

## The Aussie battler standing up to a giant bank

Twenty-five million Australians are all victims of the banking system; we all exist in an economy distorted by the dominance of the Big Four banking monopoly. Millions are direct victims of those banks' practices, ranging from excessive fees to outright criminality. Tens to hundreds of thousands are victims of banking misconduct, including charging fees for no service and selling inappropriate products. Thousands to tens of thousands are victims of outright bank fraud, including mortgage fraud.

Thousands of Australians have tried to fight the banks—10,000 made submissions to the 2018 banking royal commission—but most have failed. Hundreds have persisted, valiantly fighting the banks to some kind of (usually inadequate) compensation payout. A small number of bank victims have tried to last the distance against the lawyered-up banks in court, but the few times banks have been about to lose a case they have offered large compensation payouts too good to refuse, to avoid court rulings against them. Only a tiny handful of bank victims have been able or willing to dig in to fight for the most elusive outcome of all—justice—not just in terms of compensation for their financial losses, but in terms of findings of legal and criminal liability.



Wayne Ditchburn and his partner Rowena Hardy. Their lives were destroyed by a Big Four bank, but Wayne refused to roll over and let the bank get away with it. Wayne hopes to show other bank victims how to fight the banks and, more importantly, he is fighting for a system that can make it easier for bank victims to be taken seriously. Photo: Wayne Ditchburn

One of those who is digging in is Wayne Ditchburn. Wayne Ditchburn's experience is an extraordinary story of a bank victim who refuses to be victimised, and is driven by seething, justified anger to fight for justice. His story demonstrates an important truth: it should not have to be this way. It shouldn't require Wayne's amazing drive and tenacity to force justice from the banking system; the banking battleground littered with thousands of fallen victims shows that too few have been able to last. Based on his experience, Wayne and his legal advisors, Benjamin & Robinson Lawyers, are proposing a structural regulatory reform to ensure that genuine victims don't fall by the wayside in the future, in the form of a permanent panel of experienced or even retired independent legal experts whose job would be to assess the legal merits of each victim's case. They propose that if the experts say a case has merit, the large law firms that can match the banks' legal firepower should be obliged to take those cases pro-bono.

### Aussie battler

Wayne Ditchburn is an ordinary bloke who has worked since he left school as a 15-year-old in 1977. He started in a bakery, became a concreter, and then started a successful screen-printing business in Ulladulla on the NSW south coast. As he describes, "I had a life, home, career and beautiful family happy times". That was before trying to borrow money from a Big Four bank in 2004. Until then, Wayne had never borrowed from a bank. In 2004, with the support of the government's First Home Owner Grant, Wayne borrowed \$124,000 from the bank through a local broker to buy a \$205,000 property. Then his life changed.

In 2005, Wayne noticed the bank had changed his home loan, without his knowledge, into a higher-interest business loan, with the interest payments soaring from around 4 per cent to around 10 per cent; the change had been made in the bank's head office. When he contacted the bank to query the change and tell them the loan was unaffordable, the bank's response was: "If you don't like it seek legal advice." Wayne was stunned. "This now starts a 12-year battle involving the bank, ASIC, the Financial Ombudsman Service (FOS), financial counselling services, MPs, criminologists, police, the sheriff, receivers, real estate agents, solicitors, barristers, courts, and, now, also the new Australian Financial Complaints Authority (AFCA)", he recounts.

Wayne was forced to change all of his family's plans and shoulder an enormous extra workload, desperately trying to make money to keep up with the crushing higher interest payments. By 2008, his initial loan repayments of \$120 per week four years earlier had ballooned to \$600 per week interest-only. Wayne repeatedly beseeched the bank to re-examine his loan and restore the original arrangement, but to no avail; each time he called back, he had a new portfolio manager to deal with. Falling further and further behind in his payments, and forced to borrow from family and friends, Wayne eventually received notification the sheriff was coming to evict him.

That eviction notice set in train a rollercoaster of events that at first raised and then dashed Wayne's hopes, but would eventually, after many years, lead him to force the bank to address his case. Frantic at losing his home, Wayne again called the bank and begged the officer he spoke to: "Before you take my home, please do your due diligence. Go back to my 2004 documents and see if I'm telling the truth." The bank officer called him back the next day, Friday, with good news—she had stopped the sheriff, she said. "Why?" he asked, "what did you find?" The bank officer wouldn't comment, but she told Wayne she could offer him a 17-year business loan to resolve the matter. "But I can't afford it", he insisted, and he persuaded her to look again. The bank officer promised she would call him back on the Monday.

That weekend Wayne was elated. Finally, someone at the bank had listened. However, on Monday no call came, so Wayne called again. When a woman answered the phone, Wayne asked for the same bank officer he had been dealing with previously. "Speaking", the woman said, but it was a new bank officer with the same first name. The new bank officer informed him she was now his new portfolio manager. Stunned, Wayne tried to explain his arrangement with the previous bank officer, but the new portfolio manager coolly denied that such an arrangement existed. Within months, she had evicted Wayne and his family from their home. Wayne says, bitterly, that the years he spent trying to meet huge interest payments, he was effectively paying the bank to take his home.

