

To: The Senate Economics Committee on “Banking Post GFC”

DENISE L BRAILEY

President Banking and Finance Consumers Support Association (Inc)

Response to ASIC’s Answers: Questions on Notice 20 September 2012

9 October 2012

Since I am named in ASIC’s response (dated 20 September 2012), to questions taken on notice, I wish to respond to errors and the general misleading tenor of it.

Firstmac and Streetwise timeline

ASIC only intervened in this case after I pursued Firstmac and Streetwise. And even when they did, they had the perfect opportunity to make a case that the lender did not verify the loan application data and should therefore not profit from the loan fraud. ASIC chose not to pursue further in 2003.

Below is an explanation of the long, slow and painful path to getting ASIC to do something in a matter for which they have statutory rights and obligations.

2003, I alerted ASIC to Low Doc Fraud re some of the 50 families who complained to my support group at that time. The Lender was clearly identified as **Tonto Home Loans Pty Ltd.**

That same year ASIC commissioned a report on Low Doc Lending from CCLS NSW. Approximately, 160 page document devoted to Low Docs Lending and cases histories 2000 – 2001.

Mr VT complained to me he had lodged a complaint with ASIC regarding Tonto Home Loans and the Broker firm known as Streetwise. Mr VT received an unsatisfactory response.

As president of RECA, I wrote a letter to the Chairman of ASIC recommending the case be reopened. I then encouraged 50 families to individually register their written complaints with ASIC.

During the investigation period, I was advised by ASIC, that Tonto had changed its name to Firstmac.

2004 Streetwise collapsed. I attended 1st and 2nd creditors meeting. I asked the question: ASIC was not in attendance. Both The Australian and Sixty Minutes attended and I alerted several media outlets warning the public regarding Low Doc Lending. I wrote a series of letters to Hunt and Hunt, the lawyers for Firstmac, who drew up the mortgages relating to the Low Doc Loans for the fifty complainants.

2004 I advised ASIC via email to Mr Jeffrey Lucy, the Chairman, that Mr KB (the broker) was a flight risk and he had been seen loading furniture into sea containers. Three weeks later KB fled to the USA via a Dominica Republic passport.

2005 The ATO were commissioned by ASIC to conduct a cross correlation report on Low Doc Lending. This was announced in the Media: an ABC interview with Mr Carmody. Days later I took documentary evidence to the ATO Chief Investigation Officers that they were looking at the documents from the wrong perspective using an incorrect assumption. The fraudulent incomes were on the application documents retained by the banks. The tax returns contained the correct income figures. The sample survey involved cross correlation data involving 800 files.

As a direct result of that meeting, the ATO stated it was a matter for ASIC and not the ATO. They sent the files over to ASIC.

2005 One of our RECA Members (Jane) took it upon herself to track Bangaru ("KB") over the internet. I had many meetings with Jane. We found KB had set up a new company in the USA. Despite demands, ASIC refused to bring KB back to trial. At her own expense Jane went to the United States, tracked KB's home and office and then I advised ASIC of his whereabouts. I contacted the media as Members felt frustrated with ASIC's lack of action.

2005: The ASIC Director of Enforcement and I, met in Sydney on three occasions. I suggested that since ASIC had permitted Bangaru to flee the country, they ought to bring him back. The Director announced to the media that extradition was underway. I also met with the Deputy Chairman and suggested other groups involving different lenders, had found their Loan Applications had been tampered *after their signature had been obtained and without the customer's knowledge or consent.*

The Bankers all used the "Broker Model" to drive lending products. No phone calls were made to the client to verify income and no client received a copy of the Loan Application Form which they were entitled to under Contract Law. I documented all of the evidence for ASIC and wrote many letters that year, all addressed to the Chairman of ASIC.

2005 I wrote to ASIC again asking for a civil case to be mounted against the banks in the Streetwise case. The banks had made an imprudent lend in all cases I presented to ASIC, no matter what brokers had been doing. My letter stated the urgency and the need for the PUBLIC INTEREST. The ASIC response was once again in the negative. ASIC did not view the case as being in the public interest and responded in that manner.

2005 I had previously spoken with a friend Neil Jenman re the Jenman Agents Consumer Protection fund and possibilities of funding a class action. I spoke with Neil's lawyers and delivered 12 lever arch-files of documentation I had collected in relation to the Streetwise fraud and the 50 families we knew, had all been treated in an identical manner. We later learned that Firstmac processed approximately 187 loans from this one broker, the hallmarks of an imprudent lend were a key indicator of sinister lending practices. One of the brokers who worked there spoke of bank officers visiting the office.

