

## **ANSWER**

### **Answer to the Preamble.**

1. Clause 1 accepted.
2. Clause 2 accepted.
3. Clause 3 accepted except the last sentence *This gives us a better understanding of the issues faced by farmers and the communities they live in.*

ANSWER; The size of the banks' workforce does not necessarily provide better feedback that is dependent on bank information gathering not just business confidence review.

4. Accepted
5. Not accepted. nab has in the past and it was reported recently still using constructive defaults. In submission 64 to the Impaired Loans Inquiry one method and the valuation and accounting are identified in the first page of the executive summary. nab admitted using a LVR in its written submission in the first sentence of the answer to questions on notice and the method executing and accounting is not denied. In the evidence to the EDR committee report are at least 4 constructive defaults:

- *At page 302 of the evidence; COMMERCIAL LENDERS COMMENTS (Private and Confidential)*  
*NAB Rural Finance Manager- ( ) advised.*  
*File does not indicate anything adverse. Facilities were due for review in February, but now extended to May. He considers the debt load is excessive and would not wish to see any increase.*  
*Would prefer to wait completion of annual review prior to giving any commitment for continuing support.*

*There were no arrears.*

*At Page 303; the subsidy was \$54,550 (IRS was 10.91%)*

did not complete a review. He claimed what happened to the customer was his call only.

That is consistent with bank stating the customer control officer is always involved until the end of enforcement. This practice alone continues the corporate culture as false facts from any officer involved in cover-up are supported by further bank actions.

- Constructive default 2 was identified to the QLD Chief Counsel of nab by email on 31 May 2017 Page 323 to 330 and involves withholding a timber payment cheque and applying to Asset Structuring to issue demand and that was refused so he deposited the cheque into the account.
- Constructive Default 3 is at Page 331 where instructed his clerk not to identify an internal memo to Business Control and then used it in correspondence to Asset Structuring along with a another piece of incorrect unnecessary correspondence to Asset Structuring in February, 1997, 3 month follow-up. He had held back an Interest subsidy payment for August, 1996 of \$30,000 and increased the overdraft by the same amount and complained the debt was not reducing but that same reduction happened in May and August, 1997 but was ineffective because the interest subsidy of \$54,550 was withheld again in May, 1997. The contracts for the sales were signed in September, 1996.
- Constructive Default 4 was the failure to issue corrected bank statements where refunds from past refund activities advised to the bank before ASIC forced the refunds with 5 sets of bank statements being issued none correct attached at Page 20-35 and the correct method of accounting is shown in the British Conduct Authority Final report into Clydesdale Bank Pages 338-361 as opposed to the ASIC Enforceable Undertaking at Pages 223-237 and the undercharge later falsified is at Page 222.
- Constructive Default 5 is NAB failure to discover the final account of the customer and repay the other entities whose livestock were incorrectly sold by the receivers and applied to nab accounts.
- Constructive default 6 is when nab used an incorrect viability assessment at mediation and the customer traded the 4 years that the bank said he couldn't. This meant the viability argument the only reason for mediation was incorrect at the time of mediation but the bank continued to prosecute the mediation agreement in the court denying the true facts of the false viability report and claiming the LTV situation which was inflated by the denials of the interest subsidy and the false default interest charges admitted by Officer to be \$250,000 and the debt was reduced to \$770,000 but refused to allow the account to shift by placing obstacles in alternate financier positions.
- Constructive default 7 was when after the mediation the bank used the incorrect quantum of debt for the purpose of Bills and used an inflated interest value to bring the value of the debt up to the approved limit and then dropped the rate back to the normal rate when approval to increase the debt was denied to .

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- Constructive default 8, was when the nab refused to identify in the account deposits in accordance with section 96 of the Property Law Act 1974 which meant a 3 month stay on the account to find alternative finance.
  - Constructive default 9, was when the bank did not deduct all the funds from the account to cover the regular repayments for interest and redemption missing one account to make the farmer in default. However he identified the problem before mediation and corrected the situation accordingly.
6. Accepted- comment the bank has not corrected their processes and made corrections in line with those inquiries – mentioned in the EDR report is the process of “Shadow Ledgers” coming from the Senate Inquiry in 2000 not being identified and partially corrected in NAB Refund Activities commencing 2004. It is noted that if the bank had corrected the incorrect default interest refunds of 2006 in 2000 the first opportunity refunds would have been made to 1994 including the herein mentioned farmers accounts.
  7. The draft read by the writer abandoned the mediation process mentioned above under the Bankruptcy Act to support bad bank accounting refunds etc.
  8. Accepted.

