Banking & Finance Consumers Support Association (Inc)

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into Proposals to Lift the Professional, Ethical and Education Standards in the Financial Services Industry

Submission by the Banking & Finance Consumers Support Association

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Executive Summary

In 2001, criminologist Denise Brailey called for a Royal Commission into bank and non-bank lenders frauds, including their financial products on offer. In the decade prior, Ms Brailey identified widespread white-collar criminal activity in solicitor mortgages, debentures, and broker scandals in every state, despite the huge budgets of supervising government agencies. Retirees were being targeted and stripped of retirement funds. By 2002, Ms Brailey identified that subprime mortgage lenders were targeting ARIPs (asset rich, income poor): typically pensioners and retirees whose primary asset was the family home. Please see Appendix A for a case study of subprime mortgage lending fraud.

Over the past decade, an increasing number of people sought her assistance with toxic subprime and full-doc loans sold as 30-year interest-only loans, typically marketed to older persons. Her work has revealed the link between the sellers of the product and the lenders. Sellers were coached ("no experience necessary") by bank officers, under instruction from banking executives: "to use a marketing spiel and fill in forms to be made ready for processing."

Untrained sellers were not aware of the adverse outcomes and high likelihood of foreclosure. Lenders developed 'one-size-fits-all' service calculators (SCF) as a compulsory tool, manufacturing unrealistically high incomes with dubious mathematical algorithms. The risks were not explained. Sellers have informed Ms Brailey: "we were told the SCF must be attached to the Loan Application Form (LAF). Without the service calculator we would not know what figures to use on the LAF."

Ms Brailey has identified systemic fraud and forgery, which place consumers at grave risk of having their finances destroyed. All findings were reported to the regulator. She also identified the main players and engineers: bank and non-bank lenders, lawyers, accountants, valuers, developers and rating agencies. The real masterminds are the lenders who have engineered intentionally faulty financial products. The award-winning consumer

advocate and criminologist has tirelessly lobbied for and contributed to many Inquiries to date.

Lenders have devised two diabolical control frauds to confiscate savings and assets: debenture capital-raising schemes and subprime mortgage lending. The targets are usually older persons: retirees, pensioners and low-income families, as bank emails to the seller channels and marketing seminars suggest. These two control frauds have robbed consumers of tens of billions of dollars over the last two decades, with a likely total end cost of over $200 billion. The debenture control frauds have already produced losses of over $55 billion to date, affecting around 2.43 million Australians. The two schemes depend upon financial planner and the broker channels: the sellers (Appendix B).

Planners and brokers are simply a conduit for faulty financial products engineered by lenders; this inquiry should focus on the architects of control fraud as a matter of urgency. The emphasis on the educational standards of planners, brokers and consumers is merely a smokescreen to disguise lenders' crimes. A recommendation for a Royal Commission to investigate the predations of lenders is strongly urged. Lender abuse of their 'too big to fail (and jail)' status cannot be tolerated. Ms Brailey's efforts lead us to an uncomfortable conclusion. If a car's design was based on a flawed blueprint, should the retailer of the vehicle be held responsible? The PJC is warned against assuming the horrific financial losses suffered by Australians are the result of bad selling practices, when deliberate product defects are the ultimate cause.

Government and regulators are unmoved by the evidence of control frauds spanning more than two decades. Nonetheless, accountability and transparency needs to be restored in our banking and financial system. Confidence in our economy is built on the essential pillar of trust. An Inquiry into the training of sellers should quickly conclude that a Royal Commission into the entire banking and financial sector is urgently needed and long overdue. This PJC Inquiry and Terms of Reference are narrowly focused upon seller intermediaries, restricting the evidence we can present to assist the committee. The PJC should examine the engineers over the sellers; studying the paperwork and computer tools of lenders is particularly critical in this regard.

TOR #1: Adequacy of Qualifications of Sellers and Advisers

The government must note there are a number of key issues falling within the scope of the Inquiry's Terms of Reference that are not clearly defined but which are imperative to consumer protection, or rather, the lack thereof. This explains why many federal and state Parliamentary Inquiries have already investigated numerous predations by the banking and financial sector, including the role of regulators that are supposed to appropriately supervise the industry (please see Appendix C).

The government focus upon the conduct of sellers, rather than the quality and transparency of financial products and the true intentions of their manufacturers and engineers, places consumers at far greater risk of 'more of the same' for decades to come. The marketplace for financial products and services should first and foremost have consumer safety in mind, instead of being determined by the dictates of greed and profit. White-collar crime penetrates and erodes the foundations of an economy when regulators solely concentrate on the sellers of financial products while overlooking the central concern of rogue manufacturers.

Lenders who demonstrate unconscionable conduct by engineering patently unsuitable products and then unscrupulously target a vulnerable section of our community, typically the elderly, should face stiff penalties and sanctions with a much higher probability of jail time. The recipe for consumer confidence is clear and unbiased information provided with financial products that align with the personal circumstances of the client.

Financial advisers are hardly 'experts, qualified, advisers, accountants' following a $1,460 course and 34 hours of multiple-choice questions for which the answers are conveniently provided. Indeed, they are de facto sales personnel bedevilled by conflicts of interest due to commissions derived from selling the manufacturers' products. The Commonwealth Ombudsman and previous ABOS Banking Ombudsman (2001 – 2009), recognised the argument of agency in regards to lenders manufacturing no- and low-doc (subprime) loans. Despite knowing the skilfully engineered products and processes were likely to harm the

client, the sales prowess of the broker channel and the advisory arm (including financial advisers and accountants) was proactively used to entice elderly persons to take up subprime loans.

The Ombudsman understood the banks were taking extraordinary risks by trading in unsafe products, noting "the lender has no contact with the client and therefore the broker is the agent of the lender" *[ABOS Bulletin #32 and #36]*. The presiding judge in the case *Violet Home Loans vs Schmidt Vic Sup Ct (2010)* came to the same conclusion. The Ombudsman also warned lenders of the perils of creating adverse agreements with sellers which may not be acceptable to the courts.

The same problems were identified by *Choice Magazine* in 1996, following various shadow shopping surveys: "Plans range from poor to downright frightening." A host of similar studies have revealed the same problem of unsafe product offerings when untrained and inexperienced 'financial advisers' are allowed to publicly operate.

A significant cohort of retirees, pensioners and low-income households have complained of substantial savings losses to the regulator and in Parliamentary submissions, primarily via debenture and subprime scams that originate from the Big Four banks. The non-bank lender share of the market is smaller, but the potential future losses from subprime loans are estimated at around $100 billion, twice the potential size of the $50 billion market for these products boasted by policymakers in 2005.

A greater emphasis on the manufacturers of financial products is required, for the sellers are inadequately trained and have little or no qualifications to prepare themselves for the role. Evidence lending support to this statement includes rapid staff turnover within the industry, the poor quality of standard 'advice', a plethora of Parliamentary Inquiries spanning decades addressing similar concerns, and the overwhelming number of total victim complaints. In addition, these circumstances negatively impact both the sellers and their extended families. For instance, a 22 year old, top representative and award-winning seller was told (as were others) to "practice selling the product to your parents and family."

He was from a once-proud Asian family. Six extended relatives all agreed to take out equity loans and try the 'financial strategy' offered by the lenders. This occurred only one month prior to the collapse of the investment company; a high-risk firm known to ASIC (Australian Securities and Investment Commission) for at least five years. Within two years, all family members had lost their investments in debentures, followed by their homes to the major lenders. They were left with little recourse, for the debt instruments they had heavily invested in had no assets or collateral backing them. The shame and indignity of the experience left the son, a decent, polite human being so deeply affected, that he fell into an acute state of depression and spoke of suicide.

This tragic example illustrates the financial horror of low-income households with equity who entrusted their life savings with untrained and inexperienced staff favouring unsuitable listed and rated debentures. At the same time, potentially hundreds of thousands of Australian families have fallen afoul of the subprime mortgage scandal that threatens to cause a calamitous 'ripple down effect'.

Over the last decade, executives from ASIC have continually been summoned before Parliament for questioning over these matters, but their answers have often been evasive or dismissive in tone. Australians are tired of the weak excuses from regulators and their perceived tendency to minimise deep-rooted systemic problems. Parliamentarians have not received satisfactory explanations from ASIC about the rise in lost retiree savings nationwide, along with home foreclosures stemming from predatory lending by banking and non-banking lenders alike.

For over fifteen years, the BFCSA has been identifying central actors providing lending facilities that enable the emergence of Ponzi-like models in traded debentures. The primary actors endorsing control frauds are bankers, developers and promoters, construction firms, and the property purchase and mortgage industry. Each actor is directly dependent upon the other, setting up a path of financial destruction and destitution for typical 'mum and dad' investors who choose to invest.

The only winners in the marketplace are the engineers and manufacturers of financial products. In a self-regulated environment, bankers are effectively unregulated, for no clawbacks exist to garnish their outlandish compensation packages or large bonuses. Furthermore, ASIC and other authorities are generally hesitant to investigate allegations of wrongdoing by major lenders or to impose serious penalties when it is uncovered. For instance, no banking or non-banking lenders have ever been arrested and charged in Australia, meaning there are no liabilities for committing white-collar crimes.

Promoters, developers and the construction industry on contract also win in the short-term via massive management fees, luxury homes, opulent lifestyles, cars and other trappings of 'success'. Scant regulatory attention is paid to schemes in operation until the collapse occurs. In accordance with the 'disaster capitalism' model, the panic induced by an economic crisis is cynically used by central actors to implement policies which permit further control frauds.

