Senate Inquiry

The performance of the Australian Securities and Investments Commission (ASIC)

Submission by Chris Priestley and Claire Priestley

20 October 2013

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1. Thank you

We are siblings and farmers from Carinda near Walgett in New South Wales. We have lost our land on the Lower Macquarie river near the junctions of the Barwon and Castlereagh rivers , we have lost our home and the life we lived for, our cotton, wheat and cattle farms taken off us by the National Australia Bank in January of this year. Food security is a genuine world concern but the National Australia Bank refused to finance crops taking no consideration for the necessity to produce, they did this so they could seize our farms from us. This is a crime in itself that a bank can interfere with food production because they want to evict a farmer off the land they love. If ASIC had a genuine complaint management policy I believe we would still be where we belong, producing food and clothing for the world. But rather we watch from the outside of locked gates as our neighbours have taken over our land and home before settlement.

ASIC, the ABA and the NAB directors have blood on their hands for what we have been through, the worst of all being the NAB's refusal to let us be with our father Gordon Priestley when he was dying in Brewarrina Hospital because they refused to adjourn the possession proceedings, we said goodbye to him on the phone, his last words being "Don't give up".

We thank the Senate for initiating this inquiry, that hopefully will see that in the future, ASIC or a new regulator will ensure the Australian public and, in particular, Australian family farmers will be protected from predatory lenders. It is crucial that individuals, small business and farmers can have faith in their banking system, and at present this is not the case. We hope you, as Senate Economics Committee members, don't let us down as Cameron Clyne and [redacted] of the National Australia Bank have done and ignore this submission. Bank foreclosure on farms and homes is exceptionally high at a time when Australian banks are claiming to be the most profitable in the world. Australian banks are doing what they want because they can, because since the formation of ASIC on 1 July 1998 as a corporate regulator ASIC has failed to protect bank borrowers. Again we thank you for initiating such a positive inquiry.

2. Submission Terms of Reference priority

We believe our submission corresponds primarily to d) of the Inquiry's Terms of Reference: **d) ASIC's complaints management policies and practices.**

However we will comment on the other Terms of Reference.

3. Terms of Reference (a)

(a) ASIC's enabling legislation, and whether there are **any barriers** preventing ASIC from fulfilling its legislative responsibilities and obligations;

There is a network of barriers that have ensured ASIC cannot fulfil its legislative responsibilities and obligations, especially to make sure complaint handling is dealt with ethically. The Australian Bankers Association (ABA) with the Financial Ombudsman Service (FOS) have designed a dispute resolution promotion that is essentially promotion only and ASIC has enabled this barrier .

Complaints to the FOS are capped at $500,000.00, complaints to the contractually binding Code Compliance Monitoring Committee are inhibited to the choice of forum that that the unpublished/unregistered Code Compliance Monitoring Committee Association (CCMCA) decides suits them, the obvious choice being litigation. The Australian public is not even aware of this secret little group (CCMCA) of deceptive ABA members. This secret association proves that ASIC is being controlled by the ABA, the ABA has formed a barrier to prevent ASIC from protecting Australian banking customers and ASIC has been perfectly aware of this inhibition since the 2005 FEMAG review of the CCMC that was reported to ASIC.

ASIC has knowingly allowed the secretive CCMCA barrier to protect banks from proper complaint investigation. We are perfect examples of how the banks move quickly to commence litigation against customers before a proper complaint service is commenced or even completed giving reason for the Code monitors to refuse to investigate complaints once enforcement action has commenced. This is not a new revelation. In December 2010 the the Council of Small Business Organisations of Australia submitted their submission to the Senate Economics Committee’s Inquiry into Competition within the Australian Banking Sector including: "The Australian Bankers' Problematic Code" which addressed this misleading Code of Banking Practice and the need for the CCMCA Constitution to be investigated.

ASIC has consistently refused to take complaints against the Banking Sector seriously. ASIC say this is for the Australian Federal Police yet ASIC refuse to brief the AFP and they refuse to deal with customers directly, telling them to get a lawyer, go to the Financial Ombudsman Service etc, knowing well that this is not an option for customers who have been set up for financial ruin by their lenders.

Another convenient barrier used against farmers that ASIC is not taking responsibility for is the false claim by the FOS, the FOS is telling farmers that Farm Debt Mediation is another External Dispute Resolution Scheme and thus cannot be assisted. This is not true, there are only two ASIC approved EDR Schemes (1. Financial Ombudsman Service and 2. the Credit Ombudsman Service Limited) currently operating in Australia. The Code of Banking Practice section on External Dispute Resolution is ASIC approved. This excuse also made by the banks to innocent farmers is a lie, under the Code of Banking Practice all complaints must be investigated, (see clause 35.7) and it must be a free service. Farm Debt Mediation is not free and it is not for complaint investigation. The Code of Banking Practice is a contract, Farm Debt Mediatiton is not.

