# Supportive Residents and Carers Action Group Inc

Committee Secretary
Senate Legal and Constitutional Affairs Committee

**Dispute Resolution with Finance Institutions**

**in the Justice System**

PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee:

**ABOUT US:**

Our Association is under the patronage of a former Chair of the Queensland Crime and Corruption Commission's predecessor and we supported our patron and his colleagues in a loose knit group of anticorruption campaigning Independent Parliamentarians, grass roots advocates, and former Royal Commissioners & Judges who also wanted reforms and the Royal Commission Into Banking and Insurance and the Queensland Inquiry into Organized Crime that was later chaired by Michael Byrne QC.

Our critique of FOS, with the theme of 'How Much Evidence of Illegality Does FOS Require', was published by the David Murray Review in the middle of 2014.

Our members have featured on mainstream news and current affairs shows, advocated for the Banking Royal Commission, attended gatherings at Parliament House, and advocated heavily for the Royal Commission largely because the FOS arbitration scheme appeared to be internally stacked with bank sector lawyers, rigged, and grossly misrepresented to the general public on television as an independent arbitrator that agreed with the bank.

Our colleagues in California-based Maverick Ministries have been published by the US Department of Justice Anti-Trust Division's review of cooperation with foreign regulatory authorities, and we concur with the concerns about Australian regulators that, more recently, the Hayne Royal Commission essentially confirmed with its criticism of regulators like ASIC and APRA.

Our members have complaints at the US Federal Reserve Bank and the US SEC and FBI (which went on, for example, to arrest executives in the IT department of the Commonwealth Bank which, as is now known, was prosecuted by Austrac for its role in transferring funds for terrorist organisations and organized crime), where the arrests in Sydney by the International Corruption Division of the FBI of CBA IT executives is in stark contrast to Australian authorities who were purportedly shocked when "it all came true".

Our association's submission to the Victorian Ombudsman is noted in footnote 372 by Victorian Supreme Court Justice Hollingworth in the Reserve Bank International Bribery Case that was subjected to a national security suppression order until November 2018, and which involved charges of international bribery being paid to associates of Saddam Hussein, Prime Minister Razak, a black market nuclear-weapons broker, and to the Vietnamese Central Bankers whose conduct seemed suspicious to our members in Richmond Victoria who went to the US SEC. We also note that Justice Hollingworth, in the same vein as Royal Commissioner Hayne, was critical of the Australian Federal Police Investigation, and in matters where international bribes were paid to people like a black market nuclear-weapons broker, one has to wonder what might have gone wrong if these highly questionable characters were able to carry out whatever they were hoping to carry out.

Our association's spokesman Mr Elliott Sgargetta (see his To Whom It May Concern Letter, below) is advocating on starting a Royal Commission in New Zealand, and appeared on ABC's business program called The Business. The episode advocated for the creation of the Royal Commission (which came true), criticised regulators like ASIC (which came true at the Hayne Royal Commission), and called for an investigation into the overnight rate rigging for which all came true as Australian banks were subsequently prosecuted and paid fines to ASIC for rate rigging.

Our association is working with American mortgage fraud victims, and our association is glad to see the CBA in particular writing off mortgages and credit cards and offering some compensation.

Our association was recently published by the Productivity Commission in respect of the cost of the mental health problems that have been inflicted by a culture in banks and regulators of 'deny, delay and deceive until they die'.

Our association's Mr Sgargetta would like to testify at the Inquiry. Please refer to his open letter that is attached at the end.

**BANK CONCEALMENT OF ITS OWN MISCONDUCT:**

We draw to your attention the Victorian police prosecution of the Jordanou crime ring which resulted in the conviction of Mr Bill Jordanou late last year.

According to bank staff to the crime reporter Cameron Houston, bank staff as well as the bank investigator were perfectly aware that the bank was approving loans that were based on forgeries and fraud, and despite the bank's knowledge (which it continually denies having), the bank foreclosed on its victims.

Our association registered matters with US law enforcement such as the Nevada Gaming Authority given that the now-imprisoned Mr Bill Jordanou was known to enter poker tournaments in Las Vegas casinos.

