It's not a new code that is required ... it's honesty, ethics & accountability

Summary:
It's pretty hard to trust Anna Bligh and the Australian Banking Association when you consider the history of banking in Australia since the first Code of Conduct came into existence in 1993. The Soviet Union had possibly the finest documentation protecting the Human Rights of its citizens. Words on paper don't cut it..!! The system must be structured to serve the people's legitimate needs and interests. The Banking Codes have always served the interests of the banks. The new code is no different. But don't worry folks ..... there is light at the end of this long and torturous tunnel.

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Banking Reforms Kick Off To A Sceptical Start

Banks are working under a tougher set of customer obligations from Monday, which a financial hardship expert hopes will help improve behaviour in the scandal-tarred industry.

But one vocal, aggrieved customer is sceptical much will change, saying penalties remain weak.

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The Australian Banking Association is talking up new reforms to an industry code of practice, first created in 1993, which became enforceable in the new financial year.

Banks have already taken some steps under the reforms, such as no longer offering unsolicited increases in credit-card limits.

Lenders will also be required to offer low-fee or fee-free accounts to low-income customers, while providing a three-day cooling-off period so guarantors can consider the ramifications of guaranteeing a loan.

It comes after banks last year were pilloried in the Hayne royal commission, with horror stories emerging such as dead customers being charged fees. Under the new code, banks will be required to "proactively identify" any fees charged to customers once notified a client has passed.

The system will be overseen by a Banking Code Compliance Committee. The steps the committee can take include publicly naming a bank for breaches, while new powers include requiring a financier to take corrective action.

But the committee has previously complained about bank attitudes. **"Five banks reported zero breaches of the code's provision of credit and internal dispute resolution obligations, while six banks reported no breaches of their debt collection obligations," the committee wrote last year. "This is unlikely to accurately reflect the true situation on the ground."**

ABA chief executive Anna Bligh, a former Labor Queensland premier, argued that behaviour would improve with the code given the post-royal commission environment, as groups from regulators to politicians maintain their gaze on banking conduct.

"With that degree of scrutiny, I think we can expect to see a much increased focus [from] banks," Ms Bligh told The Australian Financial Review.

Ms Bligh argued that reforms, such as the compliance committee being able to force new training for staff and to require that banks rectify serious breaches, could also result in "considerable" costs that would help enforce behaviour.

Financial Counselling Australia chief executive Fiona Guthrie was hopeful the code reforms and other steps would result in better conduct, saying changes were substantial, including steps to clamp down on financial abuse.

She said some banks had taken steps to improve their behaviour, including proactively contacting people about fee-free accounts. "That's really encouraging," she told the Financial Review.

The code also is part of customer contracts. "That really gives it teeth," she said.

Craig Caulfield, one of a group of aggrieved customers who last year traveled nationwide to agitate at bank annual general meetings, did not have much hope that behaviour would improve.

That was partly because some customers felt the compliance committee previously had failed to address complaints, while the penalties for breaches "need to be far greater", he told the Financial Review.

"It's just nice words," Mr Caulfield said.

BRN Comments

Once again we see tinkering around the edges. Talking about: stopping fees for dead people,

informing customers about fee-free accounts. This is not the issue..!! The Royal Commission also ignored the main issues. **The main concern is the way those of us that are still living are being fleeced** .... often in the most horrific of circumstances. We call it asset stripping. It has been going on for decades. **Every bank CEO knows of cases.** Anna Bligh is also very much aware. The new code is flawed. ASIC rubber stamped it during the time it was captured by the banks. Now ASIC is supposed to be a new energised beast. Well the first step is to see it amend the code. This will only happen with Josh Frydenberg's approval.

The glaring omission in the code as well as in the Hayne Royal Commission is a serious mechanism to achieve effective redress for clients with a genuine grievance against their financial institution. Up to now people have been exposed to phony remediation plans and pathways. In fact, **most people don't even realise that the banks, regulators and government have set up codes and monitoring arrangements that are specifically structured to make proper investigation of a complaint impossible.**

BRN claims the practices of Australian Banks and their Code Compliance Monitoring Committee were not only unconscionable but also in breach of the criminal code.

