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# Senate Consumer Protection Inquiry: More of the same (Part 1)

By [Evan Jones](#) | 7 June 2017, 4:30pm | 5 comments |



(Image via @BankReformNow)

*The consumer protection inquiry began without fanfare and little MSM interest but bank victims' concerns are at least getting a hearing. [Evan Jones](#) reports in part one of this two-part investigation.*

THE CURRENT *Senate Economics Committee [Inquiry](#) into consumer protection in the banking, insurance and finance sector* held hearings in Sydney on Tuesday, 26 April 2017.

You probably haven't heard about this inquiry because the media has shown little interest. Save for scribes and witnesses waiting their turn, a mortgage broker victim and I were the only attendees. I've never before seen such a lack of interest in a Parliamentary inquiry hearing.

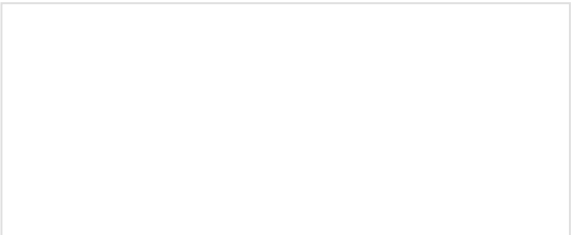
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Committee members presiding were Senator [Chris Ketter](#) (Labor, Chair), Senator [Jane Hume](#) (Liberal) and Senator [Nick Xenophon](#) (NXT).

Those appearing before the Committee were representatives of the [Australian Securities and Investments Commission](#) (ASIC), the [Financial Ombudsman Service](#), [Choice](#), the [Financial Rights Legal Centre](#) and [Consumer Action Law Centre](#), as well as a couple of financial industry associations. (I didn't stay for the latter.)

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Senate Inquirv: Consumer protection in the banking.

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The Chair tackled the ASIC representatives on matters recently in the news — matters seriously embarrassing for ASIC.

The first concerned the disclosure that ASIC had been for years workshopping its media releases regarding malpractice with the guilty parties. Sleuthing by [The Australian's Ben Butler](#) (ex-Fairfax), after a long [FOI](#) battle, exposed the practice on [18](#) and [19](#) April. Fairfax's [Adele Ferguson](#) complements the story on [21](#) April. This practice persisted during and after the 2013-14 [Senate Inquiry into ASIC](#), in which ASIC was exposed as seriously derelict in its responsibilities.

Notable is the reference to [David Cohen](#)'s involvement and ASIC's kowtowing to him — Cohen at the [CBA](#) in 2014 but also at the [AMP](#) in 2006. This is the same David Cohen who, as CBA chief general counsel, played a dominant role in the foreclosure of close to a thousand [BankWest](#) business borrowers after the CBA takeover of Bankwest in December 2008 and the subsequent cover-up of its criminal character. ASIC's deference to Cohen is definitely not a good look. Any sector that has a David Cohen as a senior player is a socially dysfunctional sector.

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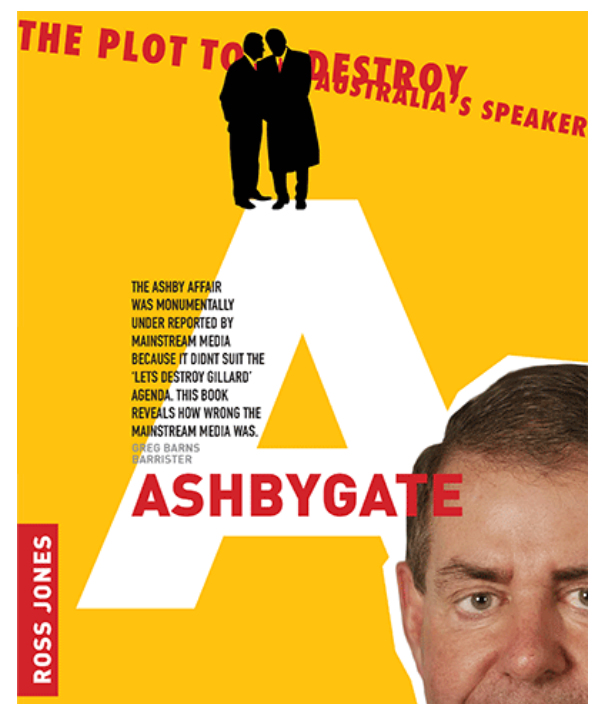
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The Chair also raised the matter, again from [media exposure](#), that ASIC tolerated the persistent failure of [Macquarie Bank](#) to clean up its financial advisory arm — the failure including a compliant report from [Ernst & Young](#).

