

## **BFCSA SUBMISSION TO RAMSAY REVIEW OF EDR SYSTEM**

7<sup>th</sup> October, 2016

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The Financial Ombudsman's Service ("FOS") and the Credit Industry Ombudsman ("CIO") were part of a regulatory grand plan to assist consumers with basic complaints against Banks and Lenders. These two External Dispute Resolution services ("EDRs") have become the defacto Gatekeepers for consumers and yet, according to the Determination files, both have systematically succeeded in tarnishing the original concept of consumer protection. Their periodical feedback to the regulatory authorities have assisted in clouding the real problems within the system and has, during the past decade, created an overflow of complaints from consumers relating to EDRs.

Consequently, this unfair decision making has led consumers to band together and lobby for a Royal Commission into the Banking and Finance Industries. I would respectfully ask that the Panel seriously listen to the voices of long suffering consumers who are now facing homelessness and financial ruin, and their cries for a better system of governance.

Small groups such as BFCSA (Inc) only come into being when public need arises due to poor handling of complaints and evidence of fraud emerges as a key factor. Our consumers have given the EDR system a rating of less than 10% for a number of reasons of dissatisfaction.

The LF Economics submission # 63 of the current Senate 'Penalties for White Collar Crime' Inquiry highlights the emerging patterns relating to the existence of a Control Fraud in play.

FOS and the CIO have failed to notify the regulators Australian Securities and Investment Commission ("ASIC"), of the strong evidence of systemic fraud in the approval process by Lenders. The public has suffered a palsy of information, leading vulnerable consumers to become aware of the existence of Ponzi Financing and fraud, only by falling into the easily identifiable traps. Consumers are not told that lenders are acting as a Cartel, using identical processing methods, calculators and highly questionable marketing techniques.

These toxic mortgage products are still being sold in the market place. The Banks contribute \$34 million in funds provided to FOS, and thereby create an extraordinary conflict of interest to the extent complaint handling becomes an essential component of the lender generated Control Fraud.

The EDR Culture is mirroring the Lender and Regulator cultures whereby consumer complaint handling is dictated to by the Lenders as to bank 'fairness'. This culture is reflected on the statistics gleaned from BFCSA Surveys:

- The average loss or potential for loss is reported as \$180,000
- Loss can be as high as \$450,000.
- FOS Determinations show mostly Maladministration in Lending
- Loans ought to have been rejected. Financial Loss/ruin established.
- Compensation then cut down to \$20,000 - \$60,000 discount.
- Customers feel they have been robbed and complain back to ASIC.

Clearly, there is a complete disregard of FAIRNESS in any of the transactions uncovered.

Lenders in 2003, identified and exploited the target market as being Asset Rich Income Poor (“ARIPs”): those on disabilities with accident pay-outs, low income families with existing home ownership, including TPI war veterans. The actual target is in fact the asset: the family home owned by older persons who are predominantly debt free. Such activities are deemed by the courts to be predatory lending. The Cartel controlled the thoughts and actions of the EDRs.

There is a notion that sellers were inflating incomes, but we know that such prevalent practices are caused by a universal internal computerised amortisation calculator, engineered by the Lenders to massage incomes. The evidence amassed by BFCSA Members is clear.

### **30 YEAR LENDING APPROVAL FOR OVER SIXTY YEAR OLDS:**

Arguing a \$500k loan approved by a Major Bank for a 66-year old couple, FOS state: *“a 30-year term would be acceptable given the age of the couple.”*

Women reaching sixty are often made redundant and the situation has been worsening. Those who are employed in any, case risk losing their job the following year. Arthritic conditions and age related disabilities are not mentioned or factored in. EDRs appear to deem people as having abilities and energies to keep working until they are 96.

FOS state their aim to new customers: *“If Maladministration in Lending is found we endeavour to place the customer back in their original position prior to the loan being approved.”*

With an average FOS “assessment” offering of a \$30,000 reduction in the loan debt, how does that compensate the customer of servicing an unaffordable debt of \$150,000 that the consumer did not have when the loan was criminally approved?

The borrower victims are then, with a stroke of a pen or a tick-a-box, condemned to losing their home. The Lender still profits from the fraud with “forever in debt” plans. In effect, FOS is aiding and abetting the Bank to continue profiting from each and every fraudulent approval. That activity must stop.

