The Committee Secretary,

Parliamentary Joint Committee on Corporations and Financial Services

P O Box 6100

Parliament House,

Canberra. ACT 2600

Dear Secretary,

Re: Inquiry; The impairment of Customer Loans.

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1. With reference to the above please find enclosed a Submission to the above inquiry and an attachment. This submission follows a long period of litigation between myself and the National Australia Bank and some comments and material from other situations I have been involved in as a consultant.

2. The National Australia Bank (NAB) process of destroying customers where the customer has a mistake in their accounts is ventilated here. In my case NAB intentionally carried out a process to recover an undercharged interest of $500 and continued the process unlawfully. The bank also claimed interest subsidy on the interest overcharge and finally 20 years later admitted in England their subsidiary, Clydesdale Bank had been forced by the Financial Conduct Authority to correct the situation.

3. This highlighted two other alleged unlawful acts in Australia for NAB firstly it did not pay customers, after the 6 year limit in Australia even when the actions constituted fraud and even if customers were in the 6 year statutory limit the bank did not pay them when they were in court, gone to another bank or changed accounts because if they had the writer would not have been bankrupted and lost his property, income, home and future.

4. I wish your committee best wishes in a situation where the vested interest of persons involved on behalf of financial corporations will twist and give false information to avoid the actual material facts of a situation of the financial institutions making. It is only through inquiries such as this that the true depth and aspects of corrupt practices in the financial industry is uncovered and not always. There is an irony in Australia that if someone breaks into your home and forcibly dispossesses you, the occupant by stealing the title. It is a criminal offence but when a financial institution does, it is seen as the fault of the occupant regardless of the issue, especially by those enforcing the law.

Yours sincerely,

L. Freeman. (24.07.2015.)

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;-

13.1This 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.***

13.2The 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).

13.3In 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***

13.4The 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**.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)**

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 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 slewed 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 18th 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**

* 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**.

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.

The bank then prepared a mortgage for the friend's property which he did not sign and lent further funds to the original partner in the dairy plant. Eventually the original bank customer was sold up by ANZ the debt was relatively small. ANZ sold the property of the original customer for a small value compared to its proper value and moved on the friend's property as a mortgagor. However he had not agreed to finance the original customer outside of the dairy plant. The bank then sold his property undervalue but had already realised the funds before the matter reached court and because of this fact he was stymied.

Banks in Australia, forcing guarantees on entities, to bring their lending within APRA Guidelines and company Risk acceptance (LTV), is creating a group of deceived individuals and making the situation where banks will never be trusted as an industry.

Banks in Australia are running the same risk as other countries and will eventually suffer the same backlash against lending credibility, as those countries. It is very comfortable for banks to act on the basis that any act that is good for the bank is acceptable behaviour and should be protected by the bank, in any way possible. Identification is dependent on bank honesty and rectification on bank willingness to behave honestly. So any obstruction to correction of bad behaviour is an acceptable practice to dishonest bankers.

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INTRODUCTION

This submission introduces the Committee to a series of specifically manufactured defaults to either avoid rectification or to gain a Risk position within the trading terms of the bank concerned when the bank knew it had made a mistake in lending approvals or accounting and gained an unlawful advantage.

Australians are so naive to banking process and in some ways so are the Judiciary that they allow bankers to dine out on their trusting the bank concerned motives. The facts are banks are no longer honestly dealing entities they make it clear they are there to sell money and services and rely on payment and incentives in effect commission from the top down. Until Australia finds a way of rewarding bank executives other than by intrinsic value of the company shares we will continue on a method of corruption of accounts to satisfy legislative and bank lending guidelines.

The submission below illustrates these facts and shows how when the bank realised it had breached Interest Subsidy Guidelines for Drought in 1992 by overcharging interest unlawfully, it then moved to force the farmer out of the bank by corrupting his interest subsidies rather than admit its' mistake and correct the situation. However in 2005 it inadvertently admitted the facts of the manipulation by the bank to gain more interest subsidies and when the farmer went back to court on the point in 2012 the bank redacted its web site to cover up the situation.

The NAB had proceeded to charge the customer by false evidence with stealing as a mortgagor but failed and relied on a senior Queensland Judge, neighbour to the Receiver covering up the false evidence to admit this relationship and discussions he had with the receiver, to avoid the evidence being admitted to the court. This submission shows the processes used in manufactured defaults and how this enforced by courts, by the bank using false evidence of debt and how Police and Court Officers consider themselves as part of the bank process in litigation, any act they do, will be immune from prosecution. In this instance 3 Police have resigned after complaints to the Crime and Misconduct Commission and the NAB program of refusing to place deposits to customers' accounts to make them unviable and manipulate LTVs is exposed. Three court officers either resigned or were transferred when their involvement was identified and the senior judge is no longer a judge.

Any settlements that could have taken place between the farmer and the bank were always affected by either the lawyers or the bank manipulating the process to fail. Consequently the process is nearly complete and this inquiry gives a forum for the government to proceed in the case of interest subsidies to obtain relief as Queensland did and to identify further opportunities to change banking guidelines to be effective for all parties involved.

SUBMISSION.

` **1**. Term of Reference (a)

practices of banks and other financial institutions using a constructive default (security revaluation) process to impair loans, where constructive default/security revaluation means the engineering or the creation of an event of default whereby a financial institution deliberately reduces, through valuation, the value of securities held by that institution, thereby raising the loan-to-value ratio resulting in the loan being impaired;

1.1 Loan to Valuation ratios are an initial credit determinant of loan security. Each financial institution sets its own security parameters. These relate to the following;

- Guidance from the Australian Prudential Regulation Authority- *Guidance Note AGN 220.1*

  Impaired Facility Definitions
  Scope
  1. The appropriate recognition and measurement of impaired facilities (e.g. assets) are key elements in the accurate reporting of an authorised deposit-taking institution's (ADI's)1 risk profile, in the assessment of the adequacy of an ADI's provisioning and reserving policies and, most importantly, in the assessment of its capital adequacy.
  2. The scope of impaired facilities must cover the full range of an ADI's activities. In classifying impaired facilities, an ADI must not limit itself to lending activities but must cover all other financial products and services provided by an ADI to the entity which give rise to a credit exposure to an entity.
  3. For APRA purposes, where an ADI is not required to hold capital against the value of any impaired assets sold, transferred or originated into a securitisation vehicle in accordance with Prudential Standard APS 120 Securitisation, such assets must not be included in an ADI's reported impaired facilities. However, where securitised assets do not meet APRA's clean sale requirements, these assets must be captured, as appropriate, in reporting of impaired facilities.

  Policies and procedures for recognition of impaired facilities
  4. Factors that affect the collectability of facilities include, but are not limited to:
  (a) indications of significant financial difficulty of a party to a facility; or
  (b) breach of contract, such as a default or delinquency in interest or principal; or
  (c) likelihood of bankruptcy or other financial reorganisation of a party to a facility; or
  (d) concessions in terms of a facility (e.g. interest or principal payments) granted to a party to a facility relating to such a party's financial difficulties; or

[1] *A reference to an ADI in this Guidance Notes shall be taken as a reference to an ADI on a Level 1 basis and a group of which an ADI is a member on a Level 2 basis. Level 1 and Level 2 have the meaning in Prudential Standard APS 110 Capital Adequacy.*

1.2 At no point in this Impaired Facility Guideline 220-1 January, 2007 at 4. is identified Loan to Valuation Ratio directly. However it is recognised by the Courts as a limiting factor in security claims by financiers as a breach of contract and enforced by the finance industry in several ways, with the greatest social impact where industries are made "At risk" by the financial institution or institutions. Examples of previous inquiry reports touching on this subject but avoided are the "Commonwealth Bank takeover of Bankwest" where Bankwest developer customers were identified "at risk" and recoveries implemented. It is possible that any development proposal was identified electronically and recoveries commencing before individual circumstances were recognised.

1.3 Thus the implementation of bank contract provisions may have been inappropriately used before customer input and without considering individual circumstances, based solely on risk assessment made mainly on Loan to Valuation deterioration, decided on an industry wide basis, which was only a speculative and intangible proposition. However history informs us, this style of recovery, commences valuation deterioration through expectation of lower values by the sheer number of identified impaired loans in the industry devaluing credit facilities.

1.4 This being disadvantageous unless the financier is in a situation of below required capital value and needs to raise cash through reducing outstanding facilities and secured property is the most reliable method of satisfying capital value adequacy and reducing facilities financed. *(Commonwealth Bank take -over of Bankwest) Bankwest policy on valuation as described to the* ***Senate Inquiry into the Banking Sector*** *by the Senate Economic Reference Committee at Submission 80 Page 6 "Valuation process The valuation process generally arises at three stages: the initial funding approval process: during the course of a review of existing facilities: and during the course of the sale of assets. Valuations during the course of a review of existing facilities arise from time to time under the existing terms and conditions in the customer's contractual arrangements. The reviews are conducted to ensure existing obligations such as repayment capacity and/or the*

security position and agreed LVR's are met and to retest cash flow and asset values. This is standard industry practice and consistent with APRA guidelines. Unfortunately the GFC saw the market value of a number of asset types reduce, particularly in commercial property. The deterioration of asset values was not isolated to Bankwest customers, as commercial property valuations were generally down across a number of sectors and regions. Bankwest relies on expert preferred lists (panels) of independent external valuers to undertake mortgage valuations under strict industry standards. This process ensures that valuations are provided by skilled and independent valuers with no coercive influence by the Bank. The valuer must: Be registered or licensed; Comply with the regulatory requirements governing licensing or registration; Be a member of the Australian Property Institute (API), as a Certified Practising Valuer (CPV); Comply with annual compulsory training requirements; Comply with the Code of Ethics and Rules of Conduct of the API; Be suitably experienced to undertake required valuations; Have suitable and current professional indemnity insurance cover. The process and standards for valuations includes: ***Detailed formal written instructions are issued to Bankwest preferred valuers to undertake valuation reports;*** *Valuations are to be based on current unencumbered market value (International Valuation Standards); Valuations must be completed in accordance with API Mortgage Security Professional Practice Standards and Bankwest reporting requirements; Valuers must not undertake any valuations where a conflict of interest may occur; A Director / Head of Valuations of the valuation firm must complete (or countersign) valuations; Valuers must maintain strict confidentiality in respect of customer details. The Bank's standard process is not to provide to valuers the particular circumstances of the proposed lending to be provided to the customer or any loan to valuation ratio hurdles that need to be met. When a customer is in default the Bank typically does not provide the valuation to third parties or to the customer, for appropriate commercial reasons. For example this may adversely influence the sale price if the asset is in the process of being sold."*

