

## ***SUBMISSIONS TO:***

***Senate Economics References Committee on Corporations and Financial Services – Inquiry into the capacity and capability of the Australian Securities and Investments Commission (ASIC) to undertake proportionate investigations and enforcement actions arising from reports of alleged misconduct.***

***This Submission is on behalf of sixty-three Australian Farmers set out in Schedule A, the ASIC complaints are set out in Schedule B.***

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## EXECUTIVE SUMMARY

This inquiry is very timely and important for many Australian farmers.

The Submission highlights the emotional and financial devastation of many of the farmers who have lost their properties to the banks. Many of them had been family owned for several generations and were evicted from their farms without any money and possessions.

Between 2007 to the present day, farmers around Australia have complained to the Australian Securities and Investments Commission (**ASIC**) alleging serious misconduct by the major banks and some second-tier banks involving contraventions of the *Corporations Act, 2001 (CA Act)* and the *Australian Securities and Investments Commission Act, 2001 (ASIC Act)*.

The alleged misconduct includes predatory lending or asset-based lending amounting to unconscionable conduct (section 12CB ASIC Act), fraud and forgery and failure to act efficiently, honestly and fairly (in breach of section 912A of the *Corporations Act*). The alleged misconduct also involves breaches of the banks' own internal compliance procedures and various forms of the Banking Code of Practice which amount to breaches of ASIC licence conditions.

The complaints attached in Schedule B, outline systemic issues which reflect a serious deficiency in bank lending culture and the inability of banks to investigate, mediate, and resolve the many serious issues that arise.

The concern is that ASIC's complaints handling process has failed to identify and investigate serious allegations in accordance with ASIC's publicly available INFO Sheet 151 '*ASIC approach to enforcement*'. The INFO Sheet 151 sets out the criteria ASIC applies in determining whether to commence a formal investigation.

The complaints indicate the Banks' predatory lending practices to vulnerable farmers was systemic and ongoing. In those circumstances, after applying ASIC's investigation criteria it is difficult to understand why ASIC failed to investigate these serious allegations.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, made recommendations to the banks in relation to the treatment of the farmers. The recommendations dealing with stressed agricultural loans do not appear to have been implemented.

This Submission respectfully asks the Senate Inquiry to direct ASIC to:

- **Conduct a review of the complaints made by the farmers to ASIC alleging misconduct in relation to systemic wrongdoing by the Banks (as set out in Schedule B);**

- **Provide a report to the Senate Inquiry by no later than 1 August 2023, which addresses the following:**
  - a. **Conduct a review of the complaints made by the farmers to ASIC alleging misconduct in relation to systemic wrongdoing by the Banks (as set out in Schedule B);**
  - b. **Whether ASIC has now commenced an investigation into any of these complaints, and if not, the reason for failing to do so;**
  - c. **Any legislative reform which may be implemented to facilitate taking action against the Banks for alleged misconduct involving improper lending practices.**
  
- **Immediately arrange for mediation between the farmers who have grounds for complaint and the Banks. The Banks pay for legal representation of the farmers at mediation.**

## **INTRODUCTION**

1. We thank the Honourable Committee members for undertaking this important inquiry.
2. This Submission is on behalf of farmers represented and listed in **Schedule A** to this Submission consisting of 63 farmers Australia wide who have made complaints to the Australian Securities and Investments Commission (**ASIC**) set out in Schedule B.
3. The farmers represented in this submission have had their farms repossessed and in many cases their farms were in the family for several generations. This has caused financial and emotional devastation and in some cases suicide. Many of the farmers have reported the misconduct to ASIC as a result of alleged misconduct of some major Australian banks. It appears that ASIC has failed to properly investigate complaints or consider the systemic nature of complaints. The combined complaints reveal a primary pattern of systematic predatory lending or asset-based lending – where loans are provided on the basis of the value of the asset rather than the ability to repay the debt, which is illegal in Australia.
4. We submit that the banks involved in a range of alleged misconduct in relation to the farmers in Schedule A include National Australia Bank (**NAB**), Australia and New Zealand Banking Group (**ANZ**) (in its acquisition of Landmark), Rural Bank (A Division of Bendigo and Adelaide Bank), Suncorp, Westpac, Commonwealth Bank of Australia (Bank West), Robo bank and the Bank of Queensland (“the Banks”). The Banks have established an ecosystem in the financial sector where farm properties are repossessed using liquidators and big law firms, and farmers are left with no money to pursue their cases through the courts having no funds for legal representation.

