Banking in Australia:

Unregulated and Unprotected

Part I

1. Presents a brief history of recent developments in regulation in the Australian finance industry. Highlights how demands for greater consumer protections with simultaneous pressure for deregulation of the finance sector led to the rise of self-regulation and the *Code of Banking Practice*.

Part II

2. Focuses on the Financial Ombudsman Service, highlighting the private company's inability to provide an effective external dispute resolution mechanism, as proscribed by the *Code of Banking Practice.*

Part III

3. Evaluates the Code Compliance Monitoring Committee, the body tasked with monitoring the *Code of Banking Practice*. Describes this organisation's inability to protect consumers from abuse of power by code-subscribing banks.

Part IV

4. Covers the unfair provisions in standard form contracts. Describes how these contracts entrench the unequal relationship between banks and their small business, farmer, and individual customers.

Part V

5. Links the weakness of the *Code of Banking Practice*, the Code Compliance Monitoring Committee, and the Financial Ombudsman Service with systemic flaws in the self-regulation regime of Australian banks. It asks whether the practices of leading banks constitute criminal behaviour.

Part VI

6. The final part of this report includes needed reforms to the financial industry regulation system and asks whether the practices of the leading banks and bankers constitute criminal behaviour.

Dated: 14 August 2015

PART I

Roadmap to Deception: Evolution of the Code of Banking Practice 1993 to 2015.

7. *Consumer allegations of abuse by the Australian banking sector in the 1980s and 1990s led the Federal Government to implement a system of self-regulation in the Australian financial sector. A product of this system, the Code of Banking Practice was born in 1993. The Code was designed to protect consumers and ensure a competitive but fair banking system in Australia.*

8. *However, the Code is today not the mechanism that the government's Campbell and Martin reviews envisioned. Since the Code came into force in 1996, Banks have misled the public, weakened consumer protections, and abused their power over their customers.*

9. *This chapter presents the unconscionable evolution of the Code of Banking Practice in Australia from the period 1993 to present.*

Recent History Banking Regulation

10. The 1981 *Australian Financial System Inquiry*, titled the 'Campbell Report', found that the Australian government was inappropriately intervening in the financial services industry. The report recommended that the government pull back from intervention in the operation of financial markets, and that it should instead implement high prudential structural standards. This—the report found—would help create a competitive but stable financial system.[1]

11. The report emphasized the high cost to consumers of seeking redress for breaches of these protections, also recommended the creation of industry-based alternative dispute resolution schemes. The inquiry found that this would give financial institutions flexibility to operate in a free market whilst protecting individuals and small businesses.[2]

Martin Committee

12. The Campbell Report's recommendations on consumer protections were not implemented and as the pace of banking deregulation increased in the following decade, customer allegations of abuse by financial institutions mounted. The Federal Government responded by commissioning the 1991 Martin Committee on Banking and Deregulation. In its report, "*Pocket Full of Change*", the Martin Committee endorsed the findings of the Campbell Review and recommended the creation of "*a code of banking practice, contractually enforceable by bank customers and subject to ongoing monitoring*".[3]

13. The Committee also recognized that the cost of holding banks to account for breaches of consumer protections through the court system was

prohibitive to bank customers. In response, the committee recommended the creation of alternative dispute resolution schemes that would enable bank customers to have their disputes arbitrated cheaply, quickly, and fairly outside the court system. The result was the creation of the 1993 *Code of Banking Practice*, (the Code), which came into effect in 1996 and has been subsequently revised three times, most recently in 2013.

The Code

14. The Code is described by the Australian Bankers' Association (ABA) as the "*banking industry's customer charter on best banking practice standards*".[4] The Code compels banks to create alternative dispute resolution schemes and all disputes, the Code outlines, are to be investigated.

15. However, through amendments in 2003 and 2004, the Code has become a vehicle for deception, allowing the major banks to mislead their customers while claiming to protect consumer rights.

