

## Part I: mis-conduct in financial services in Australia

I thought that it might be useful to see what has been happening in Australia, which has suffered a string of large financial services frauds and other bad conduct, often linked to the country's largest banks.

At the end of 2017, the Australian government set up a Royal Commission to look at bad practices in retail banking. This followed a number of serious scandals involving the main commercial banks in Australia. The Commission issued its interim report in September this year and this will be covered in a separate report on the UCL Centre for Ethics and Law web-site.

While the Australian financial system came out well from the 2007/8 financial crisis, in recent years there has been a steady stream of major cases demonstrating unethical behaviour. These have mainly involved mis-advice but also fraud and outright theft. Examples include Westpoint involving the loss of some A\$388m (the chief financial officer was convicted), Trio/Astarra with a loss of A\$180m with eleven people convicted and Sonray Capital Markets with the founder, Russell Johnson, jailed for fraud.<sup>1</sup> Many of these firms were connected with the four major Australian banks.<sup>2</sup> For example, Commonwealth Financial Planning Limited (CFPL) was the financial planning division of the Commonwealth Bank of Australia. Many of CFPL's staff mis-advised many thousands of customers leading to an investigation by the Australian Senate Economics References Committee which in a press release in 2014 described the "conduct of a number of CFPL advisers [as] unethical, dishonest, [and] well below professional standards and a grievous breach of their duties".<sup>3</sup> "The problem is that some people in the industry have lost their moral compass. What we are particularly worried about is the conflict between what is in the best interests of the banks' bottom lines and what is in the best interests of customers."<sup>4</sup>

Two of the most significant failures were Storm Financial, linked to the Commonwealth Bank of Australia, and Opes Prime, closely linked with ANZ Banking Group.

### Storm Financial

Storm Financial was a retail investment advice business based in Queensland but operating in a number of other states. It collapsed in 2009. It has some 14,000 clients "of whom approximately 3000 were leveraged investment clients. Typically, these investors, who included retirees or people intending to retire in the near future, were encouraged to take out loans against the equity in their own homes in order to generate a lump sum to invest in the share market, via index funds (primarily

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<sup>1</sup> Adam Steen, Dianne McGrath and Alfred Wong, 'Market failure, regulation and education of financial advisors', (2016) *Australasian Accounting, Business and Finance Journal*, Vol. 10, Issue 1, 7-8, <https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1675&context=aabfj>

<sup>2</sup> *Ibid*, 7

<sup>3</sup> Australian Parliament, Senate Standing Committees on Economics, 'ASIC Inquiry final report says Royal Commission is warranted', (26th June 2014), Press Release, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/ASIC/Media\\_Releases](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ASIC/Media_Releases)

<sup>4</sup> Adele Ferguson and Chris Vedelago, 'Targets, bonuses, trips - inside the CBA boiler room', (22nd June 2013), *Sydney Morning Herald*, <https://www.smh.com.au/business/banking-and-finance/targets-bonuses-trips-inside-the-cba-boiler-room-20130621-2oo9w.html>

Storm-badged Colonial First State managed funds and Storm-badged Challenger managed funds). Clients were generally then advised to take out margin loans to increase the size of their investment portfolio.”<sup>5</sup> It appears that investors had signed blank loan applications with the completed forms containing over-stated income and assets.<sup>6</sup> The investigating Parliamentary committee stated that the evidence showed “patently that the Commonwealth Bank had what can only be described as an umbilical connection with Storm Financial” with devastating losses and consequences for the individual investors.<sup>7</sup> As a consequence, a number of banks came to settlement arrangements with the Australian regulators to compensate those who had suffered loss.

### **Opes Prime**

Opes Prime collapsed in 2008 owing some A\$650m to unsecured creditors.<sup>8</sup> This was a stockbroking operation with close links to ANZ banking Group, which used the transferred securities as collateral for the bank’s lending to the stockbrokers. Opes enabled retail clients to engage in securities lending, an arrangement that is usually only entered into between wholesale parties. The clients thought that they were borrowing from Opes using their securities as ‘collateral’. However, the legal documentation transferred legal title in the securities to Opes which lent them on. When the business collapsed it clients were simply unsecured creditors and would have got nothing, however, ANZ took part in a settlement in which investors got back 40 cents in the dollar.<sup>9</sup>

### **Conclusion**

As mentioned earlier, these types of scandals have continued. Unfortunately, they arise due to reasons all too familiar to those in the UK, with bad business models and skewed remuneration and targets, with poor corporate cultures at their heart. Part II will look at the remedies proposed by the Australian Royal Commission.

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<sup>5</sup> 9 Parliamentary Joint Committee on Corporations and Financial Services Inquiry into financial products and services in Australia, (2009), 21,

[https://www.apf.gov.au/binaries/senate/committee/corporations\\_ctte/fps/report/report.pdf](https://www.apf.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf)

<sup>6</sup> Ibid, 24

<sup>7</sup> Ibid, 31

<sup>8</sup> ASIC web-site, 11 January 2010, ‘ASIC brings charges against Opes Prime directors’, (accessed 9 November 2018), <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2010-releases/10-05ad-asic-brings-charges-against-opes-prime-directors/>

<sup>9</sup> Australian Securities and Investments Commission, ‘MR09-37 Opes Prime: proposed settlement and ANZ enforceable undertaking’, (6th March 2006), <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2009-releases/mr09-37-opes-prime-proposed-settlement-and-anz-enforceable-undertaking/>