1. Since August 2003, many of the bank clients that BRN is assisting right now signed loan contracts with their bank where it was claimed the bank would comply with its Code of Banking Practice. Most banks have mimicked the ABA's code in their own Code of Banking Practice. The code states the bank would have an internal process (Internal Dispute Resolution - IDR) for handling disputes with customers that will be free of charge; meet standards set out in AS 4269-1995; adhere to time frames specified in the code; and require the bank to provide written reasons for its decision on a dispute (fact). The Hawke and Keating governments when accepting the 1993 objectives in the first Code, required the banks to describe standards of good practice; provide disclosure of information relevant to customers; and have procedures for resolution of disputes between banks and customers.

2. Since 2003, the government allowed banks to shut down all complaints - as demonstrated in the BRN assisted cases. By allowing banks to take customers to another forum customers lost their rights under clause 34(b) of the Code and found that their rights to justice and due process were deceptively taken away from them. Therefore the BRN complainants (and many others), having been required to deal with disputes found their bank had taken away their rights and directed them to another forum. This allowed the bank to deal with their disputes in a court because the bank, prior to 2014 being able to obtain an advantage whilst in breach of the loan contract.

3. ASIC allowed these practices to continue for the last 14 years. In February 2005 it stated that it believes “that Codes sit at the apex of industry self-regulation. 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). Despite this commitment, ASIC allowed the banks to prosecute customers without complying with AS 4269-1995 (clause 35.1b) which was supported by the Commonwealth Government.

4. In light of the poor performance by ASIC since the 2003 Code was published and adopted by the banks, it seems unlikely ASIC will take any action against banks to determine “whether any conduct by [this financial services entity] (including by its directors, officers or employees of or by anyone acting on behalf of those entities) might have amounted to misconduct and, if so, whether the question of criminal or other proceedings in relation to the decision by bank CEOs should be referred to the appropriate agency” (refer TOR page 2(a)).

Hayne was given this information. Why was it not acted on? Hayne did the banks a favour by trying to lock out legacy cases from ever getting justice. Some cases BRN has been assisting with go back thirty years.

The new code makes no mention at all of complying with the Australian complaints handling standards - **the previous code did refer to AS ISO 10002-2006.**

The other glaring omission is banks being model litigants. All the banks have now accepted

the concept of behaving as model litigants. This should be spelt out in the code and be standardised for all the banks. The BRN preferred model would have banks commit to the following. Some of these can be made enforceable under the code -

The bank commits to -

a) Acting honestly, consistently, and fairly in the handling of claims and litigation;

b) dealing with claims promptly and not causing delay. This includes prompt provision of all required and requested documents;

c) making an early assessment of the prospects of a matter;

d) Paying legitimate claims without litigation;

e) keeping the costs of litigation to a minimum by:
(i) not requiring the other party to prove a matter the litigant knows to be true;
(ii) not contesting liability if the real dispute is about quantum;
(iii) using appropriate methods to resolve litigation including settlement offers or alternative dispute resolution; and
(iv) ensuring that a person participating in settlement negotiations can settle on behalf of the litigant.

f) Not taking advantage of a claimant who lacks resources;

g) Not relying on a merely technical defence against a claim;

h) endeavoring to avoid, prevent and limit the scope of litigation (including by participating in alternative dispute resolution where appropriate);

i) Equality of Arms - thereby agreeing to fund their client's legal expenses equal to their own expenditure; and

j) apologising where the litigant has acted wrongfully or improperly.

BRN Advisory Panel members and bank warriors Michael Sanderson and Craig Caulfield have been leading the charge advocating for Equality of Arms and Model Litigant requirements.

For bankers to be taken seriously we need more that a pretty looking code. They must admit to past wrongdoing and compensate their aggrieved clients. In addition they should co-operate in making amendments to the code that will help stop unconscionable abuses .... and when they do occur they must remediate their clients promptly. It is quite simple ..... but only if their intentions are honest and ethical.

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