Thu 11/04/2019 2:00 PM

Hello AFCA

I have heard you have an inquiry into extending the reach back in time AFCA could consider in cases of bank malfeasance etc.

Can you please confirm and provide details of the TOR urgently?

As a general statement I wholeheartedly agree that this should be the case given that many victims like me do not become aware of the malfeasance until many years later

In my case my loan with [redacted] commenced in October 2007.

I became aware of fraud in the loan documentation in January 2017.

My above example is one of many others who did not have access, or were never provided, or were refused access to their own LAF

I requested my LAF in 2013 when problems at [redacted] handling my file were not being properly or fully forthcoming

Craig Caulfield

Bank Warrior 💪

[redacted]

www.bankwarriors.org

Fri 12/04/2019 8:29 PM

Thank you Mr D'Argaville for your quick response and thank you also for commenting briefly on [redacted]

I intend to lodge after the 1 July 2019 when compensation limits change.

It is now 8pm on the date final submissions are due. I cannot imagine that most bank customers with grievances will be aware of or frankly understand the legal terminology in the information memorandum and legal attachments. I have just sent a group email out but likely will only be opened over the next few days

I do note the far better job David Locke and the AFCA team are doing to publicise AFCA's availability at a raft of seminars and media events etc. Disaffected bank customers are nonetheless most unlikely to have been made aware of this particular opportunity to make input nor understand the ramifications.

To this end I recommend AFCA draw particular attention, in a plain English style to my group www.bankwarriors.org and others such as BRN and BFCSA whenever any input is sought or even an informal opinion considered.

Circulating to Consumer groups such as CALC or Caxton Legal Centre (if it was done) is commendable but will not reach me and my members. Every single Community Legal Centre in Australia is reluctant to take on substantial bank cases. Goodness knows I have tried dozens.

On this basis I would be grateful if we were granted an extension of just 7 days from your confirmation to make submissions.

I fully appreciate the right time from imposed upon you by the minister.

Notwithstanding the above and that I will use matchsticks to keep my eyelids open I will now seperately make a submission.

Should any fellow bank Warriors make similar late submissions in the remaining 3 hours please allow some latitude where we suggest outside the scope etc. it would be great if you could take on board the tenor of our suggestions and perhaps you can legally or compliantly reframe them. I say this after meeting your CEO David Locke a few weeks ago. David was generous in his time meeting us and frankly surprised me with his genuine desire for reform. Bank Warriors are rightly highly critical of some bank conduct and also regulator conduct but we do work co-operatives where we are welcomed. A perfect example is the recent agreement of the four major banks to adopt MODEL LITIGANT standards. I can attest that I led a close group of bank Warriors working behind the scenes with the banks and politicians. It was a great example of cooperation and a win-win outcome. We expect legislation in the months post election

I am interested if you came from FOS or if you have worked in any FSPs?

Best regards

Craig Caulfield

Fri 12/04/2019 9:29 PM

F.2.1 AFCA will not consider a Legacy Complaint:

b) about conduct that occurred and ended before 1 January 2008.

This comment that the conduct ended before 1 Jan 08 appears to contradict other information or at least provide confusion

Conduct may have had its seeds in issues commenced prior to Jan 08 but not had any impact or a customer had no awareness until after this date. For example a bank loan made in October 2007 containing fraud may not have come to the customers attention until Jan 2017.

Is the conduct the original loan documentation fraud? Could the poor conduct be the refusal of Hardship in 2010?

Could the poor conduct be the way the bank handed the file to lawyers in 2012 after refusing to meet the customer?

Does refusing FDM in 2014 on the basis the loan was residential (yet a farm was purchased and operated) where the bank did not perform with skill and care of a prudent and diligent banker in providing the proper loan. This should be included because the FDM refusal was 2014, even if the LAF is 2007.

