

[REDACTED]

[REDACTED]

**From:** XXXX XXXXXX XXXXXXXXXXXXXXXX  
**Sent:** Tuesday, 11 May 2021 2:41 PM  
**To:** AFCA Review <AFCAReview@TREASURY.GOV.AU>  
**Subject:** Attention URGENT ATTENTION -XXXXX and AFCA review panel- from XX XXXX XXXXXX

Attention XXXXX

**RE: AFCA Case XXXXXX, XX XXXX XXXXXX AND XXXXXXXXXXX XXXXXX and Commonwealth Bank of Australia**

As per our conversation on Monday 10<sup>th</sup> May 2021, please find enclosed a summary of my husband and my unsuccessful submission to AFCA whose mantra is to provide, [as AFCA states], ***'a free alternative to courts,'*** for victims of the bank's misleading, deceptive and criminal behaviour as described, and admitted to by the banks, in the 2018 Banking Royal Commission.

**Our request to you is to expose AFCA as an ineffective instrument to deal fairly with historic complaints against banks, specifically the CBA (in my case) and to recommend the urgent establishment of an appropriate compensation body. AFCA's handling of complaints does not reflect the recommendations and findings of the Banking Royal Commission, and is not an effective body to provide compensation to the victims of bank greed, corruption and malpractice as recommended by the 2018 Royal Commission.**

While we also have knowledge of deliberate fraud by the CBA, **our complaint to AFCA against CBA was for not providing 'copies of all documents relating to [my husband and me] that the Bank [CBA] held when we requested them in 2019, and an explanation 'why the Bank[CBA] did not provide copies of the statements when they were requested previously,' in 2009, and years before, given that, by law, those documents should have been provided within 30 days of our request, and that that action constitutes both maladministration and an inappropriate application of the practice or policy.** Ultimately, we sought financial compensation for the consequences of both maladministration and an inappropriate application of the practice or policy, by the CBA. This inaction by the CBA has devastated my husband and me, both financially and emotionally.

**Our financial loss claim was - \$997,752.41**

And includes

XXXXXXXXXXXXXXXXXX paid to the CBA who misled and deceived us by not providing our personal financial documents (the provisions of our personal documents would have afforded us the means to recoup XXXXXXXXXXXXXXXX which we were forced to pay by the CBA. 'The FSCPC advised that in fact consumers suffered loss as a result of the policy not to issue statements when a shadow ledger was opened and of the generally unsympathetic attitude of the Bank.'

- **The CBA's promise to provide all personal documents as detailed above to the (PJSC), on 21 June 2000, is proof of their admission they did not supply, specifically** *'At the hearing the Bank advised the PJSC that it had already announced that it would provide the very small number of affected customers with details of their account indebtedness on request. The Bank also advised that it was now prepared to go further and to issue statements on those loan accounts in accordance with the borrower's regular statement cycle until there is either a Court judgment or an agreement between the parties, normally signified by a release document. The statement would set out fully the account indebtedness of the borrower, including the principal outstanding, interest, fees and costs, together with any interest rate changes. The Bank would introduce this new arrangement on 1 January 2001, or sooner if possible. Until that date the Bank would honour its commitment to issue statements on request'*.

- 
- Interest on loan to pay XXXXXXXXXXXXXXXXXXXXXXXX
- Interest on loan to pay XXXXXXXXXXXXXXXXXXXXXXXX

**Our non-financial loss total \$5000.00.**

- already agreed to by the CBA as confirmed by ██████████ in a telephone conversation with ██████████ on 30<sup>th</sup> 12 - 2019 (██████████ from the CBA, advised he had taped the conversation for the record).