'Viney Review' 2000

16. In May 2000 the Australian Bankers' Association (ABA) appointed Richard Viney to conduct an independent review of the Code.[5] In conducting the process, Mr Viney sought submissions from governmental and industry bodies, as well as consumer representatives, on suggested changes to the Code, before making his final recommendations to the ABA. These recommendations – outlined in the Final Report, released in 2001[6] – resulted in the new Code being drafted and launched by the ABA in August 2003.[7]

Binding Code

17. The General Standard Terms[8], the Facility Agreement[9], the original 1993 version of the Code[10], ABA director David Bell [11,12], all stated the code's contractual enforceability.

18. Indeed, although the National Australia Bank (NAB) has appealed its ruling, the Supreme Court of Victoria recent confirmed that the Code is a legally binding contract between banks and their customers in *National Australia Bank Limited v Rice* [2015] VSC 10.[13] While the Code has been accused of using ambiguous and misleading definitions of terms, obscuring the banks' obligations under the Code, it appears clear that the Code is contractually binding between banks and their customers.[14]

PART II

The Financial Ombudsman Service: Unable and Unwilling

19. *The Financial Ombudsman Service (FOS), in its role as regulator, has failed to protect consumers from dishonest bank practices.*

20. *This section outlines the lack of independence and transparency of the FOS as well the stringent restrictions placed on its arbitration powers.*

Financial Ombudsman Service

21. The Financial Ombudsman Service (FOS) was created to provide the external dispute resolution service.[15] In many cases, the FOS does provide a forum to resolve consumer complaints or disputes quicker and cheaper than the formal legal system; however, there are continuing issues surrounding the independence of the FOS and its effectiveness in resolving those disputes.

FOS is not independent

22. Australian banks play in funding, staffing, and setting the Terms of Reference for the FOS. The FOS does not disclose to the public that directors can be employed by the very banks it is tasked to regulate and investigate. This situation has led to allegations that Australian banks have an unfair influence over the complaints that are put to the FOS. This ultimately compromises the FOS' objectivity and independence.[16]

Unaccountable Ombudsman

23. As a private company, the Financial Ombudsman Service Limited is unaccountable for its decisions. As was ruled in *Mickovski v Financial Ombudsman Service Limited & Anor* [2012] VSCA 185, FOS decisions cannot be subjected to judicial review.[17] As a result, a complainant is left with no avenue for redress even if the FOS rules incorrectly or unfairly in its arbitration of a dispute.

Financial Limitations

24. As outlined in its *Terms of Reference*, the FOS is restricted to assessing disputes in which the applicant's claim is $500,000 or less, although this amount is increased for a credit facility of up to $2,000,000. As a result, the loans of many small businesses, farmers, and individual customers—especially concerning real estate mortgages and leases—are prevented from accessing the services of the FOS.

25. In addition, it is limited to awarding compensation of $309,000 or less.[18] Therefore the FOS is unable to ensure consumer protections in Australia.

PART III

The Code Compliance Monitors: Toothless Tigers

26. *The CCMC, the second pillar of Australia's financial regulatory system, is severely restricted by a hidden constitution, which both limits its authority to investigate complaints, and ultimately deceives and misleads bank customers.*

27. *This section highlights that even in the limited cases in which the CCMC has the authority to act, its authority is so restricted as to be largely ineffectual.*

Code Compliance Monitoring Committee

28. The Australian Bankers' Association expressed their preference for:

> "*An independent, well-resourced code-monitoring agency with a capacity to impose a range of effective sanctions for code breaches".*[19]

29. The NSW Government agreed that "*Compliance with the Code should be able to be independently double-checked, and not rely entirely on the bank's self-assessment".*[20]

30. The Australian Consumers' Association criticised the 1993 version of the Code for lacking of sanctions in the Banking Code.[21]

31. In the face of this criticism, the CCMC was formed, appointed and funded by subscribing banks and the banking industry body, the Australian Bankers' Association. The CCMC was intended to investigate and '*name and shame*' banks that breached the Code.[22] However, despite promises otherwise, the CCMC does not protect consumers as its ability to investigate and impose sanctions on banks for code breaches is severely limited.

