



Ref: 160318 Impaired loans

Ms T Matulick
Secretary
Parliamentary Joint Committee on
Corporations and Financial Services
PO Box 6100
CANBERRA ACT 6100

18 March 2016

Dear Ms Matulick,

**Parliamentary Joint Committee on Corporations and Financial Services
Inquiry into Impairment of Customer Loans**

Please accept this late comment in relation to the above inquiry.

The Martin Committee inquiry recommendations in 1990 resulted in the Code of Banking Practice (“the Code”) being introduced as a benchmark and to regulate banking practices. One of its functions was to ensure a fair relationship between banks and customers.

Background

In 1996, banks, including the Commonwealth Bank of Australia (“CBA”), National Australia Bank (“NAB”), Westpac Banking Corporation (“Westpac”) and the Australia and New Zealand Banking Group (“ANZ”), adopted the first Code.

Four years later, with the proposed introduction of self-regulation, the banks appointed Richard Viney to make recommendations for a revised code in a changing financial environment. This report redefined the term ‘dispute’ and contravened clauses in the code, contravening the requirement by banks to provide all information in plain language.

In 2004, the banks modified the Code, with the Financial Ombudsman Service (FOS) acting as their agents, appointed the Code Compliance Monitoring Committee (CCMC) to replace government regulators. The banks claimed that the CCMC would monitor their compliance of the Code and name banks that failed to rectify breaches.

With the 2004 modified Code, bank CEO's introduced a further document that was not accessible to bank consumers. This was the Constitution of the Code Compliance Monitoring Committee Association ("CCMCA").

Abuse of Process

The introduction of the CCMC as regulators required the collective support of the FOS and the compliance monitors. However, the Constitution changed the purpose of the 1996 Code by limiting any prospects of consumers having complaints under the Code investigated and rectified.

The Constitution meant banks would not have to investigate any complaints or be named for breaching the Code. Section 8.1(b) of the Code below, provides an example of this:

"... the CCMC must not consider a complaint:

(b) if the CCMC is, or becomes, aware that the complaint:

(i) is being or will be heard (whether as a standalone matter or as part of any process or proceeding) by another Forum.

Forum is defined in the Constitution:

"Forum means any court, tribunal, arbitrator, mediator, independent conciliation body, dispute resolution body, complaint resolution scheme (including, for the avoidance of doubt, the BFSO scheme) or statutory Ombudsman, in any jurisdiction..."

The Martin Committee recommended introducing the Code to allow disputes to be resolved without using courts and other forums, where highly resources banks have a considerable advantage. Section 8.1(b) contravened this fundamental Martin Committee principle by allowing banks to circumvent the CCMC's responsibility to investigate breaches.

The banks and their chief executives, supported, by their agents, meant less than 10 people controlled banking regulation in Australia. The considerable number of banking inquiries has been caused by lack of transparency and the conflict of interest between banks and their regulators.

The limited options available to government to deal with systems failure include some or all of the following:

1. Introducing legislation, such as the Wilkie Bill (2012) ¹
2. Regulators with powers to introduce multi-million dollar penalties for corporate crime such as breaches of corporate law, or
3. Requiring APRA to mandate the Code

In order to address systems failures, the government and its agencies might now have an opportunity to balance the competing rights of customers and banks. The issues set out above are comprehensively dealt with in the attached small business paper.²

Should you require any further information please contact the writer.

Yours sincerely,

Russell Cousins
Chairman
Counter Corruption Analysts
Suite 101, 15 Albert Avenue
BROAD BEACH QLD 4218

¹ <https://www.legislation.gov.au/Details/C2012B00146/Explanatory%20Memorandum/Text>

² http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/customer_loans/Submissions?main_0_content_1_RadGrid1ChangePage=4_20
(See submission 61 and attachment PDF's)