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SUBMISSION FROM CONSUMER ADVOCATE  
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## INTRODUCTION

For the past 15 years as a Consumer Advocate, I have been actively assisting victims of fraud. Four years ago I alerted the Federal Authorities to activities of concern by Broker/Financial Planners, who were accredited Authorised Representatives of AFS licence holders.

Loan Application Forms (“LAF”) were grossly altered after signatures obtained, without the knowledge of the clients and without authority. Income details were exaggerated and employment details tampered with. Most of the victims were pensioners and low income families.

Pensioners who have lost their homes are now looking for permanent accommodation assistance and become a further burden on the overall economy. Sadly, I warned authorities and governments of this side effect to financial scams running unchecked in Australia in 1999.

A decade later, the Financial Product offered by the Banks and Non-Bank Lenders, which has caused the latest round of losses, are known as “**Low Doc Loans.**”

A key indicator of the alleged fraud was the fact that no client received a copy of their LAF document from either the AFSL holder or the banking facility that approved the loan. When the Banks were recently asked to provide a copy, they resisted and suggested people ask for the Broker’s copy. This in itself was misleading as the Broker’s copy differed greatly from the Banks’ copy. Each copy bears the hand writing of at least three different people, suggesting duplicity in the fraudulent use of the documents. As to persons of interest whom we allege altered these documents, these matters are now the subject of a Western Australia Police investigation by the Major Crime Squad.

The Australian Securities and Investment Commission (“ASIC”) were fully briefed on similar activities perpetrated by Broker/Planners in 2004 and again in 2005. These scams in the Finance and Banking sector are not new inventions and they are widespread, as evidenced in most States in Australia and also in New Zealand, where I met with authorities and the Minister in 2008.

Significantly, the Broker/Planners do not know each other, so the question remains: “how did the registered authorised representatives understand that Low Doc Application Forms could be easily tampered with without close banking scrutiny, prior to approval of the loans?”

Furthermore these activities surely raise the following pertinent questions:

1. Why are the banks, refusing to hand over copies of their Lending Approval Policy Guidelines?
2. Why are Australian Banks displaying an obvious reluctance, in furnishing the client with the Bank’s copy of the “Original Loan Application Form?”

3. Why the same wall of silence in handling over their critical Lending Approval Policy Guidelines?
4. How were processed loans being approved for Pensioners and Low Income families?
5. What is the current banking exposure to this problem and how wide-spread is sub-prime lending in our market place?

I am asking the Parliamentary Committee to enquire specifically into the role played by the Banking Sector in creating financial products, which would undoubtedly disadvantage consumers and were created as both high risk and commission driven. In particular, it is my wish that the Committee thoroughly examine the Lending Approval Processes used in the Low Doc cases reported by individuals in their own submissions to the Inquiry. The Australian Parliament needs to discover the reason for so many loans being approved without any verification of details provided by the Authorised Representative Financial Planners and the AFS licence holders.

The loans I refer to were offered to Pensioners and Low Income Families and documents recently uncovered, suggest loans of \$400,000 or more, **“met with our lending criteria...”**

Of the hundreds of victims of these products that I have spoken to, none received a call from the lender to verify income or employment details. The specific criteria and purpose of Low Doc Loans were to provide a financial facility for self employed persons. Instead a method named “ABN for a Day Scam” was used, by gaining access to the intended victim’s TFN number.

Authorised Representatives used the “ABN” website and the client’s TFN number to secure ABN numbers the day prior to the loan approval. Clients were only made aware of this process recently, two years after the loan approval process.

The strategies used by the Planners, appear to bear all the hallmarks of wide-spread looting of people’s assets, similar to the American “Savings and Loans Scandal.”

## THE MODEL

### THE PRODUCT

The Low Doc Loan has been created for market by members of the Banking Sector. These financial products are expensive loan agreements. The selling of them is fraught with the dangerous use of “middleperson networks” open to abuse, and not consistent with best practice. The products are specifically commission driven, with characteristics similar to Sub-Prime Lending. Since the exposure of the misuse of these products, some banks have recently announced: “we no longer have Low Doc products on offer.”

