Ms Sharon Wong
Senior Analyst, Merger Investigations
Australian Competition & Consumer Commission
Lonsdale Street Melbourne VIC
GPO Box 3131 Canberra ACT 2601
E-mail: *Sharon.Wong@accc.gov.au*

19 January 2023

Dear Ms Wong,

I attended meetings with small businesses and farmers at Parliament House in August 2018. We had concerns that our banks did not treat us fairly nor did they investigate our complaints appropriately.

In February 2019, Kenneth Hayne published his recommendations following Royal Commission. It seemed that he trusted the banks, regulators, and governments to protect us when this has not been the case since 2003. At about the same time, Josh Frydenberg, Treasurer, responded *'to the landmark Royal Commission'*, stating:

> *The Government is taking action on all 76 recommendations contained within the Royal Commission's Final Report and in a number of important areas is going further.*
>
> *In outlining the Government's response to the Royal Commission, the Government's principal focus is on restoring trust in our financial system and delivering better consumer outcomes, while maintaining the flow of credit and continuing to promote competition. These objectives are vitally important to the health of the economy and therefore to the health of our community.*
>
> *As we have heard, too often the conduct within our financial institutions has been in breach of existing laws and fallen well below community expectations. The price paid by our community has been immense and goes beyond just the financial. Businesses have been broken, and the emotional stress and personal pain have broken lives. As Commissioner Hayne has made clear: "there can be no doubt that*

the primary responsibility for misconduct in the financial services industry lies with the entities concerned and those who managed and controlled those entities".

My message to the financial sector is that misconduct must end, and the interests of consumers must now come first. From today the sector must change and change forever.

Commissioner Hayne's recommendations and the Government's response advance the interests of consumers in four keyways. First, they strengthen and expand the protections for consumers, small business and rural and remote communities. Second, they raise accountability and governance standards. Third, they enhance the effectiveness of regulators. Fourth, they provide for remediation for those harmed by misconduct.

The Government is confident that the actions announced today will put in place the legislative framework necessary, providing the regulators with the powers and the resources to hold those who abuse our trust to account. In doing so the community's trust in our financial sector can and will be restored.

In 2021, the 3 million small businesses and farmers believe Frydenberg made a promise that Scott Morrison and his government will not be going to keep. We believe the Coalition had never treated small businesses and farmers fairly nor reviewed submissions filed with the Parliament and the Senate.

Reviewing public documents

In 2010, The Parliamentary Business Committees on Corporations and Financial Services published a submission prepared by the Council of Small Business Organisation in Australia (COSBOA) titled *'Australian Bankers' Problematic Codes.'* It provided an outline of events in the banking sector between 1991 and 2010.

The foundation documents for this submission were a review of world banking practices commissioned by Bob Hawke's government. It was carried out by Stephen Martin and his Committee, and they travelled to various countries that had introduced codes of banking practice and made recommendations to the government.

This committee provided recommendations in *response to the House of Representatives Standing Committee on Banking, Finance and Public Administration, October 1992. The report, titled 'A Pocket Full of Change' was, in fact, the detailed and well researched Martin Report in 1993.*

> *It had been an aspiration of the Parliament since 1990 for banks to have a set of high-standards and for them to be monitored 'independently' by the Committee whose duty it is to monitor compliance with the code and to investigate 'any alleged breach of the code' by any person.*

In 1993, a Code of Banking Practice was written by the Australian Bankers' Association ('ABA') when Paul Keating was Prime Minister. The Code failed to include recommendations from the Martin Committee that the banks did not like. However, the code made clear statements that customers could understand. It states:

The Code is intended to:

i. *describe standards of good practice and service;*
ii. *promote disclosure of information relevant and useful to Customers;*
iii. *promote informed and effective relationships between Banks and Customers; and*
iv. *require Banks to have procedures for resolution of disputes between Banks and Customers*

These objectives are to be achieved:

i. *having regard to the paramount requirement of Banks to act in accordance with prudential standards necessary to preserve the stability and integrity of the Australian banking system;*
ii. *consistently with the current law and so as to preserve certainty of contract between a Bank and its Customer; and*
iii. *so as to allow for flexibility in products and services and in competitive pricing*

