Mr RUDDOCK (Berowra) (09:59): by leave—I thank the member for Forde for tabling the report and his comments about it. I do not normally, I might say, participate in committees that deal with such complex and difficult issues relating to financial affairs. It is not my area of expertise. So, it was with a good deal of trepidation that I joined the Parliamentary Joint Committee on Corporations and Financial Services to conduct the inquiry in relation to impairment of customer loans. But I did so because I became aware, in my role as a member of parliament, that there were people who had been dealing with one particular bank who suddenly found that they were on the brink of bankruptcy because loans that they had negotiated were found to be impaired, and I wanted to see a situation where we could understand what was happening and try to find a way forward.

Parliamentary committees are probably not the best way to do it. If you read the terms of reference—and the minister at the table gave us these terms of reference, as I recall—you will find that we were asked to look at:

a. practices of banks and other financial institutions using a constructive default (security revaluation) process to impair loans, where constructive default/security revaluation means the engineering or the creation of an event of default whereby a financial institution deliberately reduces, through valuation, the value of securities held by that institution, thereby raising the loan-to-value ratio resulting in the loan being impaired;

b. role of property valuers…;

c. practices of banks and other financial institutions in Australia using non-monetary conditions of default to impair the loans of their customers, and the use of punitive clauses such as suspension clauses and offset clauses by these institutions;

I do not regard a parliamentary committee as being able to adequately deal with these issues, and I will explain why. If you are going to inquire as to who is to be believed in relation to issues like impairment then you effectively have to hear the evidence from the party who believes they are aggrieved, you need to hear the evidence of the people against whom accusations are made, and, in order to try to determine the truth, you need to comprehensively cross-examine each of the parties to be able to find where the truth lies.

When you have a committee, where other members have an entitlement, you can never get to a point where you are adequately able to test the evidence that is before you. So, one should not be surprised that the committee, in its consideration, uses language like:

The committee considered allegations that there was a deliberate strategy by the Commonwealth Bank to over-impair loans in order to seek financial gain through a range of mechanisms after the acquisition of Bankwest in 2007. After considering the evidence and responses it has received, the committee has not been able to determine that deliberate impairment of loans, solely motivated by clawbacks or warranties, occurred.

The reason you can never get to that is that you can never effectively cross-examine the parties and test the evidence. A parliamentary committee specifically was not able to look at all of those issues.

I want to draw a further point in relation to this, because the committee went on to observe:

While the contractual arrangements associated with the acquisition of Bankwest may have played a role, the evidence before the committee points strongly to a culture of placing profit and return to shareholders ahead of the interests of borrowers.

The most interesting aspect of this inquiry, to me, was that there was an opportunity to consider evidence in relation to two banks where there were suggestions that loans may have been impaired deliberately, and the practices involving each bank were different. For me, the Commonwealth Bank has meant a great deal. I have known many of its senior executives over a lifetime. I had one of its money boxes—which I am sure most people
will remember—given to me at school. I look at somebody like David Murray, who is contributing to national debate and who has been a very, very important leader in relation to probity and appropriate conduct. I look at somebody like Les Taylor, whom I knew as the bank’s corporate counsel. I look at those who have followed and I cannot see people conducting themselves in the same way.

I do not know on what basis the Commonwealth Bank were asked to take over Bankwest, but it is quite clear that, having been asked by the government to do so, they were a bit worried about the nature of the loan book they received. There is a Mr Narev. I have never met him, but he has made some comments that they thought they were getting a lot of lesser quality loans. That may lead to a situation where 2,000 loans were impaired—it may. They may have been lesser loans. I do not know. But what I am reasonably satisfied about is that in numbers of cases there have been suggestions to me that if the bank had been reasonable and had talked matters through—had negotiated with their clients—the matters might have been resolved very differently.