### COMMISSIONS

Commissions are payable via a complex payment structure, from the Banks and Lenders, through to Aggregators (AFS licence holders), through to Authorised Representatives approved by the AFS licence holder companies. Authorised Representatives (“AR’s”) become no better informed than

glorified salespeople eager for lucrative Trailing Commissions. Activities are greed driven, rather than a proper risk assessment as you would expect to find in a properly controlled environment of financial planning. The AR's can earn in excess of \$50,000 per month, using their own Pty Ltd Company as the prime vehicle for selling Banking Sector products and receiving commissions.

## MARKETING

Seminars are used to entice people to view products on a series of "obligation free information evenings." Churches, Community Groups, Sporting Groups are often targeted as a quick vehicle to produce volume commissions. None of the advice on offer, given the content of the websites, could be classified as "Good Advice." Banks, AFS Licensees and their AR's were after large volume selling of product and form the chain of "Players."

## TARGET MARKET

Pensioners who own their own homes, and Low Income Families with mortgages, have become the latest target and used in industry dialogue, describing this group as "**asset rich and income poor.**" Previous targets uncovered in the Solicitor Mortgage Scams and Finance Broker Scams, have been retirees with superannuation funds and who are home owners. By pulling the assets of retirees and pensioners into the control of the Banking Sector with the aid of Non Bank Lenders, there appeared a surge in economic terms of new money flooding onto the market place.

Many of these elderly people now face financial ruin, due to the widespread abuse of risky financial products and services, being sold as "safe and secure" using mothering terms of "no risk." Retirees and Pensioners alike trusted the banking sector as being "reputable." These victims find it hard to believe they were the target of some well planned strategy involving players from the banking and finance industry sector.

The victims believed the strategy would enable them to manage financial risk by accepting the advice of the Financial Planner and/or its authorised representative.

## METHOD OF SELLING

Clients, who attended small or large Group Meetings, were advised to use a financial strategy devised by the "Players" to use the Equity in their residential homes in order to seek a possible \$10,000 per annum additional income, as a method of following Government advice to be better prepared in retirement or perhaps a trip to visit loved ones each year.

Potential "clients" were told there was "no risk" in using the equity in their homes and they should follow Government advice and "*try it for three months.*" The Banks approved the loans in less than 24 hours after paperwork received by fax from the Authorised Rep, to the AFS licence holder and/or to the Lender. Victims trusted the Banking Sector: "if the banks are providing the loan, then they (the banks) must have approved dealing with this particular planning firm." The Planner salespersons were given credibility by virtue of the banking facility.

## LOAN APPLICATION FORM

Clients disclosed they were on a pension and/or low income, yet these details were exaggerated by other handwriting, after the client's signature was obtained and without knowledge or consent.

Eg: 80 year old pensioner, represented as being self employed and earning in excess of \$250,000 per annum as a professional investor, misrepresented as a “landscape gardener.” In another case a ship’s deck-hand was misrepresented as a ship’s captain.

Banks and Lenders approved these loans without verifying any part of the document with the client. The ABN website reveals low income and the date the number was applied for. Due diligence carried out by the bank approval officers ought to have rang alarm bells in all of the numerous banks involved in these activities.

Clients were presented with the Loan Application Forms (usually three page document) when the document was in fact, ten pages. Clients did not receive a copy of this document as required by law.

### **TAX INQUIRY INTO LOAN APPLICATION FRAUD**

In mid September 2005, **Mr Michael Carmody , then Commissioner of the Australian Tax Office**, made a public statement relating to the ATO’s specific investigation into 800 cases of this type, by using the cross correlation facility between Tax Files and the client’s bank driven Loan Application Forms. Discrepancies suggested incomes of less than \$20,000 on the Tax File and \$300,000 plus, as earnings on the “LAF.” When asked by the interviewer, as to how many of those looked at so far **are like that**, Mr Carmody suggested: “hundreds and hundreds...of discrepancies” ABC presenter and economist, **Mr Alan Kohler was the interviewer**.

I met with Mr Carmody’s senior officers, the same week and passed on evidence of my own research into this area of concern, providing several examples of LAF Fraud, where the clients were the victims of fraud. The 2005 Tax Office Inquiry into Loan Application Forms, as I understand, was immediately handed over to ASIC, post my visit. Initially the Tax Office was in fact looking for those who stated \$300,000 per annum on the Bank LAF, and say declared \$20,000 income to the Tax Office. The ATO investigators had been fully briefed on the wide-spread discrepancy and were examining the LAFs, hence the interview and public announcement of their findings.

