

# EUFA

'Exposing Unacceptable Financial Activities'

2 February 2011

Senate Standing Committee on Economics  
P.O.Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Mr Hawkins,

Re: Senate Economics Committee Inquiry – BlueChip NZ

We wish to express our appreciation to the committee for receiving this submission from New Zealanders which relates to Low Doc loans and predatory lending by Banks and non banks who are registered with ASIC which are major players in New Zealand with the Bluechip NZ scam.

The report will explain the issues that we believe need to be raised to your committee given the interrelated companies that operate in both countries.

Our concern that BlueChip NZ has had a name change and is now operating in Australia, instead of New Zealand, must also be known to the authorities in Australia.

We trust the seriousness of the issues laid out in this report will be considered by the committee.

Yours faithfully  
Ron Jensen  
EUFA  
(Bluechip Assistant Coordinator)

# SUBMISSION

By EUFA to the Australian Senate Economics Committee Inquiry.

**Re: Bluechip NZ and associated companies.**

## 1. INTRODUCTION

We wish as a collective group to inform you of the “low doc” lending and “Predatory” lending of the banks operating in New Zealand. Our information is based on files of investors who borrowed through a property investment company called BlueChip New Zealand (BC), now renamed and operating in Australia as Northern Crest Investments.

Our focus will endeavour to:

- a) Identify the key players in the role attributing to the losses of BC investors.
- b) Expose the deliberate nature of the banks in alluring elderly investors to participate in their “BlueChip” models.
- c) The level of exploitation of the banks to “collectively” gain possession of peoples homes and livelihoods, and even in some instances, their lives.

## 2. A DEFECTIVE PRODUCT – Impact on Consumers

We are not talking about some small faulty mechanism which does not work which we can return to the local shop, but a product which was devised by New Zealand Lawyers and the New Zealand Real Estate Institute, and administered by banks operating throughout New Zealand.

## 3. ASSET RICH AND INCOME POOR

BC was targeted at asset rich and income poor, (“ARIP”), usually pensioners and low income families who owned their own homes or had paid off a substantial portion of equity in their residential home – their only asset. This predatory market became known as “asset lending”. The targeted ARIP investors lack of ability to repay the loans (approved using the “low doc” loan model) was blatantly obvious, as their only income was their pension, which in a lot of cases was actually less than the monthly loan repayments! Their income could never service the substantial debts approved by the lenders.

- a) Investors were unaware of the intricacies involved and trusted their bank to act using all diligent care. They willingly contributed information requested to obtain mortgages but in most instances brokers falsified documents, and did not adhere to good banking practice, (loan documents were often processed unsigned). In some cases, the loan application documents had no reference as to where the money was being advanced. The money was transferred from the banks to “tamed” BC lawyers trust accounts or directly to BC companies, without signing permission from the investors. Money should have been transferred to the consumers own lawyer’s trust accounts, as in “ordinary” conveyancing circumstances, and not to the trust accounts of “tamed” lawyers. In some instances BC investors (in the developer litigation) did not involve a lawyer, as they did not believe they were buying property. If the banks were being diligent they would have made contact with the investors’ lawyers or if they were not contacted by a lawyer, alarm bells should have been ringing. One lawyer, Jonathan Mathias, dealt with so many BC investors, surely he can not be considered to be giving “independent advice”. Information stipulating the investors were pensioners was deleted (whited out) and their occupations over-written with “Self employed property investor”. In the Bartle Trial the Judges attributed these changes to “correcting the documents”. Passport books and Drivers Licenses were obtained as proof the investors were retired pensioners, but the bank never questioned their ages and their ability to service the loan, some being for 30 years.
- b) In most cases personal interviews were never conducted with the banks and the BC investor. In reality the banks did not want to confront the topic of BC with the investor as it is now proven there is denial from the banks concerning their knowledge of BC. In hindsight the banks never confirmed details of where the monies used to repay the loans was to come from, ie the amount of rental income guaranteed by BC in the Joint Venture apartments was never discussed. It appears the banks were relying completely on the security of the properties owned by BC investors and the banks were unconcerned with the borrowers’ ability to repay the loans. The banks were conducting simple asset lending only.
- c) In some instances there are diary notes on investors’ files referring them to “Tele Sales”. It appears the Loan to Value Ratio on clients files may have been outsourced with computer software. Some brokers even encouraged investors to sell other investment properties, so they could become mortgage free on their own homes, as this was the bank’s target market.

