Our ref: 170315 Senate Inquiry

lcflms
bank victims

15 March 2017

The Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir / Madam,

Consumer protection in the banking, insurance and financial sector

Please find attached a copy of twelve *'Banking in Australia'* papers sent to ASIC in relation to consumer protection in the banking, insurance and financial sector.

These papers detail malpractices of banks to treat customers with fairness and justice. It is accepted by people who have contacted Bank Victims that it is not the prime responsibility of ASIC to investigate complaints on a case by case basis.

We note ASIC made a public commitment in its publication titled *"fido, Australian Securities & Investments Commission financial tips and safety checks"* regarding what the public should do if they think the bank has breached the code. This has been set out in Part 5 of the attached papers, and relates to commitments made by the federal regulator in or about October 2007.

Self-regulation has demonstrated an inability to work with banking codes since the 2003 Code was introduced. Self-regulation permitted banks and their association to create an arrangement whereby they could breach their contractual agreements and avoid penalties. The supporting documents suggest banks, their association, the FOS and the CCMC are implicated in this arrangement.

Bank Victims' Terms of Reference provide examples of small businesses and home owners with mortgages that suffered damages as a result of these malpractices. Bank Victims believes the banks and their associates' conduct was wilful, as the banks have avoided investigating allegations that they have not acted in good faith whilst being self-regulated.

[1] ASIC's Publication – "Financial Tips and Safety Checks", accessed on 30 October 2007 at http://www.fido.gov.au/fido/fido.nsf/byheadline/Code+of+Banking+Practice?opendo.

Bank Victims response to the Terms of Reference

TERMS OF REFERENCE

In relation to the Terms of Reference (TOR) the *writer* explains in the following paper to the Senate Standing Committee on Economics:

TOR a. any failures that are evident in the:

i. current laws and regulatory framework, and

ii. enforcement of the current laws and regulatory framework, including those arising from resourcing and administration;

In relation to i., we note:

The decision by the government to introduce self-regulation to the banking and finance *sector* may have proved an initiative whereby the government regulators can save money. The attached papers note that this is not acceptable for customers of the banks.

In relation to ii., we note:

The government regulators have authority to investigate and possibly prosecute banks and bankers for unconscionable and dishonest conduct. However, they have avoided any prospect of confrontation with the major banks in relation to safeguards that customers depend on.

TOR b. the impact of misconduct in the sector on victims and on consumers;

There is evidence that banks could avoid any prospect of investigating allegations in relation to their misconduct, which was not the intention of the code in 1993 when it was first published. They have significant resources that are best used by the banks in the courts when they wish to avoid having to deal with disputes as agreed in the 1993, 2003 and 2004 codes.

TOR d, the culture and chain of responsibility in relation to misconduct within entities within the sector;

We have attached allegations that the CCMC pays no regard to the contractual agreements banks had with customers when 1993, 2003 and 2004 codes were introduced. We believe the attached documents approve it. When banks published the *'2014 Code and CCMC Mandate',* they did so in such a way they would not have to investigate 1993, 2003 and 2004 code breaches, due to the 12-months limitation introduced (for the first time) when the 2014 Code was published.

TOR e. the availability and adequacy of:

i. redress and compensation to victims of misconduct, including options for a retrospective compensation scheme of last resort, and

ii legal advice and representation for consumers and victims of misconduct, including their standing in the conduct of bankruptcy and insolvency processes;

In relation to i., we note:

The bank senior executives and officers might be asked to explain how they have provided redress and compensation to customers without investigating claims by customers that they breached their contract. The two attached papers demonstrate there is no willingness by the banks to investigate complaints whereby they have acted inappropriately or dishonestly.

In relation to ii., we note:

Self-regulation introduced by government in 2000 made it impossible for individual and small businesses to obtain fairness and justice in the banking system. Once banks become involved in allegations serious dishonesty and predatory lending they ensured, through forceful measures such as foreclosure or bankruptcy, customers did not have sufficient funds to protect themselves in the courts.