5. The Royal Commission into Misconduct in Banking, Superannuation and Financial Services (**the Royal Commission**) established on 14 December 2017, led by Commissioner Hayne, exposed banking misconduct in relation to farmers.
6. The banking sector were supposed to resolve issues in relation to the farmers, mediate claims and attempt to settle matters and in some cases even told the Royal Commission that this was underway. In most farmers' cases, this has not occurred in many cases.
7. If ASIC had investigated these farmers' complaints (and similar complaints), connected the dots on the themes – asset-based lending or predatory lending, misleading and deceptive conduct, breaches of the Australian Securities and Commission Act - it would bring into question whether the banks are adhering to the conditions of their licence to act “efficiently, honestly and fairly” towards customers as required by s912A of the Corporations Act. If ASIC had properly reviewed complaint misconduct themes, it could have directed the banks to mediate with the farmers.

#### **FARMER COMPLAINTS NOT DEALT WITH BY ASIC**

8. Since 2007 farmers Australia wide have lodged complaints to ASIC about serious misconduct, including fraud. ASIC has failed to investigate these complaints.
9. Schedule B highlights of the complaints from dispossessed farmers made to ASIC. The complaints are serious and show systemic issues of unresolved misconduct in the banking industry. It is apparent that banks are not applying the industry Code of Practice and may be breaching their own licence conditions to act “honestly, efficiently and fairly” under s 912A of the Corporations Act.
10. There are several common features in the conduct of the banks towards the farmers outlined as follows:
  - (a) Predatory lending;
  - (b) Asset-based lending;
  - (c) Interest rates outside the scope of being able to be paid in relation to farmland;
  - (d) Failure to disclose mortgage repayments linked to overdraft accounts increasing interest rates over 18%;
  - (e) Unethical behaviour – failure to follow banks internal processes;
  - (f) Failure to investigate complaints in accordance with relevant Banking Codes of Practice;
  - (g) Instances of fraud in relation to documentation (three farmers), including forged signatures;

- (h) Active concealment of documents;
  - (i) Conflict of interest;
  - (j) Exaggerated assets in the farmer's balance sheet on the bank's file;
  - (k) Improper interest and charges;
  - (l) Breach of the Banking Code of Practice;
  - (m) Internal compliance failures not disclosed to ASIC;
  - (n) Failure to comply with licence conditions to act "efficiently, honestly and fairly" – section 912A Corporations Act 2001;
  - (o) Unconscionable conduct section 12CB ASIC Act;
  - (p) Equitable fraud;
  - (q) Document fraud;
  - (r) Withholding of documents; and
  - (s) Contravention of Consumer credit legislation
11. In late 2011 ASIC first published INFO Sheet 151 'ASIC approach to enforcement', which set out the criteria ASIC applied in determining whether to commence a formal investigation under section 13 of the ASIC Act.<sup>1</sup>
12. Applying the criteria set out in INFO 151 to the farmers' complaints the following should have been apparent to ASIC:
- a. **Strategic significance** – the allegations involved serious predatory conduct which was continuing. The misconduct resulted in actual harm to vulnerable consumers; the harm caused was systemic and widespread and failure to address the misconduct would have an adverse impact on the trust and confidence of consumers in our financial system;
  - b. **Benefits of pursuing misconduct** – taking enforcement action against the Banks was likely to send an effective and important deterrent message to the financial services sector and test or clarify important legal obligations;
  - c. **Issues specific to the case** – the evidence currently available or likely to become available, supported serious allegations involving at least a high level of recklessness and most likely dishonest, deliberate breaches of the responsible

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<sup>1</sup> INFO 151 was updated in November 2021, however, the fundamental resourcing decision principles remained the same.

lending provisions and pointed to continuing widespread harm being inflicted across the farming community.

13. It is difficult to understand why ASIC failed to investigate these serious allegations which clearly indicated the Banks' predatory lending practices to vulnerable farmers were systemic and ongoing.