2005 As a key note speaker and a guest of the Victorian Government, I had dinner with a number of regulators and I happened to sit next to Mr Peter Kell of ASIC. We had spoken over the phone previously, and again we discussed Low Doc Lending and the prevalence of Fraudulent Loan Application Forms and the provisions of the Contract Review Act NSW 1980.

2006 After constant media pressure, KB was extradited from USA and brought to Sydney by ASIC to face charges of theft and other similar charges, eventually found guilty and jailed for eight years.

During this two year period, my work was mostly voluntary. Of note was the constant and justifiable criticism from all quarters, with aggrieved bank customers had to deal with ASIC's refusal to acknowledge with the major part of the complaints: **the banks we had identified were approving inappropriate loans with zero checks as to affordability.**

I have taken the trouble to explain these details in brief to clarify the regulatory system that consumers had to deal with ASIC: pre GFC, during GFC and post GFC and up until the present time.

ASIC suggested the Judges found their "intervention was welcome..." For clarification, ASIC is referring to 2009, six years after the first serious approach by complainants. Their "intervention" was to spend two days in court handing over brochures relating to their "surveillance," and also to now suggest this case was in the "public interest" after all. This statement to the court was contrary to their letter to me re Firstmac/Tonto and Streetwise in 2005.

The Judge in 2009 did not appear to be overly appreciative of ASIC's intervention and the irony was not lost on the victims whom I sat with in court for that event, including myself.

ASIC took no action against the banks. They did not fund the civil case. They did not assist the other 50 families who had complained and offered evidence to them. Those families received negative 'form' letters from ASIC suggesting they would do nothing to resolve their cases. I can only assume all those families lost their homes as Firstmac and other lenders moved in. One of these loans involved a Bank Officer from NAB and had nothing to do with the Broker Chain. ASIC also ignored that file. I have retained all my arch-files of evidence, copies of which were all sent to ASIC at the time.

The Firstmac case proceeded all the way to the High Court 22 June 2012, and ASIC attended again but chose not to pay for any of the expenses of this case even though it had been designated "in the public interest."

Had the Jenman Group not funded the case, had the media not written the stories of ASIC's appalling neglect of these cases, had I not discovered the omissions relating to the missing LAFs and gathered all those families together, the precedent to the High Court may never have occurred.

Mr Bangaru is in jail because he stole some of the funds. The other brokers gave evidence that bank officers taught the brokers to use the bank generated **serviceability calculators**: the crucial link to enabling the fraud to be able to perpetuate.

ASIC once again reacted only to media pressure and lobbying from RECA (Inc) Members.

ASIC ignored this major point of proof of IMPRUDENT LENDING involving Low Doc Loans and the fact that Major Lenders were targeting older persons classified by Banks as Asset Rich and Income Poor. ASIC attended a venue, as I did, where this targeting ""new markets" was being promoted.

During 2004/5 I delivered evidence to ASIC of multiple cases of identical imprudent lending involving Low Doc Loans and Full Doc Loans from at least publicly named and shamed companies who were using equity loans as a supposed safe and secure method of investment. My files stand as a record. ASIC ignored them all.

In the RECA submission to the Property Investment Advice Inquiry which I lobbied Members of Parliament for, in 2005, I referred to Loan Application Fraud.

Why did I, an individual, have to go to all this trouble and so relentlessly, just to get ASIC to do its job? It is ridiculous to the point of being obscene. **No one should have to go to any length whatsoever to have a regulator deal with non compliance of its charter, and to this magnitude.**

ASIC has suffered widespread, yet justifiable criticism for over a decade on using 'form' letters to suggest that valid cases would not be investigated. The wording in the response letters has changed little over the years. I have a library of all of these response letters to consumers who were left unprotected and not championed by ASIC.

ASIC follows a set pattern of responses and their recent evidence at this Senate hearing proves beyond a doubt that the same excuses continued to be used as were evidenced in the 2005 treatment of those same kinds of complaints from consumers of financial products and services.

