

The Secretary,

Through the Chairman,

Senate Select Committee on Lending to Primary Production Customers (SSCLPPC)

P O Box 6100,

Parliament House,

Canberra. ACT. 2600.

Dear Secretary,

Re: Submission to SSCLPPC – Dated 1.8.2017.

1. Thank you for the opportunity to make this submission. In reviewing other submissions it has become apparent that I am in general agreement with the submission by Legal Aid Queensland and in particular Page 2 para., 7, Page 5 para., 6 - 7, Page 6 para., 6, Page 7 para., 6-7 and Page 9 para., 1 and 9. These circumstances highlight the problems with all farmers when financial institutions are aggressively selling credit and recovering money.

2. The areas covered by the Australian Securities and Investment Commission (ASIC), Australian Competition and Consumer Commission (ACCC) and Australian Prudential Regulation Authority (APRA) are identified and tabulated<sup>1</sup>. It is clear the issue of securitisation and the sale of mortgages as collateral obligations is effecting Australian banking through securitisation and turning bank credit into recoveries from customer asset sales.<sup>2</sup> In the United States it has been documented mortgages sold have a 30% higher chance of being involved in recovery process.<sup>3</sup>

3. The terms of reference identified and answered in this submission all fit within the frame work of secured credit and mortgage funding, recoveries and credit risk compliance. Up until 2015 the major banks refused to acknowledge the banking code of practice gave customers a small safety net. However two judgments involving guarantees against National Australia Bank (nab) in New South Wales and Victoria changed these circumstances with the Judiciary acknowledging the rights for customers created under the Code in guarantee situations<sup>4</sup>. Then nab immediately changed all contracts to avoid the facts of the judgments affecting its guaranteed contracts and this is a common example of banking contract litigation and reaction. At issue is when should the bank be able to change its

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<sup>1</sup> Submission 10 to the Family Business in Australia Inquiry by the Parliamentary Joint Committee on Corporations and Financial Services

<sup>2</sup> <https://independentaustalia.net/business/.../banks-and-the-moral-dimension,4069>

<sup>3</sup> <https://independentaustalia.net/business/.../banks-and-the-moral-dimension,4069>

<sup>4</sup> National Australia Bank Ltd v Timothy Craig Rice and John Albert Rose [2015] VSC 10.  
[www.bransgroves.com.au/mortgage.../national-australia-bank-limited-v-smith-2014-n...](http://www.bransgroves.com.au/mortgage.../national-australia-bank-limited-v-smith-2014-n...)

contracts of guarantee or any contract it finds it has entered and consequently vulnerable to litigation.<sup>5</sup>

4. In referring to the above issue the National Australia Bank submission was read.<sup>6</sup> It is imperative that your committee examine the material on these files in detail. The reason being that nab placed before your committee doubtful statements. Firstly it says that in the Impaired Loans Inquiry no engineered default was exposed. In fact in the inquiry commencing at page one of submission 64 is a detailed examination of an engineered default involving firstly refusing to place a customer's funds to his account and withholding other deposits until the bank manager had applied to asset structuring to have a demand issued on the basis the overdraft was out of order.

5. The bank manager had been requested by the customer and the bank, to complete the customer's review, he did not and would not, even though requested for over 12 months. The bank manager did not make periodic deduction authority payments from the customer's account and used many other ways including supporting reports from viability assessors to force the customer out. Eventually his and the banks' process forced the customer to sign a mediation deed where the bank claimed he was unviable. The customer denied the charge and traded the 4 years from the date the bank manager called him unviable to the date of trial and the bank relied on the false evidence to force the customer to sign the deed that forgave the bank its corruption. At no stage was the customer guilty of monetary default.

6. This use of Loan to Valuation Ratio (LTV) was admitted by nab in its reply under additional documents to the Impaired Loans Inquiry at reply to Question 1 about the use of LTV. In fact there are many incorrect statements in the nab submission, that affect this customer. nab tried to cover-up the above circumstances by stating that it did not use constructive defaults. Further an admission by nab that it keeps its customer contact person involved at all stages of the account including recovery is an admitted process used by the bank to cover-up the corruption in this reported customer's circumstances.

