



10 June 2016

Mr Greg Tanzer  
ASIC Commissioner  
PO Box 9827  
MELBOURNE VIC 3001

Dear Mr Tanzer,

### **BANKING IN AUSTRALIA: PART 6**

*Banking in Australia: Unregulated and Unprotected Part 6* explains how ASIC, ACCC and Treasury allowed banks to sell standard form loan contracts without full disclosure.

This is set out in my 18 March 2016 submission to the *Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Impairment of Customer Loans*. The attached submission explains how banks sold loan contracts to their customers without full disclosure.

I filed a further submission to the Senate Inquiry into Penalties for White Collar Crime.<sup>1</sup> Again, there was no response from ASIC, ACCC and Treasury.

### **Background**

In 1991: Paul Keating was Prime Minister.

The Martin Committee, comprising Members of Parliament, proposed the introduction of a Banking Code that would:

1. *describe standards of good practice and service;*
2. *promote disclosure of information relevant and useful to Customers;*
3. *promote informed and effective relationships between Banks and Customers; and*
4. *require Banks to have procedures for resolution of disputes between Banks and Customers.*

In 2001, John Howard was Prime Minister.

The government allowed banks to be self-regulated, which meant that bank customers were not protected by federal regulators. This was high-risk, as explained by ASIC Deputy Chair, Jillian Segal, who said:

*“self-regulation must have vigorous and active accountability mechanisms ... if accountability is not a place, then the risk is not just that self-regulation will be ineffective ... the existence of self-regulation would be counter-productive”.*<sup>2</sup>

In 2013, Tony Abbott was Prime Minister.

The Financial Systems Inquiry members wrote to the Treasurer, Joe Hockey, on 28 November 2014, claiming their report is *“a blueprint for the future of Australian financial systems . . . [and] makes recommendations for efficiency, resilience and fairness of the financial system”*<sup>3</sup>. The Inquiry failed to comment on banks selling contracts to consumers without full disclosure.

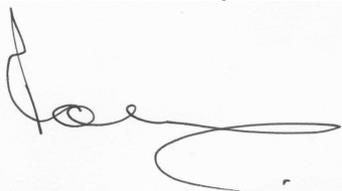
### **Contracts Lasting 10 Years**

Self-regulated banking, introduced in 2001, allowed banks to sell contracts without full disclosure. By concealing the Constitution of the CCMC, bank contracts could be termed toxic, as important and relevant contract terms were withheld from customers.<sup>4</sup>

The Constitution in 2004 meant principles agreed in 1993, when the first Code was published were disbanded, and banks were not prosecuted for selling untruthful and misleading contracts. At the same time, US banks agreed they had acted fraudulently and required to pay billion dollar penalties.

*Banking Victims* believe a public inquiry might find regulators allowed banks to sell toxic contracts and conceal important and relevant terms.

Yours sincerely,



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<sup>1</sup> Inquiry into inconsistencies and inadequacies of current criminal, civil and administrative penalties for corporate and financial misconduct for white-collar crime – submission 108, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/White\\_collar\\_crime](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/White_collar_crime)

<sup>2</sup> Address by Jillian Segal, Deputy Chair, Australian Securities and Investment Commission, to the National Institute for Governance Twilight Seminar, “Institutional self regulation: what should be the role of the regulator?” Canberra, 8 November 2001

<sup>3</sup> 28 November 2014, Financial System Inquiry Final Report, assessed at [http://fsi.gov.au/files/2014/12/FSI\\_Final\\_Report\\_Consolidated20141210.pdf](http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf)

<sup>4</sup> 6 December 2010 COSBOA Submission, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Completed%20inquiries/2010-13/bankingcomp2010/submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed%20inquiries/2010-13/bankingcomp2010/submissions)