The CBA has refused to provide my husband and my documents on the following dates: -

- 4<sup>th</sup> August 2010**
- 10<sup>th</sup> August 2010**
- 5<sup>th</sup> November 2010**
- 16<sup>th</sup> December 2010**
- 22<sup>nd</sup> December 2010**
- 5<sup>th</sup> January 2011**
- 1<sup>st</sup> February 2011**
- 4<sup>th</sup> March 2011**
- 1<sup>st</sup> April 2011**
- 4<sup>th</sup> April 2011**

[Other requests have been made through multiple compensation processes and enquiries, including The Royal Commission in 2018, or directly by telephone. The CBA resupplied some documents during the AFCA process but still have not supplied

Specifically, Accounts: -

XXXXXXXXXXXX, Statement 237 and onwards

XXXXXXXXXXXX, Statement 27 and onwards

XXXXXXXXXXXX, Statement 154 and onwards

XXXXXXXXXXXX. Statements 26 and onwards

Please note the CBA have still not supplied those statements, not even in the emails they sent on 30<sup>th</sup> October 2019 as a result of this complaint to [AFCA].

**Also, they omitted to email copies of invoices already supplied to us in the past - specifically Account No XXXXXXXXXXXXXXX, Statement 82 to 153.**

The CBA have also not provided personal financial documents including:

- (a) **invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and**
- (b) **documents of prime entry; and**
- (c) **working papers and other documents needed to explain:**
  - (i) **the methods by which financial statements are made up; and**
  - (ii) **adjustments to be made in preparing financial statements.**

We relied on this CBA's conduct, and therefore advice, that our personal documents had been destroyed to advise both our accountant, for taxation purposes, and to advise our lawyer who sought evidence of 'continuous records' to validate the money the CBA claimed we owed them and, the money we subsequently were forced to pay the CBA, (since the CBA had never supplied us with 'the books of the bank' nor continuous records on our statements.)

If the CBA had not told us the documents had been destroyed, we would have taken action to recover the documents and sought compensation for the financial losses we incurred, from the CBA's failure to provide our documents and because of their deceptive and misleading behaviour regarding the status and the provision of our personal financial documents.

I wrote the letter below to AFCA after they referred the matter to the Ombudsman and the Ombudsman sent us their findings. AFCA have not addressed any of the issues and concerns I have raised in the letter. AFCA simply advised on 24/9/20, 3:31 PM that they had '**received [my] email rejecting the determination. [I] retain (MY) rights to pursue the matter elsewhere. [AFCA] now closed our file.**'

**RE: [EXTERNAL] RE: AFCA Case XXXXXX, XXXXXXXXXXX & XXXXXXXXXXXXXXXXXXXX and Commonwealth Bank of Australia**

**To: [info@afca.org.au](mailto:info@afca.org.au)**

**24/9/21, 1:24 PM**

**AFCA**

**Attention: XXXXX XXXXX**

**Case Support – Support and Allocation**

Even though **XXXXXX XXXXXX** [Ombudsman Australian Financial Complaints Authority], states that '**This determination is in favour of the complainants**', namely my husband and me, and '**The bank should then credit [our] account with \$1,000 in non-financial loss compensation**'. I am writing to advise that I do not accept this recommendation, for a multitude of reasons, none the least of which include the following reasons-



As AFCA advises ***We [AFCA] rely on the recollection of parties and documentation..., but we [AFCA] cannot take evidence on oath or cross examine witnesses.*** it is both inconsistent and misleading that AFCA would then ask an employee of the CBA, specifically XX XXX XXXX, to provide a statutory declaration [which is ***'evidence on oath'***] as critical evidence to support the CBA's defence that they have supplied all of our personal documentation, and then to make a determination based on the CBA's employee XXXX XXXXX'X ***'evidence on oath.'***

This action by AFCA to request evidence from the CBA which is ***evidence on oath***, also contradicts AFCA's claim that ***AFCA is an independent and impartial dispute resolution service.*** because AFCA's request for XXXX XXXXX'X ***evidence on oath***, in the form of a statutory declaration, graphically demonstrates a complete lack of independence in the resolution of our dispute as AFCA has determined that ***on the information submitted by both parties, I cannot be satisfied the bank holds any further information it is failing to provide the complainants. The bank has provided a statutory declaration setting out the steps it has taken to locate any further information. I am satisfied that the steps it has taken are adequate. There is no information to suggest the bank is withholding information from the complainants.*** This statement also flies in the face of the Ombudsman's observation that the following documents we requested from the CBA have not been provided, specifically