Dismal Record

32. The CCMC, in its 2014 annual report, states that in the 2013-2014 financial year, the 18 banks that adopted the Code investigated 1,099,272 disputes, under their internal dispute resolution schemes. Of these disputes, the banks reported to have found that they had breached the Code only 5,762 times.[23] This number is simply too low to warrant the view that the banking regulatory system in Australia adequately protects its customers.

33. The lack of protection afforded to small businesses and individuals can be further blamed on two main factors; firstly, bank customers are not adequately informed of their right to take complaints to the CCMC, and secondly, the constitution of the CCMC, hidden from the public, seriously restricts the cases which the CCMC can investigate.

Unknown Monitor

34. The CCMC, in its 2014 Annual Report, stated:

> "*The small number of allegations received from consumers and small businesses for investigation each year remains a concern*".

35. Of the 1,093,510 disputes lodged with code-subscribing banks, only 42 were referred to the CCMC. Meanwhile, the CCMC reports that there were only 4,854 visitors to its website in 2013-14. With regard to these figures, it is clear that the CCMC and its compliance functions lack public awareness.[24]

36. One of the major causes of this is that the Code does *not* require banks to inform customers of the CCMC's existence, or of their right to lodge breaches of the Code and complaints with the CCMC. As a result, the major banks in Australia only publicise customers' right to lodge complaints with the CCMC in an extremely minimal way.[25] It is of no surprise, then, that the CCMC does not receive more complaints.

CCMC's Wicked Constitution

37. Clause 34(b)(ii) of the Code notes that CCMC's functions are:

> "*To investigate and to make a determination on, any allegation from any person that we have breached this Code.*[26]

38. This constitution under which the CCMC is operated was first made available to the public in until July 2012, and then it was only to a group calling itself the JMA Parties. [27] Under it, the CCMC's powers to investigate are seriously restricted.

39. Clause 8.1 of the Constitution restricts the CCMC from investigating a dispute, if:

> (b) the CCMC) *is, or becomes, aware that the complaint:*
> *(i) is being, or will be, heard…by another <u>forum</u>.* [28]

40. Thus, where a dispute is, or will be, heard in another 'forum', the CCMC no longer has the power—or the responsibility—to consider the complaint.

41. For the purposes of Clause 8.1, a '<u>forum</u>' is classified as:

> "*Any <u>court</u>, tribunal, arbitrator, <u>mediator</u>, independent conciliation body, dispute resolution body, complaint resolution scheme (including, for the avoidance of doubt, the <u>BFSO</u> scheme) or statutory Ombudsman, in any jurisdiction.* [29]

42. This means, that where a bank chooses to escalate a complaint to another 'forum', the consumer is stripped of the right to have the matter referred to the CCMC. Further, as the constitution is not disclosed to the customer, they surrender this right without being informed that this is the

case.

Further Restrictions

43. Further restrictions placed on the CCMC by its constitution were highlighted in its submission to the independent review of the Code in 2007-08.

44. Specifically, the CCMC members revealed that its ability to "name and shame" banks who breach the Code is limited, since it must receive approval from the ABA Chair before making any public statements, other than in its annual report.[30] The CCMC also noted it can *only* name banks, which have repeatedly breached the Code and failed to rectify issues raised by the CCMC. This significantly undermines the core role of the CCMC as envisioned by the Martin Review.[31]

45. The CCMC has also questioned the authority the ABA Chair has over its funding, and the fact that – due to budget constraints – its annual reports have very limited circulation.

Constitutions Becomes Mandate

46. In 2013, the 'CCMC Mandate' replaced the constitution. Unlike the constitution, the mandate has been made publically available. Little appears to have changed however, and the CCMC is still restricted in investigating complaints. [32]

PART IV

Unfair Contracts

47. *Standard form contracts in Australia are unfair: with them banks abuse their disproportionate power with small businesses, farmers, and individual customers unable to seek redress.*

48. *This chapter outlines these unfair contract terms.*

Retaining Unfair Contracts

49. Beyond the issues raised by the restrictions placed on the FOS and the CCMC, significant problems exist in the terms set out by standard form banking contracts.

