SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT

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Name of other person, business or organisation:
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Having read the Interim Report following my previous public submission PWF.0001.0002.1321 on 27/09/18, please refer to my comments in regard to the policy issues and general questions outlined in Chapter 10 of the Interim Report, as follows:

1 Consumer lending

In short, the lender and all intermediaries owe a duty of diligence to the borrower via complete transparencies of duties of care, obligations, remunerations, disclosures, conflicts of interests, risks, fees and rewards within the contractual chain relationship. The "transparencies" must include the lender and all intermediaries specific evidentiary reasons to support the individual borrower's capacity to service the proposed loan, i.e. ready reckoner HEM, credit limit increases & add-on insurance should be prohibited. In effect the lender and all intermediaries are required to act as *quasi* business / personal financial advisors to the borrower to justify their remuneration and financial products for the borrowers best interests & needs. A mandatory 'Borrower Information Statement' (BIS) should be included within each loan proposal complete with (c/w) "transparencies", including contractual network diagram, risk matrix & SWOT analysis. BIS should also include specific reference to s.912A of the *Corporations Act 2001 (Cth)* c/w an ASIC "Report Proforma" for ASIC mandatory investigative action to hold the lender and all intermediaries to the law. The ASIC "Report Proforma" would be required to be used by all within the contractual chain relationship to report breaches, pursuant to s.912D of the *Corporations Act 2001 (Cth)*. I recommend that introducer programs be banned due their corrupting influence. I also recommend that when a lender's employee or intermediary is terminated for fraud or other misconduct, a licensee must inform their clients of the reason for termination and review all the files or clients of that employee or intermediary for incidence of misconduct.

2 Financial advice

On the whole, financial advisors & manufacturers of financial products are and will always be driven for sales outcomes c/w conflicted remunerations and employee incentives. My recommendations above would help in regards to the borrower's *caveat emptor* and protection under law. In addition, to constrain the financial advisors and lenders employees which includes managers, office holders & board members from current illegal sales practices littered within the Interim Report, I recommend an ASIC regulated Individual Public Registry "Demerit System" be introduced as I proposed in my previous public submission PWF.0001.0002.1321 on 27/09/18. I note on p.183 of Volume 1 of the Interim Report reference to Westpac's existing "Demerit System" and "the BEAR". However my proposal follows the *Queensland Building and Construction Commission Act 1991* as a model, which in effect would leave a prospective lender's employee or intermediary illegal gains from misconduct being weighed up against immediate ASIC Investigator's sanctions, public register disclosure, demotion, suspension and / or expulsion from the Financial Services Industry, subject to the number and frequency of demerit points incurred. Consequently a cultural change would occur and encourage sound ethical sales incentives & practices with proportionate liability of demerit points up & down the organisational chain of command, i.e. no "Auschwitz Defence" whereby sanctioned breaches would be held to account by all breach participants and the duty of care would be reinforced by and for the individual employee or intermediary's benefit. In regards to Financial Advisor fees, I recommend annual client reviews and deductions subject to client approval. As I stated above, when a lender's employee or intermediary is terminated for fraud or other misconduct, a licensee must inform their clients of the reason for termination and review all the files or clients of that employee or intermediary for incidence of misconduct. In regards to the disturbing revelation within the Interim Report of the regulators impotence which has significantly been a contributing factor to the increasing illegal culture by the banking, superannuation and financial services entities, I recommend that negotiation and settlement be stopped immediately as well as enforceable undertakings and no fault infringement notices. As per my above recommendations, the law, particularly s.912A & s.912D of the *Corporations Act 2001 (Cth)* must be rigorously enforced immediately as the primary remedy against the entity wrongdoer with the secondary remedy against the individual wrongdoer as per my above proposed ASIC "Demerit System", which would alleviate the problems of s.916G of the *Corporations Act 2001 (Cth)*

whereby individuals may attempt to circumvent detection and accountability. In essence, theft is theft, which is criminal activity and the regulators emphasis and actions must now be to investigate and focus on criminal proceedings to jolt the current increasing illegal culture by the banking, superannuation and financial services entities to abeyance.