7. In fact the nab Qld Chief Counsel tried to satisfy a cover-up situation by reporting the customer's problem at mediation was his overdraft being out of order but the mediation agreement showed the dispute was about the bank holding out about \$130,000 of deposits in interest subsidy over 2 years a large proportion of which was already allocated to the customer but refused to be accepted by the bank<sup>7</sup>. As well the bank manager claimed the customer did not have \$10,000 in cattle and \$14,000 in timber sales to collect. nab transferred the cattle sales between the accounts and when the timber cheque arrived the manager held it

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<sup>5</sup> Opinion: The banks' power over small business - News Weekly  
[newsweekly.com.au/article.php?id=760](http://newsweekly.com.au/article.php?id=760)

<sup>6</sup> National Australia Bank Submission 10 "Lending to Primary Production Customers"

<sup>7</sup> The banks' power over small business - News Weekly  
[newsweekly.com.au/article.php?id=760](http://newsweekly.com.au/article.php?id=760)

out of the account until Asset Structuring had told him a demand had to be made before the bank could confiscate the cheque.<sup>8</sup>

8. When nab publicly denies these happenings it is vitally important that they are uncovered these happenings go unreported and later denied and the use of computer generated information continues the banks identified and admitted corporate culture hereunder.<sup>9</sup>

*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).<sup>10</sup>*

9. This culture was particularly mentioned, by senior executive Michael Ulmer, at his resignation dinner, speech, on 19 March, 2012<sup>11</sup>. It is brought forward by the following circumstances:

\*on or about the **28 April, 2017**, a letter to the Chairman of nab exposed the nab involvement of the corruption of government interest subsidy schemes using a farmer's account (engineered default) and the use of false evidence in courts by bank officers and the social impacts and outcomes.<sup>12</sup>

\*on **8 May, 2017**, NAB made it's submission to this inquiry denying engineered defaults were used by the bank.<sup>13</sup>

\*on or about **16 May 2017**, nab Queensland (Qld) Chief Counsel identified to the writer he had stated the he (the farmer) was in default on his overdraft at mediation. This was denied and an email detailing the methods of his bank manager, trying to engineer monetary defaults was forwarded and acknowledged reaching the Chief Counsel.

\*on 31 May, 2017 a further email, detailing some of the engineered defaults to the Chief Counsel of the NAB and identified as received by the Chief Counsel.

\*To date there has been no identified or acknowledged retraction or denial of the above circumstances identified in the Executive Summary to Submission 64 of the Impaired Loans

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<sup>8</sup> [www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121](http://www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121)

<sup>9</sup> National Australia Bank redacts website to hide customer refunds

<https://independentaustalia.net/.../national-australia-bank-redacts-website-to-hide-cust>

<sup>10</sup> National Australia Bank Limited - SEC.gov

[https://www.sec.gov/Archives/edgar/data/833029/.../a04-3790\\_16k.htm](https://www.sec.gov/Archives/edgar/data/833029/.../a04-3790_16k.htm)

Mar 23, 2004 - 333-6632) Page 70

<sup>11</sup> Gluyas, Richard "Not all bankers fret over image, says formerly Deputy Chief, Michael Ulmer" 'The Australian' March 19, 2012.

<sup>12</sup> [www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121](http://www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121)

<sup>13</sup> National Australia Bank Submission 10 "Lending to Primary Production Customers"

Inquiry<sup>14</sup> and the acknowledgement in the NAB answer to questions on notice at Question 1 and the answer<sup>15</sup>.

10. NAB Answer to the Impaired Loans Inquiry - Questions on Notice:

***Questions on Notice Question 1: Chair-You said that there is only one case where LVR alone was the reason for a default. Most of the submissions we have received indicate that there several conditions, LVR being just one of them. So, how many times have you taken action against a borrower where LVR was one of the conditions? ... with an indication, and particularly where it is one of perhaps only two or three areas.***

*Beyond the one instance described where an LVR was the sole reason for the event of default, NAB will only use non-monetary events of default in limited circumstances to commence enforcement action,*

The Section of Submission 64 the NAB is replying to is contained in the Executive Summary and reproduced in the report.<sup>16</sup>

### **TERMS OF REFERENCE**

11. .

a. **the lending, and foreclosure and default practices, including constructive and non-monetary default processes;**

- identified above are a series of default processes used to create and individually become constructive defaults. They include,<sup>17</sup>
- Loan to Valuation Ratio,
- Corrupted use of customer correspondence,
- False accounting,
- Withholding deposits from accounts,
- False evidence of debt,

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<sup>14</sup> The impairment of customer loans – Parliament of Australia  
[www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/.../customer\\_loans](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/.../customer_loans)

<sup>15</sup> [www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/.../customer\\_loans](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/.../customer_loans) Answers to Questions on Notice from the National Australia Bank, asked at a public hearing on 18 November 2015, received 29 January 2016