In a lawyer’s words relating to FOS mishandling of cases: *“Banks have become disgracefully arrogant. The six degrees of separation of the lending chain that appeared in every bank at the same time, is not collusion according to bankers, just an incredible coincidence?”*

*Other than for the bank to distance itself from the borrower and claim, as they do, we’re only the lender, we don’t know about any fraud, why do you need a line of borrower, broker, originator, aggregator, BDM and lender?”*

The Six Degrees of Separation model, presents the evidence of dishonorable intentions by Lenders and their Cartel activities, by way of current and unprecedented debt levels and the growth in property bubbles.

*Has FOS reported this grave concern re loans to older persons and risk of homelessness to the regulator? Has FOS noted to the regulator the obvious concern for consumers as to the lenders’ profiteering agenda and their beneficial reasoning for adopting the Six Degrees of Separation Model? The Model was created by Bankers to mask the existence to the Cartel.*

## PARENTAL GUARANTEES ISSUES

There has been widespread criticism of Banks encouraging sellers to sell mortgage products whereby the security sought is from parents. The Australian Parliament has dealt with this unpalatable subject in the past and provided consumers protection from predatory loans involving the use of parent's homes, particularly whereby the parents receive no benefit from the loan monies, yet are placed at risk by bad advice delivered by internal bank staff.

The Prime Minister embarrassingly suggested recently that *"parents ought to help out the kids" with guarantees. These are incredibly dangerous 30-year INTEREST Only loans geared to ensure homelessness within 5 years.* FOS has been using its power to deny consumer protection remedies. The Banks and the EDRs then work in unison with each other. The fraudulent approval of loans feeds upon itself.

Major Bank wrote to one customer in a response letter:

*"Our bank's EDR is the Financial Ombudsman Service ("FOS"). The FOS is an ASIC Policy Statement 139 compliant EDR; and such EDR is available to the guarantors in accordance with its terms of reference. To this end the FOS has determined that your dispute as guarantors is outside its authority pursuant to the Articles of the FOS.*

*Accordingly, the Bank has discharged its obligations under the Code."*

*Has FOS reported this grave concern re Parental Guarantees and risk of homelessness to the regulator? What proportion of these type of complaints is marked 'file closed?'*

## FOS LIMITATIONS GOVERNED BY THE AMOUNT OF THE LOAN and LOSS

FOS have a statutory LIMIT of handling cases of loss up to \$500,000. Yet a high number of loans are written for over \$600,000 and then find within four years the borrower has attracted default fees and debt has risen to \$800k. A property market crash would see losses rise and render many cases outside the EDR jurisdiction and left with nowhere to go.

Yet borrower incomes have remained at an average \$60,000. Those borrowers are then barred from the EDR system and its "too bad" but you are then left at the mercy of the bank who sold you the mortgage loan and brainless financial strategy in the first place. The Major Bank then responds that any loan of over \$500,000 has no chance of assistance. Customers are then treated as cannon fodder.

The FOS notion that the loan was affordable, does not simply invite mere criticism, but rather invites condemnation for failure of its ability to expose these serious breaches of the Australian Bankers Code and regulatory provisions contained in the ASIC Act.

In the endless arguments between Bank Advantage vs Customer Advantage, banks have the upper edge by its relationships with its own industry EDR. The independence is at best blurred and, considering the loss of one's own home, at aged 60 is at stake through systemic dodgy lending practices, complaint handling is totally biased and grossly unfair.

*Has FOS reported this grave concern re Limitations on complaint handling to the regulator? What proportion of complaints received are marked "outside our TOR."?*

### **THE AUSTRALIAN BANKERS CODE OF CONDUCT - VALUATIONS**

We suspect the Code Credit assessment was never used on most cases. Major Banks have lending policy guidelines stating there must be a face to face meeting with a trained bank loan officer (prior to approval). Yet the Loan Application Forms ("LAF") show this was rarely carried out.

The Code has Court of Appeal level backing as a contractual warranty, and say the valuation is part of the assessment and if the valuation doesn't come up to the loan, it must be raised with the borrower. Our BFCSA members have continually reported the instances of exaggerated valuations. The Banks and its EDRs kept evidence locked up as to the Valuations used. Major banks failed to notify the customer prior to approval, they could be paying far too much for the investment property.