### **LOAN APPROVAL PROCESS**

Banks’ and Lenders’ Approval Process failed to insist on accountant’s reports to verify “self employed” statements. Banks and Lenders failed to check any part of the vital LAF document, yet against Lending Criteria in place, all loans uncovered to date, were systematically given approval. The Banks claim the funds were then advanced “in good faith.” With Sub Prime lending evident, none of the components of the creation of the financial products, the selling and marketing of the products and the loan approval process were “in good faith.”

The system appears to have been geared to advantage everyone involved in the Volume creating businesses, with the client/victims paying the ultimate price of losing their homes.

### **FUNDS DISAPPEAR**

Monies were then channelled into developments, riddled with conflicts of interest, in much the same way as other more recent spectacular collapses involving retiree funds. Projects were started and not finished and/or simply vanished into complex structures whereby no project existed.

Meanwhile, the Authorised Representatives paid income payments either to the client, who kept up the bank payments, or in some cases, directly to the Bank, in the full knowledge of the inability of the Pensioners to afford the loan repayments, without this arrangement.

### **THE PONZI**

New recruits were necessary for the Authorised Representatives to continue making payments to the Pensioner existing clients, after their funds had been used up, according to later audit reports: a classic “Rob Pete to Pay Paul” or Ponzi system. Eventually, the operator (broker/financial planner) simply ran the company or group structure into the ground. The clients are told the funds have gone, there is no security and the Banks will move in to take possession of the homes.

### **THE BANKS AND LENDERS: MISUSE of an AFS LICENCE**

Banks and Lenders, after lining their pockets with outrageous fees, commissions and charges with little remorse for developing the perfect financial product, try to avoid the issue of how the loans were approved in the first place, with zero checks and balances, amidst faulty and dangerous ‘rapid approval’ processes.

Banks who are caught by their own less than impressive lending policies, are currently displaying a complete disregard for the financial well-being of these clients. Few of the players appear to understand accountability as a public citizen. Several Banks are in the throes of their own internal investigations, yet at the same time are intimidating the elderly as to when they may lose their homes. Others are suggesting private deals which include taking one third of their pension payments for the rest of their days and then taking the house! The answer is NO DEAL.

None have admitted their own responsibilities in terms of liability.

None have agreed (as yet) to hand over their copy of the **LENDING APPROVAL POLICY GUIDELINES** in use at the point of lending approval.

It is my firm belief that the Committee ought to demand the above document be made public, in every case of this nature. If we wish to bring confidence back to the financial services and banking sector, this document must become a matter of public record rather than suggest it be discovered through the courts. Parliament ought to demand that these documents be made available ASAP. If the Banks suggest their “***lending approval meets with our criteria...***” then there ought to be nothing to hide. This exact wording appears on recently discovered bank documents. The Banks and Lenders are currently claiming “privacy and confidentiality” reasons for not furnishing a copy to the client.

It is my personal belief, based on the evidence at hand and in other cases already before the courts, that these documents hold the key to the integrity of the lending process and the behaviour of the Banks in this situation. In other words, the Banks were in breach of their own Guidelines, by chasing large volume business with little regard to the financial well-being of the client.

In 2004, Australian Banks opened up the “Pensioner, Low Income” markets as a new source of business, utilising the services of the Financial Planning Industry and the AFS licencing system, to

gain respectability for a dastardly product, which they now admit to: “no longer selling the Low Doc products.”

*The Banking sector created the product, approved the loan, displayed no regard for the purpose of the loan, nor had regard for the affordability factor and the ability of the Low Income clients to repay even the first payment.*

#### **INQUIRY TERMS OF REFERENCE (in brief)**

1. Role of Financial Advisers
2. General Regulatory Environment for Products and Services.
3. Role – commission arrangements – product sales and advice, conflict of interest issues, need for appropriate disclosure and remuneration models
4. Role played by marketing and advertising.
5. Adequacy of licensing requirements selling products and services.
6. Appropriate information and advice – interest of consumers
7. Consumer education and understanding
8. Adequacy of PII insurance and impact on consumers
9. Need for any regulatory/legislative change.

