9 May 2016

Mr Greg Tanzer
ASIC Commissioner
GPO Box 9837
MELBOURNE VIC 3001

Dear Commissioner Tanzer,

BANKING IN AUSTRALIA: PART 2

We wrote to you on 5 May 2016 regarding self-regulation of the banking sector, and how this changed the principles agreed by government, consumers and banks when the 2004 Code of Banking Practice was introduced.

The letter explains how the leading banks collectively misled customers as to their rights under standard banking contracts. The four documents that banks intended to rely on were:

(1). Banks Facility Offer and (2). General Standard Terms

Between 2004 and 2014, banks agreed to be bound by their Facility Offer and General Standard Terms (GST). However, these documents did not include all of the information that customers needed to know when signing contracts.

A third document, the Code of Banking Practice, provided rights and safeguards for customers to have complaints investigated to their satisfaction. The 2004 Code stated that the banking regulator (the Code Compliance Monitoring Committee) was empowered to name banks "in connection with a breach of the code".

(3). Code of Banking Practice (2004)

The 2004 Code was the third document that formed an important part of the bank contract. This information was provided to customers by code subscribing banks as noted in the bank's GST. The GST states words to the effect that:

> *"The relevant provisions of the code of banking practice apply to this facility agreement if you are an individual or a small business."*[1]

[1] Code of Banking Practice (2004), Clause 34(i)

The Code included clauses that were either general or specific. With respect to the former, banks claim they will provide "effective disclosure of information"[2] and "information to [customers] in plain language"[3], and will act "fairly and reasonable towards you in a consistent and ethical manner"[4]

With respect to the latter, the Code stated: "Our dispute resolution process is available for all complaints other than those that are resolved to your satisfaction,"[5] and "we agree that the CCMC's functions will be to investigate and make a determination on any allegation from any person that we have breached this code."[6]

Documents recently obtained from Parliamentary inquiries note that the CCMC was bound by an unpublished document that changed the terms of the contract.

(4). Constitution of the Code Compliance Monitoring Committee Association

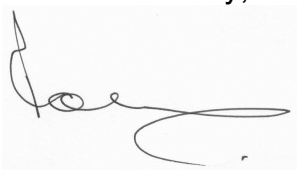
The Code states, "the CCMCs functions will be to monitor… compliance under this code"[7], while the unpublished Constitution states "the CCMC must not consider a complaint if the CCMC is or becomes aware that the complaint is being or will be heard in another forum."

The Constitution authorised banks to direct any customer complaints to courts, mediators, or the Financial Ombudsman Service. Thereby, the CCMC's powers to name banks in connection with Code breaches were void. This arrangement was unknown to any of the leading bank's customers for a period of ten years.

Bank Victims will publish *Banking in Australia: Unregulated and Unprotected Part 3* during the next week.

Should you require further information, please contact me by email below.

Yours sincerely,



Russell Cousins
Director, Bank Victims Pty Ltd
101/15 Albert Avenue
BROADBEACH QLD 4218

Email: Office@bankvictims.com.au

Enc: Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Impairment of Customer Loans: Submission 61

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[2] Code of Banking Practice (2004) Clause 2.1(b)

[3] Ibid: Clause 2.1(d)

[4] Ibid: Clause 2.2

[5] Ibid: Clause 35.7

[6] Ibid: Clause 34(b)(ii)

[7] Ibid: Clause 34(b)(i)