1.5 This same position applies in rural industry where cash flows and asset values are ignored by financiers when industry downturn occurs and the finance industry by its own actions increases, security value deterioration and implements that

proposition across rural land values and farmers (McDonald v Holden [2007] QSC 54 (15 March 2007). This is often expressed as viability of enterprises and ADI's treat these customers despicably; By

- refusing or altering, deposits to make the customer unviable, The banks' power over small business (Dr.Evan ...**newsweekly.com.au/article.php?id=760: "The dog that did not bark: mediation style" The ADR Bulletin vol 4 no. 2, June 2001; The Productivity Commission Draft Report into Drought Aid 2008 at EC Interest Subsidy interpretations. The banks power over small business (farmers) was secured through misplaced (Government) legislative and incorrect judicial enforcement www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121**
- increasing interest rates unjustifiably**, "NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab Fixed rate interest only interest refund www.independentaustralia.net/.../national-australia-bank-redacts-website.**
- the bank claiming customer subsidies incorrectly, using the customers' account without the customers knowledge,

  www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121;("Ministers agree to disagree", Courier Mail Brisbane. 5 April 2005.) NAB past refund activities 28.8.2006 refund of Interest Only Loan default interest redacted from NAB web site in or about February, 2012 (www.independentaustralia.net/.../national-australia-bank-redacts-website) "NAB $4.7bn comeback" The Australian 5 November 2005.
- bankrupting customers by using incorrect account values and false claims of debt value, even when Senate Inquiries *Shadow Ledgers 2000* identify the situation, courts refuse to implement the report recommendations, Australian farmers threatened by banks: **www.crikey.com.au/.../for-farmers-drought-not-the-most-dangerous-pre...Mar 7, 2014: National Australia Bank v [2001] FCA 1783 (10 December 2001) (refused discovery of bank statements in bankruptcy); (v National Australia Bank [2006] QCA 329, Brisb (1/09/2006) at [37][38][39][40][41]. NAB admission 28.9.2006 NAB**

admitted the material facts of the claimed false default interest claims and refunded to existing customers.

- making false claims under the mortgage to blame the customer through indemnified practices, **(www.independentaustralia.net/.../national-australia-bank-redacts-website) "The dog that did not bark: mediation style" The ADR Bulletin vol 4 no. 2, June 2001. 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**
- giving incorrect information to courts and enforcement authorities. (www.independentaustralia.net/.../national-australia-bank-redacts-website)
- Failing to include the removed customer in refund processes and contemptuously when fraud is involved restricting the refunds to the 6 year limit**.(www.independentaustralia.net/.../national-australia-bank-redacts website) "NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab Fixed rate interest only interest refund www.independentaustralia.net/.../national-australia-bank-redacts-website**
- Failing to include customers and ex-customers in industry refunds and denying the relevance of these processes in courts.: **(v National Australia Bank [2006] QCA 329 Brisb (1/09/2006) at [38][39][40][41]. www.independentaustralia.net/.../national-australia-bank-redacts-website) PJCCCS "Shadow Ledgers" Report 2000 and Guidelines for Mediation for un-received and incorrect bank statements issued by ACCC. Incorrect bank statements denied before the Court but admitted in correspondence on 26.3.2001. National Australia Bank v [2001] FCA 1783 (10 December 2001)**
- Forcing customers to the Financial Industry Ombudsman where the bank concerned works directly with the Ombudsman's representative on the account particulars and complaint. **(When the bank gives false information to the Court then false information to the Ombudsman is obvious.) The National Australia Bank refused to discover bank statements unproduced to the customer in courts and the Ombudsman agreement under "Shadow Ledgers" a policy decision was also ignored irrespective of the**

Commonwealth Attorney General supporting the customer in writing. The Bankruptcy Act 1966 (Cth) specifically caters for contracts with mediations or arbitrations such as the Banking Code of Practice by interpretation of Section 60(5) and its' application to Section 60(2).

- The financial institution knowing courts give it preference on facts and that accounts are regarded as correct in Australian Law falsify accounts in the court and demand those false accounts being accepted as evidence. Banks and the moral dimension - Bank Victims www.bankvictims.com.au/.../10905-banks-and-the-moral-dimension. **PJSCCS Shadow Ledgers Report, NAB "Enforceable Undertaking" 20 October 2004, and NAB past refund activities list. "The dog that did not bark: mediation style" The ADR Bulletin vol4. Kay v National Australia Bank Ltd [2010] NSWSC 1116 . www.independentaustralia.net/.../national-australia-bank-redacts-website)**

2 **Moral Risk**; The Australian Prudential and Regulation Authority (APRA) either agrees or indulges the finance industry claims of Loan to Valuation Ratio identifies Moral Risk. Banks and the moral dimension - Bank Victims www.bankvictims.com.au/.../10905-banks-and-the-moral-dimension Sep 11, 2013

The courts accept the proposition of Loan to Valuation Ratio as a method supporting breach of facility contract. Financial institutions have control of the system in several ways two of which; are

* an arbitrary value for security purposes by percentage acceptable as security e.g. Housing deposit system 80%), and

* secondly by accepting or rejecting any valuation presented.

2.1 The largest mortgage market in Australia by number is home loans when these are secured by the factor of 80% debt to valuation, it does not attract Mortgage Guarantee Insurance under previous APRA Guidelines. Thus valuation process and valuation acceptance guide the Credit Risk for any financier in housing.

2.2 In business loans the process of risk assessment is contractual consequently more available to manipulation.

2.3 Financiers access valuations either internally or externally. However any valuation has to be acceptable to the institution and secondly external valuers are subject to legal process. In this situation professional indemnity insurance premiums are prohibitive to valuation competition, so by financial pressure and the threat of legal process, financiers' can control all valuation functions. **(APRA Guideline APS 220 Attachment B-27)**

2.4 This allows the engineering of default process by valuation manipulation. One method revolves around the financiers acceptable standard varying mostly between 30% and 70% of valuation somewhat depending on industry and in the instance of short term capital provision sometimes 100% +.

2.5 These conditions of risk are normally available in the published credit conditions under APRA Guidelines and in financiers annual reports but through APRA Guidelines varied under certain conditions.

2.6 It is important to note here that courts ignore these legislated guidelines particularly on breaches of contract and impose a strict contractual position. Thus in some instances breaches of insignificant defaults can cause recoveries to be enforced and supported by judgment. Thus a temporary valuation decline can be used as a trigger for default.eg. Standard Published Westpac conditions of default are very broad and accepted by the court immediately a stated breach occurs, when in equity, the APRA Guidelines and the Queensland Property Law Act 1974 may give a proposition that 3 months should be allowed for rectification. <u>For rural industry this is important because a drought affecting valuations of livestock and property can be rectified by rain in any three month period.</u>

APRA Prudential Standard APS22 Credit Quality; Attachment B -28 clause 20

Policies and procedures must also provide for the formulation of instructions for the conduct of valuations. Each valuation request must be the subject of specific instructions to the appraiser or valuer. These instructions must cover (as relevant in each instance) appropriate issues such as valuation purpose; valuation basis required; valuation for insurance purposes; valuation method; market summary/commentary; and form of report required. Where a party other than the ADI instructs the valuer, the valuation must be appropriately endorsed for the ADI's use. Good practice in these circumstances would be to have the valuation

confirmed by an internal appraiser, or an external valuer, with the appropriate expertise.

At *23.*

An ADI's policies and procedures must provide for regular assessment of security values so as to ensure that the fair value of security underpinning provisioning, and any security coverage measures applied to facilities, is timely and reliably reflects values which an ADI might realise if needed. This is especially important where facilities are secured by assets that are susceptible to significant changes in value (e.g. commercial property) or where the margin for diminution of value of security is small (e.g. high loan-to-valuation loans).

2.7 A demonstration of this process is readily available in the Senate, *Economics Reference Committee," Post GFC Banking Sector" Inquiry, November 2012* Submissions of individual customer experiences with the relationship to submissions on credit and customer protection, reported in *Submission 10 to the PJCCFS- Inquiry into Family Business- 2012.* The conclusion being financiers lend "endogenous" money on their own narrow conditions contractually and change those conditions at will and cover the "endogenous" money against their balance sheet by various methods; one of which is (Securitisation) to overuse capital in the form of Collateralised Debt Obligations or Mortgaged Backed Securities priced through risk and swap rates. Consequently the mortgaged property valuations involved are fundamental to intangible security practices (sales of customer security) backing funds to cover loaned "endogenous funds". However the timing of this borrowing is a fundamental practice of banking and in Australia, some consideration must be given to the Reserve Bank holdings of mortgages purchased from the Banks during the Global Financial Crisis.

2.8 One problem being that the first instance credit or (mortgage) provided by the lender is supported by individual mortgage valuations controlled by that lender and secured by intangible products sold by the creator of the "endogenous" money (lender). So the only times real cash may change hands except as facility related interest and fees is when the security in the "endogenously" funded mortgage is sold, realised or repaid.

2.9 Just as financers squeeze Valuers out and create internal valuation processes the requirement for independent values by providers of intangible security (guarantors

etc.) becomes acute. Consequently the Reserve Bank interest in mortgage valuations becomes obvious as that institution has purchased and may be called upon to purchase further mortgages in the future. How the lender at first instance methodically controls valuations to support its creation of 'endogenous" money by credit can now be described in some particular instances. Prudential Standard APS 220 Credit Quality Attachment B-28 Cl 27 *In some circumstances, it may be difficult to determine the fair value of property assets (e.g. new properties) that have not yet achieved a stable income, or properties that are experiencing drastic fluctuations in income. In such cases, a forecast of expected cash flows must be used to estimate the value of the property. The discount rates used in calculating the value of security must reflect the opportunity cost (determined by way of comparison with prevailing returns on competing investments) of holding the property, assuming a long-term holding. Capitalisation rates must reflect expectations about the long-term rate of return investors require under normal, orderly and sustainable market conditions.*

2.10 Where non real estate security is provided such as CDO's Prudential Standard APS 220 Credit Quality Attachment B-29 Cl 28 applies;

Where collateral held takes the form of a charge over non-real estate assets, for example, fixed and floating charges and debenture mortgages over the assets, or guarantees or cross-collateralisation arrangements involving third parties, an ADI must ensure that all relevant collateral is properly scrutinised.

