

## **SUBMISSION – IMPAIRMENT OF CUSTOMER LOANS**

**SUBMITTER** – Michael Sanderson

**RELATIONSHIP** - Director of Styx Holdings Pty Ltd and Guarantor

**BANK** – Bank of Queensland

“What kind of justice is it when the nobleman, the banker, the money lender, in short, those who do nothing productive, glory in riches while the day labourers, teamsters, blacksmiths, carpenters and field workers, whose work cannot be dispensed with for a year, can sweat out a miserable existence at a level below that of beasts of burden. Our animals do not work so long, are better fed and have greater security than they do, for our workers are pressed down by the hopelessness of the situation and the expectation of beggary in old age. What they are paid does not cover their daily needs and to save for old age is out of the question. So we find shocking waste, luxury, triviality and vanity on the one side and abject misery on the other.”

Sir Thomas More, ‘Utopia’, London, 1515

## **INTRODUCTION**

The above extract is 500 years old, but would seem as relevant today as it was then. This submission will outline dealings with the Bank of Queensland (BOQ). What should be front and centre in the mind of the reader and the committee at all times, is that the Bank of Queensland had normal, standard business options available that would have resulted in no loss to either party. This submission will demonstrate that the valuation system in this country is so rubbery that it lacks any credibility. It will illustrate categorically that this bank as well as their agents could only be described as predatory, incompetent and inept. The submission will also show that these organisations are able to carry on this trade with impunity with the tacit approval of the legal and political sectors.

We in this country are seeing the movement of capital from the productive sector to the non-productive sector. This is having a devastating effect on this country’s productivity that manifests itself as increasing national unemployment, expense and debt.

If the political and legal sectors continue to fail to address this movement of capital they will stand condemned. To effect meaningful change they too will be required to remove their snouts from the trough.

On the 23<sup>rd</sup> of July 2015, the day before these submissions close, I will be attending the Brisbane District court as a self-litigant to attempt to argue the legal principle “Equality of Arms” which the Australian Attorney General’s Department says must be observed to ensure a fair hearing and fair trial. (Refer attached pages 004 to 008) For too long, the influential, rich and powerful have used the monetarised legal system to bludgeon the poor and weak. Although not all, a significant proportion of the Judiciary should be condemned for their indifference, arrogance and detachment. It could also be argued that the monetarised political system is also guilty of the same.

Because I will not have the time to include the outcome of this hearing in this submission I would like to front the Parliamentary Joint Committee to give verbal testimony.

## SUBMISSION

Due to the potential length, complexity and the significant amount of supporting documents of my case, I have chosen a linear narrative style overview of the key points and included the key documents relating to that narrative. Should the committee require a more comprehensive presentation or further supporting documents I am happy to supply them.

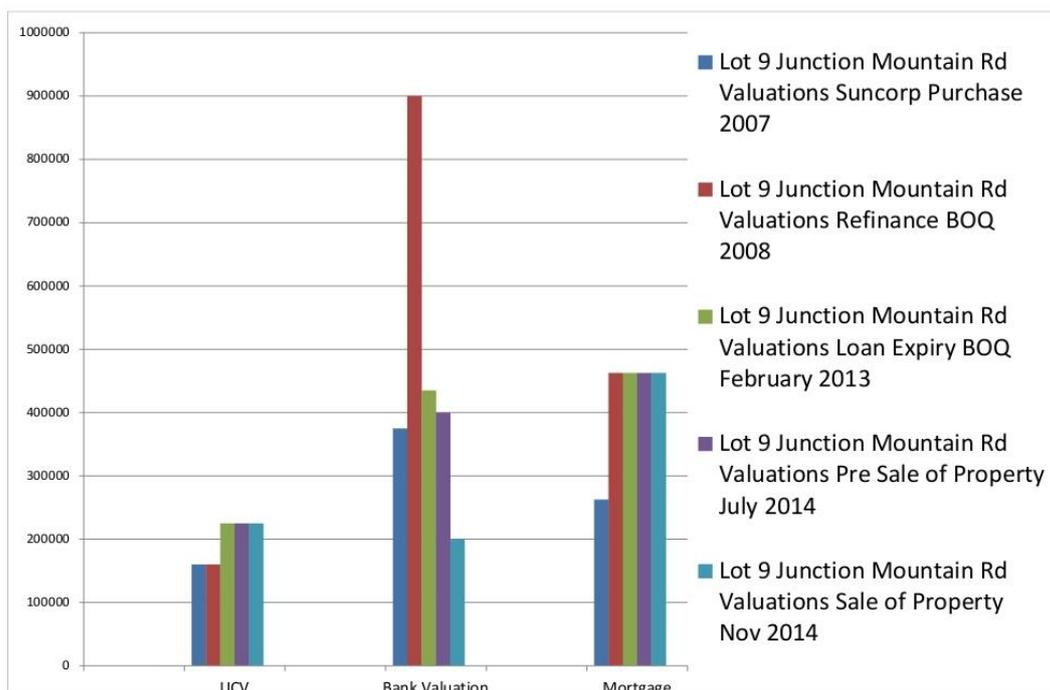
In 2008 the private company Styx Holdings Pty Ltd borrowed \$462500 from it was believed at the time, BOQ to pay out a Suncorp loan and for additional working capital. Although a ten year term was offered at the time, a 5 year interest only loan was entered into.

