

## **SUBMISSION TO THE SENATE ENQUIRY**

### **Farm**

#### **Culleton's**

Rod Culleton called their farm in home for before being property by the December

The family's only mortgage

of the Culleton's company in 2008/09 by specialist rural lender Landmark Operations Limited (LOL) which had the growers to believe was an entity owned by the Australian Wheat Board. The Culleton's were misled under this 'Trojan Horse', as evidence now shows that at the time of signing the new lending arrangements with LOL under the Rural Program, this facility had only 9 months of credit available through the expiry of the Culleton's Loan (AWB Tranches).

#### **Background:**

ANZ Bank purchased LFD Limited off Dalgety in 1993 and the pastoral interest was sold to Wesfarmers. LFD Limited became a 100% subsidiary company owned by ANZ Bank and later changed to a Pty Ltd company and became known as LFD Pty Ltd. LFD Pty Ltd was owned by two ANZ Bank entities: 25.1% shareholding to ANZBGL and 74.9% ANZ Funds Pty/Ltd. Through these entities ANZ Bank was the external funder/underwriter, servicer and sub-ordinated funder to the Rural Program. The above companies were part of the 261 subsidiary companies the ANZ Bank held in the AWB - Substantial Shareholder).

In late 2008, at the height of the Global Financial Crisis, LOL and AWB's future were not looking good. During this time, Lehman Bros collapsed and the AWB lost its single desk and had been struggling due to its string of litigations against it in relation to the 'oil for food scandal'. The AWB had been listed as a company in serious trouble and failed to perform as arranger/manager of the Master Trust Deed for the Rural Program. Rabo Australia exited the Rural Program, however Rabo Bank Australia remained on in the current lending arrangement as a hedge provider and found that the funds had dried up from their Dutch Parent - Rabo Bank Netherlands.



### **Foreclosures**

#### **Story**

and his family have sheep and cereal Western Australia almost 20 years, driven off their ANZ bank in 2013.

15-year, interest- was offered to one

Rod Culleton and thousands of other Landmark customers were advised in writing that a "new working relationship" between Landmark and ANZ Bank was to occur and we were informed in writing from signed notices from [REDACTED] quoting, 'business as usual'. No changes to our current facility were to occur until our next annual review.

From the outset, the Culleton's companies (CC) did not want to become customers of the ANZ Bank **and simply** asked their lender, Permanent Custodians Limited (PCL) for a payout figure. Both PCL and ANZ could not give a payout figure. The ANZ Bank mailed out new deposit and cheque books and advised us to sign new Letters of Offer (LOO) and that all of our current facilities will continue under the same arrangements.

The ANZ takeover officially came about on 1 March 2010. The sale date was announced as being December of 09, however the CC had been receiving bank statements prior in Sept-Dec of 2009 quarter from the ANZ Bank. Culleton's had completed a new purchase in March of that year of a farming property for \$1.7 million. In March 2010 all LOL managers had left their posts in their branches and no one was available to contact as a result. Due to these circumstances, we contacted our lender (PCL) for a payout and they informed Rod Culleton that they could not provide a payout figure to our loans and that I had to contact the ANZ Bank. PCL also said that they were only the Trustee of the loans and were not the Lender - PCL as trustee were only lender of record.

By November that year, a **default was engineered by the ANZ bank and the Culleton's were put on notice outlining a missed payment had occurred**. The reason for this was due to the ANZ bank having closed the CC 'Landmark interim account' where the loan repayments were coming from. The Culleton's were only made aware of this closure one day AFTER the Default Notice was sent. Default was obviously **engineered and inevitable** as a result. The ANZ bank created new ANZ bank accounts with new BSB and account numbers that had no reference to any bank accounts that we held previously and the new ANZ bank accounts were created without any consent or authorisation from the Directors of the CC. This was totally foreign to our previous and current contractual arrangements.