At no place in these Guidelines is shown an instruction that stops the practical application by a financial institution of accepting a top of the range valuation when selling the facility (money) and reducing the value to a lower level by instruction at a further time. In fact it is encouraged and practised;

*** as partial write down, under**

***Non- Accrual provisions of the Taxation Acts allows this advantage,**

***APRA allows a General Reserve for Credit Losses for some Authorised deposit Takers as a loss provision; and**

*** this provision may not necessarily be applied to Tier 1 Capital in the year of advice.**

2.11 Following are three examples of the misuse of Loan to Valuation Ratios both are unlawful but in both cases the bank customer lost in court situations to the

bank. These situations may be only in Queensland where the corruption of Commonwealth Funds in farmer schemes by banks is acknowledged, but the following Commonwealth entities acted in the manner produced hereunder:-

***** APRA was informed of the illegality of the bank concerned and how they used a false LTV in finding the customer unviable. **APRA's telephone call stated, they did not want to investigate the bank and APRA was there to protect the banks not investigate and prosecute.**

*** The prosecution section of ASIC**- after the writer had contacted Code Enforcement referring to the Banking Code of Practice, stated **they would not investigate the bank and prosecute in the case of the Government Schemes.** The Code Enforcement Senior Officer made it clear they would not be able to help because **the bank concerned would derail their investigation by the control of the information concerned.**

***** Several years later between parties on the issue but not being a bank and customer relationship the circumstances were considered by the Supreme Court on Appeal and the proposition put in the bank and customer relationship originally to APRA, ASIC and Code Enforcement was upheld by that court. The court upheld the proposition that in viability accounting situations all customer (farmer) assets should be included, thus making a finding in valuations for Loan to Valuation Ratio previously controlled solely by bank instruction. However this definition does not under the APRA Guidelines force banks to become all of a sudden compliant, especially where the officer controlling the account is singularly minded to destroy the customer**. McDonald v Holden, [2007] QSC 54 (15 March 2007).**

*** This poses the question of the social impacts on thousands of people because of the bullying tactics of (NAB) bankers not being resisted by the bureaucracy or the courts. How much misapplied Commonwealth money was paid to bankers in the 5 years between advice to APRA and the Minister identifying the corruption is partly published as $300M and the damage to farmers as $4bn.**

2.12 **Example 1**. (The writers' circumstances) The circumstances of the first example of misuse of LTV in farmer facilities to cover up false and possibly unlawful and illegal accounting previously.

.1 A farmer transferred his accounts to the National Australia Bank and the bank obtained a Drought Subsidy for him some time later. As part of the agreement the bank would transfer his development funds from overdraft to fixed rate interest only each time the overdraft reached $60,000 the bank valuation on the property being $2.5M. 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. At the end of the 4 years the bank manager transferred the accounts to make the debt within the terms of the original arrangements ($60,000 OD balance after transfer to Interest Only of the excess) and an interest subsidy claim was due 6 weeks later.

The customer had held all his heifers back for 4 years and prepared the property for the turnover of 400-500 Japanese Bullocks with pasture and legume, irrigation and cultivation. His debt repayment would come from timber sales and on property contracting, gravel and mining royalties, cash cropping and cattle. He had arranged his business to pay the bank the total debt in the seventh (7^{th}) and eighth (8^{th}) year of the facility. A new bank manager was appointed and immediately called the customer unviable by refusing his next interest subsidy, advancing the same value in funds from the Bank and increased his interest rate to category B about 2.75%. This new bank manager then took an incomplete signed signed budget form with him stated to be for production to the Qld Rural Adjustment Authority for interest subsidy claims, which he returned with incorrect figures as a budget signed and copied into bank records by the farmer.

The account was not required to repay the $30,000 for 6 months but the bank manager made a demand for the $30,000 after 2 months and advised his assistant

not to inform credit control. Credit control had told the bank manager not to continue his process to sell the farmer up. The bank manager then after 3 months wrote a letter creating a situation where the customer seemed uncooperative for the repayment of the $30,000. He then forwarded this letter in correspondence to the asset structuring section of the bank after losing the next interest subsidy application until it was impossible (time) to use interest subsidy to cover interest either before or after the date the subsidy was due, two months later.

Three months later the bank manager after he gave false information for reference to the Qld Rural Adjustment Authority, (QRAA) refused to accept the customers subsidy payment and issued a formal demand for a sum less than the subsidy payment. This is an illegality and was found on the facts to be such when the Qld Magistrates Court and Supreme Court found the facts could be criminal fraud by the bank (the limiting factor to prosecution being security for costs). Following the refusal to accept the interest subsidy QRAA investigated the farmer's property and development and found it satisfied viability and stated under circumstances the subsidy would be available to another financier.

The farmer arranged alternative finance which would have included all the corrupt sums charged to the account by the bank. The bank manager refused to inform the alternative financier of the quantum of the debt or cooperate in any way even when the farmer gave his permission in writing. He referred the farmer for viability assessment and the assessment did not include any income but cattle but still came through. But when it was returned to the farmer it read differently to the original, the farmer wrote a reply and the bank manager then forwarded it to asset structuring. NAB paid for a valuation, debited to the customers' account which also did not include the true values of the assets or all assets and called the farmer unviable to stop him from moving, but the farmer used his cattle and other assets to pay the bank interest. The bank forced the farmer to mediation and pressured him to accept the whole debt. However in 2003 the farmer complained to the Productivity Commission he was not unviable and later a judgment

(QRAA, CEO) [2007] QSC 54 (15 March 2007) stated all assets had to be included in viability decisions. In 2008 in the interest subsidy section of the Drought report of October 2008 by the Productivity Commission it stated the

legislation was not applied the same all over Australia. **www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121**.

The matter proceeded to court and the upholding and the involvement by serving judges giving evidence for the bank is described by **"The dog that did not bark: mediation style" The ADR Bulletin vol 4 no. 2, June 2001.** Shortly after this was published the alternative dispute legislation in Queensland was withdrawn by the Labour Government and this legislation had covered fraud by a mediator and gave a review period. an Independent with the support of a petition tried to introduce a Farm Debt Mediation Bill but this was refused by both sides of politics.

Matters proceeded in the courts the farmer eventually being found bankrupt and the article by **The banks' power over small business...newsweekly.com.au/article.php?id=760** covers the period to Bankruptcy and the banks attempt to falsify a criminal case to have the farmer jailed for stealing cattle he had sold and the funds had entered his account on instructions from the company concerned which also banked National and were transferred by the bank. The corruption of the court cases by the receivers and their agents not producing cattle sale dockets showing the true ownership of the cattle taken from the property and in fact showing illegalities by the receivers in selling the cattle was covered up by a senior Queensland Judge in another action and when this evidence later came before that same judge the bank lawyers had him admit the receiver was his next door neighbour and the neighbours had discussed the case and by implication prior to the previous judgment. The implications of the evidence were very bad for the bank and receiver and this process avoided the evidence coming before the court. The evidence has been either withdrawn by court staff or refused in every action since by Judges upholding applications including refusing applications for an equity account in March 2015 after the bank had admitted the material facts of account corruption as stated above.

In bankruptcy the bank told the court the farmer would be convicted of stealing as a mortgagee by claiming cattle that were at the heart of the stealing charge as being theirs when in fact the court later found no stealing had taken place. The

judge then used the slip rule to extend the bankruptcy petition outside of the provisions of the Act. He also refused discovery of the farmers bank statements that would have shown the inclusion of the false accounting above even though the PJSSCS 2000 identified corrupt bank statements could have been used in the court and in fact this is correct because the same bank refunded about 400,000 customers over $1bn over 6 years.

This creates a situation where the Commonwealth can claim back an estimated over $300m from that one bank the process is roughly described by

"NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab Fixed rate interest only interest refund. When the customer eventually gave the evidence of the account corruption of his accounts to the Australian Securities and Investment Commission and the bank was forced to admit its *corporate culture of doing as it liked and covering it up by any means possible* the farmer was charged as being vexatious. The judge was the same one as at bankruptcy and after the hearing story above was published from the annual accounts of the bank. The judge held 8000 National Australia Bank, shares granted to him by the bank in an issue to all Federal Court Judges in about 2000 and it could be argued knew from the same annual report, he could have received from the bank that any facts the accounts of the farmer were incorrect was verified. The bank lawyers did not advise the court of these facts so the judgment found the customer vexatious.

However to make this conviction viable the bank produced case in the Federal Court of Appeal where the court of appeal record book had been changed after the hearing establishing the appeal record book contents and this left out the evidence supported by the bank publications under their "Enforceable Agreement" with ASIC. A similar evidentiary problem occurred in the Queensland Court of Appeal by a Deputy Registrar who banked National and went to school with the previously mentioned senior judge. Both of the Officers considered responsible for the false evidence are no longer employed in either court service. Some of the Police involved in the cattle stealing investigation after a 3 year delay in investigation had resigned avoiding any departmental charges.

Effectively the customer was found unviable by false evidence of Loan to Valuation Ratio produced from a valuer paid and instructed by the bank at a time

when the bank could not rely on their manipulation of his deposits to cause default. This created a situation where the now admitted facts of that banks corruption of fees and interest and default interest in farmer accounts covers up claims that may be available to the Commonwealth and other farmers committed both before and after the incorrect valuation. The NAB, British subsidiaries had been found and forced to refund customers in similar positions with incorrect accounting and refunds, the customers having left the bank or changed accounts were denied refunds. The property was sold for less than half an independent valuer stated and the bank bankrupted their farmer customer in over a million dollar account for THE VALUE OF THE INCORRECT CHARGES that can be shown as a stated material fact refund on 28 September 2006. The same refund that affected the Commonwealth Interest Subsidy Scheme and other customers was redacted from the banks website between February and March 2012 and denied to exist in the Federal Court at about that time and later in Affidavit by the Banks' solicitors at appeal. This false evidence was ruled correct, without hearing evidence of falsified accounting in the Qld Supreme Court in March 2015. Evidence of the original false accounting used is at **www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121** and as referred at:-

2416	*10/06/2010*	*Letter, dated 9 March **2010**, from L Freeman to Member for Gladstone, relating to Freeman and NAB process and correspondence to Premier Beattie when the Commonwealth withdrew Queensland drought fees and funding [NB: Attachments in hard copy only]*

2.14.2 Shown hereunder is the process of interest manipulation established by the bank that is covered up by using the Loan to Valuation ratio (LTV) as part of viability, for the farmer in mediation where the false LTV through incorrect valuation was used to stop the farmer forcing the bank to allow him to shift by bringing an action to redeem.

Pursuant to the dates and processes in **"NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab Fixed rate interest only interest refund www.independentaustralia.net/.../national-australia-bank-redacts-website**

The applicant paid nett 14.20% when if the bank had renewed his facilities on time his account % rate would have been 10.70% (indicative rate +1%); less interest subsidy of 4% on FRIOL account rate of 8.815%. The applicant was disadvantaged by 14.20% default rate less nett rate if renewed on time or a nett variation increase of 14.2% - 4.851% for FMMA balances above $60,000.

Worked in accordance with actual figures and the banks' admissions of 28 September 2006 where it charged default interest against interest only accounts when not renewing the accounts on the appropriate day back to 1992. The rate on the renewal of the interest only account was 8.815% less 4% subsidy or a nett interest rate of 4.815%.

