

**ROYAL COMMISSION: MISCONDUCT IN BANKING, SUPERANNUATION****and FINANCIAL SERVICES INDUSTRY****The Royal Commissioner Kenneth Hayne****16<sup>th</sup> March 2018, Denise L Brailey – President of BFCSA (Inc)**

BFCSA is a significant consumer group in Australia, examining cases in relation to mortgage fraud. We delve into actual case files of customers who have experienced bank mortgage fraud and unaffordable lending. Our members come from every state in Australia. When people join our group, they have no idea what the fraud is. Over 70% of borrowers do not realise they have an Interest Only Loan. All complaints relate to (“IO”) Loans. Since 2001, regulators have ignored customer concerns regarding bank internal calculators and the fraudulent approval processing of loans. Our research into actual consumers files has revealed that every Loan Application Form has an income altering “Serviceability Calculator” attached, and many errors relating to personal information. Borrowers are unaware of the SC document. No borrower is permitted to fill in their own application.

Our submission is intended to provide the Royal Commission with previously unknown details of the mechanics of the standard industry loan approval processes, gathered from inside major lending institutions. We agree that only 3% of sellers are rogues. 97% of sellers are decent honest people, yet most loans we have seen, have exaggerated incomes.

The Case Study will give you an overall idea of how figures are being distorted, to the detriment of consumers. We have delved into over 2000 cases across all States and Territories. BFCSA has collected hard evidence of everything suggested here.

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An example of unaffordable lending: -

### LOW DOC INTEREST ONLY LOAN - CASE STUDY:

#### Five Year period 2012 - 2017

Couple answer a knock on the door – financial strategy to enhance retirement plan.

A second visit involves the Broker as agent of Major Bank.

The mortgage applied for is **\$450,0000**

The purchase price is re-stated as being **\$460,000**.

The loan approval comes though as being **\$490,000**.

The Investment property is in fact worth only **\$340,000**. (unknown to borrower)

The Valuer warns the bank *“the purchase price is considerably higher than the valuation.”*

Valuation suggested as **\$400,000**. This document is also hidden from consumer.

The Bank fails to warn the customer of risks.

The Investment property is offered by linked developers. The bank agent and the project agent work in tandem. The suggested property is invariably in a different state to the client.

No drive-by is possible. **141% Loan to Value Ratio 2012**

The LVR figure is misleading on bank document as it includes the securitised home, which is not mortgaged, but is cross collateralised. Consumers are confused by this.

The security for the loan is the couple’s own home worth **\$550,000**.

Age of the couple – end of working life. 60’s – 70’s.

Contract signed – no face to face meeting.

UNAFFORDABLE LOAN approved. Payments paid from debt: Buffer loan.

Long periods of no tenant, contrary to propaganda given at point of sale of loan product.

Payments become problematic.

Within three years the BUFFER LOAN has run out. **\$25,000**

Couple stressed, dip into their superannuation to stay afloat.

One suffers a stroke. Couple fear the loss of their home

Bank agrees to Hardship payment.

Complaint to FOS, falsely state no maladministration.

FOS falsely state the “Broker is agent of the Borrower.”

FOS ignore the lead of the courts.

Investment Property sold after 4 years: achieved \$290,000

**LOSS crystallised at \$ 210,000 168.9% LVR 2017**

Bank warns: the home will be sold.

BFCSA step in: Matter settled using cogent legal arguments. Home saved.

Details undisclosed.

FOS DETERMINATION stated: “No Maladministration in Lending.”

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### STANDARD INDUSTRY PRACTICE – a brief summary of facts uncovered in the files.

Our surveys show that most mortgage loan packs contain, an ‘unapplied’ for **credit card** with an automatic LIMIT of **\$25k - \$100k**. The cards are intended that people in strife with unaffordable loan payments would start using the cards in desperation. Sixteen years ago, we found misuse of “ABN” numbers. Banks encouraged agents to apply for “an ABN for a DAY,” online, on behalf of older clients, without their knowledge or authority. Sellers have Business Development Managers (“BDMs”) to teach the sellers successful ‘sales techniques’ and how to use the compulsory computer program known as the serviceability calculator.

The banking industry has become a driven machine to maximise volume of sales, rather than quality of product. Protection of customers is an issue of least consideration. The major fraud occurs in the processing of the loan application which is by then, out of the hands of the sellers. Bank Officers, managers, brokers, agents and external mobile brokers confirm they are encouraged to write majority “Interest Only” loans.

We refer to this group as collective SELLERS. A bigger percentage of these loans are unaffordable than has been previously suggested by industry. The figure could be considerably higher than 60% of the loan books, according to the sellers we have been in contact with.

Every BFCSA Member is asked for a Details and Issues page to assist us with individual assessments. We are experienced in what questions to ask and what facts to look for.

For the unaffordable loan to appear as if “affordable,” payments can only be made from additional DEBT, and not from nett income. Initially, mortgages do not appear as being in default. DEBT increases occur during the first 3 years, suggesting people have little understanding of the high cost of borrowing re sub-prime mortgage loans. Banks will then offer an additional Top Up or even a Line of Credit to sustain payments for a further 2 years.