I will mention just one case. A client of the bank’s who was building units in Sydney found, regrettably, that the principal of the building company he had employed had died. The client was worried about whether those who followed would be able to complete the contract. He went to the bank and said, ‘Look, I would like to change the builder, to engage a major constructor, Hornibrook, to finish the job.’ The bank said no. When the builder did not deliver the project in a timely way, the bank called up its interests, essentially closed down the operation and sold the property—and, I might say, somebody else made an absolute killing in finishing it off. I would like to think that banks, when they are faced with a situation like that, would sit down with people and work out the appropriate way to deal with these issues. I know that they have not conducted themselves unlawfully but I think they have conducted themselves in ways that, in some cases, are absolutely unconscionable.

A committee like this was never going to be able to get to the bottom of that, but I think it is very important for a new government to be aware of the recommendations that are being made in this report, because we have to find a way forward where these issues will be addressed. I have encouraged the Commonwealth Bank, when they have appeared before us, to sit down, like others have—and I refer to the ANZ bank—with their clients, work out where the problem is and come to a reasonable, negotiated settlement. The Commonwealth Bank has essentially refused to do it. I encouraged them, when they appeared before us, to put in place a situation of independent mediation where we could enable people’s issues to be adequately tested and address the issue as to whether the bank—not that they had acted unlawfully, because I am absolutely certain they had the best legal advice; they were never going to act unlawfully—had clearly acted unconscionably.

Recommendation 11 in this report is absolutely essential to providing a way forward. It recommends that:

a. lenders should engage independent experts nominated by the Australian Small Business and Family Enterprise Ombudsman to critically examine contentious cases to determine what, if any, restitution may be appropriate in the light of the standards developed by the Australian Small Business and Family Enterprise Ombudsman, with particular regard to unconscionable conduct; and

b. that funding through a user pays industry funding model be provided to Australian Small Business and Family Enterprise Ombudsman acting as a tribunal to consider cases retrospectively in the event that lenders do not choose to voluntarily examine contentious cases as recommended above.

So the banks will have two choices. One is to appoint independent mediators and to work these issues through. And, if they do not, there will be a body set up to consider those cases retrospectively in the context of whether or not their behaviour was unconscionable. These are remedies in relation to consumer protection that we expect in every other area, and they ought to be available to the banks’ clientele.

If you think I am passionate about it, I am, because I believe that people have been treated quite unjustly. And I very much regret how the Commonwealth Bank, invited to look at these issues—probably because of the enormity of the potential claims—approached this. Imagine if you have 2,000 customers all looking for $1 million compensation; $2 billion might come off the balance sheet, and wouldn’t that be dreadful? You can see why they may be taking such a view. But, let me say, I did say to the banks during the inquiries, ‘Look, you ought to sit down and deal with these matters independently, and if you do not then you may be faced with a royal commission.’

I want to speak about that issue because some comments have been made that others are taking up the view that perhaps there should be a royal commission. I want to make it very clear that I support the recommendations of this report because I think they provide a better way forward, and that ought to be understood. If there were a
royal commission, it would be doing merely what our parliamentary committee did before. It may be able to get
to the point where it cross-examines and gets a better understanding of what has happened, but at the end it will
make further recommendations. That would not be the end of the matter, if a royal commission were appointed.
It would mean another inquiry.

My view is that the recommendations this committee has made to set up a body that will be retrospectively
empowered to adjudicate on those issues are a far better way to go and will give a more meaningful result. That
is why I support the recommendations of this report. But let me just say to my colleagues at the table—because
I know that if the government are returned, given the responsibilities that they hold, they may be looking at
this issue—that I want to make it very clear that I am a great fan of the Commonwealth Bank. I want to see
its reputation restored. And I believe—and I hope the bank is listening to this speech or will read it—that its
reputation will be restored only if it is prepared in good faith, with independent arbiters, to deal with these issues,
not in terms of the lawfulness of what has happened but absolutely in terms of whether or not the conduct was
unconscionable. If they do that, there may be some justice.