#### **RECOMMENDATIONS:**

##### **1. ROLE OF FINANCIAL ADVISERS:**

AFS Licence Holders, are made responsible for overseeing the conduct and activities of Authorised Representatives and to be held accountable for FINANCIAL PRODUCTS and SERVICES that are generally being sold on a commission basis, to the general public. Trusting members of the public believed that the role of the AFS licence holder was to ensure the products on offer were in-keeping with “Good Advice” and that financial strategies used to prepare specific plans for clients, were given on ethical terms by “Highly Professional” personnel who promoted those financial products.

ASIC ceased reviewing all products on offer to the public in the late 1990’s. Officers who carried out that task were made redundant. The public believed these products were being reviewed by the licensing authority, namely the Australian Securities and Investment Commission (“ASIC”). The financial products and services market became a haven for commission driven sales people whose focus became personal wealth rather than client financial risk management.

ASIC recognised the need for consumer protection and identified major problems in the invention of products and services, coming from the Banking Sector in early 2001. Sub Prime lending practices and associated products placed Mums and Dads in a high risk zone, yet retirees and pensioners were being targeted as a continuing source of “new markets.” The industry label used to describe the target market for pensioners being: “asset rich and income poor.”

The key role of the AFS licence holder was to ensure the products on offer were as stated and that the risks levels were fully explained. No-one it seems, was actually policing this area. People were being asked to borrow against the equity in their homes.

**Recommendation # 1:**

- a) To examine the conduct of the creators of Financial Products that have led to billions of dollars of losses suffered by vulnerable Mums and Dads who now face losing their homes.
- b) To examine the obvious conflict of interests between the creators of the Products and the conduct of certain promoters of Financial Services, by way of a Royal Commission into: the Banking Sector, their Aggregators (AFSL holders), the Broker/Planner/Authorised Representatives and any others who formed part of each loan approval process.
- c) A full investigation into those who provided a facility for, or those who were the recipients of, obscene commissions.
- d) To examine the vulnerability of the public in relation to the Finance and Banking Industry's record of spruiking customers and the selling and marketing of totally unsafe and unsuitable products to unsuspecting and trusting "potential clients".
- e) A thorough public examination into the use of suspected fraudulent Loan Application Forms and suspect Deposit Bonds Application Forms.
- f) To warn the general public of the current and inherent flaws in the current financial services and products industry, aided by the banking sector who provide those facilities with little regard as to the financial well-being of the clientele.

**2. GENERAL REGULATORY ENVIRONMENT:**

Consumer experience in dealing with the Australian Securities and Investment Commission ("ASIC") has given genuine rise to a fresh wave of calls for a new Consumer Agency of Investigation to be formed. The financial losses of ordinary Mums and Dads, have escalated under the past ten years of regulatory failure by ASIC to protect the public from unscrupulous financial planning salespeople. The products on offer have ceased to be examined in any meaningful way. Spruiking by phone is rife in the financial planning and services industry. Products on offer are unsafe, with the high level of risk being mischievously understated.

Losses in New Zealand are similar per head of population, in both monetary terms and in numbers of victims reported. This means the licensing system in Australia is hopelessly compromised and unsafe, leading Australians to believe they have protection when they are at the same level of risk in a country that has no licensing system. Honest citizens have lost funds in the same manner in both countries suggests the licensing system is costly and meaningless.

My own extensive investigations into financial scams in all states of Australia, and in New Zealand have led me to discover a cross pollination of unsafe financial products, coupled with bad advice, by the use of risk-prone financial strategies.

**The "Management of Financial Risk" in terms of financial products are covered under s763 A (1b) of the Corporations Act 2002.** These investors ought to have benefitted from the raft of protection mechanisms contained in Chapter 7. They believed they were being given sound strategies for their future financial well-being and acted according to the advice given.

ASIC, took over from ACCC in handling consumer protection in 1996. ASIC has consistently taken a reactive stance in the policing of the financial services and products sector rather than become a



proactive regulator. The number of successful criminal prosecutions per annum, has steadily dwindled during the past decade from 69 to 4. An obvious lack of proper investigations into the known major players, has directly contributed to the escalation of Mums and Dad losses, from retirees to pensioners. The average loss in the nineties was \$100,000 per family. The average Loan Book of the bandit operators was \$60 million in losses. Today the figures are an average loss of \$500,000 per family and loan books creeping into the \$2 Billion category and beyond.