Customers like us have been treated like the criminals, and lost everything because bank CEOs and their directors are controlling ASIC. We suggest ASIC refer the designers of the secret deceptive 2004 Code Compliance Monitoring Committee Association Constitution to the Australian Federal Police for investigation for their misleading and deceptive conduct against the Australian public, especially Australian farmers who go to hell and back to feed these directors with the best quality beef, lamb and wheat in the world and in our part of the world, you wont get better cotton than what is grown at Carinda.

4. Terms of Reference (b)

b) the accountability framework to which ASIC is subject, and whether this needs to be strengthened;

ASIC is supposed to be accountable and responsible for consumer complaints, however ASIC has been accountable to no one since its creation 1998. Parliament needs to hold ASIC responsible for the huge losses suffered by so many people including us, we are homeless whilst big time executives live it up.

We are refugees in our own country, the only difference is we have been completely ignored, with no housing assistance, no government income support or an exit package, we are completely on our own and this should not be happening in modern Australia. ASIC has not been made accountable for not doing as it should, ASIC should be compensating us for such loss, seeing as no other government department will assist us to carry on after victims of deliberate corporate bullying.

ASIC should use their powers now to stop the sale of our land going through and demand that the directors of the NAB prove our assertions that they deliberately misled us for their own financial advantage are incorrect, because a proper investigation of who and why the secret 2004 Code Compliance Monitoring Committee Association Constitution was created would prove we have been deceived. ASIC has been aware of this deception and didn't warn us.

From our experience ASIC and other departments are promotions only. We have been offered absolutely no assistance, in fact we have been largely ignored by the very services who should have assisted us. Not one community service has contacted us to see what they can do to offer to assist us, for example where is the NSW Rural Financial Counselling Service (RFCS)? Where are the so called support workers for rural Australia? When I brought our ordeal to the attention of a Catchment Management Authority officer who is also a board member of the NSW RFCS and copied Mark Coulton MP and Kevin Humphries MP, I was not contacted again. **Please view (Annexure A)**

Where is Barnaby Joyce Australia's new Minister for Agriculture, whose office I called prior to the election but I was not responded to, where is Mark Coulton MP Federal Member for Parkes who I also called asking for him to look into our story of

unethical eviction but again I was never contacted, where is Kevin Humphries MP NSW Minister for Mental Health etc, again I have never been contacted. It is not good seeing Barnaby Joyce with Gina Rhinehart when all we wanted was some kind of support and were willing to speak openly to help other farmers in the same situation. If politicians and government agencies had listened to the public such as us, ASIC would act responsibly, but while ever politicians and government community services are selective about who they listen to from the public, ASIC will continue to use this to their advantage and not protect consumers.

Had ASIC been watching for sub-prime lending problems particularly known in 2005 innocent borrowers would not have lost everything and gone through such heartache.

Again on another serious issue ASIC is responsible for permitting Bank Engineers to develop the Service Calculator which was used by lenders to trap innocent borrowers The Service Calculator and the Loan Application Form are attached to each other, yet ASIC and its licensed EDR's have failed to demand banks hand over these vital documents to borrowers.

ASIC and its EDRs have failed to report these activities to the AFP. There has been no banking or regulatory accountability, evidenced by both the practices of the ABA deceiving the public about the transparency of their contracts and of course the of Low Doc Lending stories.

5. Terms of Reference (c)

c) the workings of ASIC's collaboration, and working relationships, with other regulators and law enforcement bodies;

ASIC appear to refuse to have a working relationship with consumer groups who show the evidence that consumers are being taken advantage of.

ASIC has placed unworkable compensation limits on its EDR's for average loans especially for farmers loans. If the farmer increases his acreage or like us after years of drought and low commodity prices their debt level increased more than they had envisaged and worked on with their agribusiness lenders, they should still be entitled to a free EDR before litigation is served. A farmers debt should not be conveniently referred to us unmanageable, as in our case we could have made a net surplus of about $9million in three years if the NAB had supported us to grow crops, which was the most logical move to debt reduction for Australia's largest Agribusiness bank. The National Australia Bank could send us under because ASIC enabled our contract to be worthless once the Code Compliance Monitoring Committee Association Constitution came into being in February 2004. This alone should have been enough evidence for ASIC to have used their powers and taken these engineers of this secret document to court. Borrowers such as farmers should not be defendants facing court.

