



3 June 2016

Mr Greg Tanzer
ASIC Commissioner
GPO Box 545
MELBOURNE VIC 3001

Dear Mr Tanzer,

BANKING IN AUSTRALIA: PART 5

Banking In Australia: Unregulated and Unprotected refers to banking practices in Australia that should never have been allowed by the regulators.

This paper refers to federal regulators being negligent in circumstances where the practices of banks may amount to criminal conduct. There is evidence that senior executives of the banks generated profits unlawfully. The regulators, in this case, may have been negligent.

In 2004, the Code of Banking Practice was amended¹. Banks agreed that they would investigate all complaints, and, if they didn't, they would pay the Code Compliance Monitoring Committee (CMCC) to name the bank publicly.

However, with the 2004 Code, the bank CEO's introduced a further document that was not accessible to customers until late 2012 - the Constitution of the Code Compliance Monitoring Committee (the Constitution).²

2004 Code v. 2004 Constitution of CCMC

While the Code required banks to investigate all complaints, the Constitution could void the CCMC's rights. As a result, 17 million customers lost rights to have bank disputes resolved inexpensively. There were several ways banks used the Constitution to void customers' rights.

The Constitution, in clause 2.1, defines Forum, which includes mediation, the Financial Ombudsman and other dispute resolution bodies. However, clause 8.1 of the Constitution states that the CMCC must not consider a complaint ... if the CCMC is or becomes aware the complaint is or will be heard in another Forum (et).

This provided banks with a number of opportunities to ensure that the CCMC would not investigate breaches of the Code or name banks that breached the contract.

ASIC's Publication - "*Financial Tips and Safety Checks*"

The Constitution has been in place since 2004. In 2007 ASIC released their publication "*financial tips and safety checks*". It directed bank customers to the Financial Ombudsman if they had a complaint about a bank breaching the Code.

ASIC's publication states:³

"The 2004 Code applies to both individuals and small business customers of subscribing banks...

[It] gives customers of subscribing banks important legal rights [within] a numbers of areas... [This] included:

- Disclosure of fees and charges and other terms and conditions
- Complaints handling

The 2004 Code gives loan guarantors important disclosure and other rights... there is a general commitment to act fairly and reasonably towards customers and guarantors in a consistent and ethical manner....

Who should I contact if I think my bank has breached the Code?

If you have a complaint that your bank has breached the Code you should first discuss the matter with your bank...If your complaint is not immediately resolved by the internal complaint service, the [Financial Ombudsman Service] may be able to help...

A Code Compliance Monitoring Committee (CCMC) has been set up to investigate possible breaches of the Code. Anyone can refer a possible breach of the Code to this committee...

The CCMC is an independent panel ...

If you believe the breach of the Code is serious and/or may involve many bank customers apart from yourself, you may wish to make a complaint to ASIC."

Conclusion

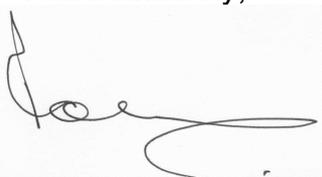
Following self-regulation in 2001 and the introduction of the Constitution in 2004, banks could encourage or require customers to use mediation or the Financial Ombudsman. This meant the banks could void the powers of the CCMC to name them that breaching the contract. It is difficult to understand how ASIC allowed this arrangement to remain in place for a decade.

A large numbers of banking inquiries have been undertaken by Parliament due to a conflict of interest between banks and regulators. In the absence of a public inquiry, it would be difficult to determine whether lack of transparency misled ASIC, as well as 17 million bank customers.

Banking In Australia: Part 6 will be published next week.

We look forward to your response at an early date.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Russell Cousins', written over a light grey rectangular background.

Russell Cousins
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BROADBEACH QLD 4218

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¹ 2004 Code of Banking Practice published by Australia Bankers Association.

² Code Compliance Monitoring Committee Association Constitution, Mallesons Stephen Jaques, 20 February 2004.

³ ASIC's Publication - "Financial Tips and Safety Checks", 30 October 2007.