



7 February 2017

Mr John Macfarlene  
Director  
ANZ Centre Melbourne  
Level 9  
833 Collins Street  
DOCKLANDS VIC 3008

Dear Mr Macfarlene,

Re: **Mr & Mrs Cicekdag v ANZ Bank**

In 2016, Mr and Mrs Cicekdag (our clients) contacted Bank Victims and asked if it could recommend steps they could take to have complaints investigated. To date, our clients have not had any complaints investigated by the bank. As their representatives, we are reinstating their complaints to the Australia and New Zealand Bank (the bank).

On 27 October 2007, one of our clients, Mr Erkan Cicekdag, was diagnosed as having Chronic Post Traumatic Stress Disorder and Comorbid Reactive Depression by a clinical psychologist. Psychologists had previously reported issues of Global Memory Deficit, following a work place accident, which occurred in 1996.

### **ANZ's Loan Contract**

In March 2008, the bank invited our clients to sign a loan contract that was for an amount of \$152,000. This loan was for the purpose of refinancing an existing home loan held with RAMS. When doing so, without our clients' knowledge, the bank agreed to purchase an impaired loan. We are advised that our clients have been experiencing financial difficulty in maintaining interest payments on the loan, as well as capital repayments.

The bank's loan was entered into with the bank following documentation submitted to our clients by the agent, Touchstone Financial Group. Our clients believed that the agent had been put in touch with them by the bank and their previous lender, RAMS.

The loan was provided at a time when the only source of income for the family was their Centrelink Disability Pension of approximately \$450 per week. The Loan Application that Touchstone Financial Group completed stated their annual income was \$65,000 and that Mr Cicekdag was self-employed. This information is not

correct. At no stage were our clients asked to provide evidence of their income, nor were they advised to obtain legal advice.

However, when signing the loan contract with the bank, our clients did not understand it was not a housing loan. Neither the bank nor its agent advised them that they were, in fact, signing a Low Doc Loan. When discussing this with our clients, we believe they had no knowledge of what a Low Doc Loan was or why they were required to sign it.

Apart from our client's interaction with the agent, the only contact they had with the bank was to sign the loan contract. They were provided only a small portion of the bank's 150+ page contract, which was handed to them by the bank's reception staff. They had not met or discussed information in relation to the contract with the bank, apart from with the receptionist.

### **2004 Code: A Binding Agreement**

In 2008, our clients entered into the Low Doc Loan contract with the bank. When doing so, they were bound by the 2004 Code of Banking Practice (the code). It was described by the banks and their association, the Australian Bankers Association (ABA), as being a binding contract between banks and customers. The code set out standards of good banking practice when banks were dealing with their individual and small business customers and their guarantors.<sup>1</sup>

The purpose of the code, according to the bank's association, was to "*establish the banking industry's key commitments and obligations to its individual and small business customers on standards of practice, disclosure and principles of conduct for their banking service*".<sup>2</sup>

The code was published by the ABA, which noted its objectives<sup>3</sup>, which have been confirmed in the courts system.<sup>4</sup>

The Facility Agreement - part of its standard banking contract - acknowledges "*The General Standard Terms*" are a part of the contract: "*A legally binding contract is created between you and us*".

*The Standard Terms (Annexure B)* of the standard banking contract sets out in clause 35 that:

*"The relevant provisions of the Code of Banking Practice apply to this facility agreement if you are an individual or small business"*.<sup>5</sup>

The bank's contract confirmed the code was part of a binding agreement between the bank and its customer. Customers, without considerable resources, were entitled to believe that code breaches were therefore contractual breaches.

### **Loan Contracts without Full Disclosure**

The Facility Offer and attachments were part of the bank's loan contract. The bank, by inviting customers to sign loan contracts, meant that an agreement was reached once a customer had paid the respective fees.

The Code Compliance Monitoring Committee (CCMC) was established by the bank's association, the ABA, which included Chief Executives of the major banks. The ABA appointed the CCMC to "*monitor code compliance and name banks found guilty of a serious or systemic breach of the Code*".<sup>6</sup> However, when appointing members of the CCMC, they were bound by a Constitution (Attachment A) that sits under the CCMC, which was not publicly revealed to its customers.<sup>7</sup>

In order to demonstrate the bank's Chief Executive varied the terms of the code, it is necessary to review the limited authority of the CCMC under Clause 34 of the code in terms of investigating code breaches. This clause states that the function of the CCMC will be: "*(i) to monitor [the banks] compliance under this Code*" and "*(ii) to investigate, and to make a determination on, any allegation from any person that we have breached this Code...*"<sup>8</sup>

In or about June 2004, at about the time that subscribing banks had adopted the code, the bank's Chief Executive was one of several bank CEOs who authorised the Constitution, which varied the provisions of Clause 34 in the code.<sup>9</sup> The Australian Bankers' Problematic Code: Part 3 (Attachment B), sets out the difficulties that our clients experienced in attempting to explain how the bank avoided having to comply with the code.