In reply, ASIC's Deputy Chairman [Peter Kell](#) claimed that there was nothing untoward in ASIC-bank liaisons regarding media releases and that, in any case, the events were yesterday's news. Kell also claimed that ASIC has ensured that Macquarie Bank is now well and truly accounting for past sins.

The Chair let the parries from Kell go through to the keeper. ASIC's sole problem, according to Kell, was the lack of additional definitive answers.



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consumer protection is now looking rosy.

**Lynda Lee**  
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## The Financial Ombudsman Service (FOS)

FOS Chief Ombudsman [Shane Tregillas](#) opened his segment [with these claims](#) (also published on the FOS [website](#)):

*In order to fairly and impartially resolve the disputes that come to FOS, we are independent of the parties to that dispute and of the government and of regulators. ...*

[Our principles introducing FOS' Terms of Reference] *emphasise that what we do is resolve disputes fairly, informally and in a timely manner. They also stress the importance of seeking to resolve disputes cooperatively and transparently. These principles mean that, in resolving disputes, we seek to understand all aspects of the dispute without taking sides and then we make a decision based on the specific facts and circumstances of each dispute....*

Tregillas has made such claims many times in similar circumstances.  
But the perennial experience of bank victims who go to the FOS seeking

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Several examples highlight the FOS’ *modus operandi*. Tasmanian [Suzi Burge’s complaint about the CBA](#) was detailed in her submission’s [chronology](#). The FOS stuffed Burge around for several years, during which period her position deteriorated. The FOS contented itself with partial documentation provided by the bank. The FOS found in Burge’s favour on multiple counts but got the story wrong on several key accounts (as misled by the bank). Because of the (avoidable) inaccuracies, the FOS’ resolution regarding compensation was trivial, incommensurate with the substance of its determination adverse to the bank. When Burge asked the FOS to get it right, the FOS, in the person of [Justi Tonti-Fillipini](#), replied to the effect that, *we got it wrong, that bothers me, but we’re worn out with your case, we’re understaffed, that’s it, we’re not changing anything, go away*.

SuzyBurgesSpeechBRN Canberra211116 still

Ms Tonti-Fillipini figures significantly in another case — that of the Goldsworthys and their company, [Goldie Marketing](#), against the [ANZ](#). Tonti-Fillipini informed the Goldsworthys’ consultant, Bruce Ford, over

the phone (Ford recorded the exchange on 22 October 2014) that the FOS could not take on their complaint because of staff shortages. The Goldsworthys then took the FOS to court, claiming that denial of assistance on this basis was contrary to the FOS' charter.

Tonti-Fillipini then penned a reconstructed file note, claiming a range of reasons why denial of assistance was appropriate – the note submitted to the court proceedings. Ford and the Goldsworthys were appropriately outraged. So was Senator Nick Xenophon, who opined that the FOS should be disbanded and replaced by a statutory body. This matter has been admirably covered by ABC reporter Stephen Long, both on the *7.30 Report*, [16 March 2016](#), and *The Drum*, [1 April 2016](#).

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Bizarrely, the court found for the the FOS ([Goldie Marketing v FOS](#), VSC 282, 19 June 2015).

Judge Cameron determined that:

*109 I find that the reasons given and decision made by Dr Tonti-Filippini in the November Jurisdictional Decision are "compelling" within the terms of the Operational Guidelines. They are convincing, rational, logical, reasoned and comprehensive. It has already been noted that those reasons (apart, of course, from the issue of staff resourcing) are not sought to be impugned or attacked by the plaintiffs.*

This is all just so much palaver. It may be that it was ill-advised to take the FOS to court in the first place. Red lights would be flashing everywhere regarding this "attack" on the regulatory apparatus and its implied undermining of the "legitimacy" of the entire apparatus. The FOS is transparently doing the bidding of ANZ in its refusal to handle the Goldsworthys' complaints. More, this impertinence of the judge complements the deep underlying bias of the courts against bank victims. That judicial bias can be read between the lines in the succeeding paragraph, where the substance of the bank customer's complaints has been obliterated by the imperative of the bank cleaning up its books:



