Submission for the Committee regarding an Inquiry into the Impairment of Customer Loans

Dear Senator Fawcett,

Below is an overview of my Experience as a Customer of the Commonwealth Bank of Australia.

My submission will include:

- Altered Bank Documents
- Missing Bank Documents
- A Breach of the Australian Securities and Investments Commission Act ('ASIC ACT')
- A Breach of the National Consumer Credit Protection Act 2009 ('NCCP Act')
- Failure to Act appropriately as Mortgagee in Possession
- Valuations that were inflated or deflated for banking purposes
- A Determination by FOS that contained errors, which were not corrected, resulting in what I believe to be Unconscionable Conduct by FOS.

All Documentary Evidence is available upon request.

I have been in business since 1997 and had been extremely successful. In 2002 my then partner and I decided to buy a large Commercial Property. This was to enable my business to expand. I mortgaged my own home (which was unencumbered) to purchase the Commercial property. My Commercial Property was then unencumbered.

In 2008 we decided to do some renovations to the property by expanding the front of the building, modernising it and finally adding a Café. We approached the Commonwealth Bank of Australia to finance the project for $300,000 and as the building was unencumbered and we had numerous other property interests the bank felt it appropriate to lend us the money. Initially we believed that the loan would be as our other investment loan, at a lower interest rate and over a longer period of time, which is why the loan was put in our personal names and NOT in our Company name. However in the last stages the loan was put through as a business loan with higher interest rates and over a lesser amount of time. We were told it could be done no other way.

According to documents that were requested by FOS from the CBA bank, we never really qualified for any loans with the CBA based on income.

Below is an exert from an Inter Bank Email 7th October 2008

"Fully secured position (LGD of A) and strong personal balance sheet of the guarantors provides comfort."

"The Company balance sheet reflects an extremely poor position with major deficit (retained losses)."

It is worrying that the Personal Balance Sheet for this loan is missing. What has been provided by CBA as evidence to FOS was a half completed Balance Sheet that has no date and no signature. A signed Personal Balance Sheet was provided to the bank when we applied for the loan. Where is this document now?

For us to qualify for this loan (Loan 1) our property had to have a value of at least $429,000 (According to CBA paperwork). I have not sighted that valuation but obviously the valuation was over that amount.

After advancing the funds on Loan 1, CBA indicated that they would like us to bring over our Westpac loan. They enticed us by stating we would qualify for a Wealth Package which would save us in interest fees and account fees. To my mind this was a good scenario. When Loan 1 was completed I then stated that I would like to bring over the Westpac Credit Card to save on annual fees (with our newly established Wealth package) and was told that I would not be able to do this, as I would not qualify for a credit card?

To fund Loan 2 CBA required that all 3 properties were to be re-valued. The Commercial Building was not used to secure Loan 2 so I am still wondering why it needed to be re-valued? The newly renovated Commercial Property that was previously valued at approx. $430,000 now came in at $650,000.

Loan 2 (Westpac) was then refinanced by CBA with an additional $60,000 added to the balance. This then made a total of $500,150 for Loan 2 and a total of $800,150 just in property loans. Bear in mind here that apparently my Company Balance Sheet shows an extremely poor position. Together the 2 loan repayments were well over $6000.00 per month. They had also refinanced our car loan and those repayments were $689. 00 per month. So the next email regarding the ability to service Loan 2 is quite shocking.

Below is an exert from an Inter Bank Email 14th April 2010 (prior to the lending of Loan 2)

"xxxxx, servicing position is accepted as I have verified that xxxxx is currently receiving some payment from Centerlink for child maintenance"

"Fully secured position with a few Non sensitive assets held, which can be sold to reduce/clear debt if required"

There was no Centerlink maintenance but there was a low income supplement. I believe lending money knowing that we couldn't afford to repay such a huge amount and then stating that we had property to reduce/clear

debt if required is a breach of the National Consumer Credit Protection act 2009. Names have been withheld.

The loan repayments of over $7,000 per month were unaffordable. The initial time taken to extend the Commercial Building had also meant that the principal sum of Loan 1 was being eaten up with repayments.