The intended losers in this scenario are the 'mum and dad' investors who mistakenly placed their faith in financial 'advisers', not realising they are simply sellers of financial products who do not fully understand the risks – namely, potential capital losses of between 50 to 100 per cent from day one. Clients and advisors do not realise that a key indicator of a possible Ponzi structure is dividends and income flows that are paid on time, even if debentures are rated and listed, as with Westpoint and Bridgecorp.

'Mum and dad' investors are targeted by a financial strategy which coaxes them to withdraw equity from their home so borrowed funds can be directed towards either a 'promoter'-sourced property investment, shares and/or margin lending, or unsafe debentures. Some products are no better than an IOU and are simply manufactured defective - almost guaranteed to fail. Reverse mortgages are an example of another toxic financial product where borrowers are not informed of the tremendous risks attached.

The modus operandi of financial strategies developed by the banking and financial sector is to entice the public into investing the entirety of their life savings and home equity. Nil regard is given to the devastating consequences for those who have worked hard, saved for

retirement, have accrued equity in their homes, or are debt-free. Genuine financial advice is supplanted by disinformation that excludes the possibility of catastrophic losses. Borrowers are universally told that such investments are 'a sure thing'.

ASIC is media-shy unless reacting to publications which further tarnish their already tattered image. The diabolical track record of the agency and its general idleness has prompted an inquiry into the regulator. ASIC has been content to blame the victims – the borrowers, investors and sellers – despite unquestionably knowing and confessing behind closed doors: "Yes Denise, the bankers are the engineers, no doubt about it."

ASIC executives are fully aware that many full-doc (prime) loans are also unverified, due to all mortgages being approved by a computerised process for some time. The BFCSA has uncovered and extensively documented mortgage fraud in full-doc loans by bank managers, often with no sellers involved. An internal service calculator is used by the sellers of financial products which 'fudges exaggerated incomes' to get loan approvals over the line.

The common response of ASIC to the plight of victims of predatory and unconscionable lending is the standard 'get lost' letter, unjustly dismissing those with legitimate grievances against lenders and promoter networks. This practice is entrenched and can be traced from 1998 through to today. The BFCSA has an impressive and vast collection of documents covering everything from debenture collapses to fraudulent loans. The Credit Ombudsman Service (COSL) has admitted fraud exists but consistently refuses to take action, before ultimately closing files. Similarly, the Financial Ombudsman Service (FOS) concedes the banks have committed fraud, but then capitulates in determinations that favour them.

Consumers and victims of predatory lending are outraged their cries for justice have gone unheard by an alphabet soup of agencies unprepared to exercise their legal mandate to maintain fairness and transparency in the financial system. This inquiry will not prove deaf to the entreaties of victims, if Members of Parliament permit a Royal Commission including them as part of the process, so they can become empowered through active participation. The head of ASIC has publicly stated that 'disclosure policy' does not work and that Australia is a haven for white-collar criminals (the latter statement has been subsequently retracted).

Yet, ASIC is not forthcoming about its knowledge of undisclosed risks, particularly for those financial products and services manufactured by lenders. Those losses are far greater and effect many more families.

Lenders use the planner and broker channels for only two reasons: to sell financial products developed and/or supported by the banks (including for debenture-funded company directors to promote development and construction), and then to blame them for the predatory lending when the Ponzi structure inevitably folds (the 'fall guy'). The use of a complicated lending structure is not justifiable on either the grounds of efficiency or profit, as lenders' returns are diluted by the additional actors involved in the lending chain, suggesting it has been solely designed to provide a plausible legal defence. Control frauds almost always avoid liability, a point noted by the leading US academic, William K. Black, who, as a Bank Board regulator and litigator, helped clean up the rampant control frauds during the US Savings and Loans crisis during the 1980s.

The BFCSA implores the committee to dwell further on what a few of you have been saying for some time: this is about staring a very unsavoury and predatory banking system in the face and shining a light on areas regulators fear to tread. The direct harm and ramifications of immense losses can be measured in heart attacks, stress-related cancers and illnesses, depression and suicide. These criminal activities are pervasive and so profound they can destroy forty years of hard work and hope in an instant: the financial well-being in retirement whether via a modest retirement income and/or a pension.

If sellers had university qualifications, they would quickly ascertain the risky strategies being employed and may ask too many probing questions. In short, the educated seller is not as amenable to selling flawed products in a predatory environment. Of course, the persons operating control frauds, the engineers and manufacturers of defective and fraudulent products, are mostly tertiary educated and have gained business, economic and financial degrees from the most prestigious university business schools.

The public is unaware that sellers have very little formal training and education in regards to financial risk strategies, yet they are permitted to trade in dangerous products, in defiance

of this obvious deficit. Minimum qualifications are a necessary antidote to the toxicity of control frauds, for rank and file employees would then start to recognise their development and implementation by executives and management.

Consumers may also benefit from a system of mandatory legal notices that are similar to 'black box' warnings on tobacco products. We warn smokers because the product raises the chances of cancer and premature death, yet financial ruin is also a painful and indiscriminate killer. Transparency dictates that potential investors are warned their savings and/or home may be lost within several years if they decide to proceed. This is particularly true for investments in firms funded through debentures, and mortgages used to purchase residential investment properties.

If sellers, borrowers and investors realised these products were a ruse rather than sound and honest financial advice, sales would evaporate overnight. In the retail sector, faulty products causing harm, ruin or even death are customarily banned or withdrawn from sale. If sellers were taught the negative consequences and hidden risks of their proposed investments, then a vast majority would leave the banking and financial industry for greener vocational pastures. Ms Brailey has personally spoken to over twenty brokers, ex-brokers and planners expressing their disgust with the state of the industry. Like many investors before them, some are coming forward with stories of toxic mortgages leaving them in penury and a virtual debtor's prison.

As several have disclosed, "we did not exaggerate the income – the service calculator was designed that way. We had no idea this was illegal; we were told that if we did not attach the SCF (service calculator form) to the loan application, our deal would not be processed. We did not pluck the fudged income figures out of thin air. Rather, we were given passwords supplied by the lenders to access the calculator." The service calculator is a secret computer program designed by lenders that calculates tax advantages and is used for a 'one size fits all' approach for mortgage approval.

It should not be forgotten that ASIC provided the lenders with an exemption order back in December 2005 in relation to the methods outlined and the use of sellers, as an ex-ASIC

solicitor described to the ASIC inquiry earlier this year. The intent of legislation to protect consumers is clearly being subverted when ASIC hands out exemptions to lenders and insurers in this manner (see CO 05/1122).

TOR #2: Implications and Cost to Participants

There are literally no ethical standards in the banking and financial industry today, as the sellers of products do not fully appreciate the risks they are transferring to investors.

Advisers say: "if we knew all this we would never have become involved in selling. We trusted the banks, we trusted the system, we were told the service calculators were to be used and attached to the applications. We were told lawyers had agreed it was legitimate to use the service calculator to create futuristic incomes using tax advantages. We were told we were helping people achieve their dreams and that we could use certain financial strategies and offer low rates. We did not see these products as high cost and the contracts completed by the lawyers."

"We were simply taught to ask for three pages to be signed and then add all the other pages in with the document and then fax to the lender for processing. We were taught never to show the service calculator form to borrowers as it had the daily NSR (net servicing ratio) on there. BDMs (business development managers) would teach us how to use the lenders' service calculators. We had no idea of the risk; it was never explained. We were told to sign up anyone and permit the lender to make the approval decisions. Nothing has changed, even when the NCCP came in."

"Financial strategies of selling depended upon us being taught to use the lenders' service calculator in order to estimate incomes, but in reality, the online program inflated incomes. We were told never to give copies of the loan application form to the customer, while collecting all identification documents. Many of us took out loans also, without recognising the risks. We were also told not to permit the borrower to fill in the form – we fill in the forms, hand-written or electronic. They simply sign in three places. We were told if there is an asset there are rarely rejections as there is plenty of money."

Sellers remained upbeat and adhered to the 'sales pitch' being recommended, with all bank and non-bank lenders using the same methods. Sellers were apparently trained "in a

comprehensive plan to have advisers to act honestly and with a high expectation of integrity." This statement stands in stark contrast to reality - everyone was oblivious to the potential for fraud within the lending institution framework and the intentionally unsafe nature of the financial products on offer.

The absence of sound business ethics has created losers out of buyers and sellers, while financial engineers continue to reap unearned windfalls by promoting flawed financial products. The power imbalance is further shifted to the benefit of lenders through 'Lending Policy Guidelines' which authorise the refusal of documents to the aggrieved borrowers. These guidelines were not supposed to present a means to entrap pensioners and throw them out of their homes via superficially alluring, but truly toxic loans as they strove to become novice 'investors'.

As outlined in TOR #1, the seller network was created with the express intention to ensure bank and non-bank lenders could avoid liability – a sound investment in plausible deniability. ASIC has never prosecuted a lender and admits "most advisers are doing a good job." The BFCSA agrees, given the majority of sellers have little to no understanding of lenders' intention to commit predatory subprime fraud. ASIC employs three hundred investigators, but seemingly the lenders have been granted immunity to forensic examinations that may uncover corroborating evidence warranting criminal referrals and prosecution. As the head of ASIC has acknowledged, jail is the ultimate deterrent for white-collar criminals, as has been the case elsewhere across the globe in the pursuit of financial and banking sector racketeers. In Ms Brailey's experience, the majority of sellers are decent people who sought to lawfully follow rules set down within the institutional framework, but along with the investors and borrowers, were intentionally kept in the dark about its true purpose.

