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Commissioner
Royal Commission into Misconduct in the Banking,
Superannuation and Financial Services Industry.

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**Submission – Interim Report of the Royal Commission into Misconduct in the Banking,
Superannuation and Financial Services Industry.**

Misconduct in banking goes beyond bank to consumer relationships.

Misconduct is being experienced via business to business dealings as well.

I have been employed in the banking and finance sector since 13 January 1970.

In 2001, I started a Mortgage Broker business and since then I have seen many lenders, financial counsellors, consumer advocates, regulators, and politicians try to rid the market place of a valuable, no cost to consumer, asset.

Being a no cost to consumer asset is the reason why consumers are using mortgage brokers in larger numbers year by year.

It is a nonsense to conclude that a mortgage broker offers larger loan sizes or interest only loans so that they personally will collect **an extra couple of hundred dollars in gross business turnover**. To do so would suggest that the loan contract is somehow controlled by a third party to the transaction.

The profession of Mortgage Broking has been articulated by lenders, financial counsellors, regulators, and politicians, as 'conflicted', 'dishonest', 'cowboy rogues', who do not deserve to be paid commercially negotiated rates of payment in a business to business commercial world.

To solve the problems the regulators and politicians thought consumers had in obtaining credit, used predominately for personal domestic and household purposes, the National Consumer Credit Protection Act (NCCP), came into place in 2009.

This law offers no real consumer protection and fails community expectations.

Australians want to be treated fairly and honestly in a competitive market place. A market place that protects businesses that protect them and the Australian economy.

In fact, the NCCP is covertly used by regulators to encourage lenders to discriminate against credit worthy borrowers. Age, product choice, and interest payment type preference are current examples of how the law is disadvantaging the very people it is supposed to be protecting.

The NCCP is being used inappropriately and leaving many consumers high and dry, locked into more expensive uncompetitive loans, or locked out of mortgage market because "lenders must lend responsibly, as we (the regulators) see how lending should be done".

The deliberate and planned destruction of the Mortgage Broker industry has occurred over a number of years.

The destruction commenced around 2007 and continues today where the self-regulation of independent mortgage brokers by the banking giants has almost been achieved.

The Sedgwick report was commissioned by the Australian Bankers Association (ABA).

The report was said to be an “independent” review. I challenge this assertion.

In fact, the Sedgwick report was an avenue to find ways to force changes, that the ABA members wanted.

The ABA’s website states it has 24-member banks (including the Big 5).

Some members are Australian-owned banks, some are Foreign Subsidiary Banks, and some are branches of Foreign Banks.

“The independent review is necessary to ensure confidentiality of information and proper process. The independent reviewer has specifically been asked to identify options to guide potential responses for banks, including whether regulatory approvals or other actions are needed to enable banks to make any changes or take actions to address the relevant issues.

Changes could be implemented in the form of legislative reform, which would ensure that all banks and other participants in retail banking are subject to the same legislative requirements and standards. Alternatively, the banking industry could seek authorisation from the ACCC. In this case, a proposed approach and timings is set out in Attachment B. We look forward to the independent reviewer identifying options and recommendations for action by the banks, and also how banks would be able to take action to ensure competition in retail banking is not adversely impacted and banks are able to meet their various legal obligations, in particular competition laws.” ABA submission to Sedgwick review page 5,6.

Reading the ABA submission to the Sedgwick report and associated legal advice it seems that the review was seeking options to support Cartel behaviours that are currently outside Australian law. Laws that have been put in place to protect Australians in all walks of life.

Next, albeit almost at the same time we had the ASIC review into mortgage broking remuneration.

This report was requested by MP Kellie O’Dwyer Assistant Treasurer at the time. Her Bio in part reads: Executive, National Australia Bank 2007-09. Elected to the House of Representatives for Higgins, Victoria, at by-election 5.12.2009 Re-elected 2010, 2013 and 2016. In April 2016 NAB sponsored a fund raiser for her re-election campaign.

It was no surprise that the ASIC review and the Sedgwick review both had a push to portray mortgage brokers in a bad light and to support the banks in their desire to pay less remuneration and to gain more control over mortgage broker independence.

This allowed for the Combined Industry Forum to be formed.

There are very few consumer complaints about individual brokers. The majority of complaint noise comes from non-related parties.

All the “Industry” representative bodies involved are top heavy with lender members. Both the MFAA and the FBAA are extremely conflicted in that they are reliant on forced broker membership via it being a bank accreditation requirement. Without lender accreditations mortgage brokers are banned from introducing business to lenders.

A bank and aggregator group of people who have contracts with each other was formed (Combined Industry Forum) to self-regulate the third-party mortgage broker businesses who have no power of negotiation and no real representative voice.

These industry players have gathered together in private meetings to discuss options for how they can introduce their plan for the “industry moving forward”. To address the concerns of the Sedgwick review and the ASIC review. This is the one opportunity “we” have to self-regulate this industry.

Consumer groups and a couple of mortgage brokers were invited to join the Forum.

First thing that happened is nearly all the banks introduced the “standard” upfront and trail payments. What one pays becomes the standard for all others to follow. That is the banking industry agreement as this is said to remove a “potential” (not evidenced) conflict of interest that the mortgage broker may have.