## FINANCIAL SECTOR MISCONDUCT INQUIRY

14. In the Royal Commission Final Report published in 2019, Commissioner Hayne pointed to a problematic culture that existed in the financial sector where the pursuit of profit is put ahead of the interest of customers. This included remuneration practices within banks being primarily rewarding sales and profitability in conflict with customers' interests.<sup>2</sup>
15. The major issues stemming from the Royal Commission, were fees, selling tactics, weak regulators and self-interested remuneration. The case studies before the Commission highlighted unethical and dishonest practices such as charging customers for fees for "no services", charging for financial advice without providing information, and inflating customer financial information to meet benchmarks loan within banks. In essence, all the major banks were involved in serious misconduct and breaches of the law, unethical sales practices that severely disadvantaged customers and their reputation socially.
16. The Royal Commission also found that the Australian Securities and Investments Commission (**ASIC**) and the Australian Prudential Regulation Authority (**APRA**) were ineffective and "asleep at the wheel". More recently, the Australian Senate has announced this inquiry into ASIC in relation to its complaints mishandling which will begin in February 2023.
17. It is acknowledged that ASIC is still pursuing several banks and has since 2020 initiated several successful penalty proceedings obtaining multi-million-dollar penalties.
18. Some of the issues highlighted before the Royal Commission, were the ways in which the farmers were treated by banks, especially in relation to predatory or asset-based lending and in being charged interest rates linked to overdrafts which they could not afford.
19. After the Royal Commission, many consumers hoped that the banks would have changed their approach and mediated with customers, especially with the farmers. However, the hard line of the banks has not softened, and the trouble is that farmers, once financially broken, do not have the means to deal with these corporate giants who use the best law firms in Australia and can take advantage of the ecosystem they know so well.

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<sup>2</sup> <https://treasury.gov.au/publication/p2019-fsrc-final-report>

20. The Royal Commission Recommendation 1.11 – Farm debt mediation which recommended “A national scheme of farm debt mediation should be enacted” does not appear to have been implemented.

## **HOW FARMERS GOT INTO FINANCIAL DIFFICULTIES**

21. Rural lenders offered short-term loans or rolling bill facilities and overdrafts, mainly on an interest-only basis. Essentially, all loan facilities were short-term, with no long-term repayment strategy. Often there were principal reductions required in the form of significant lump sums (ie, \$300,000 reduction in 12 months), rather than structuring the loans with a portion of the debt over a 25–30 year period at lower residential lending interest rates.
22. Interest only loans are also typically more expensive (higher interest rates) than principal and interest loans.
23. Valuation of real estate for lending security purposes was not often an issue ie, value of security was sufficient to meet lending requirements.
24. The farmers’ historical actual financial results were often overlooked, as they were not sufficient to meet serviceability requirements, and instead cashflow forecasts were used as a basis for meeting lending serviceability criteria. These forecasts were often prepared by farmers (with no financial background), on instruction from lenders. The forecasts were unrealistic and incongruent compared to actual historical financial results. These forecasts were then used to satisfy bank internal lending criteria. As the asset position was strong, the loans were approved, even though historical financial results demonstrated that they could not service the loans (ie, on the loan structure offered, they were predatory).
25. Also, lenders often had financial covenants in place and required onerous ongoing reporting information, tying back to cash flow forecasts prepared. Breaches of such covenants led to default interest or increased interest margin, higher fees and more ongoing onerous financial obligations that were to be met by the borrowers. What happens is that when the covenants are linked to forecasts incongruent with historical financial results, often breaches were happening before and from onset of loans ie, the loan was in default from the onset.
26. Banks gave overdraft facilities to farmers to service interest payments on other loan or bill facilities along with supporting working capital requirements of the farms. Interestingly, often lenders required principal reductions of other loan facilities (say term loans) and applied said payments against the overdraft, resulting in the latter going into default. Default interest ensued, and the lender often temporarily increased the overdraft limit. The interest rate being charged was higher than that of the facility for which the reduction was applied to. In essence, the lender shifted term debt to the

overdraft and charged more interest. It also left the farmers with little to no working capital and often unable to trade.