- d) The banks never made any phone calls to the BC investors regarding any queries they may have prior to approval of the loan. It is confirmed one of New Zealand's and Australia's largest bank argued that "it is not appropriate for the bank to by-pass the broker and approach the customer and had no legal obligation to look behind the documents provided in support of the lending obligation". Surely the incentive for lenders to check repayment ability so they can get repaid is paramount? This same bank advised, "The broker services included liaising with other parties to gather information required for the application". This approach was adopted but clearly we can confirm they also obtained a falsified letter regarding rental income of a property. This letter, and many other shortcomings, was not discovered by the investor/borrower until the BC investor requested their files from the bank after the collapse of BC. The banks "good faith" in communicating with the particular broker and the BC investor, failed to verify the information sourced by the broker as being correct. This is unreasonable practice. It basically comes down to what a prudent lender should or should not do. It is alleged the broker obtained funds/income by deception. In many instances the statement of assets and liabilities, Authority and Declarations states "I/We understand that the broker does not charge me/us for these services (unless specifically negotiated in advance) but receives a commission on settlement **from the lender** providing the loan".
- e) Some investors were led to believe their loans in the joint venture proposal were being paid by BC. This did happen for a very short period prior to the collapse of BC, but they never understood if BC collapsed they would then be responsible for debt repayment. If the bank deny any responsibility to or knowledge of BC, where did they believe the money was coming from to repay the loans? Why did they not make dutiful bound enquiries with their superiors if they were uncertain? Or did their superiors mastermind the entire entangled web of the BC debacle?
- f) Simply, the banks provided the mortgage contracts, but kept their "clients" at arms length with no communication.
- g) The "systematic business structure" of BC was created by the banks who willingly financed the whole business model, enabling these institutions to tap into large volumes of pensioner assets, collectively and potentially worth billions of dollars.

#### 4. THE DYNAMICS OF THE BANKS

The banks engaged a mortgage broking operation to promote new mortgage business. They were particularly keen to be involved with brokers, with links to marginally non-conforming borrowers. This strategy immediately helped BC to close many property transactions which otherwise might not have proceeded using sound conventional lending practises. Marginal deals became profitable to the banks and brokers without any risk to them. The risk was carried by the unwitting borrower by way of security using their only asset, their homes. The lenders were the original creators of the “low doc” loans. The banks for BC are the product manufacture and facilitator. BC was the vehicle to outsource the loans.

- a) Mortgages with BC just did not happen, they were made to happen through an orchestrated network of selected individuals including lawyers and brokers. The banks have cleverly constructed broker agreements, designed and crafted by their lawyers, where responsibility cannot be imputed back to them. BC investors were issued with instruction letters/documentation and the entire operation was like an assembly line, precisely to ensure the satisfactory result of an approved mortgage.
- b) In the Bartle Appeal trial the Judge sent a strong message that the courts will not allow lenders to rely on the delegation of loan origination functions to a third party and to use that delegation of responsibility as a defence to a claim to reopen a credit contract on the grounds of oppression. The banks though are disputing this and arguing onus is on the broker, and how they were acting in “good faith” on behalf of the broker. Remember the banks were paying the brokers a commission suggesting the brokers were operating as the banks agent in these deals. Neither the banks or the brokers showed loyalty to the consumer, the third party in the transaction.
- c) The banks understood the transactions and what they were all fundamentally about but both the brokers and the banks were negligent in stating the truth to the investors. All it would take was a simple investigation on the bank’s part of the basic facts (but now the Judges in the Supreme Court argue the banks should not be responsible for “investigating into the affairs of the borrowers lest there be something which might render the transaction liable to reopening. Lenders are not required to take responsibility for matters of which they neither knew nor should have known”. The banks no care, no responsibility, laissez faire policy of accepting forged and altered documents was deliberate. In the BC Developer trial, where the investors are being held accountable to settle on apartments they believed they would never have to settle on, the Sale and Purchase Agreements should have formed part of the banking documentation. A simple printout of the client’s bank statement would have conveyed their income, and questioned their ability to settle on \$1M (minimal) of apartments.

A recent court case quoted “The statutory imperative is to see that those who borrow money understand what is going on in the transaction and what they are getting into.” Truthfulness and the keeping of promises, and transparency contribute not only to the Banks own credibility and stability but also the smoothness and efficiency of business transactions.

## 5. THE BANK’S ABDICATION OF RESPONSIBILITY

No one was protecting vulnerable consumers from “predatory” lending practices, despite the presence of the Securities Commission, the Commerce Commission, the Companies Office, the Reserve Bank, or the Serious Fraud Office. They all stand indicted in terms of what happened in the finance sector. Investors have laid complaints with the Banking Ombudsman, but none of these have been upheld. As quoted in the NZ Lawyer (Dec 2010) “A number of lessons for financial institutions and banks should include prudent lending proposal assessment procedures, sound knowledge of the sector to which the loan is made, and timely reports to boards on the economic substance and risk dimensions of a proposal”

Banks failed ARIP borrowers, failed their shareholders and failed society in general by:

- a) Never informing us of the possibility of forfeiture of our properties.
- b) Never informing us of the inherent risks.
- c) Never advising us of the selling techniques used to promote the bank products we were obtaining a mortgage for.
- d) Never giving us an opportunity to make an informed choice
- e) Never providing all the information on our files and ascertaining the information was a true and correct record.
- f) Never asking us to verify information submitted on our behalf, by the intermediary broker, as being correct.
- g) Failing to provide us a copy of the crucial (yet fraudulent) Loan Application forms.
- h) Denying the rights of the investors to view the crucial lender/broker agreements.
- i) Failure to recommend genuine “independent” legal advice re the mortgage contracts.
- j) Failure to inspect personal interview “records” from the broker.