The FOS and the CCMC must report to ASIC, however ASIC has not warned the public about their misleading and deceptive contract as the unpublished Constitution is unconscionable.

There should be no limits to Compensation paid by banks and no limits by what ASIC's EDR's can investigate, but it was all in the well thought out plan, because the contracts that are bound by the Code of Banking Practice were designed to deceive and leave the FOS as the only complaint option which is then conveniently capped at a unrealistic level.

ASIC ought to have used so much evidence to take lenders to court but have not laid charges against any of them. It is not using its powers to protect consumers and test these laws whilst customers such as us are being evicted.

ASIC did nothing about the Loan Application Fraud and Service Calculator Fraud in 2001, so why would they act ethically and protect individual and small business loans from the 2004 Code Compliance Monitoring Committee Association?

ASIC has collaborated with Industry Players and not Consumers, and then lied to Parliament. ASIC's working relationship with Lenders ensures that consumer complaint files alleging fraud are closed by ASIC with no formal investigation ever taking place.

6. Term of Reference (d)

d) ASIC's complaints management policies and practices;

As mentioned in contents No 2, we believe our story corresponds primarily to this term of reference. ASIC's complaints management policies and practices have so far failed, leaving borrowers like us homeless whilst banks in particular their CEO's and Directors go on as usual without being made answerable or made responsible for compensation to innocent victims, leaving an opening for predators to seize valuable business opportunities such as ours.

Background

ASIC and its relationship with the Australian Bankers Association (ABA), the Financial Ombudsman Service (FOS) and the Code Compliance Monitoring Committee Association (CCMCA) have ensured there is absolutely no other dispute resolution service except for the court system. ASIC's complaint management policies and practices will never assist customers.

A background to our story will hopefully assist the Senate to appreciate why we believe our submission should be included in this inquiry. Our case should be enough to make you agree that ASIC or a new regulation body must be made to enforce proper lending practices. In particular, agribusiness lending practices

must be scrutinised if family farmers are to survive and not be taken over by predatory Australian or Foreign conglomerates. Agribusiness customers need to be assured that if an incompetent Agribusiness manager is jeopardizing their future their complaints will be heard and not ignored as was the case with us.

Attached articles by Dr Evan Jones on our horrific journey with the National Australia Bank highlight the desperate need for Australian citizens to be protected from their lenders as ASIC never will and never intended to.

Annexure B – Business as usual at the NAB and Grab, 16 January 2013

Annexure C – The NAB, Small business and the wilful ignorance of judges, 16 June 2013.

We are third generation farmers from Carinda, our grandparents arriving from the Pilliga at the original farm "Salt Glen" in 1909. By 1984 our father Gordon Priestley owned another four adjoining farms from the Ginghet Creek to the Macquarie river to the Barwon River. In 1990 we had developed "Riverview" for irrigation, primarily cotton.

In 2004 in a family settlement to purchase three of these family farms from our father we formed a farm business including cotton, wheat and cattle production. From 2003- 2009 Walgett was almost consistently drought declared, however within nine days of approaching the National Australia Bank (NAB) in August 2004 we were given a Letter of Offer for $3million. The NAB benefited from these drought years by taking government drought relief interest subsidies, in our case about $470,000.00. The NAB misled us to believe they were committed to building our long term wealth, in particular through our commitment to irrigation. We have this commitment in writing. But when we could have grown cotton from 2010 until now and when we could have forward sold cotton based on ample water and prices of up to a record $1000 a bale the NAB refused to assist and attacked us with credit card level penalty interest rates.

Rather than abiding by their claim that they are the "bank for all seasons" (**Annexure D)** the NAB decided to cease all assistance to us to take advantage of the drought breaking seasons when water was abundant for cotton and moisture for wheat was available. Rather than us having a net surplus of about $9million from 2009 - 2012 (as an expert report shows and tendered to the Supreme Court before Garling J, 5 December 2012) if the NAB had supported us, our outcome with NAB Agribusiness was eviction on 31 January of this year, not only from our home but also from our beautiful Macquarie River family farms.

We made complaint after complaint about the incompetency of our two agribusiness managers and the lack of agribusiness services being offered to us as promoted, both verbal and written, in early 2010 and had every right to do so under our contract that included the Code of Banking Practice. We were ignored

and litigation was the chosen forum the Agribusiness managers chose.