27. The cumulative impact of higher interest rates and then trading losses, meant that many borrowers defaulted on their debt commitments and lender commenced enforcement action. Often the lenders would engage the Big 4 accounting firms, or large accounting firms, to prepare investigative reports, at the borrower's cost (often around \$50,000), and then proceed to appoint the same party as receivers and managers, on the receivers and managers advice, knowing that this would be the more costly option to the borrower. Some lenders would simply appoint receivers and managers, very rarely were deeds of forbearance offered or where they were, didn't allow the borrower much time to refinance or sell assets to repay the lender ie, they were offered as part of due process but not offered with realistic timeframes to sell assets or refinance.
28. The costs of lender enforcement were extremely high, with some borrower's equity being eroded by seven figure receiver and bank enforcement costs for the simple disposal of a farm and its assets.

## EVIDENCE OF BANKS NON-COMPLIANCE BEFORE THE ROYAL COMMISSION

29. The evidence was that despite Banks internal policies and procedures, banks breached Loan to Value Ratios ("LVR's") and safe level lending policy resulting in over reliance on security of farms. Banks often included in LVRs 100% of the livestock value, which is outside all banks' policies and procedures as stated in the KPMG report<sup>3</sup> to the Royal Commission:<sup>4</sup>

*"Now, the observations of KPMG are summarised on this page, and we see that in respect of those 10 credit files KPMG found major themes arising which were, firstly, misrepresentation of data in Rural Bank's system which went beyond window dressing of credit submission; reasons for excesses providing by district banking managers in the seasonal/overdraft accounts did not reflect the actual cause of excesses of customer's accounts; there were instances of livestock appraisal values appearing to have been inflated to improve the security position of the exposures; there was suppression of information pertinent to the credit; deteriorating features were not reported to Rural Bank in a timely manner; there was noncompliance with conditions precedent, including confirmation that all tax liabilities were up to date and in order with no arrears or repayment arrangements; there were failures to comply with loan conditions prior to loan drawdown; failures to follow up on loan conditions, and inadequate financial and cash flow analysis was evident. Major material financial movements should have been probed and documented?--Yes."*

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<sup>3</sup> Creditor Risk Internal Control Program (KPMG, 27 September 2010) ('KPMG Report').

<sup>4</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Transcript, 2 July 2018) 3645, [30]-[40] ('Royal Commission').

- a. The Willis Report<sup>5</sup> states:

*“To refocus the credit approval process on loan serviceability and long-term sustainability of the borrower from productive income as the primary source of repayment. It is evident that the current process and practice have allowed the secondary source of repayment – security, to have too much weighting in the credit decision. Collateral / Security should be considered after the primary repayment source has been demonstrated and satisfied. Their needs to be greater focus on being able to identify and target the better-quality counterparties in each sector that Rural Bank chooses to operate. We believe the Rural Bank would benefit from the incorporation of more production-based information into the approval and monitoring processes. Our impression is that ABS is flexible enough to enable these modifications to be incorporated relatively easily.” (transcript reference)*

- b. In addition, the Royal Commission<sup>6</sup> summarised systemic changes within Rural Bank that were presented in the Corolis Report<sup>7</sup> relevantly as follows:

*“A strong bias toward asset lending on the assumption that rural property values would continue to increase and, accordingly, asset sales would provide a comfortable “first way out” in the event of recovery action.....*

*A failure to disclose, recognise and identify the true risk profile of the borrower....*

*A compromised valuation process, with valuations having been instructed and/or influenced by sales....*

*Appraisals being inflated due to the appraiser not visiting and inspecting the property and/or possibly compromised due to an inherent conflict of interest....*

*Cash flows for clients having been prepared by sales and not sighted and/or agreed with the borrower.....*

*An overreliance and usage of temporary limits....*

*Poorly structured credit approvals and waiving of conditions subsequent to approval....*

*Lending against defective and/or poor securities....*

*Obviously warning signs such as anomalies that were either not identified or overlooked....*

*Permitting customer risk rating overrides without proper justification....*

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<sup>5</sup> Credit Framework and Operations Review (HSW & Partners, November 2011) 4 (‘Willis Report’).

<sup>6</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (n 15) 3676.

