



14 August 2017

The Secretary  
Small Business and Family Enterprise Ombudsman  
GPO Box 1791  
CANBERRA ACT 2601

Dear Sir/Madam,

**Re: [REDACTED] V ANZ: Facts & Opinions**

1. Thank you for providing Bank Victims an opportunity to inform you of details of Mr [REDACTED] and Mrs [REDACTED] (the [REDACTED]s)'s contract with the Australian and New Zealand Banking Group Limited (the ANZ Bank) (attached), after carrying out an intensive documentation review.
2. Bank Victims are not lawyers and have not provided legal advice to the [REDACTED]s. As such, facts and opinions are separated and explicitly stated for each section. The facts provided in this review are referenced with supporting evidence to provide the readers with a thorough understanding of events leading up to the dispute between the [REDACTED]s and the ANZ Bank.
3. This submission outlines the circumstances in which the [REDACTED]s were not able to maintain monthly payment to the ANZ Bank for their Lo Doc loan, due to the financial hardship, mental and physical disability and alleged code breaches by the bank. The bank purchased an impaired loan and converted it to a Lo Doc loan to the [REDACTED]s based on incorrect details, including their annual income.
4. The [REDACTED]s have filed multiple complaints to the bank and banking regulators including ASIC, FOS and the CCMC.
5. The later part of the submission details practices employed by regulators and the bank, and highlights the role played by the Australian Bankers Association (ABA) and the Code Compliance Monitoring Committee (CCMC). It identifies lending practices by the ANZ Bank that are of a predatory nature. These details are necessary to answer how banks, since 2004, used the ABA's Constitution to avoid having to investigate customers' complaints.

## Part One:

### ██████████s' ANZ Bank Contract

#### Facts

6. In 1996, Mr ██████████ received a settlement for damages caused in the workplace. With the funds he later purchased a house at Berkeley in 2002 and in 2005 obtained a mortgage from RAMS.
7. 18 February 2008: the ██████████s were invited to transfer their housing loan from RAMS to the ANZ bank. The bank did not require the ██████████s to sign a housing loan contract, instead they were asked to sign a Lo Doc 60 (small business loan contract). The information set out in the bank's loan contract was provided to the ██████████s by the bank to sign when they attended its office.
8. 4 March 2008: The ██████████s signed an ANZ Lo Doc 60 loan contract of \$152,000 with a 30-year repayment period.<sup>1</sup> The contract included: a fixed interest rate of 8.64% for two years;<sup>2</sup> the total period of repayments was 30 years<sup>3</sup>; the Loan Approval Fee of \$500;<sup>4</sup> Credit Fees and Charges ascertainable at the date of the loan offer were \$1181<sup>5</sup> and weekly payments of \$285<sup>6</sup>.
9. This loan was for the purpose of refinancing an existing loan held with RAMS:
  - \$137,652.81 was used to refinance an existing home loan held with RAMS and
  - \$14,347.19 was used for home improvement purposes.
  - An ANZ low rate credit card with a limit of \$3,000 was also provided to the Applicants.
10. The loan application stated their annual income was \$65,000 and that Mr ██████████ was self-employed.<sup>7</sup> This information was not correct. Mr ██████████ did not have a business, nor did he have an annual income of \$65,000.
11. The ANZ Bank claims it conducted a search for ██████████'s Clarence Valley Kebab business.<sup>8</sup> However, ABN records show it was owned by ██████████,<sup>9</sup> who his family called ██████████. ██████████ advises that ██████████ was three years older than him; however, they have not spoken for many years.

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<sup>1</sup> 4 March 2008, Letter of Offer, ANZ Home Loan Contract.

<sup>2</sup> Ibid, page 1.

<sup>3</sup> Ibid, page 1.

<sup>4</sup> Ibid, page 2.

<sup>5</sup> Ibid, page 4.

<sup>6</sup> Spreadsheet: Home Loan Payment-Cicekdog.

<sup>7</sup> 12 February 2008, ANZ Mortgage Broker Distribution-Loan Application, page 3.

<sup>8</sup> 4 February 2013, ██████████, Senior Consultant, Complex Complaints, ANZ, wrote to Mr ██████████.

<sup>9</sup> ABN lookup search result, the search was conducted on 22 February 2008.

12. The documentation of the loan application was submitted to the bank on behalf of the [REDACTED]s by the bank's consultant, Mr [REDACTED], Touchstone Financial Group.<sup>10</sup> The [REDACTED]s believe the consultant was known to the bank and their previous lender, RAMS.
13. Based on information we obtained from the [REDACTED]s, they did not pay or were asked to pay Touchstone Financial Group for transacting the Lo Doc loan agreement.
14. The loan was provided to the [REDACTED]s by the ANZ Bank at a time when the only source of income for the family was a Centrelink Disability Pension of approximately \$500 per week.<sup>11</sup>

### Opinion

15. ANZ Bank, when refinancing the [REDACTED]s' loan in 2008, purchased an impaired loan from RAMS. During an income verification conducted on 22 February 2008, ANZ incorrectly claimed Mr [REDACTED] as being self-employed. His annual income was incorrectly stated as being \$65,000.
16. The [REDACTED]s state at no stage did the bank ask them to provide information about their resources and evidence of income, nor did the bank advise them to obtain legal advice.
17. When signing the contract with the bank, the [REDACTED]s were not told, nor did they understand it was a Lo Doc loan. Neither the bank nor its consultant advised them they were signing a business loan. When discussing this with the [REDACTED]s, we understood they had no knowledge of what a Lo Doc loan was, nor the terms in the contract they were required to sign.
18. Apart from the [REDACTED]s' interaction with the bank's consultant, the only contact they had with the ANZ Bank was when they were asked to sign the contract. They were only provided a few pages of the bank's 150+ page contract, handed to them by the bank's receptionist. They did not meet or discuss details in the contract with the bank's staff, nor did the receptionist advise them to read that part of the document handed to them for signing.
19. The [REDACTED]s said they were not provided with a copy of the bank's contract to take home, nor the ABA's 2004 Code of Banking Practice (the 2004 Code) or the Code Compliance Monitoring Committee Association's Constitution (the Constitution).
20. The ANZ Bank failed to properly verify the [REDACTED]s' financial circumstances, including their actual income, prior to providing the loan to them. Had the bank made the proper enquiries it would have realised the [REDACTED]s' income was not as stated

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<sup>10</sup> 12 February 2008, ANZ Mortgage Broker Distribution-Loan Application, page 9.

<sup>11</sup> September 2007 to February 2008, Centrelink customer record.

in the loan application form filled out by the bank's consultant whereby the [REDACTED]s could not afford to make repayments.

