

## **BANKING AND FINANCE CONSUMERS SUPPORT ASSOCIATION (Inc) SUBMISSION TO SENATE INQUIRY INTO “PERFORMANCE OF ASIC”**

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This submission deals only with ASIC’s role and performance in the consumer lending arena and in particular, the area where it has not just failed to perform, but refused to perform.

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## **1. EXECUTIVE SUMMARY**

1.1 The objects (section 1) Of The Australian Securities And Investments Commission Act 2001 include:- (numbering as per the Act)

(b) to provide for ASIC's functions, powers and business; and

(2) In performing its functions and exercising its powers, ASIC must strive to:

(a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

(b) promote the confident and informed participation of investors and consumers in the financial system; and

(d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and

(e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and

(g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

1.2 ASIC's letter to Denise Brailey on 23 December 2011, effectively says that the only rule they take notice of is 2(d) and their interpretation of that is that "minimum of procedural requirements" includes doing nothing and trying to avoid doing anything.

1.3 ASIC could, and should, stamp out lo doc loans and require the lenders to extinguish all non compliant loans and compensate those who've already been signed up.

1.4 ASIC must unwind the agreement of FOS and COSL to restrict their exclusion of claims against non members to the previous position whereby any borrower could make a complaint to FOS.

1.5 ASIC must require that FOS increase its monetary jurisdiction or provide an EDR for matters that exceed \$500,000.

1.6 ASIC must require FOS to amend its Terms of Reference so that cases involving undiscovered fraud do not have time limits run against them until 6 years from when the fraud was discovered or should have been discovered as is the legal position.

1.7 ASIC must dissolve COSL or merge it with FOS.

1.8 ASIC must require COSL to accept that fraud complaints are also actionable civilly and referring them to the police does nothing to redress a borrowers loan because ASIC's acceptance of the lenders' six degrees of separation, ensures the lender is not a party to the fraud and therefore immune from criminal redress.

1.9 All these matters are within the scope of the sections of the ASIC Act set out above but are wilfully ignored.

## **2. THE ASIC ACT**

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 - SECT 1

#### Objects

(1) The objects of this Act are: (as relevant to lending practices)

(a) to provide for the Australian Securities and Investments Commission ( ASIC ) which will administer such laws of the Commonwealth, a State or a Territory as confer functions and powers under those laws on ASIC; and

(b) to provide for ASIC's functions, powers and business; and

(2) In performing its functions and exercising its powers, ASIC must strive to:

(a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

(b) promote the confident and informed participation of investors and consumers in the financial system; and

(d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and

(e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and

(f) ensure that information is available as soon as practicable for access by the public; and

(g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

### **3. OPENING**

Lo-Doc lending simply means loans made to less stringent lending guidelines. Originally, it was designed for, and worked well for, small businesses that could show at least two years or more trading background to prove viability. For the past decade, it has become another money making scheme for rogue brokers and lenders who use a loan service calculator, in which they enter exaggerated earnings and diminished liabilities, to 'prove' loan affordability, without the knowledge or authority of the borrower; the borrower's Loan Application Form ('LAF') is altered after signing. Only three pages of the 11 page document are presented to the customer. The other pages are added back at the office by internal staff. Across Australia this was known (by ASIC) as National Industry practice.

The six degrees of separation lending model appears to have been introduced to Australia in about 2003. Six degrees of separation, with all due apologies to Kevin Bacon, means that between the lender and the borrower, at least 4 other middle entities are interposed with the singular object of ensuring the lender, and its mortgage over the borrowers home, is at arms length from the lies, misleading conduct and outright fraudulent conduct of the brokers, managers and others as regards the false information that appears on the borrower's loan application form after the borrower has signed it as true and correct. As a matter of law, if the lender is not aware of the lies and fraud of an entity in the chain, it is not liable for it.

ASIC has continually shown an inability to provide consumer protection, is dysfunctional as consumer protector, and is incapable of serving the interests of two masters: Finance Products and Services Industry; Consumers of those products and services.

### **4. CONFLICTED FUNCTIONS**

4.1 ASIC is significantly conflicted by looking after the opposing interests of banks and their customers. ASIC has proven to be swayed by bank advantaged compromise since inception in 1998. ASIC has the choice of permitting lenders and planners to promote sub-prime loans and yet denies the right to consumers to be forewarned of the mechanics of these business models and the inherent risks of fraud and maladministration in lending, first identified by ASIC in its commissioned report from the NSW CCLS in 2003.

4.2 ASIC have by policy and practice decriminalised that which the common law and Parliament has deemed criminal conduct: namely the creation and use of fraudulent documentation to maximise business interests. *ASIC permitted Lenders to continue without impunity, to alter Loan Application Forms after the documents have been signed and without the the borrowers' authority or knowledge. This practice is widespread and concealed as ASIC delivered no instructions to banks to ensure all borrowers received a copy of the LAF when they signed to avoid additional information being added. This is the very basics of contract law and avoidance of fraud.*

Our Courts reflect this known and obvious conflict.

[Perpetual Trustee Company Limited v Albert and Rose \*\*Khoshaba\*\* \[2006\] NSWCA 41 \(20 March 2006\)](#)

[Permanent Trustee Company Limited v Gillian \*\*O'Donnell\*\* Permanent Trustee Company Limited v Di Benedetto Tonto Home Loans Australia Pty Ltd v Tavares \[2009\] NSWSC 902 \(4 September 2009\)](#)

[Perpetual Trustee Company Ltd v Alexander \*\*Kotevski\*\* \[2009\] NSWSC 1228 \(16 November 2009\)](#)

[Perpetual Trustees Australia Limited v \*\*Schmidt\*\* & Anor \[2010\] VSC 67 \(4 May 2010\)](#)

[Permanent Mortgages P/L -v- Vandenberg \[2010\] WASC 10 \(29 January 2010\)](#)

It is therefore inappropriate for Government to consider the best interests of consumers of financial products and services can ever be properly dealt with by the agency that it is also what used to be, the Corporate Affairs offices in each state.

An inherent regulatory Conflict of Interest between Industry interests and Consumer interest was first identified as a potential risk for consumers in 1997. Phil Hanratty, in his Wallis Inquiry into banking 'critique' of the new corporate regulatory system flagged this possibility in 1997. Seventeen years later, it appears these concerns are justifiably noted.

4.3 Ordinary Mums and Dads who have lost billions of dollars in life savings via Managed Investment scams and also billions of dollars in losses via sub-prime lending products and services, **known as Lo Doc Mortgage Loans**. Older Retirees and Pensioners have been the consistent and favoured target of white collar criminals In Australia, during the past two decades.

ASIC has assisted in the recovery of some funds, yet the percentage of recovery is embarrassingly small and may take up to years as in Streetwise. ASIC can only boast a small percentage of recovery as against the staggering billions in losses experienced by the older Australian community. All Losses were Preventable had ASIC conducted through investigations and enforced the law, recommending criminal action be taken against the perpetrators of the mass fraud: the banks and lenders.

**In the case of Lo Docs, the engineers of these products and the promoters are the Bank Executives who have developed a sinister and alarming appetite for delivery of toxic services.**

Consumers pay a dreadfully high price for being “uninformed” and such losses of superannuation and homes cannot be good for the economy. A strong and purposeful regulator with a determined mindset to enforce our laws, particularly in the area of fraud against vulnerable consumers, is therefore essential for families, for extended families and for the economy.

ASIC’s explicit failure to acknowledge these issue has given the “green light” to promoters of defective financial products and services, and the selling of faulty products continue to this day. Major Banks are free under ASIC’s failure to use its laws, to continue with impunity, to manufacture unsafe toxic mortgage loans. Our Major Banks continue to profit from these fraudulent loans, aided by ASIC’s non performance as a suggested provider of consumer protection.

There needs to be an urgent Royal Commission into the Banking Industry and hopefully a newly created Consumer Protection Federal Bureau to prevent such criminal activities in the future.