In 1996, ANZ Bank, Commonwealth Bank, Bank of West Australia, National Australia Bank, Rabobank, Suncorp Metway Ltd, Westpac Banking Corporation, and St George Bank Ltd

adopted this code. There was a commitment by them *to have procedures for resolution of disputes between Banks and Customers.*

In 1997, John Howard was Prime Minister. His government introduced the inquiry by Stan Wallis, and it was required to recommend *to the government that rather than relying on the integrity of the bank parties, government should introduce co-regulation through a national regulatory body with comprehensive responsibilities to enforce consumer protection in the banking and finance sector.*

Its members included:

i. *Stan Wallis (Chairman)*
ii. *Bill Beerworth*
iii. *Prof. Jeffrey Carmichael*
iv. *Ian Harper, and*
v. *Linda Nicholls*

Following this inquiry, the government introduced statutes and Acts, and established key industry regulators, ASIC, APRA, and later ACCC. Each had responsibilities to enforce specific provisions of the bankers' self-regulated codes of practice. It seems that the APRA Act was the most relevant to small businesses and farmers. It had obligations set out in the Act that included:

> *The APS 520 Prudential Standard developed by APRA, made under subsection 11AF(1) of the Banking Act 1959, requires all regulated institutions to:*
>
> a. *Have and implement a written Fit and Proper Policy that meets the requirements of this Prudential Standard;*
> b. *Assess fitness and propriety of responsible persons prior to appointment and then re-assessed annually (or as close to annually as practicable);*

c. *Take all prudent steps to ensure a person is not appointed to, or not continue to hold, a responsible person position for which they are not fit and proper;*

d. *Additional requirements must be met for certain auditors; and*

e. *Certain information must be provided to APRA regarding responsible persons and the regulated institution's assessment of their fitness and propriety.*

According to these standards, this report will consider whether the fact that officers and senior management of regulated institutions are able to hold positions as code regulators if the Association's constitution compromises their ability to be 'fit and proper', and if so, whether these standards comply with the relevant APS 520 APRA criteria.

The ASIC Act in 1998 states:

ASIC's responsibilities relate to market integrity and consumer protection. It was established upon recommendation of the Wallis Committee under the guiding principles of competition and consistent regulatory treatment within the industry. It has, as its intended function, 'monitoring and promoting market integrity and consumer protection in relation to the Australian financial system' and the Australian payments system, as well as the operation and compliance of industry standards and codes of practice.

The Australian Competition and Consumer Commission (ACCC) states:

The ACCC was established at the same time with the primary purpose of ensuring that individuals and businesses comply with Commonwealth's competition, fair trading, and consumer protection laws.

In 1999, the Taskforce on Industry Self-Regulation was commissioned by Minister for Financial Services and Regulation, Mr Joe Hockey. Its purpose was to provide information to the government, industry, and consumers in relation to best practice in industry self-regulation. Its final report was published in August 2000 and provided crucial information for the public. However, when the contemporary codes in 2003 and 2004 were published

in August 2003 and May 2004, bankers, regulators, and politicians would have been familiar with misconduct by leading banks that followed.

> *The 2003 Code wanted it to be widely known by the public that after the revised code was published on 1 August 2003, the high standards in the code meant that:*
>
> *A bank must be sure it is ready to comply with its obligations under the revised code before it adopts it because the code is an enforceable contract between the bank and the customer.*
>
> *The code is a voluntary code in the sense that a bank has a choice whether to adopt it. Once a bank has adopted the code, it binds the bank contractually to the customer. So if a bank breaches the code, it has breached its contract to the customer.*
>
> *The revised code builds significantly on the earlier edition (1993) and among the new provisions: small business is included for the first time.*
>
> *This code meets and beats similar codes in other countries such as the UK, Canada, New Zealand and Hong Kong. The ABA's code... stands out both in scope and the specific customer benefits it provides.*
>
> *Banks will submit to independent monitoring (emphasis added) of compliance and if a bank has systemically or seriously breached the code it is liable to be publicly named.*
>
> *Each bank will lodge an annual report with the Committee on its compliance with the code in much the same way as banks have done under the original 1993 code in reporting annually on compliance to ASIC.*
>
> *David Bell, CEO of the ABA and Jillian Segal, Chair of the BFSO in a joint decision of the two organisations announced the appointment of Mr Tony Blunn, AO, as Chairman of the independent Code Compliance Monitoring Committee for monitoring banks' compliance with the code.*

The Committee will have a very important role, especially when it comes to taking action against a bank... the code is contractually binding, so a regulator might even consider action of its own.

