



7 September 2017

PRIVATE AND CONFIDENTIAL  
DELIVERY BY REGISTERED MAIL

Ms Anna Lenahan  
Group General Counsel  
Commonwealth Bank of Australia  
Level 5 Tower 1  
Darling Park  
201 Sussex Street  
SYDNEY NSW 2001

Dear Ms Lenahan,

Thank you for your reply on behalf of your Chairman. Unfortunately, it is completely unsatisfactory.

Despite the executive "culture" and "accountability" at your bank being the subject of extremely serious allegations, questions and scrutiny by government, ASIC, APRA, ASBFEO, international financial watchdogs and indeed, the entire Australian community, you seem to have learned nothing.

You claim to have detailed knowledge of my case. Obviously you do not, despite your role as Group General Counsel. This is extremely concerning and I predict will have a serious impact on you and CBA. Contrary to your statements the facts are as follows:

1. Your suggestion that my matter had been reviewed internally carries no weight whatsoever. No one trusts the CBA to be fair, balanced and reasonable. That is precisely why your bank is experiencing its biggest and most damaging crises since its inception in 1901. (See point 5 below.)
2. Your suggestion that my matter was dealt with by the Supreme Court is simply wrong. The matter never got to Court as it was settled (in totally unsatisfactory manner and which is currently under review) prior to hearing. The fundamentals of my case have therefore never been heard, nor tested in Court, so no conclusions can be drawn.
3. Your suggestion that my matter was also dealt with by the Supreme Court of Appeal is also factually misleading. Only one technical element of my entire case relating to the legal veracity of the imposition of your "Suspension Clauses" was reviewed by the Supreme Court of Appeal and not the merits of my actual claim.

Frankly, I am surprised that you would raise this issue as the Court found, unanimously, against CBA in my favour (with costs). It was determined that CBA's harsh, unfair and unconscionable "Suspension Clauses" in your one-sided loan document were, in fact,

unlawful. CBA then defied the Court Order to pay my costs, which necessitated sending the Sheriff of NSW to make the collection. The CBA lied to the Sheriff saying it was a Bankwest matter, despite previously, formally, notifying the Court that it was a CBA matter. Justice Sakar then rebuked your bank in open Court directing you to pay the duly awarded costs for both hearings. Hardly CBA at its best.

4. Your suggestion that my submission and statement to the PJC was inaccurate is also wrong. My statement was entirely accurate and it was Messrs Cohen and Craig (both currently at the centre of your storm) who have made false and misleading statements to the PJC, ABSFEO and previously the Senate Inquiry all of whom have found incontrovertible evidence of Unconscionable Conduct by CBA with my case being a central example. I have indisputable, documented proof of this most serious matter which was subsequently supplied to the PJC, but not made public. I had hoped to discuss this privately with your Chairman prior to it becoming so.
5. Both the PJC and ASBFEO have uncovered clear evidence of "unconscionable conduct" by CBA in its dealings with me on a significant and serious level as well as many other Bankwest victims involving the "engineering" of impairments and defaults on 1,958 performing loans estimated to be worth \$10 - \$18 billion. (See Ruddock speech <https://youtu.be/YZMSwNAISFM>; ASBFEO summary - see attachment). It's interesting to note that 2 independent inquiries have clearly identified appalling conduct by CBA, yet your "internal review", referred to above, found nothing wrong? No doubt this "review" was conducted under the same inadequate governance and culture that have allowed the transfer of funds to criminals and terrorists. Having regard to the facts referred to above, you can no doubt appreciate why an "internal review" by CBA is viewed as worthless in terms of accuracy, balance, fairness, objectivity and professionalism.

