



28 June 2016

Greg Medcraft  
Chairman  
Australian Securities and Investment Commission  
PO Box 9827  
MELBOURNE VIC 3001

Dear Mr Medcraft,

**RE: BANKING IN AUSTRALIA: PART 8**

*Banking in Australia: Unregulated and Unprotected Part 8* is an open letter to ASIC alleging bank Chief Executives were selling customer loans without full disclosure for ten years.

It further alleges that this practice was carried out with ASIC's knowledge.

**ASIC Policies and Powers**

"A code of practice is a set of enforceable rules setting out industry's commitments to deliver a certain standard of practice. ASIC has the power to approve codes in the financial sector, however, to date no financial services sector codes of practice have been submitted to [it] for approval.<sup>1</sup>

***ASIC's role in codes of practice***

ASIC has the power to approve codes in the financial services sector... An approved code of practice should meet a number of criteria, including:

- 00 A comprehensive body of rules developed in consultant with stakeholders
- 00 Enforceability against subscribers to the code
- 00 Adequate provisions for dispute resolution, remedies and sanctions

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<sup>1</sup> 9 July 2015, "ASIC has the power to approve codes of practice in the financial services sector and administers the ePayments Code", accessed at <http://asic.gov.au/for-consumers/codes-of-practice/>

- oo Effective and adequate administration- including compliance monitoring."

The attached paper suggests subscribing banks have not met these criteria. It further suggests that the government should declare a position in relation to banks failing to provide relevant and important facts in contracts.

### **Labor Party**

Shadow Treasurer Chris Bowen's statement:

"If its good enough for other areas to be examined its clearly good enough ... for the banking sector ... to be examined very thoroughly in a methodical and calm manner so that we can have a good, robust, profitable banking sector, but one which serves the interests of all Australians and we see an end to what is a continuing, rolling list of scandals ... We see problem after problem and it needs a thorough examination." <sup>2</sup>

### **Liberal Party**

Premier Malcolm Turnbull's statement:

"ASIC has all of the powers of a Royal Commission, all of the powers of a Royal Commission plus much more. It has the ability to initiate prosecutions, to take action, to issue fines, to ban people from trading in, from operating in as company directors or in financial services. So what we have already is a very serious, very comprehensive regulatory structure."

### **Financial Sector Self regulations**

Taskforce on Industry Self-Regulation<sup>3</sup> outlined the regulatory frameworks for self-regulated industry codes in Australia prior to the 2004 Code of Banking Practice being introduced by subscribing banks. This introduces a number of serious allegations overlooked by governments.

The Competition and Consumer Act 2010 ("the Act") provides a general power to make industry codes of conduct enforceable at law. It gives ACCC powers to ensure that industry participants comply with code provisions. The principal benefit of prescribed codes is that commitments under it are enforceable by ACCC or by private action under the Act. However, without explanation, the government has avoided prescribing the code of banking practice.

### **Summation**

To date, no financial services sector codes of practice have been submitted to ASIC for approval.

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<sup>2</sup> 15 April, 2016, "*Fundraiser for Assistant Treasurer Kelly O'Dwyer to be sponsored by NAB amid banking firestorm*", accessed at <http://www.smh.com.au/federal-politics/political-news/fundraiser-for-assistant-treasurer-kelly-odwyer-to-be-sponsored-by-nab-amid-banking-firestorm-20160415-go7c4y.html>

<sup>3</sup> 1 May 2000, "*Taskforce on Industry Self-Regulation*", The Treasury, accessed at <http://www.treasury.gov.au/documents/1123/HTMLdocshell.asp?URL=appc.asp>

However, without explanation, only the subscribing banks, the FOS and the regulators knew that customers referring complaints to mediation and the FOS would lose their rights to have code breaches investigated and banks named publicly for breaching the code.

*Banking in Australia: Part B* has made a case for ASIC to inform political leaders why it failed to prosecute any subscribing banks or bankers for providing contracts to consumers without full disclosure. It is therefore the political leaders responsibility to accept there is a need for a public inquiry into toxic banking practices.

An inquiry would require ASIC to provide a public response in relation to its conduct, since 2004, and to allow many thousands of bank customers to claim damages from banks profiting from dishonest and unlawful conduct.

*Banking in Australia: Part 9* will name industry leaders that have allegedly failed to address these serious allegations for the past ten years.

Yours sincerely,



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*Attached: April 15, 2016, Fundraiser for Assistant Treasurer Kelly O'Dwyer to be sponsored by NAB amid banking firestorm, James Masso/a and Heath Aston, The Sydney Morning Herald.*