**THE US CONSUMER FINANCE & PROTECTION BUREAU:**

In the USA, the Obama Administration created a bureau of specialist investigators backed up by search warrants which went through, for example, 25 million mortgages with Citibank. The bank was fined $7 billion of which hundreds of millions of dollars went to various States to compensate them for reduction in taxable land values, and there was approximately $3 billion for victims and for housing programs aimed towards assisting the homeless.

We believe that the Australian government should consider mandating compensation and restitution payments for victims of white collar bank crimes. In summary, no one needs class action lawyers or litigation funders, and victims did not need to use their exceptionally limited time and their exceptionally limited resources to respond to tactics which are calculated to delay deny and deceive.

**AFCA:**

We understand that AFCA is staffed by former lawyers from places like Comminsure and AMP which both might be facing criminal proceedings in the future as a result of investigations by the Hayne Royal Commission. We firmly believe that nothing will be achieved if AFCA is little more than a rebranded FOS that are employs the same people who worked for finance sector companies and insurers.

**ADVERSE COSTS ORDERS:**

Our Association supported Bob Katter MP and his idea over the years that there should be no legal costs order against bank customers in bank cases. We still support that idea.

We draw to your attention the letter sent by the CBA's lawyers in Tasmania to the lawyers representing Ms Suzi Burge, and to lay people looking through the prism of perversion of the course of justice, average laypeople might see conduct on the part of a bank and its legal team that should be unethical and should possibly be illegal.

The bank's lawyers threatened to seek a costs order against Ms Burge's law firm in the event that the Judge was not satisfied that the bank had engaged in fraud, mistake misrepresentation or unconscionable conduct. Ms Burge suddenly found herself without any representation. The bank's lawyers also claimed that they investigated the bank, decided it was innocent, and they would pursue the lawyers through the legal ethics regulators with the result of course that the unfortunate lawyer could face disbarment. And Susie Burge found herself without any representation. Susie Burge also found that the barrister urged her to see things from the bank's perspective (and presumably the barrister was also exposed to adverse costs orders and potential referral to ethics regulators), and it seems that Ms Burge was unaware that her own barrister may have had his own interests at heart in nudging her towards an unsatisfactory settlement.

We firmly believe that, firstly, bank lawyers who investigate banks and find them innocent should cease to act in case they are put in the witness Box to give evidence about their investigations into their own client. A recurring theme in discussions with bank victims at Parliament elsewhere is that the bank seem to be immune from legal ethics whereas bank customers find that the legal ethics regulators will use ethics against small law firms that defend small impoverished bank customers.

Secondly we think that it should be unethical for solicitors and barristers to conceal from their client that the solicitor or barrister might be in fear of being referred to legal ethics regulators unless the client succumbs to the banks offer-you-cannot-refuse.

**COMMUNITY LEGAL SERVICES:**

Our Association shared the concerns of Mr Brophy's Consumer Law Action Centre at the Royal Commission.

Our association's Mr Sgargetta was provided with nearly a dozen pro bono barristers by the Victorian Bar Association's pro bono scheme. The pro bono scheme does not fund frivolous or unsubstantiated cases, and despite the overwhelming views of the barristers, the bank refused to budge over a small $24,000 dispute, and found that American purchasers felt extorted and went to US law enforcement which subsequently was on 7 News making arrests of CBA executives from its IT department in circumstances where David Cohen testified nearly 2 years later at the PJC Inquiry on April 4 2016 that in his view due diligence would not have picked up international bribery within the bank; the FBI did.

**COURT COSTS/FILING FEES:**

We believe that people pay taxes for the government to provide services such as access to justice. Accordingly we believe that filing fees and court -related fees should be abolished.

**MEDIATORS:**

We believe that mediators should be allowed to give legal advice without necessarily holding a practising certificate or being subject to retaliatory threats by banks that they will set the legal services board on to them.

We also believe that mediators should not include escape clauses which allow the bank to escape from agreed mediated terms which often contain a consent to default judgement and which then allows the bank and its affiliates to sell up assets with the assistance of bank-friendly lawyers receivers real estate agents and valuers.