50. Banks can use 'constructive default' to deliberately engineer a customer's default. This was done by lowering their assessed value of a security, thereby raising the loan-to-value ratio and impairing the loan.

51. This concern arises due to the definition of 'default' and the banks' ability to conduct their own property valuations under the General Standard Terms (Annexure B).[33]

52. As a result, Australian banks are legally allowed to re-value a secured property at the customer's expense. If the valuation shows that the secured property has fallen in value since the loan was agreed, then the bank has the right to default the customer and demand full payment of all amounts owing. This is known as a 'non-monetary default'. As a result, even if a customer has made all repayments on time and in full, a bank has the right to call in its loan if the "saleability" of the held security falls at any time below its initial level. The consumer cannot challenge the default, nor has the right to challenge the valuation on which the bank has relied. This is the case where the valuation is wrong, as outlined in section 9.4.

53. Furthermore, where a bank defaults a loan, leading to the forced sale of secured property, numerous cases report property being sold at values far below the valuations. In particular, Australian banks have been accused of selling farms in default during periods of drought, resulting in sale prices that do not reflect the true value of the property.

54. The 2014 *Financial System Inquiry*, the Murray Review, raised these issues, calling on government to extend unfair contract term protections to small businesses.[34]

55. Even with these changes, it is clear that with their standard form contracts, the major Australian banks are abusing their power against small businesses, farmers, and individual customers due to power imbalance.

PART V
A Complicit Government

56. *Despite the various independent reviews both conducted on behalf of, and submitted to, government on the self-regulated system of banking in Australia, state and federal governments have failed to act on the recommendations made.*

57. *This section describes how in failing to address the key problems with self-regulated banking in Australia, the government has been complicit in a range of unconscionable practices.*

Failure Self-Regulation

58. Whether looking at banking regulation, disclosure, or standard form contracts, the self-regulatory system in Australia for the finance industry has failed. Governments or all political persuasions, both state and federal, have not adequately protected consumers from being abused by dishonest and unconscionable actions by the banks.

Murray Review

59. In 2014, the *Financial Systems Inquiry* (the Murray Review) outlined severe problems with the current banking system in Australia. Many of the review's subsequent recommendations concerned inadequacies in the self-regulatory system, recommending the government act to strengthen consumer protections. In particular, 'non-disclosure' and regulatory weakness were key themes of Recommendations 21 and 22.

Non-Disclosure and Banking Regulation

60. 'Non-disclosure'—so states the Murray Review—and the danger arising from consumers committing to contracts "*they do not fully understand*" are critical issues in Australian banking.[35] Recommendation 21 criticised the existing regulatory framework for relying too heavily on disclosure by banks and banks providing adequate financial advice to consumers.

61. The major Australian banks clearly did not fully disclose the nature of the self- regulatory system to customers. The CCMC largely unknown by consumers and is severely restricted in its investigations and censuring powers by a constitution only recently made public after a decade of secrecy. The FOS is purported to be an independent company when it is, in fact, a private company run, staffed, and funded by the major Australian banks. The Code is filled with ambiguous and unclear terms and definitions despite its commitment to 'plain language'. Consumers falsely believe they are protected from banks abusing their power.

62. The inquiry further suggested that government amend the law in order to ensure that regulators can *"enforce action against conduct causing consumer detriment" before* a "*demonstrated or suspected breach of the law"* has occurred.[36] Such amendments would give regulators preventive

powers under government legislation, as opposed to this intervention power merely being afforded to ASIC following suspected breaches of the Code.[37]

63. The Review further encouraged increased regulator accountability through the creation of a new 'Financial Regulator Assessment Board', designed:

> *"To advise Government annually on how financial regulators have implemented their mandates".*[38]

64. This formal mechanism would allow government:

> "*To receive annual independent advice on regulator performance, and strengthen the accountability framework governing Australia's financial sector regulators*".[39]

65. In turn, the Review's recommendations would increase the accountability of both the financial institutions *and* their regulators, thus insuring accountability at a more systemic level.