### NO BORROWER IN AUSTRALIA IS PERMITTED TO FILL IN THEIR OWN LOAN APPLICATION

- 1) Only three pages of the Loan Application Form (“LAF”) is presented for signature
- 2) The remaining 8 pages are filled in by Sellers ‘back at the office.’
- 3) Customers across Australia report only 3 pages sighted.
- 4) No copy of the LAF is left with the customer
- 5) Years later customers ask for the full 11-page LAF copy and cannot believe the fraud.
- 6) If by Broker – there is no face to face meeting with the Bank.
- 7) Sign Ups of contract are calculated to be no more than 6 minutes.
- 8) No risks are explained.
- 9) The average Interest Only loan size \$300k - \$600K
- 10) A Serviceability Calculator is used to “project” hypothetical incomes.
- 11) The additional 8 pages of the LAF are filled in by the seller back at the office.
- 12) Aggregators have instructed agents to “shred the original LAF.”

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- 13) The 2-page calculator is “attached” to the LAF is not seen until a few years later.
- 14) Income is never verified by bank staff.
- 15) No call is made to the customer or employer. (*this ceased a decade ago*)
- 16) Non-Banks as subsidiaries of Major Banks are “white labelled” mortgage facilities.
- 17) Only the value of the home “the major asset” is verified.
- 18) Verification of loan application financial details ceased more than a decade ago.

## MAJOR CHARACTERISTICS FROM CONSUMER FILES – All States.

### The Borrowers:

Borrowers do not wake up one morning and decide to borrow an average \$500,000 loan. Customers are being spruiked by bank driven seminars, door knocking or phone campaigns.

The actual household net income is usually \$50,000 working life finishes in 5 years. High number of applicants have been signed up with average income \$19k - \$30k. PAY SLIPS are provided along with Tax Returns. Tampering on these documents are relatively rare. Cost of Living is not recorded by the applicant. No Budget Expense Sheet.

Pensioners do not pay taxation, so a centre-link statement is furnished. The key detail in all loans is the value of the home with full equity. Securitisation of the homes and cross collateralisation of both assets. Average LVR 121% - 142% No deposit is required for Investment property.

Banks use the **Henderson Poverty Index or HEM** to suggest false Cost of Living. No Borrower is asked for an expense or budget of living expenses. People with six children later found 5 children have been dropped from the Application. There is a prevalence of 1 child recorded, when more are there at bank appt. Sustainability via debt is calculated for first five years – to match the Bond Market. Interest Only 30-year loans are a larger slice of the mortgage loan books.

70% of borrower’s have no idea what an IO loan is and were not told the implications. The products are sold using the word: “Mortgage” The intended customers are assured NO RISK Banks are fully cognisant of the fact, they are exchanging a debt free existence for customers, to a risk filled future of becoming homeless within 5-10 years.

The average loss per household, is between \$110,000 - \$250,000. Clients are given personal financial advice and a plan to improve their “retirement outlook.” Borrowers are spruiked via phone, door knocking and bank funded wealth creation activities. Trust of Banks has been noted by consumers as a key deciding factor in decision making

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**The Sellers**

There is a high turnover of bank agents. Banks pay for the expensive venues, functions and channels. There is an aggressive and unhealthy culture, driven by volumes, quotas and excessively high commissions. Banks hold mass instruction seminars for sellers and bank managers. I have attended earlier seminars whereby these strategies are promoted by lenders to the members of the seller channel. ARIPs are emphasised by bank experts as the preferred target market: older persons who own their own home and have no debt.

Sellers are trained by bank employed Business Development Managers (“BDM’s” who distribute the passwords for the Serviceability Calculators, visit broker agent’s offices and teach how to use the computerised program. They also teach how to fill in the applications. Sellers have no idea this could be criminal. It is a clever system. Sellers like borrowers are trusting the Banks and bank lawyers. BDMs have been known to fill out the APPs and we have evidence they would do sign-ups for sellers in order to meet their own volume targets and bonuses. I have sighted copies of LAFs written up and witnessed by BDMs and Branch Managers, after being “sold” by the brokers.

Banks encourage sellers to seek out people who own their own home.  
 Financial strategies are explained to the potential client as sound expert advice.  
 The creation of the broker channel has been an important part of bank strategy.  
 Incentive schemes are in the banks best interests and not for the consumer’s.  
 The risks are known by the banking experts and not passed on.  
 Older clients are seen as easy prey. Identified by Banks as ARIP’s. “income Poor”  
 The Target Market of ARIPs is an unconscionable bank strategy.  
 The actual Target for Banks is the customer’s home – the client’s only asset.  
 Training of Agents is only a 30-hour course to fill in forms as required by the lending process.

Sellers have been encouraged to sign up their parents with “**parental guarantees**” dressed up as secondary “borrowers.” The intention to deceive becomes apparent, as we investigate these components. Knowing what to look for and understanding the overall Industry Model, the fraud and the intention to deceive by the creators, becomes obvious. Parents with homes are a known Lender target for unaffordable loans for their offspring.

**LOAN MORTGAGE INSURANCE FRAUD**

Customers are also misled re The Loan Mortgage Insurance in that the original Policies in 2001 stated: *“If there is fraud on the Loan Application, claims will not be met.”* . Yet “Hardship” payments were being approved by ABOS, later named Financial Ombudsman’s Service (“FOS.”) Consumers (as compulsory requirement of mortgage contract) paid thousands of dollars for this insurance. Customers used to pay around \$5000 for LMI. Banks approached ASIC and suggested self–insurance “cheaper for consumers.” Our observations as per the files; costs rose from \$10,000 up to \$20,000. On Cost notifications: acronym LMI removed from the statement, and inserted: “RISK FEE.” FOS issued ‘hardship’ forms when the loans were clearly unaffordable and the borrowers in some cases were unemployed.