The bank's decision, in 2004, to enter into loan contracts with small businesses and individuals with mortgages, without disclosing the Constitution, appears dishonest and unethical.

### **Constitution of the CCMC**

Prior to 2014, the public had little knowledge of a Constitution, nor the influence it had on loan contracts. In November the parliament published '*The Impairment of Customer Loans Submission 61- Attachment 2*'. It publicised the influence of the Constitution. It includes a number of provisions by which the CCMC is bound, and were not included in our client's loan contract.

Clause 2.1 Definitions, notes that:

*"Forum means any court, tribunal, arbitrator, mediator, independent conciliation body, dispute resolution body, complaint resolution scheme (including, for the avoidance of doubt, the BFSO scheme) or statutory Ombudsman, in any jurisdiction."*<sup>10</sup>

Clause 3.2 of the Constitution states:

*"Association Member must be Code Subscriber  
Only a Code Subscriber may be an Associate Member"*

Clause 3.3 then states:

*"Membership of CCMC Association  
An Association Member is each Code Subscriber which subscribes to this Constitution by giving a written instrument to that effect signed by its chief executive officer"*

Clause 3.7 states:

*“Function of meetings*

*The CCMC Association shall meet only for the purposes of:*

- a) Considering proposed amendments to this Constitution;*
- b) Amending this Constitution; and*
- c) For any other purpose that arises from this Constitution.”*

Clause 3.11 states:

*“Representation at meeting*

*Each Association Member shall be represented at a meeting of the CCMC Association by:*

- a) The chief executive officer of the Association Member; or*
- b) A senior executive officer of the Association Member appointed by instrument in writing signed by the chief executive officer...”*

Clause 8.1 states:

*“Consideration of complaints about Code breaches*

*The CCMC must consider any complaint alleging that an Association Member has breached the Code, except that the CCMC must not consider a complaint:*

- a) To the extent that the complaint relates to an Association Member’s commercial judgment in decisions about lending or security...*
- b) If the CCMC is, or becomes, aware that the complaint:
  - i. Is being or will be heard (whether as a standalone matter or as part of any process or proceeding) by another Forum...; or*
  - ii. Was heard (whether as a standalone matter or as part of any process or proceeding) by another Forum...**
- c) If the CCMC thinks there is a more appropriate Forum to deal with the complaint...”*

Our clients believe the Constitution, governed by the bank’s Chief Executive, allowed the bank ample opportunity to transfer allegations of impropriety, code breaches or complaints to a court, rendering the CCMC’s authority powerless.

## **Morals and Ethics**

In 2017, our clients appear better able to resolve their differences with the bank, than previously. The commitment by bank officers to adopt the Banking Oath provides our clients with an opportunity to redirect complaints to the bank alleging that since 2004 it acted unethically by failing to rectify the limitations imposed on the CCMC.

There are several considerations the bank might reflect on in relation to our client’s case, which incorporate its committing to act in good faith and with ethical restraint when its officers made a commitment to accept responsibility.

The Banking Oath states:

*“The Oath*

*Trust is the foundation of my profession.*

*I will serve all interests in good faith.*  
*I will pursue my ends with ethical restraint.*  
*I will help create a sustainable future.*  
*I will help create a more just society.*  
*I will speak out against wrongdoing and support others who do the same.*  
*I will accept responsibility for my actions.*  
*In these and all other matters;*  
*My word is my bond."*

Our clients believe there are several provisions under the Oath that provide them an opportunity to resubmit their concerns.

Firstly, it introduces an opportunity for customers to direct concerns of impropriety to the banks senior executives in regards to ethics. Oxford English Dictionary defines ethics as:

*"Moral principles that govern a person's behaviour or the conducting of an activity".<sup>11</sup>*

Secondly, it allows our clients to expect that their complaints will be investigated in circumstances where they were filed in good faith, involving issues that potentially damage them. The CCMC submission of 11 March 2008<sup>12</sup> alleged the Constitution was problematic and, if correct, restricted the bank and the CCMC from investigating complaints and code breaches filed by customers. Whilst at the time only banks and the CCMC had evidence of such practice, in the form of the Constitution which was inaccessible to customers at the time. Consequently, it is alleged that subsequent bank Chief Executives may have acted corruptly by not rectifying the CCMC's 2008 allegations.

The Oxford English Dictionary defines corrupt as:

*"Having or showing a willingness to act dishonestly in return for money or personal gain"<sup>13</sup>*

The most important initiative made by banks since the 1993 Code was introduced following the Martin Committee Review in 1991 was the Banking Oath. The Oxford English Dictionary defines oath as:

*"A solemn promise, often invoking a divine witness, regarding one's future action or behaviour"<sup>14</sup>*

Our clients can expect no more than that by the banks current senior executives and officers.

### **Our Clients' Allegations**

Our clients believe that the bank systemically breached its obligations to them under the code, which was part of their loan agreement with the bank in 2008.

