The Treasury; Enhancements to Unfair Contract Term Protections

Submission; Claire Priestley

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My brother Christopher Priestley and I would like to thank you for inviting us to file a submission with the Treasury UCT Protections review.

In 2004, we opened a bank account with a major bank in our area. Since opening the account, our business was operated by River Staaton Partnership, and it owned the stock and plant and later purchased a property that was owned by the Partnership.

From a 2004 family settlement ,we received properties and attached water licences, which we owned in our own name and therefore, we believe that the bank had to comply with its responsibilities set out in the 2004 Code of Banking Practice. The Code provided rights to individuals (like us), and small businesses like the family Partnership.

We are filing this submission because we believe our banks contract was unfair, as it:

- caused significant imbalance to both us and the Partnership and the ABA and our banks responsibilities under the 2004 Code.
- It did not protect either our, or the partnerships, legitimate interests and was able to obtain an advantage during the term of our agreements. And,
- caused detriment to us and the Partnership, despite Chris and I not having an account with the bank, whilst the Partnership did.

My brother and I would appreciate you considering the information set out in our submission, as we believe these problems were widespread in the industry since 2004.

Legality and Penalties; (point 5)

Chris and I would like to suggest that there should be a requirement for banks to provide guidance and education that would help customers identify UCTs. This includes suggestions and improvements to the current guidance as it is urgent and essential that these practices be addressed by the government.

Flexible remedies; (point 9)

Our family and our businesses have been impacted by a court not making a determination in relation to our contract which suffered the effects of UCT clauses. We filed complaints with the bank and the CCMC prior to the banks selling Chris and my farms, and neither the court, nor the court of appeal, understood how serious these UCTs were, nor how damaging it is when a bank sold the farms owned by Chris and me prior to taking us to Farm Debt Mediation. We do not suggest the court was in any way part of the arrangement whereby the banks acted deceitfully other than a belief that they did not understand the very serious dishonest practices introduced by the ABA, the CCMC and our bank.

Definition of a small business; (point 12)

Chris and I suffered damages when the ABA, the CCMC and the bank knew that we were bound by the code as we operated the farms ourselves. Therefore, had the court understood how misleading and deceptive our bank was in its efforts to breach clauses in the code, the judgment could have been very different, the deceit was not something Chris or I, could explain as self-represented litigants. All of the relevant information available at the time was that the code was a binding agreement and our bank had stated in September 2009 that "*the code is not legislation but when your bank adopts the code it becomes a binding agreement between you and your bank".*

Clarity of standard form contracts; (point 23)

Chris and I believe the law should be amended so that practices by the code subscribing banks should be prosecuted by regulators when they impact on all small businesses, breach provisions in the code and regulatory guides and fail to negotiate a settlement as required under RG 256, which requires the banks to remediate when customers have obtained financial benefit having breached the code but not self-admitted it to the courts and farm debt mediation.

Summary

The attached documents set out the extraordinary amount of dishonesty there has been by banks and their associates since 2004. We understand that ASIC has made a statement that customers are bound by the codes that were in place when they signed loan contracts.

The Treasury will find that the CCMC in its letter dated 28 September 2016, that it could not investigate our submissions as there was a 12-month rule applied in a different code, and the ABA, the CCMC and the bank would have known, but all failed to rectify it. Likewise, in our letter to Kenneth Henry dated 2 February 2018, the table on page 10 demonstrates we could not repay either the interest or the debt, yet the bank increased the amount of funds it loaned to us, with no prospect of us being able to resolve that dispute.

Please contact me should you require any further information. References list are noted on the following page.

Yours sincerely,

Claire Priestley
5 April 2020

References

6 Dec 2013; Submission 397

The Performance of the Australian Securities and Investments Commission (ASIC)

Submission by Chris Priestley

30 Mar 2016; Submission 107

Submission to Senate Inquiry into Penalties for White Collar Crime

Submission by Tasmanian Small Business Council Inc.

5 August 2016; 160705 CCMC Priestly Case

Complaint filed with the CCMC on behalf of Chris & Claire Priestly

Submission by Russell Cousins

28 Sep 2016; CX3680 Allegation made by Mr & Ms Priestly

Submission filed by the Code Compliance Monitoring Committee (CCMC)

Submission by Ralph Haller-Trost on behalf of the CCMC

19 Jan 2017; 170119 NAB v Priestly

Submission filed by Counter Corruption Analysts (CCA) supporting documents in relation to the Priestly case

Submission by Russell Cousins

02 Feb 2018; 180202 NAB Henry

Submission filed by Bank Victims regarding Priestly v NAB

Submission by Russell Cousins