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**The Hardship Plan has been a fiasco:** Only three claims can be made in 30 years (life of loan). Each time the borrower can only claim for three months. Ie. if payment \$2500, claim = \$7500. The customer is only entitled to three CLAIMS: ie. total \$22,500 which is then added on to the loan debt. Eg: \$300,000 mortgage now has risen to \$322,500. The customer paid \$10,000 plus for what they believed to be insurance on a 30-year loan. The hardship claims are used up within three years and they received a total payment holiday for nine months for \$22,500.

The payout is then added on to the debt remaining on the mortgage! Disgraceful.

This is more DEBT dressed up as Mortgage Insurance. Banks appear to be double dipping? When did banks start “self-insuring” loans? Insurance was really for when you may have lost your job – yet these loans were unaffordable, and many borrowers had no employment. The Banking Ombudsman needs to be thoroughly investigated according to Consumers. Every FOS and CIO file needs to be re-opened and viewed with suspicion. No fairness found.

Customers are not able to get a copy of any Policy that they paid for. Most likely unavailable because there may not be one: a key indicator, no policy has been paid for. I am unsure if shareholders or borrowers are aware of this possibility.

## THE TERMS OF REFERENCE

### a) CONDUCT of Australian Banks – Is it of a criminal nature?

**Fraud, intention to deceive, asset-stripping, unconscionable conduct, false and misleading information designed to disguise risks: are all hallmarks of criminal activity which has become the bedrock of banking in Australia.** BFCSA Members are taught to investigate their own files and report back. We have consistently reported evidence of the critical characteristics found by consumers in most Interest Only files.

The “unaffordability” is hidden for the first 3-5 years involving an estimated 50,000 sellers who have no idea what the fraud is. Sellers are instructed by Business Development Managers or BDM’s: *“our lawyers have been over this and all is in order.”* No matter whether the seller is a bank officer, manager or broker agent, every unaffordable loan contains multiple hidden frauds. Most of the fraud occurs after the loan is submitted.

Most unaffordable mortgage loans are accompanied by “Buffer Loans.” The additional debt facility is approved as a \$25k - \$50k **buffer** to use when payments are likely to be unsustainable. If affordable from day one, there is no need for additional debt.

Banks suggest, encourage: **“Buffers:”** Extra \$25k - \$50k debt to keep loan “affordable.”

Banks suggest, encourage: **“Top Ups”** when Buffers run out – additional \$50k

Banks suggest, encourage: **“Line of Credits”** \$200k to pay payments with, down the track.

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If the applicant runs out of money to pay payments during the first five-year period, the Top Ups keep rolling, increasing original debt by an average **\$150,000**.

These additional DEBT facilities are in fact a key indicator of unaffordable Lending. Verification of income details and other assessment duties were phased out by the Banks some years ago. Banks only verify the Valuation of the Asset to be used as security as soon as the loan is settled.

The “income stream” is re-packaged in RMBS packs. All loans written and settled are removed from the balance sheets. There is considerable concern over Residential Mortgage-Backed Securities, whereby the Income-Stream is securitised. The “income” is in fact fuelled by further debt. The only winners, it seems are the Banks.

Customers left with debt have no funds to seek legal advice or defend in court.

The following generations are robbed of intended inheritance opportunities.

Defaults start when the Buffers run out - as expected. Usually at the five-year mark.

Refinancing can and does mask previous loan maintenance issues.

Refinancing also prolongs the lending activity and models used.

Banks make even more profit from re-financing unaffordable loans. Additional Top Ups.

There is evidence to suggest Banks are collectively propping up problematic loans.

We have discovered aged pensioners with lending facilities of \$1m - \$4 million.

The average loan costs around \$140,000 in fees plus a further \$120,000 in debt extensions

Reminder: that unconscionable \$60,000 exit fees would be used to stop competition and switching. The “compulsory” serviceability calculator creates unsafe hypothetical incomes.

**Rental Income** cannot be used on investment loans when the security is that persons own residential home.

Rental is a hypothetical figure – a calculator invented projection

There is a known and heightened risk of there being no tenant income for extended periods of time. Risks include, damage, unpaid rent, high repair bills.

Even with a tenant: If the true NETT income cannot pay the shortfall - the loan will fail.

Costs and Expenses of running a rental investment home are not included in the affordability test via the bank calculator. Nor listed on the client file.

**Cleverly engineered algorithms of the service calculator** produce highly exaggerated incomes. Without the CALCULATOR incomes cannot be exaggerated. Negative Gearing is falsely used and hidden within the Algorithms. (Pensioners pay little or no tax)

**The Application Tracker** also demonstrates how valuations are mechanically altered a second time within minutes after the application has been entered into the robotic approval system.

Key documents are hidden from the borrower: Lenders have marked such documents as “do not show the borrower.” It is the Borrower files that contain the bulk of this evidence which our Regulators seem to have failed to identify.

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The sum of all the above in TOR A, demonstrates a lack of competition, a likely Cartel Conversation in operation, leading to a collective and systemic intention to deceive, driven by volume of business and profits before customers. Banks have become a toxic culture, with toxic products.

**b) Conduct, practices, behaviour, business activity, below community standards**

Intention to Deceive is found in most steps of the loan automated approval system. Our members believe these activities are well “below community standards.” The sheer volume of loan approvals would warrant close attention and is cause for alarm.