The Twin Peaks Model, of APRA and ASIC in 1998, took away the ACCC’s task as consumer protector and both newly created regulators have failed to deliver proper risk assessments of current financial products and services, particularly regarding Mortgage Lo Doc Loans.

### a) ANY BARRIERS – whether barriers preventing ASIC from fulfilling its legislative responsibilities and obligations.

ASIC’s three core responsibilities:

- **Protect Markets – Confidence in the Market Place**
- **Licensing of the Financial Sector**
- **Consumer Protection**

**ASIC’s Performance on Criminal Prosecutions against Lender Engineers:** ASIC ‘s consistent and prolonged refusal to delve into the banking mechanics of the LO DOC MORTGAGE product, refusal to lay charges against the engineers, despite the overwhelming evidence contained in the client complaint files, is powerful indicator of ASIC’s own barriers and lack of appetite for criminal prosecutions against known executive offenders. ASIC is content to prosecute the “sellers” or Brokers of the faulty products rather than the core responsibility of bringing the manufacturers to book. **Performance SCORE: 0**

**ASIC’s Performance in relation to cases where fraud by Banks is obvious.** Criticism of ASIC levelled by long time reporters: *“ASIC has decriminalised that which Parliament deemed as criminal behaviour.”* This specific reference relates to fraudulent Loan Applications in the Banking sector, circa 2003. Parliament and **our judicial system consider fraud to be a**

**criminal offence.** ASIC staff repeatedly treat fraud as a “misdemeanour” evidenced by the form letters telling complainants who have furnished ASIC with evidence of fraudulent lending practices to *“seek advice from a lawyer....ASIC will not be taking action at this time....ASIC can find no evidence to suggest.....etc”* **Performance SCORE: 0**

**ASIC’s Performance lacking in action: Consumers are disenfranchised:** Consumers are attempting to group together due to an overwhelming feeling of being disenfranchised. Grass roots consumer groups only rise up when endemic problems are obvious: a key indicator of non performance by the regulatory body.

ASIC are acutely aware that when people have been crippled financially by DEBT, they have zero funds with which to *“seek legal advice.”* The chances of launching a defence against the banks via the courts are remote unless ASIC provide funding. It follows that justice for aggrieved consumers of criminally tainted financial products is non-existent.

Lenders and sellers are the only people to benefit from this lack of enforcement and systemic and inappropriate regulatory secrecy. Lenders frequently boast handsome profit from sub-prime loans and associated fraudulent products. The Business Model is all about the profit at any cost. Lenders are therefore advantaged and rewarded by non regulatory action or intervention.

Consumers are adversely affected by this lender unfair advantage. The Barriers to proper consumer protection are the fault of ASIC’s long term laziness and attitude leading to a decade of well-founded criticism from consumer users of its services.

The commonality of complaints from Group Membership is both consistent and alarming. Consumer of banking products harboured an unrealistic understanding that ASIC ought to take action against the creators of devious and high risk financial products.

Moreover, the regulator knew the protected players were likely to intentionally leave a consumer in financial ruin, driven by greed for obscene profits and bonus structures.

**Performance SCORE: 0**

**ASIC’s Performance dealing with Commonality of Complaints:** The age groups (50 – 80+) suggested from the outset it was a ruinous path from which the victims could never hope to financially or mentally recover. The knowledge of regulators included the fact that lender generated strategies created by banking institutional promoters and legal minds, ensured all of the product information had been available to ASIC for some years.

ASIC freely admits: **“Banks are the Engineers.”**

Our argument is that it is far better to stop the looming catastrophic failure when say \$100 million has already been taken from innocent people, than allow the practice to continue

and escalate to multiple losses. **Example of Westpoint** dangers raised with ASIC in 2000, multiplied to \$400 million within 5 years caused by one favoured promoter.

In fact, 30 other similar models reported to ASIC collapsed within five years with losses amounting to more than \$2 billion.

ASIC has continually ignored grass roots warnings of impending collapses and crisis. These are precisely the outcomes thrust upon innocent citizens. Consumers, according to our research and surveys show that almost all of the consumers affected who are BFCSA members, could have avoided serious loss, had ASIC delivered detailed warnings and simultaneously took criminal action against the promoters. In particular, ASIC ought to have immediately banned unsafe products. **Performance SCORE: 0**

**ASIC's Performance in preventing Lenders from delivering faulty financial products to the general public:** ASIC discovered the chronic effects of Lo Doc Lending and the targeting of ordinary older Australians, in 2001 and in 2002. The 137 page NSW CCLS Report pointed out growing concerns regarding Lo Doc Lending and exaggerated income figures (unknown to the borrower) in 2003. At the same time ASIC was being briefed by members of the RECA Group as to unaffordable loans being approved by a particular key industry player.

ASIC permitted the lender to change its name during the middle of an investigation into 51 significant Lo Doc complaints ASIC had received from consumers, in 2004. It was business as usual using the same Model, under a new name with ASIC's blessing! I know of 48 homes lost due to ASIC's neglect of these particular complaints. History will show its likely to be more than 100,000 homes lost. All should be compensated for defective loans from 2003.

Inappropriate financial plans and strategies were being placed by untrained "advisers" before trusting borrowers. ASIC conducted several shadow surveys resulting in plans that were classified as "down-right frightful" in Choice Magazine in 1995,1998 and three others from 2000 onwards. Only 10% of planned "strategies" on average were classified as "good."

Brokers are giving financial advice and yet not licensed to do so. The restricted broker licences are approved and controlled by ASIC. The public do not know the differences in the thousands of licence numbers on issue. It's a complicated network. Banks know Brokers cannot give advice. Brokers are there to fill in forms for banks to profit, yet ASIC know the strategies used to sell Lo Docs are predicated on a bank driven "strategy" which is a financial PLAN.

Yet if the strategies are not used there is no sales spiel. Therefore no sales occur and, no profit enjoyed by banks. ASIC has been turning a blind eye to its own reports on strategies and plans for years. ASIC has known the big cash cow for Banks are the Lo Doc product and the Brokers are used as pawns to take the blame. Banks planned the immunity from

prosecution. If loans are set to implode in six years then FOS will claim “complaint has run out of time!”

Banks used computers to “approve loans.” These computers were geared to rarely reject a loan but to “**make it fit.**” Our email evidence shows this being used as terminology in conversations between banks and brokers.

Computerised Approvals were the scourge of American lending and well known here by ASIC staffers. Banks also intentionally hired “Bank Officers” recruited to become glorified sales personnel **to teach unsuspecting Mortgage Brokers how to use the Bank generated Service Calculator.**

**Passwords are supplied to Brokers** to enter the Banking system and use the Bank’s Service Calculator – the calculator was geared differently to intentionally “upgrade” exaggerated incomes. **In other words the Banks’ own computerised system multi-fudged the income figures and other cost of living data and tax rebates etc.**

This occurred on every LAF and why my evidence last year in Parliament explained: “I have not seen a clean loan so far.”

Business Development Managers (“BDMs”) are hired to promote bank engineered **financial strategies** to mostly older and elderly people – those who have equity in their homes and no mortgage and specifically enjoy an AI credit rating. The Banks referred to this **target market** as ASSET RICH and INCOME POOR (“ARIPs”).

Brokers merely copied the highly inflated figures onto the Loan Application Form, as instructed by the BDM’s. ASIC has been fully briefed on this model and does not deny its use. BFCSA has provided emails to show that BDM’s were, in some cases writing up “the apps,” for the Brokers to “Pump up volume of business” and communicated those details on emails between banks and brokers.

Since the activity of Fraudulent Loan Applications was first made known to ASIC, all major banks and non bank lenders continued to use the same Model with impunity, and each lender targeted ARIPs. By mid 2006 these same high risk loans were being sold to first home buyers with disastrous financial consequences. **Performance SCORE: 0**

## **b) Accountability Framework to which ASIC is subject, whether needs to be strengthened.**

**ASIC Poor Performance take action against the Broker/ “sellers” and not the LENDERS:**  
The engineers and manufacturers of sub-prime lending products and services have

remained immune from prosecution for over a decade. Lo Docs are particularly profitable for banks but ASIC is **permitting the Lenders to profit from a fraud** of their own making.