By the respondent not renewing the applicant's accounts on the correct day or the 27 April, 1993 it gained a nett interest increase of 9.385% on the Farm Management Account (FMMA) balance when above $60,000. On 27 April, 1993 that was $216,487.52 and paid interest at 14.2% instead of 4.815 %.

The applicant paid 14.20% default rate on his FMMA against a nett rate of 4.815% when transferred to the Interest only account or 9.385% each time interest was debited monthly until 31 May 1993 and then until 30 June 1996. The applicant paid dearly for the banks mistake of $553.35 under deduction of interest. The respondent for the 4 months in 1993 the under deduction took place made a stated $6548 actual profit (nett) on the account.

These incorrect interest charges were certified by the bank officer in the following years as correct debt for the purposes of obtaining interest subsidy on the applicant's accounts for the benefit of NAB. **(NAB subsidiaries were identified in 2013 using this practice in Britain by the Financial Conduct Authority "Final Notice" 24 September, 2013 against Clydesdale Bank PLC FRN 121873 the Chairman was , NAB CEO and Chairman of NAB's, international executive committee)** ASIC and APRA refused to prosecute NAB on behalf of the Government and the affected customers between 1999 and 1992 irrespective of the circumstances. The Qld Magistrates Court found NAB had a case to answer in fraud but the prosecution was withdrawn because of Security of Costs imposed by the court.

NAB refused to accept the applicants' interest subsidies following June, 1996.

NAB failed to accept the applicant's interest subsidy 31.8.1996. $30,000

NAB refused to deposit the applicants interest subsidy 24.4.1997.$54,550 and 15 September 1997.

NAB refused to allow the applicant to shift to another financier unless he signed a Deed exonerating NAB by denying him subsidy and accepting an incorrect viability assessment and paying for an asset deficient Valuation to support an incorrect Loan to Valuation Ratio debiting the funds to the farmers account.

In fact the self- represented farmer was representing the Queensland and Commonwealth Governments and all farmers found unviable at that time.

In 2003 he placed an outline of incorrect unviability, including LTV before the Productivity Commission.

In 2007 a judgment, , [2007] QSC 54 (15 March 2007) agreed the viability assessment process and accounting was incorrect.

In 2008 the farmer returned to the Productivity Commission and they agreed in their Draft Report October, 2008 that the law on interest subsidies was not being used correctly all over Australia in particular viability assessment. www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121

The National Australia Bank misused its internal write down facilities (LTV) to sell the customer up to cover-up its falsifications and illegal acts in his accounts and misused legal process to complete the process. Documents supporting the incorrect LTV are attached hereto and so are some judgment materials showing the illegalities and use of the incorrect LTV where sale prices were not accepted until the value reached the banks LTV value. Proof of such act documents accept the court findings were destroyed or not handed to the court under subpoena. This case could not be heard because of the farmer was bankrupted and the bankruptcy trustee refused all avenues to allow the farmer to bring a case.

3 **Example 2**. The circumstances of this situation and the use of Loan to Valuation Ratio includes the misuse of the banned company manager provisions and the misuse of the Westpac standard loan provisions to cover-up the non- compliance of Westpac with APRA stated Credit and Risk policies. This all combined to a possible breach of public policy.

3.1 In 2006 a Westpac client had paid a deposit on a property where after a week but before financing was complete with Westpac he had resold the property. Westpac refused his application even knowing the property was resold. But just as time was running out on his contract to purchase, it was identified if he could agree with a particular Westpac nominated, guarantor to guarantee the debt he would be able to finance through Westpac. Westpac refused the funds to his purchaser so the guarantor was his only option.

3.2 He agreed through a broker to a guarantee by the nominated party and nominated party's company took a 50% share in the property. This propped up the Loan to Valuation ratio of the Westpac nominated, guarantor when the value of the guaranteed assets were added to its balance sheet as an asset but only had a 50% guarantee debit against a revised value. The guarantor had an undisclosed share in the guarantee company but was treated as an independent director of both the guaranteed company and the guaranteeing company. By this move Westpac had held its security within its' stated LTV or security and risk limits.

3.3 The loan was for 12 months to allow the property to be sold and a profit split. Westpac had made an offer to allow the Goods and Services Tax to be used by the parties after it was deposited to the property holding company account. However in the meantime Westpac had given a cheque book on this account to the so called independent director of both companies. The other director of the guaranteed company was not advised of this availability of funds to the so called independent director.

3.4 Eventually the proponent of the property acquisition received the Goods and Services refund and placed in a company account not in the Westpac Group. Westpac agreed the circumstances were fluid and the guaranteeing company eventually increased its guarantee to cover the failed deposit within 3 months of the required deposit.

3.5 The guaranteeing company through its group soon breached its terms with Westpac and this brought to light the guaranteeing independent director was a banned person under the Corporations Act and had dealt with National Australia Bank, Australia and New Zealand Bank and Westpac in conducting business and loan agreements. Westpac moved against the guaranteeing company and the original proponent of the property purchase as a guarantor of the holding company also but not against the so called independent director.

3.6 In the court Westpac stated the worth of an independent director and the judge applied that fact. However the independent director at bankruptcy disclosed he owned a share in the guaranteed company. The judge disallowed that evidence because it came after he had made a legal mistake and pronounced judgment before hearing the defence, but it was in a Federal Court judgment as property owned by the so called independent director.

3.7 Westpac appointed a receiver to sell the property after the guarantor's group collapsed. The original proponent company director guaranteeing the property holding company had arranged a sale the secured initially purchased property. The so called independent director appointed a liquidator to the property holding company where if his shareholding of the guaranteeing company 50% held up the liquidator could demand the so called independent director's funds as the personal property of an illegal manager under the Corporations Act. The sale of the secured property fell through.

3.8 Westpac applied to have the so called independent director bankrupted. The receiver did not sell the property during this period of about three years. Within a short time of the so called independent director being bankrupted, Westpac revalued the property and sold it at a value of about 35% of the secured value. Australian Securities and Investment Commission (ASIC) refused to investigate because the so called independent director was bankrupt and could not manage a company for 3 years. However under similar conditions after a conviction for fraud he was managing companies within about 12 months of being released from jail from a disqualifying period for managing companies.

3.9 At the heart of this saga is that Westpac allowed three months in its published risk conditions to repay the technical default of not placing the funds of the GST to the Westpac account but another company account, after Westpac had given a cheques book and allowed a one person signature to use company funds without seeing a company minute. This placed in jeopardy the interest of all entities involved because Westpac moved against the so called independent director several months before appointing a receiver to the guaranteed company, holding the securities and this receiver refused to complete a sale of the security on Westpac instructions.

Did the original proponent of the property purchase and actual guaranteeing company director at the time of receivership (not disqualified under the Corporations Act) lose control of his guarantee and the value of the security by the actions of Westpac? lose the sale of the property by the actions of Westpac not revaluing the property until after the so called independent director was bankrupted and should his guarantee remain effective? Should he be entitled to funds for sale at undervalue or in account? Did Westpac arrange the circumstances to produce a Loan to Valuation Ratio when the guaranteed property was included in the so called independent director's group balance sheet for LTV (lending) purposes under the Westpac Risk Policy? The combined LTV making the so called independent directors, group within the required Westpac LTV at the time.

4 Example 3.

The misuse of information by the Australian and New Zealand Bank Limited on receiver sold machinery led to a New South Wales man and a Queensland Guarantor of his accounts losing everything. Where the Queensland man, used his property, to guarantee the New South Wales man, for the purchase of the machinery only.

4.1 The New South Wales man (NSW man) purchased a dairy plant under the mistaken knowledge of its date of manufacture as stated by the ANZ . The plant could not be exported because of this fact and ANZ had supplied the funds to purchase the machinery after a failed sale by its previously appointed receivers from another failed transaction.

4.2 In order for the sale to go ahead the bank demanded the purchaser have a guarantor for the value of the machinery. The guarantor was the Queensland man who allowed his friend to use his guarantee. The Queensland man had a language problem and was susceptible to naïve transactions because of his impediment.

4.3 The bank accepted the guarantees but the funds were extended further the bank producing and claimed an unsigned mortgage was sufficient to establish the guarantor's debt when it had been switched from guarantee to mortgage for further funds.

4.4 The bank appointed receivers when the machinery was unsaleable sold the assets of the NSW man where they were purchased very cheaply possibly by an associate of a person dealing or in the know of the situation. This property was then sold to a Superannuation Scheme for the approximate true value.

4.5 The bank sold the Queensland man up as guarantor of the mortgage not the machinery guarantee and once again an undervalue sale was used. This time the sale of one property was adjusted but not enough to satisfy the whole debt so both properties of the guarantor were lost. The bank claiming valuations in all instances at the time of sale as mortgagee were for value.

4.6 Once again the sale at undervalue was used in a guarantor situation to sell the guarantor up under circumstances where the APRA Guidelines on securities and risk may have been breached to cover-up bank misinformation and recover losses from an unrelated bank credit loss, by misusing guarantor services as a mortgagor this time with an unsigned mortgage.

5 Term of reference b.

Role of property valuers in any constructive default (security revaluation) process.

5.1 Property valuers are in competition for work and so follow instructions. The simplest instruction such as this entity could be a good client may be sufficient to identify to a valuer that the highest possible valuation is acceptable to the instructing bank.

5.2 Valuers when they are asked midterm to supply a valuation for mortgage purposes will provide the valuation on the bank's terms requested which obviously are susceptible to interpretation. As the value concerned is in many cases subject to imagination by the valuer then the instructions can be forwarded through supervision. This is identified in the Bank West instructions included by the fact the bank wants the supervisor from any valuation firm to sign off on valuations. The valuer does not receive instructions from the bank directly or necessarily for the banks purposes where supervisors may be aware of the process necessary to satisfy the bank in particular circumstances.

5.3 In example 1 the bank valued the property at $2.5m when accepting the application. When the valuer was appointed to force the entity to fail he valued the property at $1.5M. The first valuation was based on 2000 cattle being run on the property which the property had run until the bank refused to accept the customers interest subsidy deposits approved by Queensland Rural Adjustment Authority where the Chairman is now that original bank manager.

5.4 The valuer was instructed to value the property on 1200 cattle to satisfy the Asset Structuring team to make it $1.5M just outside the required LTV of $1.65M. The valuer did not include, timber, irrigation, royalties or cash cropping in his valuation. This is despite CSIRO mapping showing the area cultivated as suitable for cultivation.

5.5 The valuer was instructed through a signoff from his head office. This valuation corporation is subject to identified corporate practices by text book with the material available to the committee if required.