Asset-stripping is a criminal offence. Bankers have shown they have no regard for consumer protection, nor abiding by their Statutory Lending Obligations. What is being ignored is accurate data on the percentage of sub-prime unaffordable loans against the total Major Bank Loan Books. Information from the Seller Agents on products sold, suggest up to 80% loans are sub-prime and not the 40% reported by Banks to APRA, and passed on by APRA to the Bank for International Settlements.

### The Loan Application Form

Eight (8) pages of the Loan Application Form are completed in secret *without the knowledge or authority of the Borrowers*. I warned ASIC of this significant finding in 2001. Over the years I have had many meetings with ASIC Commissioners. Borrowers are never given a copy. ASIC has been fully informed, nor do the directors disagree on certain key points raised.

The target market promoted to sellers has been defined by Lenders as “ARIPs:” Asset Rich and **Income Poor**, *older persons who own their own home and have no debt.*” Bank Mortgage Fraud victims are generally homeowners on low incomes or pensions, aged 50 plus often approaching the end of their working life.

Sellers, as agents of the Banks or Bank Managers and Officers have been required to only present three pages of a Loan Application Form to the customer. Additional pages are then completed by the seller ‘back at the office.’ Under instruction, the borrower is prevented from discovering the crucial additional financial information pages. Banks have in recent times suggested to Parliament these vital and fraudulent pages containing financial details are now “missing.”

Consumers are complaining that so many documents in files have been redacted. Had the copies of every document been given to the customer at point of signing this would not be an issue.

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The seller must use a **compulsory serviceability calculator**, a bank computer program, creating a highly exaggerated projected income based upon the algorithms engineered by the lenders. The banks hand over the calculator 'passwords' to the seller channel. Sellers must then use the projected incomes to fill in the additional pages of the Loan Application Form.

I have verified this point with many brokers from several states, unable to collude due to the fact they are unknown to each other. Explanations of flaws in process is very similar.

The futuristic incomes from the calculator are to be entered onto the Loan Application Form by the seller. The seller does this as directed by the BDM's. The latest versions are the online variety but the same flaws in process occurs. Sellers are simply following instructions and processes. They do not understand the Fraud is in the Approval.

Lenders are constantly frustrating attempts by consumers to recover their complete files and at times are given *unsigned* documents that courts would consider to be "*recent inventions*."

Bad behaviour in Banking have caused numerous media stories, over 20 Parliamentary Inquiries, and even stronger calls for a Royal Commission into the Major Lenders.

Sellers are merely following a deceptive process yet unaware of the outcomes. Sellers are instructed to practice on their parents first with the misuse of parental guarantees coming into play. I have spoken to many of these parents and siblings who are in a desperate financial position. Some of these cases are heart-wrenching.

THE DOCUMENTS are sent into the Bank's Processing Centre

All documents are gathered together by the sellers and sent to the lending processing centre. At least one of these Centres is now offshore.

A computer program known as **the Tracker**, tracks the progress of the loan application to settlement of the mortgage loan.

Assessments and checking of information no longer take place.

Managers can, and do, override these computerised systems to reach Volume targets.

Data entry clerks at the Processing Centre add additional pieces of data.

Twenty persons handle data on each Loan Application.

The PAY SLIP contains the correct income figure is presented and ticked as "received."

The calculator contains the "exaggerated incomes."

Valuations are similarly exaggerated on the Tracker.

No cost analysis is provided - associated with tenancy: insurance, rates, taxes, water, maintenance, r/estate fees, advertising, strata. The high cost of borrowing is not explained.

The sellers do not necessarily understand these issues.

The Productivity Commission admits it has no data on the types of lender behaviours BFCSA Members have collectively researched into. Three regulators operating on a combined \$1 million have failed to report any of the issues we raise in our reports.

**c) Misuse of Superannuation**

Bank customers have been encouraged to use their Superannuation to service payments on the inappropriate loans. This is proof the banks knew that once the Buffer Loans cease, the couple have no choice but to use up their stated Superannuation when retired from the workforce. The targeted age groups are asked to include the level of superannuation they have in readiness for retirement. This factor demonstrates the Banks' knowledge and intention to take over those funds in the process.

**d) Above attributable to: i) culture ii) governance practices - risk culture – remuneration practice – industry or subsector**

Our investigations show the APPROVAL fraud is the same in most cases, no matter the description or demeanour of the seller, whether an internal or external agent of the bank. This atrocious and obvious culture that has led to the financial ruin of tens of thousands of older Australians was spawned by the Banks in approximately 1998.

The Income Stream for RMBS Bonds is coming not from income, but serviced monthly by additional layers of debt. Specifically, the five years are linked to the RMBS Bond packs.

**d i) The culture** complained of by Consumers is with regard to the engineers at the top level of our banking system. The commissions, bonus structure and gifted incentives, driven by quotas and volume targets, has created the “profits before people mentality. The institution’s culture then slides away from consumer interests coming first. This has to be addressed or the organisation will find itself dealing with critical image problems.

**d ii) Governance practices**, that Lenders today cannot be trusted to regulate themselves. The risk culture has been one of hiding risks from borrowers, sellers and shareholders. Remuneration to the executive level of bonus incentives and exit fees has encouraged creation and maintenance of these frauds. Mortgage Fraud is so sophisticated the mechanics, and the contents of the Black Box by necessity, are known to very few participants.