In 2013 when the loan fell due the company because of the Queensland floods and other unforeseen events outside of its control, did not have the cash to pay out the loan. BOQ would not roll the loan over because they claimed the value of the property had reduced to less than the mortgage.

What follows is a summary of five property valuations from 2006 to 2014:

1. 26/09/2006 - Suncorp \$375000,
2. 10/12/2007 - BOQ \$900000, , a 240% increase in a little over a year despite no substantial improvements.
3. 13/02/2013 - BOQ \$435000, , a 48% decrease in spite of substantial improvements.
4. 22/07/2014 – BDO \$400,000, , a further 9% decrease.
5. 26/11/2014 – BDO \$200,000, , a further 50% decrease to justify selling the property for \$210,000. This represents a massive 78% decrease in value from the \$900,000 that the property was valued when the facility was extended, to less than the unimproved capital value, in spite of significant improvement. To put it another way, the property would have to increase in value 450% to get back to \$900,000.

(Note: Copies of these valuations are attached, refer pages 010 to 082.)



The graph above (Refer attached page 009) is not distorted in any way. It illustrates the extremes of the valuations and makes it very easy to pick the odd man out. It would seem that the banks and receivers can merely dial a valuation and the valuers will custom make one to suit. We have seen similar activity from the group of rating agencies –

– who gave stellar ratings to destined-to-fail financial products distorting the perception of the market resulting in the GFC.

I believe the \$900,000 was an overvaluation of the property in order to enable BOQ to advance the company the facility. The mid valuation of \$435,000 enabled BOQ to engineer a default on the impaired loan. The low valuation of \$200,000 was to justify the sale of the improved property for less than the unimproved capital value.

BOQ would not roll the loan over even though the company had never been late or missed a payment, had no other debts or creditors and was current with ATO and ASIC. The company also had a demonstrated ability to service the facility at normal standard terms and conditions.

Despite its strong fiscal position, the company was unable to refinance via another lender because BOQ had advanced the facility based on the over valuation of \$900,000, an increase of 240% on the valuation just over a year prior. When the valuation collapsed and was reduced by 48% to \$435,000, the reduction of valuation despite significant improvements, to less than the mortgage of \$462,500, made it impossible to refinance via another lender.

At all times the debtor, Styx Holdings Pty Ltd was prepared to negotiate a viable way forward. Apart from two impractical short-term offers in 2013 and a three month Deed of Forbearance offered at the same time of "Notice of Exercise of Power of Sale" no viable offer was made. All the offers were not binding on BOQ, but represented significant condition, financial and time impost on Styx Holdings Pty Ltd.

The serving of the "Notice of Exercise of Power of Sale" on 10/02/2014 by BOQ left the directors of Styx Holdings Pty Ltd no alternative but to comply so as not to breach the Corporations Act 2001. At the time of the director's meeting when that decision was made on 18/02/2014 the loan account was less than the maximum balance of \$462,500.00. At the time, the company had no creditors and its dealings with ATO and ASIC were current. It was the serving of this notice and this alone that forced the directors to make this decision. The property was vacated and BOQ was advised on 10/03/2014 and again the company protested BOQ's actions.

At the time of the serving of the "Notice of Exercise of Power of Sale" BOQ was charging Styx Holdings Pty Ltd a penalty interest rate of 8.5% and continues to do so to this date. At the same time it was offering new clients an interest rate in the vicinity of 5%. It would seem that new business, with no track record is valued more than loyal, consistent performing existing clients.