In 2006 ASIC disclosed the risk to the public in dealing with 93 companies which were subject to minor scrutiny at the time. The total of four categories revealed a staggering \$80 Billion at risk. The fall of Westpoint in 2005, exposed previously unknown and hidden data.

ASIC continues to have an over-representation of private consultation and close relations with many heads of financial services industry companies and the banks who service the loan facilities. Only token consultation is carried out with consumer groups, and rarely with those who are at the grass roots level of investigation – the point of entry of consumer complaints into the regulatory system.

It is the public who suffer financial loss, each time the corporate regulator appears to be biased in favour of the views of the industry players rather than the views of consumers. The lack of effective corporate policing has been evident during the past ten years for anyone who cares to study the ASIC Annual Reports, tabled in Parliament.

*We as a nation have managed to decriminalise that which Parliament has decreed as being criminal activity, thanks to specific alterations to regulatory policy.* White collar crime is treated as if in need of a parking fine, apart from expensive high profile cases which do not protect the average Mums and Dads from bad financial advice and planning.

A few choice arrests and long term imprisonment for directors of these hideous schemes, that rob the average Australian of his/her own home, would in fact boost confidence in the regulatory system. Instead we, as a nation, appear to rap our white collar criminals over the knuckles.

It takes an extraordinary Government to acknowledge this fact.

#### **Recommendation # 2:**

- a) That ASIC re-introduce the scrutiny of every fund raising Prospectus, prior to the offering's point of entry into markets place.
- b) A new Consumer Investigation Agency is formed to stop the conflict of interest experienced by an agency trying to serve two masters as pointed out in the Wallis Inquiry in 1997. ASIC ought to continue its role in looking after the interests of the financial planning sector, but relinquish its responsibilities of consumer protection.
- c) New policing guidelines be framed to ensure the new Consumer Protector has full legislative powers **and policies** to lay criminal charges in relation to unacceptable practices in the Financial Services and Products industry.
- d) Custodial sentencing ought to be considered mandatory given the extent of the devastating losses experienced by ordinary members of the public.

- e) Regard given to the ever increasing cost of welfare to all retirees/pensioners caught up in such scams and the additional burden of the cost of housing for these people.

### **3. ROLE OF COMMISSIONS:**

During the past six years, large numbers of pensioners have been targeted, persuaded by bad advisers, flawed advice and unconscionable financial products to part with the Deeds of their home, in a “try it and see” campaign, aided by banks who displayed an eagerness to move Low Doc Loan products. Hefty commissions paid by the banks to Aggregators or subsidiaries, were then channelled on to the broker/financial planners creating a fresh increase in the use of glorified sales personnel.

Not one of the component companies or institutions displayed an interest in warning the clients of the inherent financial risks when using such financial strategies. Conflict of interests is evident in the delivery of these “management of financial risk strategies.” Good Advice would have been to stay clear of these products and those who sold them.

The ease with which the Low Doc Loans were executed has led to an over-representation of pensioners and low income families being targeted by commission-driven sales orientated AUTHORISED REPRESENTATIVES, who are paid by Aggregators, the holder of the AFS licence. Certain authorised representatives and financial planners have engaged in the practice of actual falsification and forging of loan documentation.

The Banking and Finance Industry chiefs have noted these practices for some years. Banks moved the responsibility of payment of these Authorised Representatives on to the Aggregators (AFS License Holders) and Non Bank Lenders. Yet the genesis of the commissions is still the banks who are the creator of the products in question. Banks abandoned the direct payment system of commissions to Broker/Planners in 2004, stating repeatedly they could not be trusted, yet were happy for these same people to sell product directly to the public, in order to gain substantial profits from the volume business.

#### **Recommendation # 3:**

1. Ban commission selling in the Finance Services Industry as soon as possible.
2. Banks ought to be banned from profiteering from fraudulent selling by any persons, whether employed directly or indirectly. Slack Loan Approval Processes is no excuse.
3. All clients who find they are the victims of fraud, should have those loans immediately negated.