*Finally, the parties differed in relation to the impact of further delay in the resolution of their dispute. Whilst the plaintiffs stated that there is no urgency given the longevity of the dispute, ANZ submitted that it has effectively been prevented from exercising its enforcement rights for several years. By way of observation, it is highly desirable that commercial disputes are determined in an efficient and timely manner which invariably reduces the costs burden on all parties.*

[#BanksRC](#) [@ANZ](#) [AU](#) 2x Shavne Elliot appeared b4 Fed Parli 2

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matter" concerning an [ATM](#)'s disbursement of a withdrawal. I have always been ready to concede that FOS handles small-scale complaints reasonably well. No. In this case, the FOS refused to accept the complaint regarding the offending bank [Westpac](#)'s refusal to deal with the complainant's concern.

[David Bibo](#)'s submission #61 is salutary. Bibo doesn't explain the nature of his complaint, but goes straight for the jugular. He notes that the FOS rightly invalidated a "settlement" (apparently by a FOC "conciliator") that was forced on him through bullying (*'How can one agree to be assaulted?'*; he notes) but then the FOS overturned its own invalidation.

In my own [submission](#) (#87) I claim simply that the "FOS is simply corrupt".

Bibo lays it on:

*The apparent poor institutional culture and low ethical standards of the FOS and its members raise the question as to whether the FOS has any genuine intent or ability to identify, address and help prevent unconscionable, illegal and unethical behaviour of the type constantly and consistently indulged in by its members. The FOS is clearly biased towards its own members and a sham operation that regards itself and its members to be unaccountable to anyone. ...*

*Its members [Financial Service Providers] know they can continue to operate in a corrupt manner with immunity perpetually granted to them by the FOS in the secure knowledge that their days of getting away with misconduct. whether it is a*

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Calls for financial ombudsman to be disbanded after discovery of inaccurate file notes [fb.me/26QRuZQc7](https://fb.me/26QRuZQc7)

11:11 AM · Mar 18, 2016

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It is also instructive to examine a number of submissions for which the Secretariat has invited a FOS response — notably Harris (#74), Matheson (#75), Slattery (#76), Thomson (#78) and Nielen (#79). In addition to documenting the malpractice of the particular financial services provider/s (FSPs), the victim submission documents the maltreatment by the FOS — long delays, transparently ludicrous decisions, occasional right evaluations that are backtracked on, or not reflected in the final determination.

In each case, the FOS has responded to the submissions with the same form letter. We have considered all material, it says. Well, no, it hasn't. That's a lie. We are independent, it says. By way of "proof", it cites ASIC support (which merely indicts ASIC as well) then proceeds to claim that because we are formally independent, therefore, we are in practice independent! That's a lie as well.

Presumably, there is the delicate matter of not pursuing public disclosure of private details of a victim complaint. But the point of standard parliamentary inquiry procedure in seeking a response from a financial services provider or external dispute resolution organisation (as is FOS) is to seek correction or reinterpretation of the victim's submission from that body. In all cases here, FOS merely responds with

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... conclusion of the large complaint was that the bank had indeed engaged in malpractice against her. FOS should be asking itself, *"How did the courts come to a conclusion contrary to ours?"* FOS' charter, remember, is to provide a dispute resolution mechanism that avoids dependence on the court system.

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9:38 AM · Apr 23, 2017

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One of the FOS trio of senior managers appearing at the Inquiry hearing was Philip Field. Field himself is implicated in the FOS' dodgy practices. He apparently condoned the FOS' rejection of the Goldsworthys'



complaint. In another case involving the NAB, which attempted to corruptly manufacture security from a person not involved in some dodgy loans by the bank, Field sided with the bank though the evidence was naturally lacking. Field also oversaw the determination in late 2014 legitimising the rejection by the CBA of the Sunshine Coast-based Caulfield family's claims for financial hardship consideration and for inclusion in Queensland's Farm Debt Mediation process.

The Caulfields have incidentally raised a new complaint with the FOS on the grounds of CBA's "maladministration" (the FOS' label for alleged bank malpractice) of their loan. The FOS initially rejected this complaint on four grounds, all of which were transparently erroneous. FOS subsequently admitted that their grounds for rejection were wrong. But

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... to have information to the FOS given the reasonable presumption that the FOS, in collaboration with the bank offender, will use such information to crucify permanently a victim's redress against bank malpractice.