The culture of BOQ and it would seem banks generally need to be questioned. On the 18<sup>th</sup> of March 2013 not long after the loan fell due, the manager of the local BOQ branch Hervey Bay acknowledged that to roll the loan over was a "no brainer" however he explained that it was the executive element of BOQ that were "playing hardball" and dictating terms. He went on to say they "sit in their air-conditioned towers and don't care about the impact their decisions have". These words where prophetic and described the actions of BOQ over the next two years and remains the case to this day. It should be noted that at this point (18/03/2013) I realised that I was dealing with a hostile bank and approached all future interactions defensively. The statement made by confirms that within BOQ the culture was unreasonable. There was also the acknowledgement that it was reasonable ("no brainer") to roll the loan over.

BOQ's culture was on full display when I met with the bank's representatives on the company property on 12<sup>th</sup> of December 2013. The meeting was organised by from KordaMentha (not declared), who was under contract to BOQ and who I discovered later was senior manager of BOQ's asset management group. Some of the highlights of that meeting were as follows:

1. At the start of the meeting the question was asked of , who was she working for, KordaMentha or BOQ. After a short uncomfortable silence advised that she was under contract to BOQ. At this point articulated BOQ's position and was effectively sidelined. The inclusion of a KordaMentha operative suggests BOQ had already decided on a course of action and was merely going through the motions.
2. became increasingly uncomfortable talking about relevant historical events as it would seem neither he nor had any knowledge of them.



On the 8<sup>th</sup> of May 2014 BDO, particularly [redacted] were appointed receivers and managers approximately two months after BOQ were advised they had control of the property. I complied with all the legal requirements in an open, timely and efficient manner. The property was listed for sale early in July 2014 another two months after their appointment and four months after BOQ had control and did so with the incorrect address and without listing the properties main features. Despite being advised that the listed property address was wrong and being supplied with the correct one, they changed the listed address to another incorrect address. They refused to correct the error despite numerous protests and it remained until the campaign ultimately failed.

The property was relisted with another real estate agent late in 2014 and was eventually sold (given away) for \$210,000 on the 2<sup>nd</sup> of April 2015. BOQ has received \$115,000 from the sale of a property that they had valued at \$900,000 when the facility was extended. It should be noted that whilst [redacted] was bungling the sale the Styx Holdings Pty Ltd loan account was being debited over \$3,000 interest each month plus BOQ's legal costs, and the total balance was increasing exponentially. [redacted] retained \$95,000 of the sale price to participate in, and organise this farce.

I also discovered that [redacted] falsified the unsecured creditor details on the Form 507 filed with ASIC on the 12/06/2014. Although the dollar amounts were not significant it would have had to been done deliberately. This matter as well as the manner that [redacted], particularly [redacted], bungled the real estate sale goes to the heart of the competence, ethics and professionalism of the receivers and their agents.

What is described above must raise questions with the committee as to the "role of insolvency practitioners as part of this process", item (d) of the terms of reference. It also illustrates the questionable relationship the valuation sector (b) of the terms of reference, has not only with the bank but also the receiver's. I would also encourage the committee to look closely at the relationship, the insolvency practitioners have with the real estate agents and the advertising sectors.

#### Document Withholding, Delay, Tampering and Fraud

I was never given copies of the loan and guarantee documents within the required period after the facility was extended. I understand that this is a significant breach of the bank's legal requirements. As various documents became available from 2013 to the current date I discovered what could only be described as document tampering and fraud. The following are some examples:

1. On the 05<sup>th</sup> of December 2014 I requested a copy of the loan application file (LAF) which I understand is a right. After what I believe was a strategic legal delay of forty one days part of the LAF, a copy of a business loan application was supplied on 15<sup>th</sup> January 2015. This document was a blank six page document (not filled in) allegedly signed by my Wife and I as directors on the 21<sup>st</sup> December 2007 and dated by an unknown party. Written diagonally by an unknown person, across three of the blank pages where the words "as per submission 14/1/08". It would also appear that there is a line of text missing directly above the signatures. This document raises a number

of questions:

- i. Why would I sign a blank document?
- ii. Why would BOQ accept a blank document?
- iii. Why does the document refer to another that does not come into existence for another 24 Days?
- iv. What happened to the line of text above the signatures?
- v. Who dated and noted the blank document?

I strongly encourage the reader and committee to refer to attached "BLA DOCS" pages 083 to 090 to see a copy of the document, associated email and detailed description.

