

Parliamentary Joint Committee on Corporations and Financial Services
The Impairment of Customer Loans
Senator David Fawcett
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

20 July 2015

RE: Serious Fraud and Malfeasance at ANZ Bank

Dear Senator David Fawcett,

Consumers look to place their trust and confidence in Banks and financial services businesses, for help in securing products with which may be complicated and may be unfamiliar with. Consumers are required to sign 'non negotiable' bank drafted complex legal documents to obtain loans, and in doing so, they have to place significant trust in the honesty of these professionals and organisations.

ANZ's Executive officers have a fiduciary duty to ensure that ANZ is fully complying with all its legal obligations and applicable laws. This submission contains a copy of detailed correspondence regarding ***Serious Fraud and Malfeasance within ANZ Bank*** that was sent direct to and confirmed received by; _____ : Chief Executive Officer, Executive Director ANZ and _____ : General Counsel ANZ

It is important that ANZ in the conduct of all aspects of its business, act with honesty and integrity, diligence, competence and independence in the performance of these functions. Invariably when vast sums of money are to be made, things do go wrong; malfeasance, inappropriate culture and improper or illegal conduct take place, it can have lifelong devastating impacts on innocent consumers.

ANZ must ultimately answer the following question.

"ANZ abides by all the Laws of Australia, and is a honest and trustworthy Bank; why as a customer, do we need to check any ANZ transaction for any deceitful practices by any ANZ officer, plus any paperwork ANZ officers prepare or put in front of us for execution for FRAUD?"

ANZ as a AFS licensee must establish and have adequate systems and procedures to ensure they meet all the obligations of their licence, furthermore consumers should have confidence that a AFS licensee such as ANZ Bank is in full compliance.

It is the presumption that when parties enter into contracts, they contemplate honesty and good faith in the performance of their obligations. In the House of Lord's decision of *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* Lord Hoffman remarked:

"I think that in the absence of words which expressly refer to dishonesty, it goes without saying that underlying the contractual arrangements of the parties there will be a common assumption that the persons involved will behave honestly."

It takes consumers many years to save deposits for their first home, and life times to own or build up significant equity in their homes, farms or business, to provide for their children, and a long comfortable retirement.

Unscrupulous financial predators large and small lurk everywhere, preying on the innocence of consumers and their hard won assets. Borrowers over commitment is rife, poverty line living expenses (significant hardship) and every other dollar spent on debt repayments leading to inevitable loan defaults, increased interest rates, penalties, the coerced forced sale of their property or sold up in mortgagee sale and bankrupted.

Consumers are indoctrinated and shamed into believing *'it was all your fault', 'your financial difficulties', or 'market vagrancies', or 'the GFC'*; its never the bank's fault who's here to help you *'achieve your dreams'* and palms you off to *'Customer Care'* aka *'Late Collections or Recoveries'* and inescapable financial ruination. Customer asset harvesting / stripping takes place at every stage, furthermore the bigger the predator the easier the takedown is to implement and achieve, all without any fear of regulatory interference or retribution.

Lender Mortgage Fraud: is a crime perpetuated by officers or agents of the lender in which the intent is to materially misrepresent or omit information on a mortgage loan application to obtain a loan or to obtain a larger loan than would have not been obtained had the lenders approval systems or borrower known the truth, and often includes **Predatory Mortgage Lending**; which occurs when a consumer is misled or deceived by agents of the lender, and often followed by **Asset Stripping**; when the overcommitted borrower can no longer keep up with payments, or by using a **Constructive Default** (security revaluation), and using other non-monetary conditions of default to impair and call in loans, depriving another of property, or putting that property at risk, or risk of deprivation, or like conduct as described herein. (Lender Mortgage Fraud or LMF)

"..... to lend money without regard to the ability of the borrower to repay by instalments under the contract, in the knowledge that adequate security is available in the event of default, is to engage in a potentially fruitless enterprise, simply because there is no risk of loss." Basten JA in Perpetual Trustee Co Ltd v Khoshaba

It is plainly unreasonable that ANZ bank or any bank should even attempt or be able to shift the risk of unauthorised transactions, fraud or wilful misconduct of banks' employees within its own sphere of control to an innocent customer. The compelling rationale is *that banks rather than the customers would be in a better position to effectively detect the fraud of its own employees.*

Banking customers who are victims' of conduct described under the well known precedent set in *'L'Estrange v Graucob'*, that can be characterised as *"actions showing no regard for conscience or that are irreconcilable with what is right or reasonable"* i.e. *"high level of moral impropriety", "high level of moral obloquy", "misrepresentation" and "fraud"* are more than likely not to be held bound to their onerous credit contracts.

Toll (FGCT) Pty Limited v Alphapharm Pty Limited [2004] HCA 52
46.the well-known principle stated by Scrutton LJ in *L'Estrange v F Graucob Ltd [1934] 2 KB 394* at 403 ("*L'Estrange v Graucob*") that "[w]hen a document containing contractual terms is signed, **then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not.**"

The doctrine of fraud on a power was developed by equity to prevent exercise of special powers for improper motives amounting to *fraud* in the common law meaning of the term or any conduct which could properly be termed dishonest or immoral, including when the power of sale is to be exercised in circumstances where there would be a fraud on the power.

This can be and often is where the financial institution decides its exposure to asset classes or the assets physical location; and for the sake of capital requirements, increasing profitability or reducing a perceived risk, banks and other financial institutions using a *constructive default* process to impair and calling in, or not rollover otherwise performing loans. It would a fraud on the power to exercise it in circumstances where the mortgagee itself has been guilty of conduct which strongly contributed to the, or engineered the mortgagor's default, which is the basis for the exercise of the power of sale.

When financial institutions conducts valuations of the assets of loans that may become impaired, a forced quick/quit sale valuation is procured, it's often 20-25% below fair market value, further eroding the LVR and the comfort level that the banker has, causing an inescapable negative feedback loop for the hapless consumer.

Banks are licensed and regulated by Governments to undertake banking services, and to create money or credit when making loans, furthermore huge sums are continually expended on advertising to convey and project a image of honesty integrity and 'we live in your world'. The ugly truth is it's a parasitic association based on a mortgage, with the money creators and lenders seeking debt enslavement, steady cash flow interest payments, and if or when the borrower defaults the equity in their pledged assets.