We have not only lost all of our assets and look set for bankruptcy, but we also have lost a life time of family work and dreams, not knowing what to do next. Our example of what banks can do to farmers and small business in Australia supports the common view that our country is no longer the land of opportunity for everyone, but a country geared at looking after the big guys. The National Australia Bank has sent us under, destroyed our reputation because they could, because ASIC allowed them to chose litigation for dealing with complaints rather than what our contract committed to, that being the Dispute Resolution section of the May 2004 Code of Banking Practice.

The NAB enabled this eviction and possession by refusing to finance cotton and wheat crops since 2009, refusing to look at long term debt management options and preferring to cripple our loan with default penalty interest rates of up to 18%, rather than growing crops, choosing to default us when we had about $325k in wheat pool equity, and choosing to ignore our logical complaints, rather than taking the logical approach to debt reduction.

We made complaints that were ignored. Under Part E Resolutions of Disputes, Monitoring and Sanctions in particular clause 35.7 “our dispute resolution process is available for all complaints” of the 2004 Code of Banking Practice all complaints must be investigated. We made complaints to both Cameron Clyne NAB CEO and NAB Agribusiness Manager [redacted] but we were continually ignored, and advised that Farm Debt Mediation is the proper forum for the resolution of these matters. These matters they referred to were complaints and Farm Debt Mediation is not for complaint investigation, especially when the complaints we made were about the two agribusiness managers that were present at the mediation. Farm Debt Mediation is not recognised by ASIC as an External Dispute Resolution service and it is not a free service. The Code of Banking Practice involves a free service and is contractually binding.

The group of NAB employees whose desire was to seize our land and only assets moved quickly to put us in the court system through Farm Debt Mediation which is the commencement of enforcement action. It is commonly known in the farming community that Farm Debt Mediation in NSW means you will lose your farm because it is not a genuine mediation but a set of unrealistic repayment obligations that does not take into account agriculture’s seasonal changes and commodity fluctuations. We broke our mediation requirements, which we were forced to sign, because of the large-scale November 2010 floods. There isn’t a clause in Farm Debt Mediation for natural disasters. Possession orders followed, briefly put on hold when we proposed an Aboriginal purchase but the NAB refused to assist and give the Aboriginal groups of Walgett and Brewarrina time to investigate a purchase. This is another example of NAB hypocrisy, given that the bank boasts of a NAB Reconciliation Action Plan. **(Annexure E)**

The NAB was successful in the courts, given the bias in legal culture in favour of the lender, and with the help of 'our' then lawyer who wilfully destroyed our case. To this day our complaints have never been investigated as promised in our contract under the Code of Banking Practice, over which ASIC ultimately presides, and we have lost everything our parents and grandparents had worked so hard for.

We watch as our neighbours, who are from one of Australia's largest Agricultural families, have taken over our land before the sale has even gone through, We are locked out forever whilst strangers we have never met start running the land destroying precious grasses, trees and animal habitat. We could make a complaint about this, but why bother when the NAB know they can treat us like this, because ASIC is protecting the NAB and not the Priestleys. To this day we are still being charged penalty interest rates even though the NAB has taken possession, we still receive accounts for our water licences and other government agency accounts that we cannot pay. We have had no advice of sale price or when the sale will be completed even though the close of tenders was June 21, 2013 and the new owners took over three weeks later.

It appears that banks use Loan Service Calculators to grab people's homes by increasing their income and do the opposite to farmers. The NAB conveniently decreased our income and refused to look at a cotton budget and we were deemed unviable, contrary to the expert advice report we tendered to the court.

ASIC and the deceptive Code of Banking Practice

The May 2004 Code of Banking Practice is deceptive with false representations. Customers unwittingly signed up to their contracts from May 2004 until now, not knowing their contracts were subject to another contract, that being the February 2004 Code Compliance Monitoring Committee Association Constitution. ASIC has been aware of this since at least 2005 after the FEMAG review of the CCMC was reported to ASIC, and they still refused to investigate this secret contract and ensure customers were protected.

The current revised Code of Banking Practice is dated May 2004 (it has been updated in 2013, for adoption in 2014, the 2004 Code is relevant in our case).

At no time has the CCMCA ever published its February 2004 Constitution that makes the Code of Banking Practice irrelevant due to the restrictive terms that the CCMC must comply to.

ASIC is meant to be the corporate regulator duty bound to ensure compliance with the Code of Banking Practice by the Code's signatories

The Code Compliance Monitoring Committee Association Constitution (CCMCA) is dated 20 February 2004, written by Malleson Stephens Jaques for

the ABA. Malleson Stephens Jaques published the Financial Ombudsman Service 2008 Constitution. If the CCMCA Constitution is innocent, then why is it a secret and not published as the FOS Constitution is?