## Tenacity



Banking and Finance Consumer Support Association founder Denise Brailey, seen here outside the 2018 banking royal commission, supported Wayne's fight and showed him that his case wasn't a one-off, but was systemic in the banking system. Photo: ACP

This article cannot do justice to what Wayne Ditchburn went through in his battle with the bank, in terms of the toll on his health, his mental health, and his family. He didn't give up, however, driven by fury at what the bank had done. He turned heaven and earth seeking help and advice—including from Denise Brailey of the Banking and Finance Consumers Support Association, who is now fighting for the victims of the Sterling First scandal— and kept hitting the bank with correspondence and Freedom of Information (FOI) requests, from which he tried to chase down every name associated with his documents, and every lead. Most of the time he was dealing with the same portfolio manager. To his great shock he discovered through FOI that he had supposedly signed a document waiving his rights as a consumer. "How can such a document be legal?", he asks. "If I'm not a consumer, what am I?" His FOI requests also revealed that the bank did not have his loan application form (LAF) from when his loan was restructured with his supposed consent.

Wayne kept fighting. For long periods in the years after he lost his rural home he lived away from his family, staying in a friend's shed and using a borrowed generator to power his phone and laptop computer, chasing down every name and lead he found in the FOI documents. His biggest breakthrough came when he found where the previous bank officer who had tried to help him was now working. Wayne called her and got her on the phone. He reminded her who he was, and how she had temporarily stopped the sheriff from evicting him. "What happened?" he asked. "Things went very bad after you left the bank." She wasn't rude, but she didn't want to talk: "I don't have anything further to say", she said.

Wayne stewed on that phone call for the next few months; he *knew* that when she was his portfolio manager she had discovered information about his case that the bank hadn't wanted him to know.

One day he said to himself, “Screw it”, and called her again. This fateful impulse of a desperate man changed everything; classic movies hinge on scenes like the one that played out next. His former portfolio manager had been expecting his call: “Before you say anything”, she interrupted, “I’ve been advised to give you this phone number.” The number was answered by a senior manager of credit and lending who had worked at the bank for 36 years. This senior manager had also been expecting Wayne’s call, and invited Wayne to a meeting. Essentially, the game was up, and the bank was in damage control. The issue for the bank was no longer denying wrongdoing; it was how cheaply they could get away with settling the case.

Wayne met with the bank’s representatives in 2016, four years after being evicted. The senior manager didn’t deny wrongdoing, but he made a curious assertion: “It’s not systemic”, he claimed. By then Wayne had known of Denise Brailey and thousands of other bank victims for a number of years, and was aware of the growing chorus of calls for a royal commission into the banks. “I think it is”, he countered.

The meetings Wayne had with the bank were essentially a bidding exercise: how much would he accept as a settlement? Wayne had calculated, based on the money he had borrowed from family and friends over the years that he had to repay, he needed a minimum of \$680,000. Even that amount of money could not hope to make up for the suffering and destroyed plans his family had endured for more than a decade. In the first meeting, the bank started with insultingly low amounts, and in subsequent meetings offered higher, still insulting amounts. In the meantime, Wayne and Rowena met with their local federal MP, Liberal Ann Sudmalis, who promised to take up their case.

In March 2017, Wayne and his legal advisors met again with the bank. Wayne and his barrister called their latest offer an “unfair settlement”, but he took it. Then the bank sat him down to sign the paperwork agreeing to the settlement, but it included—as all bank settlements do—a gag order, to stop him from speaking about the settlement. Wayne explained that he had already shared the details of the case with MP Ann Sudmalis. The bank had no choice but to accept what he said, and because the money was already on the table, he got paid. Wayne’s refusal to sign that gag order is the reason this article can be written.

## **Systemic failure**

One year after Wayne Ditchburn accepted his unfair settlement, the banking royal commission commenced its proceedings in Melbourne. Wayne saw the royal commission proving that banking abuses like he had endured were systemic, and got fired up. Not bound by the bank’s gag order, he took up his battle again, contacting the bank, ASIC, AFCA, and other agencies to demand proper remediation. ASIC’s failure in particular was glaring. In a 13 September 2019 letter to Wayne, ASIC inadvertently confirmed its negligence: “

As you know, ASIC has considered your concerns about [the bank] since April 2013 on several occasions, in November and December 2015, April 2017 and October and December 2018, most recently in January 2019. As outlined in our previous communication I reiterate our view that ASIC will not take any further action into the concerns raised and will not correspond further on these issues.” In other words, ASIC admitted to dismissing Wayne’s concerns *three times* before the bank itself acknowledged wrongdoing through its settlement.

Wayne’s settlement, such as it is, only came about due to his sheer tenacity and determination, but was far from justice. As Wayne says, achieving fair treatment shouldn’t require that level of extreme endurance. He is using his case to demand structural reforms, including the expert panel to assess the legal merit of cases outlined above. However, his experience proves that even settled bank misconduct cases are in many or most cases unfair, and the banking royal commission barely touched the sides of the problem. Australia needs an inquiry into ASIC, and serious structural reform of the banking system, including a public postal bank that can break the monopoly of the Big Four banks.

*By Robert Barwick, Australian Alert Service, 25 August 2021*