A government minister once boasted in 1996 that "The new regulatory regime will be the best consumer protection system in the world." Unfortunately, since 1998, it has cost taxpayers $6.4 billion to protect no one except the manufacturers and promoters of these deliberately faulty financial products.

TOR #3: Recognition of Professional Bodies by ASIC

ASIC has been receiving and using BFCSA's 'intel', as they describe it, for sixteen years. Ms Brailey has attended commissioner-level meetings and had the opportunity in 2005 to brief the Deputy Chair on Westpoint. Twenty years of her life has been devoted to consumer protection issues as a volunteer because she is personally motivated and guided by the ethical principles of 'right and wrong'. Control frauds and the subsequent losses uncovered by the BFCSA has been the key indicator that lenders and promoters have often acted in a horrendous manner, whether the chosen instruments of financial mass destruction are loans, investment plans and strategies, shares or property.

On repeated occasions, ASIC has been brought before Parliament to answer for its own brand of unequivocal negligence causing injurious impacts. Every time ASIC has been asked by Parliamentarians over the past decade, "do you have enough funds?," the politically correct answer has always been, "yes we have plenty of funds." ASIC has continually asked for regulations, rules, standards, legislative provisions and codes to be upgraded, but the real problem is rooted in a dysfunctional regulator culture, a reticence to enforce existing rules, and the failure to impose strict penalties and issue criminal referrals. Parliamentary responses have consequently been neutralised by ASIC's proclivity to bury losses suffered in the past with excuses of why they are powerless to act in the present.

The idea that 'we ASIC, can do better…' with additional resources or regulatory tools simply fails the plausibility test. The scale of losses experienced by a legion of 'mum and dad' investors is testament to this fact. ASIC's inaction demonstrates they are conflicted, for they can never accept the mantle of a world-class regulator if they continually serve industry ahead of consumer protection. For fifteen years, Ms Brailey has identified regulatory misconduct akin to window-dressing – a conscious misrepresentation of the state of the banking and financial industry seen through rose-tinted glasses.

In previous inquiries, ASIC has intentionally tried to disguise the commission of criminal activities by the financial engineers and manufacturers. Consequently, there is a strong basis

for the claims ASIC is also directly culpable for these losses, with the poorest executive decisions providing a prima facie case of malfeasance in public office. ASIC only speaks to those who identify with their own particular line of thought. ASIC's position is untenable, their brand has been irreparably damaged, and grass roots consumer groups long ago lost all faith, trust and confidence in their ability to protect Australian consumers.

ASIC's actions are generally incongruous with their professed principles, particularly in relation to the policy of 'disclosure'. A succession of previous chairpersons knew the disclosure policy was an ineffectual remedy, yet ASIC is only now making this admission following a slew of media reports and criticism. Even in recent times, the head of ASIC acknowledged that "disclosure policy does not work." Meanwhile, the number and scope of control frauds continues to grow, destroying the financial livelihoods of countless Australians.

When policy catastrophically fails, cover-ups ensue and can remain hidden for years. The regulator will now claim it has a conflict – the very thing it was in denial about. The primary issue, however, remains unresolved; consumers are in desperate need of protection from maliciously designed financial products and services, and have been since the mid-1990s. Yet, it is likely consumers will continue to pay an extremely high price for ASIC's many follies and short-comings.

Perhaps most galling to consumers of financial products is ASIC's gross negligence and their effrontery in continually dismissing consumer complaints with an incomprehensible rationale: "not in the public interest, no investigation." ASIC is fully aware their advice to seek legal counsel is disingenuous, for most victims have already been financially destroyed and cannot afford the expense. Trite 'cut and paste' excuses employed since 1998 are simply no longer defensible.

Recommendations

The BFCSA suggests the following recommendations to the committee:

1. The establishment of a Royal Commission, with the broadest terms of reference to capture all actors and beneficiaries of control frauds: lenders, insurers, property developers and builders. A Royal Commission is critical to laying the groundwork for genuine consumer protection legislation, particularly since hundreds of thousands of Australians have fallen victim to substantial losses during the past fifteen years.
2. Financial advisers must immediately be limited to 'general advice' and be named as 'sellers' of financial products to provide clarity to consumers.
3. All sellers must be licensed and referred to as such by name, with a clear notification of whom the agents are acting for.
4. All 'financial strategies' and 'cash flow charts' are removed from the sales process, as they generate unrealistic projections of future incomes.
5. A mandatory warning is provided to all consumers who invest with firms funded via debentures: you may lose the entirety of your capital.
6. Consumers need to be warned that markets have been flooded with inappropriate investment offers. Public awareness should be raised regarding rampant and unchecked control frauds, unsafe mortgage loans, and other unregulated activities that radically increase the risk threshold for investors.
7. The argument of agency cannot be circumvented by lawyers of financial product manufacturers; consumer protection is paramount (see *Schmidt 2010 Vic Sup Ct*).
8. Misleading codes of conducts that are not actually applied in practice should be banned (see *S25.1* of the Bankers' Code regarding prudent lending affordability).
9. ASIC's role as consumer protector must come to an end, with preference given to establishing a new and more effective regulator unburdened by a dysfunctional institutional culture.
10. A new Federal Bureau of Consumer Protection should be established, incorporating a Serious Fraud Office, to deal with corruption and white-collar crime.

11. The reversal of Future of Financial Advice (FoFA) reforms which have weakened consumer protections.
12. Consumers require mandatory notices detailing Australia's weak consumer protection legislation and feeble regulatory apparatus, which notes that regulators rarely assist victims of predatory finance, leaving them stranded to pursue costly and time-consuming action through the legal system.
13. Government must recognise the entrenched conflicts of interest between financial product manufacturers, promoters and sellers.
14. In place of corporate secondments to ASIC, it is preferable to have persons with requisite legal or investment banking experience join the Australian Public Service, and then be bound by associated codes of conduct and fiduciary duty to the Australian public in their daily activities as an ASIC employee.
15. Hidden secondments to ASIC from the FIRE sector must cease. All secondments must be disclosed in an annual report, detailing the staff member(s) involved, their parent institution, the period of time engaged, the ASIC division in which they were placed, and their alleged area of expertise that is considered essential. ASIC must develop an explicit conflict of interest policy to prevent industry representatives' direct involvement in decision-making that may influence their employer's financial prospects. The use of ASIC corporate exemptions from the provisions of the Corporations Act must be urgently reviewed, particularly the use of legal instruments that may have breached Parliamentary rules.
16. An "Office of the Whistleblower" is established within ASIC to facilitate anonymous tip-offs.
17. All documentation relating to all mortgages, whether no-, low- or full-doc loans, should be released to borrowers. While this directive is in force, no document should be classified as 'commercially sensitive'.
18. To minimise the opportunity for fraud, forgery and further alterations, all mortgage borrowers must be given a copy of the Loan Application Form and the attached Service Calculator Form and Worksheet, at the point of signing.
19. All investors must be given a chance to redeem their capital immediately, due to the concerns of misleading and deceptive conduct, predatory lending and the formation of Ponzi structures tied to control frauds.

Conclusion

The adequacy of financial adviser qualifications is not the key issue in lifting the professional and ethical standards in the financial services industry. This argument has been raised in Parliament for over a decade, yet losses keep accumulating. Sellers are unwittingly being used as pawns to mask these defective financial products. The casualties of these rampant control frauds need compensation; all borrowers need the security of system-wide reform and Australia needs a Royal Commission into how and why the regulator made its determinations. Australians have been betrayed by ASIC's neglect and continual siding with the lenders and corporate management, despite their full knowledge of the catastrophic pain endured by a generation that have lost their homes and life savings.

A strict focus on rules, regulations, standards and codes will have a negligible effect on white-collar crime because ethics and integrity are simply ignored in practice. The prevailing perception and deception is encapsulated by the words 'ethical professional conduct'. Ignoring the role of financial engineers and manufacturers in designing purposefully flawed financial products blunts the effectiveness of investigations. Targeting financial advisors and their requisite educational standards and qualifications will not end the plague of white-collar crime and control frauds.

Two decades of fruitless debate and the tweaking of innumerable rules and regulations has merely contributed to the losses endured by typical 'mum and dad' investors, now into hundreds of billions of dollars. Unsafe financial engineering and the masterminding of massive networks of untrained and uninformed sellers are a major cause of the immense financial losses recorded to date.

Even if an investor's monthly payment arrives on time every month, this is not evidence their capital is safe. In reality, the capital was dissipated the day their money was 'invested' into the care of others. The BFCSA cannot condone or abide by ASIC's decision to implement the 'no action plan' that has been strictly in force since 1998. We already have a cornucopia

of appropriate laws, powers, rules, regulations and codes to stem fraud and abuse, yet regulators are averse to enforcement, rendering these powers null and void.

The deliberate manufacture of financial products and services intended to defraud hundreds of thousands of borrowers risks bringing the entire Australian banking system down and seriously impairing the economy. Ms Brailey warned of this outcome in writing to the highest offices in 1999 and notes her calls for a Royal Commission into the sector were first made in 2001 (Senate Report 2005). She is not alone in warning of the conflict of interests in the banking and financial sector. For instance, in Choice submission #20, they place blame upon financial advisers, but mistakenly overlook the role of toxic products. This is disappointing, as Choice has authored several articles on ASIC shadow shopping surveys on financial planners.

The first Choice survey in 1996 stated, “Financial plans ranged from poor to downright frightening yet the majority were deemed as ‘poor standard.’ Only 10% were considered ‘good’.” In follow-up surveys during the mid-2000s, similar conclusions and comments were made. The major banks have continually broken their own codes of conduct, producing and selling 30-year interest-only loans to those with equity in their homes seduced by a slick marketing pitch.