ASIC have by design or default given immunity from prosecution to the Lo Doc laboratory technicians and engineers. A staggering 80% of consumer complaints are against Australian Major Banks who command a reported 85% market share of Lo Doc or sub-prime lending: Westpac, National Australia Bank,, Commonwealth of Australia Bank and Australian and New Zealand Bank.

Any other “manufacturing” Industry harbouring such wide spread faulty products, causing such chronic financial failure for consumers, would be considered a major public and parliamentary scandal.

ASIC did raise the issues of risks to consumers associated with “Commission driven” financial products being openly detrimental to consumer’s financial well-being.” However, after 14 years of consumer complaints to ASIC, that specific problem still remains. Current financial “advice” is no better than a clever sales-spiel and wide open to abuse by all commissioned parties involved. Our BFCSA files are full of consumers demonstrating how lethal these products are in the Lo Doc marketplace. Regulatory inaction is a direct cause of a **potential overall loss of \$57 billion worth of Lo Doc Mortgages**. Compensation for losses could be a major factor of legitimate court claims in the foreseeable future.

**BFCSA Members are unable to find one clean loan.** Every loan from nearly 800 received is toxic and fraudulent and some have complained of blatant forgery of signatures on applications and contacts which they have only recently recovered copies of.

**We say the lack of full copies of the entire files as standard industry practice is the proof the intention of banks and lenders to engage themselves in deceptive practices.**

ASIC admitted that advice given by commission driven players is unsound and fraught with risk. Yet ASIC failed to advise Parliament or Treasury that the products were creating massive losses for the customers for the past decade. Risky products are being sold to people to encourage them to believe: *by borrowing money you could become better off financially* by following such “trusted and sound” advice delivered by the Banks and their officers and agents.

- **BFCSA surveys show that 36% of all loans are arranged by Bankers and NO BROKER involved.**
- **18% of all toxic loans are FULL DOCS arranged by Bank officers or staffers: No Brokers involved.**

The irony here is that the “sellers,” are licensed by ASIC as sellers, but are NOT trained or licensed to give any personal advice that may in reality, alter people’s financial well-being.

As sales aids: Bank trained BDM's convinced the brokers they were "helping people" to become retirees and no longer have need of the pension. Brokers will be shocked at this report but they will start to see how the mechanics of the scandal made fools of themselves also. Many brokers became "privileged borrowers."

**The toxic products were 30 year loans set to implode with 4 – 6 years: enough time to avoid six year statute of limitation argument used by ASIC and its EDRs.** Low interest rates had stings in the contracts rising to 10% - 18% within two years or less becoming horribly unsustainable.

Whilst ASIC identified the risks associated with commission driven financial products, ASIC failed to curb commission only products from being promoted in the market place, directly attributed to their refusal to commence investigations into the executive level of banking. Specifically, investigate the engineering and manufacture of the faulty financial products.

Banks had in fact created products fraught with consumer risk and then devised mechanisms to avoid detection of their own creativity and intent to deceive: avoid risk and blame and take all the profits. **Performance SCORE: 0**

**ASIC has managed to make a mockery of consumer protection in Australia.**

**ASIC's Performance on recognising key indicators of fraud:** RECA (Inc) 1990's – first understood that lenders, developers, lawyers, accountants and financial planners, were working as a cartel-like industry whereby business models were being cloned to the detriment of retirees. **The feature product** preferred by a Cartel of Bankers operating in all states of Australia manifest as the humble mortgage: the mainstay of the great Australian dream of home ownership.

Key Indicators and patterns emerged in 2002 showing systemic issues in Banking. Evidence collected by RECA, and later continuation of investigations by BFCSA, showed systemic Loan Application Form abuse and indeed further evidence of **Deposit Bond fraud in the insurance industry**, involving the same bank driven property/borrowing strategies. Insurance companies used the same bank service calculator programs and a variety of NET SERVICING RATIO's appeared applied to in each case. Fraud was found to be rife in the banking, finance and insurance industries commencing soon after deregulation of the Banks in 1986.

So called "prudent lenders," making a mockery of the Banking Code, took none of the risks or blame for any catastrophic financial disasters and passed on all risk and blame to Consumers. Hence the Broker Model was deliberately engineered to permit lenders to avoid liability for any of its sub-prime lending activities. ASIC had watched this long term loan engineering with interest, yet failed to protect consumers from financial ruin by a simple initiative of banning these products.

Furthermore, the Banking Code only applied to Banks and not to Non Bank Lenders and ASIC failed to warn consumers of this extremely risky situation. ASIC failed to lobby Parliament on this issue as far as the public are aware.

Consumers have no way of knowing whether this information is being passed on to Treasury as to the true nature and extent of toxic sub-prime lending In Australia. ASIC ignored every key indicator thrown at them by consumers. **Performance SCORE: 0**

**ASIC's Performance in speaking truth to Parliament:** The identification of a clear and present danger to Australian consumers of banking products has been further frustrated by ASIC's suggesting to Parliament these are isolated instances and there are specifically "**no systemic issues.**"

In 2005, Major Banks took control of **85% of the Lo Doc market**, yet ASIC neither warned the public, nor took action via the courts against any lender. Banks boasted their intention to go after the expected **\$50 Billion target market of ARIPs: pensioners** with high worth land and modest homes and brought up on trust and confidence of the banking sector.

For a staggering 14 years, ASIC turned its regulatory back on these victims of the future scandals that are only now, bubbling to the surface. ASIC has in fact created an extreme LACK OF CONFIDENCE IN the Banking and Finance Sector despite confidence being a core responsibility for ASIC's key role of duty and oversight of the Banking and Finance markets.

To suggest the evidence presented by BFCSA, its members and thousands of other consumers is in fact "**mere marketing**" is pure farce and deserving of a Royal Commission into the Australian Banking Sector. **Performance SCORE: 0**

**ASIC's Performance in curbing the proliferation of Lo Doc Lending:** The Bank Engineered "Target Older Persons" campaign delivered to their agents, developed a target market of ARIP's". Thousands more vulnerable people became entrapped in Lo Doc products and have either lost their homes or will be facing the same fate in the coming months.

Had ASIC banned the Lo Doc products, from inception, every one of these people could have been saved the misery of homes lost. ASIC's regulatory negligence is the root cause of these losses which could eventually affect 100,000 families.

We know that the tally of loans written is, according to the RBA Nov 2011, at \$57 billion of a \$1.278 Trillion mortgage market. Yet the 18% of toxic FULL Docs make these revelations worthy of serious investigation in the immediate future. Failure to heed these warnings may have catastrophic implications for the economy as expressed by APRA in August last year. **Performance SCORE: 0**

### c) Workings of ASIC Collaboration & working relationships – other regulators and law enforcement

**ASIC's Performance in the Bank Engineered Service Calculator Scam:** I met with another Commissioner in February, 2013. The Chairman of ASIC had written to BFCSA, asking that I produce the evidence mentioned to the Senate on 8<sup>th</sup> August 2012 (2.15pm). The evidence was twofold:-

Firstly, the service calculator was ATTACHED to the loan application form. Banks insisted The clients sign to say “we have read and understood everything” and were then given only three pages to sign from a bundle that was usually 39 pages thick! They received no copies of this bundle. The Banks now say the “service calculator is an internal document with sensitive information!” We know, as we have recently uncovered a few of these gems including the work sheets. So if the Service Calculator printed form was ATTACHED to the LAF why is it classified as an internal document and why are ASIC and its EDR's presumably under direction of its regulatory masters, siding with the banks and refusing to sue their powers to demand those copies of the entire bundle be handed over?