Rod claims, **as a director of Elite Grains Pty Ltd, the company** was never a distressed asset to the Lender and CC were never in default because under their Landmark loan agreement the CC's cash flow was strong and the business could meet its payments monthly. The business had expanded **its farming interests** into a **manufacturing, packing, logistics** and stockfeed business, employing a dozen people and at that stage had borrowed more than \$4 million **through a property purchase expanding their broad acre enterprise**. The pilot plant **on the farm** was turning over \$5 million a year.

Regardless, Rod advanced \$750,000 after having comfort to do so after engaging [REDACTED] to conduct negotiations to the validity of the purported purchase of the Landmark loan book by the ANZ Bank. Through this the Culletons continued to ask for an exit model so CC could exit and refinance elsewhere. At all times we were informed by [REDACTED] of [REDACTED] office that the ANZ officials had confirmed that all proceeds would go to our lender. The ANZ Bank took all those proceeds and after making further enquiries to PCL, PCL informed Rod Culleton that they had not received any funds and if PCL had, they

could not accept such a payment. PCL informed Mr Culleton that they were not the Lender but held the securities and acted as 'Lender of record'.

The ANZ Bank and PCL failed to **provide** the Culleton's a payout figure. Instead the Culletons were sent a new LOO in June 2011 which demanded fresh guarantees including using Rod's intellectual property on an invention (Grain Keg – can be viewed under grain keg youtube) as security, as well as demanding the right to revalue the property at least once every 12 months **by an ANZ approved valuer**.

Rod refused the offer of the ANZ Bank and would not put the IP rights up as security to a Bank. Once again a payout figure was requested which was not forthcoming. The ANZ Bank informed the Culleton's they had to sign the LOO as the ANZ Bank wanted the present and future rights to the IP securities. If we didn't sign the new LOO, then the ANZ Bank would use other means to secure it. As a result, the ANZ Bank closed all of CC's banking facilities and CC **had no option but to open interim** accounts with another financial institution (NAB), where the continuation of loan repayments could be made from.

ANZ defaulted the Culleton's four times in total – none of which Rod can think of plausible reasons as he had enough funds to keep making his loan repayments. In October 2012, the ANZ bank under the 'disguise' of PCL took him to court over the money owed. [REDACTED] had been in contact with the ANZ Bank officials and at no stage were the Culleton's informed, nor was our negotiator informed that PCL were the party threatening court action as the ANZ Bank had claimed they had the legal rights to the Loan. Rod was in London conducting sales for his Grain Keg company and **had not been made aware of any such action, and essentially was unable to attend and make a** court appearance. He was ordered to pay the Plaintiff PCL \$4M. The following year in May 2013, the ANZ bank took Rod and Ioanna Culleton back to court as Guarantors to foreclose his farm under purported POA granted by PCL giving the ANZ bank the power, acting under pretence of authority, to do so. Registrar [REDACTED] of the WA Supreme Court (WASC) refused Rod and Ioanna Culleton the right to speak or defend themselves in court. The Registrar totally ignored the Culletons and ultimately ruled in the ANZ bank's favour and awarded the Culleton's farm to the alleged plaintiff. The Culletons were given 42 days to exit before receivers locked the gates in December 2013. Upon the Culletons request, there are no court transcripts available for that day's proceedings before Registrar [REDACTED]!!

The Culletons were confused as to the correct Plaintiff, as the ANZ bank appeared in court as if it was their own case. PCL were given a possession order under Rule 62A Rule (4) of the (WASC) over the Culleton's properties. Due to this Order, the Culleton's were unable to appeal the decision of [REDACTED] on the 28th May 2013 as they were given only 3 days to lodge a notice of appeal, which was insufficient time for them to prepare a case or find and brief a legal representative to act on their behalf.

The Culletons filed an application in the WASC seeking leave to appeal out of time before Master [REDACTED]. The Master however threw the Culletons application out of court stating "it's out of time...doomed to fail.. game, set and match".

