

Dear Senators

I am making this second submission to this Inquiry to specifically raise **endemic issues that remain unresolved at CBA**, despite the findings and recommendations of the 2014 Senate Inquiry into the Performance of ASIC. There is an ingrained, cultural intransience within Financial Institutions, such as CBA, to openly and fairly address issues of unethical, unprofessional, illegal and misleading conduct, even when this conduct is irrefutably supported by overwhelming evidence from many witnesses, including respected whistleblowers. I hope this Inquiry will call into the public arena those in management who have hidden in their offices, and denied any knowledge, responsibility or accountability for the financial ruination of thousands of hard working, elderly and retired Australians. It is time a light was shone on the Directors and Senior Managers who collect enormous salaries, but slink away from the associated responsibilities. The list of Australian financial scandals is long and covers the most profitable and prominent financial institutions in this country. Enough is enough.

### CBA Board's Response to CFPL Issues : 2008 to 2013

Senators, I understand you intend call CBA's Chairman, David Turner, to appear before your Committee, and I urge you to insist that he does comply, regardless of Mr Narev's offer to appear in his place.

David Turner, Chairman of CBA, has consistently made blatantly deceptive and misleading statements to the media and public regarding the CBA Board's knowledge of the activities within CFPL and the involvement of CBA Senior Management in these activities.

Mr Turner has been a CBA Director since 2008. **As recently as 2013 David Turner stated to the media the CBA Board had been unaware of the extremely serious matters pertaining to CFPL.** Turner's **denial** of the Board's knowledge of the CFPL issues **beggars belief**, given that ASIC's investigators were inside CFPL for 12 months, from February 2007 until February 2008, reviewing the work of 51 CFPL financial planners. It beggars belief ASIC staff could be inside the CBA for an entire 12 month period, carrying out an extensive investigation, without anyone on the CBA Board being informed of the investigation by CBA's CEO, Sir Ralph Norris. Either the Board members have lied about their knowledge of the situation, or the CBA Board was negligent. When Mr Turner appears before your Committee he can clarify which of these two scenarios is accurate.

The CBA whistleblower has given evidence Sir Ralph Norris, CBA's CEO from 2005 to 2011, was directly informed of the financial malfeasance and unprofessional activities taking place within CFPL. Mr Norris should also be called to give evidence, under oath, to determine the honesty and integrity of the responses publically issued by CBA's Senior Management and Board.

Additionally, during evidence given to the Senate Inquiry on April 10<sup>th</sup> 2014, **ASIC confirmed** a copy of their **2008 Report**, which **detailed the appalling practices within CFPL, was submitted to CBA.** As CBA's CEO reports directly to the CBA Board, Mr Turner's denials indicate CBA's CEO either had no knowledge of ASIC's year-long investigation, or chose not to inform the Board of this process. Either scenario is **indicative of a serious breach of corporate governance at the highest level within CBA.**

Mr Medcraft and Mr Kells also confirmed during their evidence to the Senate Inquiry in April 2014 that ASIC had chosen not to publically release the 2008 ASIC Report, an action for which they were soundly criticised by Senator Bishop.

Furthermore, on page 8 of ASIC's Initial Submission to the Senate Inquiry into the Performance of ASIC, dated August 2013, ASIC states that from **April 1<sup>st</sup> 2008**, a Continuous Improvement Compliance Program (CICP) commenced as a result of the appalling findings of the ASIC investigation undertaken from February 2007 until February 2008 at CFPL, and **"the CICP had a very senior steering committee that reported to both the Board of CFPL and the Board of the Commonwealth Bank of Australia".**

This submission by ASIC confirms that **CBA Board members were well aware of the activities within CFPL during 2008**, having received the 2008 ASIC Report and **regular reports** from the CICP Steering Committee, which commenced in April 2008.