It is obvious to our members that the LAF and the service calculator ATTACHED, played a crucial role in the fraudulent conduct of the banks to enable automatic computerised approval of mortgage loans and credit cards. **ASIC had plenty of these copies, dating back to 2002** received by the regulator, from **over 90 of our members in letters to ASIC in July 2012.**

An additional **53 letters were sent without the evidence attached, but with** a description and a specific **List of Discrepancies** added *after the signature was obtained and without the consumers knowledge or authority.*

Why has ASIC refused assistance to consumers? Why has ASIC failed to use their extensive powers of recovery of the very documents customers ought to have been given copies of from the very beginning?

ASIC claimed in the Senate, these letters were mostly relating to 2003 – 2004. **That is false. The majority are 2007 – 2009** and more are appearing post 1 July 2010 as the buffer loans and refinancing continues with the same banking players involved. ASIC told Parliament that BFCSA had complaints coming from one particular broker. **That is false.** On record, less than 1.5% came from the named Broker/whistleblower. ASIC told Parliament the Broker was charged with fraud relating to the LAFs. **That is false.** The charges related to missing monies after the Police looked at the LAFs and realised most were in the handwriting of the Bank's various BDMs and Credit Assessors.

**The next bundle of evidence was in the form of emails.** I have been given approximately 2000 emails from one computer yet mass emails were sent to the Broker Channel across the

nation (some 20,000 brokers) by at least 30 lenders identified, including the four Major Banks.

ASIC Executives sent me a total of six emails stating they were willing to set up a meeting to receive this vital evidence. The evidence was not named, yet the phone calls established clearly, **ASIC required the EMAILS in my possession**. It was obvious the Major Banks would have wanted to know what evidence we had obtained. ASIC already had over 100 LAFs that our members had provided as evidence of bank fraud.

**There was no doubt the “evidence” required by ASIC were the 2000 EMAILS.**

**The ASIC / BFCSA meeting occurred February 4<sup>th</sup>, 2013 in Perth.** Upon arrival, ASIC Commissioner tried to suggest they were expecting the LAFs as evidence. I realised this was a set up and, I had travelled 200 kms to deliver the email documents. I offered that since the EMAILS were of no interest, I would immediately return home.

I mention this incident as the epitome of frustration in dealing with ASIC. The ASIC lawyer knew very well he wanted the EMAILS and had rang me personally to discuss the content of emails in my possession. I told him I was “sanitising the emails first and would take some weeks to do so.

1) **ASIC had collected fraudulent LAFs as evidenced by the reports in 2003** and other letters over the years, and by the 90 people who attached their LAF to complaint letters in July 2012.

2) **ASIC had written flick letters to each of the complainants and no investigations took place** on any letters ASIC received in July 2012. The letters from ASIC were **form letters** to suggest “*ASIC will not be investigating this case,*” and “*seek a lawyer...*” in the full knowledge that people mired in debt have no funds to consult with lawyers.

The meeting started from that point. ASIC clearly wanted to see the EMAILS.....and wanted to take them away for forensic analysis. The ASIC lawyer immediately flagged the first few in the pile of 250 hard copy emails, as being “**mere marketing,**” ie: the documents held no significance for ASIC and neither did the examples of conversations and specific email **references from Bank to all Brokers regarding the service calculator**. As always they had pre-empted the outcome of the meeting and were in “manipulation of evidence” mode.

Two months later I had to drive the same distance to recover my documents. Despite this two months timeframe, and the value of the briefing. ASIC had failed to identify the obvious service calculator fraud from within the banking system and that the practice of exaggerating incomes using the bank calculator by credit assessors was endemic.

ASIC’s so called forensic team failed to see the fraud or wrong doing as to maladministration in Lending and alteration of documentation by bank insiders *after the borrower had signed and without their knowledge or consent*. **Performance SCORE: 0**

## YES: BANKS ARE THE ENGINEERS

The only useful thing to come from that meeting being the Commissioner admitting **the “Banks are the Engineers.”** Of course they are. The Credit Assessors are not told the service calculator is fraudulently set to a different gearing to the Brokers. The BDMs did not wake up one morning and have an epiphany and decide to all promote the *“good news you can now do ABNs for a Day”* or the *“the service calculator must be attached or we will not process your deal,”* or *“no GST required...”* Or *“target older persons,”* and the list goes on. All of this was contained in the EMAILS ASIC were so desperately wanting to lay their hands on but ASIC’s purpose was a thinly veiled attempt to discredit the evidence to protect the Banks. **Performance SCORE: 0**

**ASIC’s Historical Performance on working with consumer groups:** If ever there was a key indicator of poor judgment in products to be sold to vulnerable citizens, the ARIP acronym ought to have set off alarm bells in 2005.

Sellers were told to hit new ARIP markets: older persons who owned modest homes in inner metropolitan districts but could be ripe for the “Jumbo Loan Strategy.” Emails from banks to the entire broker channel, some **20,000 people employed** on commission and bonus incentives offered by banks, **were told: “target older persons.”**

The reasons were given as follows: **ARIPs have no debt, no mortgage and an AI credit rating.** The credit ratings became a key plank in selling future RMBS products.....another lucrative money spinner for the banking fraternity. Residential Backed Mortgage Securities split the mortgage and sold the INCOME Stream, knowing these products were fraudulent and unaffordable.

The Master Bank plan was **to tap into this \$50 billion market and within less than 6 years \$57 billion of toxic sub-prime loans had been “signed up.”** I was a guest OF THE Bank with a front row seat at the launch of this new campaign by Bankers to 1000 Planners in 2005.

The plan by the executive lenders engaged in Lo Doc and No Doc lending was to load debt upon people who had little or no prior debt. The Banks KNEW they were marketing unaffordable debt in direct contravention of S25.1 of the Bankers Code. The gleam in the eyes of top level Bankers was a trail of fat bonuses and profits. Good conscience did not get a mention. The lucrative commercial goal being: “a new \$50 billion market.”

The initial Engineers flagged the Model to all other banks, as occurred in the USA, to enable the “practice” to expand and become entrenched as “Too Big to Fail.”

The Lo Doc Loan scandal was born of greed and permeated the FULL DOC market. Every customer was encouraged to buy two homes to assist with a false and therefore risky “retirement plan.” These plans were sold by banks as being *“safe and secure as houses.”*

Our surveys show 18% of all TOXIC loans surveyed are FULL Docs arranged via bank staffers and managers – **no brokers involved**. 36% of Full Docs and Lo Docs are arranged by Bank Managers and staffers and no broker involved.

Two big name Non Bank Lenders in particular, had been using this model for two decades and one appeared on ASIC's radar in Western Australia and Tasmania in 1999 during the mortgage scams. I still have those documents.

Historically ASIC has known of this model for years. Retiree money was suspected as being on-leant to Pensioner borrowers. I reported as much to ASIC with documented evidence in the late nineties. I flew to Tasmania and delivered the initial "altered" LAF's to the Tasmanian Commissioner of ASIC. This became front page news in 1999. I warned ASIC this could be a \$5 billion scandal. I warned ASIC WA of the mistrust of a particular Victorian Lender. The initial pieces of the jigsaw had already emerged well before 2002.

ASIC attended a privately funded Supreme Court defence challenge in 2009. ASIC was the interloper and offered "*brochures*" to express its concerns. The Judge and counsel for the victims expressed annoyance. I was there in the court with the victims. ASIC then tried to tell Parliament the High Court thanked ASIC. That's a bit of licence and unhelpful to the victims of these toxic loans. ASIC was the interloper wasting everyone's time, on each occasion.

I had asked the ASIC Chairman for funding for this particular case in 2005 who refused by writing to me "**it is not in the public interest to do so.**" The **Jenman Group (not ASIC)** came to the rescue of the "public interest" and funded the ultimately successful Supreme Court, Appeal Court and High Court challenge, after I spoke with the committee regarding seeking funding and what the key issues were in relation to the evidence at hand. ASIC refused to fund the case but later tried to take the glory.