The Culletons has since found out that the ANZ Bank didn't have crucial authorisation in place when it commenced action by way of writ of summons, purporting to be acting as Power of Attorney (PoA) for PCL, and under the Purported Judgement to send receivers to sell the farm. The affidavit of [REDACTED] (ANZ bank Manager) relying on the (PoA) to commence the purported action was not only out of date but had been revoked on 21<sup>st</sup> August 2012 – prior to the commencement of the writ of summons. [REDACTED] relied on this defunct power as evidence sworn on more than one occasion in the WASC to bring purported actions against third parties. In summary, [REDACTED] has misled the court with purported documents on a number of occasions under pretence of authority.

Rod has also acquired a key document the ANZ bank wouldn't release called "The Master Trust Deed" which shows LOL loans did not have long-term funding. These loans were securitised loans **and also a line of credit** agreement. In 2010, when Landmark's book of debts were purportedly purchased by the ANZ bank, and the ANZ bank came in as the manager, **Servicer, external funder and controlled the ANZ Rural Trust No 1** (or servicer??), that's where problems began to happen for the Culletons as they had not signed over to the ANZ bank under their new letter of offer terms.

Sydney lawyers, [REDACTED], are working with barrister [REDACTED] who is representing farming families across all states who have been foreclosed after the ANZ bank takeover of Landmark. He believes the Federal Government has a responsibility to expand its banking sector investigation to include the current farm debt crisis.

In December 2014, a full year after the Culleton's were forced off, the ANZ bank announced it would stop foreclosing on drought-stricken farms for the next 12 months. However, this promise means nothing for the Culletons **and others** who have already been forced off and have to take matters into their own hands via the courts or attempt to physically take back the farm.

### **TIMELINE:**

#### **1993 –**

- LFD Limited is purchased by ANZ Bank 100% owned Subsidiary and later changed to LFD Pty Ltd

#### **August 2003**

- Australian Wheat Board acquired Wesfarmers Landmark Limited (Landmark) from Wesfarmers for \$825 million

#### **Nov 2005**

- Deed of Assignment "Primary Loan Book" was between Rabobank, Landmark Operations and Landmark Qld

- Master Trust Deed “rural program” was between Permanent Custodians Limited (Trustee) and AWB Services Limited (Arranger)
- Supplemental Deed “rural program” was between Permanent Custodians Limited, AWB, Landmark Operations **Limited**, Australian and NZ Banking Group and Rabo Bank

#### **17 Feb 2009**

- Original Letter of Offer to Rod Culleton from Landmark Operations Limited

#### **19 June 2009**

- Rod receives letter from Landmark **Operations Limited** about potential alliance between it and Australian Keg Company Pty Ltd (Auskeg). Landmark Operations Limited wanted to purchase exclusivity rights of the GrainKeg (IP of Auskeg). Culleton's declined the offer.

#### **Dec 2009**

- “New working relationship” announced between Landmark and ANZ bank that will see Landmark lending and deposit portfolios become part of ANZ regional commercial banking business. Landmark team will join ANZ bank.
- Changeover to take place early 2010, all funds on deposit with Landmark will become deposits with ANZ bank in early 2010.
- Letter to Rod states that the current lending facilities will remain unchanged until our next 12 months review. All current and informal approvals will remain unchanged and service and management will transfer in 2010 to ANZ bank.
- All formal/informal approvals will remain in place and will not need to reapply for credit
- Media Release from ANZ bank –agreement reached with AWB to acquire the Landmark loan and deposit books. Loan book of \$2.4 billion and deposit book of \$300M
- As part of the transaction, Landmark will enter exclusive distribution & referral agreement for ANZ banking products to be offered to Landmark’s 14,000 customers nationally
- Quotes made by both ANZ Chief Executive [REDACTED] and Group Managing Director of Commercial Banking [REDACTED]

#### **Feb 2010**

- Landmark advises farmers that it’s two months since Landmark and ANZ bank announcement

- Change of ownership likely to occur 1 March 2010

### **March 2010**

- Power of Attorney document for Deed Poll ([REDACTED] lawyers) by party Permanent Custodians declared – ANZ bank attorneys as [REDACTED]  
[REDACTED].
- No names of [REDACTED] stated on these documents.

