



16 May 2016

Mr Greg Tanzer
ASIC Commissioner
GPO Box 9837
MELBOURNE VIC 3001

Dear Commissioner Tanzer,

BANKING IN AUSTRALIA: PART 3

I wrote to you on 5 May and 9 May 2016 regarding self-regulation of the banking sector, and in particular the banks failure to comply with the practices set out in the Code of Banking Practice 2004.

In 2015, I received advice from a prominent federal MP regarding enforcing laws against banks that act dishonestly. The message was presented to ASIC in "*Banking in Australia: Unregulated and Unprotected.*"

The MP stated that ASIC had considered the information, but claimed there was "*insufficient evidence to suggest a failure with the Code [of Banking Practice] that would warrant a regulatory response from ASIC.*"

ASIC is not the only regulator grappling with misconduct by unregulated banks. In August 2014, the US Department of Justice announced that Bank of America was required to pay a \$16.65 billion settlement, acknowledging that it had provided misleading information to customers¹. Whilst the circumstances that have been referred to ASIC differ, the banks conduct in the US and Australia has striking similarities; they misled customers.

In the US, Attorney Paul Fishman for the District of New Jersey said banks "failure to disclose known risks undermines investor confidence in our financial institutions."² In Australia, leading banks have provided contracts to customers without full disclosure, which misled their clients. Like in the US, Australian banks put themselves in a position to obtain profits by dishonest acts. These banks have established practices to ensure customers cannot achieve equity or redress in borrowing arrangements, denying clients any semblance of natural justice.

¹ Department of Justice, "Bank of America to Pay \$16.65 Billion in Historic Justice Department Settlement for Financial Fraud Leading up to and During the Financial Crisis", 21 August 2014.

² Ibid page 2.

The recent *Senate Committee Report on the Impairment of Customer Loans* highlighted issues outlined in *Banking in Australia*. The Report noted shortcomings and gaps in existing legislation and regulations, which enabled Australian banks to behave in ways that are “unethical, unreasonable and lack transparency.”³

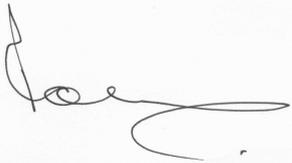
The Senate stopped short of finding that there was “widespread or systematic illegal behaviour.”⁴ Perhaps, this was because “*Banking in Australia: Parts 1 and 2*” highlighted deceitful conduct, but without a public inquiry clients would not be aware of being deceived. In these circumstances, bank customers could not report any wrongdoing to courts or/and a Senate Inquiry.

These concerns have been presented to you and ASIC’s senior governance team, which includes Greg Medcraft and Peter Kell. Each of you have the skills, knowledge and awareness of illegal practices by banks to investigate these allegations, but have apparently failed to act.

In the US, it took the GFC to reveal the extent of illegal conduct by banks. It is my understanding that the claim by ASIC that it has insufficient evidence to warrant a regulatory response, reveals the need for a wide-ranging public inquiry.

‘Banking in Australia: Unregulated and Unprotected, Part 4’ will be published by Bank Victims during the next week.

Yours sincerely,



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Copy: Peter Kell, ASIC Deputy Chair.

Enc: US Department of Justice, Office of Public Affairs Release “Bank of America to Pay \$16.65 Billion in Historic Department Settlement for Financial Fraud leading up to and during the Financial Crisis” Released 21 August 2014.

³ Parliamentary Joint Committee on Corporations and Financial Services in Impairment of Customer Loans Report, May 2016 page x.

⁴ Ibid page ix