The Valuer's insert a warning clause to the banks: *"We are aware that the property within this area are marketed aggressively to non-local investors. Deals are offered with inflated vacant land contracts, etc."*

A Seller explains: *In years gone by, if the value came in lower than the purchase price, the bank insisted that the agents were required to have the customer sign off on the acceptance of the valuation prior to the contract.* That safeguard must have been thrown out of the window.

Lenders are ensuring the documents are not handed to borrowers, which could easily reverse their decision to proceed prior to final approval. This document, whereby the Valuer wishes to warn the bank to escape any future liability, is described by FOS and banks in unison: *"commercially sensitive."* Other documents suggest internal to the Lender, that the value of the home and land product is an average of say \$80,000 over priced, yet the true figure is closer to \$140,000 greater than the realistic recovery and achievable.

*Has FOS reported this grave concern re large valuation discrepancies and systemic bad conduct concerns, to the regulator?*

### **FOS REFUSAL TO HAND COPIES of CRUCIAL EVIDENCE IN ITS FILES TO THE BORROWER**

FOS has crucial evidence in files which it refuses to hand over to the customer. The same with the rash of Loan Applications Forms, which are key indicators of fraud to start with in any competent investigation into mortgage fraud, are suddenly "missing." FOS did raise this problem in Parliament in 2014. Yet the Serviceability Calculator two-page Form which must as a matter of process according to bank notifications to its own sellers: *"The SCF must be attached to the LAF."* The FOS staff suggest yes they can see the SCF on file but cannot hand to the borrower as once again: *"its commercially sensitive."*

In fact, on some of the documents we have managed to discover, through our own methods, bank directives which state: “Do Not Show the Borrower.”

*Has FOS reported this grave concern re intention of secrecy to enable covering up of obvious frauds in lending to the regulator? Is ASIC aware that most Sellers and Staff do not know the existence of the entire fraud: a key element of white collar control frauds.*

## **LOAN MORTGAGE INSURANCE and HARDSHIP**

Loan Mortgage Insurance is another scam completely rampant and not mentioned by the EDRs, yet is critical to hardship arrangements one of the core duties of FOS.

The settlement terminology changed and noticeably is re-written as a RISK FEE. The Bank CEO's had meetings with ASIC to promise the in-house self-insurance by lenders: “*self-insurance would be cheaper for customers.*” The fees immediately increased from \$4000 for an average loan to up to \$20,000. It's called gouging. The hardship arrangements also include writing back the funds advanced as debt as capitalised on the loan facility. So, insurance premiums paid really means customers ultimately pay for the cost of their own claim, in dire hardship times, as well as the over-bloated premium of the non-existent policy.

These grand slam risk fees are calculated as being one price for the life of the loan.

Bank Chiefs have informed ASIC: “*Most of these 30-year interest only loans settle within 5 years.*” That is true, due to the intended consequences of this lending product. In reality, this means the loans are intentionally set to implode within 5 years, as evidenced by the heavy number of complaints coming into the EDR system. We see no evidence, even in bank swap loans of re-financing that consumers then receive the benefit of a refund on the balance of 25 years. The second bank then issues a new premium and a new fee.

*Has FOS reported this grave concern re Loan Mortgage Insurance and Hardship concerns to the regulator? Has FOS attempted to recover balance of premiums paid for customers?*

## **CREDIT CARD SCAM – PUMPING UP VOLUME ON DEBT: Maximising Profits on Fraud**

Consumer Members have reported to BFCSA that credit cards have been bundled into mortgages without an application or request for a card. When consumers resist, suggesting “we did not require a card,” they are told its part of the mortgage package. They are told “just put it in the drawer.” The LIMITS on older loans are approved at \$25,000 per person, on application for a mortgage. Others stated their card limits were \$50,000 plus and then soon ran into difficulty. Lenders calculated the chances of the mortgage disaster candidate being “forced’ to use the card in the drawer, was high.

We have been alerted to contract clauses being inserted to suggest that if the home is repossessed then the card debt would also be secured and claimable. That specifically bad practice means the card is in fact “securitised,” and should consumers deserve FAIRNESS by the unwanted card priced at interest rate of the home loan 5% and not the unsecured rate of 22% and beyond.