21. The ANZ Bank's records will show the loan application was not prepared by the [REDACTED]s and some information was not correct. Therefore, the bank should not have provided either the loan or the Credit Card to the [REDACTED]s, since its lending process was faulty and it should have made further enquiries into their financial circumstances.
22. In these circumstances, the ANZ Bank had a duty to review the documents provided by its consultant. At the least, the bank had a duty to the [REDACTED]s to ensure the contract was valid.
23. The ANZ Bank did not act diligently when it failed to provide the [REDACTED]s with all parts of the loan contract, prior to requesting them to sign it. These included:
  - i. "Your ANZ Home Loan
  - ii. Consumer Lending Terms and Conditions (Version 7)
  - iii. ABA's 2004 Code of Banking Practice (refer to page 19)
24. The bank also failed to disclose the Code Compliance Monitoring Committee Association's Constitution when inviting them to sign the loan contract in 2008.
25. The bank denied Touchstone Financial Group was acting as its consultant. However, the ASIC's submission of December 2014 to the Scrutiny of Financial Advice Inquiry noted:

*"The inherent conflict of interest created by vertical integration may not be readily apparent to clients, particularly if the product manufacturer and advice parts of the business operate under separate licences and business names. Roy Morgan Research found that 55% of surveyed consumers receiving financial advice from an entity owned by a large financial institution, but operating under a different brand name, considered it to be independent..."<sup>12</sup>*

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<sup>12</sup> ASIC's submission of December 2014 to the scrutiny of Financial Advice Inquiry, Submission No. 88, at [245].

## Part Two:

### ██████████s' financial, mental and physical disabilities

#### Facts

26. Mr ██████████, born 12 August 1967, left school at age 16 after completing his School Certificate. He then worked in a range of manual and semi-skilled jobs until suffering from a work-related injury in 1996.<sup>13</sup>
27. 31 December 2006: Mr ██████████ was physically assaulted suffering two fractures to his right ankle requiring surgery. On 19 March 2007, Psychologist, Dr ██████████, after consulting with Mr ██████████, notes in her report that he presented symptoms of Post-Traumatic Stress Disorder.<sup>14</sup> As a result, he would be unable to continue with employment after the assault.
28. 18 April 2007: Mr ██████████ was granted the Centrelink Disability Support Pension, which he continues receiving.<sup>15</sup> His wife, Mrs ██████████ was granted a Centrelink Carers Allowance.<sup>16</sup>
29. 27 October 2007: Mr ██████████ was again diagnosed as having Chronic Post-Traumatic Stress Disorder and Comorbid Reactive Depression.<sup>17</sup> Psychologists had previously reported issues of Global Memory Deficit, following his 1996 workplace accident.<sup>18</sup> His psychologist noted he suffered from difficulties with concentration, psychological and behavioural issues.<sup>19</sup> Mr ██████████'s qualifications for the disability pension were successful after being diagnosed.
30. Between September 2007 and February 2008, the ██████████s were receiving combined Centrelink payments of approximately \$500 per week.<sup>20</sup> This was their primary income that was gradually increased to \$613 per week in 2016.<sup>21</sup>
31. 26 February 2008: Mrs ██████████ was diagnosed as having Graves' Disease<sup>22</sup> that severely restricted her ability to go about her day to day responsibilities, due to concentration and memory symptoms related with the illness.<sup>23</sup> Initially her doctor

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<sup>13</sup> 19 March 2007, Confidential Report following Initial 2 hours of Counselling, from ██████████, Registered Psychologist, to NSW Attorney General's Department.

<sup>14</sup> Ibid.

<sup>15</sup> 29 November 2016, Income statement of Mr ██████████ and Mrs ██████████, Centrelink.

<sup>16</sup> Ibid.

<sup>17</sup> 27 October 2007, Consultation report "'Re: ██████████' Victim of Act of Violence", issued by Dr ██████████, ██████████ and ██████████, Clinical & Consulting psychologists.

<sup>18</sup> 10 August 1998, Dr ██████████ letter to Dr ██████████ 'Re: ██████████'.

<sup>19</sup> Ibid, page 5.

<sup>20</sup> September 2007 to February 2008, Centrelink customer record.

<sup>21</sup> 29 July 2016, Letter from ██████████, Complaint Resolution Centre, ANZ, to Mr. ██████████, Agent for the ██████████.

<sup>22</sup> 26 February 2008, Diagnosis report by Dr ██████████, Endocrinologist, Southern Endocrine Pty Ltd.

<sup>23</sup> 'Natural Thyroid Treatment Methods Graves' Disease & Hyperthyroidism Hashimoto's & Hypothyroidism' accessed on 21 February 2017, at

prescribed pharmaceutical drugs to reduce the symptoms, which failed to maintain the symptoms and [REDACTED] underwent surgery on 8 May 2009.<sup>24</sup> Prior to surgery, [REDACTED] could not comprehend the bank's contract terms, or the fact that she was not signing a housing loan.

32. 5 March 2010: Mr [REDACTED] filed for Total and Permanent Disablement with the Superannuation Company Cbus.<sup>25</sup>
33. 18 January 2015: In an account summary by the ANZ Bank shows Mr [REDACTED] had approximately \$3420.58 in his account.<sup>26</sup>
34. 31 March 2015: In an income statement provided by Centrelink, it shows that Mr [REDACTED] was on a Disability Support Pension that was of the amount of \$585.50 with supplements to the total of \$58.50 additional.<sup>27</sup> There were deductions from this overall payment of \$70.10 from the Disability Support Pension.<sup>28</sup>
35. 2 April 2015: A Medical Certificate from Illawarra Medical Services shows that Mr [REDACTED] has been on a disability pension since February 2007 and is unable to work due to multiple injuries.<sup>29</sup> Included in Mrs [REDACTED]'s medical history is that she suffered with Emphysema, Thyrotoxicosis, Osteoarthritis of thoracic spine, Hyperthyroidism, Graves' disease, Thyroidectomy, Anxiety/Depression.
36. 9 November 2015: Income Statement from Centrelink reinforces Mr [REDACTED] is on a Disability Support Pension of \$577.40 and additional supplements of \$58.50.<sup>30</sup> There are two deductions from Disability Support Pensions to the total of \$235.20.<sup>31</sup>
37. 11 November 2015: In a letter to Mr [REDACTED] from Counter Corruption Analysts, the total Centrelink payment per fortnight as of 24 January 2007 for Mrs [REDACTED] is \$106.09 and Mr [REDACTED] is \$635.30 per fortnight as of 18 April 2007.<sup>32</sup>
38. Having one dependent children, approximately most of the [REDACTED]'s total income was required to cover the family's weekly expenses. When they signed the contract in 2008, they could not pay the contributions required by their contract with ANZ while still covering their family's expenses.

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<http://www.naturalendocrinesolutions.com/articles/correcting-memory-and-concentration-problems-in-people-with-thyroid-conditions/>

<sup>24</sup> 8 May 2009, NSW Government Health 'Medical / Attendance Certificate' certifying [REDACTED] was a patient from 8 to 11 May 2009.