Repayments are kept artificially low during the ‘honeymoon period’, before resetting to above-market levels that leave borrowers to pay off a mortgage at credit card rates for decades. Unsurprisingly, these loans implode within five years or less as intended, allowing lenders to repossess both the owner-occupied homes and investment properties, leaving older people homeless. Lenders may cynically decide to provide additional bridging and buffer loans to ‘help’ borrowers. Rather than assisting the borrower, however, this is a strategy to extract further onerous fees and charges during a ‘window of opportunity’, while hiding the true level of defaults and the total repossession tally.

The BFCSA is asking the committee to consider the widespread and entrenched problems in the banking and financial sector. We have lobbied for and presented numerous submissions to these inquiries. Consumers groups, grass roots organisations and the BFCSA are imploring

the government to understand that every constituency has been affected by toxic control frauds. The collective evidence for the existence of these control frauds is overwhelming and growing on a daily basis (please see Appendices D and E for a listing of Australian control frauds and a thematic analysis of their general structure).

The committee can assist by recommending a Royal Commission into the banking and financial sector to examine the engineers, the off-shoot investments and all products relating to mortgages and real estate. Critically, it must include the regulators – please see Appendix F for an overview of ASIC's functioning, culture and performance. The committee should also suggest the widest terms of reference possible.

Appendix A: Predatory Subprime Mortgage Lending Case Study

The following case study details the experience of a BFCSA couple affected by predatory subprime mortgage lending. Shelley and Dennis are farmers in their mid-50s who purchased two inexpensive properties more than a decade ago. In 2006, they applied for property investment loans with the CBA, Firstmac and Perpetuals on the basis of their accrued home equity. Unverified interest-only loans were approved, totalling a colossal $1.2 million, costing them around $8,000 per month to meet the repayment schedule. Predictably, the couple were constantly juggling the shortfall from rent and other sources of genuine income. In truth, the loans were designed to fail.

In 2011, the couple agreed to become guarantors for two loans over two units, one for each son, as neither qualified for prime financing based on their credit scores. National Australia Bank (NAB) agreed to lend the couple money to purchase a B&B, ostensibly to provide additional income to help service the mounting debts. All loans were refinanced into one with the NAB. By 24th July 2011, the couple owed a total of $3.3 million to creditors: the two loans for the sons, the B&B mortgage (the only principal and interest loan), plus the refinancing of the original loans owed.

At this stage, the loan repayments had swelled to $26,000 per month – an additional $18,000 per month in repayments compared to only five years earlier. Their combined income from wages during 2010 and 2011 (and since), however, was never more than $23,000 per annum. The stream of rental income from the two properties was inconsistent, leading the bank manager at the NAB to suggest they use their credit card to bridge the shortfall. During 2012, ongoing struggles with meeting debt repayments meant that the credit card limit of $33,000 was maxed out by 2013. Incredibly, this business plan had actually been drawn up by the bank manager according to the borrowers.

One simple phone call from the lender to the borrower would have verified their true income. Like so many cases before them, this couple had no idea that their details had been altered by the lenders after they signed the original loan application form (LAF). In fact, they

only recently made the discovery their LAF was subject to fraud and forgery to get loan approvals over the line. As they did not sign blank forms, white-out liquid was used after their signatures had been obtained. No copies of the LAF were ever voluntarily provided to the borrowers.

Recently the couple confirmed their tragic story with the BFCSA:

> We received a second cash flow from the NAB, via the Financial Ombudsman Service, showing a surplus of $13,155 per month. We had never seen this second report before and were certainly not party to its creation or fabrication. The first report he provided was to convince us that the loan was a viable option. I am concerned at the legality of these documents which clearly show the changes were not made by us.
>
> Regarding our new B&B property, it was the bank manager who detailed our 'cashflow' that was showing $8,700 per month, without any contract in place as the previous owners only had a verbal arrangement. On all of our personal documents the NAB has, it showed Dennis with no income and that was the truth. The NAB knew we only had $23,000 income from my wages. We became guarantors for our two sons' properties for $715,000, but we were not informed we were going to actually be on their loans.
>
> The bank manager came to our property, gloating that he had succeeded in approving a large enough mortgage to receive a big bonus. It was apparent the manager was acting in his own self-interest. We now realise all these interest-only loans (bar one P&I mortgage) were designed to fail. We soon fell into default. I was emailed by the bank manager to get our accounts up to date. He suggested we use our credit card to meet the interest payments; otherwise, the accounts and decisions would be taken out of his hands.
>
> Within the first twelve months (in 2012), all properties had fallen in value, by around 30 per cent. From 2011 to 2014, we went from $1,241,000 to $3,300,000 in debt. Yet, we thought that for $1 million of these debts, we were acting as guarantors. That's how it was explained to us. The B&B was to earn money to pay off the other debts and the NAB agreed. We now realise the loans ought to have been rejected as unaffordable. The loans were not being approved on our incomes or the ability to afford the payments.

We asked for a copy of our LAF, after joining the BFCSA. We received this document from the bank on the 12th June 2014. Some of the pages we were seeing for the first time. It was only then we discovered all the errors, discrepancies and alterations:

- Page 1 - $1,050,000 was declined; $715,000 sons' loans we agreed to be guarantor but it was put there as a loan after we signed;
- Page 2 - small writing by bank staff: my husband was never a fencing contractor;
- Page 4 - bank manager added another $10,000 we never had after signing;
- Page 5 - all added after we signed, showing $8,000 per month surplus cash flow. Both incomes were exaggerated and crossed out figures with no signature;
- Page 7 – potentially a forged signature, possibly a cut and paste, as it is dated on a Sunday.

Unfortunately, this is not an isolated incident. Every subprime loan Ms Brailey has investigated since 2002 reveals the LAFs have been tampered with and then hidden from borrowers. It is not standard industry practice for lenders to phone borrowers to verify basic details, as this may pose an impediment to the operation of existing control frauds. Each 30-year subprime interest-only loan is designed to implode within three to five years – quintessential predatory lending at its worst.

At the 2014 Senate Inquiry into The performance of the Australian Securities and Investments Commission, ASIC executives contended the enactment of the new NCCP laws (National Consumer Credit Protection Act (2009)) should allay any fears over imprudent lending. As a keynote witness regarding consumer-related matters and an expert holding substantial evidence of subprime mortgage lending fraud, Ms Brailey has actually found the opposite to be true - despite the new NCCP laws, the same reckless loans are being made to older persons, as this case illustrates. The previous laws have been used in High Court and Appeals Court challenges against lenders, leading to judges finding in favour of the borrowers.

The NCCP is not a panacea for consumer protection and the final outcome is likely to be more of the same: Australians losing their properties under unjust circumstances. Simply

put, the loans regularly approved by the Big Four banks are unsustainable in nature. The domestic banking cartel's stranglehold over mortgage lending (88 per cent of the market) and the poor subprime lending standards being employed are of grave concern. In addition to the potential adverse impacts upon the economy, if a large number of those older persons were to default on unaffordable and unverified subprime loans within five years or less as planned, then many would need to be rehoused.

Appendix B: Subprime Mortgage and Debenture Control Frauds

The banking and financial sector tend to favour two diabolical control frauds they have devised to confiscate savings and assets: debenture capital-raising schemes and subprime mortgage lending. As suggested in bank emails to the seller channels and marketing seminars, the affected targets are typically retirees and pensioners on low-incomes. Together, these two control frauds have robbed consumers of tens of billions of dollars over the last two decades, with the potential for losses to exceed $200 billion in the near future. In both instances, the financial planner and broker channels (untrained sellers) are used for the following four reasons:

1) To vigorously avoid all legal and financial responsibility and liability, ensuring the risks are clandestinely transferred to the borrower.
2) The probability of enforcement actions is reduced in an already lax regulatory environment with additional degrees of lending separation, aided and abetted by deregulation, self-regulation, desupervision and de facto decriminalisation of white-collar crime.
3) Executives and managers can still achieve obscene bonuses and incentive payments for highly-profitable control frauds after accounting for agent commissions that dilute returns.
4) Predations are likely to remain unpunished due to successful lobbying by vested interests for further financial deregulation that creates a power imbalance favouring lenders over investors and consumers.

As identified by the BFCSA, the following is a brief timeline of Ponzi activities of just one debenture-funded company, involving the banking and financial industry, including property developers and builders.

- In 2000, Ms Brailey briefed an ASIC commissioner regarding debentures that were being sold with security amounting to IOUs in the form of Promissory Notes. The prospectus was a ‘look-alike prospectus” known as an Information Memorandum.

- The prospectus was fabricated by lawyers and one non-executive director position was even held by a Victorian judge. A director position was also suspected of being occupied by a former ASIC employee.
- In 2001, Ms Brailey had a roundtable discussion with ASIC's chief barrister, the Director of Enforcement and a Commissioner, where they again "expressed concern."
- By 2004, ASIC had taken one of the companies within this group to civil court, asking the judiciary for clarification over its own jurisdiction. The judge explained this matter was indeed within ASIC's purview and the reasons why. The amount of capital raised from vulnerable investors amounted to $100 million in 2001, but had grown rapidly to $600 million by 2005.
- The company collapsed at the end of 2005, owing $680 million in funds to mostly retirees who had lost their entire life savings.
- The Ponzi structure meant that after one year, most investors' funds were switched between multiple projects without disclosure, sometimes up to eight times. Those who asked for their funds back were almost always deterred and unsuccessful in their attempts.
- All investors were paid a monthly income until the weight of the Ponzi collapsed due to insufficient additional participants entering the scheme. The grinding existence of penury without an income was worsened by news delivered only three weeks later: investor capital had been extinguished at 100 cents in the dollar.