Most members who were forced to use the card to pay home loan payments due to unaffordable lending, reported they have ended up with the debt of the original card limit and due to low income, unlikely to have the ability to repay. It's a bi-product of unaffordable lending and lowering of lending standards into the realm of sub-prime.

*Has FOS reported this grave concern re Credit Card manipulation to the regulator? Has FOS attempted to have the card rates retrospectively adjusted and fees recovered, and has FOS insisted the card debts be extinguished on that basis? Possibly Third Line Forcing?*

FOS is at the coalface of watching these nuances unfold. This perceived neglect to report, is further evidence of conflicted interests and lack of independence by the EDR system. This proof of customer gouging and other alarming evidence of UNFAIRNESS are all hidden in the case files managed by FOS. If FOS has reported upon all these issues, then it suggests a blockage in the pipes that is not in the best interests of consumers of mortgage products and associated credit cards. This silence indicates there is too close an association with the regulators and the Major Banks.

#### **BUFFER LENDING TO MASK UNAFFORDABILITY**

In order to mask unaffordability, Major Banks use "Buffer Loans." These are usually an additional loan or an 'add on amount' of an average \$25,000 up to a collective \$100,000 as debt gaining higher interest, to have the customers pay lovely additional fees and charges added on to the original loan. In this way the Major Banks can mask unaffordability for up to four years. Payments are on time, yet the customer is paying the payments with the bank's money. Within two – three years the borrowers are in trouble.

Another twist, that in fact disadvantages consumers, is the loans being pumped up internally, to an actual 140% LVR by adding on the buffer loans and or Lines of Credit and Credit cards.

Internal emails from banks to sellers show the encouragement processes and quota systems relating to commissions, to maximise debt under the guise of "making people happy."

**Initial findings of fraud and maladministration in Lending ought to have caused the EDRs to immediately report with Big Ben alarm bells, the evidence of sub-prime lending in Australia.**

*Has FOS reported this grave concern re Buffer Loan Lending to mask unaffordability as suggesting grave concerns of imprudent banking habits, to the regulator? Has FOS attempted to have the buffer loan activities extinguished?*

#### **CONSEQUENCES OF IRRESPONSIBLE REPORTING**

Nothing in the above suggests the CEO's conduct in engineering these products and computerized approval programs of these banks could be classified as "looking after customers." These horrid financial scams were designed with a "bottom line" mentality bereft of any honour or decency. Product selling via a Quota system in order to keep oneself employed has grossly indecent and foreseen consequences of financial ruin and

homelessness for the customer. In addition, such bad conduct and intent left unfettered has grave issues for the nation and its economic future.

Discovery of fraudulent exaggeration of incomes, generated by bank computerised programs, accessed by sellers, have been the compulsory tool of choice for the bankers, prompting recent and widespread calls for a Royal Commission.

These activities have led to an obvious lack of trust and confidence in the Banking System. I refer the panel to my evidence of *8<sup>th</sup> of August, 2012* whereby I warned of the ramifications of the associated RMBS products and the fact *“the Government cannot ought not to profit from a fraud.”*

The use of amortisation calculators to create false incomes based upon ‘next year projections’ and false negative gearing figures, should have caused immediate detailed reporting to Treasury via the EDR’s periodical notifications to ASIC and as a safety measure, those reports ought to have been made available to economists.

in years gone by, if value came in lower than the purchase price, the bank insisted that the agents were required to have the customer sign off on the acceptance of the valuation. Like many other safeguards of prudent lending, that consumer protection requirement was abandoned.

*Has FOS reported this grave concern to the regulators re the copious evidence in client files of Banking System’s intention to deceive?*

## **MAJOR BANK INDICATORS OF A CONTROL FRAUD**

Major Banks control 85% market share relating to Interest Only Lending. These loans are sold as “Low Docs.” Most people when asked today, still do not understand the product: *“Did you know you would never own this home with an IO Loan?”* Answer is almost always NO, or *“what is an Interest Only loan?”* They are shocked. The word Low Doc and mortgage was used as a selling tool and they were given to believe this is a normal mortgage requiring a few less documents. That’s how the product is sold. The fraud is in the computerised approval system. The sellers (55% bank staff and 45% broker agents) are unaware that the fraud is contained in the actual system. As schemes go, the mortgage fraud model, is exceptionally clever and could be described as a masterminded scam. Only the Cartel Members understood all the ingredients for success. Secret compartmentalisation of tasks was imperative.