<sup>25</sup> 5 March 2010, Cbus wrote to Mr [REDACTED] regarding Total and Permanent Disablement.

<sup>26</sup> 17 December 2014 to 18 January 2015, ANZ Payment Summary.

<sup>27</sup> 31 March 2015, Centrelink Income Statement of Mr [REDACTED].

<sup>28</sup> Ibid.

<sup>29</sup> 2 April 2015, Medical Certificate by Dr [REDACTED], Illawarra Medical Services.

<sup>30</sup> 9 November 2015, Centrelink Income Statement of Mr [REDACTED].

<sup>31</sup> Ibid.

<sup>32</sup> 11 November 2015, [REDACTED], Secretary, Counter Corruption Analysts, wrote to the [REDACTED]s.

## Opinion

39. The bank's consultant failed to advise the ANZ Bank the [REDACTED]s have suffered from several disabilities, including physical, as well as cognitive and psychiatric deficits. The bank was negligent in that as it did not advise them to obtain legal advice before signing the Lo Doc loan contract.
40. In addition, the ANZ Bank knew or should have known Mr [REDACTED] was incapable of reading and understanding the contract, and that he would require a legal professional to explain the terms of the contract with him before signing it. The records we have sighted do not demonstrate the bank recommended to the [REDACTED]s they should obtain independent legal advice.
41. Without the [REDACTED]s' knowledge, the ANZ Bank agreed to purchase an impaired loan. We are advised that the [REDACTED]s have been experiencing financial difficulty in maintaining interest payments on the loan, as well as capital repayments.
42. The [REDACTED]s' financial situation is vastly different than was noted by the ANZ Bank when the loan contract was signed in 2008. Mr and Mrs [REDACTED] were unemployed, with their primary income totalling \$500 per week as noted in their Centrelink payments. Mr [REDACTED] has been qualified for a disability pension with Centrelink since 2007.
43. In exercising the care and skill of a diligent and prudent banker, the ANZ Bank knew or should have known that the Cicekdags relied on Centrelink payments as their main source of income, which was approximately 35 percent of what had been quoted on their loan application.
44. It is worth noting that under the clause 27 of the bank's Consumer Lending Terms and Conditions, and if you are in financial difficulty, the ANZ Bank states:
- "You should inform ANZ as soon as possible if you are in financial difficulty. If you have an ANZ credit card or other ANZ loan account, ANZ will, with your agreement, try and help you overcome your difficulties with your facility, including for example, developing a repayment plan."*<sup>33</sup>
45. In this case, the ANZ Bank was negligent in not determining whether the [REDACTED]s could afford to pay their living costs and the interest on the Lo Doc loan. The bank placed the [REDACTED]s 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.

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<sup>33</sup> ANZ Consumer Lending Terms and Conditions (Version 7, February 2008), page 23.

## Part Three:

### ANZ Managing the ██████'s loan

#### Facts

46. 6 April 2010: Illawarra Legal Centre's, ██████, Financial Counsellor, wrote to the ANZ Bank advising no formal response or offer from the bank had been received.<sup>34</sup>
47. 14 April 2010: Illawarra Legal Centre's, ██████, Financial Counsellor, wrote to ANZ on Mr ██████'s behalf with an offer to vary the loan contract on the grounds of Hardship.<sup>35</sup> The ██████s were in arrears of \$5,894.24 and wished to commence weekly mortgage repayment at a reduced rate of \$234.11 from \$285.05.<sup>36</sup>
48. 25 May 2010: ANZ Customer Resolution Team's ██████, Case Manager, wrote to Illawarra Legal Centre confirming ANZ's agreement to the ██████s' proposed repayment arrangement of \$234.11 per week.<sup>37</sup>
49. 13 December 2012: Mr ██████ filed an application for Hardship Assistance as he was unable to meet the payment requirements.<sup>38</sup>
50. 17 December 2012: ANZ's Customer Resolution Team wrote to Mr ██████ in response to written and oral complaints discussed with the bank on 13 and 14 December 2012.<sup>39</sup> The ANZ Bank states it has commenced an investigation into the ██████s' complaints.
51. 5 February 2013: ANZ Customer Resolution Team's Ms ██████, Senior Consultant, Complex Complaints, wrote to FOS's Mr ██████, detailing findings of the ANZ Bank's Maladministration Review of Mr ██████'s FOS case. Ms ██████ states:

*"ANZ conducted income verification for the applicant as per ANZ's Lo Doc 60 policy. An ABN search was conducted 22 February 2008, which confirmed the applicant was self-employed as an individual/sole trader and trading under*

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<sup>34</sup> 6 April 2010, Illawarra Legal Centre's, ██████, Financial Counsellor, wrote to the ANZ Bank.

<sup>35</sup> 14 April 2014, Illawarra Legal Centre's, ██████, Financial Counsellor, wrote to ANZ Bank.

<sup>36</sup> Ibid.

<sup>37</sup> 25 May 2010, ██████, Case Manager, ANZ Customer Resolution Team's, wrote to Illawarra Legal Centre.

<sup>38</sup> 13 December 2012, Mr ██████ filed an Application to ANZ for Hardship Assistance.

<sup>39</sup> 17 December 2012, ██████, Senior Consultant, Complex Complaints, ANZ Customer Resolution Team, wrote to ██████.

*Clarence Valley Kebab. The ABN search confirmed that the business had been registered and active since 23 August 2005*<sup>40</sup>

52. 25 February 2013: the ANZ Bank Customer Finance cancelled Mr ██████'s ANZ card due to failure to pay the overdue amount. Mr ██████'s outstanding balance being \$3,709.08.<sup>41</sup>
53. 19 March 2013: ANZ Customer Finance wrote to Mr ██████ requiring immediate repayment of \$769.05 on outstanding cancelled ANZ card.<sup>42</sup>
54. 16 December 2013: ANZ Complaints Resolution Centre's ██████, EDR Consultant, offered to work with Mr ██████ towards a mutually agreeable resolution. The ANZ Bank, when offering to consider Mr ██████'s claims, required a Statement of Financial Position as at the time of application in February 2008.<sup>43</sup>
55. 31 December 2013: ANZ Complaints Resolution Centre's ██████, EDR Consultant, reinstated in order to provide an alternate resolution to FOS the ANZ Bank required a Statement of Financial Position.<sup>44</sup>
56. 23 January 2014: ANZ Complaints Resolution Centre's ██████, EDR Consultant, reminded Mr ██████ in order to provide an alternate resolution to FOS that the ANZ Bank required a Statement of Financial Position.<sup>45</sup>
57. 18 February 2015: a letter was sent from ██████, EDR Complaints Consultant, Complaint Resolution Centre, ANZ.<sup>46</sup> It notes that Mr and Mrs ██████ had lodged a dispute previously through the FOS claiming maladministration.
58. The letter states as part of ANZ's verification of Mr ██████'s income a business search was conducted on 22 February 2008. The search confirmed Mr ██████ was self-employed as an individual/sole trader and trading under 'Clarence Valley Kebab' located at North NSW. This business had been registered and active since 23 August 2005.<sup>47</sup>
59. 2 April 2015: the ANZ Bank confirms the FOS has been contacted. It notes they had the opportunity to investigate the matter and responded, "*In our investigation ANZ did complete a search on the ABN in question and found the former holder details*

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<sup>40</sup> 5 February 2013, ██████, Senior Consultant, Complex Complaints, ANZ Customer Resolution Team, wrote to ██████, FOS.