In 2005, former ASIC chairman, Jeffrey Lucy, admitted that there was $5 billion potentially at risk in debenture schemes, later revised in 2007 by the acting chairman, Tony D'Aloisio, to $37 billion at risk. Later that same year, an ASIC list was released that identified even more entities, but the total assessed figure did not change. D'Aloisio advised Parliament there were four categories of debenture finance and the totals did not fully denote all categories.

At that stage, Ms Brailey believed the real figure was closer to $80 billion when every type of company and category of financing was encompassed. The BFCSA has been studiously compiling a preliminary Register of Losses relating to those companies that have already

collapsed; this research is a work in progress. The data demonstrates $55.7 billion in lost funds, with $100 billion potentially at risk. ASIC is aware of the potential for widespread and cascading investor losses, but they lack the unwavering conviction to identify and prosecute these control frauds.

The second, and possibly more dangerous control fraud, is the subprime mortgage scandal stretching from coast to coast. Borrowers are intentionally sold defective financial products, primarily interest-only loans, which are designed to implode and allow the forfeiture of valuable collateral. Hundreds of thousands of households may have been caught by this 'debtor prisoner's dilemma'. This massive control fraud is similar to the US model, where lenders targeted NINJAs (no income, no job or assets). Australian lenders have adopted comparable techniques, but have instead focused their predatory lending on ARIPs – the asset rich, income poor.

Borrowers' loan application forms (LAFs) are manipulated by means of computerised and password-protected 'service calculators'. Lenders provide these black box applications to brokers on the pretext of assisting with calculating tax advantages, but in reality, it helps generate unrealistically large loans for approval. Borrowers are provided with loans far beyond their capacity to service out of disposable income over the contractual term. Bank lawyers assist with drafting contracts, ensuring independent legal advice is unavailable that may unravel the deception.

Jumbo interest-only loans are granted to novice 'mum and dad' investors, even though they are designed to default within three to five years, causing them to lose everything. Bridging or buffer loans are often granted in the years preceding borrower default to extract additional profits (penalty interest rates and fees). The BFCSA database indicates clients have an average loan value of $400,000, despite being on annual incomes of only around $30,000. Without exception, these mortgages should never have been approved, and have consequently ballooned to $600,000 several years after issuance.

Potentially more than 200,000 families and $100 billion are at risk from one control fraud. The effects could easily gather momentum and greatly amplify the potential losses across

the economy. The RBA, ASIC, APRA, ATO, AFP, Treasury, FOS and COSL all spurn opportunities to investigate serious allegations of predatory lending; the existence of systemic fraudulent lending is denied. Broker channels have instead become the 'fall guy' for faulty financial products, conveniently shifting the blame from financial engineers onto 'rogue sellers' who play a relatively minor role.

Appendix C: List of Federal and State Inquiries

Since the mid-1990s, there have been many federal and state inquiries into the predations of the banking and financial sector, including the impotent regulator ASIC. Ms Brailey has lobbied for, provided submissions and testified before many of these inquiries. While these inquiries have proven invaluable in exposing the wrongdoings of control fraud participants and the intentional inaction of ASIC, a Royal Commission is the final and necessary step to publicly unveiling the crimes committed against many Australians.

1. Les Smith Inquiry into the Ministry of Fair Trading's Real Estate Business Unit (1997).
2. Premier Geoff Gallop Review into the Boxes of Missing Documents (1999).
3. Senate Inquiry into the Tasmanian Law Society (1999).
4. Report of the Gunning Committee of Inquiry into the Finance Brokers Supervisory Board (2000).
5. Select Committee into the Finance Broking Industry in Western Australia (2000).
6. Royal Commission into the Finance Broking Industry (2001).
7. Ministerial Council on Consumer Affairs Inquiry into Spruikers and Property Scams (2003).
8. Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the Regulation of Property Investment Advice (2005).
9. Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Products and Services in Australia (2009).
10. Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the collapse of Trio Capital (2012).
11. Senate Standing Committees on Economics Inquiry into the post-GFC banking sector (2012).

12. Senate Economics References Committee Inquiry into the performance of the Australian Securities and Investments Commission (2014).
13. Financial System Inquiry (2014).
14. Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry (2014).
15. Senate Standing Committees on Economics Inquiry into the Scrutiny of Financial Advice (2015).

Appendix D: Control Fraud Listing

Foreign Currency Loans Scandal

- **When:** 1980s.
- **Control Fraud Participants:** Big Four banks and some minor lenders.
- **Victims:** Non-corporate businesses.
- **What Happened:** The major banks issued loans to non-corporate businesses denominated in foreign currencies, supposedly to benefit borrowers via lower interest rates. Borrowers were herded into these loans, sometimes without their explicit knowledge. They were also poorly advised in relation to the foreign exchange risk – the rise in payments associated with a weakening of the Australian currency – and excessive fees and penalty interest rates imposed for breaching loan covenants. Foreign currency loan liabilities soon spiralled out of control as the Australian dollar weakened against contracted currencies, notably the Swiss franc, the Japanese Yen and the US dollar. In nominal terms, the size of principal and interest payments increased until they were beyond the capacity of businesses to service, causing widespread defaults after business equity and the proceeds of asset sales were exhausted.
- **Losses:** Business insolvencies and personal assets estimated at several billions of dollars.
- **Government/Regulator Action:** None.
- **Macroeconomic Risk:** Low.

Finance Broker Scandal

- **When:** 1992 – 1998.
- **Control Fraud Participants:** Lawyers, brokers, developers, construction firms, accountants and valuers.
- **Victims:** Elderly 'mum and dad' investors and self-funded retirees.
- **What Happened:** Hundreds of millions of dollars in funds were solicited via a long chain involving the control fraud participants, particularly from the states of Western Australia and South Australia. Monies were entrusted to state-licensed brokers who invested in high-risk commercial development schemes (developer 'black holes'), devouring never-to-be-seen-again savings. This control fraud took place over many years, but the office of Fair Trading in both states steadfastly refused to help victims.
- **Losses:** Around $200 million. Many lost their entire life savings, although litigation by IMF Australia Ltd. and RECA helped to recover $90 million by suing the WA state government and law firms, and from the proceeds of asset sales. Payouts were not received until 2007, even though victims had been stranded in limbo since 1998.
- **Government/Regulator Action:** The WA state government and the Commissioner for Fair Trading initially refused to act to help consumers, only later reacting in response to adverse media coverage. Multiple calls for an inquiry led to the establishment of the Temby Royal Commission in WA in 2001, the same year IMF Australia Ltd. initiated its lengthy court action. Police eventually laid four hundred fraud charges, leading to the jailing of seventeen brokers. In contrast, the SA government refused to take any action in helping to recover the estimated $70 million in lost funds.
- **Macroeconomic Risk:** Low.

Mortgage Solicitor Scandal

- **When:** 1992 – 1999.
- **Control Fraud Participants:** Lawyers, developers, brokers, commercial construction firms, valuers and accountants.
- **Victims:** Retirees, and later on, pensioners.
- **What Happened:** These control frauds operated up the entire east coast of Australia, from Tasmania to Queensland, and were similar to the 1990s Finance Broker Scandal, except that lawyers did not use brokers as agents (except in Tasmania). Lawyers provided financing at 2 per cent over prevailing bank rates to typical 'mum and dad' investors so they could purchase severely overvalued real estate – sometimes 400 per cent above fair market value. An aura of legitimacy was provided by lawyers hailing from long-standing firms with a seemingly impeccable record. Documentation was readily doctored, deceiving investors into believing their funds were being used for specific and secure real estate projects, when it was really being pocketed by lawyers or used in junk-grade investments. The control fraud operated as a figurative 'washing machine', with no one knowing exactly where the funds were sequestered, except for the lawyers operating the scheme. In Tasmania, licensed brokers were used as agents to provide an additional degree of legal separation, but the 'back room boys' always held their hand firmly on the operating levers.

  Law firms functioned as Ponzi scheme operators, with new retirees' money provided to questionable developers and their associates to pay monthly instalments for existing investors. Few retirees ever held first rank mortgagor status (title) over their investment and were instead ranked in the second, third or even fourth position, meaning their security interest was not protected. Lawyers handled all the contracts and title changes, with many title deeds reported as 'missing' so new ones could be issued. The Bernie Madoff-type structure meant that 'robbing retiree Peter to pay retiree Paul' was a scam destined to fail. For over half a decade, investors were paid regularly on time, before the stream of new entrants dried up, causing the collapse

of the law firms and erasing investor monies, with the contagion rapidly spreading throughout the industry. State law societies exercised de-facto control of these firms, for many of the lawyers directly involved were registered members, with some even participating in the ethics committees.