**e) Effectiveness of mechanisms for redress for consumers of financial services and products. Detriment suffered as result of misconduct.**

The average loss is around \$200k per family. The pain and suffering for older persons who experience the loss of home which has likely cost them 30 years of hard work and saving to achieve, home ownership is immense. The later discovery of the criminal plan to steal their home, gives rise to anger frustration, anxiety and ill health issues.

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A feeling of helplessness, even the embarrassment is hard to deal with. The ripple down shock to other family members compounds this agony. A common question is heard: where were the regulators?

Mortgage Fraud Victims are left with no assets, nor funds in order to pursue remedial matters through the court system.

**f) Adequacy of existing laws and policies of the commonwealth – provisions of banking and financial services to identify and regulate to community standards and to provide appropriate redress to consumers**

Our work has been used in nine successful cases within the court system and all the way to the High Court. ASIC used its powers to frustrate the passage of these high-profile cases at that time. Funds from ASIC were not forthcoming for these cases at that crucial time in 2006, despite the arguments of “public interest.”

**f ii) Internal System**

We have identified the Mechanics of the Fraud. We have opened up the contents of the Black Box, namely identification of all components comprising of specific documentation, calculators, automated approval system, lack of verification, external input from possible unsafe practices, manipulation and the effects of conflicts of interest on how information is treated and applied to the final processes. We have looked closely at motives and lack of warnings. Of particular concern is the left hand not knowing what the right hand does. The most worrying aspect of mortgage approval is the secrecy with mal-intent. Fraud is made all the easier to operate without discovery.

I fear that is precisely the current DNA of our own banking system. The profits before people mentality in our finance and banking sector has likely caused an even bigger headache for economists.

Mortgages are pumped through the system in huge families and robotically approved within days of a signature appearing on an application. There are very few rejections, yet approvals are completely dependent upon the asset being verified for securitisation purposes: the family home that has no debt.

**f iii) Industry Code of Conduct.**

Over 85% of complaints received by our group involve the Major Lenders. [Banks have been collectively breaching s27 of the Code of Conduct re unaffordable lending.](#) Bank lawyers contested the authority of the Code as not being a regulation (in NAB v Rose 2016) and lost the argument. FOS has consistently ignored the Code in relation to affordability and other specific and blatant breaches of the Code: namely the erroneous assertion: *The Broker is the Agent of the Borrower.*

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The banking industry has actually demonstrated how Codes of Conduct are purposefully rendered impotent. Consumers are left helpless. In addition, bankers have misled Parliament into believing critical documents are “missing.” Later they turn up in bank files. Consumers have been defrauded, then lied to, then evidence contradicted in evidence, during Inquiries. The major banks have been totally consumed by “volume, quotas and targets.” Now they are concerned by an image problem and realise, public trust and confidence is waning.

The Banks employ “Sellers” 55% of whom are bank managers and officers and 45% are bank broker agents. All are trained by the Lender members of the Cartel. The Cartel controls all aspects of complaint handling via the Code of Compliance Monitoring Committee Association. The CCMCA controls the CCMC “Monitors.” They in turn, control the EDRs. Further investigation is needed here.

**g) Effectiveness and ability of regulators to identify and address misconduct by those entities.**

In our experience there has been no appetite for Regulators to assist with Consumer Complaints. The letters sent to Customers by ASIC, state that *“ASIC does not investigate cases and suggests people seek the services of a lawyer.”* If people have been laden with debt and their home is under threat they have no monies left to seek legal advice. ASIC suggests they go to the Ombudsman’s service, but FOS has never followed the lead of the courts (not required to do so) yet *Determinations falsely state: “the broker is the agent of the borrower.”* This erroneous stance disadvantages consumers from the outset.

This position is opposed as stated by Colin Neave, ABOS (ex FOS) in 2001 and again in Bulletin #32, 2002, in line with the courts: *“the Broker is the Agent of the Bank.”* The Master Servant argument is repeated all the way to the High Court and has been used in common law on many occasions. *Yet the Ombudsman’s stance continues to advantage the banks and to the detriment of the Customer.* Victims of Mortgage Fraud have been left with between \$20,000 - \$60,000 inappropriate discount on a potential loss of \$200,000. I lobbied successfully for compensation limits to be raised on three occasions and now stands at \$309,000.

Customers are then bullied by FOS into accepting the low-ball amounts in exchange for deeds of confidentiality. FOS deny it is fraud and continue with a lesser interpretation of “maladministration in lending.” Ie “an administrative error.” “The computer did it.” FOS and ASIC continue to frustrate consumers by this denial of justice. The Misconduct of the Regulators has been appalling. There is no apparent fairness in this conspiracy doom loop.

ASIC suggested to Parliament for over a decade, obvious fraudulent activity was due to a few “rogue brokers.” That premise is false and misleading. The situation is frustrating for consumers. NO sellers in Australia APPROVE mortgage loans. None. The duty of verification of affordability, the adherence to regulatory lending obligations means prudent lending duties rests with bankers. Consumers have been left to deal with catastrophic life changes.

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Lending Institutions are responsible for the approval systems in place and for all their commission paid agents. Lenders have a statutory responsibility to ensure every approval meets high prudential standard. ASIC is responsible for the integrity of the market place and failed at every opportunity to speak truth to Parliament. ASIC and APRA are making a complete mockery of our regulator system and those are forced to depend on their attention, continually report bitter disappointment.

