Pollies Don't Want You To Have Legal Firepower

Summary:
URGENT...!! - The government is limiting time to respond to one of the most important inquiries to date - regarding: The Resolution of disputes with financial service providers within the justice system. You only have till the 1st of March - 10 Days!!!! ... from now...!!!

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Access To Justice Inquiry - It's A No-Brainer

This is a critical inquiry. If we can lock in changes here it will affect every single one of us for the better. **The legal system is not a justice system.**

On 14 February 2019, the Senate referred the resolution of disputes with financial service providers within the justice system matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 8 April 2019:

Terms Of Reference

The ability of consumers and small businesses to exercise their legal rights through the justice system, and whether there are fair, affordable and appropriate resolution processes to resolve disputes with financial service providers, in particular the big four banks considering:

a) whether the way in which banks and other financial service providers have used the legal system to resolve disputes with consumers and small businesses has reflected fairness and proportionality, including:

i) whether banks and other financial service providers have used the legal system to pressure customers into accepting settlements that did not reflect their legal rights,

ii) whether banks and other financial service providers have pursued legal claims against customers despite being aware of misconduct by their own officers or employees that may mitigate those claims, and

iii) whether banks generally have behaved in a way that meets community standards when dealing with consumers trying to exercise their legal rights;

b) the accessibility and appropriateness of the court system as a forum to resolve these disputes fairly, including:

i) the ability of people in conflict with a large financial institution to attain affordable, quality legal advice and representation,

ii) the cost of legal representation and court fees,

iii) costs risks of unsuccessful litigation, and

iv) the experience of participants in a court process who appear unrepresented;

c) the accessibility and appropriateness of the Australian Financial Complaints Authority (AFCA) as an alternative forum for resolving disputes including:

i) whether the eligibility criteria and compensation thresholds for AFCA warrant change,

ii) whether AFCA has the powers and resources it needs,

iii) whether AFCA faces proper accountability measures, and

iv) whether enhancement to their test case procedures, or other expansions to AFCA''s role in law reform, is warranted;

d) the accessibility of community legal centre advice relating to financial matters; and

e) any other related matters.

The deadline for submissions to the inquiry is 1 March 2019.

Committee Members

Senator Louise Pratt - Chair - ALP WA

Senator Kimberley Kitching - ALP VIC

Senator the Hon Ian Macdonald - LP QLD

Senator Nick McKim - Greens TAS

Senator Jim Molan AO, DSC - LP NSW

Senator Murray Watt - ALP QLD

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BRN Comments

Bank warriors have been campaigning hard for legal system reforms. BRN Advisory Panel Members Michael Sanderson and Craig Caulfield have been driving the demand personally with politicians and bankers. Equality Of Arms and Model Litigant requirements are no-brainers. This inquiry must support the push for justice. Any member of the Legal and Constitutional Affairs References Committee **that does not support these concepts is not working in your interests.** The below concepts must be wholeheartedly endorsed and brought into practice. This is our big chance for meaningful reform ..... it must not be blown.

One of our key demands is for Equality of Arms

Legislation must establish an independent bank funded specialist legal aid cell to represent bank victims when they are subject to legal action by a bank - consistent with the human rights principle "Equality of Arms." This will require banks to be responsible for their clients' legal expenses.

Banks should no longer be able to use this country's justice system as a weapon. Bank victims must have timely, proportional, and equitable legal support. Banks may have to be forced into becoming "model litigants." Abuse of the law and legal processes as a weapon to financially decimate their aggrieved clients is no longer tolerable.

Once bankers fully understand that a client has proper access to justice two flow on results will become the norm. First, banks will be unlikely to take a victim on in court - especially if they know the victim has a good case; and second, banks and bankers will be far less likely to engage in unethical, unconscionable, immoral and illegal behaviour. In other words the industry will be forever changed. This is a key driver of sensible and long overdue reform.

Another Key Demand - Banks Must Become Model Litigants

Bank warriors demand that corporations, governments ... and particularly banks must act as Model Litigants. How does it look in practice when powerful entities deliberately choose to act ethically, morally and fairly regarding the legal process?

Here are the guidelines we use regarding banks. The bank commits to -

a) Acting honestly, consistently, and fairly in the handling of claims and litigation;

b) dealing with claims promptly and not causing delay. This includes prompt provision of all required and requested documents;

c) making an early assessment of the prospects of a matter;

d) Paying legitimate claims without litigation;

e) keeping the costs of litigation to a minimum by:
(i) not requiring the other party to prove a matter the litigant knows to be true;
(ii) not contesting liability if the real dispute is about quantum;
(iii) using appropriate methods to resolve litigation including settlement offers or alternative dispute resolution; and
(iv) ensuring that a person participating in settlement negotiations can settle on behalf of the

litigant.

f) Not taking advantage of a claimant who lacks resources;

g) Not relying on a merely technical defence against a claim;

h) endeavoring to avoid, prevent and limit the scope of litigation (including by participating in alternative dispute resolution where appropriate);

i) Equality of Arms - thereby agreeing to fund their client's legal expenses equal to their own expenditure; and

j) apologising where the litigant has acted wrongfully or improperly.

Send your submissions in ASAP

If you like you can copy and paste the above two key demands in as part of your call for a properly functioning justice system. One where bank clients get a fair go and bankers are forced to conduct business and behave in a civilised and ethical manner with their customers.

Websites For More Information: Resolution of disputes with financial service providers within the justice system
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/banksandlegalsystem

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