<sup>41</sup> 25 February 2013, ANZ Bank Customer Finance wrote to ██████.

<sup>42</sup> 19 March 2013, ANZ Customer Finance wrote to ██████.

<sup>43</sup> 16 December 2013, ██████, EDR Consultant, ANZ Complaints Resolution Centre, wrote to ██████.

<sup>44</sup> 31 December 2013, ██████, EDR Consultant, ANZ Complaints Resolution Centre, wrote to ██████.

<sup>45</sup> 23 January 2014, ██████, EDR Consultant, ANZ Complaints Resolution Centre, wrote to ██████.

<sup>46</sup> 18 February 2015, ██████, EDR Complaints Consultant, Complaint Resolution Centre, ANZ wrote to ██████, Unhappy Banking.

<sup>47</sup> Ibid.

were very similar to Mr [REDACTED], however, they were not the same and for this reason ANZ are happy to put a proposal forward to Mr and Mrs [REDACTED].<sup>48</sup> The ANZ Bank claimed it was prepared to deduct the total of \$8, 972.06 as well as six-month hardship assistance starting from the signing of the acceptance.<sup>49</sup>

60. 3 April 2015: a report titled 'The FOS Case Report' prepared by Unhappy Banking was emailed to the FOS outlining responses to questions in the letter dated 6 March 2014. It notes the [REDACTED]s were in financial hardship at the time of refinancing the contract. Mr and Mrs [REDACTED] were not receiving employment income, or inheritance, nor any other substantial cash injections to meet repayments. The report states:

*"The income portion being Centrelink payments was inflated and in addition to this the broker made these payments look like they were related to employment income (of business income) which it was not. This should have been easily picked up by a prudent and responsible lender. People like Mr [REDACTED] are very vulnerable to these kinds of shortcomings."<sup>50</sup>*

61. 10 April 2015: the ANZ Bank Complaints Resolution Centre's [REDACTED], EDR Complaint Consultant, wrote to Mr [REDACTED], stating:

*"ANZ has completed a new search using the ABN 43 401 232 297 which shows the business had been active since 23 August 2005, with the entity name appearing as [REDACTED] Individual / Sole Trader location NSW trading name Clarence Valley Kebab.*

*During ANZ's investigations, we also found that Mr [REDACTED] had previously had two personal loans with ANZ in 15 December 2005 and 28 April 2006. On both applications Mr [REDACTED]'s occupation was stated to be Small Business Proprietor, with the current employer stated as Clarence Valley Kebab, self-employed 'No'.<sup>51</sup>*

62. 1 June 2015: [REDACTED], Case Manager, FOS, wrote to Ms [REDACTED], Unhappy Banking.<sup>52</sup> He states that the ANZ Bank notes the loan was provided on the basis of the financial information provided to it by the applicants, which showed that they could afford loan repayments. The FOS identified issues in dispute:

- Should ANZ have provided the loan and Credit Card to the Applicant?
- Did ANZ comply with its obligations owed to the Applicant as customers experiencing financial difficulty?

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<sup>48</sup> 2 April 2015, [REDACTED], EDR Complaints Consultant, Complaint Resolution Centre, ANZ wrote to [REDACTED], Unhappy Banking.

<sup>49</sup> Ibid.

<sup>50</sup> 3 April 2015, an email from [REDACTED], Unhappy Banking, to FOS regarding FOS Case 375195.

<sup>51</sup> 10 April 2015, [REDACTED], EDR Complaint Consultant, the ANZ Bank Complaints Resolution Centre, wrote to Mr [REDACTED].

<sup>52</sup> 1 June 2015, [REDACTED], Case Manager, FOS, wrote to Ms [REDACTED], Unhappy Banking.

- Are the Applicants entitled to receive any compensation from ANZ?

63. 15 June 2015: A response was given to Mr [REDACTED] from the ANZ Bank, it states the following, “ANZ believed they had complied with its internal policy in obtaining income verification materials and assessing serviceability for the Loan and credit card under Credit Principles criteria.”<sup>53</sup>

64. 31 August 2015: FOS issued a recommendation in relation to the dispute. It notes the following:

*“The FSP should not have provided either the Loan or the Credit Card to the Applicants. Even based on Mr Applicant’s inflated income recorded in the loan application form, two serviceability assessments show that the Applicants had a monthly deficit of income as to expenses and were not able to afford repayments on either facility at the time of lending.*

*There were also read red flags apparent in the lending process that should have caused the FSP to make further enquiries into the Applicant’s financial circumstances.*

*This Recommendation is substantially in favour of the Applicants.*

*At law and under the terms of the Code of Banking Practice, a financial service provider has obligations to exercise the care and skill of a diligent and prudent lender in assessing whether a customer has the ability to repay a loan as at the time of lending.*

*I consider that the FSP failed to comply with its obligations as a diligent and prudent lender and should not have provided either the Loan or the Credit Card to the Applicant.*

*Under both the law and the terms of the Code of Banking Practice, the FSP has an obligation to try to help a customer overcome their financial difficulty.”<sup>54</sup>*

65. 16 September 2015: Mr and Mrs [REDACTED] rejected the FOS’s Recommendation as they believed the conditions imposed by the recommendation will be unjust. In particular, the recommendation would result in them being forced to sell their home and they would be unable to refinance their loan in their current position, which would cause them significant detriment.<sup>55</sup>

66. 1 October 2015: the ANZ Bank wrote to Mr [REDACTED] offering a further \$3000 to assist with their moving into a rental property.<sup>56</sup>

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<sup>53</sup> 15 June 2015, [REDACTED], EDR Complaints Consultant, Complaint Resolution Centre, ANZ wrote to [REDACTED], Case Manager, FOS.

<sup>54</sup> 31 August 2015, FOS Recommendations.

<sup>55</sup> 16 September 2015, Mr [REDACTED]’s handwriting note.

<sup>56</sup> 1 October 2015, [REDACTED], EDR Complaint Consultant, the ANZ Bank Complaints Resolution Centre, wrote to the [REDACTED].