ASIC and the Code do not warn customers about the opt-out provision 8.1(b) of the constitution was brought to the Senates attention in 2010 in the Council of Small Business Organisations of Australia's (COSBOA) submission to the Senate Inquiry into Banking competition. This submission notes in its paper The Australian Bankers Problematic Code "The opt-out provision can be invoked by a subscribing bank at any time for the purpose of restricting the Committee from investigating a complaint the bank doesn't want investigated. By using litigation, which is time consuming and very expensive, the opt-out provision provides banks a right to make the committee's dispute resolution procedures powerless, ineffective and irrelevant."

This Constitution is not registered or a public document but it allowed the National Australia Bank to completely disregard our contract and treat our asset and its future in any way they desired because they knew they didn't have to answer to anyone and ASIC did nothing to stop this behaviour nor did the Senate committee that were made aware of this in 2010.

Our story is a perfect example of a non-existent ASIC Complaint Policy, our complaints were quickly transferred to another forum, readily manipulable by the banks, so we could be dealt with in the deadly court system.

The NAB refused to deal with our complaints through their Internal Dispute Resolution (IDR) under the Code of Banking Practice, but rather chose Farm Debt Mediation (FDM) which is the commencement of enforcement action. FDM is not consistent with the Code, nor the ASIC listed External Dispute Resolution (EDR) option.

Nowhere in our Agribusiness loan is Farm Debt Mediation mentioned but the Code of Banking Practice is in every NAB contract. NAB breached our contract by failing to investigate our complaints.

In January 2013 we continually wrote letters to Cameron Clyne, NAB CEO, Michael Chaney, NAB Chairman, and the NAB directors outlining their misleading and deceptive conduct, asking them to stop the eviction and possession, we were ignored and they seized our property, and ASIC permitted this by not ensuring the Code of Banking Practice would protect us. Please see **(Annexure F)** our January 26, 2013 letter. The NAB's lawyer claim we had every opportunity to agitate our complaints in court, showing complete disregard for our rights under our contractually binding Code of Banking Practice. Please see **(Annexure G)**

<u>ASIC ensured that our complaints were ignored.</u>

ASIC knew but we didn't know that our complaints would never be investigated because:

1: NAB CEO Cameron Clyne and the Code Compliance Monitoring Committee (CCMC) knew they were bound by the secret February 2004 Code Compliance Monitoring Committee Association Constitution (CCMCA) that limited their investigative powers as committed to in the May 2004 ABA Code of Banking Practice.

ASIC has been aware of the constitution since the first 2004-05 CCMC Review that Clause 34(g) of the Code of Banking Practice requires: *to arrange a regular independent review of its activities and to ensure a report of that review is lodged with ASIC…*

The first CCMC Review of 2004-05 was conducted by the Foundation for Effective Markets and Governance (FEMAG), the FEMAG report to ASIC stated the potential existed for significant failures to arise due to flaws in the Code and the restrictive and opague nature of the Association's constitution.

The second 2008 CCMC Review of 2008 by Richard Viney that coincided with the ABA's McLelland Review of the Code which Clause 34(g) also requires, also brought to ASICS attention the Associations Constitution and the CCMC's submission that reflected their concerns that the existence of the Association's Constitution has limited their powers. Please see **(Annexure H),** The 2008 CCMC submission to Viney Review.

2: The FOS could never investigate our complaints because the sums involved, being a farm property, are outside the FOS' upper limit. Moreover, the role of the CCMC is that of general Code compliance monitoring. The FOS is to report annually to ASIC.

In other words our complaints had nowhere to go and ASIC de facto facilitated this by not ensuring a proper complaint policy. Our complaints were ignored and conveniently Farm Debt Mediation was served by the NAB before they were investigated and in order to prevent their investigation. Little did we know that once enforcement action was served we had lost our rights under the contractually binding Code of Banking Practice due to the unpublished secretive Code Compliance Monitoring Committee Association Constitution (CCMCA). It appears that once Farm Debt Mediation (one of multiple forums mentioned in the CCMCA Constitution) is served the Code becomes irrelevant. ASIC approves the Code of Banking Practice Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) procedures but has made sure both services do not protect bank customers.