The FOS' slip is showing and it doesn't seem to care who notices. Which highlights that the FOS, like the corrupt financial system it protects, sees itself as immune from redress. This racket leaves the victims both desperate and enraged.

Tregillas did raise the issue that

*'... current claim limits and compensation caps for consumers and small businesses under our jurisdiction are outdated and do need to be increased.'*

Certainly, both the current cutoff limit for accepting complaints and the limit of monetary compensation for small business complainants are arbitrary. More, they have been used cynically by FOS to stuff around SME complainants. However, it's not clear that it would be a good thing to raise these limits for SMEs. If FOS has demonstrated that it is part of the problem rather than part of the solution in resolving malpractice against SMEs, raising the limits will merely compound the present bottomless pit of misery for SME victims. Either FOS should be disbanded or responsibility for external dispute resolution for SMEs should be taken from it.

*[Dr Evan Jones](#) is a retired political economist. Read Dr Jones' submission (#87) to the Senate Inquiry [here](#). This is the first of a two-*

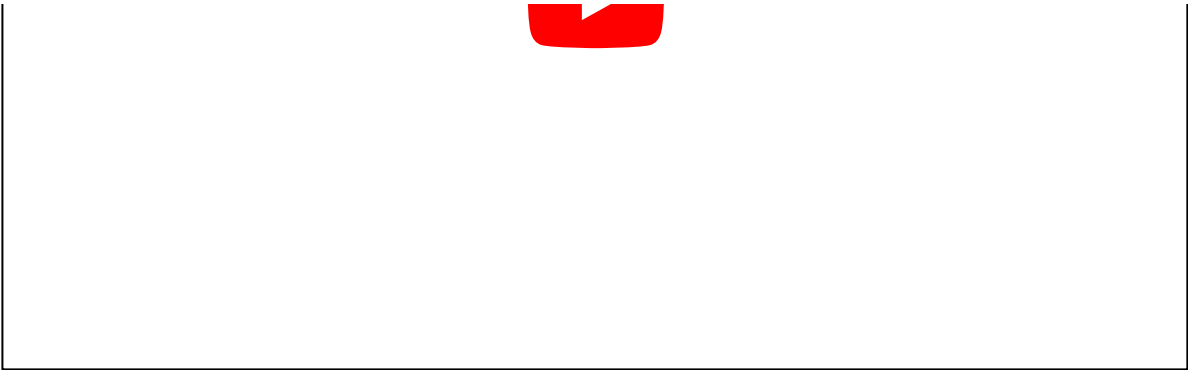
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**nobody2014** • 5 years ago  
Situation normal unless Labor can somehow disengage from the financial sector . Problem is that I'd guess the majority of those with major complaints wouldn't even consider voting anything except Liberal or National.  
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**slorter** • 5 years ago  
The neoliberals have had 4 decades to create the scaffolding in all institutions as well as influencing both sides of politics!  
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**42 Long** ➔ Guest • 5 years ago  
There's an all pervading bad smell there, and it needs to be uncovered and dealt with. They deserve no sympathy. They are intelligent and know EXACTLY what they are doing. None of this is "just happening" because a few people got slack. It's the way they OPERATE on purpose because they make more profit, pure and simple, and it's because they have been allowed to for too long. So long they view it as "normal" and OK.  
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**trigger 2014** • 5 years ago • edited  
The corruption on show in the banking and finance sector is almost beyond belief. That this criminal behaviour is allowed shows the level of corruption that

has infested not only the aforementioned sectors, but all levels of business and government. It is any wonder the Liberal party will not allow a royal commission into banking. That the regulators are assisting these criminal activities is obvious.

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**oz-demigod** • 5 years ago

Thanks for this Evan. It just goes to show how ineffectual is the FOS and how meaningless are the issues as reported by the complainants. I got this from following one of the links above:

"Justi Tonti-Filippini – Ombudsman Decisions

Justi has 15 years experience in the financial services industry. She was a Special Counsel at Ashurst specialising in retail banking and financial services. Before joining Ashurst, Justi worked as a senior in-house lawyer for a major Australian banking group.

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financial sector'. All I really see is Justi was in the employ of the banks before moving to the FOS where she is now in the employ of even more banks.

What a truly despicable situation, fully supported by Australia's current and former federal governments.

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