## 6. OUR INVESTIGATIONS AND FINDINGS

One phone call from the lenders asking, “What is your annual income?”, reply, “We are both pensioners”, would have resulted in the immediate rejection of the loan applications. It is believed some banks did take this stance and the broker in these instances approached another bank and was then successful in obtaining loan approval. Loan Officers and Business Managers are direct employees of the bank and should face serious allegations as to their relationships with the brokers. It has been established in one sector of the banking industry in relation to BC banking loans a broker has lied about income details, overstated the value of assets, the number of dependent children living in the home, the amount of money presently funding other mortgage payments held by the bank, the value of household fittings and furniture, the value of other properties, and many other misrepresentations. Variation of mortgage forms, are signed by the consumer but not dated. The mortgage brokers were encouraged by the banks to sell, sell, sell, the more they sold, the higher their commission, plus most commissions earn a trail fee, whereby the broker is paid for the life of the loan. A parliamentary select committee inquiry into the finance company collapses has been told the New Zealand finance industry suffered from an anything-goes culture lacking in ethics and morals. The professional integrity and responsibility on the part of the lenders was abdicated. BC collectively was a fraudulent scheme which should have never got off the ground if the lenders had acted with integrity. The behaviour of the lenders has had adverse consequences which should have been foreseen and avoided. Protection to investors should be paramount. The financial piety of the politicians in stomping on “Mum and Dad investors” is insulting, whilst the Australian government has intervened in proceedings relating to the enforcement of “low doc” loans. Had bank executives and shareholders taken their responsibilities more seriously there would have been considerably less risk and less provision of unsustainable financial “BC” products. Their responsibility should be to guard against high risk and imprudent courses of action within the finance industry. One major New Zealand bank is actually funding the legal action on behalf of the developers in the BC Court Case, of which we are presently awaiting the outcome. How is it that their involvement stems from both sides? They hand out the loans to the investors, (easy peasy using “lowdoc loans”) and then they file legal action against the borrowers for not settling on apartments which they are the financiers for? This whole situation is ludicrous. Hundreds of victims are being hung out to dry, bled of their equity, and publicly shamed and blamed. This misdemeanour by the banks leaves the honest ARIP investors to resort to their own coping mechanism of the “tsunami” which has potentially ravaged them of their homes. It is disappointing the Politicians have not given the ARIP a fair representation even though many of them have written, outlining their plight, but always to no avail. The government has been known to bail out the banks with taxpayers money over money they owed to the Inland Revenue Department, and to bail out other financial institutions but it is their failure to involve themselves in court action to prosecute lenders who have actively utilised faulty “low doc” lending products, which has placed us in the position to uphold Ms Denise Brailey’s submission on behalf of the Banking and Finance Consumers Support Association of Australia (BFCSA), and to present our own submission.

The Australian Securities and Investments Commission (ASIC) provides an appropriate vehicle to test the legal and regulatory framework that allows enforcement action to be taken against lenders who have exposed borrowers to unethical banking practices like “low doc” loan applications, “liar loans”, “asset lending”, and “predatory” lending (as in the case of Tonto and Permanent), where the conduct of the lenders and brokers towards the borrowers, is or may be, in question.

As a result, part of the ASICs’ overall role is to uphold the integrity of the Australian financial markets and the protection of consumers. The Australian commentators have argued that the profit maximisation model is out of date and New Zealand banks also need to address the marginalisation of stakeholders by changing their corporate structures and strategies, ie we (the consumers) will no longer tolerate “greed”.

## **7. THE CRITICAL LOAN APPLICATION FORM**

Some BC investors have requested their loan application forms (LAF’s) from the banks, but they will not provide them. These lenders failed to send the investors the original copy. No-one it seems, has a copy of this document on their files. The broker’s copy is often incomplete and contains less detail. The copy of the original is proof of the fraud: exaggerated incomes and assets, forged signatures on “inserted” pages, erroneous statements of the borrower being a “self employed property investor”. Most incomes are massaged as being way more than the true income. Some BC victims were totally unaware of the model being used, or the deception and have reported the matter to the Police. We believe the banks created “being made aware statements” not seen by their customers, as a way around completion of the documentation. In some instances there are several peoples handwriting involved on the pages. None of the banks can boast a consumer protection focus. The banks colluded with each other. If the loan documents were to be matched up to the Inland Revenue Department (IRD) records of the BC investors it would seem that the BC investors are cheating the tax man.

However the tax returns reflect the true income, and in many instances these were used as proof of income, however false income details are contained in the bank’s copy of the LAF’s. Documents would ascertain that the average loan approved for the BC investors, in the joint venture proposal, was simply secured by the value of their actual homes put up as security. In other words the banks were “asset lending” to people on low incomes, who had zero ability to repay the loan repayments. Also the investors in the developers court case are expected to raise capital of millions of dollars to purchase overpriced properties if they are unsuccessful in their court case. How can these ARIP investors hope to raise millions of additional dollars?