Innocently we made complaints, the crucial one being a detailed list of complaints

in a letter to NAB CEO Cameron Clyne on 19 May 2010. If Cameron Clyne had treated this letter as he should have under our contract we may still be in our home growing our fourth cotton crop. Under Clause 35.7 of the Code of Banking Practice Cameron Clyne should have immediately demanded his staff investigate our complaints. Instead Clyne instructed his staff to advise us that "Farm Debt Mediatiton is the proper forum for the resolution of these matters" **(Annexure I).**

Clyne knew that he could respond to us in this manner and ignore our complaints because he knew ASIC would not demand he comply with our contract and investigate our complaints because ASIC had no intention to monitor banks' behaviour and obligations under the Code of Banking Practice because ASIC has proved to be as deceptive as the corporations they are to monitor.

The Council of Small Business Organisations of Australia brought this corrupt behaviour to the Senate Committee's attention in 2010 in its Submission to the Banking Sector Competition Inquiry titled the Australian Bankers' Problematic Code, dated 5 December 2010. This multi-document submission is frightening. If it had been taken seriously we may still have our land and home, but it has been ignored and we and many other Australian customers have paid the price. To this day the ABA directors who conspired to mislead the Australian public by publishing a misleading and deceptive Code of Banking Practice have never been made accountable. Most disheartening is that the Code Compliance Monitoring Committee submission to the second review in 2008 still wasn't enough to make ASIC take control.

Independent MP Andrew Wilkie has been the only Senator to show strength to acknowledge that complaints were not being investigated. According to the Daily Telegraph article of 11 September 2102, since 2003 only 200 complaints out of 2.5 million complaints have been investigated. Please see **(Annexure J)** is the Bill suggested by Wilkie.

Please see **(Annexure K)** the Wilkie Bill. Rather than wait for the Wilkie Bill to be debated, Steven Munchenberg from the ABA went ahead and announced a new Code of Banking Practice coincidentally on the 31st of January 2013 – the same day we were evicted, the same day we were filmed reading a letter to Michael Chaney NAB Chairman telling him to stop the eviction and possession until he can prove our allegations of misleading and deceptive were not correct

The ABA announced a new Code of Banking Practice and published a new constitution, but this is no consolation to the victims of the 2004 Code. Without proper monitoring, as was the intention of Mr Wilkie, how can the public trust the Code Compliance Monitoring Committee from falling into old habits if ASIC will not step up and enforce regulation.

Ms Segal: the NAB Director/Lawyer/former ASIC director who should know better.

Ms Jillian Segal is a current National Australia Bank director with a long biography of prestigious corporate and community roles. A quick look at this biography suggests a serious conflict of interest in this web of ASIC's collaboration with the big Industry players.

A brief biography of Ms Segal shows that she cannot deny her role in misleading Australian bank customers, especially the NAB customers like us, who wrote to her desperately in January 2013 asking her to investigate our complaints and allegations of misrepresentation relating to the Code of Banking Practice before allowing the NAB to kick us off our land.

As to be expected Ms Segal ignored our desperate letters to save our farms from being taken over, she hid behind Dibbs Barker lawyers and allowed them to inform us that the matters we had raised had been dealt with in the court, but this is not true as our complaints from 2010 until now have never been investigated , nor did not ever get a hearing in court due to errors in law. Of course Ms Segal wouldn't respond as it appears she was one of the chief engineers of the CCMC losing its powers in 2004 and onwards to investigate complaints.

The Jillian Segal Biography:

Jillian Segal is a lawyer who was with Allen Allen Hemsley

Jillian Segal was Deputy Chair and Commissioner of ASIC 1997 – 2002

Jillian Segal was the Chair of the FOS from 2002- 2004. The FOS participated in the revised 2003 and 2004 Code of Banking Practice.

Jillian Segal has been a non-executive director of the NAB since 13 August 2004

Either Jillian Segal has been misled by the ABA if she was not aware of the February 2004 CCMCA Constitution at the time the ABA and the FOS engaged the CCMC, or she is guilty of conflict of interest, knowing that the NAB customers that have put their faith in her as a NAB director, will never be protected by both ASIC, the FOS and the CCMC.

The Senate must demand an investigation into Ms Segal's role in misleading the Australian public and the NAB customers.

Mr D'Aloisio: the ASIC Chairman/Lawyer

Similarly the Senate must demand an investigation into the role that former ASIC chairman Tony D'Aloisio may have played in the misleading Code of Banking Practice. His biography certainly looks like a conflict of interest has occurred.

The Tony D'Aloisio biography.

Mallesons Stephen Jaques wrote the unpublished February 2004 CCMCA Constitution which was never published, they also wrote the FOS Constitution but it was published.

Tony D'Aloisio joined Mallesons in 1977. He was chief executive Partner at Mallesons Stephen Jaques between 1992 and 2004, the same time the secret constitution came into being .