**Using surveys** from members we have been able to pinpoint the approach used by sellers. We have managed to open up the BLACK BOX of the banking approval process and understand the mechanics of Low Doc lending fraud. The use of calculators and robo approvals. None of the regulators wish to look inside, yet behind closed doors, they agree with me: *the “banks are the engineers, no doubt about it.”*

The Australian Tax Office uncovered this truth in 2004. I personally attended meetings in relation to the discrepancies between the Loan Applications and the Tax Returns. I explained “either the \$50,000 income is false on the tax return, OR the \$212,000 income on the Loan Application is false.” Commissioner Carmody had announced completion of a report involving some 800 Loan Apps as a cross collateralisation exercise. ASIC had instigated this report. Investigators assumed tax payers were the liars. I explained: “it’s the banks.” Their response: “nothing for us here, this is a job for ASIC.” Me: “yes indeed.” Report never saw the light of day. No follow up occurred by media on the initial announcement. The matter was buried, despite being a sizeable sample.

APRA has been responsible for passing on SUB PRIME Lending statistics on to the Bank of International Settlements. We have noted errors up to \$50 billion and we have reasonable concerns over the veracity of these statistics. We refute the notion only 40% of loan books are sub -prime. Brokers suggest the true figure is a great deal higher based upon known sales.

**In 2005, ASIC gave exemptions to Lenders re the Calculators being used, to falsely manipulate incomes on Loan Applications.** A former lawyer working for ASIC in May 2005, gave evidence to the 2014 Senate Inquiry into the Performance of ASIC. He was present for high level meetings with Commissioners relating to an **Exemption for Insurers to use Calculators**. The lawyer was told pressure had been placed on ASIC by prominent executives in the Insurance Industry. He refused to agree to signing off on the exemptions, claiming “not in best interest of consumers”, and walked out of the building as an employee. He never returned. I listened to this evidence. I knew the Banking Industry had achieved something similar in relation to exemptions for agents of Lenders regarding Bank Serviceability Calculators in December 2005, namely: **ASIC CO 1122/05**.

The issue was again raised in Parliament on 31st March **2016**, the bank exemption from prosecution CO 1122/05 was withdrawn by the regulator ASIC. The bank calculator is still a compulsory bank tool and “must be attached to every LAF.”

ASIC KNEW Credit Assessors were phased out years ago. They knew the Bank calculators were designed to misrepresent incomes. ASIC knew these exemptions would place consumers financial well-being in jeopardy.

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In our continued quest for fairness, and justice, the new Ombudsman’s service AFCA, ought to be instructed to review all previous External Dispute Resolution outcomes from FOS and COSL/CIO) Determinations and/or Recommendation for two reasons: -

- 1) To understand what bad behaviour of regulators has been in play and to what extent.
- 2) To understand the level of pressures and influences placed on regulators and EDR’s by influential members of the Banking Industry.
- 3) To quantify any compensation long overdue to every FOS complainant.
- 4) Banks paid average \$5000 per complaint to the EDR service to bring the best possible outcome “for the customer.” That was supposed to be the intention.

#### **h i) Changes to legislation, necessary to minimise likely misconduct:**

We suggest for every loan sold, a contribution must be made by the Bank into an Independent Consumer Protection fund to produce an equality of legal argument. Access to Justice for Consumers is by far the bigger issue.

Why is it that banks do not simply put a large white sign in the front window stating: “*we sell mortgages here?*” The reason is clearly, they do not wish to wait for customers to walk in. Spruiking methods are extremely dishonest and open to manipulation. Misconduct in the banking and financial services and products industries has produced unimaginable trauma and suffering for consumers. Marketing and profile Targeting are aggressive and unsatisfactory way of doing business. The raft of legislative provisions we have used with success and compelling evidence in courts can protect consumers, but only with assistance of rare philanthropy.

Consumers urgently require a system where they can be confident their complaint is handled appropriately by a sufficiently funded and dedicated Federal Bureau of Consumer Protection. I first suggested this in 2001. To effectively minimise misconduct, consumers deserve to have a very strong, independent proactive policing of the banking and finance industry.

#### **h ii) Changes to practices necessary to minimise likelihood misconduct:**

All consumers must receive a full copy of the Loan App Form, the attached Service Calculator, the Valuation of the investment property, the Tracker, the agent’s file notes, the SOFP, and any other document likely to be used as an instrument of manipulation of client data.

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These documents are to be sent to the client prior to the contract being produced for signing and with a 4-day cooling off period. Every existing mortgage borrower ought to be given copies of their entire customer file – immediately.

### h iii) Changes financial regulators necessary to minimise likelihood misconduct:

BFCSA Members suggest that a notice be sent out along with the Copy Document Pack stating that: *“WARNING - Please ask your own independent lawyer to go through the mortgage contract with you prior to signing.”*

#### i) Occurring overseas – relevant?

Client Files from Ireland, NZ, USA, UK, Canada, have shown similar bad banking behaviour. The issue of Loan Application fraud and the catastrophic effects of robo approval of mortgage loans, has been discovered but not under any collective consumer group banner. I do receive a number of international inquiries per year.

Australian Lenders target older people with their own home as their only major asset. Yet a similar feature has emerged: the misuse of parental guarantees by Lenders. This suggests to me that Regulators, in countries which may have the same legislative protections as Australia, have been equally remiss in global discussions and development of serious investigations. The series of meetings by International players such as [The International Order of Security Chiefs \(“IOSCO”\)](#), simply report everything is in order, when clearly the opposite is true. The lack of acknowledgements of fraudulent behaviour is of grave concern.

