

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Dear Committee Secretary

This is our submission in dealing with the justice system in relation to our dispute with the bank.

An outline of what occurred:

My husband entered prison for a term of 6 months and we approached our lender for hardship so we could retain our home we had lived in since 2004. Our lender took over the loan in 2011. They made an error and engineered a default. We were making payments as per the agreement which we had signed and sent back in January 2014. We then received a letter in May 2014 stating that our application had been declined. I called the bank immediately and they sent out another letter which we signed and sent back. Because of their error they were to extend the terms for an extra 12 months. Which we found to not have been processed when we had the Sheriff turn up to evict us.

WE had not received any paperwork nor had been served to advise us that the bank was foreclosing on us. The judgement had been entered without us having the opportunity to defend our case. Paperwork had been altered. Monies had been lost and we could not get any assistance to retain our home. We tried to access our Super three times and each time the paperwork got lost. We managed to access lending from another company only to be screwed by them as well. We were finally evicted, and that is when the bank went to task on us.

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:

1) *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,*

a) *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*

If the Banks are aware of misconduct or maladministration, they are unwilling to admit fault and instead pursue the consumer relentlessly. They utilise the services of Law Firms that have no moral compass and who will go above and beyond to ensure the Bank is the one that comes out favourably.

Banks use bullying methods and interfere in any methods consumers employ to access fair justice.

Banks and their lawyers ensure you are unaware of your legal rights, and impede any access to information that may assist you.

- b) *whether banks generally have behaved in a way that meets community standards when dealing with consumers trying to exercise their legal rights;*

Banks have little or no regard when it comes to dealing with consumers trying to exercise their legal rights or answering questions raised regarding the terms and conditions of the mortgage or the mortgage document itself. Instead accusing consumers of being vexatious. As a consumer I believe any questions I ask regards to the mortgage should be answered truthfully. It seems that when the Banks do not like the questions you are asking, as it may expose them if they were to respond truthfully, they will have their lawyers throw what they can at you.

Bank engineered default when they made an error in processing our claim for hardship. Refused us access to our Super to pay the arrears that kept accumulating as they refused to honour their representatives' word that the hardship claim would be extended.

There is no transparency, they do not disclose all aspects of the loan or key terms in the loan that a consumer may have an issue with, one would be signing Power of Attorney over to the Banks. I believe if consumers were to know that this was part of the loan they would make the bank scrap that clause before signing the documents.

- c) *the accessibility and appropriateness of the court system as a forum to resolve these disputes fairly, including:*

There is no fairness in the court system as laws have been passed that allows them to no longer have to physically serve you with paperwork. They can write an affidavit claiming they sent the paperwork via post and then it falls on the customer if paperwork is not received. The court system is paid by the bankers for the bankers and consumers have no recourse in trying to save their homes.

- d) *the ability of people in conflict with a large financial institution to attain affordable, quality legal advice and representation,*

We rang every law firm we could, and all wanted us to deposit an amount of \$10,000 into their trust account and then they would look at our claim to see if we had a case.

Others laughed at us and told us not to bother as the banks always win.

Those that would look at the case had no idea on how to actually proceed, I was more educated in property law than they were.

The Legal Advice we get is ineffective, inefficient because no one is really conversant with the LAWS, Regulation, and Codes and HOW they should be applied to each individual case

- e) *the cost of legal representation and court fees,*

The Banks add their legal costs to your mortgage so that you are paying for their lawyers. They then charge ridiculous amounts and make claims for legal fees for 3 people to attend a court case that you are not even aware is happening.

- f) *costs risks of unsuccessful litigation, and*

Whether you are successful or not, the Bank ensures to add any costs they can to your mortgage so that if they foreclose and sell the property you receive 50 % of what you would have if you had the opportunity to sell the property yourself.

They employ Real Estate agents who charge astronomical prices and use any resource that will charge you through the roof.

They employ Removalists and Agents that have no consideration about your personal belongings and damage both the property to devalue it and destroy your personal belonging in the interim.

We had an antique writing desk passed down from our Grandmother worth \$5000 that they trashed and completely destroyed making it worthless.

Pieces of furniture that we had restored left out the front of the property to be stolen or left in the rain to be destroyed.

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.

g) the experience of participants in a court process who appear unrepresented;

Judges look unfavourably on those who represent themselves, they offer no assistance and side with the Bank in the dispute, making it impossible for the consumer to defend their case.

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

When we were given our notice to vacate by the Sheriff we sent through a complaint to the then FOS. As the matter had been to court they refused to look at our case even when we had advised them of the situation. They advised us that they could not assist us.

i) whether the eligibility criteria and compensation thresholds for AFCA warrant change,

Yes they need to look at each case and disregard their cookie cutter answers to the complaints as not one complain is the same. If they are regulating the Banks they need to then be impartial which they are not. They are employed by the Banks to ensure the Banks receive favourable outcome.

j) whether AFCA has the powers and resources it needs,

I am sure they have been given the powers and the resources they need, yet they are favourable to the Banks as they are made up of ex Bank employees or CEOs. The Board should be made up of impartial people, those not part of the Banking Industry who may be objective.

k) whether AFCA faces proper accountability measures, and

There is no accountability for them when it comes to the Banks as they are accountable to the banks. They need to be impartial and not have their Code of Conduct issued by the Banks who they are supposed to be regulating and ensuring are kept in line.

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

They cannot enhance test cases as every single case is unique, they may have some common denominators but overall no case is the same.

Their role is to regulate the Banks, expanding their roles in law reform will only help to serve the Banks and not the consumers.

m) *the accessibility of community legal centre advice relating to financial matters; and*

There is no real accessibility to community legal centres as these centres are kept hidden and do not show up on Google searches when you are looking for who can assist you.

any other related matters.

Overall, I would have to say we were jaded by the whole process.

The deceit employed by the Banks and their lawyers.

The Bullying tactics they utilise.

Their failure to assist you when facing financial hardship, instead doing everything in their power to have you dispossessed of your HOME.

No alternatives offered to you, all they tell you is you need to move out.

They throw a pittance of \$3000 to move, which when facing foreclosure finding a property to rent is impossible as they have blackened your credit rating so no one will assist you.

There are no conversations with the Banks. You are treated like a number. There is no personal assistance from the Banks and those that try to assist you are chastised and punished.

When you ask questions and show them proof of their wrongdoing, they call you a Vexatious Litigant and defame you so you will receive no fair court hearing.

The Judges are quick to take the Lawyers word which is hearsay as they have never been party to any dealing you have had with the Bank. Yet their testimony is validated, and you are made to be a liar.

They alter documents and accounting history and when you show them otherwise, they refuse your evidence, claiming you have doctored their statements.

They submit affidavits as if they are gospel.

The Banks have the money to use at their disposal and will keep you held up in court hearings to bankrupt you, effectively leaving you destitute.

In litigation, adverse costs orders are a significant barrier to equitable redress for consumers. In a financial dispute, there should be no adverse costs orders against vulnerable consumers. Each party should be liable for their own legal costs, no matter the outcome.

Big corporations have so far held the balance of power and have used shareholder resources to routinely game the legal system which the vulnerable consumer is ill-equipped to compete in. It is not appropriate for consumers to face litigation unrepresented. Therefore, realistic access to justice must be a priority for consumers.

Consumers should be protected from legal consequences of pursuing redress for signing inequitable, unconscionable agreements that did not reflect their legal rights under Australian law. Banks should be made to disclose all aspects of the Loan Agreements and there should be transparency on where the money is sourced from and in respect to the Banks securitising loans, those who hold the securitisation for said property should be the only one bringing forward the claim.

Yours Sincerely,