People who purchased their own homes, and some investors also have holiday homes or rental properties, have been very capable in managing their finances up to this point, so why now are we being treated like morons? The results of the IRD findings has been passed on to the ASIC as being their specific jurisdiction.

- a) Was the “self certification model” which became “industry practice” in direct breach of the lender agreements?
- b) Why are the regulators failing to run test cases?
- c) Were the agreements a smoke-screen for the deluded and greedy bankers, intended to absolve the creators from responsibility, yet gathered in hundreds of thousands of new customers in a “new ARIP driven market”.
- d) The regulators should be asking pertinent questions as to the banks exposure to “low doc” lending.
- e) What is the break up of small business loans vs ARIP’s?
- f) How many of these toxic loans form part of the New Zealand banking structure?
- g) Are these loans ticking time bombs of a need for future taxpayer funded bailouts?
- h) In instances where the investors signed the loan forms at the bank, why then did the banks’ employees not take the opportunity to question the ability of the consumer to be able to make payments.
- i) Some investors paid a valuation fee on the apartments but in most instances they were received after the agreements for sale and purchase were signed. Very few investors had the valuation addressed to themselves. The valuers were instructed by BC as their agents and knew that their valuation would be provided to the investors. Most valuations, however, are addressed only to the banks. The banks are most certainly implicated and the truth must be exposed.

**Therefore we ask Committee members to consider the following questions:**

- a) The PIP (Premium Income Product) has been described as difficult to comprehend by anyone in a legal capacity. These documents were produced by BC and now form the basis of a Court Case between the developers and the investors. The developers argue the investors must settle on the apartments since the collapse of BC in 2008. The developers’ litigation is being funded by the developer’s financiers, a large Australian Bank operating in New Zealand.
- b) The *Bartle v GE Custodians Limited* (2010) NZCA most recently upheld in the Supreme Court the following:  
The mortgages obtained by the Bartles are not “oppressive”.  
A Judge in the previous Appeal trial described the documentation as “so unusual and risky that any reasonably competent conveyancing solicitor would have been duty bound to draw the risks to his clients’ attention whether asked or not”. The Judge also said “the agreement had “significant legal issues and shortcomings”. This ruling was overturned in the Supreme Court.

We wish to further outline the above:

## 8. THE “LOW DOC” LOAN MODEL

It has been reported in a Trans-Tasman survey, conducted by New Zealand bank staff union Finsec and the Finance Sector union in Australia, showed 25 per cent of workers were uncomfortable about their customers not being able to meet the financial obligations of the products. They also reported concerns about how they were told to sell them. “It’s a very practised and systematic approach to the selling of these products, and no stone is left unturned in relation to it”.

A Victorian Supreme Court Judge castigated a mortgage provider for not verifying the income of a pensioner.

The Judge found that the loan agreement over the pensioner’s home should be set aside because the Melbourne-based mortgage provider engaged in unconscionable conduct. The Judge ordered compensation to be paid.

In New York a Judge ruled that the lender’s behaviour had been “harsh, repugnant, shocking and repulsive to the extent that it must be appropriately sanctioned so as to deter it from imposing further mortifying abuse”. The couple involved were caught up in what the Judge called the “yawning abyss of a deep mortgage and housing crisis”. The Judge accused the bank of an “opprobrious demeanour and condescending attitude”.

Facilities should be structured to ensure:

- a) Borrowers understand when signing a mortgage over their homes and should not be taken advantage of. As consumers we may have been “vulnerable” in the sense that we are unsophisticated and perhaps naïve in some instances. “We were putty in the hands of the banks”.

Excerpts from recent jurisdiction:

- i) If the loan is not serviceable then in substance it was not a loan but an asset sale. The lender risked nothing and the borrower risked their asset.
- ii) “Fastdoc” lending where it was not known whether borrowers had the ability to repay. Lenders should not have lent money to people when they had no reasonable foundation for believing they could meet their mortgage contributions, then have recourse to the family home. The Court ruled the loan contract was “predatory” and “oppressive”.

- iii) The lender knew or should have known that the loan application forms lodged by a mortgage broker contained discrepancies about the level of his income. The decision by a lender to process a loan **without conducting further checks** was “deliberate and attended by moral fault and lack of moral responsibility”. By at least turning a blind eye to the irregularities in the loan application, and the income declaration, and ensuring that the supplementary information was massaged, the lender did not act in “good faith”. The lender “condoned or, at the least turned a blind eye to the practice” of not interviewing clients. This case highlighted the need for mortgage providers to personally check the applicant’s credentials. “The reason why it is important is that it highlights how you have all these middle-men who can doctor the loan applications to fit, and they (the forms) are then blithely sent up the line”.
- iv) Mortgage loans should be fair, sensible and sustainable.