Banking institutions aren't necessarily evil, it's the obscene bonuses and psychopathic greed that morally corrupts the very people entrusted with running them, which creates and facilitates the '*profit above all else culture*', '*wilful blindness to any wrongdoing*', and hiding behind the corporate veil,furthermore shareholders the real banks owners most certainly do not condone immoral and illegal activities.

ANZ senior executive management knew that *Lender Mortgage Frauds* were able to be committed by dishonest loans officers, this was a known systemic operational risk and had been for many many years, yet executive management allowed the avenues to and methods of the frauds to remain open and unchecked. There were systemic deficiencies in the credit control framework, and these deficiencies were likely identified in credit risk reviews, but remedial actions were not implemented in a timely or effective manner.

It is clearly evident there were serious short comings within the entire ANZ "streamlined" automated loans processes as early as 2006 if not before. These short comings combined with a widespread lack of required internal safety protocols, plus any proper checks of the automated loan approval systems allowed systemic abuse by dishonest employees. ANZ's; *Global Retail Lending Policy*, loan guidelines and prudential practice manual were routinely ignored, side stepped and the prudent and diligent banker lending requirements criteria and the lax automated computer loans approvals process allowed and permitted loans to be illegitimately approved.

These numerous serious failings exposed every ANZ borrower over the last 10 years to the serious risk of *Lender Mortgage Fraud and Predatory Lending Practices*, to which tens of thousands of Australian family's became unsuspecting innocent victims.

We draw the committees attention to; *Tonto Home Loans Australia Pty Ltd v Tavares; FirstMac Ltd v Di Benedetto; FirstMac Ltd v O'Donnell [2011] NSWCA 389*

259. The only clear organisational checks and precautions were the guidelines. Not only were they not followed, but they were disregarded in a way found by the primary judge to reflect a lack of real concern for aspects that underpinned serviceability and the suitability of the borrowers. Of course, lending guidelines such as these are principally the relevant tool to protect the lender's interests.

However, as recognised by Spigelman CJ in Perpetual Trustee Company v Khoshaba [2006] NSWCA 41 at [80]- [82] and Campbell JA in Kowalczyk at 228 [102], following the guidelines confers a direct benefit on a prospective borrower by identifying risky loans and preventing fraud. The failures can be seen to be material in permitting the fraud to occur.

*270 Another aspect of the public interest is the advancement of the protection, to those not able fully to protect themselves and to those preyed upon by dishonesty, trickery and other forms of predation. namely to prevent unjust dealings which offend against community standards of business morality': J R Peden *The Law of Unjust Contracts (Butterworths, 1982) at 122**

271 Procedures that promote suitable borrowings and operate as checks against fraud should be seen not only as matters for the lenders to comply with or not as they choose, but as indirect guards against conduct that can produce injustice to members of the public and thus undermine confidence in the free and fair operation of financial markets.

Such protection will, in the public interest, encourage the recognition by lenders that the safeguards in such structures to avoid or minimise fraud or misleading conduct should be rigorously applied. For example, here, it was not good enough to be precise and perspicacious only about the taking of security and its value.

But when people are duped, misled, defrauded or taken advantage of by participants in the financial system by means that have been, in significant part, facilitated by inhering obvious risk and lax operation of appropriate safeguards, it conforms to the public interest to take into account such systemic and operational failure in order to assist to promote conditions that will make it more difficult for such conduct to exist, and thus encourage circumstances more conducive to free and just contracts." Tonto Home Loans Australia Pty Ltd v Tavares; FirstMac Ltd v Di Benedetto; FirstMac Ltd v O'Donnell [2011] NSWCA 389

When a ANZ consumer is a victim of an error, mistake, misleading, deceptive or fraudulent conduct, and has in all probability occurred; it is a regulatory requirement that ANZ acknowledge and propose appropriate resolution, be open and co-operative, what is a fair and reasonable, effective and lawful appropriate outcome. This means that a consumer victim should be quickly and equitably compensated for any direct or consequential loss or damage caused by any breach of any obligation owed in relation to the provision of any ANZ financial product or service.

ANZ's in house de facto merging of its *Complaints - Collections – Legal's* business units produces grossly inequitable perverse outcomes; where '*victims entitled to compensation*' are lumped in the same bucket of '*recoveries of delinquent and defaulted loans*'.

The consistent defrauding of consumers of their rightful compensation of the real losses have suffered at the hands of financial institutions is not to be regarded as additional lucrative profit centre. Unfortunately the well known in-built culture of Banks; *Delay – Deny - Defend* attitude when things do go wrong and or illegal conduct takes place, affecting innocent consumers, (who are now reclassified to numbers and outstanding bad debts). Banks will *Delay* handling your complaint, *Deny* they were at fault or you lost money, and *Defend* their decision in prohibitively expensive drawn-out court battles.

With nowhere to go, ANZ and others bet you'll take what they offer and walk away. i.e. force '*smaller walk-away settlements*.' fearing that if they didn't, they'd get nothing at all. Banks are betting you won't wait, you won't sue and you'll take what you get and walk-away. Victims of bank malpractice and malfeasance have been coerced and forced into walking away from hundreds of millions of dollars that bankers now keep for themselves. These innocent victims are treated with disdain and contempt, no or lowball offers of compensation on a take it or leave it basis; along with coercion, threats of repossession and litigation.

Why this despicable practice is condoned or allowed to even take place by ASIC, APRA or the Government needs to be seriously questioned and immediately rectified.

As customers of ANZ, we have been subjected to outrageous conduct not only at the ANZ Branch concerned, but consistently from numerous officers (at all levels) at ANZ Head Office. It is absolutely appalling what has happened to us as innocent victims of *Lender Mortgage Fraud*.

Initially our plight was, caused by and as a result of a Cairns based ANZ loans officers, consistent multiple actions of misleading, deceitful and fraudulent conduct; combined with frequent affirmations and promises during 2008-2010 of the return of significant cash equity we put up as required security for the facilities, which

was to be by way of within 18 months of an ANZ financed 2nd tranche advance, which never could have eventuated.