*Credit allowing perceived pressure from sales and/or management to compromise the independence of credit decisions.”*

## **ROYAL COMMISSION RECOMMENDATION**

30. “When dealing with distressed agricultural loans, banks should:
- Ensure that those loans are managed by experienced agricultural bankers;
  - Offer farm debt mediation as soon as a loan is classified as distressed;
  - Manage every distressed loan on the footing that working out will be the best outcomes for bank and borrower, and an enforcement the worst;
  - Recognise that appointment of receivers or any other form of external administrator is a remedy of last resort; and
  - Cease charging default interest when there is no realistic prospect of recovering the amount charged.”

## **BANKS ENGAGED IN PREDATORY LENDING AND GOT AWAY WITH SERIOUS COMPLIANCE FAILURES**

31. In many instances we alleged that the banks have breached their own compliance procedures, internal policies, Banking Code of Practice (in many forms since 2000), and their Australian Financial Services Licence - s 912A of the Corporations Act that required licensees to “act, honestly efficiently and fairly”. It is not a long bow to allege that many directors on the boards of banks were aware of the serious compliance failures and did not act with due care and diligence as required under s180 of the Corporations Act. For example, see the KPMG report to Rural bank about compliance failures referred to above.
32. The practical consequence has been although banks engaged in predatory or asset-based lending which is illegal, they have been able to “pick off” the farmers by debt proceedings in courts, one by one, and sell their farms at reduced values to secure the asset, bankrupt farmers or leave them with no financial resources to make out a legal defence, thus disabling them from taking action for misconduct. Most farmers are not represented in what is often complex proceedings. It is indeed a sorry tale of banking, finance law and receivership ignoring all the precepts of the royal commission. There are few sincere independent mediations with farmers by the banks.
33. Many small law firms do not have the specialty in the areas of regulation and compliance, banking conduct, unconscionability issues. In Australia, many lawyers do not act pro bono, especially in relation to cases that may be litigated over several years against a corporate giant. The result has been that many of the farmer cases are still

unresolved because of lack of resources funding and the failure of ASIC to see the systemic themes of alleged misconduct in the banking sectors.

## RECENT CASES CONCERNING BANKING MISCONDUCT

34. In a case before the Federal Court commenced by ASIC, the National Australia Bank (**NAB**) was deemed to be unethical and contravening the law in the way that it dealt with customers.<sup>8</sup>

35. In relation to unconscionable conduct, Justice Derrington stated at [341]-[342] that:<sup>9</sup>

...[The NAB] took advantage of the customers' continuing lack of knowledge and acted in its own self-interest by continuing to operate a system which it knew wrongfully deducted sums from its customers' accounts.

This conduct fell so far below the standards required of a bank's obligations to its customers that it was unconscionable. It was neither proper nor right, according to ordinary commercial values in Australian society and it was an offence to conscience.

## RECENT HIGH COURT DEEMED ASSET-BASED LENDING ILLEGAL

36. There is a recent case from the High Court that indicates that asset-based lending is illegal. Each of the farmers in Schedule A have all have been the victims of asset-based lending on the part of the banks.

37. The High Court decision that maybe useful to the Honourable Senators on this issue is In *Stubbings v Jams 2 Pty Ltd* [2022] HCA 6, where the High Court considered whether an instance of asset-based lending was unconscionable in equity, and also a contravention of s12CB of the ASIC Act (which relates to prohibition against unconscionable conduct in relation to financial services).

38. The Court (Kiefel CJ, Keane and Gleeson JJ writing together, Gordon J and Stewart J writing separately) allowed the appeal, concluding that the lending was unconscionable. While the reasons largely deal with equitable rather than statutory unconscionable conduct.

39. In short, the appellant was the guarantor of loans made by the respondent to a company owned and controlled by him. The company had no assets and had never traded. The appellant's obligations as guarantor were secured by mortgages over land owned by him.

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<sup>8</sup> <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-304mr-court-finds-nab-engaged-in-unconscionable-conduct-over-account-fees/>

<sup>9</sup> Australian Securities and Investments Commission v National Australia Bank Limited [2022] FCA 1324.