I am still in touch with several families. The three representative victims won their case, no thanks to ASIC at all. They had received the same "form letters" from ASIC that everyone else receives stating: "*we can see no evidence.....*"

It took me a further three years to discover the existence of the service calculator and **Identification Verification Statements** signed by Brokers and Bank staff as a Bank statutory obligation. ASIC knew of these statutory requirements, but kept quiet in favour of the lenders, and refused to acknowledge their existence to the detriment of all other consumers. This vital piece of evidence, discovered only recently by BFCSA, proved the Brokers were acting as agents of the Lenders and without this vital document no mortgage loans could be approved.

In some cases, like Schmidt, Appeal Court Judges have found the brokers are indeed "agents of the banks." These landmark cases were privately funded by grass root support groups, never by ASIC.

Of further concern is the fact that ASIC's EDR's continually try to intimidate and harass consumers to produce documents but uses those financial tools to inform lenders of whatever is discovered. Yet no-one is forcing Banks to produce their documentation.

**Performance SCORE: 0**

## d) ASIC's Complaint Management, Policies and Practices

**ASIC's Performance in alerting Parliament to known systemic issues:** Banks are suggesting "low risk" on their high risk products. ASIC (8<sup>th</sup> Aug), told the Senate Inquiry into banking Post GFC, there were "no systemic issues." ASIC intentionally suggested brokers engaged in selling the toxic loan products, yet failed to notify Parliament the Banks are the Engineers and Manufacturers of Lo Doc products.

ASIC knew its licensed External Dispute Resolution Service providers were experiencing a **363.8% spike in the number of consumer complaints regarding mortgages 2008 - 2012.**

ASIC failed to report to Parliament those vital details. **Performance SCORE: 0**

**ASIC's Performance in risk determinations to protect consumers:** ASIC's practice of permitting Lo Doc manufacture and selling to continue, with little to show for enforcement of law, has placed all consumers of financial products and services in grave danger of losing their homes. **Performance SCORE: 0**

**ASIC's Performance at Consumer Confidence:** at merely doing occasional "shadow shop surveys" has since 1998 failed to curb "downright frightful financial plans" as suggested in Choice April 1995 in subsequent and similar surveys. Confidence in the market is the very essence of what citizens expect of Good Governance. Shadow Shops are merely window dressing to wrongly suggest ASIC are doing something worthwhile in protecting consumers from predatory lending practices and protecting the financial markets from becoming toxic..

ASIC failed to create a fair and equitable market place. The Industry players are privy to information not afforded to consumers. Why is that? ASIC created an extremely unlevel playing field evidenced by the spike in the number of consumer complaints against Lenders and mostly against the Major Banks. ASIC by its own failure to recognise fraud as a criminal activity, has created the catalyst for a lack of confidence in the banking industry.

**Performance SCORE: 0**

**ASIC's Lack of Performance Endemically Entrenched:** ASIC by its own lack of professional and reliable performance are pretending to assist consumers but their **reactive policies** produce the opposite outcomes. Numerous reports of ASIC's incompetence emerge only after media intervention, exposing uncomfortable stories featuring ASIC's negligence. Exposure motivates ASIC to then issue a series of press releases suggesting "we will get

tough...” or “we will be doing something. These regular attacks of the “willbees” frustrate consumers who have used the system and have been left utterly disillusioned, by the experience. ASIC’s dogged approach to POLICY of being reactive (badly) rather than proactive (non-existent) is one of the root causes of consumer losses escalating into the Billions of Dollars and posing a threat to the economy. **Performance SCORE: 0**

### **FINANCIAL SCAMS AND LOSSES revealed by anyone but ASIC.**

This short list demonstrates ASIC’s continual failure and lack of any credible performance to act in the best interests of consumers of financial products and services.

**Finance Brokers Scandal 1998** demonstrated consumers at risk – mainly elderly retirees. Records show \$120 million in losses, a large percentage of which was eventually recovered. Whilst the States bore the brunt of the blame for neglect, the lion’s share of these losses in 2000, were the results of licences handed out by ASIC to the major players in the Solicitor Mortgage Scams of the 1990’s. ASIC had abrogated its rights to deal with consumer complaints to the State Law Societies who became infected by the very people who were profiting from the infamous Managed Investment Scheme rackets. Laws relating to “prescribed interest” were available to the old ASC but ignored.

ASIC listed 127 law firms heavily involved in the MIS rackets: and a total of \$1.5 Billion in losses in 2001, Australia wide, became the focal point to suggest ASIC take back the responsibility for handling consumer complaints. Yet the evidence and extent of the losses were not known by the public until the media started to report the horror stories emanating from grass roots consumer groups, years after the damage was first reported.

### **HISTORICALLY ASIC’s Performance in using historical evidence to enhance future outcomes: ASIC LOW DOC REPORT 2003**

ASIC commissioned a report on this very subject in 2002, released in March 2003 by the authors: the NSW Consumer Credit Legal Service. ASIC had avenues it ought to have taken at the time by prosecuting the Bank Engineers of the faulty toxic Lo Doc Mortgage loans. Such action, had it been taken in 2003, would have sent out a clear and very public warning to the lenders, that such behaviour would not be tolerated.

**Today in August 2013**, consumers using ASIC’s complaint handling services are appalled at the lack of investigation into serious allegations of fraud in the banking sector by lenders.

Numerous motherhood statements are issued by ASIC by way of form letters to complainants only after we have reported these activities to the media. Cases are media driven that ASIC merely offers “commentary” to suggest they are looking into the matter and an investigation is under way. In reality, cases are routinely shelved according to those who “used to work for ASIC” and, according the users of the system. The truth bears

witness in the previous decade of statistics: a lack of “enforcement of law” evidenced by ASIC’s own statistics in their annual reports. **Performance SCORE: 0**

### **INTELLIGENCE TO ASIC: High Level Meetings**

During my time in dealing with ASIC: 1998 – 2013: as President of RECA (Inc) and later as President of BFCSA (Inc), I have held numerous meetings with ASIC commissioners, lawyers, directors of enforcement, deputy chairs, etc.

ASIC appear to consult with Lenders and Finance Industry people, on a monthly basis. They rarely consult with consumers. We are the only known grass roots group that actually investigates the industry players, road test their products and deliver tangible “intell” to ASIC, according to one Director of Enforcement. Yet meetings are scarce.

Memory was considered a long term part of excellent policing. As the face of the old ASC changed in 1998 to the new ASIC approach to regulation of “free markets,” ASIC altered its policies to that of collecting data and “monitoring” rather than a good old fashioned “lets round up a few of these villains.”

In an ASIC public seminar in 2004, an ASIC lawyer in South Australia admitted: “we just help the directors out with a bit of compliance; unfortunately he continued the same activity.” This recorded remark was in response to the audience’s concerns that 13,000 people had lost \$60 million after ASIC first investigated the well known spruiker/promoter in 2001 and 2003.

**ASIC’s Performance track record has been abysmal:** In our experience an investigation is only announced in response to a public outcry via the media. One year later those investigators have moved on and the investigation file is closed.

### **WHAT DOES ASIC REALLY DO?**

Pierpont wrote a similar headline close to two decades ago. Yes ASC is the fore-runner to the ASIC but the public criticism has not changed regarding their performance: “*Shareholders wouldn’t have to worry about searching companies if the ASC was doing a good job of policing them. The fees (most expensive in the world – some countries it is free) are meant to pay for better regulation of Australian companies. Given the ASC’s abysmal track record in convicting corporate felons, we’re not getting our money’s worth.* Pierpont describes the public as *suffering fearful deprivations*.”

