A commission is established by this subsection, to be known as the  
8 People of Australia's Commission of Inquiry (Banking and  
9 Financial Services).
- 10 (2) The Commission is constituted by 6 Commissioners, consisting of:  
11 (a) 3 Judges, or former Judges; and  
12 (b) 3 representatives of the Australian community.
- 13 (3) The Commissioners are to be appointed by a committee of  
14 members of the House of Representatives.
- 15 (4) The committee of members of the House of Representatives is to  
16 consist of:  
17 (a) a person nominated by the Prime Minister; and  
18 (b) a person nominated by the leader of the Opposition; and  
19 (c) a person nominated by a member of the Australian Greens  
20 who is:  
21 (i) a member of the House of Representatives; or  
22 (ii) if there is no member of the Australian Greens who is a  
23 member of the House of Representatives—a senator;  
24 and  
25 (d) a person nominated by a member of the Nick Xenophon  
26 Team who is:  
27 (i) a member of the House of Representatives; or

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- 1 (ii) if there is no member of the Nick Xenophon Team who  
2 is a member of the House of Representatives—a  
3 senator; and  
4 (e) a person nominated by a member of Katter's Australian Party  
5 who is:  
6 (i) a member of the House of Representatives; or  
7 (ii) if there is no member of Katter's Australian Party who  
8 is a member of the House of Representatives—a  
9 senator.
- 10 (5) The committee must also appoint one of the 6 Commissioners to be  
11 the Presiding Member of the Commission.
- 12 (6) A decision of the committee is made by the agreement of a  
13 majority of members of the committee.

14 **6 Terms of reference**

- 15 The matters into which the Commission must inquire are:  
16 (a) whether banking or financial services providers are engaged  
17 in unethical or unlawful conduct and, if so, the nature of that  
18 conduct; and  
19 (b) whether the infrastructure is in place to ensure that banking  
20 or financial services providers do not engage in unethical or  
21 unlawful conduct, including:  
22 (i) whether the laws governing the conduct of banking or  
23 financial services providers are sufficient to ensure that  
24 those providers do not engage in unethical or unlawful  
25 conduct; and  
26 (ii) whether the agencies regulating the conduct of banking  
27 or financial services providers are effective in ensuring  
28 that those providers do not engage in unethical or  
29 unlawful conduct, and if not why not; and  
30 (iii) whether there are alternatives, of practical use to  
31 consumers, to help consumers fairly resolve disputes  
32 with banking or financial services providers; and

- 1 (c) the fairness and propriety of current contractual practice in  
2 terms of the rights of consumers (including borrowers) and  
3 the responsibilities of banking or financial services providers  
4 (including lenders); and  
5 (d) whether the conduct of banking or financial services  
6 providers in their current practices and procedures are failing  
7 to facilitate a fair and commercially conducive business  
8 framework; and  
9 (e) any matter that is reasonably incidental to a matter mentioned  
10 in paragraph (a), (b), (c) or (d).

11 **7 Report to the Parliament**

- 12 (1) The Commission must submit to the Speaker of the House of  
13 Representatives a report containing:  
14 (a) the Commission's findings of fact; and  
15 (b) the Commission's recommendations as a result of the  
16 inquiry.
- 17 (2) The report must be submitted on or before the end of the period of  
18 2 years starting on the commencement of this section, unless that  
19 period is extended (see section 8).
- 20 (3) The Commission must submit with its report a record of so much  
21 of the evidence before the Commission as the Commission thinks  
22 necessary to substantiate its findings of fact and its conclusions.
- 23 (4) If the Commission is of the opinion that, if any of its findings or  
24 conclusions or any of the evidence given before the Commission  
25 were laid before the Houses of the Parliament:  
26 (a) a person who has been or may be charged with an offence  
27 might not receive a fair trial for the offence; or  
28 (b) the conduct of an investigation of a breach or possible breach  
29 of the law, might be prejudiced; or  
30 (c) the existence or identity of a confidential source of  
31 information in relation to the enforcement or administration

**Section 8**

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- 1 of the law might be disclosed or a person enabled to ascertain  
2 the existence or identity of that source; or  
3 (d) there might be prejudice to the safety or reputation of a  
4 person;  
5 the Commission may submit those findings or conclusions, or that  
6 evidence, to the Speaker of the House of Representatives in a  
7 separate report, together with a statement of its opinion.
- 8 (5) As soon as practicable after receiving the report and record of  
9 evidence, the Speaker of the House of Representatives must cause  
10 copies of the report and record, other than a separate report  
11 submitted under subsection (4), to be laid before each House of the  
12 Parliament.
- 13 (6) The Minister must table the Government's response to the report  
14 within 6 months after copies of the report are laid before the House  
15 of Representatives.