67. 14 October 2015: after obtaining authorisation by Mr and Mrs ██████████ to act on their behalf <sup>57</sup>, Counter Corruption Analysts wrote to Mr ██████████, FOS.<sup>58</sup> It states the Code of Banking Practice applies to the ██████████s' loan with the ANZ Bank and the ██████████s believe they have a duty to accept or decline your recommendation and these documents will assist to make a decision. The same letter was sent to Ms ██████████, ANZ Bank.
68. 20 October 2015: Counter Corruption Analysts wrote to FOS to reject the recommendation and ANZ's settlement offer and understand that the FOS's Determination will commence on 19 October 2015.<sup>59</sup>
69. 23 October 2015: a letter was sent to Mrs ██████████, ANZ, from Counter Corruption Analysts requesting further information.<sup>60</sup>
70. 2 November 2015: Ms ██████████ emailed Counter Corruption Analysts and states on top of the recommendation and advice the ANZ Bank was prepared to assist Mr ██████████ by a way of a further \$5,000.00 on top of the \$3,000.00.<sup>61</sup>
71. 20 November 2015: the ██████████s requested a letter be written to ANZ <sup>62</sup>stating that they believed the contract was unfair and the loan was unconscionable.<sup>63</sup> They believe the bank was negligent, or that the consultant acted dishonestly. They wish to determine the responsibility for the unfair contract or the unconscionable conduct prior to considering ANZ's offer.
72. 30 November 2015: a letter to Mr ██████████, FOS, from Counter Corruption Analysts advising the ██████████s have withdrawn their application that was sent to the FOS.<sup>64</sup> This letter was copied to the ANZ Bank.
73. 22 June 2016: the ANZ Bank, through its legal representatives, served a section 88 Notice of Default on Mr ██████████, requiring that the outstanding amount of \$16,535.48 be rectified by 29 July 2016. This notice stated the full amount required to repay the loan totalled \$161,226.56.<sup>65</sup>

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<sup>57</sup> 13 October 2015, the ██████████s' authorisation.

<sup>58</sup> 14 October 2015, ██████████, Secretary, Counter Corruption Analysts, wrote to ██████████, Case Manager, FOS.

20 October 2015: ██████████, Secretary, Counter Corruption Analysts wrote to ██████████ Case Manager, FOS.

23 October 2015, ██████████, Secretary, Counter Corruption Analysts, wrote to ██████████, EDR Complaint Consultant, the ANZ Bank Complaints Resolution Centre.

2 November 2015, ██████████, EDR Complaint Consultant, the ANZ Bank Complaints Resolution Centre, emailed Counter Corruption Analysts.

<sup>62</sup> 20 November 2015, ██████████, Secretary, Counter Corruption Analysts, wrote to ██████████, EDR Complaint Consultant, the ANZ Bank Complaints Resolution Centre.

Unconscionable Conduct under Section 12CC of the ASIC Act notes the bank's superior bargaining power which it used by disregarding its prior undertaking to the ██████████s regarding their rights under the Code.

<sup>64</sup> 30 November 2015, ██████████, Secretary, Counter Corruption Analysts, wrote to ██████████, Case Manager, FOS.

22 June 2016, letter from Gadens Lawyers to Mr ██████████.

74. September 2016: the ANZ Bank, through Gadens Lawyers, required the ██████s to sell their house to repay the loan. Professional mortgage brokers advised no bank or finance company would refinance their house.<sup>66</sup>
75. 13 September 2016: the bank advised the ██████s that it has “accepted FOS’s conclusions [in its report] and the FOS remedy takes into account that your client has had the benefit of the funds to repay existing debt”.<sup>67</sup>
76. The ██████s believe the ANZ Bank systemically breached its obligations to them under the code, which was part of their loan agreement with the bank in 2008. They allege that the bank breached the following clauses of the code<sup>68</sup>:
- Clause 2.1 (d): provide information in plain English
  - Clause 2.2: fair and reasonable
  - Clause 6: customers with a disability
  - Clause 25.1: provision of credit and diligent banking
  - Clause 25.2: financial difficulty
  - Clauses 35.7 and 35.8: dispute resolution

### Opinion

77. Mr ██████ advises the bank he did not own a business called ‘Clarence Valley Kebab’ and the Sole Trader who appeared on the ABN records was ██████, who is his older brother with whom he has not contacted for years. In addition, Mr ██████ claims he did not have personal loan history with the ANZ Bank on 15 December 2005 and 28 April 2006 as stated in the bank’s 10 April 2015 letter.
78. In 2013, the ██████s presented information in relation to their dispute to the FOS.<sup>69</sup> When doing so, they were not advised by the FOS they would lose their rights to have complaints investigated by the CCMC at no cost.
79. The FOS’s determination should not be conducted until it had reviewed all of the relevant documents.
80. To date, repayments the ██████s have made on the loan have been applied only to interest accrued, and, as such, the balance has not been reduced. The ██████s understand independent mortgage providers, Mortgage Choice, which represented 28 mortgage providing organisations, advised none of them would provide a home loan to the ██████s in these circumstances. This meant the loan the ANZ Bank purchased from RAMS in 2008 was valueless. In this case, the bank was negligent

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<sup>66</sup> 2 December 2016, ██████, Principal, Mortgage Choice, wrote to Mr ██████, Counter Corruption Analysts.

<sup>67</sup> 13 September 2016, ██████, the ANZ Bank Complaints Resolution Centre, wrote to Mr ██████, Counter Corruption Analysts.

<sup>68</sup> 5 December 2016, ██████, Counter Corruption Analysts, wrote to ██████, CCMC.

<sup>69</sup> 4 February 2013, Financial Ombudsman Service Case No. 307996.

in not determining whether the ██████s could afford to pay both their living costs and the interest on the Lo Doc loan.

81. The bank has a duty to review application documents and check the validity of information. At the least, it had a duty to the ██████s to ensure that they signed a valid contract. Had it done so, it was incumbent on the bank to advise the clients what level of funding a prudent banker could have provided to them in order that they could repay the loan. The ██████s believe the appropriate level of funding was considerably less than \$152,000.
82. It is confirmed the bank could not rely on expert advice provided by the FOS on 21 March 2016. This was obtained six months after the ██████s had withdrawn the dispute from the FOS. The expert advice was illegitimate, as the FOS did not have authority or powers in its constitution to provide such advice. The ██████s allege the bank was not diligent when it directed the FOS's advice in correspondence to them when seeking to obtain payment of funds from them.
83. In 2016, the ██████s filed several complaints with the ANZ Bank and the CCMC requesting they investigate the conduct of the bank and its Senior Executives. A written outcome was requested by the ██████s. None was provided.
84. It is noted under the clause 26 of the ANZ Bank's Consumer Lending Terms and Conditions: Financial services dispute resolution schemes, the bank states:

*"If ANZ makes a mistake, or ANZ's service doesn't meet your expectations, ANZ wants to know.*

*If it can't be resolved in 48 hours, ANZ's specialist complaints team, at our Customer Response Centre, will take responsibility and work with you to fix the matter quickly. ANZ's aim is to resolve all customer complaints within ten working days.*

*If this is not possible, ANZ will keep you informed on the progress of your matter and how long ANZ expects it will take to resolve your complaint.*"<sup>70</sup>
85. It is the ██████s' position that in purchasing the impaired loan in 2008, the ANZ Bank failed to exercise the skill of a diligent and prudent banker to assess the correct financial position of the ██████s in relation to whether it:
  - i. verified or confirmed that the income information provided in the loan application was correct;
  - ii. made the necessary inquiries about inconsistencies provided in the application, including the ██████s providing a Centrelink card for identification verification;

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<sup>70</sup> ANZ Consumer Lending Terms and Conditions (Version 7, February 2008), page 22.

