



# Bank Reform Now

Taking Real Action To Bring About Real Change In Banking

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Treasury Review AFCA

By email only - [AFCAreview@treasury.gov.au](mailto:AFCAreview@treasury.gov.au)

re: AFCA Inquiry

BRN welcomes the opportunity to contribute to this inquiry.

As you will know from the media and various Parliamentary interactions - bankers have been shown to be involved in: fraud, forgery, predatory asset stripping, money laundering, rate rigging, drug trafficking, terrorism funding, superannuation rip-offs, financial planning abuses, insurance scandals, farmer evictions and many resulting suicides and most recently in facilitating the predatory exploitation of children.

The conduct of the banks and the way they treat many of their customers prove that their culture, values and ethics are sorely lacking and not in line with community expectations & standards.

You will also be aware that bank criminal conduct is a worldwide issue of importance. Banks have been effectively enabled and allowed to get away with criminal misconduct because the regulators have been captured by the finance sector. In addition the judicial system effectively protects bankers because:

- a) a victim of misconduct cannot afford to access justice, and
- b) the judiciary (and in fact government) effectively run a protection racket supportive of banking interests over citizens' and customers' interests.

Our membership has given us many examples of AFCA's failure to investigate and resolve disputes properly. In fact our advice to bank victims is to avoid the use of AFCA altogether.

AFCA is simply a rebadged FOS with the same staff and much the same limitations which in effect guarantee that satisfactory resolutions cannot be achieved for any high value disputes. This only suits the banks.

The way the regulators protect bankers from the consequences of their misconduct is much the same as current moves by the government to remove Responsible Lending Laws. How can a banker be held accountable if the misconduct that harms

a customer is deemed “legal” by the government and Judiciary? A bank victim cannot succeed in a Court of law if a law hasn’t been broken..!!

Our membership is of the view that:

1. Irresponsible lending and asset stripping should be illegal.
2. The police and Courts should enforce the law.
3. The regulator AFCA should have terms of reference and a culture that holds bankers accountable for misconduct.
4. There should be no limit to the damages payable.
5. Victims should have access to the same legal firepower that the banks have when a dispute does reach court.

Clearly - if bankers understood that a victim was able to successfully argue the case in Court then the banks would be far more likely to seriously discourage misconduct by their staff. This is not rocket science. If a predator knows they have a good chance of being caught they are far less likely offend. This doesn’t just apply to bankers. It is also relevant to politicians and lawyers amongst other.

Therefore we recommend AFCA should be shut down and replaced with an entity that operates in the way such an organisation should function - to serve the interests of the users of financial services. The following points should be a priority of the new entity:

- a) There should be no restriction on the size of claims i.e. they should reflect the size of the actual financial loss and the flow on consequential losses.
- b) There should be no limit regarding the date of the dispute i.e. if a family was harmed forty years ago and the documentary evidence trail is strong they should be heard and assisted. Bank crimes go back a long way.
- c) Banks must be required to supply all required documents to any investigation. The entity must have the power to enforce this requirement.
- d) A new organisational structure and function to facilitate honest, fair and just outcomes for users and victims of finance sector misconduct by:
  - i) being independent of banks and government
  - ii) being funded by bank fines and a levy on bank profits
  - iii) being structured as a non-profit NGO
  - iv) having an independent board put in place via input from the public with the assistance of qualified advisers such as the small business ombudsman

v) employing well qualified lawyers

vi) funding victims where appropriate in their legal battle against a bank. Thereby providing “Equality Of Arms” to victims of bank misconduct.

vii) being available to face the relevant House and Senate inquiries at regular intervals throughout the year.

It is worth noting that just because something is “legal” doesn’t mean it can’t be harmful. Many activities and practices that are legal can and do cause significant harm.

Bankers are only concerned about “law.” They don’t care if they cause harm if they can’t be held accountable by the law. Generally it can only be a Judge that can force a bank to remediate a harmed client. It is very hard for a victim to fight a bank even when laws have been broken. It is important that EDRs give victims an effective path to justice which avoids Courts but when a Court is required the client should get the appropriate support. Any AFCA replacement should perform the required jobs efficiently and effectively.

Thank you for the opportunity to assist with your inquiry.

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