A classic case in point is that of the borrower, Mr Elliott Sgargetta, who story appeared on ABC TV's business program The Business and in Submission 116 at the Engineered Default Inquiry and at the Treasury. The gist of the settlement was that the bank would accept $299,000 within a month or so, in full and final settlement of all claims including any additional interest or legal fees. Mr Sgargetta's purchasers obtained a bank cheque for $299,000 and it was refused by the bank and their legal team who relied on weasel clauses

while demanding an extra $30,000 in legal fees and interest. The purchasers were US citizens with backgrounds in IT and international law enforcement investigations, and the FBI International Corruption Division and SEC investigated the CBA, and found Al Qaeda and international suspicious payments by the Clinton's IT expert Mr Eric Pulier to the CBA's IT division executives in a matter which was prosecuted later by Ms Eileen Decker from the US Attorney's national security and counterterrorism unit and people under the SEC's prosecutor of the likes of bin Laden, Ms Mary Jo White, and the FBI Assistant Director in Charge Deirdre Fike. Copies of the press releases by Ms Decker are attached.

**PHILLIP FIELD'S EVIDENCE AT THE HAYNE ROYAL COMMISSION:**

The David Murray Review published our critique on the Financial Ombudsman Service in the middle of 2014 prior to Senator Dastyari and Senator Xenophon questioning the CBA's Mr Brendan French in early 2015 and before Mr Phillip Field at FOS testified to the Hayne Royal Commission that FOS decided to stop using its arbitration clause which allowed FOS to totally write off mortgages.

We believe your Inquiry should investigate if FOS all on its own and without tortious interference in contractual relations by people in banking decided to stop using its arbitration clause that allowed victims to be returned to their original position by writing off their entire mortgage. If banks and/or bank executives and/or ASIC prompted FOS to stop writing off mortgages, we believe that the banks and bank executives should be investigated for tortiously interfering in the arbitration contract that is constituted in the FOS terms of reference.

Furthermore, we believe that FOS misled the public into believing that the arbitration contract (a.k.a. terms of reference) allowed FOS to write off the entire mortgage by not disclosing on its website at FOS and/or ASIC and/or banks had collaborated in a back room deal into believing that FOS would write off or reduce the mortgage. We believe FOS, ASIC and bank staff should be examined by the inquiry, and if there was cartel like conduct then the Inquiry should invite the ACCC's cartel unit to investigate if any laws were violated.

**BANKS MISLED FOS, REGULATORS AND WITHHELD DOCUMENTS: ROYAL COMMISSION**

According to evidence at the Royal Commission, banks misled FOS (and regulators) and withheld documents.

Our understanding is that FOS nevertheless back the banks against consumers. As suggested in our critique of FOS at the David Murray Review, we suggest that AFCA/FOS be the Inquisitorial body at professes to be, and in line with that the onus of proof should be on the bank to produce documents and explain its conduct otherwise the decision will be made against the bank.

## FALSIFICATION OF LOAN APPLICATIONS AND OTHER SO-CALLED MALADMINISTRATION:

According to an article by David Turner's law firm in the Singapore International Arbitration Commission Journal, if arbitrators failed to investigate illegality on the part of the parties before them, the arbitrators can be liable as facilitators of crimes.

We believe that FOS should be investigated in case it and its staff purposely refused to arbitrate cases with claims of fraud et cetera with the result that FOS watered-down to something called maladministration, human error, computer programming error, or misapplied contractual terms, or some other copout. In our view, if FOS was complicit in covering up systemic bank crimes carried out by its bank-members then FOS decisions should be retrospectively reopened and set aside and reconsidered a fresh, and preferably with the benefit of a presumption that the bank was not the model litigant that they made themselves out to be.

## MICHAEL SANDERSON'S "EQUALITY OF ARMS" SUBMISSION

We have supported Mr Sanderson's submission which was published with submission 116 at the PJC Engineered Defaults Inquiry alongside our spokesman Mr Sgargetta's submission and alongside submissions by other bank victims.

We point out however that banks to date have been able to hide information behind boardroom confidentiality and Law firms and out-of-court settlement agreements so we suggest a thorough review takes place which includes the reluctance of judges to invoke the Fraud Exception to Privilege and the reluctance of judges to compel full and complete discovery from banks.

## PEXA

PEXA seems to be the Australian equivalent of the American computerised mortgage tracking system that has been plagued with prosecutions by US government agencies of documentation falsification rackets whereby low-paid students would falsify signatures of bank officials on backdated and artificially created documents like assignments of mortgages.

