

1.

FINANCIAL SYSTEM ENQUIRY Second Round Submission from Diana Macdonald August 2014

As a direct result of experiences that I have had, I contend that a Royal Commission into banking and financial services is necessary in order to clean up and better regulate a sector of our economy which is proving to be a risk to our financial future, as individuals, businesses and the country as a whole.

The initial report of Financial system enquiry, whilst it has done some valuable work, does not appear to quantify and address the volume of fraud, historically, relating to loan processing in Australian banks. The level of fraud, maladministration, and misleading and deceptive conduct that has been uncovered by consumer advocates acting for consumers (who have suffered often disastrous consequences), has not been adequately identified and remains unaddressed. Therefore, there is no mention of correcting these gross injustices that have been inflicted upon Australian consumers, nor any framework proposed to adequately address this problem and allow for the rectification or adequate compensation to the victims of that fraud. ASIC and FOS have failed in this area.

I cannot accept the comment in Section 1: “The enquiry has not seen evidence to suggest a need to reform radically the way government intervenes in or regulates the financial system” as this statement clearly contradicts:

- all the evidence that consumer advocates have shown of widespread fraud and maladministration by banks and mortgage brokers, where Loan Application forms for mortgages have, without the applicants knowledge let alone approval, been fraudulently altered, often in another person’s handwriting, to exaggerate the income and assets of the applicants.
- all the failures of businesses from lack of funds during the GFC
- The Interim Report’s comments / acknowledgements re the need for extra levels of funding / “vanilla bonds” proposals etc.
- the identification of the failures within the Financial planning industry
- the practises of, and misleading information provided by many property marketers to induce investors to buy properties
- the questionable and seemingly widespread practises of some mortgage brokers demanding upfront fees for seeking to organise funding for clients, when they are fully aware that the funding is not available and/or make no effort to obtain it.

2 Cont.

- “Business advisers” acting without a Financial Services licence. This is a danger with the “vanilla bonds” proposal that would need to be very carefully legislated and monitored.
- One party that I had experience with and further observed operating in various parts of Queensland was quite predatory in nature. It appeared that this entity lived quite well off the proceeds off the “Business Plans” that they asserted the fund originator required. They were also attempting to gather funds and set up syndicates.

Regarding ASIC

Like many others, I contacted ASIC with clear evidence of mortgage brokers and banks fraudulently altering a Loan Application form AFTER I had submitted financial information. [Note: dated emails with attachments cannot be fudged and I have such records of what I submitted] I fully co-operated with ASIC, who in one particular case conducted a thorough investigation which identified the level of fraudulent conduct by the mortgage broker concerned, but ultimately failed to prosecute or censure him, or actually ACT in any way: they suggested that I should follow up and do this! I do not have their resources / authority / charter. Why did they fail to act to ensure a broker obeyed the law? Why do they not offer a level of protection to Consumers? This is a failure on the part of ASIC.

It has been left up to me to explore other avenues for justice.

The Interim report suggests enhancing ASIC’s powers. Why, when it doesn’t use the power that it already has, would anyone recommend this? I am mindful of a colloquial expression which mentions force being applied to one’s rear end which seems more appropriate in the circumstances.

FOS applies unreasonable limits to their compensation parameters that are quite simply out of date; they have failed to account for rises in property prices and the amounts of money involved. Their levels of compensation are not clearly defined: e.g. does the level apply to the amount of the LOAN that was initially supplied, or to (later) losses?

Additionally, FOS should be legally challenged regarding their 2009 reversal of policy regarding the law of AGENCY and any cases that have been decided on this basis (one of mine included) need to be re-examined. Colin Neave (now Commonwealth Ombudsman) wrote policy 2001 – 2009. The Broker is the Agent of THE BANK”The bank has no direct contact with the customer and even if there are agreements between bank and broker or third party....bank may well be held liable for loss”

The profits of these banks have benefited from such frauds and that is illegal. The securitization and sale of packages of mortgages tainted by fraud to the government and their subsequent on- selling is also fraud. No corporation or government should be involved in, or profit from a fraud. This is “the elephant in the room” that needs to be addressed by this Inquiry and indeed Treasury.

3. Cont.

Whilst I applaud the Interim report for many of its current findings and determinations, and appreciate the enormous amount of work that has been done to achieve them, I wish to record the following observations and comments:

In the report under “Consumer Outcomes” 3-50

“The Enquiry considers the Financial System should deliver 5 outcomes:

Outcome 3. Consumers should have confidence and trust in the financial system and be able to expect fair treatment. Effective regulation that minimises misconduct and promotes fair outcomes will drive confidence and trust in the financial system.....

Outcome 5. Consumers should have access to timely, low cost and efficient dispute resolution and remedies when problems arise.

Effective avenues for redress to provide access to justice for consumers and promote confidence and trust in the system”

YES! AGREED! But in my experience, this is not happening.