The Committee will be able to receive complaints from anyone who thinks that a bank has breached the code. The Committee will have the power to investigate that complaint and decide whether a breach has occurred.

Mr Blunn emphasised the independence of the committee which he believed had an important role in the broader structure of the governance arrangements of the banking sector.

When I discovered that ASIC Regulatory Guide 165 (2001) had been omitted from clause 35.1(b) in the 2003 and 2004 Code, I reviewed statements the directors published in their 2004 Annual Report. The report states:

good corporate governance meets the bank's ethical and stewardship responsibilities and provides the bank with a strong commercial advantage. The Chairman notes in his report that importantly, the bank has taken on a broader role in the community and he reinforces the board's message that quality disclosure is fundamental to achieving the bank's vision; to become Australia's leading and most respected major bank.

The report notes the directors and employees overriding responsibility is to act honestly, fairly, diligently, and progressively, and in accordance with the law (emphasis added). Its key codes and policies which apply to the directors and employees, who are expected to pursue the highest standards of ethical conduct, reinforce the bank's commitment to having an overriding responsibility to always act honestly, fairly, diligently, and progressively.

The directors and employees are expected to adhere to the high standards set out in the bank's own code. These require banks parties to disclose any relevant interests, act in the best interests of the group and always act honestly and ethically in all dealings. The Bank aims to achieve a culture that encourages open and honest communication and all levels of accountability, to meet its ethical responsibilities.

These practices were dishonest and unacceptable to small businesses and farmers. They should have been reported to Kenneth Hayne and Royal Commission because the 2004 Code remained in place until February 2014.

It did not have standards requiring banks to comply with obligations under this code. The Code was not enforceable because the banks omitted ASIC Regulatory Guide 165 (2001) in clause 35.1(b). Small businesses and farmers could not resolve disputes free of charge nor rely on other provisions in its clause 35.

ASIC records note that ten months after publishing the 2003 Code, the ABA was incorporated. Prior to June 2005, its members were chief executives and managing directors of the leading banks. It required that they *'had a duty under the APRA Act to have the appropriate skills, experience and knowledge and to act with honesty and integrity, and to be fit and proper and have appropriate governance standards.'*

The ABA's board comprised:

- *Mr Robert Hunt – Bendigo Bank*
- *Mr John Stewart – National Australia Bank*
- *Mr David Morgan – Westpac Bank*
- *Mr Daniel McArthur – Bank West*
- *Ms Gail Kelly – St George Bank*
- *Mr David Murray – Commonwealth Bank*
- *Mr John McFarlane – ANZ Bank*
- *Mr John Mulcahy – Suncorp Metway Limited*

In June 2015, the House of representatives referred an inquiry into the impairment of customer loans to the committee for inquiry and report by March 2016. A submission was filed by the Tasmanian Small Business Council (TSBC). It reviewed problematic codes and

practices by the above banks.

On 14 November 2014, we believed this report was reviewed by a professional economist who was a senior advisor to Deloitte Access Economic and chaired Australian Government's Competition Policy Review. This report states:

> *A public inquiry into banking practices would find there were many examples where subscribing banks took customers to court [intentionally] for breach of contract while [these] banks were silent on policies.*
>
> *This paper reveals that the relationship between [leading] banks and their customers is unconscionable and unfair.*
>
> *Having access to all four documents, which includes the Constitution, makes it clear that publications to the media are misleading. Further, there is evidence that the subscribing banks' contracts with individuals and small businesses promote a commitment to investigate all complaints and a dispute resolution package that does not exist.*
>
> *This paper notes the relationship between subscribing banks and customers has been damaged by the failure of regulators to prosecute banks that breached part of the APRA, ASIC, and ACCC Acts.*
>
> *The decision by legislators to allow banks to be self-regulated has no jurisdiction based on the research of this paper.*

In August 2015, a TSBC reports, set out in Submission 61 (Attachment 1 and 2), were titled '*The Australian Bankers' Problematic Code'.* It was also published by the Parliamentary Joint Committee on Corporations and Financial Services.