We are very concerned that PEXA and the sale of Land Titles Offices and the destruction of paper titles and a paper trail will result in the same sorts of problems that has seen Americans are complaining bitterly about being sold up in judicial and nonjudicial foreclosures based on frauds. An Australian example is that in which a criminal ring falsified mortgage documents, obtained loans which were put through casinos by criminal rackets, and the CBA nevertheless foreclosed on the victims of the fraud such as the Barkers and Mandarinos who featured in Bill Shorten's and Claire O'Neil's videos of meetings with many of the 10,140 people who filed submissions with the Hayne Royal Commission.

## MCKENZIE FRIEND:

We believe that unrepresented litigants should be able to enlist the assistance of laypeople, preferably with banking and legal or commercial experience, without the need to be licensed by a legal services board.

**TESS LAWRENCE:**

Tess Lawrence was a mainstream media reporter who was investigating the National Australia Bank and its relationship to organise crime figures. Rather suspiciously, her lawyer was visited by the Victorian Legal Services Board and Commission who purported to find over charging and proceeded to take over his practice. Also rather coincidentally, Ms Lawrence's files pertaining to their investigations into the bank and organized crime disappeared as if someone did not want reporters to expose the financing of criminal operations.

**ELLIOT SGARGETTA:**

# To Whom It May Concern Letter to Parliamentary Inquiry by Elliot Sgargetta

- Thursday, 07 September 2017 00:43


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**To whom it may concern, My name is Elliot Sgargetta. I was the recipient of what we estimate to be a $1,000,000 offer covered in Submission #2 as published by the Senate Inquiry into Foreign Bribery.**

I owned a home in Kalorama that was mortgaged to National Australia Bank, represented by global law firm Gadens Lawyers.

I was the vendor of that home to a family who, unknown to anyone else, were US citizens from a family with a background in Law Enforcement and IT industry in Silicon Valley.

Every time the mortgage payout money was proffered with a bank cheque, Gadens wanted extra money, in the region of $16,000 to $30,000, to make fallacious legal problems go away.

A dispute over $24,000 ended up in the High Court and I estimate that Bank Shareholders are about $600,000 worse off at the end of the day.

How could a bank manager Melissa Thomas think that it was in the bank's best interest to push little people around.

The 'legal problem' was never curable by handing over the agreed payout amount early and in full.

The legal problem was only curable by giving them extra money for extra legal fees and "extra interest" (even though the agreed payout was inclusive of legal fees and any extra interest).

As I never received a bill for legal fees, I think that could be illegal and unethical in itself (but the Legal Services Board whitewashed things anyway). I queried this extra interest and its rate and the contractual basis.

Things felt extortionate to me and the American buyers. Gadens were impervious to me for years.

Gadens were untroubled by the Financial Ombudsman Service casting doubt over their independence.

Judges Whelan and Santamaria essentially found that Gadens lied in Court. Gadens were untroubled by that.

Gadens weren't worried by transcripts.

Gadens tried to bluff past an affidavit from an independent pro bono barrister. Gadens claimed their bank could authorise them to ignore Conflict Rules. Gadens weren't worried by rules that say a barrister cannot run a case he testified in as a witness.

Gadens ran roughshod over my understanding of the Over-Arching Obligations.

Gadens were untroubled by enquiries from “60 Minutes”, Fairfax and the ABC.

Gadens were untroubled by complaints at the Director of Public Prosecutions, Victoria Police and the Legal Services Board & Commission.

Gadens seemed to get away with things in Court that shocked me and dozens of friends and reporters.

Gadens beat me in every Court all the way to the High Court. They beat me in VCAT. They beat the purchaser’s Caveat with ease.

They beat another purchaser’s Caveat from a lender. Gadens were unbeatable.

Judges with shares in the banks failed to disclose their shareholdings and they refused to recuse themselves from cases. (Only one did, at VCAT). In one instance one Judge – Justice Osborn declared having close to a ¼ million dollars and refused to recuse himself.

The Legal Services Board and Commission let them off. The Board’s letter essentially states they can do nothing if Judges’ don’t do anything. Then I have judges stating that if it isn’t in the pleadings then they will ignore everything else.