<sup>16</sup> [www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/.../customer\\_loans](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/.../customer_loans) Answers to Questions on Notice from the National Australia Bank, asked at a public hearing on 18 November 2015, received 29 January 2016

<sup>17</sup> Submission 64 Impaired Loans Inquiry,

- False evidence to mediations to have the customer sign a forgiving in all circumstances mediation deed in favour of the bank,
- Switching the default to uphold false evidence and mediated processes in the first instance,
- Creating a situation to enforce the contract by foreclosure by using intangible false facts to have a mediation deed signed under pressure and then using the conditions of that contract to enforce foreclosure.
- False evidence in criminal and civil courts actions to retain the funds from property sold by Receivers appointed by the bank where the cattle were not mortgaged and the bank was aware of the change in ownership.
- *Three Police and 3 Registrars or Deputy Registrar have resigned or been disciplined following false evidence being placed before courts. One Judge has been identified using bias, hearing one action based on the same evidence, where NAB stated to the court the evidence, "did not exist" and the court upheld the proposition. Then when the evidence was subpoenaed later the same judge recused himself because the evidence involved his next door neighbour, a receiver and meant the stealing and sale of cattle not mortgaged.<sup>18</sup> The bank still retaining the funds and the evidence with held was the sale records of cattle from a property where NAB appointed the Receiver and encouraged the Receiver to charge the farmer with stealing cattle. Thus withholding the documents meant a charge proceeded that should not have happened.*

**b. the roles of other service providers to, and agents of, financial institutions, including valuers and insolvency practitioners, and the impact of these services; of**

\* Police are used to create criminal allegations against bank customers where banks in civil courts receive advantage as an innocent party. All bank legal representatives advance criminal implications against customers in civil courts in Queensland at the appropriate time.<sup>19</sup> Police will not investigate complaints against the bank or bank officers, after all they can sometimes just as court officers, receive loans and privileges from banks under professional account conditions.<sup>20</sup>

\* Court Officers have control of the evidence before Courts and the Judiciary are bound by the special privileges given to banks in the constitution and the object by practitioners is to have the customer declared bankrupt or sign a Deed where they will not proceed further against the bank. In actions where manipulation of evidence has occurred this prompts action

<sup>18</sup> Lynton Freeman - Productivity Commission

. Submissions - Access to Justice

Arrangements Productivity Commission

[www.pc.gov.au](http://www.pc.gov.au) › Inquiries › Completed inquiries › Access to Justice Arrangements.

<sup>19</sup>

. Submission 64 Impaired

Loans Inquiry.

<sup>20</sup> Submission 64 "Impaired Loans Inquiry" Page 40



by customers who have nothing to lose.<sup>21</sup> It must be remembered that all legal officers are subject to bank approval as professional account holders with lower borrowing rates etc.

\* Bailiffs are special court officers charged with enforcing warrants. In all these situations the NAB solicitors complete the affidavit of debt and that debt is inflated at the banks will to trap any assets of the customer not mortgaged. In some cases service of documents and where no bailiff is appointed Police can carry out the duties.<sup>22</sup>

\* Legal Practitioners internal legal personnel are there to enforce the themes of the corporate culture and to advise on the best external legal firms to force the customer to bankruptcy by honest means or dishonest. Evidence in the letters to the NAB Chairman and Chief Counsel (annexed) indicate any evidence will do.<sup>23</sup> Thus many customers are unable for various reasons to resist the march of false financier allegations and wilful default and engineered circumstances complete with false evidence and is daunting to most customers.<sup>24</sup>

- the material above and detailed and accepted in the Report on Impaired Loans shows the method of valuation misuse to create an Loan to Valuation engineered default. The valuers are dependent on the banks for their income and insurance costs are so high a bank can dispose of a valuer by just refusing them work.<sup>25</sup>

- The same valuer manipulated the value of the property to \$770,000 the agreed true debt of the customer after mediation and before an action for Equity Account was taken with of NAB and before the customer had traded the 4 years NAB said he could not.<sup>26</sup>

The bank claimed the false quantum of debt in litigation and that was accepted by the Judges.<sup>27</sup> It was challenged in the Court of Appeal, the Federal Court<sup>28</sup> (also refused discovery) and the High Court<sup>29</sup> but all accepted the bank evidence. The “Shadows Ledgers” inquiry reported and the courts refused discovery and the NAB issued 5 sets of bank statements all different and all incorrect 2 would be shadow ledgers, one the true main frame for value account and two sets all three being the same sheet numbers on excel sheets and all three being incorrect<sup>30</sup>. Consequently a system beyond Equity account in mortgage has to be

<sup>21</sup> Submission 64 Impaired Loans Inquiry at Example 3 and detailed in the annexed letter to the NAB CEO 24.4.2017.

