Bank Reform Now

Taking Real Action To Bring About Real Change In Banking

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26.01.21

Senate Standing Committees on Economics
By email only economics.sen@aph.gov.au
re: National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill

BRN welcomes the opportunity to contribute to the consultation regarding the proposals aimed at reducing the time it takes for individuals and small businesses to access credit.

For decades governments of all persuasions have facilitated banks profiting from unfair, dishonest and often criminal conduct. At the same time both major political parties were accepting significant donations from the big four banks.

The NCCP (2009) and its responsible lending laws was one very small advance that in a small way addressed the power imbalance between the banks and their clients. Now the Morrison government wants to remove those protections to increase the availability of credit.

Almost every policy announced in response to the COVID crisis has directly or indirectly been aimed at sustaining the unsustainable. Increasing the country's debt and pushing the money to the banks and corporations in myriad ways. This was in effect a "bail-out."

After the 2008 GFC the so-called elite wanted policies put in place to allow them to continue "business as usual." That meant easy credit pumping up asset prices, making homes unaffordable and rents outlandish. Of course they also knew that come the next crisis they wanted yet another bail-out followed by a bail-in (whereby the banks could confiscate (aka steal) the cash deposits and superannuation of their customers).

The regulatory agencies such as Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA) & Australian Financial Complaints Authority (AFCA) and the Courts do not deliver justice to victims of finance sector crimes and misconduct. Mr Frydenberg wants people to trust ASIC and APRA after what Commissioner Hayne concluded?

At the 2018 limited Banking Royal Commission the Commissioner claimed he had read all 10,323 submissions. If any of these had suggested criminal conduct would you expect a retired High Court Justice to have referred them to ASIC or APRA?

Why didn’t he? We know that many submissions detailed horrific crimes against bank customers. Many of these BRN has previously provided to government inquires and to members of various Parliamentary committees.

Regardless of Hayne’s failures he did make some worthwhile recommendations. The major one was that: **the responsible lending laws in the National Consumer Credit Protection Act should not be amended to alter the obligation to assess unsuitability.** Commissioner Hayne also made recommendations that sought to improve the enforcement of laws like responsible lending, recognising that they were no good if they were not enforced.

The implications of Hayne’s position are clear – the laws we have should be adequate. We don’t need new laws that make the system more complex or difficult but we do need the appropriate agencies to enforce the laws that were formulated and put in place for very good reasons after the GFC.

It is also important to note that the Government and particularly the Treasurer Mr Frydenberg made a commitment to implement the Royal Commission’s recommendations. The Australian Banking Association also – via their leader Anna Bligh fully supported Hayne’s position.

It is totally unacceptable for both the Government and the ABA to renege on their commitments.

Bligh has even said that "no bank has an interest in lending to a customer that cannot repay." **This is absolute rubbish!** There is profit to be made through keeping people in debt and pushing them as close to the edge as possible. Years of commissions, late fees and other penalties on top of prolonged interest payments can be harvested from customers that have been given inappropriate loans. This is as easy to do as a banker fudging a loan application to increase a customer’s income and decrease their liabilities. This is very common and has contributed to Australia’s own subprime crisis that will likely be fully exposed later this year.

The banks have a strong track record of exploiting vulnerable customers in the above manner – just look at the hundreds of thousands of people who carry large debts on credit cards at high interest over many years.

How dare the government propose to let bankers engaged in predatory business practices off the legal hook?

It is critical to understand that there is a difference between a lender's credit risk appetite and what is affordable to a borrower. This was recognised by Parliament when the responsible lending laws were introduced in 2009.

The explanatory memorandum of those 2009 law explains this: "Credit providers' internal standards and guidelines would be expected to factor in the credit provider’s own policies on risk exposures and may vary from time to time, in line with changes to the risk appetite of the credit provider, … the fact that an application for credit satisfied a creditor's own policies for affordability does not necessarily mean that it meets the [responsible lending] standard."

Another major problem of the proposed change is the removal of ASIC's role in overseeing responsible lending. Putting that role into APRA's hands has obvious dangers.

APRA's role is to ensure financial stability of the banks, not protect individual consumers. Everyone wants "strong banks." APRA and the government regularly turn a blind eye to how banks engage in suspicious lending practices that boost profits in a predatory manner. As long as the profits keep the banks afloat APRA is not much concerned with how it's done. If consumers got a fair go the banks would not be able to make "super-profits."

Banking is a relatively simple utility. The profits CEOs and shareholders have traditionally enjoyed are unrealistic, unreasonable – and in fact …. criminal..!!

It has been widely reported in the media that bankers have been involved in: fraud, forgery, predatory asset stripping, money laundering, rate rigging, drug trafficking, terrorism funding, superannuation rip-offs, financial planning abuses, insurance scandals, farmer evictions (and many resulting suicides) and most recently in facilitating the predatory exploitation of children.