LOW DOCS have been the renamed and identified as sub-prime (or non-prime) products for almost two decades. Until 2015, most sub-prime mortgages in Australian loans were labelled Low Docs or similar names such as Ezy Docs etc. No Docs came into play for around 2 years and then vanished 2008 after specific media attention. These loans required no proof of income. An insane notion. There was no specific form. The Application used for NO DOC was that used for Low Doc, similar to the USA, NZ, Ireland, UK and Canada experience and Model.

Australia is attempting to suggest *“Low Docs have not been used here.”* These public assertions and media releases are false and misleading. Every Loan Application up until 2015 has LOW DOC or similar names written in prominent headings. Most customers identify with the name Low Doc.

#### j) Any matter “incidental” to above

When the ‘switch’ period arrives for the Principle & Interest period, the loan is doubly unaffordable. These systems are not sustainable. Banks have recently been renewing the five-year-period of IO Loans with further Buffers and extending for ten years. Yet the end result of loss of home remains the most likely outcome.

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The sub-prime banking products on offer on the Australian market, can endanger the economy due to the size and *lack of quality* of the loan books. Families of sellers have also fallen prey to these products. People are then too embarrassed to speak of what has happened to them.

The suggestion is made to pensioners and low-income families: *“do not leave dead equity in your home.” “if we can show you a way to swap your pension for a regular retiree income, I dare say etc...” “just sign this application, the bank may reject it but let’s see what happens....”*

**This is entrapment.** There are protection laws in existence. Consumer Protection in Australia appears as poor quality due to a lack of corporate policing. Support groups only spring up when the system has broken down. Our group has become the only voice for those too embarrassed, too unwell, too stressed to come forward.

#### **k) Changes to laws already pushed through – financial system stability**

Legislative changes are only relevant, if regulators take cases to court. If, as in the case of Bank Mortgage fraud, existing laws already tested in court set precedents, then consumers are still badly done by. I offered a great deal of assistance some years ago and legislative changes occurred as a consequence. Consumer Cases have been won against Banks using those same arguments we raised a decade ago, but only via private funding and philanthropic efforts. When fleeced by Banks, the borrowers and sellers have no funds left to ensure a fair and equitable remedy for their loss and suffering.

#### **l) Comparisons with international experience, practices and reforms.**

The issues identified in our research, suggests the experiences in other countries are similar and if not identical to the issues found in banking in Australia: specifically, with the urgent need for a comprehensive investigation into asset-stripping. The use of real estate to fuel debt and bank profit explosions is a Global issue and has created significant property bubbles.

Interest Only products have been created as a channel for collecting large pools of assets. There is a national economic need to enquire into the real issues of systemic fraud in approval of mortgage loans. To date, these frauds continue and cannot be effectively dealt with, unless Consumer Protection as an economic stability issue, is given top priority.

**The name “LIAR LOANS” first appeared** as an aggressive campaign by USA Banks post GFC, to discredit their own customers. Australian Banks have recently attempted to demonise their own customers in much the same way. Our Banks also blamed the Chinese Mums and Dads in Shanghai after running wealth seminars there. Next, we saw the front page: “Chinese Liar Loans.” Banks are blaming borrowers and blaming the sellers, anything to steer attention away from the “Black Box” mechanics of how unaffordable loans came to be approved in the first place and in such volume.

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Failing in their duty of consumer protection, Regulators have also attempted to brand borrowers as “Liars.” Such conduct and neglect of consumer protection issues creates a very unhealthy culture in the banking sector, aided and abetted by the regulators.

As in the United Kingdom, Ireland, New Zealand and Canada, there have been a **high turnover of bank agents in Australia**. There is an aggressive and unhealthy culture, driven by volumes, quotas and excessively high commissions. Yet the sellers are then complaining of those commissions being taken via “claw-backs.” Banks pay for the expensive venues, functions and channels. These issues have been spoken of and clearly defined for almost two decades. Something needs to change.

**RECOMMENDATIONS:**

1. Borrowers to fill in their own forms and initial every page of the complete document.
2. Borrower to be given a copy of the entire Loan Application Form and the serviceability calculator, at the point of signing the Application.
3. Prior to Settlement all borrowers to be given copy of: Valuation, the Mortgage Tracker, The Serviceability Calculator, and the seller notes, prior to settlement of the mortgage.
4. Use of rental projections – banned for obvious reasons as being unreliable income.
5. A proper “cost of borrowing” be given to the borrower prior to signing of the contract.
6. The use of Henderson Poverty Index - banned and replaced with exact budget expense list – filled in by the borrower clients.
7. Only TOTAL NETT HOUSEHOLD INCOME be used for assessment of affordability.
8. Every borrower enticed into sub-prime loans (any loan that is not a FULL DOC) to be given copy of: “Likely RISKS of sub-prime lending as prepared by BFCSA (Inc).”
9. No 30-year loan approvals for those over 50 years of age.
10. Borrowers to be warned of the known risks of INTEREST ONLY Loans.
11. An overall ban on Bank funded created wealth seminars.
12. Conflicts of Interest must be declared in all components of mortgage marketing and selling.
13. Borrowers to be warned to have an independent lawyer go over the mortgage contract prior to signing.