**As David Turner has been a Director of CBA since 2008, his continual denials of any knowledge of the activities within CFPL must be publically challenged.** The majority of the Directors of the CBA, including David Turner, held their positions as directors during the timeframe this scandal was operating. If they were subpoenaed by a Royal Commission they could be called to account for the misleading statements repeatedly made to the public by CBA Board members, in particular David Turner.

Contrary to public statements, CBA Board members were fully informed of the activities at CFPL from 2008 onwards through ASIC's 2008 Report, regular reports from the CICP steering committee, and through correspondence from both whistleblowers within CFPL and from CFPL victims.

Correspondence personally addressed to each individual member of the CBA Board from one of Mr Nguyen's victims received no response from any of the CBA Board members, and was simply passed to the General Manager of Customer Relations, Dr Brendan French, for reply. **No CBA Board member had either the integrity nor the common decency to personally reply to this elderly victim.**

CBA Board members have treated the CFPL victims with complete contempt throughout this process, and continue to do so. In May 2014 Damon Kitney, a reporter with The Australian, reported David Turner stating he doesn't lose any sleep over this issue at CFPL. It is a pity CBA's victims cannot state the same.

## Issues Arising from CBA's Response to the Senate Inquiry into the Performance of ASIC Report, dated June 26, 2014

I viewed CBA's recent announcement of an "Open Advice Review Program" with considerable scepticism, given my previous experiences in dealing with the CBA, in particular their Customer Relations Department headed by its General Manager, Dr Brendan French. As the much touted "open and independent" review process has been rolled out by CBA, my scepticism has proven to be well founded.

**There is nothing open, fair or independent about any facet of CBA's Open Advice Review Program, with every aspect being appointed by CBA, controlled by CBA and**

**residing within CBA's walls. There is absolutely no independent oversight of the CBA review program. ASIC is not involved.**

**There are a number of issues of serious concern with the CBA Open Advice Review Program:**

- the integrity of the Open Advice Review Program is compromised at the initial step where "CBA Specialist Staff" review CBA's own client files to assess the "appropriateness" of the financial advice given to the client, notably without the client actually being present at this review. **There is no client oversight of this process.**

Only the affected client can verify if the file contents are authentic, and that the file is a complete record of their dealings with their financial advisor.

In my mother's CBA file there are at least 4 fraudulent documents and a forged signature, all part of the file "reconstruction" that was undertaken when I began action against Mr Nguyen and CFPL. My submission to the Senate Inquiry clearly documents the extensive steps CBA staff undertook, including falsifying documentation, to deny any wrongdoing and to block our investigation into the activities of their financial planner. **Only the affected client can identify any documents in their CBA file that are not genuine, that have been altered or manufactured during the timeframe involved, and identify any information recorded into the file by CBA staff that is not accurate nor honest.**

**The exclusion of the client at this initial CBA review step is incongruous with any perception of a fair and open review process. I have personally raised this issue with Mr Narev, but without effect.** It was only through comparing original documents retained by my parents with documents sent by CBA **purporting** to be "copies of the original documents" in their file, that I was able to expose the fraudulent manufacturing of client file documents.

- according to ASIC's Initial submission to the Senate Inquiry (dated August 2013) and evidence given by CBA's representatives at the Senate Inquiry, 423 of CBA's original client files associated with their financial planner Don Nguyen have simply been "lost" and never recovered by CBA. My experience has revealed any "file reconstruction" undertaken by CBA management has been done to benefit CBA's position, and does not accurately represent the original file. What files are therefore being reviewed by the "CBA Specialist Staff" in relation to these clients to determine if they have received poor financial advice?

**CBA's appointment of the "independent client advocate" for the CFPL victims is irreconcilable with any notion of fairness, transparency or independence.**

- CBA have appointed the "independent client advocates" from the law firms Shine, Maurice Blackburn and Gordon and Slater supposedly to represent "the best interests" of the CBA victims. Which part of "independent client advocate" is served by CBA selecting these advocates to represent our best interests?