Lenders knew they were placing vulnerable consumers at risk and their homes at risk.

## 9. OUR NEXT STEP

We intend to make public, through the local media and outside of New Zealand, the atrocities of the banks and their offending on consumers.

- a) As in New Zealand the bankers are still trying to shield this information from the public by designating all of their information as confidential. We have encountered the same problems with broker agreements between the banks and have made contact with the Privacy Commission to obtain them. They have been unable to assist as the agreements do not contain information about the consumers personally or their accounts. The banks would advise these documents are commercially sensitive and they would only allow a lawyer acting for BC investors to view them, but requested he was to sign a disclosure statement and the information could not be released to the customers, photocopied, removed from the premises or used for any other means.
- b) The newly formed Financial Markets Authority (FMA) have stated they could bring civil proceedings to recover losses on behalf of investors. Using taxpayer funds to benefit investors will require the FMA to demonstrate that it can recover the funds, that it is appropriate to do so and that the action sends a message about the standard of conduct expected. All the investors money involved in the Development litigation is being held in one of the largest banks of New Zealand and Australia. These apparent “deposits on apartments” were transferred from a Solicitor’s Trust account and deposited with the bank to, “greatly reduce the developers’ exposure to interest, and therefore it is in everybody’s benefit to consent”, was the advice received. Should the investors win the Court Case, our money plus interest will be returned to the investors, (but once again we are relying on “good faith”).

- c) The banks owe a “duty of care” not to enforce mortgages bought about by fraud. However, many investors have pleaded with their banks and were advised to sell their properties and pay the loan. They made concessions for lump sums to be paid over a period of time, but prior to this they often served PLA Notices and put fear into the lives of the consumers. Young couples and families have been bankrupted and some investors have lost their holiday homes to the banks. Investors are continually seeking to remedy the situation but the banks are exercising “its right of power” which constitutes an “unequal bargaining power”. Fraud undermines the integrity of the mortgage marketplace on which consumers rely. The banks should have implemented controls and systems that were robust enough to identify, assess, manage and mitigate mortgage fraud risk.
- d) By taking part in this enquiry we would like to see an end to the “predatory” practices.
- e) Have the committee examine evidence of unconscionable and fraudulent conduct between the investors and the banks and bring an end to the unjust contracts already in existence.
- f) Point out the impact of little or no-enforcement of law on competition in the banking sector.
- g) Ask for a freeze on all loans found to be in the category as described in our model.
- h) Reduce the instance of people losing their homes by asking the Parliamentarians for a united effort in tightening up of lending practices.
- i) Ask the Australian Federal Government to ensure via process and good policy that enforcement of law must be considered as a major priority in the interest of effective and proactive consumer protection. The ASIC’s power under Section 50 of the Australian Securities and Investment Commission Act 2001 has the power to take legal action on behalf of the investors. This action would be in both the Australian and New Zealand public’s interest. Australians (friends and family of BC victims in Australia) have also asked for government assistance from New Zealand, but to no avail.
- j) All lending banks involved with BC associated loans should be pressured to grant moratoria while the matter is investigated and steps taken to safeguard assets. A possible enforcement role in relation to consumer credit contracts and mortgage documents.
- k) All Title Deeds to be handed back to the victims of these pernicious lending practices.
- l) Empower consumers and warn them of dodgy practices enabling self-protection warnings to be made public by exposing instances of unfair mortgage contracts and the known abuse of lending practices.
- m) Suggest an easy understanding of simple safeguards to be made available to consumers in order that our discoveries can be utilised in a positive way.

## 10. OUR RESEARCH AND OUTCOMES

In New Zealand there have been no court cases won in favour of consumer/victims to date. It is now three years since BC collapsed in February 2008 and the victims still have no redress. New Zealand financial markets are operating with an “anything goes” culture. White collar crime is escalating and the perpetrators remain free. Since the failure of the Bartle trial to deliver justice the victims of this crime are prisoners doing home detention, paying fraudulent mortgages, living a day to day existence and in huge debt, reported to be in the hundreds of thousands, and even millions. Consumers in the Development trial have the potential to be bankrupted, most of the settlement contracts, which the banks are pursuing on behalf of the developers, are for at least \$1M. A large percentage of these investors are retired low income pensioners, but investors are all ages and spread across New Zealand.

Another concern is that some of the broker firms raising the money, calling themselves finance firms, were unlisted companies. The unlisted lacked regulation and a regulator to oversee the market. Investors had “no idea” about what was going on in most unlisted companies. The banks set up untenable agreements with these broker firms.