The still employed by ANZ officer, lacking of any of the required Loan Application Forms, borrower approvals or supporting concurrent paperwork, made five illegitimate credit contracts secured by mortgages between 2006-2010, plus numerous unauthorised completely fake loan applications, all of which grossly falsified our true financial position in every sensitised electronic SOFP(consumer), which was submitted electronically to achieve unchecked fraudulently automated loan approvals.

In August 2012 on receipt of documents from ANZ, we discovered to our horror the ANZ officer had undertaken systematic fraudulent conduct, We promptly notified ANZ of the facts of this extremely serious illegal conduct, and that we as trusting and honest customers actually anticipated, or had any knowledge of, or participated in any fraud or deception, and to which we became unsuspecting innocent victims.

ANZ in dealing with a known systemic operational risk of *Lender Mortgage Fraud* is required by law to endeavour to settle a complaints equitably and quickly, which required us to be; put back in the position we were in prior to the malfeasance;

"If a transaction has been originally founded on fraud, the original vice will continue to taint it, however long the negotiations may continue or into whatever ramifications it may extend": Reynell v Sprye 1852,; Smith v Kay 1859.

If ANZ had quickly proceeded to equitably settle this very serious back matter in August 2012 (which was clearly in its best interests), and has been forewarned and been provided with numerous opportunities to mitigate our ever mounting consequential losses. Unfortunately ANZ has not availed its self of this wise course of action.

"It does not lie in the mouth of the fraudulent person to say that they (the losses) could not reasonably have been foreseen", see Doyle v Olby (Ironmongers) Ltd [1969] 2 QB 158

Instead over the last 3+ years, ANZ own *wilfully blind* officers have consistently; covered up, the true facts, ignored culpable evidence, lied and deceived us, sought to deny any wrong doing, knowingly attempted to fabricate any specious case against us (while provided absolutely no evidence). Delayed and denied any equitable resolution, contrived to ruin us financially, and thereby increasing the entirely preventable our ANZ induced consequential losses substantially.

Subsequently as a direct consequential result of ANZ's ongoing unscrupulous actions, our once happy family has been shattered, furthermore for a prolonged period of time; we have been subject to significant hardship, unnecessary emotional trauma, worryment, severe stress, pain and suffering.

ANZ after 3+ years has failed to pay any compensation, its self serving claytons 'low ball' offers of settlement are misleading and inequitable, carry unacceptable draconian terms and fail absolutely to put us as innocent victims back in the position we once were, leaving us ruined, furthermore our consequential losses caused by ANZ continue to escalate.

ANZ Executive Officers have a fiduciary duty to ensure that the ANZ Corporation is fully compiling with ALL its legal obligations and applicable laws.

The ANZ Banks executive cannot shelter behind its failure to make the appropriate level of enquiry demanded, for fear of what that enquiry will reveal, or the repercussions of adverse findings, the executive under its mandate cannot choose to shut one's eyes to the obvious, to assume a state of "wilful blindness", or otherwise to generate a state of contrived ignorance.

Being consistently subject for some 4 years to ANZ's "Kool-Aid" culture and outrageous conduct, and despite every attempt to work with ANZ to finalise the matter amicably, nothing has been resolved. As innocents having now been forced into a corner, and facing certain financial ruination.

ANZ Executive has been warned and on written notice: "*Wider ramifications for ANZ will quickly follow should ANZ fail to enter into negotiations or settle the matter. Without Notice, a whole unpleasant chain of events that are of far greater significance will certainly unfold; ANZ faces serious reputational risk exposure and financial losses*".

The following screen capture is of the covering email of the correspondence including attachments, which was sent direct to and twice confirmed received by;

Chief Executive Officer, Executive Director ANZ, and
General Counsel ANZ, and furthermore

the knowledge of the contents within inputted to the recipients and the ANZ Corporation.

Determined forthright individuals (, *former CBA financial planning adviser*), can take on a Big 4 bank, create a large ground swell of discontent, significant bad press, Parliamentary inquires, and followed by probing Regulatory scrutiny and action.

In addition significant documentation already provided to the committee, we are able to provide further extensive evidence on the unacceptable culture and illegal practice of and subsequent cover up of *Lender Mortgage Fraud and Predatory Lending* within ANZ Bank.

Yours faithfully,

Adrian Beamond

Deborah Smith

(The ANZ executive correspondence as described above of some 14 pages is included as an attachment to our submission below and reflects honestly the ballance of the original 6682 word document as sent, some 1035 words including some paragraphs have been redacted.)

Parliamentary Joint Committee on Corporations and Financial Services
The Impairment of Customer Loans **Submission #2**
Senator David Fawcett
PO Box 6100,
Senate Parliament House
Canberra, ACT 2600

20 July 2015

RE: ANZ's All Moneys Mortgage and associated Dishonest, Misleading & Deceptive Conduct.

This second submission brings to the committees notice; serious matters regarding ANZ's ubiquitous *All Moneys Mortgage* and associated dishonest, misleading and deceptive conduct. The ANZ wide culture and practices deliberately employed were far more than just "sharp practices", there are in all likelihood hundreds of thousands of these Mortgages in existence, and hence tens of thousands of ANZ victims.

Australian Securities and Investment Commission (**ASIC**), **Financial Assessment and Intelligence Division** requested and received the following "whistleblower" correspondence of 11 pages as an attachment below on 4 May 2015, and subsequently we are advised undertook some investigation. ASIC's Assessment and Intelligence Division is headed up by _____ who reports direct to Deputy Chairman _____ certainly did have knowledge of this serious matter and at one point was going to discuss the matter with us personally. ASIC subsequently have officially decided 'not to pursue' the allegations of ANZ's very serious dishonest, misleading and deceptive conduct which is clearly in contravention of the law.

Consumers look to and have to place their trust and confidence in Banks and financial services businesses, for help in securing products with which may be complicated and may be unfamiliar with, they are required to sign 'non negotiable' bank drafted complex legal documents to obtain loans, and in doing so, they have to place significant trust in the honesty of these professionals and organisations. Consumers are unwittingly being manipulated by omission of facts, misleading and deceptive conduct and are finally stitched up on a slickly lawyer produced *All Moneys Mortgage* (which most consumers have never heard of; where every asset you own now or own in the future is 'accessible and pledged' to the bank) over their hard one real property assets, can well be regarded as unconscionable if not illegal conduct.