CBA management do not seem to understand the meaning of the terms "independent" or "open". Surely one would have to be incredibly naive not to suspect these law firms will be acting primarily in their own best interest, favourably positioning themselves for fees, career opportunities and ongoing future legal business with CBA. These law firms are renowned for high percentage retainers on any payments made to clients, and their extraordinary fee structures.

Without doubt any so called "independent client advocate" appointed by the CBA must be viewed as biased.

If the CBA Open Advice Review Program is as open, transparent and fair as Mr Narev has publically claimed it to be, then why is CBA so frightened of clients choosing their own client advocates, including their own legal representatives, accountants or independent financial planners to represent them and their best interests within this program? Could it be that **the CBA Open Advice Review Program cannot stand up to independent scrutiny by anyone not appointed by CBA, not being advised by CBA or not on the CBA payroll?**

If CEO Ian Narev and the CBA Board want to claim we are all standing on a level playing field with this new, open and transparent review and compensation process, then at the very least CBA must let the victims choose their own client advocates.

### **Oversight of the Open Advice Review Program**

**Once again ASIC has abdicated its responsibility to oversee the review process to ensure CBA victims are dealt with fairness, through a truly open and transparent process.**

**There is no oversight nor accountability of the program by ASIC or any other independent external body.** The CBA "Open Advice Review Program" being promoted by Mr Narev and the CBA Board is simply a public relations exercise, with no conceivable perception of independence, openness, fairness or integrity. Surely the CFPL victims have been through enough. and it is time to move this process out of CBA's control and into a truly open and independent environment.

- Every aspect of the Open Advice Review Program is controlled by the CBA. The **file review** process, the appointment of the "**independent panel**", the "**forensic expert**" and the "**independent client advocates**" **all remain within the sphere of influence of CBA**, and are "**independent**" **in name only**. The Senate Inquiry into ASIC clearly found this was neither fair to the victims, nor healthy for confidence in Australia's corporate governance and financial markets.
- I have confirmed CBA's General Manager of Customer Relations/ Experience Dr Brendan French is overseeing the Open Advice Review Program, which should be of concern to ASIC, given the appalling activities of the Customer Relation Experience Managers, under his directorship, towards customer complaints.

As General Manager of Customer Relations/ Experience Dr French was well aware of the clients' complaints that flooded into the CBA from 2008 onwards. Under his stewardship the Customer Relations Experience Managers dealing with these clients wrote to the clients claiming the GFC was solely responsible for their extraordinary financial losses, and in my mother's case, went so far as to fraudulently manufacture documents to refute and negate any responsibility by CFPL's financial planner, Don Nguyen.

CFPL investor customers who were challenging the quality of the professional advice and standards operating within CFPL were summarily dismissed by Dr French and his associates, and referred to FOS for mediation.

I submitted my mother's case to FOS and never received any response from CBA for the 7 months the claim was before FOS. As recently as the at the beginning of 2013 I received correspondence from Dr French informing me CBA would not respond to any issues I raised with regards to CFPL and a review of my mother's case. He has simply referred me once again to FOS.

- I have personally raised Dr French's response to client claims with Mr Narev, without effect, and I have no doubt Dr French's oversight of this program will be conducted in the same biased and dismissive manner he has previously exhibited towards CFPL victims.

Once again, where is the independence of the review and compensation process and where is ASIC's contribution to the program?

## A Royal Commission into CBA

**A Royal Commission into the CBA would finally expose the unethical, illegal, and undoubtedly criminal activities that have taken place behind CBA's walls, as they attempt to renounce their responsibility for the activities of their employees.**

Together with the numerous victims of CFPL, I was delighted with the findings of the Senate Inquiry, mistakenly believing some justice may be found for the victims whose financial, physical and mental well being had been torn to shreds by CBA's activities and ASIC's incompetence.