Pierpont’s experience with the ASC services was described by the scribe as “*scuttling back inside the castle, pulling up the drawbridge and in future intends to deal with the ASC only by pouring molten lead on its chaps if ever they venture near the battlements.*” Bulletin 16 May 1995. **Performance SCORE: 0 in 1995, and Performance SCORE: 0 in 2013**

## e) Protection afforded to Corporate and Private Whistleblowers

**ASIC's Performance in foreseeing a spike in the number of defaulting loans and home repossessions:** Due to ASIC's refusal to prosecute Bank Executives, the true figures of impaired credit loans have been hidden for over a decade. The lack of enforcement of law has caused bad lending practices to escalate and there will most assuredly be consequences for future Governments including housing bubbles. **Performance SCORE: 0**

**ASIC's Performance in the identification of trends emerging:** Information from whistleblowers within BFCSA's organisation and its predecessor have been ignored for over a decade. BFCSA surveys of some 800 members of whom 400 took part, show 18% of all toxic loans are FULL DOCS – unaffordable loans to people, with no reasonable expectation they can meet repayments except by “buffer monies” and Lines of Credit.”

ASIC knew that in the Banking Sector's LOCs are the preferred weapon of choice. Only 64% of toxic loans we have surveyed are written by brokers. Had ASIC taken notice of those whistleblowers and their evidence losses would be in the millions perhaps but not in the billions of dollars as we are now experiencing. ASIC's attitude to whistleblowers has led to the justifiable criticism being levelled at ASIC. **ASIC has acted as if a law unto themselves.**

One Commissioner claims: “it's not a crime to write up an unaffordable loan.” It's not corruption of the system.” **Performance SCORE: 0**

**ASIC's Performance in keeping the public fully informed:** ASIC's regulatory response has always been: “*that's an operational matter and we cannot comment.*”

The secrecy surrounding ASIC has become such that ASIC has demolished any trust it could have earned had it treated consumers differently. ASIC is incapable in our experience of dealing with traumatised victims of bank fraud and in the delivery of proper consumer protection policies.

Consumers have failed in their repetitive quests for any satisfactory investigations into serious allegations of fraud to be taken seriously by the corporate regulator. All of their complaints involve financial products and services. ASIC employs over 300 investigators. We are yet to see a purpose of expenditure if investigators are consistently told to close files. Whistleblowers are rare, due to the perception of corruption.

ASIC'S Correspondence department has been on over-drive producing designer “flick” letters, intended to discourage consumers from going further. ASIC fails to address the bigger consequences looming for the economy, as experienced in other countries that have been caught with sub-prime lending practices. Enforcement law in cases of fraud and forgery should be mandatory.

Since inception, **ASIC has managed to spend its ways through \$6.75 Billion** yet losses experienced by consumers have gone from an initial average of \$100,000 per person to a staggering **\$600,000 per person** and have possibly reached over \$60 Billion in total.

BFCSA has achieved more than ASIC, in terms of outcomes of investigations, on a modest budget of \$40,000. ASIC's Performance on protecting consumers and charging executive offenders with criminal activity has been extremely poor. **Performance SCORE: 0**

**ASIC's Performance regarding weeding out rogue Liquidators:** As collapses occurred around the nation, now involving Billions of dollars and not mere "millions," liquidators came under the media spotlight. Once again ASIC had been delivering motherhood speeches to the Insolvency Practitioners, yet little action was being taken to protect the interests of consumers who had been fleeced by spruikers, developers, lawyers and banks but, here we had liquidators heavily conflicted by the very nature of their work and complaints poured into ASIC.

In 2004, I personally attended many of the creditor's meetings for collapsed companies and became alarmed at the DOCA's being promoted by liquidators to the innocent victims of these hazardous financial products being sold to unsuspecting consumers. I was appalled at the fees being gouged from the aggrieved.

Citizens were left complaining about the **Managed Investment Scheme entrepreneurs** and now aggrieved consumers have had to write to the same regulator regarding the liquidators. ASIC responses from the Commission have always been the same cut and paste: "we share your concerns."

Consumers were vocal in 2005, regarding their annoyance at ASIC merely "having concerns" and delivering "will bees," and motherhood statements.

The issue we have had in developing support groups is that we are constantly underfunded at a grass roots level, yet ASIC has funds that enable them to engage some 300 investigators who displayed a sustained inability to detect financial disasters from blatant and obvious advertisements in the metropolitan newspapers.

An inequality in the system has failed consumers time and again. The performance of ASIC can best be described as woeful and ineffectual at being proactive in avoiding mass carnage of life savings and loss of homes. **Clearly there are systemic issues within the banking and finance sector and also within ASIC's investigative efforts.**

Consumer's specific risks lay at the heart of ASIC's refusal to take immediate action and amidst continual denials from a succession of ASIC Chairmen, Deputies, Directors and Commissioners.

Chairman Medcraft's Gatekeeper system is now appearing to be a shambles. His admittance, three years ago, that Disclosure Policy is not working and is a very real issue but nothing has been changed.

Time and again in Creditors Meetings in all States of Australia, I have stood up and asked the question: Are there ASIC officers present? The silence is deafening. I continually inform ASIC Commissioners: *"this is not my job..."*

ASIC hand over their data to Liquidators who then make the reports disappear. ASIC needs to have regard for: Australian Standards ISO 10001.

ASIC's excuse to serious allegations of their own misconduct in dealing with white collar criminal activities has been the Nuremberg defence: "we were just following orders/policies." Whose orders? ASIC received an additional \$100 MILLION last year – There is no accountability on how these additional monies were spent.

Certainly, consumers did not benefit from such generosity. Throwing money to ASIC does not solve the problems. Senator Coonan stated in 2005: *"ASIC have plenty of money..."*

**Performance SCORE: 0**

**ASIC's Performance in setting up External Dispute Resolution Services ("EDRs")** In 2006, the fragmented External Complaint System was again justifiably subject of public criticism. ASIC once again passed its significant powers and duties for complaint handling onto others who have been affiliated within the same industry "Gene Pool" that ASIC staff are selected from.

Investigations were not a cohesive and united attack on white collar crime. Investigations were predictably fragmented. As a criminologist, I know the benefit of looking at the complete picture and not being tainted by industry influences.

By 2008 ASIC arranged for all these splinter parties to merge into two "EDRs" namely FOS and COSL. Lenders pay the EDR an average \$5000 per complaint.

ASIC is responsible for the activities of the EDRs and has licensing agreements with both. We believe that ASIC set the limits and approve the agreements between the Banks/Lenders and the EDR's. However, the entire structure is shrouded in secrecy.

The Banks in particular have been arranging approval of "Jumbo Loans" of up to \$3 million to pensioners or low income families. ASIC has placed limits of compensation for EDR's as a framework for only \$280,000 which is utterly inadequate. There are also complaint handling limits of \$500,000 which excludes the average \$600,000 loan to pensioners and low income families.

I complained about the limits in 2004 when they were simply \$100,000 and the average loss was \$250,000. Eventually, those ceiling on compensation was raised in 2006 to \$280,000.

Once again, ASIC has ignored the matter and once again has not initiated any suggestion of raising those limits and why, knowing the average loan has crept up to \$600,000 due to the predatory lending by the Major Banks in selling Lo Doc Loans.

FOS jurisdiction must increase to \$1 million immediately. A panel must be appointed to review cases over \$1 million. FOS must be made to follow the law on FRAUD which is a huge issue for consumers right now.

Anyone affected by FOS ignoring the law since 2003, must be entitled to reapply. Lenders are ducking responsibility and liability where there is fraud and this is entirely due to ASIC's lack of Performance in maintaining standards in relation to its EDR's.

The Credit Ombudsman has a poor track record in dealing with consumer complaints to the extent that none of the cases we have seen have advantaged consumers: in fact most cases re COSL have been closed. COSL is an embarrassment. The Senators may consider a merge with COSL and FOS for the same reasons the splitting of cases into two areas can only disadvantage the consumer: The Banks are with FOS and the non bank lenders and brokers are with COSL and their deals intertwine. As one member told us: *"it's a dog's breakfast! They are simply looking after their own members."*

Often cases are used as a football, being tossed from one EDR to the other and we have over one hundred situations like that. The only other remedy would be for consumer complaint handling being taken away from COSL and all complaints is sent to one EDR, namely FOS.