The TSBC's submission in August 2015 raised a number of concerns regarding misleading statements by banks, regulators, and politicians, stating:

> *Roadmap to Deception: Evolution of the Code of Banking Practice, 1993 to 2015.*

Consumer allegations of abuse by the Australian banking sector in the 1980s and 1990s led the Federal Government to implement a system of self-regulation in the Australian financial sector.

A product of this system, the Code of Banking Practice was born in 1993. The Code was designed to protect consumers and ensure a competitive but a fair banking system in Australia.

However, the Code is today not the mechanism that the government's Campbell and Martin reviews envisioned. Since the Code came into force in 1996, Banks have misled the public, weakened consumer protections, and abused their power over their customers.

This chapter presents the unconscionable evolution of the Code of Banking Practice in Australia from the period 1993 to present (Part I, p.8).

The CCMC, the second pillar of Australia's financial regulatory system, is severely restricted by a hidden constitution. It both limits its authority to investigate complaints, and ultimately deceives and misleads bank customers (Part III, p.14).

Regulatory Failure

The major Australian banks claim that they are bound by a 'world class' Code, monitored by the CCMC, supported by the FOS, and approved by ASIC. It is evident, however, that the Code of Banking Practices is unclear and ambiguous.

That ASIC has approved of this arrangement is indicative of the degree to which banking regulation in Australia is a bank-run affair. Banks set the rules of their own game and have the financial resources to outgun any legal efforts made by [small businesses and farmers] to bring the banks to account for their abuse of power.

Both the Campbell Review and Martin Committee endorsed deregulation of financial markets on the precondition that consumer protections were put in place to protect individuals and small businesses.

The Martin Committee stated that government must ensure:

> *Adequacy of redress available to [consumers] in cases of dispute with their bank.*

However, this has clearly not been the case.

As the now-Federal Attorney-General, the Hon. George Brandis MP, said:

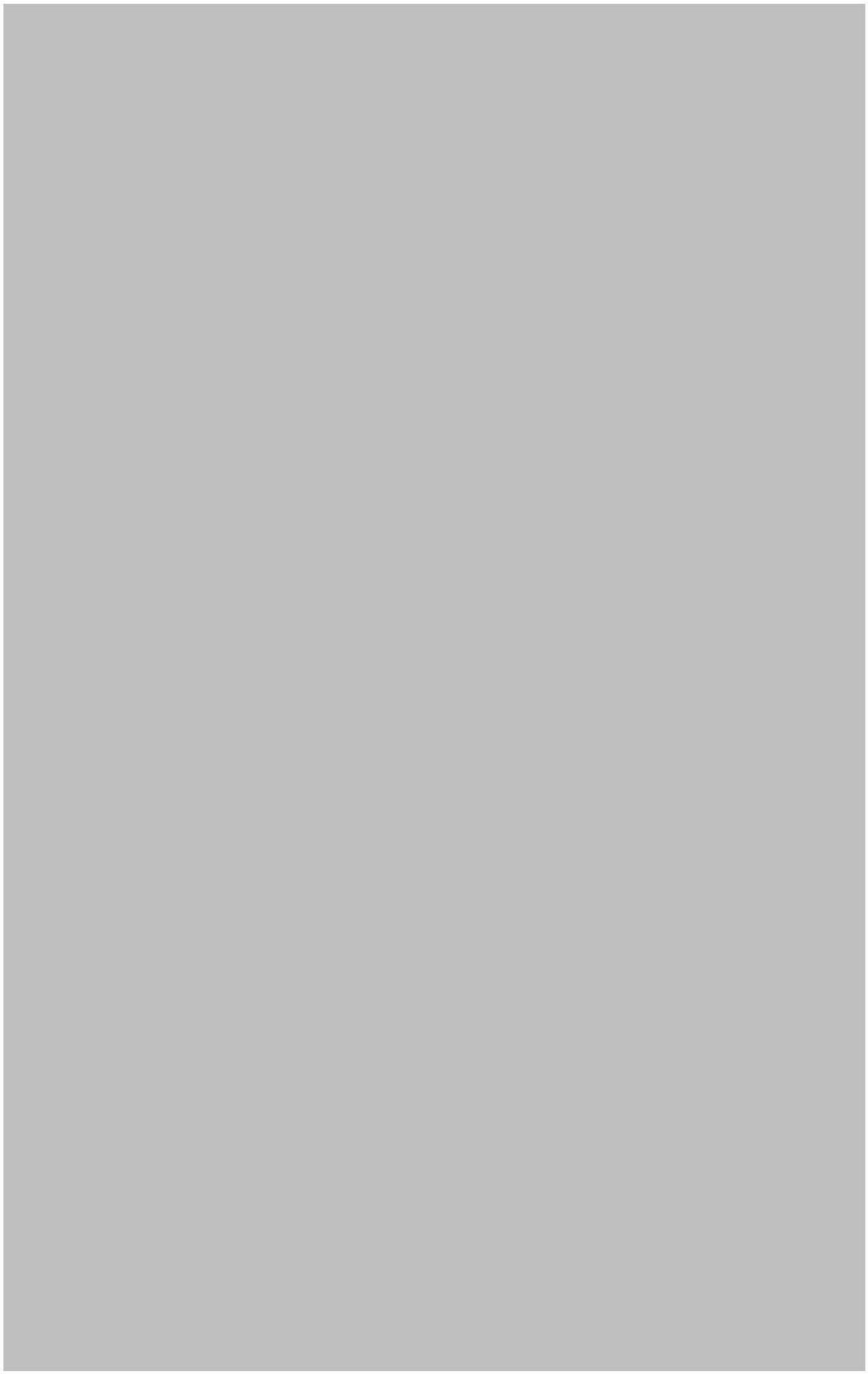
> *[U]nless you are a millionaire or a pauper, the cost of going to court to protect your rights is beyond you… the costs of legal representation and court fees mean that ordinary Australians are forced either to abandon their legitimate claims or enter the minefield of self-representation.*