<sup>22</sup> [www.pc.gov.au](http://www.pc.gov.au) > Inquiries > Completed inquiries > Access to Justice Arrangements

<sup>23</sup> Submission 36 to “Australia’s Judicial System and the Role of Judges” Inquiry 4.6.2009. Joshua Robertson, “Judge rejects bid to use banker’s alleged perjury confession to revive \$68m bank lawsuit.” The guardian 2015.07.25

<sup>24</sup> Submission 64 “Impaired Loans Inquiry” at Executive Summary and

<sup>25</sup> Impaired Loans Inquiry Report at 5.7

<sup>26</sup> Freeman v NAB 2006 [QCA 329], 1 September, 2006 at Clause [43.]

<sup>27</sup> Freeman v NAB 2006 [QCA 329], 1 September, 2006 at Clause [38].[39],[40][41].

<sup>28</sup> National Australia Bank v Freeman Q7001 of 2001(26 September 2001) DR Baldwin. Page3.

National Australia Bank v Freeman [2001] FCA 1783 (10 December 2001) Spender J.

<sup>29</sup> Freeman v National Australia Bank Ltd HCA B96/2001 (14 March 2003). Judge Kirby forgot the relevancy of Bankruptcy and quantum of debt.

<sup>30</sup> Submission to Impaired Loans Inquiry at Page 34-35. Bulletin 27 – December 2000, BAD AND DOUBTFUL DEBTS AND SHADOW LEDGERS. ACCC Guidelines for mediation of bank statements 26.9.2001.

introduced because the judiciary will not support the legal rights of customers, about accounts, in Queensland in particular.<sup>31</sup>

**c. the appropriateness of internal complaints handling and dispute management procedures within financial institutions; and**

- the internal dispute process is what continues the corporate culture in each financial institution, by failed auditing of the process and bank officer complaints, but by requesting an explanation from the Officer concerned bank policy and lawfulness are put aside for convenience. This allows the bank to become intransigent at any time and though not mentioned each institution places a limit and entities to be accommodated, on payouts for internal situations.<sup>32</sup>
- An example is the NAB after signing an “Enforceable Agreement” with ASIC in 2004 was forced by customer complaint to review its customers’ accounts eventually finding 38 customer overcharges amounting to an estimated cost of over \$1bn and involving an estimated 400,000 accounts but these refunds were not correctly made<sup>33</sup>. By comparison the British Financial Conduct Authority for the NAB subsidiary Clydesdale Bank in 2012 was forced to make refunds to customers who had left the bank or changed accounts, even though Australians were governed by the same legal proposition.<sup>34</sup> NAB in Australia did not pay all their customers refunds and in some cases acknowledge the debt was incorrect but denied this fact in enforcement actions.<sup>35</sup> NAB did not pay farmer customers default interest refunds between 1992 and 1999 for some loans when the bank failed to renew the facilities on time. In many of these instances the bank may have claimed Interest Subsidy from the Commonwealth Interest Subsidy scheme for productivity and drought mitigation.
- To the writer’s knowledge in interest corrections both ANZ and BOQ paid their customers back to date of mistake in their accounts no matter how far back. In this way they acknowledged the fraud against the customer and Equity Accounting but NAB does not and possibly the Commonwealth Bank and Westpac also.

**d. the appropriateness of loan contract terms particular to the primary production industries, including loan-to-value ratios and provision of reasonable written notice.**

- \* This question is bigger than is capable of being answered here.

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<sup>31</sup> Freeman v National Australia Bank [2015] 98/2014. 98-111 and allegations at p.147 and judgment McDonald v Holden 163-171.

<sup>32</sup> NAB Refund Activities 2004-2011, PJSCCS, Shadow Ledger Report 2000.

<sup>33</sup> NAB and ASIC “Enforceable Undertaking” 20 October, 2004. NAB Refund Activities 2004-2011, PJSCCS, Shadow Ledger Report 2000

<sup>34</sup> Financial Conduct Authority “Final Notice” Clydesdale Bank PLC 24 September, 2013 at 4.27-4.28 Page 12.

<sup>35</sup> Freeman v NAB [2006] QCA 329 at [38] [39] [40] [43] [43].