2. On the 01<sup>st</sup> of June 2015 I received as part of a bundle of 219 documents, for the first time, a copy of a document "Guarantor Details". This document is a five page document that is also blank (not filled in) allegedly signed by my Wife and myself on 21st December 2007 and dated by an unknown party. Again, written diagonally by an unknown person, across three of the blank pages where the words "as per submission 14/1/08". See attached document "Guarantor Details" pages 091 to 095.
3. Although not as blatant there are other documents that are unverifiable and show evidence of tampering. These include but are not restricted to "Facility Details – Business Term Loan" and "unregulated guarantee and indemnity details"

BOQ has systematically not supplied documents when legally required to do so but also I alleged deliberately withheld and/or delayed the supply of documents. This has impaired and delayed our ability to prepare our defence and counterclaim in relation to action BOQ has initiated with regard to my alleged guarantee.

On the 20<sup>th</sup> of January 2014, 46 days after requesting, I was sent more of the LAF. These included two commercial submissions that I had never seen or been aware of until that date. They were prepared by \_\_\_\_\_, who I had never heard of or had dealings with previously. One submission was dated 21-Dec-07 and the other 14-Jan-08, which align with the dates written by unknown parties on the blank documents described above. These documents bear the BOQ logo and \_\_\_\_\_ is featured in the box labelled "Branch". At all times I believed I was dealing with City Pacific Finance and with the BOQ Hervey Bay Branch.

What I have described above is a sample and I am confident that more will reveal itself as I work through all the documents I currently have and those I will no doubt discover in the future. Even if one was to err in favour of BOQ as much as reasonable common sense would allow, I put it to the reader and the committee that it would not be possible to find BOQ was not at the very least incompetent. Their conduct at best could only be described as

imprudent as well as “deceptive and misleading”. I would argue there is strong prima facie evidence identifying conduct that is unconscionable and behaviour that is fraudulent.

### The Financial Ombudsman Service (FOS)

A major factor that allows the banks and their agents to carry on business in the manner described above is with the tacit approval of FOS.

I will not go into any great detail regarding FOS but will say; in my opinion the service is ineffective, rather they act as gatekeeper for the banks and its other members. It is my opinion that FOS spends more time finding ways to why they can't do something, than they do disclosing and laying bare the issues within the sector. The primary reason for inaction is the matter is outside their terms of reference. For example when there is a maximum ceiling of \$280,000 FOS is virtually sidelined with regard to the majority of real estate transactions. The other classic cop out is, the matter is better dealt with within the legal system. In our case how can that be so when the actions of BOQ meant I had no money, nor entitlement to legal services because of the commercial nature of the facility?

While it is funded by those that FOS sit in judgement of, FOS will never provide, impartial and accessible services to consumers. Rather it will continue to act as gatekeeper.

### The Legal System

The monetarised legal system with its technicality, language, ritual, misplaced arrogance and superiority allows those with wealth and power to use it as a tool to their own ends. I believe the legal system as well as our society has lost sight of the fact that the judiciary are mere public servants and their prime duty is to administer justice equally, fairly and without fear or favour to all that come before it.

I have been fighting BOQ as a self-defending litigant with no legal experience or training. My opponents are a national legal firm with significant resources, knowledge, experience and manpower. My task is made more difficult because I suffer from a lifelong condition known as Dysgraphia. In my case, the condition manifests itself in the inability to write longhand legibly and for any length and to read and absorb long text. This condition further restricts my ability to comply unassisted within the system. (Refer attached “Dysgraphia Doc”, pages 001 to 002)

Because the facility was commercial in nature I am not entitled to legal assistance such as Legal Aid. I have however attempted without success to get assistance from many sources, see list below:

Legal Aid NSW  
Justice Connect Referral Centre  
Australian Human Rights Commission  
The Law Society of NSW  
Australian Law Reform Commission  
Federal Attorney Generals Department

LAC Lawyers  
Taylor Street Legal Centre  
Queensland Advocacy Limited  
Queensland Association of Independent Legal Services Inc.  
Intellectual Disability Rights  
Court Support  
New Way Lawyers  
Mitchell Solicitors  
Just Ask Lawyers  
NSW Bar Association  
People with Disability Australia Inc.  
Legal Aid Queensland  
Queensland Law Society  
QPILCH  
Crown law  
Caxton Legal  
Disability Discrimination Legal Service  
Anti-Discrimination Commission Queensland  
Basic Rights Queensland – Disability Legal Service  
Joel Fitzgibbon MP  
Nick Xenophon MP

On the 23rd of July 2015 I am off to the Brisbane district court to argue the principle of “Equality of Arms”. As a self-litigant I am at risk of being rolled by the inequitable legal system and not even getting my matter to a hearing. I said to myself, this is not on. How is it that I cannot access the system on an equal basis as the bank? The system is supposed to administer justice which the rules say is paramount, to all, not just those with deep pockets.