I have personally dealt with over 2000 cases of bank driven mortgage fraud and have demonstrated the skills and experience to carry out criminal investigations into white collar crime. I use my skills for the betterment of the national community and greater good and represent the voices of those consumers who seek my assistance.

Our Members are in fact, grass root users of the EDR Ombudsmen system and in particular FOS. All our members have been encouraged to utilise these services for many years, and report back to us by way of our Surveys. The main driver for the lenders is profit for the banking institutions and their shareholders.

A functional Ombudsman's service providing a FAIR system of complaint handling ought to have immediately revealed to Government, the key indicators of unaffordable, unverified, unsustainable lending practices. We have seen no signs to suggest this has taken place. However, we ask the question of whether reports from FOS to the regulator, reflected the similar findings that we have discovered over the years.

The critical message here: being the EDR Gatekeepers could have prevented such bank engineered unsuitable mortgage products flooding the domestic market place and indeed the exporting overseas of the associated by-products, known as Residential Backed Mortgage Securities.

Fraud is rife in the Australian Banking Industry, evidenced by the Credit Industry Ombudsman's service ("CIO") continual stream of negative response letters to consumers as CIO rejects anything with fraud. It's the first thing CIO look for: "*CIO cannot assist in matters where a fraud has been committed.*" These rebuttals show there is no consumer protection for consumers who borrow from Non-Bank Lenders.

It is BFCSA Members who have provided data on their own experiences relating to being end users of the EDR system whether from Non-Banks or Major Banks or smaller ADI Lenders.

**As a matter of standard industry practice, no lender verifies income with the borrower/client. All loans are approved by a Computer.**

We have gathered collective evidence of complaint handling by the EDRs, from BFCSA Members (in all States) and other consumer inquiries in relation to mortgage lending in Australia.

In the following paragraph we provide a LIST of identified complaints relating to the investigation of cases by the EDR Ombudsmen's system.

**Consumers highlight the following experiences with FOS and CIO for urgent attention: -**

FOS has repeatedly ignored the Code of Conduct as to an interpretation of affordability. The Lenders have devised a fairly simple system of affordability, but using inflated GROSS Incomes and falsely adding on salary sacrifice and car allowances etc. The negative gearing issues are distorted in the 'one size' fits all treatment as proven time and again for people on low incomes who pay no tax. The nett figures do not deduct current commitments unless entered.

#### **NO INCOMES ARE VERIFIED – AND OTHER SYSTEMIC FAILURES**

FOS argue they do look for affordability but its only along the lines of the lender formulas etc. Also the calculator distorts assets as expenses and liabilities are not always entered. The computerised system of approval of loans can be easily manipulated and there are quotas to "*make servicing fit.*" The LAF is presented with pay slips, yet the job of the processing centres is to start the data entry from the position of declined and then around 20 or so data operators bring the app into being "approved," without any substance or close scrutiny. Two or three years later, the fraud has become apparent via wrong assessments. People start looking around for help and are usually very distressed due to the ordeal confronting them.



Lenders have lost control of the complaint handling from the private sector and that worries them a great deal. There has been no serious scrutiny or challenge except via media.

FOS has failed to follow the lead of the courts in cases giving consumers the advantage over the banks. Several recent Judge's decisions favouring consumer advantage are being ignored, Other cases are raised as "authority" by the EDRs that favour the Banks.

Example: Two weeks ago FOS is still suggesting via email to the customers: *the brokers are the agent of the borrower*. This has always been a farcical position as the sellers cannot serve two masters. Colin Neave highlighted this legal position in newsletters to banks in 2001. Yet for 15 years, FOS Determination ignored those directives and ignored the recent authorities on this very issue in Schmidt (2010) and again in Burns (2015). FOS staff are still being trained to use this excuse to close files relating to legitimate complaints.

In any case the sellers (55% are bank managers and officers) did not approve the loans. The Bank computer generated robot approved the loans with no income verification by way of a phone call to the customer or their employers, or even Centrelink. A computer is only as efficient as the data entered. The Rate Notices show that homeowner is on a pension.

The following failures are not the fault of the case managers but rather the seconded bank officers, whom FOS employs as "Bank Specialists," who are trained to use authorities and decisions to favour the bank over the customer, as evidenced by outcomes and complaints.

