



The Hon Michael McCormack MP
Minister for Small Business
Federal Member for Riverina

Ref: MC17-002019

Mr Russell Cousins
Director
Counter Corruption Analysts
PO Box 3
TORONTO NSW 2283

Dear Mr Cousins

Thank you for your correspondence of 3 February, 3 March and 24 March 2017, to myself, the Deputy Prime Minister, the Minister for Regional Development and the Minister for Revenue and Financial Services, concerning the conduct and regulation of the banking industry.

Your correspondence raises a number of concerns about the regulatory framework that applies to the banking industry: the industry-developed Code of Banking Practice (the Code), the Code Compliance Monitoring Committee (CCMC), external dispute resolution and unfair contract terms.

In the recent Budget, the Government announced a range of initiatives to address the conduct of the banking industry. These include establishing a stronger external dispute resolution system and introducing a Banking Executive Accountability Regime.

The Code of Banking Practice and the Code Compliance Monitoring Committee

As you note, the CCMC is responsible for monitoring compliance with the Code and investigating potential breaches of the Code. I understand that your primary concern with the CCMC is the restriction on the CCMC investigating alleged breaches of the Code where the allegation is also the subject of proceedings in another forum.

The Government has in place and is strengthening the external dispute resolution system that gives individuals and small business efficient and cost-effective mechanisms to resolve disputes with banks and other financial institutions. This is necessary because the Government does not believe industry self-regulation under the Code and the CCMC alone is sufficient to safeguard consumers' interests.

A consequence of consumers having a choice of dispute resolution fora – in some cases the CCMC, regulated external dispute resolution providers and the courts – is that it is necessary to prevent the duplication of proceedings in certain cases. In particular, the proceeding before courts and regulated external dispute resolution providers should not be undermined by a parallel proceeding in an industry-regulated body such as the CCMC. This is appropriate and protects consumers' interests in having access to a binding decision from an appropriately regulated decision-maker.

Last year, the Australian Bankers' Association (ABA) commissioned Mr Phil Khoury to undertake a review of the Code (the Khoury Review). The ABA released its response to the Khoury Review on 28 March 2017. The review can be found at <http://ccmcreview.crkhoury.com.au/> and the ABA's response can be found at <http://www.bankers.asn.au/media/media-releases/media-release-2017/aba-responds-to-code-of-banking-practice-review>.

The Government is encouraged by the industry's support for the majority of the Khoury Review's recommendations. I note that Mr Khoury made 20 recommendations regarding the CCMC. The ABA stated that they support 16 of the recommendations, and support in principle or in part the remaining four.

External dispute resolution

Your correspondence also raised concerns about the financial sector external dispute resolution framework. I note your concern about disputes resolved under this framework and excluded from consideration by the CCMC.

The external dispute resolution framework covers a broader range of disputes than can be considered under the Code alone. As such, it is appropriate that many disputes are referred to an external dispute resolution provider. This is why the Government is strengthening the external dispute resolution framework.

The Government is implementing the recommendations of Australia's first comprehensive review of the financial system's external dispute resolution framework. The Review was led by an independent expert panel, chaired by Professor Ian Ramsay. The Panel examined the role, powers, governance and accountability of the existing financial system external dispute resolution and complaints framework to ensure consumers and small businesses have access to low cost, speedy ways of resolving financial disputes. The key bodies examined were the Financial Ombudsman Service, the Credit & Investments Ombudsman and the Superannuation Complaints Tribunal. This review also considered the findings of the Australian Small Business and Family Enterprise Ombudsman's *Inquiry into Small Business Lending Practices*. Further information about Professor Ramsay's Review can be found at: www.treasury.gov.au/ConsultationsandReviews/Reviews/2016/Review-into-Dispute-Resolution-and-Complaints-Framework.

The Review's cornerstone recommendation is the creation of a new one-stop-shop dispute resolution scheme, to hear and determine all financial services, credit, investments and superannuation disputes. The Government has accepted all 11 of the Review's recommendations and will establish the new Australian Financial Complaints Authority (AFCA) to replace the three current external dispute resolution schemes. The AFCA will provide consumers with access to a fast, free and binding dispute resolution service. This one-stop-shop will reduce consumer confusion and unnecessary duplication of costs that are a feature of the current multi-scheme framework.

The AFCA will have the power to determine disputes of a higher value, ensuring that more consumers and small businesses can have their dispute heard, and will be able to award fair compensation, where a consumer or small business has wrongfully suffered a loss. If a consumer is dissatisfied with the decision of the AFCA, they may pursue the matter in the courts.

Unfair contract terms

The Government understands that, like consumers, small businesses are often presented with take it or leave it contracts, with little scope to negotiate just and fair terms. The Government's unfair contract term protections aim to give small businesses a fair go and the ability to negotiate contracts fairly with larger businesses, including banks.

On 16 May 2017, the Australian Securities and Investments Commission (ASIC) and the Australian Small Business and Family Enterprise Ombudsman secured a commitment from the major banks to remove unfair terms from many small business loan contracts entered into or renewed from 12 November 2016. Terms to be removed include entire agreement clauses, financial indicator covenants and material adverse event clauses. The removal of financial indicator clauses that allow a lender to call a default when the value of a secured property falls – even where the borrower has satisfied repayment obligations – is significant for small businesses.

Government initiatives to improve accountability

The Government will establish a Banking Executive Accountability Regime. The Regime will require banking executives to register with the Australian Prudential Regulation Authority which will have the power to remove and disqualify senior executives and impose new penalties of up to \$200 million for misconduct.

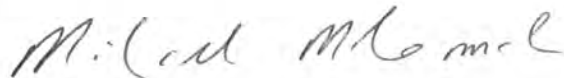
In April 2016, the Government committed additional funding to ASIC to undertake more surveillance and enforcement and to enhance its data analytics and surveillance capabilities to better identify misconduct. The Government also announced that it would accelerate work already underway to strengthen the tools available to protect consumers and punish wrongdoing through increasing penalties and giving ASIC new powers to ban the distribution of harmful financial products.

The Government has also taken action to ensure that the major banks are more transparent in their decision making. On 4 August 2016, the Government announced that the major banks will be called on to appear at least annually before the House of Representatives Standing Committee on Economics to explain the basis for their interest rate pricing decisions, provide their perspectives on the economy and disclose their progress in implementing reforms. More information about the Committee, including its reports, may be found at: www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Four_Major_Banks_Review.

In the recent Budget, the Government also announced the introduction of a major bank levy of 6 basis points on banks with liabilities above \$100 billion. This represents a fair contribution to the community from our major banks, is consistent with other advanced countries and helps foster competition from smaller banks. The Government will also provide additional funding to the Australian Competition and Consumer Commission to establish a unit to undertake regular inquiries into specific financial system competition issues, including a residential mortgage pricing inquiry.

Thank you for taking the time to write.

Yours sincerely



MICHAEL McCORMACK

19/6/2017