**8 Extending the period within which the Commission may report**

- 16 (1) The Commission may request an extension of the period within  
17 which the Commission must report under section 7 by notice in  
18 writing to the Speaker of the House of Representatives.  
19
- 20 (2) If the Commission requests an extension, the Speaker must  
21 convene a committee made up of members of the House of  
22 Representatives to consider the request.
- 23 (3) The committee of members of the House of Representatives is to  
24 consist of:  
25 (a) a person nominated by the Prime Minister; and  
26 (b) a person nominated by the leader of the Opposition; and  
27 (c) a person nominated by a member of the Australian Greens  
28 who is:  
29 (i) a member of the House of Representatives; or

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- 1 (ii) if there is no member of the Australian Greens who is a  
2 member of the House of Representatives—a senator;  
3 and  
4 (d) a person nominated by a member of the Nick Xenophon  
5 Team who is:  
6 (i) a member of the House of Representatives; or  
7 (ii) if there is no member of the Nick Xenophon Team who  
8 is a member of the House of Representatives—a  
9 senator; and  
10 (e) a person nominated by a member of Katter's Australian Party  
11 who is:  
12 (i) a member of the House of Representatives; or  
13 (ii) if there is no member of Katter's Australian Party who  
14 is a member of the House of Representatives—a  
15 senator.
- 16 (4) The committee may extend the period within which a report is to  
17 be given.
- 18 (5) A decision of the committee is made by the agreement of a  
19 majority of members of the committee.

Section 9

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1     **Part 3—Powers of the People of Australia's**  
2             **Commission of Inquiry (Banking and**  
3             **Financial Services)**  
4

5     **9 Hearings**

- 6             (1) The Commission may hold hearings.
- 7             (2) The hearings may be held at such places as the Commission  
8             determines.
- 9             (3) Subject to this Act, the procedure at a hearing is to be such as the  
10            Commission determines.

11    **10 Commission not bound by the rules of evidence**

12            The Commission is not bound by the rules of evidence and may  
13            inform itself on any matter in such manner as it thinks fit.

14    **11 Application of the *Royal Commissions Act 1902***

- 15            (1) Subject to this section, the *Royal Commissions Act 1902*, and  
16            regulations made under that Act (the ***Royal Commissions***  
17            ***Regulations***), apply in relation to the Commission, and to the  
18            Commissioners conducting it, as if:  
19            (a) the Commission were a Royal Commission; and  
20            (b) each Commissioner were a member of a Royal Commission.
- 21            (2) The Governor-General may make regulations (under this  
22            subsection), amending the Royal Commissions Regulations, as the  
23            Royal Commissions Regulations apply in accordance with  
24            subsection (1) of this section.
- 25            (3) Sections 10 and 15 of the *Royal Commissions Act 1902*, in their  
26            application in accordance with subsection (1) of this section, have

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1 effect as if references in those sections to offences against that Act  
2 included references to such offences as apply in accordance with  
3 subsection (1) of this section.

4 (4) If a body corporate is convicted of an offence against the *Royal*  
5 *Commissions Act 1902*, in that Act's application in accordance  
6 with subsection (1) of this section, the court may impose a  
7 pecuniary penalty not exceeding 10 times the amount of the  
8 maximum pecuniary penalty that could be imposed by the court on  
9 an individual convicted of the same offence.

10 **12 Application of Commonwealth laws**

11 The law of the Commonwealth (including the general law) applies  
12 in the same way in relation to the Commission as it would apply in  
13 relation to a Royal Commission.

1 **Part 4—Protecting whistleblowers**  
2

3 **13 Disclosures qualifying for whistleblower protection**

- 4 (1) This section applies to a disclosure of information made by any  
5 person (the *discloser*) to the Commission, including, any of the  
6 following:  
7 (a) a consumer;  
8 (b) an officer of a banking or financial services provider;  
9 (c) an employee of a banking or financial services provider;  
10 (d) a person who has a contract for the supply of services or  
11 goods to a banking or financial services provider;  
12 (e) an employee of a person who has a contract for the supply of  
13 services or goods to a banking or financial services provider.
- 14 (2) The disclosure of the information by the discloser qualifies for  
15 protection under this Part if:  
16 (a) the discloser informs the Commission of the discloser's name  
17 before making the disclosure; and  
18 (b) the discloser considers that the information may assist the  
19 Commission to perform the Commission's functions or  
20 duties; and  
21 (c) the discloser makes the disclosure in good faith.