5.6 The point being here that on another valuation by the Queensland Rural Adjustment Authority the valuation was sufficient to satisfy an LTV closer to

50%. An independent valuer quoted in Affidavit a value of $2.5 million based on carrying capacity alone which made the LTV 40%.

5.7 During the sale process of this property actual offers were refused and valuations granted to the National Australia Bank appointed receivers until the valuation and sale price came down from $1.5M and reached $770,000 making the customer bankrupt, which was less than the value of his correctly adjusted accounts. This being the $770,000 the bank stated in its Non- Accrual Loan valuation and documents for security use. Documents are provided and explanations may be given if evidence is required from this submitting person. (v National Australia Bank [2006] QCA 329 (1 September 2006) at [43]. A next door neighbour applied to purchase the property from the agents at $1,100,000 but was refused and then at $900,000 was refused again. Any value above $770,000 would not have bankrupted the farmer and as stated with proper adjustments and law applied this was also over the value of the account.

5.8 The court processes and responsibility for bank corruption has to be improved. Currently courts still adopt the practices of the old Commonwealth Bank Act where it was stated a bank employee cannot be charged with fraud unless it is an offence involving a jail term. This old privilege has remained in legal references and is continued today. E.g. where a Letter of Demand is issued the current law it is a demand and so payable at some time. However in Australia an account balance charged by a bank has to be correct and it is subject to revision by Equity Account process. But where this is obvious and the advantage goes to the bank they can proceed without prejudice and so bankrupt a customer on incorrect accounting and the customer is irrespective of the provisions of various Acts locked out of review of the account by the application of court rules and vexatious provisions of the Federal Court Act. So that when the National Australia Bank made the admissions it had misstated accounts it did not have to concern itself with court judgment values because it knew the courts would make any applications on that basis vexatious. This is very unfair and iniquitous especially where courts previously made judgments on the submissions of the NAB and its lawyers on the same points against impecunious or otherwise restricted persons.

5.9 This was supported by by request to the writer to make a submission and his support in that letter to the inquiry in the Productivity Commission Access to Justice Inquiry. Documents tabled in Queensland Parliament at the time are attached to this submission along with a submission to the now Government Inquiry into Corruption refused as not being within the guidelines which has been identified as the method in that inquiry process to refuse all but submissions on the Motor Bikers legislation to obtain a controlled result.

6 In the instance of Example 2 no valuations were taken on the guaranteed property until the property was to be sold 3-4 years after repossession and only after the guaranteeing

illegal manager (independent director) had been bankrupted. This property had to wait for sale until that guaranteeing illegal manager was bankrupt because his appointed liquidator under the Corporations Act had the right to demand any or all of his funds as a shareholder in the guaranteed entities recoveries as he was an illegal manager within the definition of the Act. This came about because ASIC refused to act to determine the illegal director status and if it had not been for his admissions of ownership of the guaranteed company shares, Westpac's insistence that he was an independent director would have held. ASIC by not following up on this point may be held partly responsible for the time delay in the property sale and so by this act could be regarded as partly responsible for the innocent party the director trying to sell the secured property whilst both Westpac and the jailed so called independent director obstructed the sales for their own related interests.

6.1 The issue here is the valuation was established by the other director and original property purchaser having been ready to sign the sale at $14M twice each time stopped by Westpac firstly by refusing his funds without a guarantor and secondly by refusing the sale this time until the jailed guarantor- share holder, was bankrupt. The valuer creating the sale price of about $4M+ just ($10M) below the original contract value that was contracted 3-4 years previously.

7 In example "3" the valuations of the machinery and property were obviously incorrect or not obtained. Sales at undervalue don't come about when the bank and its' valuers are correct because it is those practices that instruct the selling agents. In this situation the sale prices were estimated at $3 M below the casually obtained valuations 3 years after the sales and after the ANZ Bank had bankrupted the guarantor for $3000 in legal fees because he would not sign a Deed not to sue the bank. He did not appear at his bankruptcy for reasons unknown to the writer, but has faced the continued obstruction of ANZ in obtaining the evidence of account and facts of the accounts he was said to have guaranteed.

8 Terms of Reference **c**.-

> c. practices of banks and other financial institutions in Australia using non-monetary conditions of default to impair the loans of their customers, and the use of punitive clauses such as suspension clauses and offset clauses by these institutions;

8.1 The banks and other financial institutions practices in contract breach default other than monetary is based on construction of documents that may or may not be lawful but are used by the corporation as practices that are accepted by the courts irrespective of public policy or cost to the community or the incorrect use of public resources. e.g. Under all bank contracts receivers are stated to be the agent of the mortgagor and had

the same rights as the bank. This suits public policy and judicial convenience and the courts departed from the sale at an undervalue as an equity accounting to one of equitable damages (Commonwealth Bank of Australia v [2001] NSWCA 440; (2001) NSWLR 614 applied in v Lord [2004] NSWSC 114 (4 March 2004) at 36.) This brings the complaint within the provisions of Section 60(2) of the Bankruptcy Act 1966 (Cth) and that stops claims for sales at undervalue where bank customers do not sign Deeds voiding claims, the bank then bankrupts them and creates the same effect. Consequently secured creditors use bullying if not unlawful tactics to avoid their legal responsibilities and disadvantage unsecured debtors. If a financial institution has a desire to bring down a customer it is not unusual for the same organisation to manipulate a large account or supplier destroying another business to stop trading.

Consequently the use of legal process automatically induces contract breaches against the mortgagor in favour of the mortgagee or secured funds provider.

8.2 As part of rural mortgages the contract states all livestock on a property belongs to the National Australia Bank and are required to be sold pursuant to the Queensland Property Law Act 1974.

(a) Receivers as agents for the mortgagor sell the cattle even if others claim them before sale by corrupting waybills and brands etc. The cattle are then paid to the mortgagee through the receivers account.
(b) In order to cover-up this process the bank and the receiver proceed to involve Police to investigate the circumstances.
(c) They hide the evidence of the sales especially when the sale funds between the farmer and the other entities are paid between existing accounts with the same bank.
(d) Thus farmers in this situation are seen as crooks by others involved whether he is or not and the bank officers and lawyers laugh behind their hands, because public resources are being used to denigrate in many cases innocent persons.
(e) When this is used to cover up bad bank practices the damage to the mortgagor or customer is irretrievable because bankruptcy stops the legal process. (v National Australia Bank [2006] QCA 329 (1 September 2006) at [35][36][37]).
(f) The facts are attached in a letter to Judge and another.
(g) When the affected entity applied for the cattle sold by the bank under the incorrect sales to be identified individually so the proof of ownership could be produced, the bank objected and this was upheld by the court.
(h) In a later appeal a senior judge and two other judges forced to resign in another matter found for the bank that regulated in formation did not have to be provided.
(i) It later transpired in another action where the evidence was subpoenaed that cattle were sold unbranded as part of the sales from the property. Other entities'

cattle were entered on the Waybills consequently sold illegally. The bank charging the farmer to cover up these facts.

(j) The senior judge when this came up in the action where the documents were subpoenaed was asked not to adjudicate by the NAB because the facts affected the receiver who lived next door to him.

(k) In this instance we have a senior judge, living next door to a receiver who falsified evidence to charge a mortgagor and retain livestock unlawfully sold and the judge was prepared to identify,

(l) he had discussed some facts of the case with the receiver,

(m) to avoid the malicious prosecution case of the mortgagor being successful.

(n) The Qld Government used these circumstances advantageously in another situation to recover losses from the National Australia Bank.

(o) The bank had the Deputy Registrar at appeal withhold the stated documents for cattle sales.

(p) The whole of the circumstance was after complaints to the Crime and Misconduct Commission that 3 Police the banks investigators and 2 Deputy Registrars of the Supreme Court of Appeal were affected one resigned and the other transferred to another position. (Letters from Police and complaints to the Court provided)

8.3 This shows that banks are using their influence from previous situations where the Senior Judge was an NAB customer and neighbour of a receiver and attended NAB social events, to have their legal practitioners support corrupt practices that are identified under the banks mortgages. This brings to the fore the National Australia Bank corporate culture identified in the ASIC and APRA investigation into the bank and the themes are hereunder reproduced.

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

A close management of information flows that discourages the explanation of issues of concern to the Board or to relevant external parties (such as APRA) (APRA Report into the NAB dated 23.3.2004)

This becomes in practice:

- The NAB fails to discover bank statements not produced to the customer,(v National Australia Bank [2006] QCA 329 (1 September 2006) at [38]
- NAB failed to discover documents at the correct time but at a later time advantageous to the bank. (Letter to Judges attached; v National Australia Bank [2006] QCA 329 (1 September 2006) at [37] [38] [39] [40]. NAB fixed rate interest only loan- interest refund on 28 September 2006; **"NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab fixed rate interest only interest refund www.independentaustralia.net/.../national-australia-bank-redacts-website.**

- NAB issued and continues issuing incorrect documents (bank statements in particular). **"NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab fixed rate interest only interest refund www.independentaustralia.net/.../national-australia-bank-redacts-website. Nab refunds previous years @ nab web site.**

- NAB gives incorrect information to courts**. (**Letter to Judges attached: National Australia Bank [2006] QCA 329 (1 September 2006) at [37] [38] [39]; **www.independentaustralia.net/.../national-australia-bank-redacts-website. Nab refunds previous years @ nab web site.**

8.4. The processes used by the NAB to cover-up their incorrect claims in Government

* Schemes; is produced: at (Submission 36 Name withheld, Australia's Judicial System and the Role of Judges by Senate Legal and Constitutional Committee 2009.)

* This is the most important use of unviability including LTVas a breach of Mortgage or contract, between a bank and its farmer customers and tends to sum up the misuse of mortgages in the first stage to manufacture an account default. **www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121**

* The problem comes where in fraudulent circumstances banks refuse customer deposits, and then continue the processes when customers refinance by using Mediations Deeds to refuse to allow a customer to move unless he signs the Deed as they produce it.(The banks' power over small business (Dr.Evan ...**newsweekly.com.au/article.php?id=760: "The dog that did not bark: mediation style" The ADR Bulletin vol 4 no. 2, June 2001; The Productivity Commission Draft Report into Drought Aid 2008 at EC Interest Subsidy interpretations.)**

9 Terms of Reference (d):

Role of insolvency practitioners as part of this process.

9.1 By necessity included are bankruptcy trustees in this section as the roles of bankruptcy trustee and insolvency practitioner are joined;

9.2 This submission at example 1 shows the relationship between false evidence of debt in the Supreme and Federal Courts. In this instance the Bankruptcy Trustee was given over $32,000 by the Inspector General to proceed in the Federal Court and defended every action and refused to sell the actions to the bankrupt farmer at conclusion of the bankruptcy. After the Farmers' application for annulment he wrote to the Minister to have the corruption of NAB farmer subsidy exposed because the courts refused his applications where the bankruptcy trustee was effectively subsidised by government to deceive government.