Government Inaction

66. These recommendations clearly resonate with the current self-regulatory system of the finance sector. However, despite these recommendations, the government and regulators are yet to adequately require banks to protect the rights of their customers in the manner recommended more than 30 years ago with the Campbell Report. Governments, both federal and state, have failed to protect Australian bank customers.

67. Indeed, despite the apparent inadequacy of ASIC, the Australian state governments agreed to reduce regulatory powers against banks by transferring the responsibilities of state-based regulators to federal regulators. In NSW this result in the NSW Fair Trading regulator having its authority over the finance industry passed on to ASIC. Whether through a lack of understanding or concern, the Australian State Governments have been complicit in creation of the regulatory system so strongly criticised by the Murray Review.

Extending Unfair Contract Term Provisions

68. In accordance with the 2014 Murray Review, Federal Treasury recently released its proposed extension to existing unfair contract term provisions to include small businesses as well as individual consumers.

69. However, the Tasmanian Small Business Council (TSBC), in its submission in relation to the proposed extension, stating the proposed changes are "*insufficient to address the issues that have arisen from the misuse of market power by large businesses*"[40], i.e. banks.

70. Despite "such misuses by large business and financial institutions" being widely reported in the media, the proposed changes are simply not adequate.

71. Thus, while appearing to act on the recommendations made in the Murray review by amending the legislation, there are two major limitations placed on the definition of "small businesses", which mean that government still fails to protect small businesses.

72. Firstly is the fact that the proposed legislation:

> "*Restricts the definition of a small business to such an extent that the unfair contract term protections will cover only the smallest contracts of the smallest businesses."*[41]

73. This is done by introducing financial limits on the *ASIC Act's* definition of small business contracts, to include only those contracts of $100,000 to $250,000.[42] This means that mortgages, most leases and the vast majority of farming contracts in Australia will not be given the necessary protection by the proposed legislation changes, as recommended in the Murray Review.

74. Secondly, is the limitation placed on the definition of small businesses to mean those businesses that employ less than 20 people? This, the TSBC believes, "fails to take account of the nature of small businesses in Australia", and therefore does not protect the majority of small businesses many of which employ more than this amount on a casual basis.[43]

75. By significantly narrowing the definition of "small businesses", the proposed extension of unfair contract term protections to small businesses in fact does very little in actually providing much-needed protection for small businesses and individuals. Instead, the changes are an attempt by the government to appear as though addressing those problems identified in the review, without actually providing the protection recommended by the Murray Review

Wilkie Bill 2012

76. Despite widespread government inaction in the face of banking abuses, there have been some attempts at reforming the bank regulatory system. The Wilkie Bill, formally the *Banking Amendment (Banking Code of Conduct) Bill 2012,* proposed a number of legislative changes to the *Banking Act 1959,* aiming to change the nature of banking self-regulation in Australia. The Bill, if it had been passed, would enshrine into legislation the promises made under the Code, formally holding banks to account for breaches. Among the most important clauses in the Bill is section 36A(1), which would insert into the *Banking Act* the stipulation:

> *(1) "The Minister must, by legislative instrument, make the Banking Code of Conduct (the Code)."*[44]

77. Further, section 36B would compel the Australian Prudential Regulation Authority to handle customer complaints, where a bank "has failed to comply with the Code in dealing with their customers".[45]

78. Once APRA accepted the complaint, it would be further bound to investigate the matter under section 36C. Section 36D of the Bill would provide APRA with 'name and shame' powers far beyond those currently held by the CCMC. It would allow APRA to publically name a bank that has failed to comply with the Code, by publishing the business name of the banks:

> (a) on a website managed by APRA; and
>
> (b) so that the publication is available throughout Australia in a

newspaper".[46]

79. The Bill would further protect the Code from amendments and alterations by banks in pursuing their interests, as section 36F would prevent the Minister by law from amending the Code:

> "*Without consulting persons or bodies that the Minister is satisfied represent the majority of:*
>
> *(a) Australian customers of ADIs* [banks]*, other than business customers;*
>
> *(b) Australian small business customers of ADIs;*
>
> *(c) ADIs."* [47]

80. The Code would have to be reviewed "at least every 3 years".[48] In doing so, this would put the onus of enforcement on an independent statutory body, rather than the FOS—a private company—or the CCMC—an ineffective tool severely restricted the Australian Bankers' Association.

