Government assists banks with a phony code of practice

Summary:
The Australian Banking Association released its new Code of Banking Practice on the 1st of July. This letter was to be sent to Treasurer Frydenberg a few days later but we decided to hang onto it while we monitored ASIC, Treasury and the banks. We have now sent this to the Treasurer and publish it here today because very soon the Senate will vote on a motion to disallow the new Code. Every Senator must vote to axe the code ..... here's why.....

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Banking Code Is Deceptive - Senators Must Vote It Down

Dear Treasurer Frydenberg,
2.7.19

Your government has not been firm on either criminal conduct or unlawful practices by the Australian Banking Association (ABA), the Code Compliance Monitoring Committee (CCMC) and the

major banks since winning government in 2013.

Likewise, Bank Reform Now understands the major banks provided the government with $6.2 billion in 2017, which no doubt could have been used for victim compensation or to fully fund ASIC and APRA for the additional costs incurred when prosecuting misconduct in the banking and financial sector. Regrettably, Kenneth Hayne QC and the Banking Royal Commission (BRC) also did not have sufficient resources to deal with the extraordinary level of deceptive - and often criminal conduct - operating within the banking & finance sector.

The new Banking Code of Practice took effect yesterday; however it failed to introduce the necessary improvements that the BRC referred to so that bank / customer loan contracts were fair and transparent. Nor did it introduce practices that meant the Banking Code of Practice was enforceable. Criminal conduct has been evident since the introduction of self-regulation by the government prior to the 2003 Code of Banking Practice being published.

I have outlined below major queries, which must be addressed to assist with any related policies and proposed amendments.

1. Your government should ensure that the 2019 Code is governed by rules and regulations whereby banks and licensees involved in any deceitful or criminal conduct are prosecuted - rather than approve a new Code which is a non-binding agreement that is not enforceable.

2. An early example of dishonest or criminal conduct occurred within the 2004 Code. David Bell, the ABA and bank chief executives introduced a hidden constitution that governed the CCMC's practices. Will the new Banking Code Compliance Committee (BCCC comprising of previous CCMC members) have powers to refer dishonest or criminal conduct by banks when they relied on clause 8.1(a-h) in the CCMC Association's constitution allowing them to breach the Internal Dispute Resolution (IDR) process and avoid having to pay fair compensation?

3. Another example of deceitful and criminal conduct occurred under the IDR process in the Revised 2003 Code and continued when the Modified 2004 Code was published. Will the BCCC refer deceitful and criminal conduct to ASIC where there is evidence the IDR process was not free of charge and did not meet the practices set out in the 1995 and 2006 Australian Standards? Please understand - the 2019 Code approved by ASIC makes no reference to the IDR process being free of charge, nor reference to guidelines set out in the 2014 Commonwealth Government approved SAI Global Australian Standard for complaints handling.

4. The above concerns are dealt with by ASIC Regulatory Guide 165, which is not identified in the new 2019 Code, nor is ASIC Regulatory Guide 183 identified. Both are dormant despite ASIC stating 'we believe codes sit at the apex of industry self-regulatory initiatives. To us, a code is essentially a set of enforceable rules that sets out a progressive model of conduct and disclosure for industry members that are signed up (RG183.4).'

5. Please read this again and again, because ASIC also claims that it 'will apply the approval criteria in this guide consistently to both new codes and to existing industry codes that have not yet been approved (RG183.82).

6. In 2019, you and the government led us to believe the new version of the Code was developed in consultation with it and stakeholders, including consumer groups and the banking industry (p.4). Therefore, transparency requires the ABA to make the consultative reports publicly available as it claims the new Code replaced the previous version (the Code of Banking Practice 2013). Neither the government nor the regulators have taken on board findings by the Senate inquiry into resolution of disputes with financial service providers within the justice system.

7. The 2013 Code states 'On and after the 2013 transition date [1 February 2014], we will be bound by this code in respect of any financial service or product [refer definition p 40 2013 Code] we were providing to you at the 2013 transition date. In documents filed by the above senate Inquiry, submission 77.2 dated 13 March 2019, states, 'if indeed the ABA is attempting to alter small business loan contracts by introducing a new code of banking practice and applying it retrospectively

is a breach of Australian contract law and illegal.'

8. Mr Frydenberg, you should clarify the Media Release by Dr June Smith on 31 January 2013 titled 'publication of the ABA's revised code of banking practice and CCMC Mandate statement' whilst subscribing banks have until 1 February 2014 to adopt the provisions of the revised Code, 'the obligations under the 2004 Code remain in force during the transition period.' Dr Smith, a prominent member of the Australian Financial Complaints Authority (AFCA), should explain on what basis she, as Secretariat of the CCMC, could make this governing statement, which retrospectively changed loan contracts illegally.