40. In *Stubbings v Jams 2 Pty Ltd*,<sup>10</sup> Kiefel CJ, Keane and Gleeson JJ noted that at all times, the appellant was incapable of understanding the risks involved in the transactions.<sup>11</sup> The appellant's special disadvantage was not in issue. Rather it was the lender's knowledge and exploitation of the special disadvantage which was determinative of the appeal.

41. Kiefel CJ, Keane and Gleeson JJ went on at [43]-[46] to note that:<sup>12</sup>

*[43] The inevitable outcome of the transaction was, objectively speaking, that the appellant's equity in his properties would be taken by the respondents by way of interest payments, including at default interest rates. The dangerous nature of the loans, obvious to Mr Jeruzalski but not to the appellant, was central to the question whether the appellant's special disadvantage had been exploited by the respondents.*

*[44] The primary judge found that Mr Jeruzalski "should have known" that the appellant was bound to lose his equity in the Narre Warren properties. It may be accepted that his Honour's findings as to Mr Jeruzalski's state of mind did not rise to an unequivocal finding of actual knowledge on the part of Mr Jeruzalski that the appellant would inevitably lose his equity in his properties by taking these loans; but a finding in such terms was not essential to the appellant's case for relief. For a court of equity, the question is whether Mr Jeruzalski's appreciation of the appellant's special disadvantage was such as to amount to an exploitation of that disadvantage.*

*[46] A case for relief against an unconscionable attempt to enforce legal rights is establish in this case because Mr Jeruzalski had sufficient appreciation of the appellant's vulnerability, and the disaster awaiting him under the mortgages, that his conduct in procuring the execution of the mortgages is justly described as unconscientious.*  
*(Emphasis added)*

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<sup>10</sup> *Stubbings v Jams 2 Pty Ltd* [2022] HCA 6.

<sup>11</sup> *Stubbings v Jams 2 Pty Ltd* [2022] HCA 6 at [41].

<sup>12</sup> *Stubbings v Jams 2 Pty Ltd* [2022] HCA 6 at [43]-[46].

## HIGHLIGHTS OF THE FARMERS' COMPLAINTS IN SCHEDULE B:

### First Example of a complaint to ASIC:

**third generation farmer, land repossessed by Rabo Bank**

#### 42. ***“Bank repossessed land and farm machinery***

*Rabo repossessed the land, cattle and Machinery and totally mis-managed the assets.*

*I was literally on the point of finalising a deal with GMO the private equity group I had brought to the negotiating table for not only my assets but my father's interests as well – he was under huge pressure from Westpac to reduce his debt as it had become unmanageable.*

*I lost all my assets – the bank eventually sold to GMO however I had been negotiating a going concern with GMO with them buying the land cattle and machinery - when the receivers took over (February 2013) due to their incompetence completely destroying any equity I would have had if I had been able to finalise the deal. I engaged Damien Simonfi to try and broker the deal between the receivers and GMO. GMO never wavered in their desire to secure the assets – the receivership was completely inappropriate as I was doing exactly what Rabo had asked me to do – get equity or sell.*

*Reputational Damage is an added cost to anyone publicly going through receivership – which due to the family's high profile at that time was soul destroying.*

#### **Misconduct**

*Exceptional Circumstances, Breach of confidentiality, Conflict of interest between  
- Rabo and acting as receiver manager (Agrify) for Westpac on  
assets. Closing on me when I was in the final stages of  
negotiations - due to that breach of confidentiality and conflict of interest. Receivers  
totally mismanaged the assets and lost more money in the process e.g. We were in the  
process of planting a huge area to wheat excellent moisture available however when  
the receiver managers were appointed, they stopped that operation let the weeds grow  
depleting the moisture profile resulting in a failure of a crop which if we had been allowed  
to continue planting would have yielded huge income – no doubt more money for them  
to waste. Our current situation as a result of the bank's misconduct. I have not as yet  
taken any legal proceedings due to being completely financially destroyed I  
unfortunately do not have the funds to take them on legally. Receivers seem to have a  
charter to financially devastate people for the very reason they then have no ability to  
take the banks on in a court of law. Instead of being able to work through and negotiate  
the financial situation at the time I lost my life's work leaving me totally ruined financially  
and left on the scrap heap so to speak. Little wonder there has been so much suicide  
in the bush with the way banks and receivers behave when they walk in take over and  
incompetently manage and literally give away valuable assets.*