- **Losses:** First mortgagors lost 50 per cent of their capital, whereas those subordinated further in mortgagor rank (most retirees) lost 100 per cent of their capital. Many retirees were left in an impoverished and untenable position, unable to claim the pension following a government determination that they still possessed capital above the allowable threshold for income support. ASIC informed the federal Treasury that $350 million had been lost by 1999, but the real figure was closer to $1.3 billion when the total losses of law firms and societies in the eastern states were included. This figure rises to $1.5 billion if the structurally similar WA and SA broker finance scandals are also included.
- **Government/Regulator Action:** Consumer complaints were routinely ignored, but ASIC eventually intervened following a barrage of media criticism. 'Getting tough' led to the disbarring of a number of society lawyers and the stipulation that legal professionals required an ASIC financial services licence in the future, under similar circumstances. Ironically, some of ASIC's licence holders subsequently caused further collapses that cost investors hundreds of millions of dollars in lost funds. Nothing else was done, despite revelations that ASIC held a secret list naming 127 law firms and lawyers suspected of participating in control frauds. No charges were laid and no monies were ever recovered in NSW, Victoria or SA. In Tasmania, a federal Parliamentary Inquiry into the state's Law Society culminated in the jailing of four lawyers as well as the recovery of $80 million in funds.
- **Macroeconomic Risk:** Low.

Queensland Two-Tier Marketing Scam

- **When:** Mid-1990s.
- **Control Fraud Participants:** Banks, developers, valuers and real estate agents.
- **Victims:** Out-of-state residential property investors.
- **What Happened:** Distressed, unsaleable properties from the early 1990s recession were marketed to gullible 'mum and dad' investors at prices far above current market value. The purchase of properties at inflated prices allowed every control fraud actor to take a cut of the surplus proceeds.
- **Losses:** The typical loss was around $100-200 thousand per investment property, leading to many foreclosures.
- **Government/Regulator Action:** ASIC, and its predecessor agency ASC, laid the blame upon valuers and agents, even though banks were the most culpable as the financial engineers. No further action was taken.
- **Macroeconomic Risk:** Low.

Property Spruiker Investment Scams

- **When:** 1999 – 2014 (ongoing).
- **Control Fraud Participants:** Property spruikers, insurers, developers, accountants, lawyers, valuers and banks.
- **Victims:** First-time investors and typical 'mum and dad' investors.
- **What Happened:** Government-initiated 'wealth creation' seminars suggested consumers needed to be educated regarding the intricacies of real estate ownership for investment purposes. Property spruikers ran 'education workshops' sold at public seminars across Australia. Certain spruikers formed 'educational classes' and others built their businesses around club memberships. None of the high costs of borrowing or the associated risks of property cycles was conveyed to the unsuspecting public. Often, these seminars were promoted as if with ASIC's blessing. After signing on for courses, the 'students' were enticed into high-cost loans from lenders providing funding facilities, in joint arrangements with the spruikers. Lenders wanted a regular flow of potential clients, to steer them into property investments and developments. To boost loan approvals, two major banks provided loan facilities and also lavishly funded the more notorious spruikers, with high-class venues and teams of lawyers. The spruikers were instrumental in enticing home owners to use home equity loans for property investment, only to lose their homes within four years. Some of the publishing materials boldly declared 'approved by ASIC'. On-the-spot credit cards were also provided to help pay the $10,000 - $15,000 fees for the sham 'education' course, which provided fake credits and mock exams for entrance to university-level programs. Banks showered sellers with commissions for each investor signing up for a credit card and/or a mortgage loan.

  At the height of the 'wealth creation' business, one of the more notorious groups had registered 111 companies and boasted of owning 200 personal properties and achieving millionaire status. Within two years, the group collapsed and the properties boasted of were merely 'options to purchase', a strategy created by banks and their 'high flying' customers, identified as 'distressed' developers. Members

were provided with the same options to purchase properties that were inflated by an average of $100,000 above market value. These projects were usually sold off the plan. Deliberate overvaluation was undertaken by appraisers friendly to spruikers. In one case, a well-known insurer pocketed premiums from this racket and the promoter sensibly reinsured himself, but despite the promises, none of the investors' substantial losses were covered. By 2003, one such group had collapsed, making a mockery of the spruiker's claim as a 'wealth creator'. The misfortune of hundreds of participants who believed they were investing for their future became a bonanza of riches for liquidators who seized assets to discharge liabilities. The promoters made a fortune. Real estate investors lost everything they owned. ASIC ignored the mounting consumer complaints as these activities gained significant media coverage.

- **Losses:** Sham educational courses and credit cards provided by these spruiker groups led to losses of over $100 million. Young investors remained burdened with these debts for many years, while older investors lost their savings and often their homes to liquidators in an outcome similar to the subprime mortgage scandal. Total losses are estimated at over $200 million, stemming from home foreclosures and lost investment funds. One major bank forgave a handful of mortgages – around twenty in total.
- **Government/Regulator Action:** Considerable publicity surrounded ASIC's failure to seize the passports of spruikers, after three fled the country and set up businesses in other nations. In 2005, public outrage forced ASIC to seek the extradition of three spruikers, but they failed to investigate the obvious links to the major banks. Eventually, ASIC laid criminal charges against four of the spruikers and pursued criminal charges, resulting in custodial sentences. ASIC's persistent excuse was 'there is a lack of evidence'. ASIC did not attend the creditors' meetings out of apparent disinterest, despite their central enforcement role in financial markets.
- **Macroeconomic Risk:** Moderate.

ANZ & Macquarie Bank Singaporean Rate-Rigging Scandal

- **When:** 2013.
- **Control Fraud Participants:** ANZ and Macquarie Bank.
- **Victims:** Unknown.
- **What Happened:** The Monetary Authority of Singapore (MAS) discovered that 133 traders had attempted to rig key borrowing and currency rates. ANZ and Macquarie Bank were two of twenty lenders involved in the scandal, and consequently censured by the MAS. Three quarters of the traders either resigned or were fired, with the rest required to forfeit bonuses. None of the ANZ traders were dismissed, but the bank claimed that a small number of staff had been subjected to disciplinary action. It is unknown whether Macquarie Bank disciplined or fired its traders.
- **Losses:** Unknown.
- **Government/Regulator Action:** The MAS forced the ANZ and Macquarie Bank to set aside an additional $S100-300 million in reserves. No further investigation into bank actions was undertaken by domestic authorities.
- **Macroeconomic Risk:** Low.

NPA and Securency Scandal

- **When:** 1998 – 2007.
- **Control Fraud Participants:** Reserve Bank of Australia (RBA) subsidiary Note Printing Australia (NPA) and former, half-owned subsidiary Securency.
- **Victims:** N/A.
- **What Happened:** Agents of the NPA and Securency allegedly engaged in bribery of foreign officials in Indonesia, Malaysia, Nepal, Vietnam and elsewhere to advance their business, which involves the printing and sale of polymer banknotes. Former and current senior RBA officials have claimed that they were unaware of possible bribery concerns until 2009, although internal documents suggest that these matters were raised with the former deputy governor of the RBA, Ric Battellino, on at least one occasion in mid-2007.
- **Losses:** Unknown – potentially millions in lost offshore payments.
- **Government/Regulatory Action:** The RBA, Australian Federal Police (AFP) and ASIC initially baulked at investigating the allegations of bribery, only responding following reports in the mass media. The AFP has since laid charges against nine former NPA and Securency employees and the companies themselves. Bribery investigations and prosecutions have proceeded in international jurisdictions.
- **Macroeconomic Risk:** N/A.

CBA Takeover of BankWest Scandal

- **When:** 2008.
- **Control Fraud Participants:** Commonwealth Bank of Australia (CBA), BankWest and valuers.
- **Victims:** Hoteliers, publicans, the catering industry and other small and medium enterprises (SMEs).
- **What Happened:** BankWest, based in Perth, Western Australia, was previously owned by HBOS, a banking and insurance firm in the UK. Due to difficulties experienced by HBOS during the GFC, BankWest was eventually sold to the CBA for a reported $2.1 billion in October 2008, although the true figure remains secret. The CBA employed a predatory strategy of 'cleaning out' the commercial loan book to make a discounted acquisition. Businesses were intentionally bankrupted via two methods that placed borrowers in breach of loan covenants. Firstly, a downwards revaluation of assets was used to artificially increase the loan to valuation ratio (LVR). Secondly, banks pushed businesses into turn-around divisions when they contravened accepted EBITDA multiples (earnings before interest, tax, depreciation and amortisation) following agreed upon capital investment. The LVR strategy was especially pernicious, as valuers reassessed property holdings on a monthly basis at borrowers' expense until thoroughly debased appraisals triggered adverse commercial loan conditions. In some cases, there is email evidence to suggest bank officers were directly interfering in valuations, insisting that appraisers further lower their assessments.

  Receivers were called in if control fraud victims were in technical default (LVR>=100 per cent) and/or unable to bring the newly assessed LVR within acceptable limits via the injection of additional capital, lender refinancing, or by full loan repayment within 30 days (or other legally stipulated periods). Victims had often never missed a single loan payment, but still received legal letters informing them they were in default. Business owners were then thrown out of their premises and rendered insolvent.

- **Losses:** Unknown, but can be reasonably estimated at several billion dollars due to several thousand borrowers investing several million dollars each. Heavy losses were experienced in WA, and also in NSW and QLD where BankWest had rapidly expanded their bank presence.
- **Government/Regulator Action:** None. Several victims testified before the 2012 Senate inquiry into the post-GFC banking sector, but no recommendations were made to stem this form of control fraud – indeed the CBA/BankWest scandal was ignored in the subsequent report. Senators did not recommend a Royal Commission into the banks, despite prima facie evidence of a conspiracy by the CBA and BankWest to perpetrate fraud against defenceless businesses.
- **Macroeconomic Risk:** Low – although the Big Four banks are still using this method to force SMEs such as cafes and farms into technical default.