3 Small and medium enterprises

First and foremost, the Code of Banking Practice 2019 must be bound by Part IVB of the *Competition and Consumer Act 2010 (Cth)* c/w approval and annual review by ASIC. Additionally, lending to SMEs should come within the reach of the *National Consumer Credit Protection Act 2009 (Cth),* especially in regards to my above proposed BIS c/w cooling off periods. Again as per my recommendations above, there must be a duty of diligence by the lender and intermediaries to the borrower for a proposed financial product. In fact the business advisor expertise role must be expected from the lender and intermediaries to support the borrower *"bringing critical analysis to the cash flow forecasts and other business plan documents presented by customers"*. The business advisor expertise role must undertake and provide a SWOT analysis of the borrower's proposal to substantiate a loan approval / refusal, thereby informing the borrower in detail the status of the borrower's proposal. In regards to guarantees, my proposed BIS must also be provided to the proposed guarantor(s) which must include a specific "Guarantor" warning section c/w guarantor obligations & protections under law (especially for unconscionable conduct) and include the lender and intermediaries SWOT analysis of the borrower's proposal. In regards to the role of FOS and soon to be AFCA, their approach must be of putting the borrower back in the position they would be in if the loan had not been made, including awarding compensation for losses or harm caused, including waiving a customer's debt. Moreover, once a loan is repaid, the approach should also be to put the borrower back in the position they would be in if the loan had not been made, i.e. the lender must be directed in a timely manner to release all security interests, mortgages, guarantees and correct the borrower's credit files.

4 Agricultural lending

Due to the national interest and natural variable uncontrolled factors, agricultural businesses when afflicted, must be afforded the major protections under the 2019 Banking Code of Practice. Afflicted loans must be allowed revaluation reserves calculated on cycle mean averages c/w weighting factors via subsector and adoption of amended prudential standard APS 220. Distressed agricultural loans must be managed only by experienced agricultural bankers utilising all expert information for informed substantiation decision making. I recommend that default interest be prohibited for afflicted loans, especially as they are punitive and are only a vehicle of unjust enrichment. An external administrator must be the enforcement measure of last resort. There should be a national system for farm debt mediation based upon the best model available offered by lenders as soon as the loan becomes impaired or afflicted.

5 Remote communities

It is obvious from the public submissions that financial services entities do not have in place appropriate policies and procedures to assist Aboriginal and Torres Strait Islander people. Subsequently, the financial services entities have a national moral responsibility and there is a business opportunity to improve remote geographical access via Information Technology & Communications investment and address the cultural barriers by employing remote linguistic Aboriginal and Torres Strait Islander staff as the intermediate remote link for all services c/w their training in financial literacy, This recommendation would also address the banks' identification requirements appropriate for Aboriginal and Torres Strait Islander customers. Fee-free Centrelink benefits accounts must be compulsory and no other form of account must be encouraged unless for supplementary allowable and reportable work income or savings deposit accounts. The application of the 90% arrangements provided by the Code of Operation must be at the discretion of the bank and the customer, Dishonour fees should not be charged. Funeral policies, or particular kinds of funeral policy, financial products warrant intervention by ASIC in the exercise of its product intervention powers. All forms of funeral insurance must be financial products for the purposes of Chapter 7 of the *Corporations Act 2001 (Cth)* and be covered by Part 2 Division 2 of the *Australian Securities and Investments Commission Act 2001 (Cth)*. It should be unlawful to sell funeral insurance for persons under 18 years.

6 Regulation and the regulators

Further to my discussion above of the impotence of the regulators as a major contributory factor to the financial services entities litany of misconduct, the governing laws are not too complicated, they are just not being enforced. There is not too much complication to s.912A of the *Corporations Act 2001 (Cth)* whereby the financial services entities are required to "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly" and to report any breach within 10 business days pursuant to s.912A of the *Corporations Act 2001 (Cth)*. Therefore, as per my above recommendations, the law, particularly s.912A & s.912D of the *Corporations Act 2001 (Cth)* must be rigorously enforced immediately as the primary remedy against the entity wrongdoer with the secondary remedy against the individual wrongdoer as per my above proposed ASIC "Demerit System". The regulators must be subject to annual review and be provided the resources to exercise all recommendations aimed at holding the financial services entities to the law and break their arrogant, impious and unaccountable cultural conduct and contumelious theft of their customer's monies.