COSL are stating "if its fraud we cannot assist." All files of fraud, as a matter of policy and with ASIC's guidance are CLOSED by COSL the moment the complaint states they have found fraud in their documentation. . On a day to day basis. We have hundreds of COSL letters to this affect.

ASIC continually refuse to instruct the Australian Federal Police to look into these cases. Consumers have lodged complaints, which contain allegations and collective evidence of banking cartel activity. The State Police say they can look into the matter if we provide them with the name of the person who engineered the products.

I have no doubt from personal experience that ASIC is trying to stay on the sidelines and therefore failing to properly protect consumer interests. If the EDR's are in disarray it is entirely ASIC's responsibility.

Lenders, EDR's and ASIC are all ducking responsibility and liability of FRAUD. I think where it is suggested, reverse the onus of proof and say the loan will be annulled and the security is VOID unless the lender demonstrates the loan was appropriate and affordable.

The point is there should be NO LIMITS on EDR's and compensation claims if the Banks are permitted by default, to approve Jumbo Loans. The compensation levels should reflect the lending levels.

No BFCSA members, from six states in Australia, received a copy of the Loan Application Form ("LAF") at the point of signing. It has been noted by bank counsel as: "standard industry practice," including "no phone calls" to verify affordability and income issues. ASIC permitted this situation to continue for over a decade, knowing the consequences involving home loans could be financially catastrophic for consumers of financial products and services.

However in practice, lenders would then on demand only, send out three pages of the LAF knowing the lenders relied upon 11 page document for approval purposes. My own experience has been that it is common for Courts and Counsel to be misled in discovery of document processes.

No mortgage customer in Australia had a copy of this crucial document – and the attached service calculator form and the ICW worksheet. These three documents were in fact crucial to approval of loans as evidenced by emails between banks and brokers.

Not one customer knew the document existed (as memory dims) until BFCSA alerted consumers to demand the copy from their banks, usually four years after the loan had been approved and settled.

Universally banks are saying the LAF, yes you can acquire a copy, but the service calculator (attached) is an internal document. This is nonsense and needs to be clearly investigated as a matter of some urgency, as to the reasons for the banking industry intentions. Clearly, the service calculator shows how the fraud occurred by the unclean hands of the bank.

**In simple terms the "fudging of income figures" which ASIC refers to, is in reality "a computerised fudged figure."** Brokers were taught to use the **Service Calculator** through the banking industry master-plan of enabling brokers to **use englobo or futuristic incomes**.

Brokers trusted bank lawyers and were told this method of loan approval assessment, which Brokers were untrained and unlicensed for, carried on for over a decade to the detriment of all borrowers spruiked into the "equity loan marketing plan."

Brokers did not suspect the Banks were breaking the law. The Major Banks never asked Brokers for the original LAFs. In fact most lenders instructed Brokers to "shred the LAF" according to brokers we have spoken to. The only documents the bank's relied upon to approve loans are faxed copies and not the wet-ink original.

The Banks deny the Brokers are their agents even though the commissions flow from banks to brokers, even though the Identification duty owed by banks is passed on to its agent

officer, the Broker; yet Banks are continually instructing Brokers directly via a series of weekly and daily emails and indeed instruct Brokers to “shred the LAF.”

The intention to deceive on the part of the bank executives is clearly contained in the widespread use of identical processes and handling procedures. Yet the broker originals we have managed to obtain show the income figures on the bank copy differ wildly from the brokers’ originals. ASIC have been informed of all of this and yet deliver excuses for non action rather than substantive initiatives and fully developed cases.

The lender copy shows a widespread practice of “internally” generated income figures - pushed higher than the broker “copy” of the same Service Calculator. **BFCSA have discovered how this was done as a matter of common industry practice** and why the consumers were left without any clear warnings of the dangers of this process.

We continually pass on our findings to ASIC, yet all of these issues contained in this submission remain ignored and the bad practices are escalating.

The Lenders’ computer generated income figures were then altered with **white out** on the “internal” copy to push the loan up to maximise the LVR criteria.....not as a result of prudent lending. UK regulators refer to their noticing *“Gallons of white out being used by banks...”*

BFCSA has amassed this evidence over the past ten years. ASIC now admits it has known of these practices for years. Executives have blamed a “free market” policy. I have never heard of a policy in my Political Science studies, permitting systemic fraud.

## f) Any Other matters – Consequences of Bad Policy

### **ASIC’S KNOWLEDGE and the fact that ASIC KNEW the extreme consequences of inaction**

ASIC ignored the key overriding issue of successful policy making: to warn consumers the bridge has collapsed BEFORE they enter the zone.

Consequences for Economy – APRA said

ASIC KNEW Strategy developed by Spruikers and Banks

ASIC KNEW Bankers were the ENGINEERS

ASIC KNEW Brokers used Calculators

ASIC knew bankers intention to use Service Calculators as a mechanism to:

- Blame brokers for exaggerated incomes
- Provide Passwords to Brokers and the purpose

- Use ARIPs as the target market – those with equity in homes and low incomes
- AVOID all risk responsibility, blame and liability for consumer losses.

ASIC KNEW of plan to create a \$50 billion market – specifically designed to target ARIP's

ASIC KNEW Computers approved all loans whether FULL Doc or Lo Doc and a lowering of standards of individual data checking and verification.

ASIC KNEW of the six degrees of separation to assist banks in escaping liability.

ASIC KNEW consumers at risk from becoming involved in Lo Doc Mortgages.

ASIC KNEW The entire Lo Doc plan was akin to rigging every horse race in Australia on every race day for over a decade of lawlessness.

ASIC KNEW the key indicators of fraud and forgery – understood the Model – referred to risks in secret reports but, made no effort to advertise affective public warnings.

ASIC KNEW hundreds of consumer complainants revealed FRAUD on every LAF

ASIC KNEW of widespread cartel like activity in fraudulent lending yet failed to call in the Federal Police.

ASIC KNEW the compensatory limits for investigations set @ \$280,000 were grossly inadequate in relation to the average loans.

ASIC KNEW 30 year loans were being sold to pensioners.

ASIC KNEW the 30 years loans were unsustainable due to the fees and charges and structure and knew they had been set to implode within 5 years.

ASIC KNEW war veterans who were suffering crippling disabilities, were left with no remedy for any proper investigation into toxic Lo Doc and Full Doc loans.

ASIC KNEW Major Lenders held 85% market share of these products and services

ASIC KNEW Banks were selling JUMBO LOANS to ordinary mums and dads on low incomes.

ASIC KNEW The statutory time limit for fraud is 20 years or more and yet permitted its licensed EDR's to wrongly close files on the pretext of six year limits.

ASIC KNEW Home loan unsustainable would lead to mass loss of homes within 4 – 5 years.

ASIC KNEW the consequences to consumer confidence if the details of this scam emerged.