".....when people are duped, misled, defrauded or taken advantage of by participants in the financial system by means that have been, in significant part, facilitated by inhering obvious risk and lax operation of appropriate safeguards, it conforms to the public interest to take into account such systemic and operational failure in order to assist to promote conditions that will make it more difficult for such conduct to exist, and thus encourage circumstances more conducive to free and just contracts."
Tonto Home Loans Australia Pty Ltd v Tavares; FirstMac Ltd v Di Benedetto; FirstMac Ltd v O'Donnell [2011]

ANZ's Executive officers have a fiduciary duty to ensure that ANZ is fully complying with all its legal obligations and applicable Laws of Australia. ASIC and APRA under their mandates must institute a ANZ wide investigation into every ANZ mortgage. By law there must be a unwinding of and to make *void ab initio* the 'all moneys' provisions of all the ANZ mortgages, unwitting signed by tens of thousands of ANZ's duped victims, furthermore ASIC's supervision is required to ensure the prompt payment of equitable compensation to those duped consumers who have sustained loss and damage when ANZ unlawfully enforced those All Moneys Mortgage provisions.

Yours faithfully,

Adrian Beamond Deborah Smith

Parliamentary Joint Committee on Corporations and Financial Services
The Impairment of Customer Loans Submission #3
Senator David Fawcett
PO Box 6100
Senate Parliament House
Canberra, ACT 2600

20 July 2015

RE: Payment of Quick Equitable Compensation to Victims of Financial Service Providers.

This third submission brings to the committee notice; serious concerns and a effective implementable remedy regarding the payment of quick equitable compensation to victims of Financial Service Providers (FSP) malfeasance. Tens of thousands of innocent financially vulnerable consumers are reliant on, and at the mercy of the greedy profit driven bankers, to be *'put back in the position they once were'*. Bankers and FSP denial of liability and delay of compensation certainly does have **lifelong devastating impacts on innocent consumers**.

When a FSL consumer is a victim of malfeasance it is a regulatory requirement under the ASIC Act Sec 912a, 912b Regularity Guide 165 (see Annexure C) that a **consumer victim should be quickly and equitably compensated** for any direct or consequential loss or damage caused. It has been bought to ASICs attention that any of the words QUICK or PAYMENT or COMPENSATION does not even appear in Sec 912a or in Regularity Guide 165

FACT: in 2015 there is NO active government protection for individual consumers of financial services.

FACT: If you took a loan **prior** to July 1 2010 or January 1 2011 when the NCCP became law;

- ✓ there is NO active State or Federal Government consumer protection for any borrower at all.
- ✓ the State governments will not act on your behalf or for any borrower re UCCC prior to 2010

FACT: If you took a loan **after** to July 1 2010 or January 1 2011 when the NCCP became law and **ASIC became responsible**;

- ✓ **ASIC confirms will**; NOT assist you, NOT act on your behalf, NOT prosecute, and NOT recover lost monies or loss caused to any individual by a FSP for any individual borrower / consumer.
- ✓ **ASIC will most certainly**; waste your time, not ask for detailed information, be wilfully blind to the most obvious of misconduct or fraud, quickly close your case, shred your evidentiary documents, send you a standard 'fob off' letter, quickly refer you to FOS, or a community legal centre, or you can 'take the bank to court'.

FACT: the Federal Treasury Department, Treasurer _____, and assistant Treasurer, _____ along with the Federal and State Attorney Generals departments is well aware of this sorry state of affairs. Action is needed Today, with the immediate establishment of a new Federal Government consumer office;

Judicature of Financial Services (JFS)

Will be a fully FSP funded, consumer focused friendly totally independent Judicature, to fast track administration of swift justice, of financial and investment advice misconduct, without the prohibitive exorbitant costs or drawn out formalities of court. JFS will be being a body of persons of authority including solicitors, barristers and judges exercising the office, function, extent and power of a court, with the authority to, adjust restructure or void credit contracts, mortgages, and compensate individual consumer victims equitably and quickly.

Lender Mortgage Fraud: is a crime perpetrated by officers or agents of the lender in which the intent is to materially misrepresent or omit information on a mortgage loan application to obtain a loan or to obtain a larger loan than would have not been obtained had the lenders approval systems or borrower known the truth, and often includes **Predatory Mortgage Lending**; which occurs when a consumer is misled or deceived by agents of the lender, and often followed by **Asset Stripping**; when the overcommitted borrower can no longer keep up with payments, or by using a **Constructive Default** (security revaluation), and using other non-monetary conditions of default to impair and call in loans, depriving another of property, or putting that property at risk, or risk of deprivation, or like conduct as described herein. (Lender Mortgage Fraud or LMF) (see Annexure A)

“..... to lend money without regard to the ability of the borrower to repay by instalments under the contract, in the knowledge that adequate security is available in the event of default, is to engage in a potentially fruitless enterprise, simply because there is no risk of loss.” Basten JA in Perpetual Trustee Co Ltd v Khoshaba

Invariably when vast sums of money are to be made, things do go wrong; malfeasance, inappropriate culture and improper conduct can and do emerge; when misleading, deceptive, fraudulent, or illegal conduct takes place, it can have **lifelong devastating impacts on innocent consumers**.

- ✓ generally it takes consumers many years to save deposits for their first home, and life times to own or build up significant equity in their homes, farms or business, to provide for their children, and a long comfortable retirement.
- ✓ when a consumer is a victim of an error, mistake, misleading, deceptive or fraudulent conduct, and has in all probability occurred; it is a regulatory requirement that the FSP acknowledge and propose appropriate resolution, be honest, open and co-operative, what is a fair and reasonable, effective and lawful appropriate outcome.
- ✓ A FSP consumer victim should be quickly and equitably compensated for any direct or consequential loss or damage caused by any breach of any obligation owed in relation to the provision of any financial product or service,
- ✓ It is accepted policy of the Banks, that the consumer would be put back in the position they were if the error, mistake, misleading, deceptive or fraudulent conduct had not occurred.
- ✓ Compensation or remediation may involve a refund, and or payment monetary compensation and interest.
- ✓ Retail consumers may become impecunious due to result and or effects of paragraph(d),
 - (i) they often can and do run out of savings and available credit,
 - (ii) furthermore may have no or limited assets or means to effect further borrowing of moneys, and
 - (iii) simply unable to prevent or mitigate effectively further consequential loss or damage,
 - (iv) FSP should know of or should be aware consumers may become impecunious, and
 - (v) Compensation or remediation should be effected and payed in a reasonable time frame, without undue delay, as required under the ASIC regulations.
- ✓ if there are; deliberate delays, procrastinations, put offs, errors, negligence or conduct of a like kind, the consumer may very well suffer further consequential loss or damage at the hands of the FSP.
- ✓ the FSP would and should be also responsible for all further consequential loss or damage inflicted upon and or sustained by the FSP consumer victim, until the compensation or remediation is finally effected.