FOS failed to notify and inform the complainant of the fact that the banking system approval process is based upon a computerised affordability test which is set up as a one size fits all.

FOS failed to explain to clients that banks used a serviceability (amortisation) calculator to increase incomes and use inflated Gross Incomes and that bank internal instructions show *"Do not show the Borrower."*

FOS failed to explain to the clients that income exaggeration was rife in the banking industry and continues to be the situation. That all figures came from a bank generated program.

The FOS decision to hide the names of the Banks "describing them as FSPs," has conveniently frustrated the harvesting of true statistical data and analysis of which major lenders were the worst offenders. The escalation in complaints is proof of collective wrong doing and bad lending practices. FOS engaged further staff to be employed as case managers and the EDR budgets have risen. Dissatisfaction has emerged as a key factor by a high turnover rate in staff. Members have reported the allocation of three or more case Managers per year.

In our studies of complaint data, Major Banks are represented in disputes as: **84.8% of complaints we receive involve Major Banks. The BIG FOUR are represented as 67.85% of the total complaints. Westpac attracted 26% with CBA close behind with 18%.**

Consumers are unsatisfied with criminal fraud being treated as a DISPUTE. They are angry about the low ball offers of say 10% of losses sustained in being approved for a toxic loan.

CIO reject complaints on the basis of that same prevalent *fraud* on Loan Application Forms, prohibits them from assisting consumers. That position for consumers means Non-Bank lenders offer no suitable consumer complaint handling service. "You are on your Own."

FOS acknowledge the complaint relates to *fraud*, yet if reports of systemic issues are provided to ASIC, the public are left unaware of any problem with either the selling or buying the product, nor reference to issues relating to the limited EDR system. Consumers are getting a raw deal and yet the debt is the biggest they will ever encounter in their lives.

FOS Determinations almost always favour the Banks - the paymasters to the system.

FOS fail to deal with the issue of Asset-Stripping – victims lose their homes.

FOS fail to pass on the copy of the complete file to the aggrieved complainant. Members complain scant documents provided show critical and informative pages are missing.

The FOS Compensation limit is set as **\$309,000**. Lifted higher only after Inquiries raised in Parliament and point to obvious inadequacies. The average compensation offered is in the region of **\$20,000 - \$60,000**, for losses of up to \$450,000.

*Comment by Member: Like asking the Bank Robber to hand back one tenth of the stolen loot and allow him to continue robbing banks.*

The average loss suffered after only four years of the existence of each loan, amounts to \$180,000 - \$460,000.

FOS refuses to adequately deal with this issue: The system can effectively close doors on those persons persuaded into refinancing arrangement to further increase the debt and leave a deficit rather than equity in the home. Lenders are bleeding their customers dry.

We have members now living in caravans and tents, when they owned their own home had no debt and survive on low income just four years ago. In a Royal Commission, these people will come forward to prove the banks have destroyed all their trust and confidence in the banking system as it did for three generations after the Great Depression of 1929.

FOS failed to provide the requested Serviceability Calculator and failed to explain the significance of this document which was "attached" to their Loan Application Form and should be made mandatory as a matter of a compulsory industry practice.

Another FOS NOTE: "*the monthly rental income adopted by Major Bank cannot be verified by what is in the lending file.*" A Major Bank was recently asked about using rental incomes by a reporter and the Bank assured him: *We never uses rental incomes to determine "affordability."* Our Members have found otherwise.

CALC consistently provides FOS with a similar report and delivers a verdict of **95% success** rate with FOS. They suggest that most of its complaints relate to the Major Banks. An interesting question arises as to whether 10% settlement outcomes are the norm. ASIC response letters do recommend people to CALC and their funding is from a similar source.

Our Members report: The Regulators have gained notoriety in Hansard for flicking back unsuitable response letters to the aggrieved victims of bad banking practices and conduct. The hundreds of complaints to ASIC relating to the EDR services have resulted in a response stating in essence: “The Ombudsman’s decision is final. Get a lawyer.....”

The Perfect DOOM LOOP: Banks to ASIC TO CALC to FOS and back to Banks and back to ASIC for the final fob off letter. The USERS are unimpressed.