BC consumers, who never understood the complex financial products, trusted the banking sector and believed in their “strategy” and integrity. If you take your car to a mechanic to fix and your car repairs prove faulty, the mechanic is liable. But you can take your broker to a bank and sign up for a loan that is faulty and it is not the bank’s fault, nor the broker’s, but the consumer’s fault. This concept is seriously flawed. One of the most serious decisions of a life time and if it all goes wrong because of other people’s carelessness, deceit or whatever, then supposedly it is entirely the borrower’s risk. Investors were encouraged by the employee network of the lenders to “try the idea” for a short fixed term. These strategies were presented by the introducers of the products as a low risk amid a “try and see” campaign. The spruiked consumers paid no-one for advice and were unaware commissions were paid through every part of the structure, including the selling of the “investment” (underwrite fees) paid on the properties, which were grossly overvalued – a significant con in the “three-tier marketing scam” prevalent among BC investors. There is a further complication in that conflicts of interest are prevalent between the banks and developers and brokers. There was an intertwining of interdependencies upon which trust was paramount, but the banks have failed us. And a second conflict of interest where a bank is protecting the developers by funding their litigation, with no regard for the BC investor who borrowed from them. The investors percentage of value rates as nil, in customer service terms, and they have no verbal or written power with the banks, who just constantly turn them away. Answers to questions to bank CEO’s are replied with “This is a commercially sensitive matter and we are unable to comment”. The lenders/trustees provided the contracts, suggesting integrity of the banking system which in hindsight was plainly not present.

Some of the toxic loans have been on-sold to overseas interests, according to our searches of the mortgage securities.

## 11. **REGULATORY ISSUES**

We wish to alert the committee to the dodgy banking practices which are the foundation of BC and our demise. Our circumstances are in need of Federal attention as we have been coerced into calling on assistance from Australia who are emphatic about strong protection for consumers in the financial markets. We have individually and collectively written to Simon Power, the Minister of Commerce for New Zealand, but unfortunately it appears New Zealand is only interested in regulating future financial markets. He commented "As investors money hit the floor the regulators involved in this space all looked at each other and said – well – who's responsible here?" What of the Regulators that neglected their duty, thus aiding the malpractices continuance that directly caused many of the investors "money to hit the floor" in the first place. Under international law the State of New Zealand is duty bound to provide all clients with the protection of the law. Accordingly the statutory authorities in the space referred to by the Minister are in breach of the States International Civil Rights obligations.

## 12. **THE COURTS AND JUSTICE FOR SOME**

We have refrained from formally identifying all the participants in the BC Court cases for reasons of privacy but they would be available to produce documents on request. It is reported for the past four years the judiciary in three states of Australia have been so alarmed that so many players were involved in these loans and the Courts have predominantly found in favour of the ARIP victims, ordering the lenders to "release the title deeds" and to set aside the loans without any further costs. The Judges are saying "This is an unusual case....." The reason this expression is often used is due to the fact that the pensioners and low income families who have been targeted rarely have access to funding to take the lender to court. New Zealanders involved in BC dutifully pursued this course of action over the last three years, all contributing to the costs of legal action, but unfortunately in one court case involving the "joint venture" apartments, the Judges ruled in favour of the bank. We all feel a huge injustice has been served and we wish to continue with our investigation into the banks with the support of your committee. Lenders will argue in Court "we have loaned the funds in good faith, we have in our possession as evidence, a signed mortgage contract, the loan is in default and therefore there is NO DEFENCE, or:

Fraud/Registration of a void Instrument

"As you will be well aware, the only ground upon which a registered mortgage can be deprived of their estate or interest is through land-transfer fraud on the part of the mortgagee or its agent.

Fraud under the Land Transfer Act means actual fraud that is brought home to the mortgagee or to the mortgagee's agent. Constructive or equitable fraud is not sufficient to defeat a mortgagor's indefeasible title.

The mortgage broker was not the bank's agent and had no authority to act on behalf of the bank in any capacity. We further note that the application form which was submitted also records that the application was submitted by the broker on behalf of the consumer and any fault cannot be imputed to the bank".

As victims we are the clients of the lenders by virtue of the contractual arrangements regarding the mortgage. The Judiciary in the states of Australia have suggested that if the lenders wish to recoup their loses then they are free to take action against the brokers and the introducers of the flawed concept who, when discovered, eventually declare bankruptcy. We believe most of us have some form of fraudulent activity on our files to varying degrees and on the files of the lender. The Serious Fraud Office (SFO) have been asked to further review some individual files by investors, as we are adamant the actions of the brokers and the bank are of "white collar criminals".

### 13. **THE LENDER/ TRUSTEES**

The scandal also involves investors borrowing money from banks and paying for apartments to be constructed and have been devastated to find there was never any proposal to actually build an apartment at all, the land is bare land, and their deposit has vanished into thin air.

Also during the final desperate stages prior to the collapse of BC the banks were also "low doc" lending on the purchase of supposedly "BC" properties. After the collapse of BC it became apparent that the property has no association with BC at all. The investor consequently is left with a large mortgage on their own home they cannot afford and no new property at all. Another variation was investments properties were purchased by BC and a few days later "on-sold" to unsuspecting investors (who obtained finance by "low doc" loans) for \$100,000 more. There are so many stories and variations of fraudulent property sales by BC to unsuspecting ARIP investors they cannot fairly be categorised as pure "bad luck" mate.

