

## **SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT**

Thank you for the opportunity to provide submissions on the policy issues identified in the *Interim Report of the Financial Services Royal Commission*.

In preparing its final report on policy issues I would like the Commission to take into account the four proposed recommendations set out in this submission.

I have quite specific reasons for making these recommendations, arising out of my experience of dealing with [REDACTED] before and after my wife died from cancer. I therefore begin this submission by setting out that background and context.

## **BACKGROUND AND CONTEXT FOR MY RECOMMENDATIONS**

Five years ago my family was in a strong position. We had a two year old daughter, with a second on the way. I ran my own successful business, [REDACTED] We had substantial savings. We owned a house worth around a million dollars, with the value of the mortgage on it being less than 20% of the full value of the property.

[REDACTED]

[REDACTED] e

Financially we were coming off a strong base, but everything was thrown into turmoil. We were both in a state of acute shock, busy with parenting and treatment, and completely unable to deal with day-to-day administration in the usual way. My income was slashed, and my ability to work suddenly curtailed. We had substantial unexpected costs associated with cancer treatment. We didn't know when my wife was going to die, or what costs would be involved in her treatment.

On the advice of our hospital we applied for a "mortgage repayment holiday" from our bank [REDACTED] Following our application the bank allowed us to defer mortgage repayments for three months. For another three months after that we were required to make repayments at a 50% reduced rate. Following that period we were required to make our regular repayments but were given time to clear the outstanding arrears from the deferral period. However, we were required to repay those arrears in full, four months before my wife passed away. At this time the bank became aggressive and threatening, saying that if we couldn't make our monthly repayments punctually and in full then we would have to sell our house.

The threatening way in which the bank treated us had a significant bearing on our decision that I should keep working through the last months of my wife's life. Having to work through this time was devastating.

Following my wife's death I repaid our mortgage in full, using my wife's life insurance payout. I felt that the way the bank had treated us during the time my wife was dying was wrong, and that other families facing crisis in the future should not have to endure the same treatment. When I looked at the bank's public commitments around the provision of hardship assistance I realised that the assistance they had provided us fell far short of what could reasonably be expected by a family in our situation.

In January 2016 I lodged a complaint with the Financial Ombudsman Service [REDACTED] detailing the ways in which I thought the bank had failed to meet its obligations to my family. I sought an apology, and a review by the bank of the way in which it provided hardship assistance to families facing terminal illness. However, the bank did not acknowledge any wrongdoing on its part, and on [REDACTED] June 2016 the ombudsman dismissed my complaint. [REDACTED]

[REDACTED] Again the bank did not acknowledge any wrongdoing. [REDACTED]

Speaking publically about these issues was difficult because of the very personal nature of the material. It still makes me feel physically ill when I read newspaper stories about my wife dying, or about our house, mortgage and private financial details. But it felt worthwhile, because people were listening to what I was saying and taking it seriously. Our situation was put forward publically and prominently as one of the reasons that Australia needed to hold a Royal Commission into the banking industry.

Following the media interest, our story was picked up by the House of Representative's Standing Committee on Economics in its first review of Australia's four major banks. Before the Committee the bank acknowledged that our hardship assistance application had not been dealt with properly. The bank provided a further written response, acknowledging that it had made errors and mistakes.

Despite its acknowledgment to the Committee the bank did not and still has not provided me with an apology, nor any explanation as to what went wrong, why it happened or how it might be prevented from happening to others in the future. The House of Representative's Standing Committee on Economics did not have the power or the resources to investigate whether the bank's admitted errors and mistakes constituted illegal activity, or whether they were a result of systemic issues.

When the Royal Commission was called I was overjoyed. I had been part of the process of calling for an inquiry, and I thought that my family's case would finally receive some rigorous investigation. Any hardship that I had been through in pursuing my complaint would be worth it if even a single family in crisis in the future was to be afforded better treatment than was ours.

I lodged a submission with the Commission setting out the circumstances of my complaint and arguing that the bank's conduct may have been unlawful for the following reasons:

- i. Its public commitments relating to the availability of hardship assistance were misleading and deceptive because the actual level of assistance available in 2015 to families such as mine was substantially less than that publically committed to.
- ii. It failed to properly investigate my complaint of January 2016, or it concealed information from the ombudsman in relation to it.
- iii. In his public statement of [REDACTED] [REDACTED] misled the bank's customers and shareholders by failing to disclose the inadequacy of the bank's policies and procedures for hardship assistance.

Having now read the relevant sections of the Commission's interim report my earlier excitement has turned to disappointment. I am disappointed that the Commission does not see it as necessary to hear from people like me or to examine cases such as mine. I would have liked the opportunity to appear before Commission, to provide evidence and written submissions to support my claims, and to hear the bank's response.

I know this is not the Commission's intention, but from where I sit it feels like the Commission has gone out of its way to listen to the institutions that have committed wrongs, while closing its ears to the people affected by those wrongs.

## **RECOMMENDATIONS**

### **1. Banks should be required to publically disclose their policies and procedures in relation to the provision of financial hardship assistance.**

If banks had to disclose their policies and procedures relating to the provision of financial hardship assistance then customers could take them into consideration when comparing financial products. If the policies and procedures were transparent then they could be assessed by regulators and by the public for compliance with the law.

### **2. The Financial Ombudsman Service should be allowed to award substantive damages against banks for non-pecuniary loss.**

Currently damages for non-pecuniary loss can be awarded by the Financial Ombudsman Service, but they are capped at \$3000. The Financial Ombudsman Service in the UK is not so limited and can award fair and reasonable damages for distress, inconvenience, pain and suffering. My view is that the English approach is a better one.

Under the current regime in Australia there is little adverse consequence for a bank causing unlawful non-financial distress or pain to its customers. If the Financial Ombudsman Service were able to award substantive damages for non-pecuniary loss then that would give financial institutions a financial incentive to treat their customers with dignity and respect.

**3. Where a bank identifies that it has made a mistake it should be required to disclose to the affected customers that the mistake has been made, and detail any rights of remediation that the customer may possess as a result of the mistake.**

In my family's case, the [REDACTED] admitted [REDACTED] that it had made mistakes and errors in the way that it treated my family. Privately it has made no such admission, nor has it backed away from the response to my original complaint, that it did nothing wrong and that I have no reasonable basis for a complaint. The "don't-admit-anything-unless-you-have-to" approach is not tenable, and should be discouraged through regulatory intervention. Banks should be required to disclose mistakes when they are identified, and advise those affected by them of any available remedies.

**4. There needs to be a transparent process put in place to allow outstanding claims of illegal activity against financial institutions to be properly investigated, and any wrongs prosecuted in accordance with the law.**

The good standing and legitimacy of Australia's financial services industry depends on it being seen to be subject to the rule of law. The Commission has not had the time nor the resources to investigate the many accusations of unlawfulness made against the industry by its customers. It has not even had the time or resources to investigate cases such as my family's, which formed part of the original justification for calling a Royal Commission.

All outstanding accusations need to be investigated by a body with the appropriate resources and powers to do the job properly. Where appropriate, wrongs should be prosecuted in accordance with the law.

**Rainer Mora Mathews  
25 October 2018**