The Martin Committee addressed this concern in its November 1991 report to the parliament. Subsequent governments have not prosecuted banks that have avoided complying with their contracts. In these circumstances there has been no fairness or justice despite having access to institutions such as *'Legal Aid'* which does not have sufficient resources or adequate skills to protect customers when being prosecuted by banks.

Priestley v NAB case is a good example of how a bank's Chief Executive failed to investigate its customer's hardship claims presented to the bank, preferring to direct them to Farm Debt Mediation. In doing so, the Chief Executive voided the Priestley's rights to have their allegations dealt with by the CCMC at no cost.

In order to ensure the Priestley's could not employ lawyers with adequate skills, the bank retained the $3 million surplus in order to cover its escalated legal and interest costs.

The Priestleys have had no success referring alleged code breaches to the CCMC. Having referred their concerns to Counter Corruption Analysts, their allegations were filed with the CCMC's Chair on 9 November 2016 (attached). On page 2, the Senate will note the CCMC claimed the bank said the Priestleys' concerns *"were considered in the court, by the Australian Securities and Investment Commission and with the Senate..."*

The CCMC has steadfastly refused to investigate the Priestley's specific allegations that the bank breached the code. The CCMC also refused to provide the Priestley's with copies of information supporting the banks claim that its client's allegations were addressed in other forums.

TOR h. any related matters

Cicekdag v ANZ case is another good example of how banks willingly or negligently could avoid investigating allegations of unconscionable and dishonest conduct. The facts in relation to this case suggest that no matter how serious allegations are the banks will simply avoid investigating their own practices. We refer the Senate to Counter Corruption Analysts letter of 5 December 2016 (attached). It details similar code breaches to the CCMC that were set out in the Priestley letter. The CCMC also failed to investigate allegations in relation to home mortgages.

The Senate, having considered the attached *Banking In Australia* submissions and the attached information relating to the CCMC's conduct, *will* find that the independent compliance monitors had been funded by banks to investigate allegations as set out in Clause 34 of the 2004 Code, when in fact, they had no intention of complying with their contractual responsibilities as set out in the 1993, 2003 and 2004 codes.

The decision by the current CCMC to accept payment from banks in relation to 2014 code breaches appears equally as serious. It is alleged that they accepted payment from the banks under the 2014 Code and CCMC Mandate to not use their authority to investigate the earlier code breaches by subscribing banks.

Summation

Bank Victims published reports in its website in order that bank customers could appreciate how serious the failing by banks to carry out their responsibilities set out in the codes of banking practice. It has received complaints in relation to the misconduct of all four major banks.

Despite directing allegations of code breaches and complaints to banks and their regulators including the CCMC, there is little prospect of any fairness and justice available to individual and small business customers. This is demonstrated by reference to the attached documents; the 2004 Code of Banking Practice and the Code Compliance Monitoring Committee Association's Constitution.

The Constitution (Clause 8.1) notes that banks could avoid having to investigate code breaches and complaints by commencing an action in other forums. We understand that the banks prefer to deal with unconscionable and dishonest practices in courts when their customers do not have the necessary resources.

Since 2004, banks and the FOS have appointed the CCMC, when all of the parties should have known banks could redirect complaints to other forums. Whilst this may sound understandable to Supreme Court Judges, it is a practice that has been reported to disadvantage under-resourced customers.

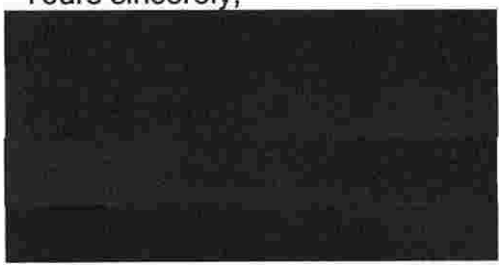
Bank Victims understands that many thousands of complaints are directed to the FOS each year. The Senate inquiry may ask the banks and FOS what steps they

took to advise customers that once they attended FOS they would lose their rights to have alleged code breaches and complaints investigated at no costs.

We are able to provide supporting documents for each of the *Banking In Australia* submissions upon request.

We are also willing to meet with the Senate Inquiry Committee should it seek further information in relation to these allegations.

Yours sincerely,



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ENC: Attachment A, Band C