## RECOMMENDATIONS:

Whilst the EDR system is in existence:

1. That consumers be given access to their entire mortgage files, particularly the documents referred to in this report.
2. Immediate and Urgent - all new borrowers be given a copy of the 11-page LOAN APPLICATION FORM (“LAF”) at point of signing including the income serviceability calculator which will be attached to the LAF and the statement that no rental income will be used in the assessment for loan approval.
3. That a right of appeal be established for the benefit of all complainants.
4. No ASIC or BANK employees past or present may sit in the independent committee of appeal. There must be clarity of Independence.
5. In the name of Fairness for long suffering Consumers - that all Determinations which are flagged as containing the words *“broker is the agent of the borrower,”* be reviewed by an independent panel capable of understanding the seriousness of issues raised in this report. That compensation be provided by the lender as a result of having these cases reviewed. These cases would be 2001 – 2016.
6. That those persons living in tents and caravans be given priority for review.
7. That Parental Guarantee cases be given priority and EDR cases dating back to 2001 be reviewed.
8. That large print warnings of known product risks be placed on a single page on front page of all mortgage agreements.
9. That a moratorium on interest rates and further action be ordered by the Government whilst the review takes place.
10. That the idea of a Tribunal be quashed as being utterly hopeless as we have seen what happens to consumers in that situation, and only 5 years ago. The tyranny of distance renders this idea unworkable. Victims are from all states and spread across each State. Most are nowhere near the CBD centres. Staff would be underequipped to deal with the fraud. It would only lead to a Royal Commission in any case.
11. Bankers who are over-represented in these serious cases, be publicly made to understand: *“saying sorry has come way too late for forgiveness,”* yet they could assist by agreeing in principle to all our recommendations. No consumer would have faith in any promise *“to do better in future.”*
12. These recommendations are only an interim solution. Therefore, a ban must be put in place on all Interest Only lending products, until they can be confirmed by

Government as being safe for consumers to purchase and be fully informed re the product risks.

13. That Credit Cards attached to mortgage loans, Lines of Credit and Buffer monies be banned, until Royal Commission can examine the misuse of these products and the intention for deceptive practices within Banking.
14. That Creating Wealth seminars and spruiking be banned from the market place. That similar bank seminars to overseas destinations by Australian Banks be also banned in order to restore confidence.
15. That complainants have full access to the computerised records of their own mortgage files on every loan including refinanced loans, and valuations.
16. That the system of complaint handling, move towards the construction of a Federal Consumer Protection Bureau, which houses a Serious Fraud Office to combat white collar crime in Australia.
17. The dissolving of the Twin Peak Model (1998) which has proved disastrous for consumers and market confidence due to the conflict of interest as defined by the Hanratty critique of the Wallis Inquiry 1997.
18. This is a Tip of the Iceberg problem and a Royal Commission into the Banking System is critical to moving forward and rebuilding trust and confidence in the Banking sector. Band-Aid approaches have been rendered superfluous by bad banker conduct.

## IN CONCLUSION:

Consumers want answers as to whether the EDRs, as required by their licencing obligations reported systemic fraud in lending to ASIC, and if YES, when did that occur and; did the Chief Ombudsmen specifically describe the lenders' system of approval of toxic mortgage loans, as being engineered by the Banking Cartel?

We thank the Ramsay Panel for the opportunity to contribute to this Review.

BFCSA (inc) is a recognised long running consumer advocacy service featuring a "self-help" system of collective investigation of cases. We have achieved a high number of settlements over the years in later dealing directly with the bank officers based upon the consistent consumer dissatisfaction with the EDR system.

The EDR system fails to enhance the consumers' true position taken by the Courts: Sellers of Products are not to blame.....Blame falls to the Manufacturer of faulty products.

The obvious and prolonged FOS inertia is not good for the overall well-being of our financial market. We have only two Ombudsmen in Australia dealing with consumer complaints relating to serious criminal conduct issues at the highest level of Major Banks. The consumers are then told the Ombudsman can provide no right of appeal.

This situation is grave indeed. No right of appeal means no democratic process and is an appalling display of bad governance considering we are dealing with the loss of homes. Even though keys to the investment property are handed over to these powerful bankers who profited from this fraud, most victims are the left with \$150,000 debt on losses, whereby four years before they had no debt. Those entire debts must be extinguished immediately.