### **1 March 2010**

- ANZ officially acquired beneficial interest in the “Rural Program”. It became the servicer in relation to Permanent Custodians Ltd lending.
- The “trust” became known as ANZ Rural Trust no 1
- Anz bank managers were asked to actively be involved without authorisation from PCL to inform growers ‘the Anz bank now owns their mortgages along with all securities and that the process is a simple formality from changing from green (Landmark) to blue (ANZ bank).’ I.e. the customers were informed by the ANZ bank that they will be taking a simple shower but instead they were led to the gas chambers!

### **23<sup>rd</sup> August 2010**

- ANZ bank ceases to be substantial holder in respect of the Australian Wheat Board Ltd.
- ANZ Bank retires 261 of their subsidiary companies from the Australian Wheat Board.

### **15<sup>th</sup> November 2010**

- DEFAULT NOTICE to Elite Grains (Rod Culleton) from ANZ bank Manager [REDACTED]
- Event of Default occurred under terms & conditions of Letter of Offer Feb 2009 (Landmark)

- Provision made by the ANZ bank until 13<sup>th</sup> Dec 2010 for Culletons to repay or outline debt repayment strategy
- *NOTE: \*\* Default occurred on an account that was shut down and zeroed out by the ANZ bank – received notice of this one day after defaulted\*\**
- [REDACTED] asked to review and manage accounts, help understand situation,
- Default occurred as follows:
  - i. Loan arrears on Agri Finance Loan (account [REDACTED])
  - ii. Failure to repay past temporary overdraft increases which has resulted in account [REDACTED] currently being in excess of approved limit
  - iii. Stagnant nature of business overdraft facility
  - iv. Requirement to dishonour drawings presented for payment due to insufficient funds being available

#### **18<sup>th</sup> November 2010**

- Letter from ANZ bank to Elite Grains from [REDACTED] (ANZ bank manager Bunbury)
- Confirming transfer of banking arrangements to ANZ bank
- **ANZ Interim Account closed at 16<sup>th</sup> Nov 2010 – closing balance \$0.00 (one day after defaulted)**
- Account numbers changed. Payments from Interim not honoured after closure

#### **Between Nov 2010 – June 2011**

- Rod Culleton paid monies to ANZ bank after being defaulted
- Culletons in negotiation with ANZ bank to receive a payout figure as Culletons wanted to exit ANZ
- ANZ bank wouldn't provide payout figure

#### **3 June 2011**

- Letter of Offer from ANZ bank to Rod – including using Grain Keg as security
- Properties can be re-valued by ANZ bank at least once every 12 months at a cost to the Culletons

- The Culletons refused to sign and kept asking for payout figure

#### June 2011 – Oct 2011

- Defaulted four times all up – doesn't understand why or how **as the newly created ANZ bank accounts were not the company's bank account(s).**
- Rod had money to pay it back but at this point didn't understand if ANZ bank or PCL were the rightful lender.
- Confusion confirmed **as Rod had contacted PCL who claimed we could not pay them out and they could not accept the funds as they were not the lender to our loans.**
- Culletons transferred their accounts to NAB, deposited monies in NAB and would transfer loan repayments from NAB account
- Had already bulk paid ANZ bank \$750,000
- Continued requesting from the ANZ bank for payout figure
- Was required to communicate with the ANZ bank via ANZ's lawyers during this time

#### 21<sup>st</sup> August 2012

- Unknown to Rod - Permanent Custodians revoked the Power of Attorney March 2010 (named above)

#### 4<sup>th</sup> Oct 2012

- Rod was in London doing sales for his Grain Keg company
- PCL (Plaintiff) **not ANZ bank** took Culletons to court over money owed,
- WASC judgement for non-appearance
- **Court Clerk (of no legal qualification) signs Court Order** in favour of Plaintiff Permanent Custodians (Trustee).
- Rod ordered to pay \$4,944,236 plus interest until payment and costs be taxed on indemnity basis.