I did a bit of poking around and came across the principle of “Equality of Arms” that the Australian Attorney General says is one of the conditions of a fair trial and fair hearing. (Refer attached pages 004 to 008)

*“What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of 'equality of arms', which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. The UN Human Rights Committee has found a violation of article 14(1) in a case in which a right of appeal was open to the prosecution but not to the accused.”*

<http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Fairtrialandfairhearingrights.aspx>

A bit more poking around uncovered the fact that there is significant legal precedent in common law for the principle. What follows summarises my understanding of the principle:

*“The concept of equality of arms has a distinctive European origin and can be traced back to the medieval era, when dispute was settled by ordeal of trial by battle. Because the trial would be to death, a rigid set of rules were put in place to ensure parity between contestants and each contestant was put at par in terms of armament and armor. This worldview midwived the common law system of adversarial proceeding.*

*In contemporary times the European Court of Human Rights relying on the European Convention on Human Rights has been responsible for re-conceptualizing and articulating the principles of the concept of “equality of arms” at trial. Article 6 of the European Convention on Human Rights embodies the concept. The European Court of Human Rights in Bulut v Austria defined the concept as “that both in criminal and non-criminal cases ‘everyone who is a party to such proceedings shall have a reasonable opportunity of presenting his case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent.’” The court has also come to define the concept to include access to resources and facilities, when it held in Steel and Morris v United Kingdom that the financial resources available to the accused undoubtedly impacts on the quality of legal representation he gets and that the denial of legal aid to the applicants had put them in an unacceptable state of inequality.”*

<http://acontrarioicl.com/2014/04/10/equality-of-arms-and-its-effect-on-the-quality-of-justice-at-the-icc/>

I put it to the reader and the committee that if this country had a legal system that was accessible fairly, equally and proportionally this committee might not be required? Might I suggest that by opening up access to the legal system could be achieved, by requiring the plaintive (the aggressor) to underwrite the defence where there is firstly a prima facie case and the defendant is at a monetary disadvantage. I believe this would be consistent with the principle of “Equality of Arms” and would decrease the burden on the court because the rich and powerful would be restricted in using their position and wealth to manipulate the system. I believe a requirement to underwrite the defence would ultimately irrespective of the result have little bearing on the burden of costs. Another advantages are there would be little burden on the public purse and no individual or authority would have disproportional control or influence.

### The logic of foreclosure and the impact on the Guarantors

The actions of BOQ have been financially devastating for me, a guarantor, leaving me unemployed and on the dole. What is most puzzling is that this has come about even though the Bank of Queensland had normal standard business options available that would have resulted in no loss to either party.

The bank was aware and warned of the impact their actions would have before they took them. The banks own valuation if correct at the expiry of the loan, also told them that the property value was less than the value of the mortgage. The bank has netted \$115,000 from

the sale of the property against a mortgage of \$462,500, most of which has already been expended on legal expenses. Why would a bank foreclose under these circumstances?

Why does BOQ pursue me legally and at great expense, knowing that I am on social security and as a consequence would not retrieve their cost let alone the principle?

Some of my thoughts are as follows:

**First** - The bank requires a judgement against the guarantors to enable them to access insurance. I suggest if this is the case this action would be tantamount to insurance fraud. It would be equivalent to a home owner that no longer wants the current home, burning it down and to claim the insurance requires an assessor report to eliminate arson.

**Second** - The bank did not lend any money. It sounds counterintuitive doesn't it, but BOQ's actions are consistent with the actions of someone who has nothing to lose.

*The Corporations Act 2001 in Australia states:*

*Section 9 providing finance means:*

*(a) lending money; or*

*(b) giving guarantees or security for loans made by someone else; or*

*(c) drawing, accepting, indorsing, negotiating or discounting a bill of exchange, cheque, payment order or promissory note so that someone can obtain funds.*

The Chicago Plan Revisited, Jaromir Benes and Michael Kumhof, IMF Working Paper August 2012, states:

*"... under the present system banks do not have to wait for depositors to appear and makes funds available before they can on-lend, or intermediate, those funds. Rather, they create their own funds, deposits, in the act of lending. This fact can be verified in the description of the money creation system in many central bank statements, and it is obvious to anyone who has lent money and created the resulting book entries."*

This statement is consistent with The Corporations Act 2001 in Australia Section 9(c). I have requested that BOQ supply evidence of "valuable Consideration" and to date they have been unable or unwilling to do so. Accordingly I advised BOQ I was revoking my power of attorney on 16<sup>th</sup> of January 2015.