The conduct of the banks and the way they treat many of their customers proves that their culture, values and ethics are sorely lacking and not in line with community expectations & standards.

Do you think laws which make it easier for bankers to give credit to people who can't afford it is a good thing - particularly with the record amount of debt currently being carried by Australians?

How is it good for the broader economy to increase the burden of debt families now carry? At some stage it will lead to people reducing their disposable income to the point where serious economic turmoil is inevitable. Stop kicking the can down the road and face up to the economic calamity that is now certain …. and likely to begin accelerating in 2021.

You simply cannot trust the banks to not abuse their position if your new laws make it harder for a ripped off client to hold the bankers accountable for predatory and maladministered lending.

The fundamental point is that when a bank is providing any service to a client it should be clear to all that the service provided is in the best interests of the client. That is the test and it may mean that banks will not be as profitable as they have been in the past. Look up William Black's work on Control Fraud to see how it's done when bankers operate in their own interests.

For bankers to operate in the client's best interests they must look on themselves as professionals that take their ethical responsibilities seriously. Serious consequences must result when bankers stray from the high standards demanded by bank customers and their representatives in government.

The proposed repeal of responsible lending rules substantially reduces consumer protection. Here are three of the key issues:

1. The change will remove a person's right to take legal action for compensation for a breach of responsible lending standards. This is intolerable particularly as non-court processes such as FOS and AFCA have failed to meaningfully assist victims of misconduct.

2. The proposal removes the bulk of criminal and civil penalties that banks would face if they are challenged by an aggrieved client. This significantly reduces the pressure on lenders to comply with good lending standards. The chance of a rogue lender being held meaningfully accountable for breaching reasonable lending standards goes down to zero.

3. Significantly weakening responsible lending laws will lead to an inadequate credit assessment processes. Lenders will no longer be required to understand the borrower's requirements and objectives for a loan. This will increase the risk that an inappropriate loan - perhaps with greater fees or interest, or riskier conditions - will be provided by bankers more focussed on their pay, bonuses and job promotion prospect. Do we really want to return to the bad old days to keep afloat a financial sector that is not working in the interests of customers? *[See the appendix for a case study that shows how low bankers can go when self-interest trumps ethics and decency].*

Anna Bligh stated soon after the Banking Royal Commission - "Having lost the trust of the Australian people, we must now do whatever it takes to earn that trust back. To move from a selling culture to a service culture, there is much more work to be done in every bank. But **every bank is determined to find the problems, to fix them and to pay back every penny."**

I'm sorry to report that Bligh was misleading you and the community. All the major banks are still refusing to "pay back" customers that were treated abysmally. Some banks have paid "shut-up and go away money" to some legacy case victims. Not good enough..!!

BRN's membership doesn't feel that Josh Frydenberg's economic recovery plan should in part be based on the ability of banks to fleece vulnerable and perhaps unsophisticated clients. Even now we will be seeing a rise in defaults, distressed sales, repossessions and bankruptcies resulting from COVID crisis job losses and other elements of the changing business environment.

Economic uncertainty and fear is limiting people's appetite for borrowing and risk taking. Cajoling, encouraging, enticing and forcing people into debt is not a wise approach. How many families, homes and businesses is Mr Frydernberg prepared to sacrifice in a vain attempt to support a decaying system that is now past its use by date?

A durable economic recovery is highly unlikely to be produced by policies that aim to maintain the asset bubble that has been produced by years of foolish, self-serving decisions from governments, bankers, regulators and various American, British & European financial interests. A correction is inevitable.

Values of property and shares will drop. The government should be looking at ways to cushion the blow rather than delaying it and making it worse with flawed preventative measures. Many people seem to think that borrowing at virtually zero interest rates is failsafe recipe for success. If the shares or property they purchase drop in value by say 30% the wonderful investment environment doesn't look quite so good.

If people can't trust the banks or the government they will withdraw into smaller lives, avoid taking risks and eventually withdraw consent. Put simply they will quickly learn not to play in a rigged game. That's when people move closer to the decline of their nation. We are well and truly on the road to serfdom. Does the Morrison government want to preside over that scenario?

Better ideas are needed. Structural reforms and a different policy mix are urgently called for.

Policies such as a national bank; the separation of ordinary savings banks and high risk speculative (exploitative) investment banking; a sovereign wealth fund; legislation that makes it clear that banks cannot steal deposits and superannuation; stopping the push toward an authoritarian surveillance state and cashless economy; a bill of fundamental rights & responsibilities and a proper Federal Anti-Corruption Commission.