### **Summary of NAB’s Position**

1. Not accepted. In the evidence given by NAB at the ASBFEO inquiry into banks the representative appeared to blame the customer for non- renewal of facilities and other bank controlled situations.
2. Not accepted the skills and capacities of the advisers are used to gather evidence and falsify reports such as viability and available assets for sale at recovery.
3. Accepted- but the relationship manager as the controlling bank employee has the call over the account holder so any bad practices associated with the account these can be denied and covered up at that time. Refer to the themes of the nab corporate culture

***The profit motive or performance culture, and its’ skewing of the “ business partnership “ balances between risk management and business decision making; and***

***A close management of information flows that discourages the escalation of issues of concern to the Board or to relevant external parties (such as APRA).***

As described by APRA and published by APRA and ASIC in 2004.

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4. NAB is in ordinary years turning over 1 in 25 customer's accounts per year. With loan periods being 10 and 15 years then the likelihood of an account turnover is 1 in 25 for 10 or 15 years not small odds at all.
5. Not accepted refer to the answer at 5 of the preamble. In fact at submission 64 is shown the method used with valuations and false accounting with NAB and in the additional documents is the NAB reply admitting in the inquiry one LTV default existed. In a letter to the Chairman of NAB on the 26 April, 2017 the facts of corruption to create constructive default in bank statements were pointed out between pages 93-194 of the evidence to the EDR report.  
At pages 243-336 is two emails to the nab Chief Counsel where he admitted he told someone the farmer's overdraft was out of order. The emails identify how those statements were incorrect and forwarded on the 16 May 2017 and 31 May, 2017.
6. Accepted.
7. Not accepted. NAB still continues to prepare contracts for mediation beforehand and demand the customer sign the document irrespective and mediation contracts need better avenues for complaint especially where false evidence at the time of mediation van not be proven until sometime after mediation.
- 8 It is identified here that payment default can be brought about by the bank not correctly deducting funds from a customer's account and the bank will then proceed to recovery action, issuing demand under the bank's operating process.

## **9 Terms of Reference**

### **(a) NAB Reply.**

NAB ensures that the relationship manager remains integrally involved with the loan management even after a loan becomes managed by the workout team.

#### **Answer**

This process keeps the management of the account in the hands of the manager who supervised the account to default. Maintaining any bad practices and hiding mistakes.

The nab corporate culture themes as defined in 2004 by APRA and ASIC and as reinforced by retiring nab deputy CEO Michael Ulmer in 2011 and confirmed in current bank submissions including this reply.

*The profit motive or performance culture, and its' skewing of the "business partnership" "balances between risk management and business decision making; and*

*A close management of information flows that discourages the escalation of issues of concern to the Board or to relevant external parties (such as APRA).*

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NAB has a policy of allowing the account manager to control the account to the death. This policy allows that Manager to cover-up mistakes and create monetary defaults in accordance with NAB corporate culture. Where he may have a system for creating defaults by keeping out deposits he now fails to collect payments and the banks' strategic management team lay the blame on the customer under the facilities agreement.

There are 9 constructive defaults listed and verified by documents at pages 4-6 and there is another one not against the customer but the Commonwealth. At page 370-373 of the evidence supporting the EDR report is the last pages in Judgment QCA 329/2006 at 373 is a clause (43) this clause describes how nab reduced the debt for collection to \$770,000 but that was the debt when it was corrected and agreed to that amount with then Asset Structuring adviser to . He wrote the debt down under Non- Accrual accounting conditions not as a correction of the account. So this one accounting misstatement to allow the bank to claim a taxation deduction was misinterpreted by the court as an action to write down the account for collection purposes.

The bank non-accrual claims for taxation increased in the year the bank wished by \$250,000 and deceived the Qld Court of Appeal.

### **Recommendation.**

**That APRA be requested to investigate the application of the NAB corporate culture in this policy of keeping the relationship manager involved and how this practice executes the nab corporate culture.**

### **NAB REPLY**

(a.i) We appoint receivers in a very small number of places.

### **Answer.**

- Firstly nab appoints receivers at 4.1% of loans per 10 year and 15 year facilities. Considering that over a

10 year period there is a 41% chance of receivership and with

15 years that goes out to 61.5% over the period of the loan.

- NAB appoints receivers with knowledge and experience for opportunities.