We are all witness the financial services industry wide culture and practices that are deliberately employed **consistent defrauding of consumers of their rightful compensation** of the real losses suffered at the hands of FSP's which they now regarded as additional lucrative profit centre. Unfortunately the well known in-built systemic culture of Banks; *Delay – Deny - Defend* attitude when things do go wrong and or illegal conduct takes place, affecting innocent consumers. Consumers of FSP's are indoctrinated and shamed into believing *'it was all your fault', 'your financial difficulties', or 'market vagrancies', or 'the GFC', its never their fault.*

Banks will *Delay* handling your complaint, *Deny* they were at fault or you lost money, and *Defend* their decision in prohibitively expensive drawn-out court battles. These actions are far more than just 'sharp practices', with nowhere truly independent to go, (see Annexure E) and paying for legal representation, expert witnesses reports for long drawn out court battles is not a option. FSP and their complicit external solicitors bet financially pressed consumers take what they offer and walk away. i.e. force '*smaller walk-away settlements*.' fearing that if they didn't, they'd get nothing at all. Banks are betting you won't wait, you won't sue and you'll take what you get and walk-away.

Victims of bank LMF, malpractice and malfeasance have been **coerced and forced into walking away** from hundreds of millions of dollars that bankers now keep for themselves. These innocent victims are treated with disdain and contempt, no or lowball offers of compensation on a take it or leave it basis along with coercion, threats of repossession and litigation.

Unscrupulous financial predators large and small lurk everywhere, preying on the innocence of consumers '*quarry*' and their hard won assets. Borrowers over commitment is rife, poverty line living expenses (significant hardship) and every other dollar spent on debt repayments leading to inevitable loan defaults, increased interest rates, penalties, the coerced forced sale of their property, or sold up in mortgagee sale and bankrupted. Customer asset harvesting / stripping takes place at every stage, furthermore the bigger the predator the easier the takedown is to implement and achieve, all without any fear of regulatory interference or retribution

Australian Securities and Investment Commission (ASIC): certainly does have intimate knowledge of these serious culture issues and inequitable remediation practices. ASIC's _____ informs the Senate "*I can tell you that what we would call a high-volume matter is something that has something like **eight complaints***" ASIC subsequently have officially decided 'not to pursue' and 'turn a blind eye' of obvious morally ubiquitous actions which are in contravention of the very laws it administers. Why this despicable practice is condoned or allowed to even take place by ASIC, APRA or Government needs to be seriously questioned and immediately rectified. (see Annexure D)

Bankers and FSP's have been entrusted with ethicalness of self regulation, *self-flagellation* and payment quick equitable compensation to financially vulnerable victims of LMF, this 'regulatory folly' is quite evidently NOT working. Banks must be stripped forthwith of their consumer facing responsibilities regarding LMF outcomes and compensation, furthermore it is obvious the larger the consumers loss the more truculent the FSP.

Consumers can't wait till late 2016 or beyond, Action is needed Today, with the immediate establishment of a new FSP funded Federal Government consumer office of;

Judicature of Financial Services (JFS)

Will be a fully FSP funded, consumer focused friendly totally independent Judicature, to fast track administration of swift justice, of financial and investment advice misconduct, without the prohibitive exorbitant costs or drawn out formalities of court. JFS will be being a body of persons of authority including solicitors, barristers and judges exercising the office, function, extent and power of a court, with the authority to, adjust restructure or void credit contracts, mortgages, and compensate individual consumer victims equitably and quickly.

- ✓ Be for genuine disputes that involve amounts over \$50,000 and allow retrospective claim lodgements.
- ✓ Any loan or Mortgage or subject to LMF of a FSP or broker.
- ✓ Provide a simple service for a nominal \$50 fee, were consumer can request ALL their loan documentation and documents available under the Privacy Act within 30 days from a FSP,

- ✓ Administer and pay compensation in the 'Last Resort Compensation Scheme' (LRCS) (see Annexure B) that would provide the fall back for consumer victims who have not been compensated for their losses, because their adviser or licensee is unwilling, insolvent or can't be tracked down.
- ✓ Insurance consumers with certain eligible classes of insurance, who are denied rightful payments, or forced to take court action (if they can afford it) to obtain insurance payouts could also lodge complaints at JSF.

Funding of the Judicature of Financial Services;

- ✓ ANZ, CBA, NAB and Westpac will each provide \$20 million seed compensation funding, other FSP will contribute pro rata amounts depending on their loan books size.
- ✓ Seed compensation funding split 10% for administration and 90% to the compensation fund,
- ✓ FSP's listed on the ASX are levied at 1/1000th or 0.1% of their annual net profits are to payable to JSF,
- ✓ Non listed entities providing investment advice or loan or insurance brokerage levied at 1/500th or 0.2% of their annual gross commissions or fees, are to payable to JSF
- ✓ Invoke penalties upon Banks or FSP's for their conduct set at 10% on the value of each compensation settlement, payable into the LRCS.
- ✓ Invoke penalties upon Banks or FSP's should they be found by JFS, to be acting dishonestly or attempt to mislead or deceive*, the JFS during a investigation, penalties set at 50% on the value of the compensation settlement, payable into the LRCS. (*by what reasonable people consider dishonest)
- ✓ Ensure Banks or FSP's provide ALL the loan documentation and documents available under the Privacy Act within 30 days, else invoke penalties at \$10,000 a time, payable into the LRCS.
- ✓ Banks or FSP are to contribute quarterly to maintaining their initial seed compensation balance.

