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BANK REFORM

Brief History

In 2005 my family bought the Best Western Zebra Motel(Zebra) in Coffs Harbour for \$865,000. We borrowed 50% of the purchase price and paid it off in 3.5 years. In 2008 Bankwest commenced business in Coffs Harbour with very aggressive marketing. They offered us new loans to purchase another motel in Cooma, the Best Western Marlborough Motor Inn(Marlborough) with a loan of \$925,000. The purchase price was \$850,000. Additional \$75,000 was for legal costs, in other words 110%. Security taken over both motels. The terms of the loans were 15 years with the first 2 years interest only. Interest rate was BBSY+2.5% monthly rollover with rollover fees of \$250 a month. I found the fees excessive but overall the offer was good. We met all terms and conditions of this loans. During 2011, Bankwest continued its aggressive expansion, with the

Bank Manager offering us a further \$1.36M for purchase of another motel in Eden, the Best Western Coachman's Rest Motor Inn(Coachman). The Coachman was valued at \$1.72M. The loan was to be on the same terms as the Marlborough, IE 15 years with first 2 years interest only. Interest was BBSY+2.5% rolled quarterly with rollover fees of \$50 only. In fact the Bank manager offered to restructure the original loan for Marlborough to quarterly with fees reduced to \$50, a saving of \$2,800. One major change to the loan documentation was that instead of the loan term being expressed as 15 years, it was expressed as expiring on 31 December 2013. It was explained to me that this was a review date rather than the of loan being 2 years only. We would not have accepted a new 2 year loan nor agreed to our original loans being reduced to 2 years instead of the balance of 13 years. We had no contingency plans to repay or refinance in 2 years. In January 2014 we were advised the loans had expired and the valuation had dropped so the Bank wanted the loans repaid. Thereafter Receivers were appointed and we were cleaned out. We lost millions.

We tried the FOS and say it and its replacement are toothless tigers. They are too close to the very people they are supposed to police. They are after all funded by the Banks. How can they bite the hand that feeds them.

We tried the courts and hundreds of thousands later we went nowhere. The Banks have too much money. Lawyers though supposed to be officers of the court, lie and hide facts to protect their clients. Receivers/Liquidators are also appointed by courts as officers of the court and sit in the shoes of the Directors, don't, in complete breach of the Corporations Act.

THIS UNEQUAL POWER HAS TO BE BALANCED.

Equality of Arms

Legislation must establish an independent bank funded specialist legal aid cell to represent bank victims when they are subject to legal action by a bank - consistent with the human rights principle "Equality of Arms." This legal aid should also be available should a customer wish to instigate legal action as a last resort. This will require banks to be responsible for their clients' legal expenses.

Banks should no longer be able to use this country's justice system as a weapon. Bank victims must have timely, proportional, and equitable legal support. Banks may have to be forced into becoming "model litigants." Abuse of the law and legal processes as a weapon to financially decimate their aggrieved clients is no longer tolerable.

Once bankers fully understand that a client has proper access to justice two flow on results will become the norm. First, banks will be unlikely to take a victim on in court - especially if they know the victim has a good case; and second, banks and bankers will be far less likely to engage

in unethical, unconscionable, immoral and illegal behaviour. In other words the industry will be forever changed. This is a key driver of sensible and long overdue reform.

Banks Must Become Model Litigants

How does it look in practice when powerful entities deliberately choose not to act ethically, morally and fairly regarding the legal process?

Here are the guidelines I recommend regarding banks. The bank commits to -

- a) Acting honestly, consistently, and fairly in the handling of claims and litigation;**
- b) dealing with claims promptly and not causing delay;**
- c) making an early assessment of the prospects of a matter;**
- d) Paying legitimate claims without litigation;**
- e) keeping the costs of litigation to a minimum by:
 - (i) not requiring the other party to prove a matter the bank knows to be true;**
 - (ii) not contesting liability if the real dispute is about quantum;**
 - (iii) using appropriate methods to resolve litigation including settlement offers or alternative dispute resolution; and**
 - (iv) ensuring that a person participating in settlement negotiations can settle on behalf of the litigant.****
- f) Not taking advantage of a claimant who lacks resources;**
- g) Not relying on a merely technical defence against a claim;**
- h) endeavouring to avoid, prevent and limit the scope of litigation (including by participating in alternative dispute resolution where appropriate);**
- i) Equality of Arms - thereby agreeing to fund their client's legal expenses equal to their own expenditure; and**
- j) apologising where the litigant has acted wrongfully or improperly.**

Some incentives for the financial institutions

All Financial institutions who are current licence holders contribute .0001 of the the turnover based on annual financial returns. This is merely \$100 for every \$1,000,000.

To avoid courts being swamped by legal actions, customers are to follow existing complaints procedure IE IDR and EDR mechanisms. The legal aid is to be available for any Advocacy Services.

Any claims made by a customer that proceeds to EDR or courts are to be treated as Statutory declarations and breach of that should incur appropriate legal and civil penalties. This is to deter any customer making false claims.

Where IDR and EDR fails and matter proceeds to court, should it be found against the Financial Institution, the penalty is to be 3 times the amount loss suffered by the litigant with maximum of \$10M.

A Whistleblower legislation be enacted or amended so that where anybody within the industry exposes a misconduct, customers loss, tax evasion, fraud, corruption, a penalty is imposed, 25% of the penalty is directed to the whistleblower/s. A suggested legislation is as attached.