Now all the banks one by one are introducing standard, all the same, commission reduction initiatives under the guises of:

“As part of our ongoing commitment to ensuring positive customer outcomes and building strong relationships with the brokers who support these customers, we are announcing some important changes to our commission model, service model and improving transparency on commissions paid to brokers.”

The concept of the Combined Industry Forum is not understood by consumers and certainly does not meet law abiding citizens expectations.

So far, the Royal Commission has jumped on the band wagon led by industry bodies, the Combined Industry Forum, ASIC, APRA, and the Productivity Commission. The opinion is seen to be that mortgage broker remuneration is unjust, and bad for consumers (who pay nothing for the service).

To add insult to injury the reduction of mortgage broker remuneration is seen to be an admirable industry initiative and it’s a perfectly fine arrangement for the gross business turnover earned by a mortgage broker to be excluded from business to business negotiations.

Mortgage Broker remuneration is a business to business contractual arrangement for commissioned work by aggregators. It is not a contractual arrangement between banks and consumers, and it is not a contractual arrangement between banks and mortgage brokers either.

Banks contract with aggregators to find them potential borrowers who they want to lend money to.

Mortgage Brokers are charged with using their skills, knowledge, ability, and networks to find suitable potential borrowers the aggregator needs to satisfy its contractual arrangement with banks.

Mortgage Brokers do not sell home loan products, they offer a mortgage broking service to potential borrowers who are seeking finance.

It is fact that no one knows what, if anything, a mortgage broker will be paid for the commissioned work they undertook for their aggregator until up to two years after the contract between the bank and the consumer has settled.

This demonstrates why the “disclosure” requirement of the NCCP is utter misleading nonsense. The amount of remuneration earned is unascertainable for the foreseeable future. That is not what is required to be disclosed in NCCP compliance documentation.

Clawback is a commercial risk transferred from the lender to the aggregator of which most is borne by the third-party mortgage broker. Most consumers are horrified when informed of the up to 24-month clawback of commission paid.

At the same time banks clawback mortgage broker remuneration, they offer amounts of \$2000- as a cash back offer for borrowers to refinance their loan.

Clawback does not pass any test of fairness as expected by the community.

The Disclosure of "possible" gross business turnover paid by the lender to the aggregator for the introduction of new business is a ploy to create an illusion of "commission payment" and does not meet community expectation.

Competition can never be enhanced when all the players in the market act the same and pay the same.

It is time the Royal Commissioner looked at the situation with a new set of eyes.

Living Expenses

The National Consumer Credit Protection Act is supposed to protect consumers of credit from unscrupulous lending practices.

Reasonable enquiry has become a forensic verification process of all that is or possible.

If I know someone has two children, they have two children. I do not need to see a Medicare card to verify the fact that they have two children.

If a person earns \$100,000- pa and they have fixed expenses such as tax and loan payments, then I know they have a certain amount of disposable cash left. After allowing for their fixed expenses what remains is available for living expenses and any new loan repayment they may take out.

Is it really relevant for a lender to know how much a lady spends on personal care and clothing to assess if she is a responsible borrower? Is it not a breach of privacy? Does it produce an environment of a consumer feeling guilty because the bank needs to know so much about their personal spending preferences? Will the bank assessor make a personal judgement and approve of their spending choices?

Does the consumer need to change their spending preference to how the regulators and the bank sees fit for them to qualify for a loan?

The Positive Credit Reporting regime is another lie in what constitutes consumer protection.

Negative Credit Reporting gave a potential lender a valuable insight into the reputation of a consumer as a reliable repayer of borrowed money. The new system provides data, data and more data.

The focus on "the actual" living expenses for a potential borrower is an absolute joke and fails community expectations. On one hand a lender adds 3 or 4% onto the actual borrowing rate of a loan for affordability assessment, then adds all this regulatory induced expenses figures. Even if the borrow does not expend the money they must be seen to be spending it as that it what the regulatory expectation is.

This behaviour is sold as a consumer protection against unscrupulous lending practices. The financial situation of consumers is being purposefully confused and one has to ask the question why? And in whose best interest? Certainly, the consumers best interest is not being considered.

Lenders are going through banks statements and determining average living expenses according to their rules and subjective judgements. Consumers are being treated as ignorant fools who are incapable of knowing how to use their own money in their own household.

I have been getting messages lately from one of my bankers telling me how much I've spent on groceries this month. Is one to believe that all this gathering of information from bank accounts and how it is being used is in the consumers best interest?

This process, I suggest, is a push to allow for open banking and digital approval of loans via new software being introduced and has nothing to do with honesty in lending and consumer protection.

Back-book Interest Rate Creep

The current practice of back-book interest rate creep is worse than charging dead people for a service not provided and needs to be investigated by the Royal Commissioner.

No-one ever mind a borrower knows anymore what interest rate they should be on in comparison to the standard variable rate and what other borrowers are paying for the same bank product and service.

The regulators have encouraged this unacceptable behaviour by banks and instead of paying down principal on loan balances too many consumers over the last few years have been forced into increasing bank profits through dishonest unjustified interest rate rises.

I am happy to appear before the Royal Commissioner as a witness.

Maria Rigoni