- iii. made adequate inquiries as to the [REDACTED]'s financial situation, more specifically, income received from Centrelink;
- iv. inquired into the loan history of the [REDACTED]s with RAMS, their previous lender;
- v. ensured that the [REDACTED]s had read both parts of the contract, the Facility Offer and the Terms and Conditions;
- vi. asked the [REDACTED]s whether they had obtained legal advice before signing a complex legal document; and
- vii. ensured information provided by the loan broker was accurate, specifically whether the financial detailed relied upon by ANZ were correct.

86. The [REDACTED]s believe the bank had not been acting fairly and reasonably towards them in terms of dealing with information provided to it, their complaints, their financial hardships and mental and physical disabilities.

## Part Four:

### ABA's 2004 Code Denies [REDACTED]'s Due Process

#### Facts

87. 1990~1991: a Review of Banking and Deregulation by the Martin Committee was commissioned by the Federal Government. It recognised the cost of holding banks to account for breaches of consumer protection through the court systems was prohibitive to most customers. It recommended the creation of an alternative dispute resolution scheme that would enable customers to have disputes arbitrated cheaply, quickly, and fairly outside the court system.<sup>71</sup> The result was the creation of the 1993 Code of Banking Practice, which has been subsequently revised three times.
88. 3 November 1993: the first code was published.<sup>72</sup> The government and banks noted the purpose of the new code was to foster good relations between banks and customers.<sup>73</sup> It would promote good banking practice by formalising the standards of disclosure and conduct which banks that adopt the code would observe.<sup>74</sup>
89. 1 August 2000: the Industry Self-Regulation in Consumer Markets report was released by the Taskforce on Self-Regulation.<sup>75</sup> It considered the introduction of self-regulation in the banking and finance sector. When the government introduced its recommendations, banks were provided an opportunity to administer themselves and establish standards of practice that would enhance their competitive position. The concept was justified in the basis that:
- “Good practice in self-regulation can be understood as significantly improving market outcomes for consumers at the lowest cost to businesses.”<sup>76</sup>*
90. 12 August 2003: the Revised 2003 Code was published.<sup>77</sup>
91. 15 August 2003: the ANZ adopted the Revised 2003 Code.<sup>78</sup>

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<sup>71</sup> November 1991, the Martin Committee's 'A Pocket Full of Change: Banking and Deregulation'.

<sup>72</sup> 3 November 1993, Australian Banking Association's '1993 Code of Banking Practice'.

<sup>73</sup> Ibid, page 1, states "The [1993] Code seeks to foster good relations between Banks and customers and to promote good banking practice by formalizing standards of disclosure and conduct which Banks that adopt the Code agree to observe when dealing with their Customers."

<sup>74</sup> Ibid, page 1. The objectives of the 1993 Code is intended to:

i. "describe standards of good practice and service;

i. promote disclosure of information relevant and useful to customers;

ii. promote informed and effective relationship between banks and customers; and require banks to have procedures for resolution of disputes between banks and customer."

<sup>75</sup> 1 August 2000, 'Industry Self-Regulation in Consumer Markets', Report prepared by the Taskforce on Industry Self-regulation, Accessed on 11 January 2017 at

<http://archive.treasury.gov.au/contentitem.asp?ContentID=1131>

<sup>76</sup> Ibid, page 59.

<sup>77</sup> 2003 Code of Banking Practice, Australian Bankers' Association.

<sup>78</sup> Date of Adoption.

92. 20 February 2004: the 'Code Compliance Monitoring Committee Association's Constitution' (the Constitution) was documented and provided to the ABA by its lawyers.<sup>79</sup>
93. 22 May 2004: the ABA released the Modified 2004 Code of Banking Practice without including the Constitution.<sup>80</sup>
94. 16 August 2004: the ANZ Bank adopted the 2004 Code without advising its customers of the Constitution that varied principles and practices in the 2004 Code.<sup>81</sup>
95. 31 January 2013: the ABA published an amended 2013 Code alongside the CCMC Mandate.<sup>82</sup> The ABA advised banks customers the CCMC's Mandate was replacing the Constitution without justifying its lack of transparency since the 2004 Code was published.<sup>83</sup>
96. 1 February 2014: the amended 2013 Code and CCMC Mandate came into effect.<sup>84</sup>
97. 19 August 2015: submission 61 filed with the Parliamentary Joint Committee on Corporations and Financial Services notes in '*the impairment of customer loans*'<sup>85</sup>, there are concerns identified to Parliament in relation to the 2004 Code and Constitution. Its conclusion suggests "*the relationship between subscribing banks and their customers is unconscionable and unfair.*"<sup>86</sup>
98. 30 March 2016: another submission, this time filed with the Senate inquiry into '*criminal, civil and administrative penalties for white collar crime*', suggests there are inconsistencies and inadequacies in criminal, civil and administrative penalties for corporate and financial misconduct in the banking sector. It reviews oversight by the industry that fails to penalise banks for misconduct and wrongful gains, and notes the banks and bankers, in many cases, have immunity from prosecution.<sup>87</sup>
99. 16 March 2017: there are similar concerns identified in a submission filed with the '*enquiry into consumer protection in the banking, insurance and financial sector*'. It

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<sup>79</sup> 20 February 2004, 'Code Compliance Monitoring Committee Association Constitution' published by Mallesons Stephen Jacques.

<sup>80</sup> 22 May 2004, '2004 Code of Banking Practice', ABA.

<sup>81</sup> Date of Adoption.

<sup>82</sup> 31 January 2013, under the heading '*Improved Code of Banking Practice*' Accessed on 17 January 2017 at <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>.

<sup>83</sup> 31 January 2013, '2013 Code of Banking Practice and CCMC Mandate' accessed on 11 January 2017 at <http://www.ccmc.org.au/2013/01/31/ccmc-media-release-publication-of-the-abas-revised-code-of-banking-practice-and-ccmc-mandate/>.

<sup>84</sup> 31 January 2013, under the heading '*Improved Code of Banking Practice*' Accessed on 17 January 2017 at <http://www.bankers.asn.au/Industry-Standards/ABAs-Code-of-Banking-Practice>.