In relation to 3, I make the following observations:

Australian Consumers do NOT have confidence in the financial system. Banks, Financial planners, the tax department all get thrown into the basket of popular scorn and avoidance wherever possible.

Another important reason why consumers do not have confidence is, as I have identified above, the evident failure of ASIC and FOS to act promptly and enforce the laws and regulations that are already in place to protect the consumers

Consumer reactions to this lack of confidence are putting the future of the economy, Superannuation and savings of this country at serious risk. The Interim report identified a few reasons why, and I agree with these and have some of my own additional observations to make as to why this confidence exists:

- The advice from financial planners is woeful (ASIC’s own secret shopping that your report quotes is damning).

4. Cont.

- I contend that the Financial Planning industry DOES need a thorough clean up, because as the interim report has clearly identified, the advice given at present is often loaded with self-interest, or just plain bad advice. The Labour government legislation proposed this area be cleaned up. The current Treasurer has stated that this will not proceed. WHY? The media comments centre on the assertion that he is protecting big business. Why else would he take that stance?

I would urge this inquiry to reinforce the finding that a clean-up of this industry is vital to the wealth creation and superannuation for all Australians this at their peril.

- Education and qualifications for financial planners need to be upgraded. Absolutely!
- It is totally understandable that the report has identified that 27% of consumers elect to handle matters on their own, although they are often ill equipped and lack the necessary skills to do so.
- Section 1 Overview comment 'where intervention is necessary the enquiry considers it should not unduly add to the complexity of regulatory arrangements' is especially relevant. Consumers should not need a law degree to be able to navigate their way around rules and regulations: they should be revised and simplified

In relation to point 5:

- **FOS** is seemingly inundated / understaffed and very slow.....sometimes taking YEARS...yet whilst consumers wait for their cases to be resolved, the **banks keep adding interest for amounts they perceive to be due! So the poor consumer gets clobbered again.**
- Banks load consumers with legal costs and punitive interest during the period of investigations, or when a property has been seized by the bank awaiting sale.
E.g. when a consumer writes to a bank, challenging their actions, they pass the issue on to their lawyers to reply to and add the lawyer's bill to their clients ledger. This is not a simple, low cost process. In one case that I have, these costs have amounted to over \$400,000 on an \$800,000 loan limit over a period of approximately 4 years.
- Many Consumers are being turned away by FOS because their case exceeds the FOS limits: where do they go?
Lack of these facilities has seen many "hung out to dry" by the banks. They have lost homes, been made bankrupt etc.
- Regarding "remedies when problems arise": the remedies of Receivership / Liquidation/ Bankruptcy are most commonly applied, yet these are of dubious benefit, especially when the root cause of the financial difficulty is bank agent fraud, or an event totally outside of the consumer's control: e.g. the GFC, drought, floods etc.

5.Cont.

- The Receivership / Liquidation/ Bankruptcy application result is that the consumer has their Ability to earn impacted as this process often results in loss of trade or professional licences. This means the (often highly skilled and experienced) worker is effectively removed from the workforce, their ability to save for retirement impacted, and they are destined to be yet another recipient of welfare. [Please refer also to the Interim report comments on fiscal pressure and the ageing population]

THE GFC WAS AN ABNORMAL CIRCUMSTANCE.

SO ARE FLOODS AND DROUGHTS

THESE SHOULD RESULT IN AN ABNORMAL / SPECIAL REACTION AND PLANNING BY THE GOVERNMENT AND FINANCIAL INSTITUTIONS.

HOWEVER, IN MANY AREAS, THIS HAS NOT OCCURRED.

BANKS GOT SPECIAL ASSISTANCE.

A FEW BUSINESS CATEGORIES WERE ASSISTED, E.G.CAR MANUFACTURERS, FARMERS

BUT THE VAST MAJORITY OF THE INDIVIDUALS AND BUSINESSES IMPACTED BY THESE WORLD WIDE PHENOMENON, ESPECIALLY PROPERTY DEVELOPERS, HAVE BEEN TREATED AS IF THIS WAS NOTHING SPECIAL AND THEY WERE TO BLAME FOR THE PROBLEMS THAT THEY ARE FACING, AND SHOULD BE, AND INDEED ARE BEING, PUNISHED BY THE FULL FORCE OF CONTRACTURAL LAW.

This is not a "fair outcome" (Point 3). It is a gross miscarriage of justice and creates a whole sub class of health and social issues.

AS THE RESULT OF BANK POLICIES AND PRACTISES, THIS TYPE OF SITUATION IS OCCURRING ALL AROUND AUSTRALIA IN THE BUILDING / CONSTRUCTION / PROPERTY INDUSTRY DURING AND POST GFC AND CURRENTLY HAPPENING IN THE BEEF CATTLE INDUSTRY IN DROUGHT AFFECTED AREAS.