\* Commonwealth Legislation may be required to bring all financial institution, court actions pursuant to the Commonwealth Best Practice Guidelines and the Best Practice Guidelines<sup>36</sup> either through the Law Society or Legislation in each state. Where a variation occurs the customer should be given any advantage in fact or law because the financial institution is given preference under the constitution and there are sufficient complaints to show this advantage is being abused.

- The main method of corrupting bank contracts is changing the contract, account, and security conditions, the customer agreed or signed up to in some way. In particular interest rates in *Kay v National Australia Bank* [2010] NSWSC 1116.

*A further example from Bangroves Lawyers, Kay v NAB [2010] NSWSC 1116 ... The loan agreement had a fixed interest of 5.65% and a default rate of 4%. The loan provided for an automatic roll over after the first year on similar terms. The NAB breached the agreement in a false and deceptive manner, by charging the base rate of 5.85% and 13.15% on default.*

*When the borrowers protested, the bank sent a duplicitous letter claiming the borrowers acknowledged in a meeting that "the default interest rate was being charged in terms of contractual arrangements". The court found that there was no such acknowledgement given at the meeting. The letter seems to have been an aggressive bluff as the judge noted:*

The National Australia Bank has admitted 38 material accounting mistakes in an (estimated) 400,000 and an estimated cost of \$1bn and gone to the effort of denying a court claimant the advantage of proving his false accounting by redacting its web site to remove the facts of the unappropriated refund. The NAB solicitors then swore a false affidavit, in the Federal Court to cover up the circumstances.<sup>37</sup>

- The problem for farmers with some banks is the bank has a standard contract booklet of terms and conditions and the customer agrees to the changing of that booklet at any time, so changes in law and conditions of the contract can be changed by the bank by a simple reprint of that booklet without customer knowledge in some instances.<sup>38</sup>

- In these ways engineered and administrative defaults can be converted to monetary defaults with very few customers being able to object.<sup>39</sup>

Completed by,

Lynton Freeman. MBA (Adv), Cert. Global Law Practice, Dip Ag and Dip RBM.

<sup>36</sup> Commonwealth Best Practice Guidelines in Primary Producer circumstances; [t- ntw r ~0-)] [ m/ 1 - Queensland Parliament

[www.parliament.qld.gov.au/docs/find.aspx?id=5414T5123](http://www.parliament.qld.gov.au/docs/find.aspx?id=5414T5123)

<sup>37</sup> National Australia Bank redacts website to hide customer refunds

<https://independentaustalia.net/.../national-australia-bank-redacts-website-to-hide-cust>

<sup>38</sup> Westpac Banking Corporation v Knight Property Investments No. 3 Pty Ltd & Anor (No 2) [2014] QSC 263 (09/BS7887) Peter Lyons J 23 October 2014

<sup>39</sup> *Kay v National Australia Bank* [2010] NSWSC 1116..



## **ANNEXURES**

### **Impaired Loans Executive Summary 132-138**

**24 July 2015-** The Executive Summary from the Impaired Loans Inquiry Submission 64. This material shows the mechanics and accounting necessary to falsify and engineer a Loan to Valuation Ratio default and a series of other engineered default processes as identified in this submission. All of these situations were completed at the hands of the National Australia Bank.

## EXECUTIVE SUMMARY.

- A. This submission applies the terms of reference to the Australian Prudential Regulation Authority (APRA), Australian Securities Investment Commission, Queensland Rural Adjustment Authority (QRAA), Banking Act, Federal Court Act, Property Law Act 1974 (Qld), and Banking Code of Practice to the methods of Banks commencing 1992 to 2015 of using and misusing their contracts and the Loan to Valuation Ratio. In 3 instances illustrating various practices.
- B. The APRA Guidelines are quoted and identified and bank application is stated. With the practices of the Judiciary to allow recoveries by banks when circumstances may be changed with proper practice and the proper supervision of banking corporate cultures. It is clearly demonstrated that the banks are misusing evidence of debt and the judiciary is not concerned to correct the situation with reasoning given from closeness of relationship with those affected to the judiciary being past employees of the bank concerned.
- C. The Loan to Valuation Ratio plays a vital role in these circumstances because it is available for manipulation by the bank involved and because it is used as a measure of viability but is totally intangible. Consequently an easy point to manipulate this is shown in the hereunder circumstance;-

*13.1 This section will show the way that LTVs are manipulated to gain an unacceptable LTV for NAB lending purposes from the farmers' situation. The process used also attracts additional interest in several ways, firstly by reducing the farmers' credit rating and secondly through that process increase IR margin, thirdly by increasing the quantum of the debt.*