### **Previous complaint to ASIC**

*I made a previous complaint, the communication with ASIC was directed through my accountant to try and acquire information and answers to numerous questions associated with the forced receivership which were being totally ignored by the receivers and the banks.*

### **Request for ASIC's assistance**

- *I believe that the bank has been involved in predatory lending or asset-based lending. (This means that the bank was only interested in the value of the land and not if you could repay the loan.)*
- *I believe that the bank who provided the loan may have been involved in illegal practices and contravened the Banking Code of Practice, credit laws, the ASIC Act, and the Corporations Law.*
- *The bank been involved in actively concealing documents from me.*
- *I am an elderly and vulnerable farmer and that you require assistance to deal with your case.”*

### **Second Example of a complaint to ASIC:**

#### **whose three-generation farm was repossessed by ANZ**

43. allege in the transactions from Landmark to ANZ he and his wife did not sign security documents and their signatures were allegedly forged. Highlights the seriousness of the nature of complaints.

*“We appealed the judgment in February 2014 and won the appeal in March 2014, with the default judgment and the possession warrant being set aside and the right to go to trial. We also won discovery of our documents with Landmark and ANZ. This did not stop ANZ and the Receivers - they continued and sold the properties including some of my father's cattle.*

*We received the discovery documents in September 2014. In the discovery of documents in September 2014, we found the Landmark letter of offer, an Authority to amend our Mortgage and the Terms and Conditions, amend our declarations and amend our accounts with Landmark and a Landmark Stock Mortgage. We had never seen or signed any of the documents mentioned in this paragraph. On some of the documents, mainly the Landmark letter of offer you can see with the naked eye that the signatures have been cut and pasted.*

*Most of these documents are dated 22 June 2007, which is when ( s wife) was already overseas and so she could not have signed them. We also applied*

*for and received a certified travel document from the Department of Immigration to prove  
was out of the country at the time of signing. left Australia on 18  
June 2007, and she returned on 5 July 2007.”*

### **Third Example of a complaint to ASIC:**

44. *“Current Situation: have retired to Canberra to a small two-  
bedroom apartment.*

*Lost a very profitable business in a growth stage.*

*Lost a family farm of over 100 years.*

*“Parkwood”, Grenfell sold in April 2017.*

*2<sup>nd</sup> property, “Greenwood” not sold, refinanced by NAB in 2018.*

*No Legal Proceedings taken against the ANZ Bank.*

#### ***Predatory Lending***

*ANZ Bank wanted to remove themselves from rural lending, particularly Landmark  
Clients and we were some the Victims.*

*The Two Term Loans provided by Landmark in March 2003, one to refinance property  
“Parkwood”, and one to purchase property, “Greenwood”, were 15 year loans – expiring  
2018.*

*When ANZ Bank took over the Landmark Loans, the expiry date of the Loans changed  
to “Parkwood” 2016 and “Greenwood” 2012.*

*The ANZ Bank forced us to sell our main property and did not offer Farm Debt Mediation.*

*The ANZ Bank took a lien on all our stock when most of the stock was financed and  
owned by Forbes Livestock Agency.*

*When ANZ Bank would not allow sufficient working capital, we approached Senator  
John Williams.*

*The result was our overdraft was reinstated and additional time was given to sell our  
properties.*

*This shows that this was not an economic problem but a personal vendetta by ANZ  
employees,*

## **Concealing Documents**

*On two occasions we requested our file from the ANZ Bank and didn't even receive the courtesy of a reply."*

### **Fourth Example of a complaint to ASIC:**

45. *"ANZ approached me in February 2011, threatening me to sign ANZ documents which were new letters of offer with ANZ and if I didn't hurry up and sign, they would start proceedings against me. I was told they would appoint Receivers and sell everything I had left.*

*The ANZ letter of offer presented to me to sign, was basically my debt with Landmark, split up into three different loans, which made it look like I was borrowing the money from ANZ. In the section that defined the purpose of the loan, was for the 'Purchase of Land'. I already owned the land before ANZ came along. I did not purchase any land through ANZ. This document also contained a clause that I must not use the loan funds for any other purpose without ANZ's approval. I did not pay out my loan with Permanent Custodians Limited and refinance with ANZ.*