ASIC KNEW retirees suffered similar losses in a variety of Managed Investment Scams

ASIC KNEW lenders were engaging in bad lending practices and at the same time permit bankers to act as a cartel

## RECOMMENDATIONS

- FOS AND COSL be merged as one EDR
- No limits on compensation claims in lending
- FOS Jurisdiction limits must increase to \$1 million
- A Panel must be appointed to review cases over \$1million.
- FOS must be made to follow the law on fraud and not its own “rules.”
- FOS and COSL cases that have been closed by the EDR’s ignoring the law since 2003: complaints must be entitled to reapply
- Where fraud is evident and Lender avoiding responsibility/liability, onus of proof be reversed and the loan immediately be annulled and the security made void, unless the lender can demonstrate the loan was appropriate and affordable.
- Every customer at point of signing to receive MANDATORY copy of LAF and all attachments including the ICW and worksheet, broker notes and Identification Verification Statement signed by the Broker or Bank Manager.
- The LAF is an 11 page document not a 3 page document and all consumers must be advised of this prior to application being signed.
- Consumers with current or previous loans must be assisted by ASIC to recover their entire files from lenders within a set period of time (say 4 weeks)
- Every potential customer MUST be TELEPHONED by the lender to verify income prior to approval.
- Every future borrower must receive a copy of the “attached” Service Calculator and all other attachments relevant to the approval of the loan, at the point of signing
- The revenue obtained from ASIC by Treasury must be allocated to a CONSUMER COMPENSATION FUND to compensate consumers who are involved with financial services and products.
- A monetary levy on Banks and Lenders to add to the Compensation Fund.
- A review of all complaint files back to 2003.
- There be an immediate freeze on mortgage payments on all fees and charges, suspended the moment a complaint is received by the EDR.
- The AFP must be directed by Government to investigate the cases where fraud is evident. The onus on the EDR to report any evidence of fraud to the AFP regarding banks and lenders.
- ASIC’s policies to be completely overhauled in terms of its complaint handling processes and obligations.
- ASIC agreements with the EDRs to be made public.

## CONCLUSION

**YES: BANKS ARE THE ENGINEERS of the TOXIC FULL DOC and LO DOC MORTGAGE LOANS.**

**ASIC will need the greatest overhaul of policies with grass roots consumer consultation in its woeful 14 year history.**

### **The lack of consumer protection in the Banking financial products and services industry**

- Consumers are sick of QUESTIONS ON NOTICE from ASIC for the price taxpayers pay for ASIC, we expect executives to be fully briefed and on top of their departments.

Article 25 of the Code of Banking Practice says ...

**25.1 Before we offer or give you a credit facility (or increase an existing credit facility), we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay it.**

ASIC allows FOS to ignore the law regarding time limitations on fraud and instead, apply their own limitations even though the fraud may not come to light for many years after when FOS prescribe their limit.

That premise has been adopted in the NCCP but for everyone who borrowed before January 2011, that is of no comfort. For once, the victims of the pre legislative changes need to be put on par with the new status quo and that means a thorough investigation and slashing loans and securities that don't pass muster.

### **Additional Information:**

#### **HISTORICAL RECORD RE ASIC:**

**To questions raised in Parliament in mid 2004,** ASIC was once again forced to explain why they were not responding adequately to consumer complaints against **Wealth Creation Spruikers**.

**Mr Kell's response:** *"we have concerns regarding spruikers and we will be looking into the matter."* Consumers are tired of hearing ASIC attacks of the "will bees." Mr Kell delivered

the same response in February 2013 to Senator Cormann's questions regarding Spruikers.....identical to his response nine years earlier.

### **HISTORICAL EVIDENCE OF ASIC's Non Performance 1998 – 2005**

**Solicitors Mortgage Scandal 1992 – 1999**, prevalent in the Eastern States was found to be a similar business model to the WA and SA finance broker scams involving property and mortgages. This work led to a Joint Committee Inquiry into Tasmanian Law Society, after aggrieved people, facing financial ruin, marched through the streets of Hobart, Brisbane and Melbourne. The ABC put out a report at that time called "A Law Unto Themselves."

RECA led these people to the doorsteps of ASIC in Hobart and Brisbane, as being the focal part of Failure to protect consumers. ASIC had been gathering alarming details of criminal activity. Instead of taking action against those responsible, to allow Mums and Dads to make informed decisions, ASIC callously hid that information. In the traditional interest of the industry players, ASIC had kept quiet about their own collection of data. Once again the whistleblowers trundled down to the offices of the media. ASIC had full access to details which would have spared the victims (mainly elderly retirees) from the agony of loss. I estimated at that time from our own research that these losses could easily and swiftly climb to \$5 Billion.

**ASIC's Performance 2000 - 2003** had been a stand out effort to hide the instance of losses and downplay the significance of those losses and potential for losses.

**Westpoint March 2000**, I asked ASIC at the Commissioner level to probe into the actions of Westpoint. I was alarmed at the use of an unregistered Promissory Note booklet for investment fund raising purposes, created to look as if a Prospectus. The ASIC Consumer Commissioner, Director of Enforcement and their Barrister, met with me in Brisbane in mid 2001. At that point ASIC was stating it *had no jurisdiction*. There had already been \$100,000 raised from mainly elderly retirees. In 2002, I met briefly with two commission executives and similar discussions took place and again I met with Commissioners that year. A Commission Director and I were interviewed on radio on this very issue of Consumers at Risk on the ABC 2003. Once again ASIC's public response was that ASIC was seeking legal advice – three years after the first alarm was raised.

By 2003/4 I was aided in publishing legal opinions from reputable and well known law firms to argue that ASIC did in fact have jurisdiction over several offerings based on the Promissory Note model. ASIC did ask the courts in 2004, to decide if they had jurisdiction and the Judge was scathing of ASIC even asking the question: "your client ought to know it has...." In September 2005, I had a meeting with Deputy Chairman and director of Enforcement, on the issue of ASIC taking action since we knew the activities were always going to end in massive losses to vulnerable citizens. Three months later the media

reported the collapse of Westpoint with thousands of retirees losing a collective \$380 million.

**ASIC'S Performance 2004** – woefully inadequate and slow.

**Streetwise during 2003 – 2004**, I operated out of Sydney and warned the Chairman of ASIC by direct email that a director of Streetwise was a flight risk. The Chairman ignored the warning and later blamed the liquidator when the director fled overseas. RECA Members tracked the fugitive to the US via Dominican Republic. We then went to media to ensure the five people that ASIC had permitted to flee whilst under investigation be brought back to Australia. Four were extradited by ASIC over the following two years. ASIC were responding to media pressure. My letters have always been directed to the Chairmen due to the expected nature and quantity of loss. During that 12 month period I reported a further 12 companies running similar models touting high risk products to vulnerable retirees.

An Enforcement Director whom I had several meetings with admitted “there are many more than 12....more like 60.” In 2005, the Chairman announced after intense questioning over \$5 Billion at risk in similar investment scams, being touted as “Managed Investment Schemes.” We had warned of this projected figure in 2001.

**ASIC'S Performance 2005** was reactionary rather than proactive and as a result caused immense pain and suffering to thousands of ordinary Mum and Dad retirees. Most of these losses were preventable after 1998.

**Spruikers and the Creating Wealth “industry” 2003**, I delved into the Creating Wealth Industry which ASIC seemed eager to promote by endorsing the fact it was “an Industry under our jurisdiction.” Indeed, this “industry” thrived upon the use of Spruikers, the most famous of whom became known as Henry Kaye and the National Investment Institute. Henry rented premises from Prime Life and Ted Sent. Both NII and Primelife become the catalyst for another round of losses suffered by retirees.

How our comparatively small economy could ever benefit from having its population of self-funded retirees left in financial ruin and having to queue up for a number at Centrelink to become newly anointed pensioners is beyond my comprehension. ASIC's cultural problems produced the usual: “people have to look after themselves.” Yet the actual policy was one of ensuring market confidence by having INFORMED CONSUMERS making wise choices. The knowledge of the regulator was not being passed on to our nation's citizens.

Had the retirees been given the information we had uncovered – the choices would have been better informed and outcomes would have differed vastly to the losses we were all witness to via the media.

## **SENATE INQUIRY TERMS OF REFERENCE**

### **PERFORMANCE of ASIC**

The performance of the Australian Securities and Investments Commission (ASIC), with particular reference to:

- a. ASIC's enabling legislation, and whether there are any barriers preventing ASIC from fulfilling its legislative responsibilities and obligations;
- b. the accountability framework to which ASIC is subject, and whether this needs to be strengthened;
- c. the workings of ASIC's collaboration, and working relationships, with other regulators and law enforcement bodies;
- d. ASIC's complaints management policies and practices;
- e. the protections afforded by ASIC to corporate and private whistleblowers; and
- f. any related matters.