Many Property developments faltered due to changes in bank policies and lack of funding during and since the GFC that have had huge impacts upon whole industries and communities. I have therefore noted with great interest the comments in the report relating to the **possible economic risk to the Australian economy from the high level of household debt, and in particular when this debt is associated with property. The perils of a falling market are very real.**

6. Cont.

I have specific evidence of this occurring in Coastal markets of Australia where the banks have withdrawn their support and called in multiple loans. In doing so they have not simply reacted to market conditions, they have CREATED the market. But they have remained unchallenged in this.

I had a Beach front property which was valued at \$1,000,000 by a bank panel valuer for many years pre GFC. This was recently sold by the bank for \$295,000: they did not auction it as they reportedly decided to accept and "above market pre auction offer"

Coupled with that, I note with concern the situation regarding the withdrawal of Lloyds Insurance from the professional indemnity insurance market and the impact that this may have on Australian Property Valuers, and how this has the capacity to further impact and erode market values.

If such a pattern occurred more commonly across the market, the whole of the Australian economy would be at risk.

May I respectfully suggest that:

THE FINAL OUTCOMES OF RECEIVERSHIPS, LIQUIDATIONS AND BANKRUPTCIES NEEDS TO BE RESEARCHED TO EVALUATE THE EFFECTIVENESS OF THESE MECHANISMS. MOST PROCEEDS FROM SELLING ENTITIES UP APPEAR TO BE GOING IN LEGAL AND RECEIVER'S FEES AND CHARGES, AND THE ULTIMATE BENEFIT TO THE BANKS / CREDITORS VERY SLIM, OUTSIDE OF THE LARGE TAX LOSSES WHICH ARE BENEFICIAL TO THEIR BALANCE SHEETS, TAXATION OBLIGATIONS AND ULTIMATE PROFITS.

I PROPOSE THAT BUSINESSES WITH STRONG PREVIOUS RECORDS AND HISTORIES SHOULD BE IDENTIFIED AND MORE CREATIVE MECHANISMS AND ADVICE APPLIED TO HELP THESE BUSINESSES AND INDIVIDUALS RECOVER FROM ABNORMAL EVENTS, SUCH AS THE GFC, AND RESUME THEIR WORK. THIS WOULD NOT WASTE VALUABLE EXPERIENCE AND ABILITIES AND BE FAR MORE PROFITABLE TO THE ECONOMY AND THE WELL BEING AND INDEPENDENCE FROM WELFARE FOR ALL AUSTRALIANS.

ADDITIONALLY, THE TAX OFFICE AND ASIC HAVE ADOPTED PUNITIVE REPORTING REQUIREMENTS AND OFTEN UNCONSCIONABLE CONDUCT TOWARD MANY BUSINESSES AND INDIVIDUALS WHO HAVE BEEN GREATLY IMPACTED BY THE GFC. THEY HAVE NOT HAD ANY PROACTIVE MECHANISM IN PLACE TO ACTIVELY OFFER ASSISTANCE OR ADVICE THIS HEAVY-HANDEDNESS CAUSES MANY TO SIMPLY GIVE UP AND CEASE WORKING. NOT A GOOD OUTCOME FOR THE INDIVIDUAL OR THE COUNTRY.

7. Cont.

WHY IS THERE NO LEGAL AID / EXPERT FINANCIAL ADVICE BEING PROMOTED TO HELP SUCH PEOPLE?

Please note that making submissions of this nature require enormous amounts of time and energy, and many who have suffered financially due to many of the factors considered above, simply no longer have the strength or the resources to cope with the workload. So please do not think that they do not care and want / need things to change. I personally know of many people in this category who are just plain worn out by all the financial pressure they have endured and the problems that they now have. Problems not of their own making, which are a far cry from their previous financial security.

I advocate a Royal Commission into the Financial Industry and the conduct of the banks to provide the Australian public with a suitable vehicle for their very valid complaints and concerns, and then to help to determine the best way forward for all Australians.

The fact that this inquiry has received many submissions from banks and institutions is entirely understandable: they have paid staff qualified to do so and it is also in their interests to seek to clear the inquiry away from areas where they may have fallen short, or practises that make them large, arguably unjustified profits. Therefore I would urge the inquiry to exercise caution in order that those submissions that may be "skewed" by self – interest and whitewashing do not influence the outcomes of this enquiry.

We Australians have a great appreciation for the concept of fairness. I applaud that this concept is mentioned and valued in this report.

Currently our system has not shown impartial fairness. The public view is that you can get away with things if you can afford a smart lawyer. E.g. The Australian reported on Friday 8th August re Sage Mining / Kapung / Cape Lambert Resources having their tax amounts payable greatly reduced: no doubt at the expense of some very clever lawyers. That does not send out a message of fairness as most Australians and certainly those whose finances have been decimated by the GFC cannot afford many legal expenses.

I am quite prepared to expand upon my comments and provide details to the relevant authorities if and when required.