*Part of this letter of offer from ANZ had \$300,000 overdraft that would enable me to pay my upcoming interest payments that were over their limit. This offer would also clear the Landmark overdraft debt of approximately \$64,000.*

*Before this time, ANZ pressured with threats to put all my properties with a Real Estate Agent and sell all assets at the one time. The agent, at the time, advised this was never a good idea and it's not in the best interest for the seller, as the price will plummet causing a fire sale and people know banks want money and start rumours and come in with below value offers.*

*ANZ did not care. They told the agent and me to go ahead and organise the auction. As advised by the agent, the properties did plummet after the auction, which did not receive one bid, only a few weeks after the auction, ridiculous offers started coming in. For example, pre-Auction, I had sold 1 x 25 acres block for approximately \$145,000 and a 1 x 21 acres block for \$125,000 and 1 x 100 acre block next to them for \$260,000. After the auction, I had to sign an offer for 100 acres for \$165,000. This person still owes me \$15,000 to date, which was on the contract to pay within 12 months with a Caveat in place on this block. ANZ would not help me retrieve this money, only saying when I get it, it goes on my debt reduction.*

*I did manage to sell more properties eventually including ones that were not in the overall sale plan, except the one I live on now.*

*ANZ would never allow me any funds from any of the sales to meet my living expenses and the costs associated with the sales of land and my bills. I had to work off farm to get the funds which were never enough. This resulted in taking longer to finish fencing projects, much longer to get settlements through, as some blocks had to be fenced and surveyed with access roads constructed.*

*I could not clear the debt with ANZ and of course the debt kept building due to the increasing penalty interest.”*

## **LIMITATION ISSUES**

46. Many of the farmers may be subject to limitation issues for actions in tort, however, I do not know what the percentage is now. Irrespective of a limitation issue, there are alternate legal pathways which allow for litigation, such as equitable fraud, active concealment, breach of the Banking Code of Practice, and various equitable remedies, such as unconscionable conduct. It is my view that breaches of a banks ASIC licence conditions are ongoing and provide an opportunity for mediation or litigation.

## **CONCLUSIONS**

47. Commissioner Hayne said at 413 in the Final Royal Commission Report, “I said in the Interim Report that almost all of the conduct identified and criticised in that Report contravened existing norms of conduct and that the most serious conduct broke existing laws.<sup>1</sup> Notwithstanding that, the law was too often not enforced at all, or not enforced effectively.”
48. In its response to the Interim Report, ASIC accepted that its enforcement approach must change. The APRA’s response to the Interim Report emphasised that its core role is ‘proactive ex ante supervision ... rather than ex-post enforcement’. It also said that recent developments, including the work of the Royal Commission, had caused it to review its approach to enforcement. ASIC undertook to review its enforcement approach.
49. Given the complaints of the Farmers to ASIC, it is not clear that a lot has changed on the part of ASIC since the Royal Commission and more needs to be done to protect Farmers against misconduct by the banks and understand emerging misconduct themes affecting Australian society through complaint analysis and take appropriate enforcement action to address emerging misconduct. ASIC needs to start investigating the complaints and assess the systemic nature of the problem.

## **RECOMMENDATIONS**

This Submission respectfully asks the Senate Inquiry to direct ASIC to:

50. **Conduct a review of the complaints made by the farmers to ASIC alleging misconduct in relation to systemic wrongdoing by the Banks (as set out in Schedule B);**
51. **Provide a report to the Senate Inquiry by no later than 1 August 2023, which addresses the following:**
  - a. **Conduct a review of the complaints made by the farmers to ASIC alleging misconduct in relation to systemic wrongdoing by the Banks (as set out in Schedule B);**
  - b. **Whether ASIC has now commenced an investigation into any of these complaints, and if not, the reason for failing to do so;**
  - c. **Any legislative reform which may be implemented to facilitate taking action against the Banks for alleged misconduct involving improper lending practices.**
52. **Immediately arrange for mediation between the farmers who have grounds for complaint and the Banks. The Banks pay for legal representation of the farmers at mediation.**

**Niall Coburn**  
Barrister-at-Law  
1 February 2023