Enact new Laws and Legislation that;

- ✓ defines LMF Lender Mortgage Fraud,
- ✓ LMF to be designated a Criminal Offence,
- ✓ retroactively protects consumer borrowers for LMF of the Banks or FSP prior to NCCP,
- ✓ retroactively protects consumer borrowers for LMF of the Banks or FSP post NCCP,
- ✓ FSP listed on the ASX are levied at 1/1000th or 0.1% of their annual net profits are paid to JSF,
- ✓ Non listed entities providing investment advice or loan or insurance brokerage levied at 1/500th or 0.2% of their annual gross commissions or fees are paid to JSF.
- ✓ Void Mortgages and Credit Contracts obtained by LMF by the Banks or FSP and provide for equitable compensation,
- ✓ makes finance Brokers agents of the Banks or FSP,
- ✓ extends the 3 year or 6 year statute of limitations to include from the date of discovery of the Banks or FSP malfeasance,
- ✓ Banks FSP's FOS and CIO must report all or suspected cases of Lender Mortgage Fraud to JFS and ASIC, within 10 days of discovery,
- ✓ Consistently fines Banks or FSP for their undesirable culture and conduct,
- ✓ Code of Banking Practice is made lawfully binding on banks.
- ✓ Ability of JFS to pursue from tortfeasors: Claims are pursued where there is a likely payout, the JFS will have the power to seek to take assignments and pursue recovery of funds of an AFS licensee.

- ✓ movement of personnel; employment between the JFS and bankers and banker legal firms is prohibited for 2 years.

FOS's [An Updated Proposal to Establish a Financial Services Compensation Scheme](#) outlines a positive initial framework outline which can be built upon for the Judicature of Financial Services. However the compensation regime cap and scale is far too low, furthermore the absolute complete independence and non influence from any FSP's is essential.

Bankers and FSP's of course will hypocritically cry foul, however; 1/1000th of their annual net profits will not be missed, furthermore the real owners, the shareholders do not condone any illegitimate activity at all, and most certainly Lender Mortgage Fraud, it is guaranteed they will not complain and applaud this genuinely warranted consumer initiative.

Another aspect of the public interest is the advancement of the protection, to those not able fully to protect themselves and to those preyed upon by dishonesty, trickery and other forms of predation. namely to prevent unjust dealings which offend against community standards of business morality':

J R Peden The Law of Unjust Contracts (Butterworths, 1982) at 122

But when people are duped, misled, defrauded or taken advantage of by participants in the financial system by means that have been, in significant part, facilitated by inhering obvious risk and lax operation of appropriate safeguards, it conforms to the public interest to take into account such systemic and operational failure in order to assist to promote conditions that will make it more difficult for such conduct to exist."

Tonto Home Loans Australia Pty Ltd v Tavares; FirstMac Ltd v Di Benedetto; FirstMac Ltd v O'Donnell [2011] NSWCA 389

The Citizens of Australia do elect the parliament to govern; to make the Laws of Australia; and though the relevant Government body's issue Banking and FSP licences. We the Citizens of Australia through the parliament will enact new laws and legislation, to protect consumers from Banking and FSP malfeasance, to ensure the quick equitable payment of compensation, as a condition of retaining a Banking and FSP licence.

Yours faithfully,

Adrian Beamond

Deborah Smith

Annexure A

The offence of Fraud. The prohibited act is deceit, falsehood, or some other dishonest act.

(1) the offence has two elements: dishonest act and deprivation; (2) the dishonest act is established by proof of deceit, falsehood or 'other fraudulent means'; (3) the element of deprivation is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, or in merely placing another's property at risk, caused by the dishonest act.

The act must be the voluntary act of the accused, just as what constitutes a lie or a deceitful act for the purpose of the *actus reus*, is judged on the objective facts, so the 'other fraudulent means' in the third category is determined objectively, by reference to what a reasonable person would consider to be a dishonest act. The personal feeling of the accused about the morality or honesty of the act or its consequences is no more relevant to the analysis than is the accused's awareness that the particular acts undertaken constitute a criminal offence.

It is not necessary for the accused to have profited by the fraud, it clear that economic loss was not essential to the offence; the imperilling of an economic interest is sufficient even though no actual loss has been

suffered, in adopting an expansive interpretation of the offence, the Courts have established fraud as an offence of general scope capable of encompassing a wide range of dishonest commercial dealings.

Since the *mens rea*, refers to the guilty mind, the wrongful intention, it need only be determined that an accused intention to, and knowingly undertook the acts in question. The *mens rea* would then consist in the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) knowing or desiring the consequences which could cause deprivation in the sense of; depriving another of property, or putting that property at risk, or risk of deprivation, could follow as a likely consequence. If this is shown, the crime is complete.

Annexure B

A **Last-resort Compensation Scheme** is designed to help people who the Financial Service Ombudsman (FOS) has ruled should be compensated for their losses, but their adviser or licensee is insolvent or can't be tracked down. Those who support the introduction of the scheme argue it is effectively the missing piece of the financial services regulatory architecture, and the only way to ensure that consumers who suffer loss from their adviser's misconduct are compensated.

Currently, around a quarter of consumers entitled to compensation as a result of bad advice on investments The latest report from the FOS reveals there were 26 financial service providers unwilling or unable to comply with 120 FOS determinations made in favour of consumers haven't been compensated. This has affected 176 people and the value of the outstanding amounts awarded by these determinations was a whopping \$12,686,956.69 plus interest (as at 31 December 2014).

'**Devastating**' impact of such uncompensated loss is very real. In research commissioned by ASIC's Consumer Advisory Panel into the experiences of 29 consumers affected by financial losses, key findings were that:

- 17% were living below the poverty line and had either lost their home or were perilously close to losing it.
- 27% were experiencing a significant decline in living standards.
- Many suffered from long-term depression, and one of the most significant impacts of these investors' losses is the damage to their confidence in the financial system.

