The Great Australian Bank Scam

How major banks have colluded to deny borrowers natural justice

Sixteen of Australia's major banks have colluded to establish processes to ensure that their consumer, small business and farm business customers cannot achieve equity or redress in their borrowing arrangements, and developed an arrangement that denies borrowers any semblance of natural justice.

The process comprises collusion between the bank CEOs to limit the level of consumer protection offered to their customers, the development of a misleading and unenforceable "Code of Banking Practice" the preparation of similarly worded standard form lending agreements which are both unfair and unconscionable, procedures to obviate the key protection clauses in the "Code" and denial of responsibility in the decision making activity associated with individual loans.

Each of these steps, and the way in which banks use them to deny consumer rights, is described below.

Standard Form lending agreements

The standard form lending agreements offered by banks to their customers contain options for contract variations which are one sided. The agreements provide that the bank can change anything while the customer can change nothing. An evaluation of these terms against the public education advice provided by ACCC/ASIC/and The Small Business Ombudsman's Office reveals that the bank lending agreements fail the fair contract test. The contracts are therefore harsh and unconscionable and may well be illegal in respect to the relevant clauses.

The "Code of Banking Practice"

This document purports to be a component of the bank lending agreement (and therefore subject to change by the banks at any time) but various courts have determined that it is poorly worded using ill definable language, and cannot be relied upon to provide the level of consumer protection and redress that it purports to offer. In particular this document indicates that "any" and "all" complaints will be considered. This commitment is not adhered to in practice.

Process abuse

Against a background of infinite power over borrowers banks use their advantaged position to force complainants' into some (any) form of mediation. This action then absolves the

bank from its stated responsibilities to hear complaints brought under the terms of "The Code of Banking Practice" There is little hope of any "mediation" process reaching a reasonable outcome when the mediator is adjudicating against an unfair and unconscionable contract in which all power lies with the bank.

Collectively the actions described above comprise the components of a great Australian bank scam.

It is further noted that when considering the merits or otherwise of making funds available to a borrower the bank seeks substantial information about the purpose for which the funds are to be used, the likelihood that the loan can be repaid in a timely manner and the risks associated with the use of the funds. The loan is only granted when the bank is satisfied that the risks are within their (the banks) level of comfort. To this effect the bank becomes a party to the risks alongside the borrower yet at a future time that suits the bank the bank seemingly denies this responsibility and seeks to rely on various guarantees to recover its funding along with often significant penalties. It is noted in a recent report by the Australian Prudential Regulation Authority that banks become "responsible" to other parties in negotiations and agreement. It is therefore clear that by denying responsibility in lending agreements banks are acting contrary to APRA policy.

It is no coincidence that there is commonality among the major banks in adopting these practices as sixteen of the major banks have signed-on the terms of the "Code" and the "Code" is managed by the Australian Bankers' Association on behalf of the "Code Compliance Monitors Committee Association" which comprises the Chief Executive Officers of the major banks. This committee appoints the Code Compliance Monitors and determines the conditions under which they are able to carry out their duties.

The practices described above clearly demonstrate how the banks visit unconscionable behaviour on their customers.

In the terms of the Competition Policy Review it is noted that because the sixteen banks that have colluded to participate in this scam comprise almost all lending to consumers, small businesses and farm business borrowers the banks actions reduce or almost entirely wipe out the possibility of effective competition in the market.

The Tasmanian Small Business Council calls upon the members of the Competition Policy Review to recommend that the appropriate Government Agencies undertake a comprehensive review of bank lending practices.

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