Stephen Weller
[redacted]

25 March 2021
Dear Minister,
I preface this writing with the fact that I was one of the four witnesses in Round 3 of the Financial Services Royal Commission (FSRC). I am attaching to this letter my responses to the Royal Commission, (i) response to the Interim Report, (ii) response to Round 3 & the CBA submissions, & (iii) letter response to final Report of FSRC as some background to my case.

I did, under duress, sign a Deed of Release (DOR) with the bank (CBA) after many months of solicitors acting for the bank pursuing me, intent on criminalising me and causing immense mental stress on top of catastrophic financial loss.

I am attaching, as well, an email I sent to the CEO of the CBA outlining the impact of the bank's immoral and fraudulent actions.

I understand that due to my signing the DOR I was prevented from approaching AFCA to review my case.

The main action by the bank, resulting in the fire sale of my business, was to engineer the expiration of the loans to the business through unconscionable conduct by the bank's officers handling the matter. This cannot be emphasised enough. The bank had all the power in the circumstances of the environment at the time and it used that power to deny me any sense of fair play and put me into a situation of duress.
My case's significant points are:
-2008 negotiated a loan facility of 15 years;
-2010 the bank unilaterally reduced the facility to a 1year loan;
-2012 the bank forced me into a Deed of Forbearance (DOF) using an LVR (Loan to Value Ratio) as it's justification;
-2013 (after 5 weeks of the DOF) the bank unilaterally cancelled the DOF on a technicality. The DOF contained a further 2year facility;
-2015 the bank sells the business on a basis that fraudulently considerably undervalues its worth.
This type of activity is systemic and would be common to a large number of complaints / disputes.

Even though my consideration that the Royal Commission was ineffective in understanding the unconscionable conduct of the bank, I was unable to proceed to a further review process by AFCA.

AFCA REVIEW

On any reasonable basis AFCA should be-

-fully funded independently by fines and levies on all financial entities and be truly independent of financial entities;

-allowed unfettered ability to pursue disputes that require resolution by an independent body;

-a non-profit entity with statutory reporting responsibilities;

-an organisational structure with a small Board of Directors comprised of both industry and professional people;

-be staffed with appropriately qualified personnel able to handle complex matters, such as those raised by submissions to the Royal Commission in Round 3;

-competent to **obtain & investigate** evidence / documentation with an aim of providing justice in the process of dispute resolution;

-given powers to hand down findings after a dispute resolution process;

-given powers to take matters to Court. Especially on behalf of complainants who have been made destitute through the actions of a financial entity;

-not constrained by dollar amounts of disputes or the passage of time from when a dispute arose;

-able to receive a complaint from any person or entity, within AFCA's jurisdiction, no matter the status of the dispute apart from having been deliberated by a Court;

-fully accountable for its actions to the Senate through the usual channel of a Senate Estimates Committee;

Stephen Weller
[redacted]

I am aware of the “Equality of Arms” proposal to Parliament for persons / entities that have been the subject of misconduct / mistreatment by a bank. I fully support this proposal.
A cursory examination of the submissions to the Royal Commission, particularly in Round 3, provides clear evidence of widespread **systemic** misconduct by banks, the extent of the damage to victims of that misconduct and the ineffective handling / resolution / provision of justice to those victims. The victim stories are **HORRIFIC** as to content and amount.
The review of AFCA by Treasury needs to address the horrendous injustices perpetrated by financial entities and to enact the changes, noted above, so that AFCA can take action on behalf of the victims of those injustices.

Yours sincerely,

Stephen Weller
[redacted]

RESPONSE TO INTERIM REPORT (ROUND 3)

MY CASE

I placed emphasis on three acts by the bank which I considered to be unconscionable and falling into the category of misconduct and falling below community standards. This emphasis was due to the way in which the CBA and its employees conducted themselves without regard for the conduct of the contract between us and that their actions would cause catastrophic financial losses for their customer.

LENDING TO SME's

Lending to SME's should fall within the reach of the NCCP Act with a threshold up to $5M. These consumers require as much assistance and recourse as possible.

CODE OF BANKING PRACTICE

The Code of Banking Practice (CBP) contained provisions in Part C Clause 3 "Our Key Commitments to you" and also Part E "If you are experiencing financial difficulties with your credit Facility".

The CBA did not engage me or my business in any respect or with any regard to these provisions.