Annexure C

A financial services licence, including its employees, are required not to contravene and required by law to adhere to the;

CORPORATIONS ACT 2001 - SECT 912A

General obligations

(1) A financial services licensee must:

- (a) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and*
- (aa) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee or the representative; and*
- (b) comply with the conditions on the licence; and*
- (c) comply with the financial services laws; and*

- (ca) take reasonable steps to ensure that its representatives comply with the financial services laws; and*
- (e) maintain the competence to provide those financial services; and*
- (f) ensure that its representatives are adequately trained, and are competent, to provide those financial services; and*
- (g) if those financial services are provided to persons as retail clients--have a dispute resolution system complying with subsection (2); and*
- (h) unless the licensee is a body regulated by APRA--have adequate risk management systems; and*
- (j) comply with any other obligations that are prescribed by regulations made for the purposes of this paragraph.*

A financial services licence, including its employees, are required not to contravene and required by law to adhere to the;

CORPORATIONS ACT 2001 - SECT 912A

General obligations

- (2) To comply with this subsection, a dispute resolution system must consist of:*
 - (a) an internal dispute resolution procedure that:*
 - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and*
 - (ii) covers complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the licence; and*
 - (b) membership of one or more external dispute resolution schemes that:*
 - (i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and*
 - (ii) covers, or together cover, complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the licence.*

CORPORATIONS ACT 2001 - SECT 912B

Compensation arrangements if financial services provided to persons as retail clients

- (1) If a financial services licensee provides a financial service to persons as retail clients, the licensee must have arrangements for compensating those persons for loss or damage suffered because of breaches of the relevant obligations under this Chapter by the licensee or its representatives. The arrangements must meet the requirements of subsection (2).*
- (2) The arrangements must:*
 - (a) if the regulations specify requirements that are applicable to all arrangements, or to arrangements of that kind--satisfy those requirements; or*
 - (b) be approved in writing by ASIC*
- (3) Before approving arrangements under paragraph (2)(b), ASIC must have regard to:*
 - (a) the financial services covered by the licence; and*
 - (b) whether the arrangements will continue to cover persons after the licensee ceases carrying on the business of providing financial services, and the length of time for which that cover will continue; and*
 - (c) any other matters that are prescribed by regulations made for the purposes of this paragraph.*
- (4) Regulations made for the purposes of paragraph (3)(c) may, in particular, prescribe additional details in relation to the matters to which ASIC must have regard under paragraphs (3)(a) and (b).*

A financial services licence must have for its retail clients a Dispute Resolution System, that meets certain requirements prescribed by ASIC. ASIC Regulatory Guide 165 gives dispute resolution system guidance to regulated entities including ANZ by, explaining when and how ASIC will exercise specific powers under legislation, explaining how ASIC interprets the law.

ASIC Regulatory Guide 165 gives guidance to regulated entities.

ASIC REGULATORY GUIDE 165

RG 165.1 Under the Corporations Act 2001 (Corporations Act), if you are:

(a) an AFS licensee (s912A(1)(g) and 912A(2)); or

you must have a dispute resolution system available for your retail clients that meets certain requirements.

RG 165.2 This dispute resolution system must consist of:

(a) IDR procedures that:

- (i) comply with the standards and requirements made or approved by ASIC; and*
- (ii) cover complaints made by retail clients in relation to the financial services provided;*

Guiding Principle 4.5 (Objectivity)

Each complaint or dispute should be addressed in an equitable, objective and unbiased manner through the complaints or disputes handling process. In responding to complaints or disputes, you should give reasons for reaching a decision on the complaint or dispute and adequately address the issues that were raised in the initial complaint or dispute. We consider that, where practicable, reasons for a decision should be in writing and should refer to applicable provisions in legislation, codes, standards

RG 165.35 Under regs 7.6.02(1) and 7.9.77(1) of the Corporations Regulations, ASIC must take into account:

(a) Australian Standard AS ISO 10002–2006 Customer satisfaction—Guidelines for complaints handling in organizations (ISO 10002:2004 MOD), published by SAI Global Limited on 5 April 2006 (AS ISO 10002–2006);

RG 165.53 These guidelines and RG 139 set out our dispute resolution requirements

RG 165.46 In respect of complaints resolution, we are mindful of the need to ensure that consumers and investors are treated fairly and consistently by the relevant complaints or disputes handling procedures.

RG 165.47 We consider IDR to be an important and necessary first step in the complaints/disputes handling process, as it gives the financial service provider,the opportunity to hear client concerns and expressions of dissatisfaction and address them genuinely, efficiently and effectively

RG 165.58 Under the dispute resolution provisions:

(a) financial service providers subject to the dispute resolution requirements must have IDR procedures that comply with our requirements. These requirements are made by us in accordance with the Corporations Regulations and are set out in this regulatory guide: see RG 165.1–RG 165.5, RG 165.33–RG 165.34 and Section B;

Documenting IDR procedures

RG 165.127 IDR procedures need to be documented to:

- (a) enable the relevant staff to understand and follow the procedures;*
- (b) promote accountability and transparency of the procedures;*

(c) facilitate the ease of understanding and accessibility of the procedures for consumers (i.e. via the production of user-friendly guides); and

(d) facilitate the self-certification process for AFS licence and credit licence Defendants’.

RG 165.128 The need to document IDR procedures and the process for doing so also ensures that effective procedures are properly thought out and established.

RG 165.129 The requirement to document IDR procedures includes setting out in writing:

(a) the procedures and policies for:

(i) receiving complaints or disputes;

(ii) investigating complaints or disputes;

(iii) responding to complaints or disputes within appropriate time limits;

(iv) referring unresolved complaints or disputes to an EDR scheme;

(v) recording information about complaints or disputes; and

(vi) identifying and recording systemic issues;

(b) the types of remedies available for resolving complaints or disputes; and

(c) internal structures and reporting requirements for complaint or dispute handling.

AFS licensees

RG 165.147 If you are an AFS licensee, you must show us that you are a member of an ASIC-approved EDR scheme or schemes, as required under the dispute resolution provisions. This means that, when applying for an AFS licence, you will need to provide us with:

(a) proof of your membership of an ASIC-approved EDR scheme or schemes, including proof of the date you became a member; and

(b) details of the position(s) within your organisation with primary responsibility for dealing with the EDR scheme(s) in respect of complaints.

Guiding Principle Objectivity Each complaint or dispute should be addressed in an equitable, objective and unbiased manner through the complaints or disputes handling process. This requires that:

IDR procedures should allow adequate opportunity for each party to make their case (and where a credit dispute involves a credit representative, for the credit representative to provide relevant information to its credit licensee).