Now is the time to bring in reforms that serve the people's and country's interests. Do you really think reinstituting Irresponsible Lending will benefit the country? Families want a fair go in a real economy that serves them with needed goods, services and infrastructure. People live, work and play in communities. Pumped up asset bubbles do not build a functional, useful economy that serves Aussie families and communities.

Thank you for the opportunity to assist your inquiry.

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APPENDIX

Illustrative example of historical financial abuse - the Case of farmer Malcolm Taylor and NAB.

Malcolm Taylor was a community leader and former President of the Shire of Lower Chittering. This is his story.

In 1994 an abattoir known as Tip Top Quality Meats was to be shut down, the impact on his home town would have been profound. Several hundred workers would be sacked and forced to leave the district with the flow-on disaster of downsizing schools, policing and other essential services, effectively destroying the hub of their community.

Malcolm and two others sought to buy the abattoir to save their way of life.

They had to deal with NAB and the existing owner whose company structure was essentially insolvent.

In the period when negotiations commenced, NAB effectively concealed crucial information and assessments from the purchasers. NAB encouraged the sale to divest itself of a failed business which was without assets to cover its debts and pass their own exposure on to the buyers, of whom only Malcolm had substantial assets, his two successful wheat and sheep farms just south of Moora, a couple of hours drive north of Perth.

In a process of legal discovery Malcolm found documents from the period of negotiation. These included: bankers' notes; memoranda; and internal assessments. These notes had been taken from orderly files and deliberately scattered randomly to cause confusion. Malcolm asked for and was given permission to photocopy everything. He took his own copier into the law firm representing NAB whereby the question of client privilege was waived and confidentiality ceased to reside in these documents.

It thus became clear that NAB found the abattoir to be the worst managed company they had come across in many years of banking. At a meeting with the company Managing Director - Mr Watson - it was made clear that his company was insolvent, although when typed up the notes were altered to say - “whilst not technically insolvent …” etc.

The objective of NAB was to conceal the true situation by hiring and arranging payment for an investigating accountant whose covert purpose was to manipulate events for the bank so that a sale could ensue and who, thereafter, conveniently disappeared.

Basically there was an orchestrated scenario to dupe Malcolm into placing his assets in NAB's hands to replace the bankrupt owner's debts which clearly were never going to be repaid to NAB.

Part of the plan was to have a purported representative of the seller, who was secretly engaged by the bank, tout the abattoir as being valued at better than $15 million.

Banking notes revealed: "Whilst the Company may not be technically insolvent it surely is struggling to meet its obligations as and when they fall due. Our dissatisfaction with the company's financial reporting and monitoring was aired and we reiterate that for a company of its size and indebtedness it is amongst the worst we have encountered in our time in banking .… the quality of information we are being fed is poor and that there is a problem with existing accountant …. we should be turning up the heat on owner to sell. … Timing is now critical as with the lack of throughput our position is deteriorating each day. … we could not have orchestrated a better scenario to manage and service our exposure."

NAB offered to finance Malcolm's purchase of the abattoir's assets. However, unbeknownst to him at the time - NAB was in possession of a valuation of the abattoir and the business - a total of $3.8 million. It was ultimately bought for $4.5 million.

At settlement NAB acted as financier and settlement agent for both buyer and seller.

Instead of $4.5 million as per the agreement, $4.75 million was paid to the seller by NAB. The bank immediately took the cheque back and started disbursing funds from the additional $250,000 without authority.

Consequently the new business was immediately under financial stress with little working capital. Notwithstanding this, NAB continued to withdraw unauthorised amounts from the abattoir accounts. The business was insolvent right from the start - and eleven weeks after Malcolm purchased it a receiver was called in.

Amazingly, it was not until July 2008 that Malcolm discovered by a search of Landgate records that the transfer of the abattoir land and assets had never taken place. This is critical - the stamp duty on the sale and the transfer of the land and business was never properly finalised.

Malcolm fought NAB's efforts to throw him off his farm. NAB used their vast legal team to harass him mercilessly. Eventually in 2006 Malcolm settled with NAB for much less than the bank was demanding. Malcolm also managed to regain complete control and ownership of his farms. NAB knew they were in big trouble over this deal - that's why they settled without taking Malcolm's property.

Fighting on, Malcolm applied for to the WA Supreme Court on 5 December 2008 for discovery of documents prior to issuing a writ so that he could assess whether he had grounds to proceed.

Malcolm sought only two core documents regarding the multimillion dollar transaction. These should have been easy for NAB to locate. NAB had a very big problem though - the documents crucial to the false acquisition, did not exist.

The Master of the Court refused the application out of hand. Such a small and easy request would, if granted, have pushed the bank into a declaration on oath that the documents could not be found. NAB could never have produced them. The Master was not on the side of the battlers but of the big and powerful bankers.

RIP Malcolm.