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14. Clear information be given that approvals can only be based upon security of job and Total Nett Household Income, accompanied by a borrower initiated and signed expense sheet as to current commitments and spending.
15. That purchase of an Investment property can only be gained by a reasonable deposit and income plan. That the family home is not used as security for additional borrowings.
16. The use of Serviceability Calculators by Banks, be banned.
17. Loan Mortgage Insurance be recommended to Senators, as the next urgent Senate Inquiry.
18. Banning of the encouragement by Banks for the customer to take on additional DEBT such as Lines of Credit, Top Ups, Credit Cards, in order to “afford” new mortgage payments.
19. Reintroduction of sophisticated loan approval system incorporating FULL VERIFICATION of all data gathered regarding borrowers and proposed mortgage loans.
20. Each borrower receives a full and detailed copy of the loan assessment prior to contract being signed.
21. **That if Credit Cards are cleverly securitised** via the mortgage contract, then a separate notification to the borrower should explain the fact the interest charged on the card should be the same as charged on the housing loan. Ie 4% and not 22%. Any cases where this has not been notified in the past: full compensation should apply.
22. That APRA Statistics be audited by two external auditors, prior to sending statistics to the Bank of International Settlements, Switzerland.

**IN CONCLUSION:**

There is no doubt the Banks are colluding with the way they are manipulating lending activities as the paperwork, hidden risks, missing pages, hidden documents, fraudulent exaggerated incomes and valuations, fake insurance policies, have been permitted over time to become “the norm.” Bankers have written up a suitable number of policies that in fact breach Laws and Codes designed to protect consumers. There has been a regulatory failure of managing fairness in the market place.

The urgency is this: within five years of older citizens being enticed into a financially engineered banking strategy, couples will find themselves in danger of losing their own home. Five years ago, they were debt free and enjoying peaceful retirement. Those entrapped which could number up to two million people, will be left with a deficit of close to \$200,000 per household. Up to \$200 billion of Interest Only loans are sold per annum. How we can even begin to think this serves our economy and nation well, is beyond my comprehension.

I have offered my expertise in terms of my investigations into Australian lending practices and white-collar crime, many times during the past 20 years. I have regularly, given evidence as a key note witness to Parliament, during that time. I have not referenced this material due to lack of time, but have done so in numerous other submissions on the subject of mortgage fraud, bad bank behaviour and unaffordable lending.

Sellers have been deliberately kept in the dark as to the true nature of these products. They are not conversant with the mechanics of the fraudulent process of loans approvals. I do however accept there are 3% rogues in any industry involving money and I have reported brokers engaging in stealing and fraud to Police leading to several convictions and long custodial sentences, in four states. However, 97% of these sellers are simply following process and do not understand the hidden frauds and the dubious nature of asset-lending. Consequently, they and their families, also suffer heavy losses and need assistance.

Our BFCSA submission is therefore an effort to set the record straight: the evidence collected to date, proves the Major Banks have masterminded the *automated loan approval systems*, along with the development of the product, the distribution channel, training sessions and identification of the target market: “*anyone with a house and a pulse.*”

If the Royal Commission only has access to reports furnished by the Major Banks and the Regulators, those who have been party to the covering up of the actual criminal aspects of mortgage lending, then there is a genuine fear by consumers, given the miniscule amount of time allocated to the task, Mortgage Fraud victims’ voices will not be heard.

The catastrophic situation of losing one’s home, that five years before was debt free, needs to be given oxygen to ensure the public are given a full and comprehensive understanding of the extent of criminal activity in Australian Banking.

**SUGGESTED CRITICAL QUESTIONS:****No Borrower in Australia is permitted to fill out their own Application Form. WHY?**

- Only three pages of the 8-page LAF are produced for signatures. Why?
- Why is the customer prevented from reading the entire 11-page form?
- The other 8 pages are not shown to the Borrower. Why?
- Banks stated: “I have read and fully understood this document” Why the use a known false statement?
- No copy of the LAF or Calculator is given to the customer under bank orders:
  - “Do not show the Borrower.” Why?
- Customers only given 6 minutes to sign the mortgage contract and no copy. Why?
- No time to read the contract: sign only yellow stickered pages. Why?
- The fraudulent Statement of Financial Position is hidden inside contract bundle – with yellow sticker. Why?
- Rental Incomes are known as unsafe - cannot be used. Yet banks rely on them. Why?
- Rental Incomes are only “projections” and yet are used. Why?
- Customers not told of the income manipulations via electronic calculator. Why?
- Why the express need for all sellers to adhere to the manipulation and secrecy?
- The “pensioner” form filled in with Centrelink simply ticked “received.” Why?
- Payslips and Tax returns are sent in with the APP and marked “received” Why?
- There are NO verification of incomes carried out in Australia. Why?
- Phone calls to customers to verify employment details ceased in 2001. Why?
- Loans are SPLIT to alter the appearance of affordability. Why?
- The Valuers write clauses such as “the Purchase Price is considerably higher than the Valuation.” Why?
- Insurers write policy clauses: “if there is fraud on the application etc – no claim etc.” These documents and specific clauses are not made known to the Borrower. Why?
- Employed customers are usually at the end of their working life, so the SUSTAINABILITY of the loans is inconceivable. Why deceives this groups of people?
- Regulators could not inform the public of the known calculator deception? Why?
- Regulators failed to identify the vulnerable target market? Why?
- Unaffordable, unsustainable, unverified lending practices.
- Bankers were permitted to engage in misleading and deceptive conduct for over a decade, without appropriate investigation? Why?

The loans uncovered are all UNAFFORDABLE, UNSUSTAINABLE AND UNVERIFIED.



Denise L Brailey

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