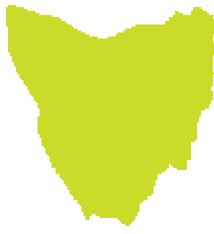

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Competition Policy Review – Submission

The Tasmanian Small Business Council is pleased to offer input to the Competition Policy Review.

The subject of this submission is the practices of the Australian Banks that abuse their market power and act in a way that reduces competition and inhibits productivity to the disadvantage of small businesses in Australia.

1. The sixteen major banks that comprise the Australian Bankers' Association purport to offer industry based self regulation to their borrowers by virtue of the Code of Banking Practice (The Code) which claims to provide a process for consideration and redress in the event that a borrower may have been unfairly treated by any member bank. The references in The Code are

   Clause 35.7 (a) "We have a dispute resolution process"
   (b) "It is available for all complaints"
   (c) "Other than those that are resolved to your satisfaction"

2. The Code of Banking Practice is a component of every lending contract and is thus a condition of the lending agreement.

3. The Code and supporting publicity purports to offer borrowers evidence of the bank's intention to provide fair trading and an opportunity for redress.

4. The banks fail to disclose the methodology for consideration of customer complaints that may be made against member banks and the fact that the "Constitution" under which the "Code Compliance Monitors" are appointed, **restricts the Monitors from complying with the terms of the Code of Banking Practice**.

5. Notwithstanding the conditions set out in The Code, which comprises part of the customer contract, the banks have the power to silence any complainant at will.

6. The Code purports to protect consumers while it is used by the banks to protect themselves.

The accompanying notes titled *"Australian Bankers' Association Problematic Banking Code Part 2 Competition Policy Review"* which reviews the 20 February 2014 Code Compliance Monitors Committee Association Constitution, demonstrate that there is virtually no chance that the 16 subscribing banks would ever be found to have breached the code by the Code Compliance Monitors.

The document "Problematic Banking Code Report Number 1" which is also attached, demonstrates how the banks have created a process which enables them to **use the Code to protect themselves against the malpractice of their own employees.**

We invite the Review to examine both this submission and the proposal therein and the comprehensive submission on this subject made by the Council of Small Business Organisations of Australia to the Senate Economics Committee Inquiry into Banking in October 2010 and accepted as submission number 90 by that Committee.

During the years 2003 to 2013 inclusive every small business (or consumer) that entered into a borrowing contract with the banks was denied fairness, equity and possible redress and the banks knowingly and deliberately acted in a manner that is demonstrated by the report to be unconscionable. Extrapolation of complaints data published by banks during this period suggests that some 2.5 million complaints were received by banks of which only a few hundred were considered by the Code Compliance Monitors and only one finding was recorded against a bank.

It is estimated that more than 90% of the small business loan agreements signed by the subscribing banks between 2003 and 2013 are still in place today.

It is also noted that in 1991, the Martin Committee recommended that banks appoint independent monitors to ensure complaints handling is *a "cheap, speedy, fair and access able alternative to traditional courts"*

The Tasmanian Small Business Council notes the various "small business position" statements set out in the attached document titled *"Australian Bankers' Association Problematic Code Part 2*

Competition Policy Review" and recommend them for consideration by the Review.

In the event that the Competition Policy Review members would like more detail or further explanation the Tasmanian Small Business Council would welcome the opportunity to address you in person on this subject and its implications for any Australian small business that enters into a borrowing agreement with a bank.

A relatively simple solution for any person that may wish to borrow from Australian banks may be found in the "Banking Amendment (Banking Code of Conduct) Bill 2012 which was introduced into the Australian Parliament by Mr Andrew Wilkie MP, Member for Denison, in June 2012. The Wilkie Bill is intended to ensure that a modified code (or contract) could not be weakened by a dual-contract that allows (CCMC) members to not "*investigate and make a determination on any allegation by any person that the bank has breached the code"* in clause 34(b)(11) of The Code

The Tasmanian Small Business Council presents the suggestion to the Review that there is a need for legislation to be reviewed so "fit and proper" governance principles are applied to self regulatory codes to ensure that they are properly administered and enforced in banking; this affects 22.49 million Australians and 2.4 million small businesses.

Thank you for receiving this submission.

Geoff Fader
Chairperson
Tasmanian Small Business Council 4 July 2014

Attachment:
Australian Bankers" Association Problematic Code Part 2 Report to Tasmanian Small business Council
Related documents:
ABA Code of Banking Practice (A)
Small Business Standard Facility Offer (B)
Australian bankers' Association "Problematic Code" Report (C)
Wilkie Bill (D)
CCMC Constitution (E)