**I would suggest, the longer predatory lending is allowed to continue, then the bigger the economic fall-out spilling onto the housing sector.**

The idea of a 1% levy on Banks to set up as a retrospective fund to deal with claims re financial advisers and huge losses?

**My answer:** ASIC have an historic track record of handling these matters, and badly. Yes, we have all considered something like this from time to time. If it was suggested again then there would have to be strict regulatory control over the fund and complete independence from anyone connected with the previously referred to DOOM LOOP: ASIC - FOS – CALC – CIO – BANKER. The offer would be a controlled and unfair mere 10% discount. We have seen it all before.

END.

*Additional Reading:*

#### **THERE ARE NUMEROUS DISADVANTAGES FOR CONSUMERS IN THE CURRENT EDR SYSTEM**

Extracts from Submission # 23 from BFCSA (Inc)

See also L F Economics Submission # 63.

*Senate Inquiry into Penalties for White Collar Crime (current 2016)*

“The EDR system has a high turnover of staff as reported in the past. Complainants have an average 3-4 case managers within the first year. The continuity of investigation for each case is problematic. The three-month training systems are hardly good enough for investigations of often complex lending practices, which can result in the loss of one’s home. A serious situation of Lender Fraud in criminal APPROVALS of fraudulent mortgage loans, has been spoken and written about in our Federal Parliament for over a decade. Calls for a Royal Commission into the Australian Banking sector have now reached almost daily commentary in main stream media and Parliament.

I have been involved in 19 Parliamentary Inquiries to date.

The cleverly engineered mortgage product causing the most grief, is the INTEREST ONLY 30-year loan, known as the LOW DOC Home Equity Release Mortgage. That product is still being marketed, with 85% of sales produced by the Major Banks.

IN A NUTSHELL: New complainants are sent in what has been oft described as an ASIC DOOM LOOP..... send the complainant off to FOS and CIO (or CALC). Everyone in the LOOP is “on song.” Customers within two years of the Doom Loop experience, in abject frustration and

anger, go back to ASIC and complain once again: the response being that “The Ombudsman’s decision is final, we now suggest you go to court.”

**This leaves a clear path for the Lenders to steal the intended asset: the family home.**

ASIC and APRA have by design or neglect permitted Australian Bankers and Lenders to form a Cartel and target a specific group of people, labelled by the banking industry as Asset Rich and Income Poor (“ARIPs”). In doing so the regulators have effectively decriminalised that which Parliament, since Federation, has deemed Criminal Activity.

Meanwhile, citizens who are deemed to be the majority back-bone of this country are those who have worked and saved for 25 years or more to own their own homes and become debt free. Responsible citizens labelled by Banks as ARIPs, have become the target market of Australian Banks for the specific purpose of profits via “asset-stripping.”

Older persons deserve the utmost respect from public servants and parliamentarians and not suffer attacks from predatory lenders. One does not work three jobs and save and take very few holidays to own a home and then have a bank agent knock on the door to permit the bank to steal the home.

Sellers are taught by bank officers, to practice on their parents. A keen way to throw the parents into a tent and lose the love of one’s siblings. Yes, brokers are victims too.

The regulatory system, tried and tested by so many victims, is in a shamefully dark corner right now and someone needs to shine a spotlight. Each week there are people contemplating suicide and those who have already left us.

Consumers are having to deal with trauma and stress caused by oversized debt issues and then are forced to deal with regulators acting as if they are Lender and EDR best buddies.

We know people who started small businesses only to find the banks gouged all the profits and sent small business operators to the wall and into caravans, and then back to work at age 75. And yes, there are war veterans and TPI pensioners, many with severe disabilities, who never thought “they would see the day when.....”

Farmers are being thrown off their livelihood and land, due to these toxic loans. One old timer: *“I wonder what we fought for, really I do. It seems like I have to dig another trench whilst these bank b’s live the high life.”*

The Australian Property Market is now in fully blown Bubble mode and someone needs to start using their powers to reverse this deplorable situation.

ASIC had powerful mechanisms through its EDR services to identify systemic fraud, and implement policies to compensate mortgage fraud consumers. ASIC has a miserable track record and is oft criticised with justification considering the loss and devastation of losing one’s home.

**Regulatory Powers that could have been of assistance to consumers, such as funding criminal cases and handing cases over to the CDDP, were simply treated as rusty tools left to rot in a damp shed.**