Tony D'Aloisio became chairman of ASIC from 2007 until 2011.

Did Mr D'Aloisio take the role of ASIC Chairman knowing that the CCMC could never assist complainants because of the CCMCA Constitution that was rendered by the law firm he was a partner at?

If this is the case Mr D'Aloisio must be made accountable for his role in misleading the Australian public and using ASIC as a means to fool the public that they would be protected.

ASIC and our unfair litigation background

ASIC has declined to ensure that the Code of Banking Practice is functional and has consistently turned away small business or farmer bank victims even though it has legislated responsibility to actively pursue complaints regarding bank unconscionable conduct. Thus bank borrowers with little legal knowledge are finding themselves either representing themselves or engaging lawyers who are often only prepared to do the bare minimal preparation or who act de facto in the bank lender's interests. The bank's lawyers crucify the customers who are physically and financially so stressed they cannot possibly get a fair hearing or even a hearing. In our case we did not even get a hearing due to errors in law made by our then unhelpful lawyer, errors of law that farmers should not have to know about.

In February 2012 the NAB commenced possession orders against us in the Supreme Court in Sydney because our attempt to sell the farms had failed. So determined were the NAB and their stand over managers that they refused to adjourn the possession proceedings when we told them our father was dying in Brewarrina Hospital. [redacted], the NAB Recoveries officer, refused to assist when we called him. saying the file had nothing to do with him and it had

been "outsourced". Somehow [redacted] claim does not add up as he is the bank officer who signed the Default Judgment for Liquidated Claim on 24 May 2012.

Our father died on February 19, 2012 whilst we were in Sydney waiting to go to court on February 20, 2012. If it wasn't for our father Gordon Priestley's development of the acreages the NAB and their maniac employees would have nothing to fight us for. We had nowhere to turn at the worst time in our lives and ASIC is allowing this inhumane treatment of Australian people to continue.

The day after our father Gordon Priestley passed away the NAB still instructed their lawyer [redacted] from Dibbs Barker to seek possession. Judge Schmidt refused their application and gave us time to file an amended defence.

We spent 2012 trying to have an Amended Defence accepted by the Supreme Court. However we didn't even get our day in court, we didn't even have a hearing. Looking back we should have stayed with our father, but we innocently believed in justice – how wrong we were. Our submissions were quickly struck out. Because we had not presented our defence in a manner to suit the court, our claims of unconscionability and estoppel were never heard. And so the Code of Banking Practice failed us again, its original intention one thought was to protect ill-informed customers from costly litigation.

The Writs of Possession were granted in October 2012. In January 2013 we were sadly evicted with two Sheriffs, two locksmiths and two bodyguards. ASIC has failed to protect Australia's farmers and the NAB and its directors knew they could do this to us.

In December 2012 we represented ourselves asking for a Stay on the Writ of Possession and seeking a new defence based on exceptional new evidence whereby we had obtained a copy of the secret unpublished 2004 Code Compliance Monitoring Committee Association Constitution, a copy of which Justice Garling was handed, but still we were denied a hearing due to errors of law. However, Justice Garling was not complimentary to the NAB in his judgement, implying that we had grounds to sue the NAB for compensation.

Completely shattered we walked away from the court wondering where was the fairness in this court system.

On 7 May 2013 we again represented ourselves in front of two judges to try and show that we deserved a new defence based on this extraordinary new evidence shown to Justice Garling, but again this was refused and again the NAB lawyers walked away with a smirk on their faces. So much work proving wasted and the truth refused. We lost everything because ASIC refused to protect us from a court system in which we could not possibly win. The only EDR that ASIC could assure us of having access to was the Supreme Court without finance to defend

ourselves against Lawyers whose speciality is possession and eviction.

7. Terms of Reference (e)

(e) the protections afforded by ASIC to corporate and private whistleblowers;

Iam sure there are many decent Australians who know so much about how certain customers have been deliberate targets of aggressive bank managers or even bank CEOS and directors who probably have friends that may wish to further their business interests by acquiring certain peoples valuable assets. The past history of bank whistleblowers has meant they have been harassed, it has proven too dangerous to even contemplate whistle blowing because ASIC will not protect whistleblowers.

8. Terms of Reference (f)

(f) any related matters.