One way for a bank to avoid future problems with customers who are resisting their efforts to destroy their lives is charge the customer criminally. Receivers are at the coal face to create this situation and in one instance the farmer was charged with stealing his children's cattle and another a company on the receivers complaint with NAB agreement and instruction.

In order to make the charge effective the bank stopped a Deputy Registrar (later disciplined) from putting the cattle sale documents in the initial court action in the court record book but in the index of the record book. The farmer complained to the Judge that the documents were not recorded in the judgment and that the bank would then charge him with stealing cattle. This NAB did and then Police, Agents, receivers held out of the court at the trial the cattle sale dockets from the Saleyards and agents accounts and waybills, from where the cattle remaining on the property were sold.

This allowed the bank to claim the cattle were stolen off the property and two when the resulting civil case came about to deceive the court of the true numbers of cattle recovered by the receivers. The court then granted cattle not mortgaged to the bank for sale irrespective of the fact the bank in May 1997 transferred the sale funds between the entities and demanded authority for the transaction and the transaction was recorded in the farmer's accounts and bank statements by his accountant.

The result was the farmer was found not guilty the 3 Police involved resigned two Supreme Court Deputy Registrars resigned or were disciplined and because of the further involvement of the Federal Court one Registrar was involved in the same cover up. The documents involved to identify the situation begin at page 33 to 73 of the evidence for the EDR report. The receiver was even part of Police moving one beast in the name of the bankrupted farmer for sale but when the farmer appeared at the saleyards the agents abandoned that process. The situation was the beast in the farmers name could be paid directly after the sale to any account nominated by the receivers, bank, police or agents.

The entities losing their cattle appealed and Judge [redacted] as lead Judge on the bench accepted the bank evidence the cattle sale dockets did not exist. Five years later the farmer subpoenaed the same cattle sale dockets in a further action for malicious prosecution and the agents under threat of contempt produced the documents. For the return of the subpoenaed documents Judge [redacted] was on the bench and the nab practitioners told the judge the case would effect a person who lived in his suburb. He stated that was [redacted] the receiver" and he had discussed the case with [redacted] and stated from a newspaper article putting a date on the conversation. It is believed the conversation was before the appearance in the Appeal where Judge [redacted] was a Judge who denied the documents existed.

When the application by the bank went to appeal at the farmers request another Court of Appeal Deputy Registrar left the documents out of the Appeal Record Book and this is mentioned the bank did not produce the documents of the account in QCA 329/06 at page 362 of the evidence to EDR report. The Deputy Registrar resigned avoiding a investigation in the circumstances, Judge [redacted] is now Governor and cannot be charged.

However the farmer and his member of parliament took the situation to then State Attorney General he investigated the matters and changed the system in the court and brought in the Mortgagors' Protection Act 2008 when the banks continued the processes, the Mortgagors' Protection Act was incorporated in to the Property Law Act 1974 at Section 85 (1-10). The Commonwealth had reduced Queensland

This answer; is to Submission 10 from the National Australia Bank to the Senate Select Committee on Lending to Primary Production Customers – 23.7.2017

QRAA contributions by about \$35m and the investigation showed the bank has used the false criminal trial to cover-up the falsities in the Interest Subsidy material produced by NAB. The NAB then made contributions of \$32.25 million to Qld Research a contribution that would normally be made by the Qld Government. The higher persons involved and support for the incorrect process is between pages 93 and 123.

At page 124 of the evidence to the EDR inquiry is an Executive Summary to the Senate inquiry into *Australia's Judicial System and the Role of Judges*. The shows the methods used in both Federal and State Courts to deceive the farmers and governments and to bankrupt the farmer by using false evidence of debt and liability during the trials and hearings where discovery was consistently denied reverting to incorrect bank evidence.

On the 28 April, 2017 a letter was forwarded to the Chairman, National Australia bank with this and other documents including a letter to the President of the Qld Court of Appeal and a open letter to the Chairman, Premier of Qld and Senator Matt Canavan published in the Independent Australia.

### **Recommendation**

That this committee recite the above circumstances to request NAB to settle with the farmer pursuant to the procedure for settling disputes previously detailed by CAG Philip Ruddock in his letter of 15 December, 2006 and the Banking Code of Practice process of a contract enforceable between the NAB and the customer exempted at Bankruptcy by the interpretation of Section 60(2) and 60(5) of the Bankruptcy Act 1966 (Cth) with the provision in the new Act. The CAG was aware of the circumstances of NAB corruption of the farmer's accounts because of the incorrect law used in Qld as detailed later between Victoria and New South Wales in the Productivity Report of 2010 at page 121 of the evidence supporting the EDR report.