81. Both state and federal governments have accepted—particularly following the Financial Systems Inquiry in 2014—that the self-regulatory system in Australia does not sufficiently protect consumers and provide avenues for redress for breaches under the Code. However, successive governments continue to fail to introduce the necessary legislative amendments, such as the Wilkie Bill, that would protect the rights of individuals and small business.

82. In light of these facts, it is clear that the state and federal governments, the banking regulators, as well as the FOS and CCMC, have all played a part in the misleading and deceptive conduct of the major banks against their customers.

83. By failing to provide adequate protection either under legislation or by the state and federal regulatory bodies, and by failing to address issues regarding penalties and avenues for redress for breaches of the Code, the government has assisted in creating a code of practice that provides merely the facade of consumer protection. All the while, the leading banks continue to profit at the expense of their small business, farmers, and individual consumers from dishonest and unconscionable practices.

PART VI
Conclusions:

85. *This chapter outlines the reforms required to ensure a more fair and just banking system in Australia.*

Reform Needed

86. There is a range of essential reforms that are vital to ensuring that the self- regulated banking system in Australia digresses from the dishonest period of banking practices that has plagued the last decade.

87. *Firstly*, it is essential that legislation like the Wilkie Bill (2012) be re-submitted to parliament and enacted into law, to ensure individuals, small businesses and farmers are afforded protection under Australian law.

88. *Secondly*, effective regulation needs to be introduced by the current industry regulators, including ASIC, APRA, and Treasury, to ensure that there are appropriate checks and balances in place to monitor the conduct of banks towards their customers.

89. *Thirdly*, in implementing effective legislation and regulation, banks that act dishonestly must face punishment, by way of enforceable penalties for breaches of the Code. As stated by Minister for Environment Greg Hunt, Australians should have the right to bring those abusing their power to some government authority.[49]

90. *Fourthly*, the internal and external dispute resolution mechanisms of the Australian banks should be reformed so that small businesses, farmers, and individual customers can have complaints arbitrated quickly, cheaply, and fairly. The concerns outlined by the Martin Committee that the judicial system is unfairly weighted towards leading banks—whose resources far outweigh small businesses, farmers, and individuals—is as true today as in 1991,

91. *Lastly*, it is essential that the Code of Banking Practice be endorsed and agreed upon not just by the major banks and the CCMC and FOS, but also the community, to restore the balance between banks and customers

Criminal Nature of Self-Regulation: Misleading and Deceptive Behaviour or Fraud

92. The definition of "fraud" is provided under section 192E of the *Crimes Act 1900* (NSW)*:*

(1) A person who, by any deception, dishonestly:

(a) Obtains property belonging to another, or
(b) Obtains any financial advantage or causes any financial disadvantage, is

*guilty of the offence of fraud.*50

93. For the purposes of this definition:

> *"Dishonest" means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.* [51]

94. In light of the continued abuse of power by the leading Australian banks and the Australian Bankers' Association directors, it would appear that its conduct is in line with the definition provided in the *Crimes Act*.[52] There is, on the facts, evidence that the leading Australian banks have misled the public when promoting a Code as a binding contract intended to protect individuals, farmers, and small business customers. The Code has been, since 2003, ambiguous, unclear, and deceptive. The banks' CCMC is made powerless by a constitution hidden for a decade and the FOS is run, staffed, and principally funded by the banks it seeks to hold to account.

95. In 1991, the Martin Committee issued a general recommendation on banks, to:

> "*Provide opportunity for customers to report suspicions of fraud and corruption".* [53]

96. Not only have the state and federal governments, regulators—both public and bunk-funded—and the banks failed to take stock of the Martin Committee, but, indeed, all have been party to the deceptive and unconscionable banking system that fails to protect small businesses, farmers, and individuals.