Since the BC collapse and the non payment of the loans to the lenders, it is not unusual for lenders to initially choose to sign over the investors homes to them and sit on the assets "until death" of the aged ARIP pensioner. These assets are not producing income, and it has been suggested the victims of the Bartle Trial should now pay rent to the bank. We firmly reject that proposal and any reverse mortgage proposal, and will reluctantly (if at all) sign any further documentation with the banks. There has not been one successful player in the BC scheme. A minor court case was won, where it was ruled an investor should be compensated by the broker for introducing them into an "investment not suitable for a woman in her position" and the broker was fined but the company is bust, so unfortunately in reality the case was a "no real win" situation. The ARIP investors are backed up against the wall.

## **COLLUSION**

Agreements between the brokers and the banks stating “we will never ring your client” so as to avoid involving the bank’s staff as much as possible and for brokers to complete forms requested by the bank to possibly record, details of confirmation of conversations with clients. A lucrative commission system would continue to “sign up” the target market. “Signing frenzies” took place in investors own homes, and on occasions representatives from banks and brokers were present. The banks operated with a “no shop front business” and the brokers would attend to all the documentation. Should the bank request further verification they spoke with the broker and the broker sourced information at their request (and was entrusted with the task of obtaining signatures and information on their behalf). Accordingly in a recent Supreme Court case of Dollars and Sense Finance Limited v Nathan (2008) NZSC 200 (D & S) the court held that making a principal liable for undetected fraud of its agent in relation to a document which was innocently registered by the principal was not contrary to the policy of the Torrens system. Consequently, D & S did not have an indefeasible title to the mortgage and the mortgage was removed from the register.

It remains a surprise to all of us that the Judge having formed the view that the BC sales agents were the developers’ agents for the purpose of selling the apartments, but did not take the further step of concluding that authority included the investment products also. The banks should have understood these intricacies (ie the tangled web of BC)

### **14. EMPOWERING CONSUMERS IN NEED OF PROTECTION**

We all deserved and expected protection from the banks. The largest number of complaints within BC come from dealings with one particular bank. Their handling of this whole matter has been abysmal to say the least. In spite of having become aware of problems with altered documents by their brokers in March 2006 and again in January 2007 it did not:

- a) Follow up with further audits because, as its chief appraiser said “There was a travel embargo on employees between Australia and New Zealand”,
- b) It did not alert staff to the cautions about dealing with particular broker documents;
- c) It made no enquiries as to why the broker firm had altered the documents, or ask for it to account to the increased volume of the business that was going through.
- d) Ever speak to the directors.

The point about the travel embargo mentioned in the claim against the mortgages with the bank was greeted with disbelief by the Judge and the lawyer acting for the BC investors. The bank’s representatives were plainly embarrassed.

To ignore this practice would be to condone the appalling conduct uncovered to date.



## 15. **OUTCOMES SOUGHT BY VICTIMS OF FRAUD**

Taking into account the recent decisions of the NSW Supreme Court on similar cases to the ones subject of this letter, the outcomes sought are as follows:

Freeze all equity loan mortgages, where asset lending is proven and where fraud is proven. The mortgages should be “set aside” including all fees and charges surrounding the loans, and further:

- a) The titles handed back to those who are caught in the “low doc” BC scandal.
- b) A Royal Commission into the banking sector is formed immediately, in order to avert the predictable greater loss of New Zealand homes.
- c) Investors who have struggled to keep up their payments on the mortgage should be compensated, and their repayments since the collapse of BC fully recovered, along with Solicitors costs.

We need to send a clear message to members of the banking sector, that such inhumane conduct will not be tolerated. As victims of these banking scandals, we deserve to be left in peace, enjoying the security of our own home. The fear of such a huge loss is causing ill health and suicidal thoughts for the ARIP investors.

## 16. **SUMMARY**

### **Creators of the Product**

Lenders created the “low doc” product purely to siphon “real money” from their unwary targets. The strategies, targets, contracts, commission structure were all channelled to advantage the network of parties involved, and to disadvantage the mortgagors. The actions of the bank were deliberate and calculated. They knew the agreements were misleading, and the mortgages were unaffordable and unconscionable, decision making assistance unattainable, lack of copies being given to the investors, (vital pages were missing), no personal interview format with the bank, and the developments offered as investments were worthless and in some cases fictitious.

Most of the funds on the loan have long since vanished, usually within days of the “investment” being suggested, and the ARIP have no course of action available to them to recover financially from the whole debacle. This is a denial of their basic human rights to a fair go in a civilised country.

### **Standard Industry Practice**

As investors we have files of letters received from lenders which are an appalling indictment of conduct and attitude to “good faith” in some parts of our banking sector.

We are being held to ransom, unable to sell our homes or borrow more money. Our lives have been “put on hold”. If the investors in the development litigation are unsuccessful the large Australian and New Zealand bank holding our monies will request we pay damages to them. We were advised “a reverse annuity mortgage is intended as **an act of generosity by the bank**. Instead of having to pay any amount of damages, the money could be secured by way of mortgage, as a way forward for the investors to be able to find a way to meet the award of damages”. This mortgage would be paid in full on death.

