

## SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT

This submission is made in accordance with (1) (2) (3) below

### (1) The interim report executive summary states:

*“The law already requires entities to ‘do all things necessary to ensure’ that the services they are licensed to provide are provided ‘efficiently, honestly and fairly’. Much more often than not, the conduct now condemned was contrary to law. Passing some new law to say, again, ‘Do not do that’, would add an extra layer of legal complexity to an already complex regulatory regime. What would that gain? Should the existing law be administered or enforced differently?”*

### Construction Industry fraud from illegal phoenix activity

Construction industry fraud is rife in Australia. This fraud targets the unsecured revenue of construction industry small business. Banks as financiers of construction companies are providing knowing assistance to fraud and receiving the proceeds of crime to the detriment of unsecured industry small business.

Illegal phoenix activity is fraud. It is not exotic, novel or unique. It is merely a process to carry out a fraud. Company directors and their advisors are not exploiting any specific loopholes in the law. It is not a matter of a lack of law. Company directors are simply choosing to commit a crime due to a lack of enforcement.

It is not a complex matter why make it one. When a company director becomes aware of insolvency and fails to place the company into liquidation but instead continues to trade to the detriment of others, engages in antecedent asset transfers to defeat creditors then the company director has chosen to commit fraud and the company director’s advisors become parties to that fraud.

Banks, as financiers, are providing knowing assistance to construction industry fraud and are receiving the proceeds of crime. Construction Industry fraud is being concealed by insolvency practitioners.

***The best deterrence is to enforce the existing laws and prosecute crime.***

The following pages contain a complaint made to [REDACTED] about such a matter and a submission to a ‘roundtable’ held by ALP.

### (2) 7.1 Code of Banking Practice:

- What inquiries should a diligent and prudent banker make when deciding whether to lend to an SME?
- Does ‘forming an opinion about the customer’s ability to repay the loan facility’ as required by Clause 51 of the 2019 Code involve bringing critical analysis to the cash flow forecasts and other business plan documents presented by customers?
- If so, what level of analysis is acceptable?
- Is it enough that the lender satisfy itself the borrower can repay the loan and that the business plan is not obviously flawed?
- Is the standard set out in Clause 51 of the 2019 Code, which requires a bank

to determine whether a customer can repay a loan based on their financial position and account conduct, a sufficient standard?

What appears to be missing from the Code of Banking Practice when considering the above, is what happens when a bank does not follow the code? What is done to compensate people affected by that failure?

Considering the final bullet point from the interim report, above, it is not a sufficient standard. The standard should be expanded to include conduct preventing the bank from acting to the detriment of others. Such conduct has been explained in the following pages containing a complaint made to [REDACTED]

- (3) 11.1 Prevention of improper conduct (like prevention of poor advice) begins with education and training. There needs to be a policy which requires criminal prosecutions of banks and their officers, carrying sufficient penalties to act as a deterrent.







