7 Entities: Causes of misconduct

In relation to conduct risk, I believe my recommendations above are the only way to change the entity and individual conduct. Insofar as the banks' current facade of addressing their misconduct raised in the public forum since the commencement of the Royal Commission, my own current experience is quite the opposite and disturbing for the public interest. Notably, my previous public submission PWF.0001.0002.1321 on 27/09/18 involves ongoing unremedied unconscionable conduct by the [redacted] against me since 19/05/18, i.e. 6 months after the Royal Commission commenced and continues to this day whilst the Royal Commission also continues. Specifically concerning breaches of the ABA Code of Banking Practice 2013 Part C 3.1(e) whereby following repayment of my FOS Case [redacted] Debt Settlement loan on 17/05/18, I requested [redacted] to release their writ & summons, guarantees and all security interests against myself and my company. [redacted] initially instructed their legal consultants [redacted] to co-execute the notice of discontinuance but they refused in concert with [redacted] to co-execute it with me as *acting in person*, by both blocking my email address and ignoring my 2no. subsequent registered letter requests. Thus after over 3 months I was forced to complain to FOS on the 4/09/18 who under FOS Case [redacted] directed [redacted] to communicate with me and respond to FOS & myself about my complaint by the 20/10/18, i.e. of them breaching the ABA Code of Banking Practice 2013 Part C 3.1(e) and not releasing their illegally held security interests on a repaid debt. The same day on 4/09/18, [redacted] finally executed the notice of discontinuance which I co-executed and they filed. From 4/09/18 to 19/10/18 [redacted] did not release the [redacted] guarantees, mortgage and all security interests nor respond to my complaint by explaining why the [redacted] breached the ABA Code of Banking Practice 2013 Part C 3.1(e) for over 3 months. On the 19/10/18, [redacted] replaced [redacted] following my complaint to FOS about [redacted] ongoing abuse of process and incompetence of [redacted] Also on the 19/10/18, [redacted] admitted that [redacted] have no records of any PPSR Security Interest on the PPSR Register under the *Personal Property Securities Act 2009 (Cth)*, despite [redacted] confirmed evidence of me paying [redacted] the PPSR Registration Fee as part of the FOS Case [redacted] Debt Settlement loan establishment fees. Thus on 22/10/18, I requested FOS to investigate [redacted] admission of [redacted] admitted unjust enrichment (theft) of charging [redacted] customers for PPSR registration fees without [redacted] ever paying & registering interests on the PPSR Register. In summary after over 5 months after paying out my [redacted] Debt loan, my [redacted] credit files still show the full [redacted] debt outstanding. After nearly 2 months of my FOS Case [redacted] progress, [redacted] still have not notified [redacted] that the debt is repaid in full and still have not provided releases of mortgage and guarantees. Instead [redacted] have admitted to charging for PPSR registration fees ignoring that "Charging for doing what you do not do is wrong" and raising the serious question of how many other [redacted] customers have been charged PPSR registration fees without the actual registrations ever being done? Therefore, unless real conduct risk mitigation measures are taken as recommended above to enforce the law and make both entities and individuals publicly accountable nothing will change and as can be seen by my own current experience with [redacted] nothing has changed. In regards to sales incentive remuneration, as discussed above that subject to my recommendations corralling the practice ethically with accountability and legality, then the practice should remain. Insofar as BEAR, I refer to my proposed above recommended "Demerit System". Likewise, my above recommendation for intermediaries and business structures to be bound by a duty of diligence to the borrower. I however would recommend that trailing commissions be prohibited as I can see no mutual consideration for the borrower but only continuing unjust enrichment for no service.

In conclusion, please accept my submission in good faith and I thank FOS and the Royal Commission for all the good work and transparent highlighting of the problems besetting Consumers in the Finance Sector and I look forward to your equitable recommendations.

Kind Regards,

Anthony Zarro – Sole Director since 1996

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