1. ASIC suggested all the complaints are in general terms with no specific details.
2. They ask RECA and now BFCSA as the support group for victims, to conduct research and provide them with the evidence, rather than taking on the responsibility of investigations.
3. In 2002, ASIC used "new laws" as an excuse to close hundreds of aggrieved consumer files.
4. The Contract Review Act had been around since 1980 and was designed to be used to protect people from fraudulent contracts.
5. The Minister criticised ASIC directly in 2005 and stated: "ASIC has plenty of legislative powers."

In the Westpoint case, ASIC refused to investigate these concerns, even though I had initially reported to the WA Commissioner in 2000 and to State Commissioners in 2001. Many people could have been saved the agony of losing their homes, had a simple single investigation been carried out.

I now mention a lady we shall call Maha, a mother of six who, after the collapse of Westpoint, begged ASIC to look into her case. Once again, the media told her story. I wrote to the Chairman in 2006, 2008, 2010 and once again all letters were given the same 'form' letter responses saying that no investigation would take place. The 2010 response stated they "would close the file" due to the "new laws."

Consumers are paying the highest possible price for this folly and being forced to deal with ASIC's appalling record of neglect.

BFCSA Members recently (September 2012) sent close to 300 letters to ASIC, complaining about Low Doc Fraud and Imprudent Lending by Banks, both of which are criminal offences. All the response letters from ASIC were identical and none of the complainants were given hope that their cases would ever be investigated. Yet ASIC has the temerity to suggest *if we have any evidence*, we should provide it to them and they will look at it. I am suggesting that this is the same empty promise ASIC officers have been making to consumers for ten years.

May I suggest that is the same empty promise that ASIC Officers have been making for ten years.

ASIC wants the Senators to believe it only has 17 cases of imprudent lending to deal with regarding the Low Doc Scandal. [Pg 7] ASIC suggests it investigates every case. **It certainly does not. Such assertions are false.** ASIC stated at the Hearing: “In the majority of cases, matters concern Loan Application Forms (“LAF”) to ADIs which have been identified are “reported” to industry. We have seen no evidence of this occurring.

ASIC fails once again to identify the Lender Engineered Service calculators which the lender refuses to hand over to its customers even though that vital clue to fraudulent allegations made by customers against the Lenders is attached to the customer signed LAF. **[Pg 7]**

ASIC is clearly telling the Parliament it’s the Brokers providing incorrect figures and we have been constantly advising ASIC it is the ADI’s to blame not the brokers. My files prove the above assertion by ASIC is plainly false. **ASIC answered all 300 letters** by suggesting they fell under the 1 July 2010 criteria that ASIC has set to rid its files of all the complaints stockpiled 2005 – 2010.

My files are full of ASIC letters of refusal to investigate claims, acquired since 1998.

Once again ASIC has told the Inquiry under Oath it sees “no systemic issues”. [Pg 4 and 7]

I am continually reminding ASIC it is their job to investigate complaints, not mine. They have powers to conduct raids against the banks and seize documents and computers. Those powers are laid waste.

ASIC tried to confuse the issue of Low Doc Fraud by diverting attention to the brokers’ part in the fraud, suggesting was all the brokers’ fault. This stance specifically ignored the fact the brokers wrote the true income figure in the “base income” box of the service calculator. The form and the Loan Application had to be then attached and sent by fax to the bank for acceptance or rejection of loans. Brokers were simply following instructions. The exaggerations referred to were computer generated by the ADI’s and Non ADI’s secretive processes. The Lenders had ultimate responsibility for approving these loans. ASIC know this to be true and yet failed to mention this as fact.

I object to the assertion made by ASIC [Pg 7] that the 400 letters it received were bona fide complaints which I have documentation on. ASIC is not telling the truth by saying those letters of complaint – all addressed to the Chairman of ASIC, did not contain individual details of complaints. I can assure the Senators, every person who wrote those letters of complaint is notifying ASIC of serious allegations against the banks, not the brokers. The evidence is contained in the documentation and clearly, ASIC’s expected response (as per public expectations) ought to have been to ask for further information as a bare minimum of reasonable complaint handling. It should follow that an in-depth investigation takes place. So serious are the allegations against the Banking Sector, we have already been able to identify numerous Lenders and predominantly our four Major Banks, but our members have no faith in such action taking place.

Consumers are learning from BFCSA (Inc) that complaints regarding the brokers who filled out forms in fact, in all cases of Low Docs and Full Docs, used the bank engineered service calculators which then instructed the Broker as to what income figure was “appropriate” to place on the LAF. This enabled the Lenders to approve imprudent loans and lay blame on the brokers. As explained in my evidence before the committee, the default rates are also hidden by the Lenders.