*2.12 The bank made a mistake in his accounts undercharging itself about \$500 interest. They then did not transfer the funds on the \$60,000 debit after that mistake had been found by audit. This over 3 years created a 9.3% about incorrect charge in the overdraft account for interest alone. NAB certificates of debt did not include the overpayment of interest because the account was not transferred to the agreed interest only facility. The bank obtained interest subsidy at 50% on this overcharge and the variation over \$60,000 (overdraft limit) at an unlawful interest charge of about 9.3%, compounding monthly for 4 years. Continuing, retaining the false interest debits compounding to today.*

*13.2 The farmer's account was incorrect in June 1996. His facilities were renewed, with incorrect charges identified under the NAB Past Refund Activities program and the identified breach of common law and equity in FCA, Final Notice, 24 September 2013 (neither of which have been corrected by NAB).*

*13.3 In order to make the LTV breach, deposits had to be held out of the farmers account to force up debt. This was done; by refusing deposits on*

- 30.8.1996 of \$30,000 creating a change in the account of \$60,000  
through increased borrowing from the bank of \$30,000  
and lost cash deposit not from borrowed funds of \$30,000.  
**Creating additional interest of 2.75% over the whole debt of \$1M**
- On 5 February, 1997 refusing to issue a certificate of debt claim  
\$54,500 Maintaining the increased interest rate margin of 2.75%
- On 24.4.1997 refusing a deposit of \$54,500 creating a deficit in  
the account of \$54,500  
and an additional lost deposit not from credit resources \$54,500
- By refusing to allow the farmer to shift by September 20 , 1996  
The farmer lost his last interest subsidy of \$45,500 \$45,500  
A deposit not from credit resources \$45,500
- Change in debt structure of the account is DR \$260,000  
Not including additional compound interest charged at 2.75%
- Additional cattle sales to replace the deposits lost about \$149,000
- **Valuation of September 1996 was \$1,300,000 for Quick Sale \$1,600,000 for  
sale of individual portions (5), \$1,500,000 for sale as one parcel.**
- Debt – credit facility approval was \$1,020,000; LTV  
required at 70% \$1,457,142  
Debt credit facility with deposits included \$ 760,000:  
LTV required at 70% \$1,085,714
- **The failure to place deposits to the account  
created a change in LTV, to a deficiency in valuation of \$ 371,428**

*13.4 The bank then on 7.4.1998 (one day after failing to place a nominated in writing, interest payment to the mortgages) by using the APRA approved non- accrual accounting process wrote the account down to \$770,000)*

*Thus LTV and valuations were not of any use in the banks view except as bureaucratic processes to satisfy APRA Guidelines and use at mediation as false measure of viability. A dispute between officers over settlement values stopped early settlement then the court agreed with certain conditions agreed.*

- D. There are several major issues included in the above process firstly the evidence and judgment at [www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121](http://www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121).show the way the National Australia Bank (NAB) manipulated circumstances through failure to place deposits to the farmer's account increasing his Loan to Valuation Ratio (LTV) to make him unviable and how Queensland by cooperation with the farmer received a refund of about \$32.25M from the NAB through its Social Account. The problem being that dishonesty and culture combined to cause the farmer and the Commonwealth not to receive compensation for incorrect claims in Interest Subsidy situations.
- E. The NAB admitting the facts necessary to establish the claims as part of its NAB past refund activities then redacting its website to avoid legal actions by this and other farmers to receive their compensation or the Commonwealth to obtain is refund. [www.independentaustralia.net/.../national-australia-bank-redacts-website](http://www.independentaustralia.net/.../national-australia-bank-redacts-website))
- F. The only way the NAB could find the farmer in breach was to manufacture one and that was done when a NAB Barrister became a Judge and gave incorrect advice at Mediation to the farmer **"The dog that did not bark: mediation style"** The ADR Bulletin vol 4 no. 2, June 2001.
- G. Falsely stating the Loan to Valuation Ratio to justify unlawful acts. The banks' power over small business (Dr.Evan ...newsweekly.com.au/article.php?id=760  
Was one of the ways NAB forced the farmer to mediation by refusing his deposits he still had to make his payments and so the value of the interest subsidies was eroded as he had used the subsidies to hold his heifers over 4 years making him very profitable after the end of the interest subsidy period.
- H. By examining these refused deposits one stood out as illegal and that was a refusal to accept a deposit for \$54,500 and then 7 days later demand a repayment of \$30,000. The circumstances were pleaded to the Queensland Magistrates Court as a criminal cheating complaint and the facts of this complaint was upheld and the complaints validity accepted by the Commonwealth Attorney General before filing. An avenue for the Commonwealth to regain its' lost funds estimated at \$300M.
- I. The NAB not only avoided correction of accounts but continued falsification after a forgiveness Deed had been signed and misapplied payments to avoid the conditions of Queensland Property Law Act 1974. Where at Section 85 (1)-(10) certain conditions apply using the valuations provided as a measure of sale at an undervalue in a similar method to the bank using LTV. To support this Act the original position of sale at an

undervalue or wilful default needs to be brought back under Equity so a true account can be taken of losses injurious to customers is found.