Staff at the Legal Services Board & Commission were very upset.

I was told they could not take action because of their budget, but they are taking action in other cases the FBI and SEC has about them as I have been informed and therefore have money to save themselves.

After losing my cases over and over, LSBC Insiders whispered to go to VCAT, the FBI and the US SEC.

That was how deeply troubled the Legal Services Board and Commission people were.

Who would think to call the FBI!? I thought they were insane. I did anyway. I am registered with a group at the SEC and the SEC might pay a reward if the Banks are fined.

They spoke to other people about my case even though the LSBC is liable for damages if they blow the whistle or talk to the wrong people. (I estimate that I am entitled to over $3mill.).

Out of the blue, Gadens offered me the $1m hush up deal as outlined in Submission 2 to the Foreign Bribery Inquiry at Parliament.

I couldn’t believe it. Everything they said about the FBI must be true, I thought.

The offer looked illegal to me, and it’s illegality was the same type of illegality I was tipped off to expect.

Gadens also insisted that my purchasers from America must sign up to the Deed. Just as was expected!

Why would anyone know that Gadens would insist that the Americans sign a deed to things they weren't involved in?

Here Gadens demanded the very things I was expecting they'd demand.

The hush deed was exactly as I was informed by people it would be like.

Gadens also refused to make changes that every lawyer and barrister told me to ask for.

Every lawyer that I spoke to from Queensland to Queen Street, said don't touch it.

Luckily no one did because the FBI "came out of the bushes".

The hush offer was unacceptable without making it open and honest and on the record, with the Bank's full knowledge of Gaden's conduct.

Regrettably, Gadens refused to make the changes and make it their own cash (rather than shareholders money). Suspiciously they turned down ideas that would not cost the bank a pretty penny.

Soon afterwards, Channel 7 News said a tip off last year caused audits and arrests of bank executives. (I think the tip off was from the LSBC whistleblowers to the SEC Witnesses).

The FBI wanted the Hush Deed. Inquiries were made by

- Auditors from Ace Foundation
- Auditors from Computer Science Corporation
- An MP about an accountant in Brighton,
- Bank Reform people in NSW
- 60 Minutes' producer for the ANZ Story that was aired in August this year
- Fairfax and ABC
- The FBI "IC" Division.
- The SEC Office of the Director of Corporate Compliance
- The SEC's Senior Counsel Mr McCreedy
- IBAC anti-corruption commission
- Victorian Ombudsman
- Parliamentarians who want the names of Legal Services Board officials
- about the American Express Case. They lost billions because of the Reserve Bank of Australia

The LSBC told me to go away despite damning evidence and despite the FBI arresting people. You would think the LSBC might see a few ethics issues if banks executives are arrested over the same Hush Deed they said was legal and ethical.

They might be liable to me and the bank shareholders for all I know too.

It all came true.

- The Hush Deed materialised out of thin air
- The Hush Deed was exactly as I was led to believe it would be.

- Gadens refused the changes
- Soon after the deed was refused, there was pay-back. We felt like we turned down an offer you can't refuse
- There are Parliamentary Inquiries in the News every day. Submission #2 is at the top of the List.
- The Parliamentary Inquiry into Engineered Defaults started;
- American Express lost billions (and I look forward to sharing the Reward).
- The NAB Audit lady in New York, Alice Savenah, is looking at things.
- The ANZ was on 60 Minutes.
- You should read the Submissions at the Foreign Bribery Inquiry from Professors, the International Bar Association, the Attorney General + Federal Police, and many others. They want the same things.
- The FBI wanted the Hush Deed
- The SEC wanted information
- MPs called
- Bank Reform Now said MPs want the names of the LSBC officials exposed in Parliament

Every few months the FBI and SEC want something more.

I therefore object to the Legal Services Board & Commission ("LSBC") using its powers to investigate its own role in the $1m Hush Deed.

They owe my family for breaching their privacy laws too. I have friends and colleagues calling me almost daily still troubled about their faith being destroyed after seeing what occurred to me and my family by Gadens, Financial Ombudsman, the judiciary, Gadens, NAB and the Legal Services Board & Commission.

If the Senate Inquiry or the Parliamentary Joint Committee want me to testify at their hearings, I will.

Elliot Sgargetta