My marriage had now fallen apart and I was left to attempt to salvage what I could. I quickly offered to sell the remaining investment property I had and to pay one debt off completely (already had an offer on the investment property). This would have left me with only one loan, 1 Commercial Building and 2 businesses. I thought this was a sensible solution to the issues I was facing? So why would CBA refuse my offer?

They continued with their quest for possession of the Commercial Building and I gave in – handing over the keys.

I removed my two businesses from the Commercial Building and was forced to leave a good deal of my possessions behind, as I had no affordable place to store them.

The bank then went into Mortgagee in possession mode, valuations, real estate agents etc.

The property was placed in the hands of a Residential Real Estate Agent. I protested heavily maintaining that a Commercial Real Estate Agent was the most appropriate place to sell my property. A Commercial Real Estate Agent would have a list of Commercial clients and would ensure that a prompt sale could be made?

CBA refused to consider my request and for 12 months left the property in the hands of a Residential Real Estate Agent. This agent did not appropriately advertise the property. 1 small sign inside a tinted window did not clearly show that the property was actually for sale, advertising in the residential part of the local newspaper only, no internet advertising prior to the auction (and only 1 month approx in December 2012 over the Xmas period after the auction), no auction date on the building itself and then holding an auction on the day after a Thursday Public Holiday. Is there any wonder that the property did not sell? My Uncle and myself were the only 2 people at the auction apart from the 2 passers by that popped in to see what was happening?

After the Auction in October 2012 the property was placed on the market for $430,000. Approximately the same price they had valued the property at prior to lending me the $300,000 to extend and renovate the premises. The property had now been on the market for 12 months. The interest on the loans were mounting and were close to $100,000 at the time the property was finally sold due to mounting default interest.

What was the eventual sale price? $400,000 or so we thought? However 3 months after the property was sold the bank then took it upon themselves to charge me approx. $36,000 in GST stating that the $400,000 included a GST amount? The original Real Estate Contract does not state that at all.

Exert from the Original real Estate Contract on the 19th day of July 2013. GST treatment as stated on the Contract – "BOX CROSSED"

> "*The sale is not a taxable supply according to special Clause 17"*

Which is why CBA solicitors don't show any sign of GST on their Settlement Statement (Which they should have done had GST been part of the process).

According to the Taxation Department the CBA had no right to charge me a further $36,000 for GST some 3 months after the sale had gone through.

As GST had obviously been claimed by the purchaser of the building the $400,000 sale price actually equates to approx. $364,000 (The Valuer General has now recorded this sale as a suspicious sale as they have the sale price as $400,000 but informed me that the sale price can not include GST). The sale amount is some $66,000 less than they originally valued the property at prior to lending me the money to improve the property? How does that happen? I understand the Valuer is citing a softening of the Property Market but his comparison of similar properties sold in his final Valuation of $380,000 bore no relevance to my property – none at all? Why did he do that? My property was situated next to one of the Largest Retail Property Developments in the North of the State? Yes it had dual zoning but permits were in place for both retail and Café?

I can now only conclude that the Valuations on this property were inflated or deflated for Banking purposes.

The disturbing factor here is that upon further investigation the Valuer of this property was previously a Business Banking Officer with the Commonwealth Bank of Australia. The Bank used the same Valuer all the way through even though in an email to me on the 14th August 2012 from CBA the following was written:

> *"The bank will ensure that it obtains fair market price and the property will not be "given away." As discussed, the bank will obtain 2 independent valuations of the property by professional valuation firms. The bank will use these valuations to determine its reserve price at Auction."*

Several things concern me greatly here. My Commercial Property was not sold at a fair market price and I don't believe 2 independent valuations were ever received. Therefore this is a false and misleading statement and needs to be dealt with.

In Mid 2012 just after handing the keys back to the Commonwealth Bank of Australia, I began to feel that things were not quite right.