#### 28<sup>th</sup> May 2013

- ANZ bank took Culletons to court
- a writ (on revoked Power of Attorney) was issued
- Rod **and Ioanna Culetton** appeared in person in court as second and third defendants before Registrar [REDACTED],



- Registrar [REDACTED] would not give **Culletons** leave to speak/act despite Elite Grains Pty Ltd having already had judgement against it - so therefore the Culletons should have been able to defend themselves in court as per their right
- Registrar [REDACTED] awarded the ANZ bank the Culleton's farm/property
- Time frame of 42 days to exit property given
- There is NO transcript of that day's proceedings before Registrar [REDACTED] as stated by the WASC

#### **Dec 2013**

- Culletons forced off their Williams property attended by sheriff and police

#### **14<sup>th</sup> May 2014**

- Content of letter between [REDACTED] (for ANZ bank) to lawyer for former Landmark client ([REDACTED] from Tasmania) as below points
  1. Until March 2010, your client's funding was from Permanent Custodians (PCL) which was trustee of and custodian of the Rural Program. Landmark was the originator and servicer in respect of the lending
  2. 1 March 2010, ANZ acquired the beneficial interest in the Rural Program. It became servicer of PCL lending. The trust became known as ANZ Rural Trust No 1
  3. ANZ refinanced PCL's lending to your client. Because it was beneficiary and funder of the Rural Program, there was no necessity for ANZ to undertake any actual transfer of funds. ANZ held all requisite attorneys and authorities from PCL to provide a discharge of the PCL mortgage and did so
  4. If my client does not obtain a release for PCL and Landmark companies and your clients subsequently seek to take proceedings against PCL and/or Landmark then ANZ may be called upon by PCL or Landmark to indemnify.

#### **15<sup>th</sup> September 2014**

- Rod emails a letter of complaint to both Chief Justice and WASC Principal Registrar in regards to the handling of our case and the lack of appeal period time giving the Culletons no consideration for the matter to be heard in court

#### **Current (2015)**

- A number of growers are now coming forward with very similar cases to the Culletons case to where the ANZ bank had forever silenced these customers by having them sign deeds of forbearance and confidentiality agreements.

- We can speak only on our own behalf despite numerous warning and negotiations, the ANZ bank have allowed the receivers to go in and gut the CC and liquidate assets that Landmark/PCL had no bills of sale over nor any other registrable or secured contracts such as stock liens.
- These actions have now shown up the receivers as the receivers steal good hard working assets with no consideration or empathy or right to Australian workers, court orders or due diligence
- Solid and valid evidence, not only with our own case is available, including where receivers have been tampering with cattle brands, and even taking advantage of people under receivership (emotionally distressed wife violated) and being joked and bragged about in the local town by the receivers and their colleagues.

### In Summary:

- ❖ We are requesting that the Government review the Torrens system, to return farmers back onto their rightful properties that have been stolen off them i.e. rewinding back to past and present victims.
- ❖ A full overview and strict regulations over receivers, preferably the abolishment of receivers and their practices
- ❖ The ANZ management and bankers to be accountable for their decision and actions and to be jailed for their crimes.
- ❖ Looking at world news we need to take a page out of actions followed through to halt such predatory behaviours and financial terrorism by our banks inn Australia e.g. Iceland

### PLEASE NOTE:

- ❖ The Culletons have at long last the opportunity to have our case heard in court later this year to set aside all purported judgement against them.
- ❖ Any evidence that the Senate Enquiry would like to view which also is being used to support our claims are based on filed documentation currently before the courts.
- ❖ This documentation can be made available both orally by Mr Culleton and/or written at the Senates request.

By

*Rod and Ioanna Culleton  
Williams, Western Australia  
Via email: [REDACTED]*

20<sup>th</sup> August 2015