Reference

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[2] Ibid.
[3] Martin Committee on Banking and Deregulation, 1991, "*A pocket full of change",* House of Representatives, Standing Committee on Finance and Public Administration
[4] Ibid.
[5] "Bank Customers to Reap Benefits of Self-Regulation", Australian Bankers' Association Inc., 8 October 2001.
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[14] Code of Banking Practice (2003), clause 2.1.
[15] Australian Securities & Investment Commission (ASIC), 2013, "Approval and Oversight of External Dispute Resolution Schemes", Regulatory Guide 139: 12.
[16] See: Submission to the Senate Standing Committees on Economics by 'Name Withheld', "The Performance of the Australian Securities and Investments Commission (ASIC)".
[17] Narayanan, G. and Donly, S. 2013, "No Scope for Judicial Review of FOS Decision", *Norton Rose Fulbright.*
[18] Financial Ombudsman Service, 2015, "Operational Guidelines to the Terms of Reference": 24, 105
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Howell, N., 2015, "Revisiting the Australian Code of Banking Practice: Is Self- Regulation Still Relevant for Improving Consumer Protection Standards?" *UNSW Law Journal*, Vol. 38, No. 2, 544-586: p. 545.
[23] Code Compliance Monitoring Committee (CCMC), 2014, "2013-14 Annual Report".
[24] Ibid.
[25] The only reference to the CCMC on the websites of Commonwealth Bank of Australia and St George Bank are contained on pages 32 and 33 of the Code, which the banks host in their "About Us" page. In addition to the Code, NAB has on its website a media release in which the Chief Executive of the ABA makes a passing reference to a consumer's right to take complaints to the CCMC, where they are not satisfied with the banks' internal dispute resolution scheme. The ANZ includes on its website two submissions to parliament that refer to the CCMC and its role as Code monitor. Reference to the CCMC was found on the website of Westpac, however there was no mention of customers' right to lodge complaints with the Committee.
[26] Code of Banking Practice (2004), clause 34(b).
[27] The Constitution of the CCMC (2004) was made available to Ms Rosemarie Bayne, on behalf of the JMA Parties in 2012.
[28] Constitution of the CCMC (2004), clause 8.1.
[29] Ibid.
[30] Code Compliance Monitoring Committee, 2008, "Governance Issues Arising Under the Constitution of the Code Compliance Monitoring Committee Association", Submission to the Review of the Code of Banking Practice, (Annexure A, B).
[31] Ibid.
[32] Code Compliance Monitoring Committee, 2014, "2013-14 Annual Report".
[33] White, P. 2014, "Submission to the Senate Standing Committees on Economics", 10 December.
[34] Financial Systems Inquiry ('Murray Review'), November 2014, Final Report.
[35] Financial Systems Inquiry ('Murray Review'), November 2014, *Final Report,* recommendation 22.
[36] Ibid.
[37] Ibid.
[38] Ibid, recommendation 27.
[39] Ibid.
[40] Tasmanian Small Business Council Submission to Financial Systems Inquiry ('Murray Review'), November 2014.
[41] Ibid.
[42] Ibid.

[43] Ibid.
[44] *Banking Amendment (Banking Code of Conduct) Bill 2012,* s 36A.
[45] Ibid s 36B.
[46] Ibid s 36E.
[47] Ibid s 36F.
[48] Ibid s 36G.
[49] Greg Hunt, Minister for the Environment, *Insiders,* ABC (Sunday 19 July 2015.)
[50] *Crimes Act 1900* (NSW), s 192E, "Fraud".
[51] *Crimes Act 1900* (NSW) s 4B, "Dishonesty".
[52] This point being first raised in: "The Australian Bankers' Problematic Code", Report to Council of Small Business Organisations in Australia, 5 December 2010, made readily available to government departments and their employees.
[53] Martin Committee on Banking and Deregulation, 1991, "*A pocket full of change",* House of Representatives, Standing Committee on Finance and Public Administration, p. li.