<sup>85</sup> 19 August 2015, 'The impairment of customer loans Submission 61-Attachment 2', accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations and Financial Services/customer\\_loans/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/customer_loans/Submissions).

<sup>86</sup> Ibid, page 33.

<sup>87</sup> 30 March 2016, '*criminal, civil and administrative penalties for white collar crime* Submission 42, accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/~link.aspx?id=4B71ABE5941E4868B9C7F092524FB7FF&z=z](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/~link.aspx?id=4B71ABE5941E4868B9C7F092524FB7FF&z=z)

refers to the Taskforce on Industry Self-Regulation and outlines dispute resolution mechanisms it considered important for banks when resolving clients' complaints. It allows the reader to appreciate the complexity the ABA relied on when it published the Modified 2004 Code without including the Constitution. In doing so, the ABA allowed banks to deny customers due process.

100. 13 June 2017: the CCMC filed a response to the above submission. It provides an insight into the CCMC's responsibilities under various codes. The response, when read in light of the ABA's decision to publish the 2004 Code and conceal the Constitution, makes potentially misleading statements regarding the CCMC's apparent role in monitoring code compliance. It states:

The CCMC is

*'an independent compliance monitoring body'.*

*"The Code is a voluntary code of conduct which sets standards of good banking practice for the subscribing banks to follow when dealing with persons who are, or who may become, an individual or small business customer of a Code-subscribing bank, or a guarantor.*

*Once a bank subscribes to the Code it becomes mandatory for that bank to comply with [it] and the obligations under the Code are incorporated into the contracts between the bank and those customers to whom the Code applies...*

*The Code, [and] the Constitution ... are documents developed and controlled by the ABA.*

*Where [the TSBC submission] refers to specific Code breach allegations ..., I can confirm these allegations were dealt with professionally and appropriately...*

*The CCMC's investigations and monitoring work examines whether a bank has complied with its Code obligations."*

101. 18 July 2017: the CCMC, in responding to a case similar to the [REDACTED]s whereby the customer, bound by the 2004 Code, is advised "12 months had passed between when the CCMC considered [the [REDACTED]s] had become aware of the events giving rise to their allegation and the time [the [REDACTED]s] first contacted the CCMC".<sup>88</sup> There is nothing in the 2004 Code whereby the CCMC could not investigate code breaches if '12 months passed' between when the time a complaint was filed with the CCMC and when the customers had become aware of events giving rise to it.

### Opinion

102. September 2004: the ABA claims the code is contractually binding. The 2004 Code of Banking Practice Fact Sheets states: "the Code is not legislation but when your bank

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<sup>88</sup> 18 July 2017, [REDACTED], CCMC's Investigation Manager, wrote to Mr [REDACTED], Bank Victims Pty Ltd.

*adopts the code it becomes a binding agreement between you and your bank.*<sup>89</sup> The Code sets out key commitments and obligations to customers by banks, as well as its standards of practice, disclosure and principles of conduct.<sup>90</sup>

103. Under the 2004 Code, ANZ made undertakings to its customers, including the [REDACTED]s, with respect to the manner in which it would manage the credit facility and complaints under clauses 25, 34 and 35<sup>91</sup>).
104. The ABA's Code Compliance Monitoring Committee Association's Constitution was not provided to the banks customers, including the [REDACTED]s, at the time of signing loan contracts since 2004.
105. Despite investigations by the ANZ Bank and the FOS in relation to the [REDACTED]s' loan contract, a resolution was not reached. This, in part, was due to the non-disclosure of contractual information, whereby customer rights were not disclosed.
106. Under Clause 34(b)(i) of the 2004 Code, the ABA claims the CCMC's responsibility is to monitor bank's compliance under the Code.
107. Clause 35 of the Code provides an internal process of handling disputes with customers that meets standards set out in AS4269-1995,<sup>92</sup> or other industry dispute standard or guidelines the ASIC declares apply to the Code.
108. Under Clause 35.7 of the Code, the ABA states banks have a duty to investigate any complaints made by the [REDACTED]s. Whilst, Clause 35.8 of the Code requires ANZ to provide the [REDACTED]s with a copy of its response.
109. Under Clause 34(b)(ii), the ABA states ANZ Bank will ensure the CCMC's function is *"to investigate and to make a determination from any person that the ANZ had breached this code"*.
110. The ABA's 2004 Code was subject to the Code Compliance Monitoring Committee Association Constitution of 20 February 2004. Under it, the CCMC would be removed from responsibility or obligations to monitor code breaches of the ANZ Bank if a dispute was transferred to another forum.

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<sup>89</sup> September 2004, Code of Banking Practice Fact Sheets:

[www.bankers.asn.au/Default.aspx?ArticleID=906](http://www.bankers.asn.au/Default.aspx?ArticleID=906), accessed on 6 November 2010.

<sup>90</sup> Ibid. *"Key commitments made by banks in the Code include to continuously work towards improving the standards of practice and services in the banking industry, to promote better informed decisions about banking services and to act fairly and reasonably in a consistent and ethical manner. The conduct of the bank and the customer and the banking services contract are taken into account ..."*  
*"The Code ... gives customers rights that banks must observe. The rights cover matters such as disclosure of fees and charges at other terms and conditions ... disclosure is general information about banking services...copies of documents... [and] complaints handling."*

<sup>91</sup> Clause 25: Provision of Credit; Clause 34: Monitoring and Sanctions; Clause 35: Internal Dispute Resolution.

<sup>92</sup> AS 4269-1995, Complaints handling Standards Australia.

111. It is suggested no ANZ customer knew about the Constitution that the ABA, CCMC and the bank introduced in 2004 and that the bank kept out of the reach of its customers until 2014.
112. The ██████s believe the Constitution allowed the ANZ Bank to advise the CCMC the ██████s initially intended to use the FOS, which was ‘another forum’, to have their complaints investigated. This removed any requirement of the CCMC to investigate the ██████s’ complaints, as required under the 2004 Code.
113. The ABA claims the 2013 CCMC Mandate included provisions from the Constitution. In addition, the ABA, when it published this recent code, applied a ‘12-month rule’. It prohibits the CCMC “commencing a compliance investigation... if the person making the allegation was aware of the events to which the allegation relates, or would have become aware of them if they had used reasonable diligence, more than 1 year before the person making the allegation first notified the CCMC in writing”<sup>93</sup>
114. In 2008, when the ██████s signed a loan contract and trusted the ANZ Bank, they have no idea the 2004 Code and the Constitution were developed by the ABA and banks. While the ABA advised customers of rights to have complaints dealt with to ‘their satisfaction’ under clause 35 of the 2004 Code,<sup>94</sup> the Constitution denied its clients’ due process. On 11 March 2008, the CCMC filed submissions with Code Reviewer Ms ██████, stating:
- “The Committee considers that the existing constitution should be revoked for two reasons. Firstly, because the structure suggests that the Committee is less than independent of subscribing banks. Secondly some provisions of the constitution vest unnecessary power in the Chairmen of the Banking and Financial Services Ombudsman (BFSO) and the CCMCA.”<sup>95</sup>*
115. These arrangements demonstrated in submissions filed with the Parliament since 2015 some form of ‘deceit’, either by words or conduct, as to intentions of persons who use deception. For the purposes of this submission, deception, if found to exist, could be either intentional or reckless (as per Crimes Act 192B(2)).
116. The ██████s believe ANZ, by concealing the Constitution, obstructed their rights. In addition, under Section 192E of the Crimes Act<sup>96</sup>, they allege the ABA, CCMC and the bank caused them financial disadvantage.<sup>97</sup>

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<sup>93</sup> 21 March 2016, ██████, Code Compliance Analyst, Code Compliance and Monitoring Committee, wrote to Mr ██████, Customer representative, regarding case CX 3410.