### **Congo Line of Commission driven**

These complex, risky, immoral products on offer to the public were driven by a congo-line of commission driven players. Retirees, pensioners, shareholders, investors and taxpayers are left being threatened by the very banking institutions that set up the entire structure, naming ARIP’s as the target “new market”.

Regulations already in place, including under the Banking Act 1959, have been ignored by agencies responsible for taking action against institutions labelled “too big to fail”. Yet if these procedures are not stopped the collapse of the financial world will follow, and the world will be bereft of wealth. “Low doc” lending products have been unearthed in the US, the UK and many other countries including Australia and New Zealand. Foreclosures can only be pursued by the party named on the title, but when lenders sell the mortgages that they’ve made to homebuyers to other lenders, banks or mortgage-pool securitizers, they are suppose to record the “transfer” of the loan and essentially document the process in what becomes the recorded “chain of title”. It has been found lenders did not bother to properly document and record changes to titles when they traded loans back and forth. Investors of BC have requested their complete originals of their LAF’s and details of security but these documents have not been forthcoming from the lenders. It is suggested the lenders either no longer hold them, that titles were improperly recorded, were never re-recorded, or are missing altogether. Investors, regulators, lenders and others are now beginning to see just how widespread these egregious oversights actually were.

## 17. **RECOMMENDATIONS**

In New Zealand we believe there is political interference (previous directors of BC are prominent ex Politicians) as the reason behind our government not assisting us. Statutory Management of BC was believed to be the best course of action after it collapsed but the government did not deliver this preferred option. One Barrister has been campaigning for the BC investors. This is the largest banking scam in the history of New Zealand involving unlicensed brokers and unregistered companies. New Zealand has laws to monitor the providers of financial services to ensure they act efficient, honestly and fairly but these laws are not being used. New Zealand also has a law called The Consumer Credit Contracts and Finance Act (CCCFA) that prohibits lenders issuing any loans that would cause undue hardship to the borrower attempting to repay, but to date this law has been disregarded. BC was described by Neville Harris of the Companies Office as a Ponzi Scheme. A large New Zealand and Australian bank is holding the monies paid by the investors in the development litigation and we desperately want it returned to us as soon as possible and ask for your assistance. We note the ASIC has administered a new law to deal with unfair terms in consumer contracts for financial products and services. This consumer law was fully implemented on 1 January 2011 and amends the Australian Securities and Investment Act 2001. As part of these reforms ASIC has new enforcement and consumer redress powers. The current law already protects consumers and investors against unfairness in contractual dealings, for example, by prohibiting unconscionable or misleading and deceptive conduct.

### **We further recommend:**

- a) Investigations through a Royal Commission to take place immediately into bank and non bank lenders and trustees.
- b) Product Manufacturers (the banks) of faulty financial products to be ordered to compensate the victims where fraud can be established.
- c) All documentation, including Lending Policy Guidelines, Agreements and complete copies of the original Loan Application Forms (the Lender's copy) LAF's relating to the client's file and any other documentation relating to the actual processing and approval of the lending facility, immediately be made available to the client.
- d) "Low doc/No doc" products to be abolished as being open to collective industry abuse.
- e) New Ministerial policies governing a standard that can truthfully represent consumer protection in New Zealand today.
- f) A release of statistics on the exposure of each banking institution to "low doc" lending and possible toxicity of assets (name and shame).
- g) That the protection of the public implied by the CCCFA be applied to the victims of "low doc" loans issued by the banks in New Zealand.

The collusive nature of the banking activities as profiled in this letter warrants an immediate and thorough Royal Commission into the New Zealand banking sector.

We are prepared to name "the worst offenders" and hope that a Royal Commission is finally agreed upon by all Parliamentarians.

## 18. IN CONCLUSION

### **Blaming the victims makes no sense at all. Why are we so reluctant to uncover the truth?**

One phone call would have immediately resulted in the BC investors explaining his/her true income, therefore the loan would never have reached approval and low income families would be saved from the agony of losing their home. Some of us can never recover from this trauma.

Borrowers had no idea of the scale of the enormity nor the trickery used by the financial institutions until the collapse of BC and the mortgages went into default.

Consumer protection can only be achieved when we insist on independent scrutiny of banking products and services and the banking industry is brought to account.

Whose interests were the banks truly representing when they created these devious products? Consumer protection must be pivotal of our financial markets.

Every consumer is capable of making an intelligent decision (particularly those who own their own home) providing they are given all the information necessary to protect themselves and their families from a wrong choice. The banks had an opportunity to ask questions if they doubted the ability of the investors, but they did not, and why not!! To date the only ones suffering punishment are the customers of dishonest staff who inhabit our banking sector.

As victims of “predatory” lending practices we aim to empower and fight back and expose these banking scandals, as a preventative measure for the future of all New Zealanders.