Account ending	Details	Dates
XXX	Statement 237 and onwards	Jul 1996 – Sep 2002
XXX	Statement 154 and onwards	Jun 1996 – Sep 2002
All	Documents of prime entry	1996
All	Working papers and other documents needed to explain the methods the statements are made up and adjustments made.	1996 – 2002

Also, AFCA is aware that our complaint was against the CBA, and as an organization the CBA cannot make a statutory declaration. [I have contacted the CBA on a number of occasions to request confirmation that the CBA stand by the information provided in XXXX XXXXX'X statutory declaration and they refuse to confirm that they do.] Therefore, a statutory declaration by the individual XXXX XXXX does not constitute evidence of the position of the CBA, as falsely determined in the statement ***the bank has provided a statutory declaration setting out the steps it has taken to locate any further information.*** It is also my understanding, as advised by XXXXXXXX XXXXXXXX, from AFCA, that XXXX XXXXX no longer worked for the CBA at the time the Ombudsman reviewed AFCA's findings yet they relied on his information to form their determination.

AFCA's determination that ***'it seems that the bank retained documents outside their normal retention period'*** and AFCA's recognition that ***'The Code stipulates that if the document is between one and seven years old, a subscriber should provide this within 30 days. We [AFCA] would not consider that around nine years is a reasonable time to provide documents,*** is not reflected in AFCA's allocation of \$1000.00 compensation for stress, particularly since stress had

been established and accepted by the CBA. As I advised **XXXXXXXX XXXXXXXX XXXXXXXXXXXX Case Manager** at AFCA that, in a telephone conversation with XXXX XXXXX on 30/12/19, @ 10.57, [which came about because AFCA had provided the CBA, in a letter on the 9<sup>th</sup> of December 2019, an 'Option 1 to 'Contact XX XXXXXX directly to resolve the complaint], XXXX XXXXX advised me, on behalf of the CBA, in 'words to the effect',

- o that while the CBA's view regarding the documentation remains the same;
- o they are open to settle on a commercial basis;
- o they offer settlement for non-financial loss of \$5000.00, and maybe even as much as \$10,000.00 as there are fees associated with an AFCA investigation they have to pay.

Also as stated in the determination **AFCA may decide a financial firm should compensate a complainant for such loss only where there has been:**

- **an unusual amount of physical inconvenience;**
- **an unusual amount of time taken to resolve a situation;**
- **interference with the complainant's expectation of enjoyment or peace of mind.**

It is clear from not only the evidence, but AFCA's determination comments that **We [AFCA] would not consider that around nine years is a reasonable time to provide documents,** that 9 years of requesting documents, involved substantial **physical inconvenience** as we had to make many requests over many years and the CBA's denial of the existence of our documents and then non-supply of those documents on request when they admitted the documents existed in 2009 would, by even the most conservative evaluation, have interfered **with the complainant's [ my husband and my] expectation of enjoyment or peace of mind.**

- And most significantly, AFCA states **that [AFCA] operates as a free alternative to courts,** which is clearly not the case as AFCA recommends that since **It is not AFCA's role to forensically examine all documents for authenticity... If the complainants continue to dispute the authenticity of this information, they [specifically my husband and me] should seek independent legal advice about their [our] options.** **Clearly it would only be in the best interests of the CBA for us to accept the \$1000.00 settlement and lose any further opportunity to pursue the CBA through other options.**

It is clear that by design, and administration, the complaint process through AFCA for victims of the bank's misleading, deceptive and often criminal behaviour, [as revealed and admitted to by the banks and the CBA specifically during the 2018 Banking Royal Commission], does not provide a forum for proper investigation and resolution of victim's complaints and is a completely inadequate response to the recommendations of the Banking Royal Commission.

Please confirm receipt of this email and also that this rejection of AFCA's determination is recorded on the file and can be viewed in any review of this claim process.

I have kept comprehensive sequential records of the complaint process with AFCA we underwent over 14 months, and I am happy to supply them to you for your edification and for any review of the AFCA process.

Please confirm receipt of this email.

Yours Sincerley

XX XXXX XXXXXXX