Where the bank is aware of loan discrepancies in 2010 after the loan origination in 2007, yet fails to inform the customer this should be included in legacy cases

My point is most wronged customers are far from aware of their rights to documents, the law or banks transgressions. It is wrong to exclude all or any of these examples simply because the loan originated in October 2007

As it stands the arbitrary date of 2008 excludes many cases. The UK is looking at legacy cases and provides a date back to 2000. The UK also has no limit to the value of bank malfeasance, where Australia limits banks liability even where it is proven the bank ripped the customer off. Many farmers and small business fall into this category.

I recommend on behalf of thousands of Bank Warriors and affiliate groups that the banks and their lawyers and lobby groups not be allowed to influence carving out such cases. If Australia wants genuine reform embrace openly such cases, remediate fairly, ethically and morally (not just legally) so that both legacy customers, banks and the entire industry can move forward

It is almost inconceivable to realise the reality that we have had 53 bank inquiries. They keep occurring because of banks lawyers input into creating carve outs. Carve outs are people's lives that have been devastated. The short term petty minded banks have paid many times over what fair compensation would have cost them. Look at Mr Morrison's $6.8 billion bank tax introduced in 2017. Look at the massive regulatory costs to government and banks. Thousands of people and office buildings equivalent full of lawyers all defending a position.

Use this opportunity, an opportunity I commend to ensure the widest parameters and scope is used, not the minimum. For if it doesn't do this not only will the agitation not stop, aggrieved victims are gaining voice, confidence and expertise in seeking fair outcomes

Bank Warriors worked co-operatively behind the scenes with all four major banks, various politicians and some regulators to achieve a new standard that the big banks agreed to. That is to act as MODEL LITIGANTS. I was actively involved in this and I can only commend and praise all four banks for their genuine engagement. Let's continue this great work right here by keeping the scope as open as possible

c) in relation to which a decision or determination has been made by a court or tribunal.

Courts may provide legal conclusions but they do not provide more ethical or fair outcomes. Banks with overwhelming financial and legal firepower have seen off almost every challenge from a bank customer. This legacy review is taking place AFTER the Financial Services Royal Commission where ETHICS and MORALS and FAIRNESS was put on display.

The APRA prudential review into [redacted] exposed systemic and multiple failures by banks. Graeme Samuel AC, Gillian Broadbent AO and John Laker AO final report was scathing of [redacted] conduct. Most of these failures were legal. So a court would have an entirely different view to Samuel and co. The point is TODAY there is NO FAIR REASON to carve out historic bank customer cases that went to court. Court is no place for fairness. An impecunious victim against a financial behemoth has their court fate sealed before they walk up the steps on day one.

d) in relation to which a decision or determination about the merits of the complaint has been made by a Predecessor Scheme or AFCA.

Rowena Orr QC demonstrated that AFCAs predecessor FOS and its lead ombudsman [redacted] had made errors and failed customers. These rules would exclude someone in the same position from being able to lodge yet the FSRC demonstrated FOS failings. This should be struck out. Where failings errors or worse occurred at FOS etc no right of appeal was allowed. I know I tried. The Independent Assessor in looking only at process errors (not decision reviews) was found wanting. The Administrative Appeals Tribunal (AAT) has likewise been criticised and subject to Parliamentary investigation. FOS did not act in an inquisitorial manner. Our hundreds of examples with bank Warriors and similar groups demonstrate how striking FOS acted in an adversarial manner. Provision of loan documents is a case in point. Regardless of FOS making a decision this process simply must not preclude these cases

e) that has previously been finally settled by the Complainant and the Financial Firm to whom the complaint relates (other than a complaint which can still be made under the Rules).

Many settlements have occurred where victims had no access to their LAF and other files and banks said they had lost their files. In my case lost the critical page of a multi page electronic document

f) in relation to a superannuation death benefit.

I cannot comment as I don't understand super but I bet a bank warrior who does would have something to say if they knew of this opportunity to contribute

g) that solely relates to a right or obligation arising under the Privacy Act.

There is no reason to exclude an item under the privacy act. The banks lawyers will have a Field Day excluding cases just on this basis

As you can see I have only commented on Clause 2 but I ask that you consider the themes of my points and ensure that ANYONE who has been treated unfairly, not be prevented and excluded by lawyers making carve outs

Thank you

Craig Caulfield

www.bankwarriors.org