- J.** Clearly identified, at this time legislation and litigation all favour banks where in fact the banks concerned are not following proper legal practice consequently the application of the law in Australia has become so skewed to the banks it has lost its purpose. This is demonstrated in the submission by the three examples provided. The bullying tactics in courts has the judiciary especially in Queensland incapable of going past judges with commercial law expertise to the existing judiciary satisfaction. Consequently further bureaucratic organisations have to be financed and implemented just to protect customers from bankers plundering by using LTVs and other intangible processes.
- K.** In the particular NAB case quoted the Bank identified how under its mortgage the receiver will sell up all animals on a secured property as the property of the bank. If the owners wish to recover their animals or value thereof. The owner:
- \* firstly has to put up with a Police investigation, where evidence was shown to be manipulated and the judiciary support this manipulation.
  - \* secondly these cattle purchase funds were transferred between accounts by the NAB branch involved and in fact most probably by the offending bank manager.
  - \* thirdly attend court as a mortgagor charged with stealing the third party's cattle,
  - \* Fourthly identify the cattle but when it is to be shown the bank sold other livestock belonging to the other entities, the records disappeared or were not presented on the court file. (*Two possibly three of the Police involved in this evidence corruption have resigned and two Deputy Court Registrars have been shifted or resigned.*)
  - \* The banks' power over the agents concerned is shown here also as they had the evidence and did not present it to the court but when subpoenaed in another action did so but incomplete.
  - \* Consequently the actions of a senior judge in an Appeal to have that evidence presented originally was shown to be bad, as the receiver concerned was his next door neighbour and he admitted discussing the case with that neighbour at a date preceding the aforementioned appeal.
- L.** NAB disregarded the farmer a customer for 40 years had been through a previous NAB fraud investigation and had identified certain incorrect facts in accounts at that time. Consequently he checked his accounts and after being refused discovery in Bankruptcy could then prove NAB had a corporate culture of doing anything for profit and then covering it up by bullying and colluding.
- M.** In 2004 NAB admitted a corporate culture having these themes and so the practicality of the farmer's claims came to be. When NAB completed an "Enforceable Undertaking" he had identified to APRA and ASIC NAB false accounting in individual accounts and to stop this from being used in the courts they brought an action to make the farmer vexatious.
- N.** The action was heard on 17 .8.2005,



\*on or about 18<sup>th</sup> August 2005 NAB admitted it had falsified customer accounts by debiting cheque debit tax and incorrect fees a refund of about \$80M.

\*On 5 November 2005 it in its Annual report admitted it falsified the accounts of customers since 1992 by using Default interest as claimed by the farmer later and a further refunds affecting the farmers account but more to the point showing the method used by NAB to falsify interest subsidy certificates of debt to the advantage of the bank. **nab Fixed rate interest only interest refund [www.independentaustralia.net/.../national-australia-bank-redacts-website](http://www.independentaustralia.net/.../national-australia-bank-redacts-website)**

\* The judge concerned who had refused discovery earlier was a shareholder of NAB with 8000 shares the same number sold on Escrow to Federal Court Judges about 2000. Further to the point he would have known about the refunds and how these affected the farmers defence in vexatious orders because he may have been served with a copy of the bank's annual Report where these facts were shown. **"NAB \$4.7bn comeback" The Australian, 5 Nov. 2005; nab Fixed rate interest only interest refund [www.independentaustralia.net/.../national-australia-bank-redacts-website](http://www.independentaustralia.net/.../national-australia-bank-redacts-website).**