Time for a Royal Commission

When we appeared before Basten and Macfarlan JJ on 7 May, we were told "this is not a Royal Commission". We were also asked what right did we have to have a copy of the CCMCA Constitution. Every Australian has a right to a copy of this document and if the courts are suggesting our assertions are only suitable for a Royal Commission, then it is time this is done. We were deemed vexatious simply because we brought to the court's attention an issue so serious they were not prepared to deal with it. For being concerned to defend our own interests in the light of our unconscionable treatment we were thus deemed as trouble making Australians. Of course the NAB were not once asked to respond to our assertions about this misleading and deceptive Code and contract. It's time that ASIC and the government stood up and declared the banks as vexatious and fatal to the future of Australian individual and small business banking customers.

This secret Constitution proves the Australian public cannot trust the banks' formal commitment to self-regulation. It is time there was a Royal Commission so that rigid banking standards are implemented and fully funded class actions are declared if it finds the banks knowingly deceived the public. This Constitution set customers up to have only one option for dispute resolution which was the courts, and ASIC knew this and failed to stop it.

ASIC has failed to deal with complaint investigation and customers are finding themselves in court which ultimately ends up with the lender gaining possession of their only asset. The courts only see one complaint and that is the convenient complaint of the banks – "But you owed the money". How the customer ended up

owing more than they should and ended up in the court as the defendant is deemed irrelevant.

A Royal Commission is required to investigate if the architects of the 2003/2004 Code were fraudulent in their actions to deceive the Australian public. ASIC is responsible to investigate how the CCMCA's Constitution came about and find out which banks used it to limit powers and authority of the CCMC. Who were the officers of the ABA when its PR promoted the CCMC's powers and the codes enforceability after the Constitution was being drawn up? Ditto, why ASIC has not taken action to provide adequate complaint management policies and practices. These Code designers need to suffer the consequences of their deception, and feel loss like we have, they need to be evicted and bankrupted and not allowed to work in business again.

If ASIC is not prepared to regulate and protect customers from the courts, it should provide a legal fighting fund so at least they get a fair hearing. For ASIC to advise customers to get a Lawyer when they are struggling to live is a complete insult. ASIC should be either initiating litigation or fully funding class actions to stop lending manager fraud and directors deliberately plotting to deceive the public.

ASIC must answer questions in the sub-prime loans that were not an accident. Sub Prime lending has reached epidemic proportions. There has to be consequences for the executives of the banks who created the service calculator and the Loan Application Form scam.

Our story has many layers but the common thread is all remedies that could assist the business to trade out of debt were rejected in an unfair and unethical way. The NAB knew that they could disregard their contract with us and their misleading long term commitment to us and treat us in any way they wished because they knew they did not have to answer to any regulator such as ASIC, the Financial Ombudsman Service (FOS) or the Code of Banking Practice's Code Compliance Monitoring Committee (CCMC).

ASIC has created an imbalance of justice here, if the NAB had supported us we would probably have had a debt free farm by now. Instead we have lost everything and we will watch as our neighbour will build his wealth (This is entirely the fault of the NAB and not our neighbour, all we are trying to reflect is, if the farms were good enough for someone else to buy then why didn't NAB support us to refinance the loan instead of telling us to sell in early 2010 when the market was in the doldrums after a long drought).

We believe our neighbour forms part of the famous Harris family conglomerate that Senator Heffernan refers to this family on page 18 of the Global Food Forum he spoke at this year.
http://resources.news.com.au/files/2013/04/19/1226624/597724-gff-panel-4.pdf.

Senator Heffernan maybe interested in our story, and how ASIC and the NAB has interfered not only with food security but also Australia's GDP. Others farmers are horrified at what we have been through and cannot believe the NAB let the land sit there not producing and we have ended up in such financial hardship when this should not have happened. The flow on effect of ASIC's incompetency runs deep.

Our neighbours who we have never met have enough land, buying up to approximately 200,000 acres in the Carinda area since 2004, this does not include the Walgett country they have invested in. Our home and land are still in our names, ASIC should step in immediately, stop the sale from going through and demand the NAB compensate us for damages both emotionally and financially.

ASIC has not protected consumers by allowing manipulation of consumer protection services, which is ultimately allowing the wealthy to get wealthier. It is not our neighbours fault ASIC failed to protect us from lenders who decided to destroy us, however our land home will never mean as much to them as it means to us, our neighbours will be ok, but what is to become of us? ASIC should immediately use their powers to stop the NAB from continuing with this sale, as ASIC are fully aware we have been cheated. Thee NAB can pay our neighours damages for misleading them as well. We want our home back.

Australia's leaders need to start showing courage and strength, and support the people who keep the country going.

We thank you for taking the time to read our submission and truly hope that ASIC can be reviewed to protect customers especially Australian farmers and small business. Further information can be supplied, we are willing to be interviewed if the Committee requires.

Yours faithfully,

Claire Priestley