#### **(a.2) Breaches and Defaults**

##### **NAB reply.**

NAB claims the financial covenants have traditionally served as an early warning sign that business is experiencing financial difficulty.

##### **Answer**

In the farmer's case mentioned NAB claimed in 1996 he was unviable yet he traded from August, 1996 to September 2000 with-out his interest subsidy payments. All that happened was at the end of the period 2000 he was back in a worse position than if he had not become part of the scheme because he was using the funds except for an irrigation scheme to build up livestock numbers. Page 147-148 of the evidence for the EDR report. It is worth mentioning here that when an interest subsidy livestock program is used in conjunction with the current GST program and Primary producer taxes it can be, that the subsidy to Government revenue is returned every 18 months.

This answer; is to Submission 10 from the National Australia Bank to the Senate Select Committee on Lending to Primary Production Customers – 23.7.2017

In this instance the calling the farmer unviable was the basis for mediation and it was absolutely incorrect and is now a chief indicator that NAB does use constructed default and has done to devastate the rural community by selling up and using the compulsory mediation schemes, ruthlessly. At page 375 is a published case note on how the bank mediation contract was upheld in particular page 376 and at evidence page 381 to 399 is a submission to the PJCCFS for the Family Business Inquiry it shows the method banks use to convert credit into money and how there are very few safeguards to support the family business sector dated 9.11.2012.

Attached to the extra documents is a copy of the Mediation Agreement verifying the mediation was based on the farmers denial he was unviable at Annexure “A”, and the bank’s insistence to force him to sign a Mediation Deed, where he could not deny any facts after the signing of the Deed and that was upheld in the courts irrespective of the bank’s incorrect evidence. and [redacted]’ falsifying the October, 1996 budget, Where he had the farmer sign a blank budget form indicating he would complete the farmers’ interest subsidy application and forward it back for signature as [redacted] had done. He did not do that just forwarded a false budget not including timber and cattle sales and other earnings from the property.

(a.3) Constructive default and LTV ration actions.

**NAB Reply.**

None of the cases examined by the PJC inquiry into impaired loans or the ASBFEO Review identified any cases of constructive default.

**Answer.**

Clearly this statement is incorrect already is a NAB signed document alleging unviability that was incorrect to force the customer to sign a disadvantaging Mediation Deed. This is expressed at 64 of the Impaired Loans Inquiry and shows how NAB made a constructive default by not accepting the farmers’ interest subsidy funds. It is the farmer’s belief NAB had Qld Chief Counsel [redacted] advise the writer of the NAB report, that the customers Farm Management Account was in Breach. Clearly this is not correct, with the facts of the bank false accounting and manipulated valuation and process is identified, then how the manipulation of the accounts to make the farmer’s LTV out of policy are identified.

The attempts to form a constructive default monetary and otherwise are detailed hereunder.

*. In submission 64 to the Impaired Loans Inquiry one method and the valuation and accounting are identified in the first page of the executive summary. nab admitted using a LVR in its written submission in the first sentence of the answer to questions on notice and the method executing and accounting is not denied. In the evidence to the EDR committee report are at least 4 constructive defaults:*

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- *Constructive default 9, was when the bank did not deduct all the funds from the account to cover the regular repayments for interest and redemption missing one account to make the farmer in default. However he identified the problem before mediation and corrected the situation accordingly.*

The proof of the attempt to manipulate this answer by NAB is shown at pages 243 to an email to the NAB Chief Counsel dated 16.5.2017 and the second email at dealing with false allegations about the overdraft is at page 323 to 373 of the evidence to the EDR report.

### **Recommendations.**

That the NAB be requested to apologise to your committee, the farmer and the Australian Public, and negotiate compensation to the farmer, as this submission is clearly another attempt to falsify evidence and allow NAB to renounce responsibility for its alleged unlawful and illegal behaviour. Ruining the farmers , business his and his family's lives, taking his home and future for the purpose of covering up its illegal and unlawful activities in his accounts and before the law.

### **(b)the role of other service providers to, agents of, financial institutions, including valuers and insolvency practitioners, and the impact of these services.**

#### **(b.1) Valuers.**

NAB submits that the members of NAB's valuation panel are independent experts, subject to the formal requirement and ethical rules of their respective professional standards.

NAB submissions are accepted.

