

This is the submission of Will David Mott of Meandarra, Qld. 28.02.2018 to the Senate Legal and Constitutional Affairs Committee.

1. whether the way in which banks and other financial service providers have used the legal system to resolve disputes with consumers and small businesses has reflected fairness and proportionality, including:

Answer.

It is should be assumed by every entity going before a court or tribunal against a bank: that

- (i) **the bank will not discover documents**
- (ii) **Documents will not be discovered at the correct time and only to support the bank.**
- (iii) **False and incorrect documents will be used.**
- (iv) **That bank witnesses will give incorrect evidence when convenient to the bank case.**

2. whether banks and other financial service providers have used the legal system to pressure customers into accepting settlements that did not reflect their legal rights,

Answer.

I am currently in dispute with a bank. The bank constantly asks for a solicitor to represent me to the point where they will pay for one. Realism says that if that is the fact then any solicitor engaged is to the banks advantage. My problem is administrative and financial products show me a solicitor that can analyse and identify how financial products are used to strip farmers of their equity and design processes to argue with expert accountants and administrators on product outcomes.

3. whether banks and other financial service providers have pursued legal claims against customers despite being aware of misconduct by their own officers or employees that may mitigate those claims, and

Answer.

In my instance: yes. The incorrect use of default interest to offset accrued interest under the facilities in the effort to have me sign a Deed. Manipulated bad practice is not excused when a court of dubious circumstances gives a judgment in favour of the bank concerned based on a Deed with incorrect accounting involved. In one known circumstance a customer proceeded to the High Court to get a correct account the bank had written his account correction down as capital losses and so left his debt at the same value so he could not refinance and the bank obtained a judgment for the incorrect account value and that was accepted in all courts. The bank denied the truth in all courts including the High Court. He walked out of court and sent the situation to ASIC and wrote and told the bank what he had done. The bank solicitors wrote and accused him of being vexatious and obtained an order for such. However while this was happening the bank at its annual meeting between the date of hearing and judgment admitted the true facts and then paid an estimated \$1bn to an estimated 400,000 customers over 7 years. The customer is still vexatious and the bank was identified improbable to refund customers in the Banking Royal Commission.

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4. whether banks generally have behaved in a way that meets community standards when dealing with consumers trying to exercise their legal rights;

Answer.

Clearly the banks perpetrate financial misbehaviour and expect legal and regulatory and political forgiveness for the practices. Banking Royal Commission Draft Report and Recommendations.

5. the accessibility and appropriateness of the court system as a forum to resolve these disputes fairly, including:

.Answer.

Unsuitable until, lawyers with Professional accounts and Judge shopping is stopped.

6. the ability of people in conflict with a large financial institution to attain affordable, quality legal advice and representation,

Answer.

Impossible and if financially available, usually inadequate representation. Because any useful customer solicitor or barrister is tied up, with a bank.

7. the cost of legal representation and court fees,

Answer.

Prohibitive to all but large case values.

8. costs risks of unsuccessful litigation, and

Answer.

Banks have a contractual right to costs and usually it is often granted by courts as all-encompassing including the costs to prepare the action as well as the costs of the court process (indemnity costs) and this is used to bankrupt the bank customer. Until the constitution is changed banks will receive evidentiary preference in courts similar to Police.

9. the experience of participants in a court process who appear unrepresented;

Answer.

One Australian Chief Justice berates self- litigants in her courts for prosecuting banks and that is a fair indication of court attitude and practical responsibility in those actions.

10. the accessibility and appropriateness of the Australian Financial Complaints Authority (AFCA) as an alternative forum for resolving disputes including:

Answer.

THE AUTHORITY WILL FIND IN FAVOUR OF THE BANK OR DIMINISH THE BANKS INVOLVED RESPONSIBILITY ESPECIALLY TO COMPENSATION EITHER BY LIMIT OR BY AGREEMENT WITH THE BANK CONCERNED.

11. whether the eligibility criteria and compensation thresholds for AFCA warrant change,

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Yes, Increase.

12. whether AFCA has the powers and resources it needs,

Answer.

Afca needs a change of attitude to correctly express the law. Rather than take instructions from bank representatives and the system has to go back to where the banks do not talk directly to the investigator.

13. whether AFCA faces proper accountability measures, and

Answer.

As above.

14. whether enhancement to their test case procedures, or other expansions to AFCA's role in law reform, is warranted;

Answer.

No. and AFCA's role in law reform is unfortunately not seen as independent.

15. the accessibility of community legal centre advice relating to financial matters; and

Answer.

Community legal centres are of little value.

16. any other related matters.

Answer.

This committee has the opportunity to recommend changes in Constitutional power to the Banks. The morality behind using government funds to allow the banks to borrow using Official and Unofficial Government Guarantees and Securitisation is one for Financial Policy of the serving Government but the removal of the Banks Constitutional advantages is one for public decision and would be a definite move to secure bank honesty to community standards.

William D. Mott,