In responding to complaints or disputes, you should give reasons for reaching a decision on the complaint or dispute and adequately address the issues that were raised in the initial complaint or dispute. We consider that, where practicable, reasons for a decision should be in writing and should refer to applicable provisions in legislation, codes, standards or procedures.

The organisation should adopt a customer-focused approach (including being helpful, user-friendly and communicating in plain English), be open to feedback and show commitment to resolving complaints or disputes by its actions.

For credit licensees, this is particularly important where disputes involve default notices and hardship notices or requests for postponement of enforcement proceedings.

The organisation should be actively committed to effective and efficient complaints or disputes handling. It is particularly important that commitment be shown by, and promoted from, the organisation’s top management.

Such commitment should be reflected in the definition, adoption and dissemination of complaints handling policies and procedures.

Management commitment should be shown by the provision of adequate resources, including training. This commitment can be demonstrated by:
ensuring all relevant staff are aware of, and educated about, IDR procedures;
ensuring that adequate resources are allocated to IDR (see Section 6.4—Resources); and
implementing management systems and reporting procedures to ensure timely and effective complaints or disputes handling and monitoring.

Top management should ensure that the complaints or disputes handling process operates effectively and efficiently.

Top management should also assess the need for resources and provide them without undue delay. This assessment should include having sufficient resources to offer some complainants or disputants assistance to make their complaint or dispute if needed.
The selection, support and training of personnel involved in the complaints or disputes handling process are particularly important.
The adequacy of resources also relates to documentation, specialist support, materials and equipment, computer hardware and software, and finances.

Annexure D

Since 11 March 2002 ASIC has had a consumer protection role for credit facilities under the **ASIC Act 2001 (ASIC Act)**, which covers broad standards of conduct, including conduct that is unconscionable and misleading or deceptive and prohibitions on false and misleading representations

Australian Securities and Investments Commission Act 2001 Regulations

<http://www.comlaw.gov.au/Details/F2010C00783>

Statutory Rules 2001 No. 192 as amended made under the Australian Securities and Investments Commission Act 2001 This compilation was prepared on 19 November 2010 taking into account amendments up to SLI 2010 No. 278

2B Financial products: credit facility

- (1) For paragraph 12BAA (7) (k) of the Act, each of the following is a **credit facility**:
- (a) the provision of credit:
 - (i) for any period; and
 - (ii) with or without prior agreement between the credit provider and the debtor; and
 - (iii) whether or not both credit and debit facilities are available;
 - (b) a facility:
 - (f) the provision of a mortgage that secures obligations under a credit contract (other than a lien -or charge arising by operation of any law or by custom);
 - (g) a guarantee related to a mortgage mentioned in paragraph (f);
 - (h) a guarantee of obligations under a credit contract;
 - (i) a facility for making non-cash payments (within the meaning of section 763D of the Corporations Act) if payments made using the facility will all be debited to a facility mentioned in paragraphs (a) to (h).
- (2) In this regulation:

credit means a contract, arrangement or understanding:

(a) *under which:*

- (i) *payment of a debt owed by one person (a **debtor**) to another person (a **credit provider**) is deferred; or*
- (ii) *one person (a **debtor**) incurs a deferred debt to another person (a **credit provider**); and*

(b) *including any of the following*

- (i) *any form of financial accommodation;*
- (ii) *a hire purchase agreement;*
- (iii) *credit provided for the purchase of goods or services;*
- (iv) *a contract, arrangement or understanding for the hire, lease or rental of goods or services, other than a contract, arrangement or understanding under which:*
 - (A) *full payment is made before or when the goods or services are provided; and*
 - (B) *for the hire, lease or rental of goods — an amount at least equal to the value of the goods is paid as a deposit in relation to the return of the goods;*
- (v) *an article known as a credit card or charge card;*
- (vi) *an article, other than a credit card or a charge card, intended to be used to obtain cash, goods or services;*
- (vii) *an article, other than a credit card or a charge card, commonly issued to customers or prospective customers by persons who carry on business for the purpose of obtaining goods or services from those persons by way of a loan;*
- (viii) *a liability in respect of redeemable preference shares;*
- (ix) *a financial benefit arising from or as a result of a loan;*
- (x) *assistance in obtaining a financial benefit arising from or as a result of a loan;*
- (xi) *issuing, indorsing or otherwise dealing in a promissory note;*
- (xii) *drawing, accepting, indorsing or otherwise dealing in a negotiable instrument (including a bill of exchange);*
- (xiii) *granting or taking a lease over real or personal property;*
- (xiv) *a letter of credit.*

Annexure E

ASIC confirms it will;

- NOT act on your behalf or assist any individual borrower / consumer,
- NOT act on your behalf or prosecute any FSP to assist any individual borrower / consumer,
- NOT recover lost monies or loss caused by a FSP for any individual borrower / consumer,

ASIC will certainly;

- waste your time,
- be wilfully blind to the most obvious of misconduct or fraud,
- quickly close your case,

- send you a standard 'fob off' letter,
- quickly refer you to FOS,
- shred the evidentiary documents you send,

- mislead parliament as to the complaints it receives and any investigative action it does,
- undertake high profile exorbitantly costly court cases for little gain and then loose!!,
- make quick compensation deals for 1000's of bank victims for 35cents in the dollar,
- facilitate big business

FOS;

- is paid for by the bankers and insurance company's
- Terms of Reference are determined by the bankers and insurance company's
- is heavily influenced and captured by bankers and insurance company's
- compensation limits are too low
- its existence is for the benefit of bankers and insurance company's under the ASIC Act
- is a forum where the bankers and insurance company's can lie and mislead and be deceptive to FOS without fear of punishment or retribution
- does not follow the Law when making decisions, but uses a "bastardisation" that minimizes the payouts of the bankers and insurance company's
- bankers and insurance company's invented the term of "maladministration" to avoid the lawful consequences of their acts
- now proceeds direct to a final determination with no appeal for a borrower / consumer
- is slow and overloaded and takes 18+ months to come to any decision

Code of Banking Practice Compliance committee;

- is useless as nothing can be done to compensate the consumer
- no compensation will be obtained by any consumers
- complaint cannot be heard while a dispute is in FOS
- expiry dates to make complaints are set at 1 year
- no punishment exists for banker malfeasance