Severe penalties should apply to banks and their officers when the CBP is disregarded with impunity. This is the only way to ensure that organizations and their employees will know that if they act with malintent they will be treated harshly. Malintent includes a determined course of action to the detriment of a customer.

This occurred in my case and the thousands of submissions to the Commission.

GUARANTORS

You (The RC) assume that bankers exercise "care, skill, diligence and prudence". That has been shown to be non-existent.

Guarantors usually have to confront a mindboggling document of General Terms and Conditions as well as a Guarantor document.

Clear concise and plain English documents are required. They need to be connected to the CBP expressly.

The Guarantor should be afforded all the protection and observances of due process as the original Borrower.

All parties should be afforded a responsible amount of time to come to terms with any potential action by the Lender.

AFCA & FOS

FOS was not effective at all in my case. It simply followed the direction taken by the bank.

If there is to be change then it has to be that these types of entities are independent of the Lending fraternity and funded differently

BANK'S CONDUCT

There was no intent to abide by the Banking Code of Conduct. This is conduct falling below community standards.

SUMMARY

No customer, especially those performing their obligations, should be demonized and pursued like a criminal in a legalistic vacuum when they have done nothing to precipitate action by the bank. This is especially so if an LVR is the only mechanism for the bank to rely on and all other obligations relating to payment of interest and principal are being performed.

The RC needs to address this. It also needs to hear more submissions and therefore to extend these proceedings. The losses not yet heard are indescribable particularly as to the actions of the lenders and receivers. This Round 3 has been very shallow and its focus purely on the legal aspects not the actions of the lenders and their personnel who should be named.

RESPONSE TO ROUND 3 AND CBA SUBMISSIONS

PROJECT MAGELLAN (PM)

The one common theme in all the cases brought before the Commission is that the bank decided to close down the loans even though the loans were being serviced within the loan agreements. The reasons were mainly on an LVR basis and the customer was ignorant of the internal background rumblings within the bank.

It is obvious that the bank did not conduct sufficient due diligence when assessing the loan book of Bankwest, but instead had internal assessments after the purchase which resulted in loans being terminated and all the onus placed on the customer who incurred significant financial distress and subsequent moral distress. They dressed up this internal process on the basis of a need to prepare financial accounts as a public company and therefore had to make provisions in their accounts.

Personally, I did not know about PM until I heard it at the RC. My case was not put on the basis of PM and I object to my evidence being dismissed in that respect.

That is not to say that I do not believe that CBA conspired to relieve itself of Bankwest loans it did not want to continue on its books for an ulterior motive and involved conduct falling below community standards.

MY CASE

I placed emphasis on three acts by the bank which I considered to be unconscionable and falling into the category of misconduct and falling below community standards. There are other issues which can be listed with further detail.

FIRST– UNILATERAL VARIATION OF THE EXPIRY DATE OF LOAN FACILITY

The unilateral variation of the expiry date in June 2010 from the original fifteen years to June 2023 to a 12 months expiry just two years after the loan facility was implemented in 2008. The CBA has distorted the evidence and stated that I requested the change after negotiation. This is factually incorrect and a gross misrepresentation of the evidence. Why was the Relationship Manager not called with whom I had telephone conversations and the final verdict of the bank, on the expiry date, was communicated by him to me by telephone. I did not request the change and I have contemporaneous notes of my 'phone conversation with that Manager recording what I was told would be the terms of the facility. It has been proposed that the reason was to do with the rate of interest and that I would not accept the higher interest rate that went with the longer term, **but the bank's own evidence shows that the bank provided the first variation to the expiry date of 24 months (from 15 years) in August at a higher rate than previously anyway, before any discussion or negotiation, this bank evidence also shows that** internal discussions were taking place in June 2010 regarding the expiry date. The intent of the bank, from its own evidence, was clear and blind Freddy could see **but this has been ignored**. It took three months to finalize negotiations during which I continued to request retention of the expiry to June 2023. My goal was simple. As a business man I wanted to obtain a fair interest rate and maintain the expiry date of June 2023, in accordance with the original terms. The evidence of the bank showed that there were significant internal discussions on this matter, of which I was unaware, culminating in the bank in October 2010 telling me the terms, including the expiry date of 12 months, and the subsequent final variation letter in November 2010.