A Royal Commission has the power to subpoena documents and witnesses and would

- shed some light and expose the magnitude of CBA Management's involvement not only in encouraging and rewarding the deceptive and indeed illegal activities of their financial planners, but also the subsequent CBA Management cover-up undertaken against the clients, observed and reported to ASIC by the Whistleblowers and documented both in the Senate Inquiry and through subsequent media releases.
- address serious issues within CBA and CFPL that are not within the terms of reference of Mr Murray's Investigation.
- **expose the fact that nothing substantive has occurred within CBA to alter the endemic unethical and greed driven culture that underpins and encourages the activities that led to so many elderly investors losing their financial security.** Massive performance bonuses have recently been paid to CBA staff directly involved in this scandal, and incentive payments for product sales and vertical integration remuneration systems remain in place. CBA have offered up only a tiny fraction of the financial planners found to be involved in serious compliance breaches, and

others from management who were involved have been permitted to leave CBA under their own terms, with sizable monetary payouts and unencumbered by their activities. Many have taken up very senior positions in other financial institutions, spreading the unethical and unprofessional CBA culture of misconduct far and wide.

- Mr Nguyen remains the recipient of CommInsure payments, despite working in an alternate position in the community. Mr Narev informs me this is beyond CBA's control and is an insurance matter. Actually, it is in fact, a slap in the face to all of Mr Nguyen's victims.

The CBA has enjoyed Australian Government guaranteed security for many years and survived the GFC unscathed because of this most favoured status. This status has been supported by the taxpayers and investors of Australia. I suggest in return for this extremely valuable guarantee, and indeed enviable security, the CBA must be accountable to those same taxpayers and investors who have underpinned and supported this valuable asset. International financial institutions have not enjoyed this tax funded largesse.

Furthermore, given the current Government's robust desire that we all need to be on "Team Australia", I suggest anyone blocking a Royal Commission into Australia's most prominent and profitable financial institution, which is supported by the taxes and investments of ordinary hard-working Australians, is not on "Team Australia". I suggest these people are clearly supportive of the appalling lack of corporate governance, professionalism, honesty, morals and ethics at CBA so obviously exposed through the 2014 Senate Inquiry.

Members of "Team Australia" should have an expectation of a "fair go" at the hands of both their banks and their elected Government representatives. We seem to currently have Government for the Banks and by the Banks, with **little respect for the very people whose taxes and investments keep all the financial balls in play.**

Along with most of the Australian public, I am at a loss to understand Mr Abbott and Mr Cormann's immediate response to the June 2014 Senate Inquiry Report, and their reluctance to hold a Royal Commission into the CBA. Perhaps it would be politically sensitive.

**However, a Royal Commission into CBA may reinstate some consumer confidence in the Financial Industry, an industry shown repeatedly to have little conscience or respect for its grass roots investors, ordinary Australians.**

## Conclusion

1. I urge you to call David Turner and Sir Ralph Norris before your Committee to explain the inaction and attitude of the CBA Board, given the evidence on public record indicates they were well informed of the CFPL situation from the outset.
2. Nothing less than a Royal Commission into the CBA will force CBA to fully expose the extent and nature of the activities of their financial planners and management, and the extent

to which ASIC was inept in safeguarding the security of the CFPL investors. A Royal Commission may bring about a change within CBA's culture, and serve as a deterrent for unscrupulous and deceptive practices in other sectors within the financial industry. Investor confidence in corporate Australia demands a Royal Commission into the activities of CBA.

3. In its current format CBA's Open Advice Review Program appears to be little more than a belated public relations exercise, with the CFPL victims' best interests running a poor second, once again, to CBA's corporate interests. This situation needs to be addressed most urgently by external oversight and removal of the process from CBA's sphere of influence. There is currently no actual nor perceived independence, nor transparency, in this latest review and compensation program.

Please do not hesitate to contact me if I can be of any assistance in pursuing any aspect of the matters I have raised.

Kind regards,

Merilyn Swan