The Hon. Barnaby Joyce, MP
Deputy Prime Minister, Minister for Agriculture and Water Resources
Member for New England, New South Wales
PO Box 963
TAMWORTH NSW 2340

14 June 2016

Dear Mr Joyce,

RE: BANKING IN AUSTRALIA: PART 7

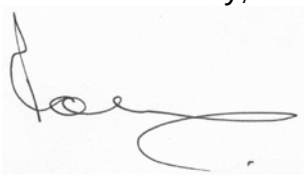
Banking in Australia: Unregulated and Unprotected Part 6 (Attachment 'A') is the most recent paper in a series referred to ASIC, ACCC and Treasury.

Frequent government inquiries into banking have failed to recommend a further inquiry into the practices of bank Chief Executives. Part 1 to Part 6 of *Banking in Australia* outlines these practices. [1]

The CEO's conduct seems bewildering, as does the underperformance of regulators. Without an inquiry there can be no closure on concerns that banks, prior to 2014, were selling customer loans without full disclosure (Attachment 'B'). Add these costs to damages caused to customers, and the cost to the community would amount to millions, if not billions of dollars, in an economy already under pressure to remain competitive.

Mr Joyce, prior to the election you might declare a position on whether you support a full inquiry into banking practices (2004 - 2014), as took place in the US and Europe (*Banking in Australia Part 3)*.

Yours sincerely,



Russell Cousins
Director, Bank Victims Pty Ltd 101/15 Albert Avenue
BROADBEACH QLD 4218
Email: Office@bankvictims.com.au

Attachment A: Banking in Australia: Unregulated and Unprotected Part 6
Attachment B: Fairness of Bank/Customer Relationships in Australia

[1] www.bankinginaustraliatoday.com

Attachment 'A'

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.[1] 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*". [2]

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*"[3]. The Inquiry failed to comment on banks selling contracts to consumers without full disclosure.

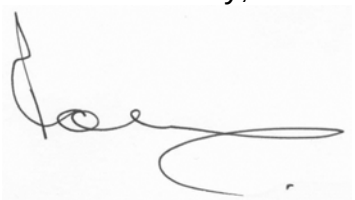
Contracts Lasting 10 Years

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.[4]

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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[1] 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

[2] 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

[3] 28 November 2014, Financial System Inquiry Final Report, assessed at http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf

[4] 6 December 2010 COSBOA Submission, accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed%20inquiries/2010-13/bankingcomp2010/submissions

BANKING IN AUSTRALIA:
UNREGULATED AND UNPROTECTED

PART 1:
Links 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 behavior.

PART 2:
Notes the relationship between [Code] subscribing banks and customers has been damaged by the failure of regulators to prosecute banks that have breached the APRA, ASIC and ACCC Acts.[1]

PART 3:
Reports information that ASIC has that explains how the Australian banks misled customers. Whilst Bank of America and others US banks have been prosecuted for illegal behavior, no action has been taken to investigate unlawful bank conduct in Australia.

PART 4:
Explains how regulators, in 2016, allege two banks, ANZ and Westpac - and possibly NAB – "disadvantaged customers by manipulating the nation's benchmark interest rate, the bank bill swap rate. This distorts lending and borrowing costs for households and businesses.

PART 5:
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.

PART 6:
Self-regulated banking, introduced in 2001, allowed the 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.

Prepared for:
Greg Tanzer
ASIC Commissioner
GPO Box 9827
MELBOURNE VIC 3001

FAIRNESS OF BANK / CUSTOMER RELATIONSHIPS IN AUSTRALIA [1]

This report examines, and makes recommendations in respect of, the extent to which customers of Australian banks are assured of fair treatment and full disclosure of facts that are relevant to their transactions.

Before 1981, the activities of Australian Banks, including the manner in which they dealt with customers, were subject to detailed regulations imposed by the Federal Government. Following the 1981 Campbell Committee report, the extent of these regulations was significantly reduced.

After the stock market crash in 1987, it was feared that deregulation had gone too far. An alternative approach was sought to ensure that bank customers received fair treatment, and the Government assigned responsibility for suitable recommendations to a committee chaired by Stephen Martin.

In its 1991 report, the Martin Committee concluded that the banks should be required to establish a formal system of self-regulation based on a government approved Code of Banking Practice. It further cited that the high cost of resolving disputes in the courts between banks and their customers; and stressed the importance of an effective, low cost, complaints resolution procedure.

The first such Code of Practice was established in 1993 but not adopted until 1996. It was substantially revised in 2003, and further modified in 2004. Despite a review in 2005 and further reviews in 2008, the 2004 code is essentially still in force.

A detailed history is included in the main body of this report.

SIGNIFICANT ISSUES

1. The 1993 code was written by the Australian Bankers' Association ('ABA') and failed to include recommendations from the Martin Committee that the banks did not like. The 2003 and 2004 (current) Codes are, similarly, ABA documents that do not take into account government principles and suggestions.

2. The key body that implements the Codes application and rules is the Code Compliance Monitoring Committee ('CCMC'). However, an undisclosed body, the Code Compliance Monitoring Committee Association ('CCMC

[1] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed%20inquiries/2010-13/bankingcomp2010/submissions (No. 90, pages 2-4) - accessed 14 Jun 2016

Association') drafted its own constitution that has the effect of limiting the activities of the CCMC to the disadvantage of customers.

3. Despite appearances to the contrary, this report suggests that the Code [may not be] enforceable at law and does not constitute the elements of the contracts (written agreements) between the banks and their customers.

4. The constitution defines narrowly the circumstances in which the CCMC reviews banks' compliance with the Code. As a result very few unsatisfied complaints come to the attention of the CCMC or are ever investigated.

5. Several reviews by independent or semi-independent persons have recommended change to impose greater transparency and / or increased government regulation. However, these have not been implemented, and incorporation of original principles of the voluntary self-regulated code or low cost dispute resolution procedures appears to have been seriously considered.

6. Although voluntary codes and self-regulation could work effectively, this report suggests that this has not happened since 2003. The introduction of [ambiguous] words and the [Constitution of the CCMC] meant that banks can filter complaints, thereby limiting the authority, independence and power of the CCMC at [the banks] discretion.

RECOMMENDATION

There is significant evidence suggesting that the ABA and hence the banks and bankers, acted to retain control over the compliance procedures that would require them to deal fairly and openly with all their customers, including all small businesses [and farmers]. There are also a number of specific incidents which would not appear to have been handled in accordance with the spirit of the Code as originally recommended by the Martin Committee, or in accordance with banks' customers, and the public interest in general.

This report recommends the Senate or the Federal Government Treasurer commissions an inquiry into the issues raised herein. This government report would have specific intent of implementing legislation and procedures that would add a truly independent element to the governance and principles involving banks' behaviour in dealings with all their customers. If the review found banks or bankers used the Constitution or other practices to their customers' disadvantage, the government report might recommend corrective action.