National Australia Bank Limited v [2001]
Q 7001 (26 September, 2001) Registrar
National Australia Bank v [2001] FCA 1783 (10 December 2001
Spender J
National Australia Bank v [2002] FCA 244 (12 March 2002)
Spender J.

9.3 This was in 2004 and the following material appeared in the Courier Mail in April, 2005:

Ministers agree, disagree

Steven Wardill

AUSTRALIA's primary industries ministers have failed to reach agreement on a Commonwealth proposal to offer grants instead of interest rate subsidies to drought-stricken farmers.

But the ministers have agreed on a national monitoring system that will streamline drought assistance under the exceptional-circumstances scheme.

The meeting in Darwin yesterday, which farmers hoped would yield breakthrough reform on drought policy, failed to reach agreement on key aspects of a six-point plan proposed by federal Agriculture Minister Warren Truss.

"While it was disappointing that we did not get a final agreed outcome today, we have at least got, at long last, an agreed set of principles to move forward on delivering a fairer, more efficient and equitable drought support system," Mr Truss said.

AT odds . . . Henry Palaszczuk, *left*, and Warren Truss.

Under the Truss proposals, which were backed by farmers, interest rate subsidies of up to $100,000 a year would become grants to pay for "drought-related and recovery expenses".

The proposal would have allowed debt-free producers to join other farmers and access the scheme to pay more pressing bills.

But Queensland Primary Industries Minister Henry Palaszczuk told *The Courier-Mail* he believed the current system was working well.

"When it comes to grants the problem is what size grant is really worthwhile," he said.

"There wouldn't be many farmers who didn't have an interest bill."

But Mr Palaszczuk said the new monitoring scheme would take the politics out of drought aid.

The ministers committed to spending $700,000 on a steering committee to bring the computerised monitoring system online.

Mr Truss was also forced to give ground on a new cost-sharing proposal for exceptional-circumstances business support.

He had proposed the states boost their share from 10 per cent to 50 per cent in the second year of any new agreement, but the states successfully argued to be credited for other drought spending.

Also in Darwin, the nation's environment ministers met to discuss a state-based carbon trading scheme and economically efficient moves to increase mobile telephone recycling.

9.4 In order to untangle the Bankruptcy the Trustee was served with a demand that by his actions he was supporting corruption in the Mortgagors Account and Government Schemes. He did not answer the demand. Hereunder are the documents served on NAB of criminal fraud and the facts found to be correct by the Queensland Magistrates Court denying NABs application to dismiss. The case was withdrawn because of the farmers' impecuniosity but is still available for prosecution.

Material Facts of the elements from the records of the Queensland Rural Adjustment Authority;-

Summons issued by the farmer and particulars and major element of the charge is shown hereunder:

Particulars

These are the Particulars of the Breach of Section 429 of the Criminal Code Act 1899 -1997 Queensland brought before the Magistrates Court of Queensland at Brisbane on the 31st day of July, 2002.

BETWEEN

AND NATIONAL AUSTRALIA BANK LIMITED (a Corporation)

The National Australia Bank were Mortgagees of the property of . In 1993 the National Australia Bank and the Defendant and the Queensland Rural Adjustment Authority agreed to receiving a Drought Subsidy from the Queensland Rural Adjustment Authority and that Grant should be paid to the Account of at the National Australia Bank annually for 5 years or $300,000 or the Drought ended. was also eligible for Productivity Subsidy under the same conditions.

Between the 7.3.1997 and the 24.4.1997 the Queensland Rural Adjustment Authority contacted the National Australia Bank , for verification of acceptance of the Annual Grant and recorded the following ; *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 that debt load is excessive and would not wish to see any increase.*

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9.4 To show that the Bankruptcy Trustee was only supporting the secured creditor National Australia Bank is shown hereunder the results from the civil complaint for the accounting falsifications denied in all jurisdictions by NAB and the Trustee and the later admissions;

v National Australia Bank [2006] QCA 329 (1 September 2006)

[36] Part of Mr argument included that his claim for malicious prosecution was property acquired after he had become bankrupt, as perhaps were his claims in respect of the failure to credit the proceeds of the sale of the 80 cattle, and that after his discharge from bankruptcy in 2005 those causes of action were revested in him, as his property. The argument rested on his construction of certain provisions of the Bankruptcy Act, and was dealt with in the reasons for judgment of the President in v NAB [2006] QCA 260 at [13]. The President held there that s 126 of the Bankruptcy Act, on which Mr relied, did not have the effect that after acquired-property of a bankrupt belonged to the bankrupt until the

bankrupt's trustee claimed it, and held that the position was not changed because Mr was discharged from his bankruptcy.19 I agree with the reasoning supporting those conclusions, which are binding in any event. The proceeds of sale of the 80 head

[37] By the end of oral argument the position regarding the complaint of un-receipted proceeds of sale of the 80 head was that the NAB contended that not all the relevant bank records were before this Court, and that the proceeds had been credited in reduction of the debt, as had been foreshadowed in an affidavit by Mr sworn 28 February 2002, and read in the Federal Court and on this appeal. While Mr made many references to the NAB's dishonesty in failing to credit the proceeds of those sales, there was simply insufficient information before this Court to conclude that had not happened. But if it did not, that was a matter for Mr trustee in bankruptcy, since those events were during the period of the bankruptcy.

Charging interest

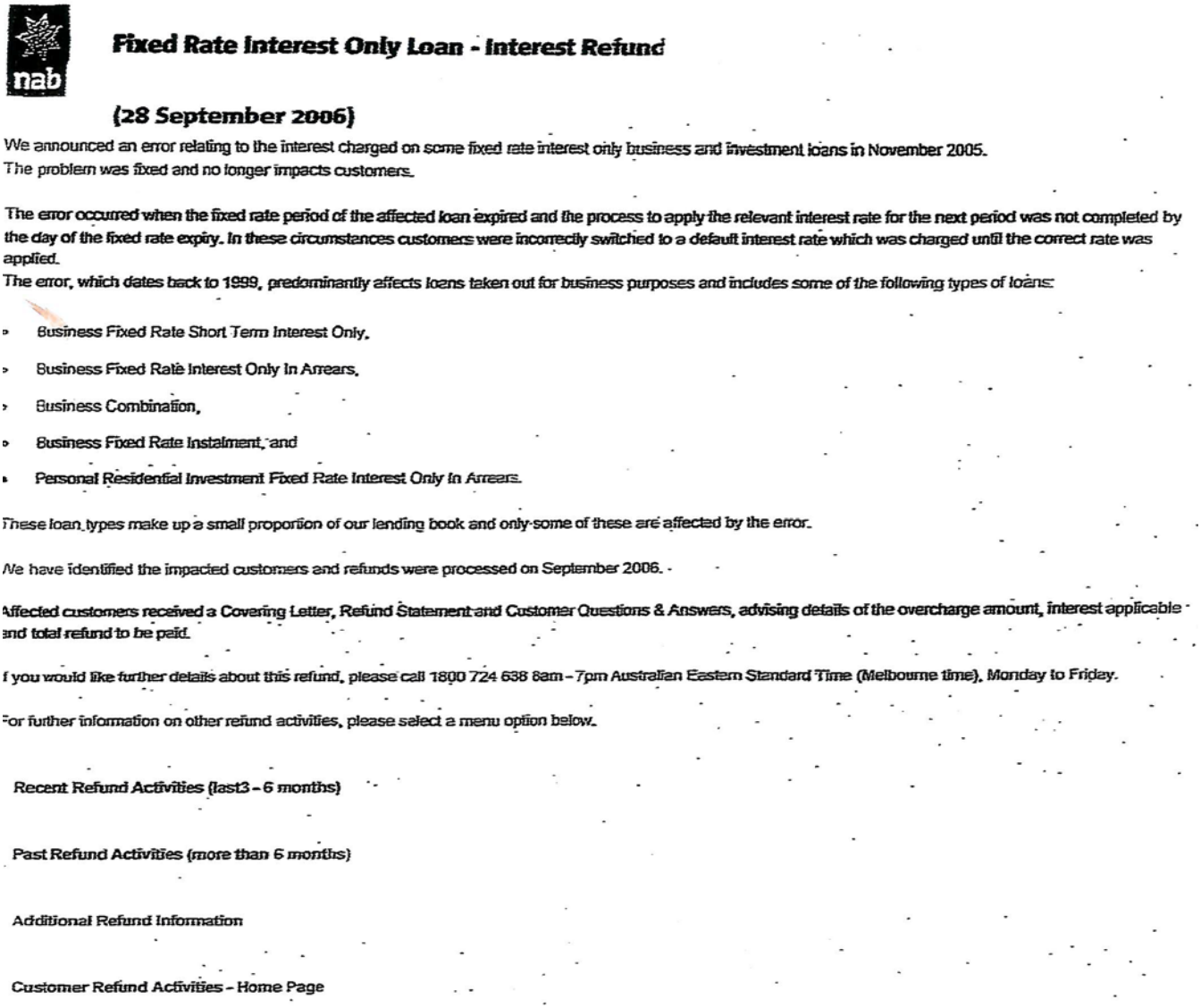
[38] oral argument made a purported connection between the asserted failure to credit the sale of those cattle into any bank account in his name, and the existence of what he described as "dummy" bank statements. He ultimately clarified that term as meaning a second set of bank statements for his account, which the bank had produced and sent to him in or about 2001, and in which his debt to the NAB had been increased by the addition of interest. He pointed to what he described as genuine bank statements for the same account, which did not record interest being charged after 7 April 1998. He contended that the "dummy" statements – the ones adding interest – had been created by the NAB to support its overall debt claimed in the Certificate of Debt relied on against him.

[39] Those general propositions were put in various ways in his oral and written argument. But his own material shows that it is common for banks which are not expecting actually to receive payments of interest, to not record its receipt, for taxation purposes; but to maintain at the same time a record of what the bank might get, should the debtor win the casket one day, or the security the bank held increase sharply in value. I was not persuaded Mr arguments demonstrated the pleaded deceit, and once again, if the debt claimed by the bank was dishonestly increased by the addition of interest, that was the matter for the trustee to challenge, not Mr

- The National Australia Bank made the following admissions on 28 September 2006 and referred by **"NAB $4.7bn comeback" The Australian, 5 Nov. 2005; nab Fixed rate interest only interest refund and redacted from NABs website in February 2012 during court process and**

denied in affidavit generally by the NAB legal practitioners www.independentaustralia.net/.../national-australia-bank-redacts-website.

The admission:



Fixed Rate Interest Only Loan - Interest Refund

(28 September 2006)

We announced an error relating to the interest charged on some fixed rate interest only business and investment loans in November 2005. The problem was fixed and no longer impacts customers.