22 **14 Whistleblower protection for disclosures that qualify**

- 23 (1) If a person makes a disclosure that qualifies for protection under  
24 this Part:  
25 (a) the person is not subject to any civil or criminal liability for  
26 making the disclosure; and  
27 (b) no contractual or other remedy may be enforced, and no  
28 contractual or other right may be exercised, against the  
29 person on the basis of the disclosure.
- 30 (2) Without limiting subsection (1):

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- 1 (a) the person has qualified privilege in respect of the disclosure;  
2 and
- 3 (b) a contract to which the person is a party must not be  
4 terminated on the basis that the disclosure constitutes a  
5 breach of the contract.
- 6 (3) Without limiting paragraphs (1)(b) and (2)(b), if a court is satisfied  
7 that:
- 8 (a) a person (the *employee*) is employed in a particular position  
9 under a contract of employment with another person (the  
10 *employer*); and
- 11 (b) the employee makes a disclosure that qualifies for protection  
12 under this Part; and
- 13 (c) the employer purports to terminate the contract of  
14 employment on the basis of the disclosure;
- 15 the court may order that the employee be reinstated in that position  
16 or a position at a comparable level.
- 17 (4) If an individual makes a disclosure of information that qualifies for  
18 protection under this Part, the information is not admissible in  
19 evidence against the individual in criminal proceedings or in  
20 proceedings for the imposition of a penalty, other than proceedings  
21 in respect of the falsity of the information.

## 22 15 Victimisation of whistleblowers prohibited

### 23 *Actually causing detriment to another person*

- 24 (1) A person commits an offence if:
- 25 (a) the person engages in conduct; and
- 26 (b) the person's conduct causes any detriment to another person;  
27 and
- 28 (c) the person intends that his or her conduct cause detriment to  
29 the other person; and
- 30 (d) the person engages in his or her conduct because the other  
31 person made a disclosure that qualifies for protection under  
32 this Part.

Section 15

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Penalty:

- (a) for an individual—25 penalty units or imprisonment for 6 months, or both; or
- (b) for a body corporate—250 penalty units.

*Threatening to cause detriment to another person*

(2) A person (the **first person**) commits an offence if:

- (a) the first person makes a threat to another person (the **second person**) to cause any detriment to the second person or to a third person; and
- (b) the first person:
  - (i) intends the second person to fear that the threat will be carried out; or
  - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
- (c) the first person makes the threat because a person:
  - (i) made a disclosure that qualifies for protection under this Part; or
  - (ii) may make a disclosure that would qualify for protection under this Part.

Penalty:

- (a) for an individual—25 penalty units or imprisonment for 6 months, or both; or
- (b) for a body corporate—250 penalty units.

*Threats*

(3) For the purposes of subsection (2), a threat may be:

- (a) express or implied; or
- (b) conditional or unconditional.

(4) In a prosecution for an offence under subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

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*Definition*

(5) In this section:

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to do an act.

**16 Right to compensation**

If:

- (a) a person:
    - (i) commits an offence under subsection 15(1) or (2); or
    - (ii) commits an offence under Part 2.4 of the *Criminal Code* in relation to subsection 15(1) or (2); and
  - (b) another person suffers damage because of the conduct constituting the offence or because of the contravention;
- the person is liable to compensate the other person for the damage.

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1 **Part 5—Other matters**  
2

3 **17 Staff**

- 4 (1) The Commission may employ such persons as it considers  
5 necessary for the performance of its functions and the exercise of  
6 its powers.
- 7 (2) An employee is to be employed on the terms and conditions that  
8 the Commission determines in writing.

9 **18 Authority to disclose information to ASIC and APRA**

- 10 (1) The Commission may disclose information obtained by the  
11 Commission in the course of its inquiry to ASIC if the information  
12 relates, or may relate, to a failure to comply with a law of the  
13 Commonwealth administered by ASIC.
- 14 (2) The Commission may disclose information obtained by the  
15 Commission in the course of its inquiry to APRA if the  
16 information relates, or may relate, to a failure to comply with a law  
17 of the Commonwealth administered by APRA.
- 18 (3) This authority given under this section is in addition to the  
19 authority given to the Commission to disclose information under  
20 section 6P of the *Royal Commissions Act 1902*.

21 **19 Legal and financial assistance**

- 22 (1) A person who is appearing or is about to appear, or a person who is  
23 entitled to appear, before the Commission may apply to the  
24 Commission for assistance under this section.
- 25 (2) The Commission may, if it is satisfied that:  
26 (a) it would involve substantial hardship to the person to refuse  
27 the application; or

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- 1 (b) the circumstances of the case are of such a nature that the  
2 application should be granted;  
3 authorise the provision to that person of such legal or financial  
4 assistance in respect of that person's appearance as the  
5 Commission determines.
- 6 (3) The authorisation given may be conditional or unconditional.
- 7 (4) The Minister must ensure that any legal or financial assistance  
8 authorised by the Commission is provided.
- 9 (5) Any legal or financial assistance authorised by the Commission is  
10 to be paid for out of moneys appropriated by the Parliament for the  
11 purposes of the Commission.

## 12 20 Regulations

- 13 The Governor-General may make regulations, not inconsistent with  
14 this Act, prescribing matters:  
15 (a) required or permitted by this Act to be prescribed; or  
16 (b) necessary or convenient to be prescribed for carrying out or  
17 giving effect to this Act.