SECOND – ENGINEERING EXPIRY OF THE LOAN FACILITY

The bank engineered the expiry of the facility in January 2013. We attended a meeting in September 2012 to discuss the rollover of the facility. The bank was to initiate a valuation on a time of the essence basis in order to be in a position to rollover the facility. They did not engage the valuer until November and in December at our request on this subject we met again only to be advised by the CBA Manager there was insufficient time to rollover and we needed to enter a Deed of Forbearance (DOF**). My wife, a Solicitor, has contemporaneous notes of this meeting. The bank's evidence seeks to counter my evidence by saying that this was not the case but tellingly they have no records of this meeting to produce. The CBA has fabricated a position in their submission by saying that "at expiry in January 2013 I had not sold GME's or sold the house" and stating we were in "Monetary Default" which is completely false and their own evidence states, in a Strategy Paper prepared by a CBA employee Suzann Chan on 10 December 2012 that, "there is no Monetary Default". The CBA has implied that this was the reason for entering** the DOF when the DOF terms clearly show those sales were to happen going forward and their evidence disputes the assertion that there was monetary default at this time.

THIRD – UNILATERAL CANCELLATION OF THE DOF AFTER 5 WEEKS FROM SIGNING

The bank unilaterally cancelled the DOF after 5 weeks from signing in late January 2013 on a technicality. **The DOF contained a further two (2) year facility.**

The bank was requested, under the terms of the DOF, to extend a date to receive the funds from the sale of the GME's by two weeks. The bank cancelled the DOF on 05 March 2013 one week after this request. The bank received the funds on 08 March 2013 which was within the requested extension. The bank did not respond to the requested extension.

Despite repeated requests from myself and the Solicitor acting for me on this matter, the bank did not withdraw the cancellation. This DOF had been negotiated with the assistance of a Solicitor at a cost of $8,000. **The bank obviously had no intention to honor the DOF because it contained a further 2 years facility.**

These items required rigorous examination which I was expecting to occur at the Royal Commission. Instead Counsel Assisting virtually led the bank on the bank's subsequent submissions where they exonerated themselves. Breathtaking

OTHER ISSUES

LACK OF PROCEDURAL FAIRNESS

No advice on being able to engage a representative at the cost of the RC to cross examine the bank's evidence and their submissions.

The Counsel Assisting virtually led the bank on its submissions and all they had to do was agree and then the bank put forward misrepresentations and fabrications to shore up their position. These were not challenged.

LACK OF RIGOROUS CROSS EXAMINATION

There was no regard for the underlying content in the evidence of witnesses and the intent behind the bank's conduct. In addition, there was no examination of the bank's evidence where it clearly does not support the submissions by the bank and also disclosed the internal ruminations by the bank in determining the bank's course of action relative to loans.

BANK'S CONDUCT

Where the bank's positions on loans were being formulated in internal discussions there was no communication to customers to allow some fruitful discussion on those positions. There was no timely alert and there was no intent to abide by the Banking Code of Conduct. This is conduct falling below community standards and **displays a complete lack of transparency**.

The bank has distorted evidence, contrived to mislead the Commission and made factually incorrect statements. Their intent leading to their actions of calling in performing loans can only be described as **unconscionable and misconduct of a most serious nature.**

Customers have been driven out of their businesses, lost their homes and suffered catastrophic financial losses, even though they were performing their obligations within the loan agreements. Why? **This question has not been rigorously pursued.**

FAMILY TRAGEDY

I gave evidence on 28 May 2018. On returning to Sydney I was informed that my Sister was terminally ill. My Sister died on 08 June. I was unaware of the dreadful content of the closing remarks and the bank's submission until later. I sought an extension so I could respond publicly to those items but I was denied.

VALUERS AND RECEIVERS

There has been no examination of the roles, actions and possible corruption of these participants in the process of depriving customers of their livelihoods. The Commission should carry out this examination.

SUMMARY

No customer, especially those performing their obligations, should be demonized and pursued like a criminal in a legalistic vacuum when they have done nothing to precipitate action by the bank. The RC needs to address this.

Stephen Weller (1)
[redacted]

21January 2019

Messrs. [redacted]

RE. ROUND THREE

I am writing to you as a continuation of my evidence at the Royal Commission (RC), my written response to Submissions by the CBA bank and my written response to the Interim Report of the RC.

I will not mince my words previously said and will retell the facts put to you in my response to the bank's submission, all ignored and dismissed in what appears to be a distinct bias in favour of the banks.