The error occurred when the fixed rate period of the affected loan expired and the process to apply the relevant interest rate for the next period was not completed by the day of the fixed rate expiry. In these circumstances customers were incorrectly switched to a default interest rate which was charged until the correct rate was applied.

The error, which dates back to 1999, predominantly affects loans taken out for business purposes and includes some of the following types of loans:

- Business Fixed Rate Short Term Interest Only,
- Business Fixed Rate Interest Only In Arrears,
- Business Combination,
- Business Fixed Rate Instalment, and
- Personal Residential Investment Fixed Rate Interest Only In Arrears.

These loan types make up a small proportion of our lending book and only some of these are affected by the error.

We have identified the impacted customers and refunds were processed on September 2006.

Affected customers received a Covering Letter, Refund Statement and Customer Questions & Answers, advising details of the overcharge amount, interest applicable and total refund to be paid.

If you would like further details about this refund, please call 1800 724 638 8am – 7pm Australian Eastern Standard Time (Melbourne time), Monday to Friday.

For further information on other refund activities, please select a menu option below.

Recent Refund Activities (last3 – 6 months)

Past Refund Activities (more than 6 months)

Additional Refund Information

Customer Refund Activities – Home Page

This the same admission refund and supply of new bank statements referred to in

"NAB $4.7bn comeback" The Australian, 5 Nov. 2005 and at QCA 329/06 at [38] and in www.independentaustralia.net/.../national-australia-bank-redacts-website. Where it was redacted from NAB's website to allow the lawyers to file incorrect affidavits to deny the true facts in the Federal Court. The losses to the farmers account by that date was over $32M unlawful charges and adjusted interest and lost property income.

The Bankruptcy Trustee appeared in the court to support the NAB.

10 Term of reference (e)

e. implications of relevant recommendations of the Financial System Inquiry, particularly recommendations 34 and 36 relating to non-monetary conditions of default and the external administration regime respectively;

10.1 It is necessary to state here that currently Banks do not follow the law and lawyers and judges do not follow legislation or industry agreements such as the Banking Code of Practice. Judgments of the court will be shown here where these because of the bank approach slewed courts against the legal interpretation stated and administered. In the case of "Shadow Ledgers" the Federal Court both at Registrar level and appeal refused to discover bank statements that were covered under the Banking Code of Practice pursuant to Section 60(2) and 60(5) of the Bankruptcy Act where negotiations as mediation or arbitration existed pursuant to a judgment by Pincus J and detailed in the current legal text. **"Australian Bankruptcy Law and Practice" The subsection 60(2) does not, however, affect an arbitration where the claim made is under an arbitration clause in a contract. Proceeding towards arbitration in accordance with such a clause does not constitute commencing an action; Re Brown Ex parte Taylor v Queensland Electricity Commission (1988) 18 FCR 180.**

10.2 Judgments of both the FCA and FCACA ignored these facts to support NAB not obtaining discovery and the "Shadow Ledgers Inquiry material was ignored by the Registrar consequently the false evidence was used by the Queensland Government to obtain a refund of overcharges from NAB. But the customer and the Commonwealth are still unpaid. (National Australia Bank v [2001] FCA 1783 (10 December 2001) (refused discovery of bank statements in bankruptcy) National Australia Bank v Q7001 of 2001 Registrar Baldwin 26.9.2001).

10.3 When dealing in a situation where the bank customer had asked for a judgment making mediation or arbitration under the Banking Code of Practice; the bank told the court this interpretation did not apply and so the Court in QCA 329/06 made the responsibility that of the Bankruptcy Trustee. This mediation interpretation was confirmed by letter from the Commonwealth Attorney General 3 months later after the NAB had admitted the facts of corruption of the account denied in the court six times on different dates in different cases and admitted the material facts of the false default interest charges 3 days after the last case.

Unfair contract term provisions

`Recommendation 34
Support Government's process to extend unfair contract term protections to small businesses.
Encourage industry to develop standards on the use of non-monetary default covenants

The following recommendations are taken from submission to the PJCCFS- Inquiry into Family Business- 2012.

These recommendations can be appropriate to small business.

1. A definition OF (SMALL BUSINESS) family business should be encompassing and allow for lawful adequacy in permitting and creating class concessions in taxation, finance, title, governance, culture and enterprise structure.

2. Information and statistics are impractical at present. The corruption of enterprise information during the productivity drives where banks and organisations associated used incorrect statistics and calculations destroying many viable businesses. Productivity is not profit and it is hard to reconcile any statistic replacing a $ profit value as a measure of business efficiency.

Thus reliability of information input and conclusion can affect the whole class of family business and should be beyond varying factors by individual measurement when required.

3. The measure of contribution of family business whilst statistically important can vary most notably in the enterprise culture and community contribution. One of the most important ways government can help is to help adjustment where industries no longer have some geographical markets but expertise remains. e.g., many local types of brickwork have closed but the expertise may be valuable in other parts of the world where brick making is not as developed and plastering common brick surfaces is the preferred building process.

4. Most structural, organisational, technological, geographical and governance challenges are associated with financial structure and enterprise abilities. Whilst structural, organisational and governance can be addressed easily by legislation. Technology and geography are practical. Both can be aided by efficiency, e.g., carbon kilometres and government policy and subsidy or concession but both by themselves can be a practical barrier to enterprise survival.

Government can improve the facilities for family business by highlighting its contribution. Then acknowledging, in planning, development and operation, acceptable practices, flexible, but ahead of community and legal standards.

5. Family Trusts are an acceptable proposition for many family businesses and can preserve governance and facilitate organisation process and governance. However from recent press reports in high profile family situations, perhaps legislation to cover the Quist close responsibilities and sale at undervalue in trust legislation could support family business and wind up and bankruptcy in family business situations.

6. Cost and value of finance is addressed previously as stated no category specifically for family business is in the APRA credit Guidelines 200-1.2.3.4.and 22. Perhaps it could be possible early on to establish a common law definition for family business as part of the APRA credit guidelines and establish a category within those guidelines for family business.

7. The preceding submission deals with the problems and recommendations for businesses, consumer organisations and regulation both during and post GFC and lays out a sketch for information gathering, from economic theory of credit creation and ADI process to regulation and individual safeguards, where family business situations are included and can be improved. The necessity for improving credit control has been internationally recognised and Australia is part of the process. However the legislative and business, problem of inclusion in credit control a family business sector has to be addressed including debt roll over, during the process and at succession.

The development of standards for behaviour have to avoid the corporate cultures of the various organisations for ADIs and Lenders the following provisions in the Federal Court apply;

6 Civil proceedings after criminal proceedings

The Federal Court of Australia must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

7 Criminal proceedings during civil proceedings

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) The offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

8 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

9 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) The individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) The conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order,

The corruption applied to ADIs is denied in every court and as most civil Judges were previously ADI counsel they are very willing to avoid public policy issues and criminal conviction for banks as it may apply to their previous employer. In example 1; there are several acts involving criminal offences including false information to the

Queensland Rural and Adjustment Authority and false accounting and false evidence produced in a court. But judges avoid the facts by accepting incorrect information from the ADI based on the constitutional implications and their own experiences to favour the ADI concerned. This reinforces the culture in banks where anything that is good for the bank is acceptable behaviour.

In example 2; when ASIC had the opportunity to charge the illegal director of the various companies because he was disqualified through fraud convictions within the 5 years. They did not take the opportunity and so the judge did not take this into account and so the facts of the corruption of the security by Westpac employees to bring the fraud convicted person into bank risk terms was accepted. In the case of a guarantor this affected the other parties Westpac was recovering against, they obviously had no control and the situation demanded interpretation as a breach of public policy which was played down by Westpac so not applied by the Judge. The failure to charge the illegal director caused in part the liability to fall in the wrong direction and support Westpac even though they were aware the information they were giving the court was bogus.

Example 3: Once again the false evidence of debt produced by ANZ was accepted by the court and led to an innocent party being bankrupted. He did not know of the manipulation of the securities values until after bankruptcy conviction and the bank has controlled the information since even though the person he guaranteed has given him written authority to inspect all his account documents held by the ANZ.

In each of the three cases above complained to ASIC and in some APRA no actions were taken even though in two cases Police were involved. It is accepted by the Judiciary that bank officers can do criminal acts in the best interests of their bank and no consequences should befall them.

10.2 Corporate administration and bankruptcy

Recommendation 36

Consult on possible amendments to the external administration regime to provide additional flexibility for businesses in financial difficulty.

There are several legal processes that can be improved:

a. Firstly the sale at undervalue interpretation should be changed by Act of Parliament to the original process that is an action at account pursuant to Equity.

b. This will allow Bankrupts to defend their bankruptcies where ADIs control Valuers and valuations through financial control of the work.
c. There should be automatic discharge from bankruptcy where it is shown a secured creditor has placed a false quantum of debt before the court. ADIs are required to issue correct bank statements and when not, it should be in the case of a court of bankruptcy a much more serious offence where judges are forced to find against the ADI concerned.
d. Flexibility comes about by factual interpretation of the situation. Firstly viability and moral risk based of Bank valuation and quantum of debt are only really applicable in a minimum of circumstances.

From **Banks and the moral dimension - Bank Victims www.bankvictims.com.au/.../10905-banks-and-the-moral-dimension**. *Is published the summary of the moral risk as assessed in the United States of America and applied to Australia .*

The Australian banking industry needs to review its systems of security valuation and recovery and that is an appropriate forum.

The whole system is geared to moving to default interest to defeat the existing mortgagor and recover the security.

The bank then writes down the account for non-accrual tax deduction process but uses the default interest as part of the debt for judgment debt purposes.

If the customer pays interest, or his interest is current after the writing down of the account, it could be that the bank has been misleading and deceptive.

This is regarded as a low risk by the banking ombudsman, but may be important in the process of allowing existing customers to retain their secured property.

Legislation could require the bank to divulge written down values for the purpose of refinance and commence to realign the whole process of security recovery — as well as to have the mortgagee accept the banking industry's responsibility for destruction of asset value, arising out of the banking inefficiencies, associated with derivatives trading and misuse of credit.

On February 8, 2012, Science Daily published a guideline for borrowers stating where if a mortgage is traded the likelihood the mortgagor will be granted relief in delinquency is reduced significantly up to 36 per cent.

Science Daily, on October 20, 2011, also published a summary of a study published the same day in the American Journal of Public Health, identifying the loss of health from mortgage stress caused by mortgagors being involved in unhealthy trade-offs in food and prescription medications to continue payments.

The study found a 19 per cent variation in depression rates, 24 per cent variation in loss of food security, and 27 per cent variation in cost related medication failure, over the two year period of the study between mortgage stressed persons and those not under mortgage stress.