### **4. ROLE PLAYERS BY MARKETS AND ADVERTISING**

As stated in the Model, the credibility of all Financial Providers and Banks is at stake when such widespread abuse of the banking facilities is evident. The outing of these activities impacts on the wider industry participants. It is hoped the industry itself will recommend similar measures to rid their own ranks of these long-term parasites. Products sold under the guise of management of financial risk strategies s763 A (1b)CL, ought to be closely scrutinised by the corporate sector and

banking and financial product regulators. The blatant targeting of pensioners as if they were “new markets” to be plundered is abhorrent to most Australians.

Material produced by the financial planners and the associated websites would have rang further alarm bells had the regulator been vigilant and/or members of the banking fraternity who provided the banking facilities for the Low Doc loans. There appears to be a calculated, yet convenient ignorance of the material on offer to these elderly people. Bank Officers would often visit the offices of the Planners and give half hour lectures on best ways to sell bank product and advice on target markets. I have spent 15 years voluntarily monitoring web sites, press advertisements and collecting data.

**Recommendation # 4:**

1. The Committee to delve further into the instance of Bank officers attending planner meetings regarding advice given as to the selling of their own products.
2. The ACCC to actively monitor any material produced and to set up a small team of officers to deal with public information on the “latest spruiking” material on offer, whether via phone canvass or via websites or the use of “free ticket” seminars.

**5. ADEQUACY OF LICENSING**

The victims of these Low Doc scams trusted their registered Licencee, here in Australia. However, New Zealand has experienced similar losses per head of population, in much the same way as described in the ‘Model.’ Difficulties emerge in trying to assess which system is more adequate. Certainly the high cost of licensing still produces the same quantity of losses and heartache for ordinary citizens who seek financial advice.

Regulators have been slow to act on initial complaints and the immediate recognition of key indicators of a wider instance of losses ahead. In Australia, we have a Tick a Box multi-licence system. Commissioners were unaware until I pointed out the problem, that Authorised Representatives are able to apply to several different AFS licence holders for a “licence.” The newly registered person can then apply for further licences, all with different numbers.

The ASIC database is woefully inadequate and expensive for people to use to make an informed judgement. The database has too many errors with consistent examples of roting of dates of birth: well known in the Financial Services Industry.

The only beneficiary of the database is the agency itself, who gain incomes of nearly half a million dollars per annum through gathering of fees and charges for access to information which ought to be freely available to the public.

ASIC ought to have shone the regulatory spotlight on the collusive activities of the banks, financial planners, authorised representatives (ex brokers). The licence therefore has become meaningless.

If the Banks were unable to spot the dishonest Authorised Representatives and Financial Planners as they claim, then how were the public supposed to tell the difference?

ASIC ought to have been implementing policies to stamp out these practices when it first knew of the Model. ASIC is the Consumer Protector and yet thousands of Mums and Dads are losing their homes due to regulatory neglect. I wrote of this in my submission to the Property Investment Advice Inquiry in 2005. My calls for a Consumer Protection Agency, were ignored. Losses have escalated since then.

ASIC is simply attempting to serve two masters, an unenviable task at best.

**Recommendation # 5:**

1. A properly constructed Consumer Protection Agency with full investigative powers, to be brought in within two years.
2. The Committee to examine the claims that ASIC's role is compromised as per the perceptions raised in the Wallis (Inquiry) in serving the interest of Banks, AFS licence holders and at the same time, attempting to serve consumer interests.
3. Adequate funding to be set aside for improvements to the ASIC database system.
4. Costs of public searches to be brought down to librarian level, (not approx. \$20 for each search and \$36 for each name search when DOBs are in multi form).
5. Licences be properly policed and restricted to one licence number per person.

**6. APPROPRIATE ADVICE & INFORMATION**

Appropriate advice and information in order to assist consumers in making wise choices, can only succeed if ASIC release the information of the latest scams, other than Nigerian Scams. ASIC has only delivered token warnings of small scams and therefore ignored the key indicators of the one mentioned in this submission. Consumers would be extremely grateful had they been given warnings in 2004 stating: "Stay away from Low Doc loans, Reverse Loans, Equity Loans – UNSAFE. "

By stating further: "these financial products have been designed/ engineered by the banking sector. They are not in your best interests to become involved. These products are not in your best interests and open to known abuses." Had warnings of this type been sensibly utilised, the banking and finance industry would have gone into immediate overdrive to rectify an image problem.