CBA Financial Planning Scandal

- **When:** 2003 – 2012.
- **Control Fraud Participants:** Commonwealth Bank of Australia (CBA), CBA financial planners.
- **Victims:** 'Mum and dad' investors.
- **What Happened:** In May 2014, the mass media revealed that a number of staff within the CBA's Financial Planning division and subsidiary Financial Wisdom had manufactured fraudulent documents and forged signatures, while providing grossly inadequate financial advice to clients. High-risk products were recommended that yielded large bonuses for planners, particularly in the run-up to the Global Financial Crisis, leading to thousands of investors incurring substantial capital losses when the value of financial instruments sharply fell. In 2009, the CBA pushed documentation through the legal department in order to provide legal privilege in the event of client lawsuits.

  A June 2014 Senate committee report alleged that attempts were made to cover-up bank misconduct in the financial planning arm. Concerns were also expressed over wholly inadequate compensation payments to victims ($52 million to date), as it appears a superficial attempt to skirt firm regulatory penalties. The CBA has been forced to re-open compensation arrangements after around 4,000 clients were not advised they could receive independent assessments of CBA compensation offers, up to the value of $5,000. Unsurprisingly, the 'rogue financial planner defence' has been recycled by senior executives, alongside an insincere apology and hollow promises of reform.

  ASIC was also singled out for delaying 16 months before acting on a whistle-blower tip-off received in 2008; this required the whistle-blower's attendance at ASIC's head office in 2010. Further criticisms included the lack of regulator support for victims, and the use of an enforceable undertaking between 2011 and 2013 (an internal risk

management review) instead of court action against the CBA, for this acts as a far greater deterrent to financial institutions.

- **Losses:** Unknown – potentially hundreds of millions of dollars, given thousands of investors were affected.
- **Government/Regulatory Action:** ASIC has banned eight financial planners from the sector. The Senate committee made 61 recommendations, including a Royal Commission into the actions of both the CBA and ASIC (with one dissention), the removal of CBA control over compensation arrangements, stiffer corporate penalties, university qualifications and licensing requirements for financial planners, and the establishment of an "Office of the Whistleblower" within ASIC that can deal with anonymous tip-offs. Committee members were scathing of the lack of integrity and fairness in compensation payments to victims, and inadequate enforcement undertakings agreed to by ASIC. Essentially, the majority of committee members opined that the credibility of both institutions was damaged, particularly ASIC's competence in managing, implementing and monitoring equitable processes and outcomes for victims of predatory control frauds. The federal government has ignored the recommendation of a Royal Commission, instead handballing it to the financial system inquiry which is considering the broader regulatory framework. ASIC's performance has similarly been excused, without penalties or opprobrium that is sorely deserved.
- **Macroeconomic Risk:** Moderate - concerns have been raised about other financial planning arms, including Macquarie Private Wealth.

Debenture-Funded Pyramid Business Scams

- **When:** Late 1990s – 2014 (ongoing).
- **Control Fraud Participants:** Corporations funded via listed/unlisted and rated/unrated debentures, banks, developers, valuers and off-the-plan sellers.
- **Victims:** Typically 'mum and dad' investors, pensioners and retirees.
- **What Happened:** Directors form a company funded with only several thousand dollars of their own start-up capital and then produce and market 'prospectuses' to gullible, cashed-up investors. Client registers of ASIC-licensed financial planning firms are used to identify targets, and prospective investors are sent glossy advertising material promoting a grand artistic impression of future property developments. Companies receive income streams when investors purchase debentures, typically for the development of real estate projects that are estimated to require between $30 and $100 million in capital to proceed. Investors are universally told that real estate prices always rise, thus guaranteeing them windfall capital gains in the future. In reality, projects are often not completed, with some not even passing the planning phase. Investors' money is almost always directed to interstate projects to prevent 'drive by traffic' accidentally confirming the absence of development.

  The status of securities underpinning an advertised project is an illusion. For instance, in a $60 million project which raises $30 million in the first round offer, this money is held in trust and investor security is composed of 'shares in project'. This enables a second phase of bank funding for high-risk developer projects, such as those involving distressed properties – providing investors with mortgage security and title. What is undisclosed, however, is their subordination in mortgagor status that ranks them in second to fourth position. Furthermore, without declaration by company directors, funding is shuffled between different projects and not the one advertised in the prospectus. The change in the status of mortgage security holdings means firms devolve into Ponzi schemes, with payments to existing investors only sustained by a continual influx of new entrants. Investors are ignorant of the risks and become easy prey for the predations of directors before the company collapses,

on average, six years later. Those who ask for their money to be returned earlier are dissuaded by a plethora of excuses for why this is impossible.

- **Losses:** $37 billion confirmed to date, rising to a possible $55 billion. Potentially over $100 billion is at risk.
- **Government/Regulator Action:** Victims are often treated with contempt, and have no recourse against the control fraud participants unless they take part in a privately-funded class action lawsuit. ASIC has known about these control frauds since the early 2000s but has consistently refused to take action on jurisdictional grounds, despite the courts admonishing their inaction on debentures as early as 2004. In a handful of cases pursued by ASIC, such as the Storm Financial group collapse, they have short-changed victims by agreeing to inadequate financial compensation terms in legal proceedings. A regulator preference for passivity has been established, allowing a host of companies to collapse under the weight of their own corruption, wiping out tens of billions of dollars in the process. Responsible company directors are repeatedly bailed out with golden parachutes and are virtually immune to prosecution following free passes granted by ASIC or the mismanagement of their court cases by relevant authorities.
- **Macroeconomic Risk:** Moderate - regulator idleness raises the risk of future collapses involving tens of billions of dollars more in investor funds.

Subprime Mortgage Scandal

- **When:** 1996 – 2014 (ongoing).
- **Control Fraud Participants:** All Australian bank and non-bank lenders, bank lawyers and broker channels.
- **Victims:** Primarily ARIPs (asset rich, income poor) retirees and pensioners, and FHBs (first home buyers) using government grants - though every demographic group is targeted.
- **What Happened:** This control fraud has the greatest potential to cause a severely adverse macroeconomic impact due to the involvement of every single Australian bank and non-bank lender. Hundreds of thousands of households may have been entrapped. This massive control fraud has similarities to the US model, where lenders targeted NINJAs (no income, no job or assets). Australian lenders distinguish themselves, however, by focusing their predatory lending on ARIPs – the asset rich, income poor. Borrowers' loan application forms (LAFs) are manipulated by means of computerised and password-protected 'service calculators'. Lenders provide these black box applications to brokers on the pretext of assisting with calculating tax advantages, but in reality, it helps approve unrealistically large loans. Borrowers are provided with loans far beyond their capacity to service out of disposable income over the contact term. Bank lawyers assist with drafting contracts, ensuring independent legal advice is unavailable.

  The LAFs are then sent to the lender, where credit assessors use whiteout liquid to add and/or alter assets and incomes. Signatures are also forged on additional pages of the LAF, remaining hidden from the borrower. The amended LAF is then put through the service calculator again for the third and final round of fraud. Jumbo interest-only loans are finally granted to novice 'mum and dad' investors, even though they are designed to implode within a period of five years, causing them to lose everything. Bridging or buffer loans are often granted in the years preceding borrower default to extract additional economic rent (penalty interest rates and fees) that increase the profitability of fraud.

- **Losses:** Potentially more than 200,000 families and $100 billion at risk. A contagion effect could greatly amplify the potential losses across the economy.
- **Government/Regulatory Action:** RBA, ASIC, APRA, ATO, AFP, Treasury, FOS and COSL refuse to investigate serious allegations of predatory subprime lending; all deny systemic fraudulent lending has taken place. Broker channels have instead become the 'fall guy' for faulty financial products, conveniently shifting the blame from financial engineers onto 'rogue sellers' who play a relatively minor role. ASIC executives are well aware that lenders have engaged in predatory finance, and possess a thick BFCSA-generated evidentiary file that meets the necessary threshold for criminal referrals in many cases. Both government and regulators appear fearful of confirming a massive control fraud in their midst that may trigger the collapse of the housing bubble. Consequently, an appropriate investigation has not been forthcoming to ascertain the true size and extent of the control fraud.
- **Macroeconomic Risk:** Extreme. The heralded changes to consumer protection legislation introduced in 2010 (NCCP) has failed, with subprime mortgage fraud still running rampant.

Overview of Control Frauds in Australia

Overview of Australian Control Frauds		
Control Fraud	**Period**	**Losses ($)**
Foreign Currency Loans Scandal	1980s	Several billion
Finance Broker Scandal	1992-1998	$200 million
Mortgage Solicitor Scandal	1992-1999	$1.3 billion
Queensland Two-Tier Marketing Scam	Mid-1990s	$100-200k per IP
NPA and Securency Scandal	1998-2007	N/A
CBA Takeover of BankWest Scandal	2008	Several billion
CBA Financial Planner Scandal	2003-2012	100s of millions
ANZ & Macquarie Bank Singaporean Rate-Rigging Scandal	2013	Unknown
Property Spruiker Investment Scams	1999-2014	Over $200 million
Forced SME/Farmer Insolvency Scandal	Mid-1980s-2014	Several billion
Debenture-Funded Pyramid Business Scams	Late 1990s-2014	Over $55 billion
Subprime Mortgage Scandal	1996-2014	Potentially >$100bn
Source: Brailey, Jones, Authors' estimates		Paul D. Egan and Philip Soos