THAT I REGARD AS UNACCEPTABLE. (More later)

The RC has failed in this round. It has abrogated its responsibility to the victims of bank fraud and misconduct.

Why have you heard only 4 cases from the thousands of submissions made to the RC? All those victim submissions should be heard in the public arena of the RC. That is, told in simple clear words, as only a victim can tell, not in a constrained legal framework.

These victim stories are **HORRIFIC**, their losses run into the tens and hundreds of millions. How can you ignore their suffering. The RC was to be the forum for uncovering misconduct and unconscionable conduct perpetrated by banks, Receivers, Valuers and Solicitors, as detailed in the Submissions to the RC.
These victim Submissions, put together under great stress and strain by victims revisiting the incidence of their losses, detailed their individual stories.

WHY DID YOU CALL FOR PUBLIC SUBMISSIONS IF THEY WERE TO BE IGNORED?

YOU MUST FACILITATE THE TELLING OF THESE STORIES. THE STORIES IN THE CONSUMER FINANCE ARENA, WHILST AWFUL, PALE INTO INSIGNIFICANCE ALONGSIDE THOSE CASES FROM ROUND 3 (ALSO THE FARMERS) NOT HEARD, YET THEY ARE IGNORED AND DISMISSED. WHY?

Simply, it would be incomprehensible if you do not recommend that this RC be extended to fully explore these untold and unheard cases.

There is considerable suspicion now as to the conduct of this Round 3. A recommendation to extend this RC will go some way to addressing those suspicions. If this does not happen then trust is shattered and that is not a legacy any RC should allow to occur.

CBA/BANKWEST
The conclusion drawn by Counsel Assisting is considered by the wider community to be amateurish and incorrect.
How in God's name could this be allowed, given the weight of cases, evidence and specific submissions on this subject provided to you.
Where was the expert banker's opinion? Why has the link between the accounts of CBA and HBOS not been explored and the quantitative analysis of this subject considered.
The general opinion in the wider community is that this was rushed to avoid scrutiny.
The reason is unclear but subject to much speculation.
THIS IS NOT AN ACCEPTABLE POSITION FOR THE RC TO ALLOW TO REMAIN. THERE MUST BE FURTHER INVESTIGATION OF THIS MATTER.

STEPHEN WELLER' CASE
Just examine the chronology-
2008 -15 year loan negotiated;
Mid 2010 -15 year loan reduced to a 1 year expiry by bank ;
Sept.2012 -Credit Dept. advises LVR breached, valuation needed asap;
Dec. 2012 -valuation arranged by bank finally received, loans need to go to a Deed of Forbearance due to lack of time before expiry in Jan2013;
25 Jan 2013 -DOF signed with 2 year facility;
05 March 2013 -DOF unilaterally cancelled by bank on a technicality.

The ordinary person in the street can see the inherent malintent.
WHY CAN'T YOU?

Stephen Weller (3)

In my response to the bank's submissions I pointed out some instances of straight out fabrication and inconsistencies in the bank's submission. These comments were the result of a cursory examination by me of the bank's submission. If a legal representative of mine had examined their submission the holes and gaps would have been greater in both quantity and quality.

That raises the question of procedural fairness and the obscure arrangement that a person giving evidence, might receive reimbursement of legal costs?
In my case it was still uncertain if I would give evidence only a few days out from the Round 3 Hearing commencing. This is not an environment for engaging legal representation on the basis of a **"might be reimbursed basis" especially given the financial circumstances of people who had lost their livelihood and businesses.**

I will not regurgitate all my points in my response noted above but I will say this-
Of all the people who discussed my case and gave evidence and submissions **I was the only one physically present during the discussions and negotiations with the bank. Yet my evidence and responses were dismissed and even treated with contempt. The bank's position was preferred, put by people who were not present. In my opinion Justice has not been served and was sidelined. WHY?**

As I said before much speculation surrounds the conduct of this Round 3. You have the opportunity to remove this speculation, otherwise it will continue to be the subject of public scrutiny and will tarnish this RC.

There are a great many victims who will work tirelessly to ensure the perceived failings of the RC will remain in the public domain. They look to you to give them some hope.

In summary, please listen to those affected and who made submissions. They have suffered. Recommend extending the RC and setting up a Tribunal to consider compensation/reparation for victims.