**Third** – The Bank of Queensland officers are imprudent, incompetent and inept. They systematically breach Code of Banking Practice and Code Compliance Monitoring Committee Mandate 2013, Australian Securities and Investments Commission Act 2001, National Consumer Credit Protection Act 2009, and Consumer Credit Code. It would seem that ASIC, APRA, the legal system and the political systems perception is akin to that of the three monkeys.

Albeit one or more of the above three or something else, the reality is there is something inherently wrong with the events surrounding my dealings with the Bank of Queensland. I am also mindful that this sort of activity is not restricted to me, but infests the non-productive sector at large.

### External Consequential impacts

The reader and committee should not lose sight of the fact that the action of BOQ and other banks as well as their agents generally go far further than individuals such as me. Here are some of my thoughts:

1. The GDP of the country has been diminished. Less than two years ago I was a productive member of this countries primary production business community. If one was to consider the impact this sort of activity has nationwide I believe, rather know, it is significant.
2. The burden on the public purse has unnecessarily increased. Less than two years ago I was self-employed and looking forward to self-funded retirement. Today I am on the dole and will have to rely on the old age pension. At the age of 61 there is little hope of starting over.
3. Valuable capital is moving from the productive sector to the non-productive sector further stifling this country's economy.
4. Property values are being artificially diminished by what is in effect informal cartel activity by the non-productive sector. I put it to the reader and committee that their collective actions have a more devastating effect than any drought, flood or fire. One can only imagine the effect on properties in the area of my former farm when the value drops from \$900,000 to \$200,000.
5. The artificial devaluation of properties makes them easy targets for foreign buyers and a bargain as well. This has the potential negative impact on this country's food security, employment and retained GDP.
6. A significant base of experience and knowledge, built up over generations, will potentially be lost.
7. It kills people and makes others sick, increasing the burden on health and emergency services.

It is my fervent belief that if the current trend is not arrested we will see the downstream impacts of lack of meaningful action further increase and that increase will be exponential. We will lose what remains of the shell of once we were.

## **CONCLUSION**

Although it may be an exercise in cutting my nose off to spite my face, I have been critical of the political sector which you the committee are part of. This was not meant and should not be taken personally for I have little knowledge of each individuals back story. Only three members, based on your parliamentary profiles could claim to have any real life empathy

with those who come before you with their stories. I would like to think that you all have the ability to consider what is presented as individuals not as a member of a particular political franchise or allow individual beliefs or personal bias to influence a meaningful solution.

There are calls for a royal commission which I support. My concerns are, these commissions are cash cows for the legal system and are effectively run by the legal system. They are expensive and restrictive terms of reference, dictated by the political system, can manipulate the result. I would much prefer medium and long term, that accessibility to the legal system is ensured by the principle of "Equality of Arms" as described above. I believe a truly fair and accessible legal system over time will find its own just solutions. For now however a wide ranging royal commission is the best way forward. You should not procrastinate nor should the terms of reference be restrictive or it will be a hollow gesture and will be seen that way. It will also allow the politicians from both franchises to save some degree of face.

More good honest hardworking Australian producers are losing their lives, both mortally and financially to the non-productive sector than any terrorist. The sideshows that both major political franchises are participating in, as an attempt to draw attention away from real issues will ultimately condemn them.

Finally Susan George said in an article titled "Down the Financial Drain" published in the 2007 Society for International Development.

*"One no longer needs to produce anything tangible in order to make huge amounts of money. It is, in fact, distinctly unadvisable to involve oneself in anything so crude as actual things. Serious wealth comes from financial manipulation and for the manipulators, nothing is ever enough."*

Imagine the planet populated only by bankers, lawyers, accountants, advertisers and not to be forgotten, politician's. It would be great for the planet because nothing would be happening, no production. They would be naked, starving, have nowhere to live, no cars or roads, no nothing, and their money would have no value. They need a host to survive and you are by your collective inaction, allowing the host to be destroyed.

Michael Sanderson