Appendix E: Control Fraud Thematic Analysis

- Control fraud participants are most often lawyers, brokers, accountants, developers, appraisers, builders, and bank/non-bank lenders. Shell corporations are heavily used. The Big Four banks feature prominently, as they provide the majority of loan facilities to the household and business sectors.
- The preferred victims are asset-rich, income-poor retirees and pensioners (ARIPs), first home buyers, and naïve investors in general – those with limited market knowledge and experience, and relatively low debt burdens.
- Control fraud lenders or their agents regularly approve loans purposefully inflated relative to borrowers' true incomes. Unsustainable loans are intended to reap excess profits and the later seizure of assets within an average five-year timeframe – a clear breach of s25.1 of the Australian Bankers Code of Conduct.
- Control frauds prefer to invest in residential and commercial property developments or acquisitions, either directly or via debentures.
- The subprime mortgage lending market is a hotbed of control frauds. Relative to the prime (full-doc) mortgage market, low-doc and no-doc processes provide greater opportunity for the circumvention of responsible lending policies and the establishment of lower underwriting standards.
- All control frauds share a Ponzi-like structure – a continual influx of new investors is required for the acquisition of property, completion of proposed development projects, the maintenance of securities payments, and to prevent the eventual collapse of the scheme.
- Lenders mastermind the control frauds, but utilise broker, seller and other channels to facilitate loan approval in around two-thirds of cases. Although profits are diluted through commissions, lenders are investing in plausible deniability: alleged ignorance based on several degrees of legal separation and supposed culpability of distant actors.
- Control frauds are usually paired with aggressive marketing strategies and seminars, spruikers and/or sellers on commissions and deceptive publications (sometimes 'ASIC-approved') promising large and guaranteed returns on trophy projects. Prepared lender

materials provided to spruikers suggests they target rich pickings – the low-hanging ARIP fruit in the elderly cohort.

- Control frauds may share one or more of the following additional characteristics:
    - An express intent to default businesses and/or households to seize valuable assets e.g. 30-year interest-only loans designed to fold within five years;
    - Intentional default or transition of borrowers into turn-around divisions yielding further economic rents based on contrived breaches of LVR and EBITDA covenants, even when clients have never missed a loan repayment;
    - Large up-front fees or other prohibitive entry costs;
    - Extraction of maximum economic rent via usurious interest rates, fees and penalties well above benchmark rates;
    - Tapping of existing home-owner or business equity for investment loans;
    - Loan contracts that appear superficially affordable, but which are designed to increase, rather than reduce, the principal and interest payment burden over time via the liberal use of bridging/buffer loans and prohibitive lender refinancing;
    - Black-box service calculators using exaggerated future estimates of tax-advantaged income to facilitate subprime loan approval;
    - Loan documentation fraud and forgery that inflates assets and income;
    - Failure of bank agents to fulfil their statutory obligation to confirm the identification details of borrowers under the *Anti-Money Laundering and Counter-Terrorism Financing Act (2006)* – falsely ticking a check-box list of necessary criteria;
    - Failure of lenders to verify borrowers' basic details and financial circumstances with simple phone calls at any time prior to loan approval;
    - Bank officers or their agents filling out loan documentation on a borrower's behalf and failing to provide a copy, or only producing a partial version that excludes material demonstrating forgery and fraud;
    - The shredding of mortgage documentation by lenders or their agents that evidences fraud and forgery. As some lenders explicitly advised: "shred the Loan Application Forms within 12 days of settlement.";

- Lender refusal to provide loan documentation to aggrieved borrowers on specious legal grounds;
- Appraisal and legal contracts completed by in-house or 'friendly' lawyers and valuers;
- Investment in low-grade (junk) residential or commercial property investments or 'phantom investments' (Bernie Madoff pyramid-style structures);
- Investor subordination in mortgagor status/rank on associated titles;
- Intentionally inflating the value of proposed property acquisitions to skim funds;
- Lender directions for sellers to use one-day ABNs to qualify borrowers for business loans and to disguise their non-proprietor status;
- At the lender's behest, agent creation of ABNs using a borrower's tax file number without their explicit knowledge;
- Marketing of interstate projects to prevent the untimely discovery of fraud; and
- The illegal shifting of funds between projects without formal disclosure.

- Most control frauds operate for years and are only brought to an end by a catastrophic collapse in the Ponzi structure, rather than via regulatory enforcement or enhanced consumer protection legislation.
- The majority of victims receive poor representation from ombudsmen such as FOS or COSL, losing the entirety of their savings and, for retirees, their homes. Young victims are also left with crippling debts over non-existent assets, limiting their future prospects.
- The emergence of seventeen lenders – including the four major banks – with an identical blueprint for subprime mortgage fraud is prima facie evidence of a criminal conspiracy borne of an active cartel with malicious intent. The BFCSA possesses a large case file with more than 2,000 victims of control frauds – a statistically significant sample that confirms a host of loans have been approved based on inflated assets and income.
- Only the financial engineers (lenders) reap long-term benefits from control frauds – most other participants in the long and toxic chain are also entrapped, with their financial livelihoods destroyed. It is the lenders, therefore, who bear the ultimate responsibility for material harms caused, having decided to recklessly approve toxic loans.
- Extensive control frauds are designed to exceed the eligibility threshold for dispute resolution ($500,000 in assets) so regulatory mechanisms can be sidestepped. Existing

compensation arrangements are also woefully inadequate, with a maximum payout of only $280,000, designed to short-change bona-fide victims and enabling fraudsters to profit, even after adverse findings against them.

- Government and regulatory reticence is evident in failing to address claims of widespread and endemic control frauds across decades. ASIC is particularly culpable, having treated victims with cold indifference and contempt, while simultaneously defending their inaction towards the engineers of control frauds, usually on spurious jurisdictional, evidentiary or other grounds.
- Maladministration in lending by domestic financiers has become the norm. Only a Royal Commission with the broadest possible terms of reference will help uncover the totality of white-collar crime that threatens to destabilise the banking and financial system, and by extension, the Australian economy.
- In the more subtle variants of control fraud, lenders do not provide loan facilities directly to those investing in managed investment schemes outside of the traditional model e.g. phantom plantations and horticultural investments. Rather, financing is extended by non-bank financial institutions that engage in loan maladministration, but these contracts are then transferred to major lenders shortly before the companies collapse, often without the knowledge of investors. Consequently, lenders are empowered to take court action that enforces the repayment of contracts within 30 days (or another legally stipulated period), leading to the seizure of valuable assets in most cases. Despite an obvious lack of procedural integrity in these contracts and surely knowing the original loans were subject to fraud and extended in bad faith, banks assert their claims are legally valid and thus ‘fully recoverable’.

Appendix F: Characteristics of ASIC

Dimension	Notes
Stakeholder Relationships	• The banking and financial sector reports excellent working relationships with ASIC, while victims of predatory lending are scathing of their contemptuous treatment and limited practical assistance provided – primarily due to dismissals of their complaints. • ASIC regularly meets with industry liaison contacts, but is usually absent for creditor/victim meetings or is unwilling to provide strong representation for the aggrieved.
Exercise of Powers and Enforcement of Relevant Acts	• ASIC rarely undertakes forensic investigations, initiates court actions or issues criminal referrals, particularly if maladministration concerns the major lenders or is systemic. • ASIC prefers the softer touch of enforced undertakings with recalcitrant institutions and the application of woefully inadequate pecuniary penalties. • Relatively minor fraudsters or 'rogue individuals/planners/entities' are generally pursued as the 'fall guy' for control frauds. • ASIC's presence as a 'friend of the court' most often results in their endorsement of patently inadequate compensation arrangements for victims – shielding lenders from harsher punishments and suitable precedents. • Applications for relief are commonly granted to institutions, despite the obvious commercial benefit and implied erosion of consumer protections e.g. online bank superannuation calculators transforming into marketing, rather than educational tools, due to the hidden impact of fees. • ASIC fails to strictly apply relevant sections of the Corporations Act - former insiders report that regulatory directions and relief applications are influenced by the political and economic clout of major lenders and financial services companies during industry liaison meetings. • ASIC policies, legal interpretations (such as jurisdictional purview), rules and decisions are often interpreted to the benefit of industry: waiving of fees, failure to undertake public consultation, exception to normal Parliamentary approval processes for class orders (disallowable instruments),

	grandfathering of legislative clauses benefitting industry, and supposed powerlessness to act on cases of rampant fraud.
Institutional Culture	• Former staff have attested to an environment of favouritism, harassment, bullying and intimidation, with lax enforcement of regulations, even when clear breaches are alleged. • Senior ASIC management are often hand-picked representatives of the banking and financial sector 'revolving door', making them amenable to industry influence. • Senior management reportedly have a 'glass jaw', with hostility shown to whistle-blowers or any suggestion that reform is required due to alleged improper and unlawful directions.
Secondment Policy	• The hidden nature of the secondment policy and the murky role of staff on loan from the banking and financial sector is reported to contribute to conflicts of interest – decision-making is influenced by the sector from afar due to internal lobbying for beneficial changes to law and policy.
Efficiency	• Poor – ASIC is idle or very slow in responding to allegations of industry impropriety, though they must deal with a wide range of complex legal and financial matters. • The worst ASIC decisions suggest management is culpable for the scale of losses incurred – these decisions provide a prima facie case of malfeasance in public office. • $6.4 billion in taxpayer funding since 1998 has failed to protect hundreds of thousands of Australians from predatory lending and the loss of their life savings. • Over the past fifteen years, the BFCSA has uncovered fraud within the sector costing tens of billions of dollars (not identified by ASIC), despite the regulator having hundreds of investigators and a budget totalling more than $300 million per annum. • Negative news stories most often prompt ASIC into making public statements, gestures and long overdue responses, not the identification of breaches of the Corporations Act. • On rare occasions, ASIC management admits policies do not work e.g. disclosure policy, but no attempt is made to remedy the situation.