ASIC falsely asserts that BFCSA Members are mostly connected with one broker. I can assure the Senators that only 18 complaints from 700 Members relate to that same broker. Of all complaints we have are lodged with FOS against the Lenders, 97% are with other brokers and include bank managerial staff.

ASIC falsely asserts and named Ms Thompson, suggesting she has been charged with fraud. This is false and in need of correction. Ms Thompson has been charged in relation to Trust Account offences and nothing to do with Loan Application Forms. State Police agree her writing is missing from most of the LAFs uncovered in that particular case. This is plain laziness of fact finding on the part of ASIC at the highest level, and what we users of ASIC have had to put up with for 14 years.

May I also point out to the Senators, the valid observation that there is clearly no need for BFCSA (Inc) to investigate these cases if ASIC was doing its job correctly? There would be no need for me to represent the hundreds if not thousands of aggrieved in Parliament. People are coming into our door at the rate of 20 per week and that only occurs if the regulators have not abided by their own duties regarding consumer protection. As stated I have not seen a clean LAF as yet.

Once again ASIC is saying to me, YOU investigate the case, when it is clearly their JOB to do so.

The complaints to ASIC re those persons aggrieved by loans from BFCSA (Inc) members were written to ASIC in the context of the banks imprudent lending.

The Police have acknowledged the writing on the LAFs in terms of exaggerations is that of the banks and that the banks had multiple copies of the Faxed LAF. Evidence exists of Banks instructing Brokers to shred the original "wet-ink" LAF. This is precisely what occurred in the US with sub-prime loans. Mr Anthony Klan from The Australian has been running a series of articles on this particular subject.

I have been a constant critic of ASIC's regulatory neglect since 1998. Consumers realise ASIC was never their "protector." The losses are extraordinary and extremely stressful on families.

In fact it is the media criticism of ASIC born from evidence of regulatory neglect that has led to widespread public dissatisfaction in the complaint handling processes. In addition that same neglect has been responsible for numerous inquiries into the property banking and finance sector during the past decade.

In light of nothing being done for 10 years, surely there must have a Royal Commission as to why these instances occurred and, how Low Docs escalated and why the Firstmac case did not include the improper lending practices of the Bank.

It is not our job to investigate but as ASIC have said on so many occasions that they do not wish to act on these serious matters (400 recent responses). In that case, BFCSA will continue to provide a service to the public and continue to do ASIC's job for them. However, ASIC should immediately hand over some of its funding to the support group. We receive no funding other than membership fees.

ASIC by their false assertions and errors are just insulting us all and pretending to you, the Parliamentarians, that they will do their job when they say to customers and us, "send us the

material.” We have sent them evidence for 14 years and it has only been media intervention that has forced ASIC to take matters seriously.

The Media appreciate the evidence we send. ASIC identified these lender activities in 2001/2 according to the CCLS Report. Yet ASIC is suggesting its Review of 2011 to mislead us all. **[Pg 7]**

Public Trust in ASIC has broken down due to their own conduct the past 14 years.

BFCSA has identified 36 Lenders involved in these activities.

BFCSA has uncovered 4000 documents which demonstrate it is the Lenders who are running Sub Prime lending activities and providing incorrect credit impairment figures to APRA and ASIC. We rightfully suspect both regulators have known all the way along, yet hid this vital information from possibly Government, the people and the brokers for over a decade. Their earlier reports show the extent of this knowledge regarding Low Doc and No Doc Lending.

ASIC won't do their job, they don't want to do it and their only focus is on brokers and intermediaries, not the lenders who are the principal beneficiaries of the LAF scheme and who are **the only link in the chain who can remedy the fraud by compensating the concerned borrowers.** And it is incumbent on ASIC to do so because if they had assessed these loan applications on their merits, and simply telephoned the borrower to verify the LAF data, lenders would not, could not have made the loans in the first place.

ASIC's platform of pushing the NCL and hiding behind it as a panacea to all improper lending is utterly misleading for the same reasons:- the lender escapes liability. The NCL will NOT provide borrowers any financial relief because everyone in the chain besides the lender will not have the financial means to make amends.