ASIC officers readily admit, they are not products that they would wish their own parents to become involved with. The fault lies in the policies of the agency charged with the protection of the Finance and Banking Industry players. On an executive level, these policies must be change, if we really aspire to consumer confidence in these markets. For markets to thrive, consumers need protection. Withholding vital warnings is tantamount to criminal negligence in my opinion.

In my criticisms of this system a decade ago, the Regulator responded with "Good Advice" programs and Consumer Education programs as if the consumer was in fact stupid. The funds wasted on blaming the consumer rather than locking up a few villains is precisely the reason why so many people have been defrauded amidst losses escalating from millions to billions of lost dollars and heartache.

**Recommendation # 6:**

1. A properly constructed Consumer Protection Agency with full investigative powers, to be brought in within two years with powers to issue early warnings of current Models of Fraud and Misconduct.
2. The Committee to examine the claims that ASIC's role is compromised as per the perceptions raised in the Wallis (Inquiry) in serving the interest of Banks and AFS licence holders and lenders at the same time of serving consumer interests.

## 7. CONSUMER EDUCATION

Victims of scams have trusted the licensing system, unaware of the multiple flaws in policy and governance. People believed the Finance and Licensing system was being policed and had little idea only four criminal prosecutions per annum was the norm. They did not know a licensed planner could steal the family home and get away with it, simply because the regulator was having warm fuzzy meetings with the industry chiefs!

It must be galling for these victims of white collar adversity, firstly to be robbed and then to be publicly blamed and humiliated. ASIC policy switched to blaming the consumer as if consumers of faulty financial products and services were an uneducated band of morons.

### Recommendation # 7:

1. A properly constructed Consumer Protection Agency with full investigative powers, to be brought in within two years with powers to issue early warnings of current Models of Fraud and Misconduct.
2. The Committee to examine the claims that ASIC's role is compromised as per the perceptions raised in the Wallis (Inquiry) in serving the interest of Banks and AFS licence holders and lenders at the same time of serving consumer interests.
3. ASIC be advised to stop blaming the consumer for their own inadequacies.
4. The Committee explore the real underlying factors of financial product abuse and a services industry that has been a common ground for the recruitment of spivs – even if the industry suggest “only 20%” are in this category.
5. Blaming the consumer is tiresome and ought to be stopped as a matter of Government Policy.

## 8. ADEQUATE PII INSURANCE

Australians had no idea of the fact that most Financial Planners do not carry meaningful Insurance. We have a Tick-a-Box system, whereby the AFS licence holder simply states “I am insured.” That is all that Government requires at present. **Parliament has not prescribed detail on how the Insurance Policy** should be worded. Parliamentarians did not know the Insurance was unlikely to ever be of benefit to many of the victims making a claim, until one year after the fall of Westpoint. The AFS Licence holders were uninsured in terms of products being sold or the method of selling.

Yet adequate insurance is a requirement of the licensing system. The Financial Planning Industry lobbied extensively against prescribed insurance as a licensing requirement. The Planners knew it would have a negative effect on their businesses in selling certain products, and an additional cost.

Few it seems argued for the interests of consumers. Industry interests won the day to the express disadvantage for consumers, who are told consistently by the Planner, “we are insured.” The Planner omits to say: “but it’s unlikely you would be successful in the event of a claim, as there are no prescribed insurance requirements, in terms of parliamentary provisions.”

To suggest to consumers there is protection when the likelihood of a claim is nigh impossible, is the root cause of misleading and deceptive behaviour. AFS licensees are fully aware (or ought to be) that there is little chance of a claim in most cases. This situation is compounded by the inability of most victims (targeted) to ever seek redress through the courts except by the involvement of class action groups.

#### **Recommendation # 8:**

1. A properly constructed Consumer Protection Agency with full investigative powers, to be brought in within two years with powers to insist on prescribed conditions on insurance policies,
2. In order to assure the public that Insurance Policies have some meaning to their personal financial safety, Parliament ought to bring in Prescribed Insurance powers for Financial Products and Services as a matter of urgency and ignore the long overused arguments of industry players.
3. The licencing requirement of Tick-a-Box Insurance be abandoned and/or reconstructed as being misleading to consumers of financial services and banking products.