This answer; is to Submission 10 from the National Australia Bank to the Senate Select Committee on Lending to Primary Production Customers – 23.7.2017

## **Reply**

NAB has not shown the standard valuation guidelines are accepted by any independent body and there is a doubt that valuations are conducted conservatively. In property sales the back-up valuations are corrupted to sell the property even when time is on the side of the customer the bank moves to sell the property and has the valuer make valuations, to suit the circumstances NAB wishes to impose, on the outgoing customer. This enables the NAB to Bankrupt the customer to stop future litigation even when fraud is involved.

The method of providing various values is exposed as unworkable in Submission 64 to the Impaired Loans Inquiry commencing at Page 1 of the Executive Summary.

Consequently until an audit of the NAB valuation processes for borrowers and customers new and existing accounts the bank must remain liable for the enterprise debt.

## **(b.2) Insolvency Practitioners**

### **NAB submissions.**

Accepted

NAB will use restructuring and turnaround professionals to undertake independent business reviews.

### **Reply.**

Currently the law Federally and in Bankruptcy is heavily skewed against the customer it is now time for the financier to become responsible for the actions of the Receiver. The receiver acts to sell the property on behalf of the bank there is no funds to be returned to the customer and the bank instructs the receiver. The public policy issue where receivers are the agents of the bank customer is totally outdated and Section 85(1-10) of the Qld Property Law Act goes some of the way to making receivers and the bank responsible to the bank customer.

It has been shown above that the receiver will sell property not mortgaged. And he will move to protect the bank even at the expense of judicial friends to support bank allegations of theft by a customer. This receiver and his bank counterparts changed the lives of the bank customer, 3 Police, 3 Court staff and one Judge may be more as that part of this situation still has a way to go. The corruption of evidence has moved one bank employee on and some others may yet face consequences of false evidence and bad court etiquette by NAB representatives.

### **Recommendations.**

That insolvency practitioners and receivers be made responsible under the umbrella of the financier and removed from the agent policy conditions now imposed on bank customers.

This answer is to Submission 10 from the National Australia Bank to the Senate Select Committee on Lending to Primary Production Customers – 23.7.2017

**( c ) the appropriateness of internal complaints handling disputes and dispute management within financial institutions.**

**NAB Submissions**

**NAB ensures that the Relationship Manager remains integrally involved with the loan management even after a loan becomes managed by the workout team.**

**Reply.**

By NAB maintaining this relationship the customer is disadvantaged because it is his relationship manager that has the call as to the customer's fate. Maintaining this relationship ensures the continuance of the NAB corporate culture as it is the relationship manager whose reputation and employment is affected by the fate of the customer. Adequate proof of this situation has been shown here. The corporate culture described in 2004 has not progressed because the same procedures of the file being handled by the same bank Officer is in place. For the corporate culture to improve NAB needs to audit the customer account for both practice and funds not just accepting the book value as the "Shadow Ledgers" inquiry showed the mistakes are not addressed. Four years after publication of "Shadow Ledgers" and the identification that false bank statements can be used in legal proceedings NAB were forced under the ASIC Enforceable Undertaking of 20 October, 2004 to make refunds to an estimated 400,000 customers costing an estimated \$1bn over 7 years. NAB did not refund in accordance with recognised law, but in a way that suited the NAB outcomes.

The farmer in this account has shown that his misappropriation in 1993 was at the hands of the bank, default interest and unlawful claims against QRAA, unaccepted deposits and deposits in the course of business being falsified and deposits of recovered property are not correctly credited to the account effectively bankrupting the customer, when after property sales and correct accounting there would have been an excess of over \$200K dollars.

**Recommendations**

The NAB internal complaints process could not satisfy the farmer because it was set up to fail him. The original mediation was based on NAB incorrect evidence to the mediation meeting and that was after 8 attempted engineered defaults by the relationship manager. The farmer a past participant in the Qld Police Culture enquiries stated to Judge that if NAB Officers kept giving false evidence in the courts they would face individual consequences from the deceived bank customer. This happened not 12 months after the warning.

This committee should recommend that the financiers accept the jurisdiction of the Best Practice Guidelines both Commonwealth and state and that any account where it can be shown any mistake or incorrect funds are continuing uncorrected then the financier is prohibited from any action against its mortgagee or customer.

That on the production of an appropriately audited account any litigation can proceed and the financier is estopped until that audit is complete. That the Dobbs Clause in bank accounting

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be abandoned in favour of the system as described above. That the committee investigate the NAB internal complaints system for correct accounting in customer accounts and false evidence in any tribunal be an instant bar to enforcement by any financial institution and that the bank pay the fees and legal costs of any customer showing false accounting in his account where the bank concerned commences action for recovery.