Our clients allege:

- Your records will show that the loan application was not prepared by our clients and the information in the application is not correct. Therefore, the bank should not have provided either the Loan or the Credit Card to our clients since the lending process was apparently faulty and it should have made further enquiries into our clients' financial circumstances.
- Further, financial advantage from a loan should never have been made. To date, the repayments that our clients have made on the loan have been applied only to interest accrued on the loan, and as such, the balance has not been reduced. In addition, we were advised by independent mortgage providers, Mortgage Choice, which represented 28 mortgage providing organisations that none of them would provide a home loan to our clients in these circumstances. This meant the loan that the ANZ purchased was valueless. In this case, the bank was negligent in not determining whether our clients could afford to pay both their living costs and the interest on the Low Doc Loan.
- The agent failed to advise the bank that our clients suffer from several disabilities, including physical, as well as cognitive and psychiatric deficits. In addition, the bank did not advise them to obtain legal advice before signing the Low Doc Loan contract in 2008. In this case, the bank placed our clients in a situation whereby they were unable to obtain additional income from part-time work or other avenues in order to pay their living costs and mortgage payments. This meant the bank has caused them hardship.
- The bank failed to provide our clients the loan contract with full disclosure. It failed to disclose the Code Compliance Monitoring Committee Association's constitution when inviting our client to sign the home loan in 2008.
- It is confirmed that the bank when relying on expert advice from the FOS was illegitimate, as the FOS did not have authority or powers in its constitution to provide such advice. Our clients allege the bank was not diligent when it directed the FOS's advice in correspondence seeking to obtain payment of funds from our clients.
- In 2016, our clients filed several complaints with the ANZ and the CCMC requesting they investigate the conduct of their Senior Executives. A written outcome was requested by our clients. This has not yet been provided.

## **Conclusion**

Bank Victims believes that the bank has to accept that since 2004 they were selling loan contracts to its customers without full disclosure. Furthermore, the bank has to accept that its Chief Executives should not have concealed relevant documents from customers.

Having adopted the Oath, this may be a suitable time for the banks officers to accept it has to compensate customers that were damaged by the problematic Constitution. In order to achieve this, the bank could introduce a transparent complaint resolution mechanism.

As you will appreciate, our clients require bank officers who have taken the Oath to consider appropriate governance practices for Australia's leading banks.

As this matter is well known to the bank, Bank Victims requests your response by the EOD on Friday 17 February 2017.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Russell Cousins', with a long horizontal flourish extending to the right.

Russell Cousins  
Director, Bank Victims Pty Ltd  
101/15 Albert Avenue  
BROADBEACH QLD 4218  
*Email:* [Office@bankvictims.com.au](mailto:Office@bankvictims.com.au)  
[www.bankinginaustraliatoday.com](http://www.bankinginaustraliatoday.com)

Copy: Mr David Gonski, Director, Australia and New Zealand Banking Group; Mr Shayne Elliott, Chief Executive, Australia and New Zealand Banking Group

---

<sup>1</sup> 2004 Code of Banking Practice, clause 1.1.

<sup>2</sup> September 2014, Code of Banking Practice factsheet.

<sup>33</sup> Australian Bankers' Association, "Code of Banking Practice – FAQs", January 2013, page1. Available at:

[http://www.suncorp.com.au/sites/default/files/Code\\_of\\_Banking\\_Practice\\_FAQs%5B1%5D\\_0.pdf](http://www.suncorp.com.au/sites/default/files/Code_of_Banking_Practice_FAQs%5B1%5D_0.pdf). It states

"When your bank adopts the Code, it will become a binding agreement between you and your bank." ...Banks that adopt the Code are considered to be contractually bound by their obligations under the Code."

<sup>4</sup> *National Australia Bank Limited v Rice* [2015] VSC 10. Available from: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VSC/2015/10.html>.

<sup>5</sup> 24 May 2004, Code of Banking Practice General Standard Terms, Clause 35, page 14

<sup>6</sup> September 2014, Code of Banking Practice factsheet.

<sup>7</sup> 27 July 2012 JMA Parties obtained the Code Compliance Monitoring Committee Association's Constitution of 20 February 2004, that was adopted by bank Chief Executives in 2004

<sup>8</sup> *Ibid*, Clause 34b

<sup>9</sup> Refer to Code Compliance Monitoring Committee Association Constitution, Clause 3: CCMC Association

<sup>10</sup> Page 2, 2.1 Definitions the Code Compliance Monitoring Committee Association Constitution, dated 20 February 2004.

<sup>11</sup> Oxford English Dictionary definition of 'Ethics' Accessed on 7 February 2017 at

<https://en.oxforddictionaries.com/definition/ethics>

<sup>12</sup> 11 March 2008, 'Review of the Code of Banking Practice 2007-2008' Annexure B, page 1

<sup>13</sup> Oxford English Dictionary definition of 'corrupt', accessed on 7 February 2017 at

<https://en.oxforddictionaries.com/definition/corrupt>

<sup>14</sup> Oxford English Dictionary definition of 'oath', accessed on 7 February 2017 at

<https://en.oxforddictionaries.com/definition/oath>