### **9. NEED FOR LEGISLATIVE CHANGE**

Legislation to address the policing of licensed industry rogues has been in place since before the mid nineties and there have been regular upgrades. These laws are rarely enforced and it is the area of white collar law enforcement, or lack of, that is open to abuse and regularly criticised. Lack of Policing and lack of sound policies and judgement continually causes chaos in the finance and banking sectors, hence the need for this third inquiry into this sector during the past six years. I refer to its predecessors: The MCCA Inquiry 2003 and the PIA Inquiry 2005.

A simple application of law enforcement, utilising the powers of “*management of financial risk strategies*” could have ended these activities and the Low Doc loan abuses in 2004.

Consumers are now left counting the cost of regulatory negligence. This situation has to be addressed immediately if we are to gain credibility in the area of consumer protection.

#### **Recommendation # 9:**

1. A properly constructed Consumer Protection Agency with full investigative powers, to be brought in within two years with powers to issue early warnings of current Models of Fraud and Misconduct.

2. The Committee to examine the claims that ASIC's role is compromised as per the perceptions raised in the Wallis (Inquiry) in serving the interest of Banks and AFS licence holders and lenders at the same time of serving consumer interests.
3. ASIC be given advice on how best to take action against the players involved in this latest Model of deceit, concerning the Loan Application Fraud and test some of the legislative powers already contained in the Corporations Act and the ASIC Act.
4. Government to fund the court test cases from the revenue generated by ASIC, of over half a billion dollars per annum.
5. Government to respond to the legislative "loopholes" suggested by ASIC, but only after test cases are taken to court.
6. The current agency ought to test as many laws as necessary to bring about strength in legislative powers. Legislation is merely a group of words. The power of those words can only be fully utilised when tested in court.
7. The Judiciary need to be brought in as the third power of Government to view the evidence that has been gathered to date – from all sources – as to the abuse of the Low Doc Loan financial product and any other banking products that have been causing large volumes of asset losses.

## IN CONCLUSION

The Banking sector has displayed little or no regard for the fact that the equity loans were secured over the victim's residential home and would ultimately and obviously leave the clients homeless.

Banks cannot now be rewarded for those efforts by seizing on the pensioners' residential homes. Such action would be a grave injustice to consumers of financial products and services.

The public need to be able to trust the system of governance. If a washing machine is faulty, we believe there is some redress. Rarely does the retailer blame the consumer. The public tend to regard the Banking and Finance sector as being an industry where complainants of these products and services will be treated in the same manner as retail.

The victims of the Loan Application Form scams did not expect to be blamed by the banking sector for purchasing bank products.

The cultural attitude coming from ASIC suggests that blaming the consumer is safer than blaming the creators of the products. I am hopeful the Committee will be able to reverse the attitude problem that currently prevails in the Banking and Financial Services Sector.

**When funds are lost, ordinary low income Mums and Dads, along with elderly pensioners are suddenly finding themselves being blamed for TRUSTING the very industry, the Committee has been asked to enquire into:** blamed for trusting the products: blamed for trusting the licensing system: blamed for trusting the licensing regulator: blamed for trusting the services offered by the licences and blamed for trusting the banking sector and their own products and services.

The regulator has been aware of the Model for the past six years. Whilst ASIC claimed they were 'closely monitoring', the Federal Regulator failed to warn the public of this particular scandal in the banking sector.

ASIC ought to have issued a consumer warning of the already obvious sub-prime lending practices, noted in 2004. The Committee has a chance to look into these activities via examination of the major causes and issues and warn the public to avoid future losses.

The Committee also has a chance to ban commission driven selling of faulty products, by banning commissions as soon as possible and driving changes for the way in which we prosecute the rogues of the finance and banking sectors.

Whether by design or no, by treating the major players with kid gloves, we effectively as a nation condoned the practice of permitting wholesale looting of vulnerable people's assets, including the elderly. The very reason that an Inquiry into the Financial Products and Services and the Banking Sector has come into existence is because of the conduct of a few key players and the resultant and collective billion dollar losses experienced by so many decent ordinary citizens.

I thank the Committee for allowing me the opportunity to contribute to this important Inquiry.