I lodged a complaint with the Financial Ombudsman's Office and was sent a letter on the 18th October 2012 stating the following

> ***"Our approach to maladministration disputes"***
>
> *"If an applicant claims that a Financial Services Provider (FSP) has provided funds to them but they did not have the capacity to repay the debt at the time the loan was provided, we will consider whether it was appropriate for the FSP to lend the money"*
>
> *"If we find that the FSP should not have lent the money, we will determine what has to be done to put the Applicant in the position they would have been in had the loan not been approved."*

FOS took 2 years to make a determination in my complaint and consequently made the following determination:

> ***"Did the FSP engage in maladministration in lending approving the Loans to the Applicant?***
>
> *"Yes. The FSP engaged in maladministration in lending when it provided the Loans to the Applicant.*
>
> *"1.3. Determination"*
>
> *"This Determination is substantially in favour of the Applicant."*
>
> *"The FSP complied with its duties to the Applicant as a mortgagee in possession, and also towards her as a customer in financial difficulty. However, the FSP did engage in maladministration in lending in advancing the Loans to the Applicant, and is required to compensate her"*
>
> ***"Reasons for Determination"***
>
> ***"2.1 Did the FSP engage in maladministration in lending in approving the Loans to the Applicant"**.*
>
> *"The FSP engaged in maladministration in lending when it provided the Loans to the Applicant because:*
>
> - *The living expenses accepted by the FSP in the loan Application were less than the acceptable standard for living expenses (based upon the Henderson Poverty Index or HPI)*
> - *The projections used by the FSP in its serviceability assessment for Loan One were not sensitised in line with industry best practice,*
> - *The FSP overestimated the business income, and*

- *The FSP took the applicant's partner's full income into account in assessing serviceability despite the fact that he was on probation."*

Did the FOS ensure that I was restored to the position I was in prior to lending me the money in Loan 1 ($300,000) as stated in their letter to me on the 18th October 2012? "**NO**". Mistakes were made and the only one that has suffered here is my daughter and myself.

There was enough evidence to show that the CBA did not deal with their duties as Mortgagee in Possession. Again FOS made mistakes.

I was compensated very little considering the breach of relevant codes. Primarily the CBA were required to refund me a good deal of the interest that had been charged but not compensate me by restoring me to where I was prior to funding the Loans.

Did the CBA mislead FOS into thinking that part of Loan 1 was refinanced? Or did FOS simply get it wrong?

Below are exerts from a FOS letter dated 25th August 2014

> ***"Your losses flowing from Loan 1"***
>
> *I determined that CBA should not have approved Loan 1 – that is, if CBA had acted as a prudent and responsible lender when assessing the application, it would not have advanced you the initial funds, nor the redraw facility, nor the funds to refinance your existing equipment finance loan."*
>
> ***"Treatment of the refinanced funds"***
>
> *"Where an applicant has obtained a loan and used the loan funds to refinance existing liabilities, we will generally consider that they have not suffered a loss."*
>
> *"This is because the liability to repay the funds existed before the debt was refinanced by the financial services provider."*
>
> *"In your circumstances, even though it was inappropriate for the bank to lend to you, you benefited from refinancing your existing liability at a lower interest rate."*
>
> *"As such, I could not award you any financial loss with respect to the refinanced portion of Loan 1."*

There was NO refinanced portion of Loan 1. I never complained about the car loan (Refinanced) that we also had with CBA. Loan 1 and the car loan were 2 separate loans. So when did they become 1?

I spoke with the Ombudsman in length about the mistakes that were made. At first they were adamant that there were no mistakes… Then upon a review of the file by the Ombudsman herself she realised that there were indeed mistakes that were made and informed me that the outcome of my complaint would have been a lot different had those mistakes not been made. She also informed me in that conversation that my business figures had been altered.

I pleaded with her to review her decision, but unfortunately once a Final Determination is made with FOS it is FINAL. I still believe that to allow a determination to stand knowing that mistakes were made is "Unconscionable Conduct".

I am a single mother who has struggled for the last few years to come to grips with what has happened and now sadly the bank want my blood yet again… they want my two remaining properties and have taken me to Court to get them. This Parliamentary Enquiry must happen now. Justice for all bank victims must happen now!

Yours Sincerely

S. Burge

21st August 2015