By limiting alternative dispute resolution mechanisms and the power of compliance monitors, Australian banks have denied individuals, farmers, and small businesses necessary consumer protections. Banking regulation in Australia has failed, despite recommendations made in both the Campbell Review and Martin Committee. Both reviews endorsed stronger alternatives to court action for breaches of the Code. However, under the present self-regulation system, there is no alternative for the majority of bank customers than to go to court to bring banks to account (Part III, p.18).

Despite various independent reviews both conducted on behalf of, and submitted to, government on the self-regulated system of banking in Australia, state and federal governments have failed to act on the recommendations made.

This section describes how in failing to address the key problems with self-regulated banking in Australia, the government has been complicit in a range of unconscionable practices (Part V, p.21).

By failing to provide adequate protection either under legislation or by the state and federal regulatory bodies, and by failing to address issues regarding penalties and avenues for redress for breaches of the Code, the government has assisted in creating a code of practice that provides merely the facade of consumer protection. All the while, the [eight] leading banks continue to profit at the expense of their



"[redacted]

[redacted]

[redacted]

[redacted] *There is, on the facts, evidence that the leading banks have misled the public when promoting a Code as a binding contract intended to protect individuals, farmers, and small business customers.*

The Code has been, since 2003, ambiguous, unclear, and deceptive. The banks' CCMC is made powerless by a constitution ***hidden for a decade*** *and the FOS is run, staffed, and principally funded by the banks it seeks to hold to account.*

This meant that the banks' [redacted] regulators (APRA, ASIC and ACCC), and politicians attended meetings when the 2014 and 2015 submissions were challenged by the government. These submissions suggested banking crimes between 2003 and 2015 were out of control and the misconduct was not rectified. However, more serious was the fact that they were not directed to Kenneth Hayne, Royal Commissioner, in 2017 when he requested details of all misconduct by banks and practices that fell below community standards.

In 2019, the Senate required Turnbull and/or Morrison to extend the Royal Commission, but they overturned the Senate's recommendations. In February 2019, Kenneth Hayne's services were terminated. However, Kenneth Hayne stated there were 6 rules, including:

- *obey the law;*
- *do not mislead or deceive;*
- *act fairly;*
- *provide services that are fit for purpose;*
- *deliver services with reasonable care and skill; and*
- *when acting for another, act in the best interests of that other.*

For 20 years, small businesses and farmers have been concerned that *'evil has an ordinary face'*. However, the Coalition members in the Parliament and Senate did not pay attention to this message.