Yours in hope,
Stephen Weller
[redacted]

Stephen Weller

From: Stephen Weller [redacted]
Sent: Friday, 1 February 2019 3:49 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Letter from [redacted] to Mr. Stephen Weller
Attachments: FSRC - DETAIL AS PART OF EVIDENCE B.docx; SFW RESPONSE TO SUBMISSIONS.docx

Hello Matt,
I am addressing this to you with the expectation that you will read this. The word I use is disappointment that the bank has not taken the opportunity to finalise my matter. It was a perfect opportunity to bring it to an end through an acceptable financial payment that took account of the extreme losses incurred as a result of the bank's actions.
I spoke with David at the AGM and made the analogy of the simplistic legal approach taken by the Royal Commission (RC) vis-à-vis the underlying issues behind the appalling behaviour of the bank officers. Those involved ensured my loans expired and initiated the unilateral cancellation of the negotiated Deed of Forbearance, after five weeks, that contained a further two year facility. **A Deed the bank had no intention to honour. Despite the RC finding there is no doubt on any objective basis these actions were unconscionable.**

I indicated to David the estimated losses and that the ex gratia payment was a small proportion of those losses. I followed with an email to him outlining the estimated losses, without accounting for the inestimable stress and impact on our health. I am attaching the document sent to David detailing those estimated losses.

Despite my Sister's unexpected death and lacking both the time and the energy to respond to the RC immediately after giving evidence, I was able eventually to make a limited response. That response is attached and it highlights inaccuracies and inconsistencies in the bank's submissions and documents produced to the RC.
This is from a simple cursory review by myself.
****
I note this for the bank to take it into account in the review of my case because they are important details which go to the heart of the bank's actions and the subsequent horrendous outcome for us. This is likely to be new information the bank has not previously taken into proper account.
****
Much was made in the RC of the downturn in the hotel's business.
*The bank at no time visited the business;
*The bank did not explore the increased business from the imminent by-pass of the Pacific Highway. An event that benefitted every town along the way due to the huge number of workers that eat, drink and sleep in hotels just like mine. The Receivers used this in marketing the sale of the hotel!!
*The bank did not explore the reality of the new school to be built ($80M) or the new Macksville Hospital now built.
*The bank did not pay regard to the force majeure incident that affected cash flow significantly, despite being advised of the situation. This had a cascading impact on finances during the time after the DOF was cancelled.
*The bank just wanted rid of this loan. They did not behave in a manner befitting a financial partner and the misconduct of the officers involved was palpable.
These are the areas the RC should have explored and examined. That may well yet happen.

It was up to the bank now, I thought, to look at the circumstances with an eye on some equity.
I say this because as I outlined in previous correspondence we have suffered catastrophic financial losses and very heavy personal and health traumas. These are not illusory, they are real.
-Loss of a multi- million dollar business including the cash equity;
-Loss of one's livelihood;
-Loss of the family home (not part of bank security but lost due to fraud and unconscionable conduct on the part of the bank's officers);
-Loss of income;
-Loss of future ;

-Loss of security;
-Loss of good health.
Six years of pain, both physical and mental, some of them being pursued by out of control legal firms intent on criminalising their targets. This despite being classified for seven of the nine years of association with the bank as an excellent customer. **Tragic.**

There is much more that could be said but the facts speak for themselves.

As with a number of other cases, this will not simply go away. It could, but it requires a much bigger response from the bank and that is what I am seeking.

I am offended by the use of the word appropriate in the letter I have received. That does not take into account the losses, the mental and physical pain and the unconscionable conduct of the bank's officers which precipitated all of those effects.

If the bank can accept and embrace the fact that the bank's officers' conduct was the genesis for all of the above. I believe the bank can then make a more decent response to us that will enable a conclusion of this matter.

As agreed with you I will ring you after receipt of this email and its attachments.

Sent with regards,
Stephen Weller

From: [redacted]
Sent: Friday, 7 December 2018 2:21 PM
To: [redacted]
Cc: [redacted]
Subject: Letter from [redacted] to Mr. Stephen Weller

Dear Mr. Stephen Weller,

Please find attached letter correspondence from M[redacted] Australia.

Mr. [redacted] also asked me to advise, he will phone you next week to discuss further.

Best regards

[redacted]

[redacted]

Our purpose is to improve the financial wellbeing of our customers and communities.