Given all the above and CBA's public statements and posturing about addressing its massive "cultural" problems, I am frankly staggered to learn that your new Chairman was not interested to meet with a high profile victim, in an informal and non-combative forum, to discuss constructively, where you have gone so badly wrong. To receive your ill-informed and factually incorrect response on her behalf is, as I said, totally unsatisfactory. It is disappointing, but now perfectly clear, that there is no hope for a "cultural" change at CBA despite new senior personnel and the screamingly obvious and urgent need for a seismic shift

Your bank is facing an unprecedented crisis precisely because of this kind of behaviour. The CBA is not suffering under detrimental market forces nor some other outside influences. It is entirely due to your own management and culture. Indeed, ALL the focus is now on CBA. You are facing fines of between half a billion and a trillion dollars and the largest shareholder class action in Australian history. Your CEO has

been sacked (don't think anyone is fooled by the pantomime) others, including senior board members, are under the gun, your share price has seen billions wiped off the bank's value and international watchdogs are hot on your heels, yet your letter tells me emphatically that you STILL don't get it. No wonder the calls grow louder for a Royal Commission.

I made a genuine, sincere and constructive offer to help your most senior, and newly appointed, officer to better understand why your institution is in such an appalling situation. That offer has sadly been rejected.

You clearly deserve all that is happening and all that is coming your way.

Yours sincerely,



RORY F O'BRIEN

**cc Members of Parliament**

Hon Malcolm Turnbull  
 Hon Barnaby Joyce MP  
 Hon Tony Abbott MP  
 Hon Philip Ruddock  
 Senator the Hon Arthur Sinodinos AO  
 Hon Scott Morrison MP  
 Senator the Hon Mathias Cormann  
 Hon Kelly O'Dwyer MP  
 Mr David Coleman MP  
 Mr Julian Lesser MP  
 Senator David Fawcett  
 Mr Craig Kelly MP  
 Hon Warren Entsch MP  
 Hon Bill Shorten MP  
 Senator the Hon Katy Gallagher  
 Hon Matthew Thistlethwaite MP

**CBA Board**

Ms Catherine Livingstone  
 Mr Ian Narev  
 Mr Shirsh Apte  
 Sir David Higgins  
 Ms Launa Inman  
 Mr Brian Long  
 Mr Andrew Mohl  
 Ms Mary Padbury  
 Ms Wendy Stops  
 Mr Andrew Whitfield  
 Mr Harrison Young

**ASIC**

Mr Greg Medcraft  
 Mr Michael Saadat

**ASBFEO**

Ms Kate Carnell AO

**Ramsay Inquiry**

Professor Ian Ramsay

## ATTACHMENT

## Executive summary

On 6 September 2016, the Minister for Small Business, the Hon Michael McCormack MP, tasked the Australian Small Business and Family Enterprise Ombudsman with undertaking an inquiry into the adequacy of the law and practices governing financial lending to small businesses.

Consistent with other inquiries, the Ombudsman finds almost complete asymmetry of power in the relationship between banks and small business borrowers. This manifests itself in:

- extremely complex, one-sided contracts that yield maximum power to banks to make unilateral changes whenever they like and without the agreement of borrowers
- inadequate timeframes around key loan milestones that leave borrowers vulnerable
- misleading and conflicting signals between bank sales staff and credit risk staff which leaves borrowers vulnerable
- lack of transparency and potential conflict of interest in dealings with third parties involved in impaired loan processes, such as valuers, investigative accountant and receivers
- significant gaps in access to justice with nowhere to go except the court system, with borrowers having limited resources and banks having overwhelming resources.

Since the global financial crisis (GFC), 17 inquiries and reviews have been held and more than 40 recommendations made relating to small business and banking practices. Despite borrowers and stakeholders persistently raising the same issues, the banking industry has taken little action.

The Inquiry reviewed a selection of cases submitted to the Parliamentary Joint Committee Inquiry into the Impairment of Customer Loans. About a third of these cases were simply poor business decisions where the bank appears to have acted reasonably, a third a mixture of poor business decisions and poor bank practice and a third with very real issues where bank conduct is unacceptable and possibly unconscionable.

The recommendations raised in this report, which also support the initial findings of the Ramsay Review Interim Report, will address these issues going forward. For past cases, where there is a genuine concern, there needs to be a specific approach to seek a remedy which will allow these bank customers to put their case and to obtain compensation that is binding on the banks. The remedy needs to produce a capacity to come to a determination in a timely manner, without including lawyers and with a scope that is not limited to contract clauses.