<sup>94</sup> Refer to Clause 35.7 of the 2004 Code of Banking Practice.

<sup>95</sup> 11 March 2008, CCMC review of the Code of Banking Practice. Annexure A Page 2.

<sup>96</sup> Section 192E Crimes Act 1900 (NSW) sets out the criminal offence of fraud as follows:

“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.

117. On 13 June 2017, the CCMC responded to the ‘*Enquiry into consumer protection in the banking, insurance and financial sector*’. It states once a bank subscribes to the code it becomes mandatory for the bank to comply with it, and the CCMC examines whether banks comply with code obligations. Of important concern to the ██████s, however, is that while the CCMC claims to deal with allegations professionally and appropriately, it is within the context of the 2004 Constitution. The ██████s found this extraordinary, as it demonstrates it is still governed by the ABA and its Constitution and the bank Chief Executives.

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<sup>97</sup> S192E(1)(b) of Crimes Act 1900 (NSW) states, ‘obtains any financial disadvantage or causes any financial disadvantage’, is satisfied if the accused: “obtain[s] a financial advantage for oneself or for another person, and induce a third person to do something that results in oneself or another person obtaining a financial advantage, and keep a financial advantage that one has...”

## Part Five:

### Predatory Lending

#### 118. Definition

The predatory lending “describes unfair, deceptive, or fraudulent practices of some lenders during the loan origination process.

*Lenders made loans that they knew borrowers could not afford.”<sup>98</sup>*

119. We refer you to “Australia’s ‘Banking Cartel Scandal’: The Rise of White-Collar Crime”, in which the submission alleges predatory lending in Australia is rampant.<sup>99</sup>

120. It states in its Executive Summary:

*“Lenders have been systematically targeting older people who owned their own home, were on low incomes and were debt free...*

*During Parliamentary questioning, our regulators have consistently down-played the instances of mortgage fraud and sub-prime lending in Australia ... Of most concern is the apparent attempt by Lenders to demonise the consumer victims of Low Doc Loans...*

*ASIC are quick to unfairly blame brokers as seller/agents of the banks, after freely admitting: “Lenders are the engineers.” Sellers of product do not approve loans. Lenders approve the loans. The crime committed was in the approval process, involving a universal and compulsory computerised calculator to exaggerate incomes.”*

121. Predatory Lending practices are:

*“taking advantage of the least educated and financially unsophisticated in our society by selling them costly mortgages and hiding details of the fees in the fine print incomprehensible to most people.”<sup>100</sup>*

122. The ANZ Bank’s records will show that the loan application was not prepared by the ██████s. The information in the application was filed by the bank’s consultant, Touchstone Financial Group, which would have received payment from the bank.

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<sup>98</sup> 25 January 2011, [“The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States”, Financial Crisis Inquiry Commission, Washington, D. C.: Government Printing Office.](#)

<sup>99</sup> 29 March 2016, ██████ “Australia’s ‘Banking Cartel Scandal’ The Rise of White-Collar Crime”, Banking and Finance Consumers Support Association (BFCSA) to the Senate Economics Standing Committee 2016 Inquiry into ‘Penalties for White-Collar Crime’(submission 23), accessed at <http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwjmuKWhqpvSAhXDwLwKHbbDA8wQFggIMAI&url=http%3A%2F%2Fwww.aph.gov.au%2FDocumentStore.ashx%3Fid%3Dbe84b97d-5d0a-41d4-acd7-d20fc6db345b%26subId%3D411906&usq=AFQjCNHC-5njXkkFW458M6su6AqDj-c9vw>

<sup>100</sup> Ibid, page 36.

The application stated Mr [REDACTED] was not “*acting as though under duress or other disability*” and was not “*acting as though they are unsure of anything about the loan*”, and was not “*acting as though they are unable to comprehend their obligations*”. The bank, regardless of what is stated on the application, should have been aware that the [REDACTED] was on a disability support pension. Mr [REDACTED]’s behaviour aside, had the bank conducted due diligence when forming the contract, it would have questioned his reason for his pension and his potential future earnings and ability to repay the loan.

123. The [REDACTED]s argue the financial advantage from a loan should never have been made. The incorrect and misleading information provided by the consultant can only be certified by depository banks and their affiliates in an environment of collapsing lending standards and lax regulation.
124. It is alleged that the bank breached the Code for threatening the [REDACTED]s with foreclosure through its lawyers in multiple occasions.
125. It is arguable the ANZ Bank’s motives, when it invited the [REDACTED]s to sign a Lo Doc loan in 2008, were profit driven and unethical. Such activities put the bank in an unfair no-lose situation. If they could not pay back the loan, the bank could exercise its foreclosure power to sell their house. If a dispute occurred, it could have blamed the middle man, the consultant in this case, for the malpractice.
126. Predatory lenders offer a loan that cannot be paid back, leading to the inevitable sale of a customer’s property by the bank to recover its funds. This recovery accounts for interest and charges money for the operation of the foreclosure. Inevitably, the forced foreclosure leaves the borrower with no remaining funds regardless if the property was worth more than the original loan. Homeowners such as the [REDACTED]s were left in danger of homelessness.

## Moving Forward

127. The [REDACTED]s have asked us to request a determination from the Australian Small Business and Family Enterprise Ombudsman on whether ANZ Bank professionally and appropriately managed their account as required under their contracts.
128. They believe practices set up by the ABA, CCMC and their bank in 2004 denied them due process. The systemic issues such as failed self-regulation, deceitful bank codes and a concealed constitution caused them significant damages.
129. This review found their bank did not fulfil its ethical and legal responsibilities under its contract, as its customers did not have the cognitive ability and financial resources to protect themselves from being taken advantage of by the banking fraternity.

Should you require further information please contact the writer.

Yours sincerely,

[REDACTED]

[REDACTED]  
Director, Bank Victims Pty Ltd

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