ASIC is also promoting this furphy to avoid dealing with what it should have outlawed in the past. So what if the NCL is a step to better regulate from 1 July 2010 ? That doesn't help anyone affected before then and there are thousands and ASIC can assist them by taking on the lenders of the loans made upon falsified data. And, if ASIC weren't continuing to waste time on their media to avoid their responsibility, they could do something for anyone who is not statute barred and take action in respect of loans going back 6 years from today. **That means loans between October 2006 and July 2010 and that is an awful lot of bad loans they are leaving swing in the breeze.**

ASIC would have you think that their requirement for lenders to have an EDR is fulfilling their regulatory responsibility. **But FOS will only act if the debt is under \$280,000.** ASIC would have it that anyone with a loan exceeding that should not have any right to EDR ? And we can tell you that at least one bank states that FOS is their EDR and if your debt is beyond their charter, that's too bad.

The average loans amounts to \$600,000, from a sample of 700 complainants. ASIC has failed to protect these people who are mainly over 60 and most are pensioners and low income earners. So who is designated by Government to handle complaints that the EDR's are not licensed to handle?

This is a disgrace of monumental proportion and yet again, ASIC does nothing. ASIC is the very reason we called for a Royal Commission into the Banking and Finance sector in 2001, 2003 and

through to the present day. Our good citizens cannot trust the regulators to deliver the truth to Parliament.

ASIC seems to imply Full Docs are not affected and this infection is contained to Low Docs and this is false. Since the Inquiry I have conducted a survey of my members and **> 10% are complaints are regarding FULL DOC LENDING and involve direct contact with BANK MANAGERS/OFFICERS and no broker involvement.**

Of the 400 members that wrote to ASIC recently, **10% were complaints relating to the Managers.** ASIC sent every one of those people a form letter – what we call a “flick letter.”

Had ASIC treated every complaint seriously as it suggests [Pg 8] *“ASIC would assess the specific circumstances to determine whether to take enforcement action...”* it would have picked up on that point a few weeks ago. ASIC has consistently demonstrated it is incapable of making correct judgements regarding complaint handling, at Chairmanship level. These are hollow words to consumers and a wrong impression to Parliament.

The Chairman of ASIC ought to be ordered to give evidence in this Inquiry.

ASIC’s letter to BFSCA of 23 December 2011, is pure media spin and propaganda. Nowhere does it say it will do its job.

ASIC’s letter to BFSCA of 29 May 2012 says a court may consider the rights of parties and make orders, including for compensation, but how does someone with no money take court action and why should anyone have to if ASIC did what their Act obliges them to do ?

ASIC’s letter of 28 August 2012, is either or both mischievous or insulting. It says if BFSCA does ASIC’s investigatory job for it, it will look into it. But why would we, or should we, or how can we, do their job? They have powers and funds that we lack, yet we are achieving results.

All ASIC have ever proffered in response to LAF fraud is that it is a police matter. Lender fraud is not a State Police matter. It’s a Federal Police matter and the AFP is flicking the complaints back to State Police. That helps no one and it is not to the point when it has occurred in breach of ASIC’s domain of finance industry regulation.

In this scenario, ASIC are the Corporate Police. So why do they steadfastly refuse to police their own patch?

Anthony Klan of The Australian has conducted an enormous amount of research into this area. Once again it is the media exposure where truth is separated from ASIC’s fiction.

If BFSCA (Inc) had even a tenth of ASIC’s funding we could provide better protection for consumers than what has been afforded to them to date.

Conclusion and action

ASIC, the Government’s own regulator no less, has seen to the Government becoming a victim of the Low Doc scheme and a beneficiary through its RMBS holdings of the fraud perpetuated on thousands of naïve, yet innocent Australians, many of whom are too old or are infirmed to be able to

go back to work to pay off this debt. And neither should they. ASIC and the lenders must redress this and redress it now.

A board positioned above FOS, that has no monetary ceiling that can review debt and other matters would ensure that single decisions to close files are a relic of the past. FOS say re-opening cases are outside their charter. A board should act as an appeal tribunal for an aggrieved party to a FOS determination and must be put in place immediately to remedy these issues. All lenders, not just the ABA members, must be subject to it. More importantly, this board must not be stacked with lending types and, our lawyers must get a seat, if not two, on the three person board.

Consumers of banking products need a fair go. The evidence is overwhelming and the path forward is clear. A federally funded board will alleviate some of these immediate problems and go some way to restoring confidence in a tainted system.

Denise L Brailey

President

Banking and Finance Consumers Support Association (Inc)

***I can supply documents relating to all of the above.....