9. Furthermore, you and ASIC might comment on the above, as they contradict statements made by AFCA in their operational guidelines (p.4) 'AFCA will have regard to the relevant law, codes and industry practice that were in place at the time of the disputed conduct.' Are AFCA guidelines enforceable or does the new Code, introduced by Anna Bligh and the ABA directors yesterday, now apply to small businesses and farmers with existing loan contracts?

The above matters also refer to compensation and the fact you and the government have not clarified on what basis banks can systemically breach loan contracts and not be required to pay 'full' compensation under AFCA's compensation cap. Its 'monetary limits for general complaints' tables a $1 million cap in circumstances when the small business facility was less than $5 million and in the case of farmers this cap is $2 million. Surely this is inadequate. Compensation must accurately reflect the actual direct and indirect (or consequential) losses suffered by small businesses and farmers.

Under the new Code, to be monitored by the BCCC, banks will continue to profit from the ill-conceived concept of self-regulation. It appears governments since John Howard's in 2001 believed bank profits are more important than customers' rights. Bank clients must have access to a fit for purpose banking system that hold banks and their staff accountable when things go wrong. Customers must be compensated promptly and fairly when they are harmed by dishonest and criminal conduct.

I also point out that it was Greg Medcraft's ASIC that had been "captured" by the leading banks. It was ASIC that rubber-stamped David Bell's ABA's 2004 code and compliance monitoring regime. James Shipton's recent comments suggest that he is willing to look at issues such as the above and have ASIC respond in an independent and firm manner.

Mr Frydenberg - you must have encouraged Mr Shipton to approve this new code and practices presented to you (and ASIC) by Anna Bligh and her ABA directors. You should resign immediately if you do not have the ability to require, ensure and facilitate an honest Australian banking system. Of course, if you and Mr Shipton accept my comments the public must see ASIC 'promptly' facilitate a new culture with the required amendments. Though it could be argued that a banker initiated and produced code may not be the best approach to producing an honest and fair system. Maybe scrapping the current code and starting again would be a better course to follow.

I have been dealing with all four big bank chief executives and licensees regarding the legacy cases and governance issues. Some chief executives have responded better than others but all have agreed to support model litigant standards similar to those that the various government departments now use. For banks the model litigant principles should be standardised and included in the present code (see our preferred model in this article - www.bankreformnow.com.au/news/press-releases/cba-was-not-fair-legal-player).

These issues will not go away. The Australian economy is grinding downwards under your watch and is now heading towards a meltdown. If people can't trust the banks investment of time and money in genuine businesses will simply dry up. Business people cannot risk being harvested by banks with practices designed by the licensees to fleece them. Government denial and deception will never cut it ..... perhaps you should ask people who used to live near Chernobyl what damage can be caused by institutionalised deception.

It is worth considering the stakes are higher than the above would indicate. Right now authoritarian

regimes such as those in Russia are claiming Liberal democracy is a failed system in decline. There are many regimes like those in Russia that are run by criminals. The best way to counter the views of the Putin ilk is to show what can be achieved by truly free people working in an environment structured to function in the interest of those people ... not the elite. Structural reforms are essential. The payoff would be huge for our country and its people. Clearly your and the PM's stature can only be improved when it is clearly seen that you are working in the nation's interests rather than those of bankers and their cronies. Surely you appreciate this.

I have outlined these concerns to you trusting we can discuss these issues - in either Sydney, Melbourne or Canberra – as they are the foundations of several important cases. Please let me know when this would be possible.

Kind regards,

Peter

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Further Comment from BRN

Please contact all Senators right now. On Wednesday the 11th of September they must support the motion to disallow the dodgy 2019 Banking Code of Practice. It is critical the following ALP politicians are contacted. If Anthony Albanese does not see to it that the ALP votes against this Code it exposes the ALP as all talk - no ticker - and no integrity.

UPDATE - the vote was postponed until November. The ALP will only support it with effective public pressure - well done Senator Roberts and team.

Email ALP Senators Today –

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Plus these Shadow finance spokespeople –

Opposition Leader Anthony Albanese - A.Albanese.MP@aph.gov.au

Shadow Treasurer Jim Chalmers - jim.chalmers.mp@aph.gov.au

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Shadow Finance Minister Katy Gallagher - senator.katy.gallagher@aph.gov.au

Also - the link below shows you how to contact all politicians and effectively lobby them to bring about policies in your interests.

Related Links: Justice Demands Action - Right Now

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