**O.** The judge found the farmer vexatious but the bank paid an estimated 400,000 customers over \$1bn.

**P.** Subsequently for the opportunity handed to the NAB by the courts the following actions in reaction have occurred.

- \* NAB forced the farmer to mediation to stop him from shifting to bully the rest of the farming community under the Bundaberg Rural Manager's District.
- \* After mediation NAB appointed a new rural manager to Gayndah to sought out the about 20 affected customers by corruption of their interest subsidies and other bad practices. The Gayndah manager drove past the affected farmers door to another affected customer and took no effort to sought out the problem with the original customer affected.
- \* At this time the Commercial Mediation Act in Queensland was withdrawn because a Judge may be guilty of fraud as a Mediator. **"The dog that did not bark: mediation style" The ADR Bulletin vol 4 no. 2, June 2001;**
- \* They had their corporate culture identified as the same stated by the affected farmer.
- \* NAB refunded 400,000 customers over \$1bn (estimated) and others in England when the affected customer advised ASIC and APRA of the problems with NAB accounting. *(NAB past refund activities)*

- \* NAB use of false information in criminal trials was identified and the Mortgagors Protection Act of 2008 was proclaimed.
- \* The methods used to falsify criminal actions for fraud against farmers was identified and the relevant Acts changed.
- \* The method of corrupting interest subsidy claims and the process for retrieving some funds was identified to the Queensland Attorney General and some funds recovered.
- \* The senior Judge in Queensland Courts and other judges willing to overlook bank and receiver corruption of evidence to jail farmer customers (*3 Police resigned after complaint to the Crime and Misconduct Authority*) and falsely claim others livestock was identified and the public servants involved identified. (*2 Court Officers were moved or resigned after corruption of evidence to give the bank an advantage in the Courts of Appeal*)
- \* The banks processes in the courts to corrupt evidence in Appeals was identified and appropriate actions taken. The judgments concerned are open to rectification.
- \* The vexatious proceedings orders were shown to be a farce and the Bank still relies on the false evidence until a further action is launched but the true facts are ignored and this was identified by interpretation in March, 2015 in the Queensland Court.
- \* The claim by the farmer at mediation that the bank had falsified his LTV and viability assessment by its power over the valuer and the person assessing the viability has been upheld.

In 2003 he made a submission on the facts on viability involved to the Productivity Commission inquiry into Native Vegetation.

In 2007 a judgment **McDonald v Holden**, [2007] QSC 54 (15 March 2007) came down stating that manipulation of viability occurred and stating a partial definition on what needed to be included upholding the farmer's submissions at mediation and in 2003.

In 2008 the facts of the unlawful manipulations was described in part in the Productivity Commission inquiry into Interest subsidies.

There is no disputing the Queensland Minister for Primary Industries was aware of the facts of the manipulations in 2005 as it is reported by newspapers and he was informed from the farmer in 2002-3.

**R.** It can now be shown that the corruption of an LTV to force a default on a farmer has much wider application and is used by the NAB to cover-up corrupt activities in farmers' accounts. The further implications are that in courts banks are given unearned credibility for falsified accounts and other evidence and that the unequal credibility especially in evidence where a farmer can give expert evidence against a bank will mean the involvement of the ASIC, APRA and others needs to be more insightful as some judges especially in Queensland prefer to hear cases for banks where they are customers or have represented possibly even as a consultant.

**S.** Example 2;

In this situation Westpac Officers realised a person had acted while banned by statute as a company director. He had a group of companies financed by Westpac and had exceeded his LTV on the group borrowings. The process was to have an asset rich cash poor entity take the banned director as a guarantor and a share in the equity and thus increase his LTV to acceptable levels. This occurred by the same bank officers misusing their positions in conjunction with a mortgage broker.

Eventually the group collapsed when the banned director was jailed on another matter. The bank had given him a cheque book to operate on the account he had guaranteed and allowed the Goods and Services Tax refund to come to that account. The other director of the guaranteed entity realised the trap and did not pay the funds to the Westpac Cheque Account because the bank was allowing the banned director to operate on the account without a company minute stating he could. He paid it to another company account in another bank.

Westpac moved on the entity to recover by appointing a Receiver but the original party involved still had the property sold for \$15.9M. The banned director appointed a Liquidator and the bank was unable to sell the company assets because the banned director had a hidden interest in the vehicle used by the banned director to bring the property of the original entity into his group LTV. Westpac claimed to be unaware of this fact but evidence of the fact was shown in the banned director's bankruptcy prosecuted by Westpac. At trial Westpac claimed they were unaware of the banned director's interest, this trial was after the banned director's bankruptcy. Westpac realised \$4M losing \$10M for the original entity.

**T.** Example 3.

ANZ could not realise dairy machinery and offered the property to an existing customer and he enlisted a friend as partner and the partner provided security to ANZ with land and the bank gave the entities the funds to purchase the plant from ANZ. The machinery specifications were incorrect so could not be sold on.