In May 2022, Anthony Albanese was appointed Prime Minister of Australia. In his victory speech, he said:

> *My Labor team will work every day to bring Australians together. And I will lead a government worthy of the people of Australia. A government as courageous and hardworking and caring as the Australian people are themselves.*
>
> *"My fellow Australians, it says a lot about our great country that a son of a single mum who was a disability pensioner, who grew up in public housing down the road in Camperdown can stand before you tonight as Australia's prime minister.*
>
> *"Every parent wants more for the next generation than they had. My mother dreamt of a better life for me. And I hope that my journey in life inspires Australians to reach for the stars.*
>
> *"I want Australia to continue to be a country that no matter where you live, who you worship, who you love or what your last name is, that places no restrictions on your journey in life. My fellow Australians, I think they've got the name by now. I think they've got that.*

Three months later, I wrote to Albanese, stating:

> *I am one of the small businesses and farmers who were devastated when [redacted] [redacted] did not comply with the Letters Patent signed by Prime Minister Malcolm Turnbull and the Governor General the Hon Sir Peter Cosgrove on 14 December 2017.*
>
> *On 15 December 2015, Commissioner Hayne required banks to provide him with all practices that might have amounted to misconduct, and practices which fell below the community standards and expectations. Several [redacted] were Architects of the 2004 Code and misled Commissioner Hayne. This was reckless and we trust it will not happen again during your period as Prime Minister.*

Prime Ministers Hawke and Keating protected us from criminal practices by banks prior to 1997. However, in 2003, the government regulators allowed banks to conceal ASIC Regulatory Guide 165 (2001) from the Code, which meant customers could not resolve disputes. For 20 years, regulators took no action.

This is not acceptable because the 2003 and 2004 Code misled banks' customers. This was referred to the Senate in August 2015 by Tasmanian Small Business Council, but Prime Minister Turnbull took no action.

Please confirm receipt of my letter because I suffered damages since 2008. I trust you, [Mr Albanese], your government, and God will deal with my case.

In 2022, I obtained a financial loss report setting out the damages the above practices by ANZ [redacted] regulators and politicians caused me. This report was prepared by a forensic accountant who is *highly skilled in analysing and preparing financial information for a court of law. It's a field that requires a combination of accounting, auditing, and investigative skills. Accountants in this field of work will typically be engaged to review financial records and information in a post-acquisition dispute, economic damages, calculations bankruptcy and computer forensics. Business valuations, insolvency and fraud issues can also typically require the skills of a forensic accountant. While not all cases may lead to formal litigation, Forensic Accountants are required to produce information to a standard that would be suitable for use in a court of law.'*

In the report of 8 August 2022, the forensic accountant states [redacted]

[redacted]

As a result of the practices by ANZ I suffered a financial loss

I believe my damages were greater than this because ANZ did not comply with the 2004 Code. They:

a. did not provide me all the essential documents when I signed the loan contracts,
b. did not ensure their staff were properly trained,
c. did not meet their responsibility in clause 35,
d. did not monitor the Code appropriately,
e. were not prudent and diligent lenders,
f. did not enforce hardship provisions,
g. did not comply with relevant law,
h. attend Farm Debt Mediation in good faith, and
i. did not act fairly and reasonably towards me.

This introduces concerns that some parties:

a. had evidence of 4 cases in relation to banks committing crimes, changing loan contracts and codes,

The new cabinet members will appreciate Treasurer Jim Chalmers has to address any criminal practices by APRA, ASIC and ACCC. The following allegations were referred to him and Senators, including:

a. *the 2004 Code of Banking Practice that banks adopted was a*
b. *banks claimed customers' disputes would be resolved free of charge, but that was untruthful,*

c. *banks omitted ASIC Regulatory Guide 165 (2001) from Codes,*

d. *these banks changed Internal Dispute Resolution procedures to increase profit, and*

e. *when asked by Kenneth Hayne on 15 December 2017 to provide details of all misconduct and practices that fall below community standards since 2008, they misled him*

Should you require supporting documents that are not available from the government's records, please contact me.

Please confirm receipt of this correspondence by EOD Tuesday 24 January 2023.

Yours sincerely,

Goran Latinovich

Copy: My forensic accountant for his report