Financial counsellors supported the findings in a separate study.

These findings in the United States are duplicated here but are somewhat hidden by Australia's' health schemes — but the individual suffering is still evident.

The philosophy of what is good for the corporation is "right" has been brought to light by in Independent Australia when he describes the BankWest practice of railroading customers into failure as a result of "Return on Equity" concerns, so as to satisfy the Commonwealth Bank's institutional investors' demands for dividends.

The banks (and BankWest is not alone) have lost the sight of the social contract between the bank and society, depositors, borrowers and government to support the demands of institutional investors for dividends when the efficient use of bank assets would aid the retention of homes and small and medium enterprises in all sectors of the economy

It is clear that lost opportunity now for changes to mortgagee and mortgagor relationships will lead to further increased personal health problems, loss of individual customer wealth and transfer of that wealth to institutional investors, their bidders and debt collection industries, to the detriment of Australian society.

The Commonwealth Government should no longer tolerate the delinquent and bad banking practices that have such a detrimental social impact upon millions of Australians with mortgages and deposits.

It is possible for banks to operate efficiently and ethically within the statutes for the benefit of society, without the need for institutional investors demanding the 'right' return on equity.

11 Terms of reference; f.

f. extent to which borrowers are given an opportunity to rectify any genuine default event and the time period typically provided for them to do so;

11.1 The reality is the banks treat customers as the bank wishes not as any statutory or other direction requires.

11.2 In the process of example 1; the bank falsified the customer's account between 1993 and 1996, during this period NAB could have rectified the situation and the customer would have been grateful. However in 1996 after partially putting the

account back on its agreed footing, the bank then refused to allow interest subsidy and advanced the same value in funds by overdraft to put the customer's account out of order. The NAB then did not rectify this situation but kept refusing deposits and withheld other deposits over periods as small as one day to place the account out of the agreed terms and once again advanced bank funds.

11.3 On 1 May 1997 it issued a formal demand for $30,000 after refusing a deposit for $54,500 from the QRAA as an interest subsidy. This is regarded as a fraud or cheating the details and copy of the summons are provided at Pages 28-30 the facts as stated were accepted as sufficient to advance the Summons past the NAB application to dismiss.

11.4 The account was renewed on or about 4 July, 1997 for 3 months because under Section 96 of the Property Law Act 1974 if all interest is paid, which it was, the bank has to give 3 months' notice before acting against the customer up. At this time NAB required a valuation and a viability statement. The valuation came out at an LTV of just over 70% or $1.3M but the previous valuation for bank purposes was $2.5M. To come to this figure the valuer reduced the carrying capacity by half. The viability statement did not include any assets and income but cattle. The program was to pay the bank out in 1999-2000-2001 financial periods. This could be achieved by sales of cattle, timber, cropping and contracting and mining royalties. None of these streams were off the property.

11.5 The bank then rejected the farmer's submissions and detailed replies. Forcing him to mediation based on the viability and LTV. The corruption of the original default interest and the refusal to accept the interest subsidy and the judgment upholding the farmer's argument at mediation and how QRAA failed process supported the bank and the Productivity Commission eventual condemnation of the unviable approach is tabled:
at www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121.

11.6 The bank could not use the first Letter of Demand for $30,000 because as shown above the subsidy refused was $54,500 and this along with refused subsidies since August, 1996 caused the farmer to sell 300 Breeders. At mediation the mediator made a series of misstatements because of the circumstances at; The dog that did not bark: mediation style - ePublications
...epublications.bond.edu.au/cgi/viewcontent.cgi?article=1135&context...by
- 2001

At mediation still no payments had been missed the bank issued a Notice of Breach because all funds owing had not been paid Section 96 Property Law Act 1974 applied. The bank manager had not taken payments from the farmer's accounts for 2 months (the farmer paid them) but the bank avoided mediating the account corruption or the incorrect claims for interest subsidy, raised. The farmer was required to forgive the bank or as described by he would not be able to shift to another financier. (This is now changed with competition policy but still used by the banks) Opinion: The banks' power over small business **newsweekly.com.au/article.php?id=760**

11.7 NAB then combined the accounts but to get the debt up to the lending approval value, charged interest rates on Bills exceeding the rate for the day. However by February, 1998 the farmer had still not missed a payment which meant he had traded the twelve months referred to in the bank manager's statements to QRAA for refusing his subsidy. The viability study had been proven incorrect and the NAB had damaged irretrievably, the farmer by absolutely refusing 3 subsidy deposits a further in September, 1997.

11.8 The farmer made his last interest payment on 6 April, 1998 and the bank did not pay it to his account until 11 March, 1998, this date is stated as 15.3. 1998 on some statements, because Section 96 of the Property Law Act 1974 still applied and NAB had to manufacture a default. The farmer had traded the 4 years NAB stated he could not on 30August, 1996 until 25 September, 2000 the date of the first trial. The bank did not admit this point in the following trial but did so after trial. At appeal the problem of the debt being incorrect was raised but denied a hearing by the court. The matter went to the High Court where Special Leave was denied. At Bankruptcy the judge refused the banks affidavit of debt for the Supreme Court value which was also incorrect.

11.9 So by this process the bank knowing it had falsified the farmers' accounts covered up their false accounting, interest and false interest subsidy claims subject to the NAB issuance of incorrect certificates of debt and interest. Not only had the NAB covered up the overcharge in the farmers accounts but also that of the Government Interest Subsidy Scheme paid to the bank under the same process.

11.10 The NAB claimed the false account values were correct in all courts. The farmer having qualifications (MBA Adv) D Ag, Dip. RBM and specialist public administration accounting and experience in two jurisdictions and interpretation of the funding and returns in a third, sufficient to be able to testify on the accounting, was refused credibility. This included the NAB giving false evidence to the High Court.

11.11 The following situations applied:

*In 1992 NAB made a mistake the farmer's account under charging interest,

*1993, NAB commenced to overcharge the accounts by falsifying interest charges upwards through unlawful default interest charges back to 1992, admitted on 5 November, 2005 and refunds announced on 28 September 2006. No adjustments back to 1992 had been made and the bank refused them in all jurisdictions even

after the subsidiary Clydesdale Bank made its admission that corrective interest under charges was unlawful. (Financial Conduct Authority, Final Notice, Clydesdale Bank, 24 September 2013.Cl [4.19]. [4.21], [5. (5)] Clydesdale failed to pay customers who had left the bank or changed facilities and were ordered to refund these customers back over 9 years. Well past the 6 years paid by the parent NAB in Australia and where the law on incorrect bank accounting statements is the same.

* 1996, June, the bank changed the accounts back to the agreed process with a deposit of $30,000 due from interest subsidy.

*1996, August, the NAB refused to issue a certificate of debt for a claim for the interest subsidy and advanced the same $30,000 to overdraft and increased interest rates by 2.75%.

*! 996, November, NAB issued incorrect written information between the Rural Manager and the Asset Structuring Unit and the farmer.

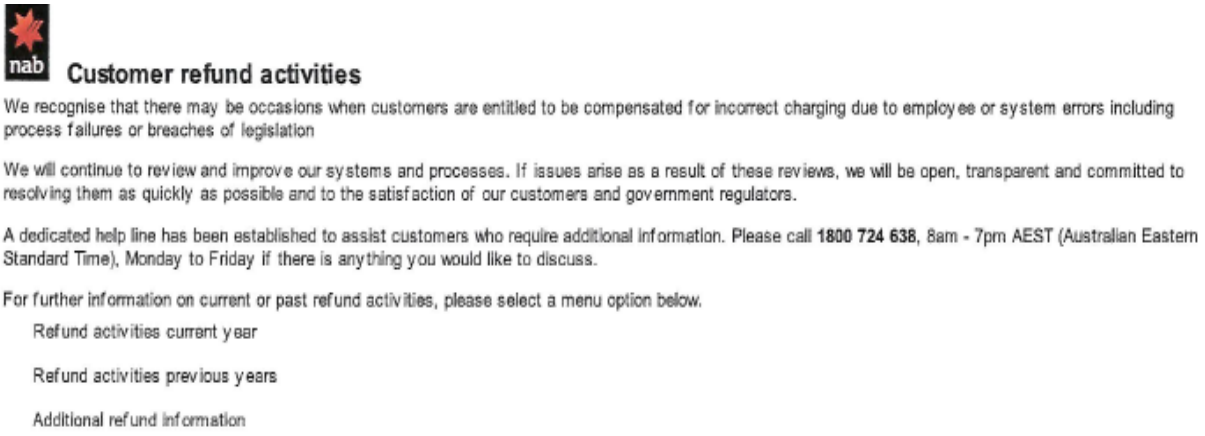
* On 5 February, 1997 refused to return an interest subsidy application and certificate of debt until 28 February, 1997 to default the farmer pursuant to the November, letter.

* On 24 April, 1997 refused the farmers interest subsidy deposit of $54,500 and issued demand for $30,000 on 1 May, 1997.

* The farmer sold cattle to a mining company agisting on his property to cover the shortfall in his account of $10,000 and that was transferred between accounts by the same NAB Branch. He had sold timber in 1996 and that was paid in August 1997 with the Bank Manager holding up the deposit until he contacted the legal section to try to avoid the deposit being paid to the overdraft account. NAB informed him it was unlawful to withhold the deposit in that way NAB gained an advantage by stating the account was out of order and charged default interest even though he was in receipt of the sawmill’s deposit. NAB then informed the sawmill not to accept timber from the property as the bank may claim the funds in any bankruptcy. The sawmill did not remove its timber or complete any more contracts. That effectively stopped the bank from being paid out in three years as timber contracts for large volumes at that time would require six years to remove the wood and the first contract was two years.

* By 15 September 1996 the NAB offered mediation and would not refund for the loss of subsidy by that time $85, 500 but stated in letter that they would not cooperate for me to receive interest subsidy due on 20 September 1996 effectively losing another 6 months of subsidy the way this fits appropriation and LTV will be explained in the next section.

* At mediation NAB misled the Mediator and the Mediator misled the farmer by giving him instructions on the bank's security as being the ultimate decider. In fact the bank had already breached its contracts by not paying deposits to the farmer's accounts. www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121.



Customer refund activities

We recognise that there may be occasions when customers are entitled to be compensated for incorrect charging due to employee or system errors including process failures or breaches of legislation

We will continue to review and improve our systems and processes. If issues arise as a result of these reviews, we will be open, transparent and committed to resolving them as quickly as possible and to the satisfaction of our customers and government regulators.

A dedicated help line has been established to assist customers who require additional information. Please call **1800 724 638**, 8am - 7pm AEST (Australian Eastern Standard Time), Monday to Friday if there is anything you would like to discuss.

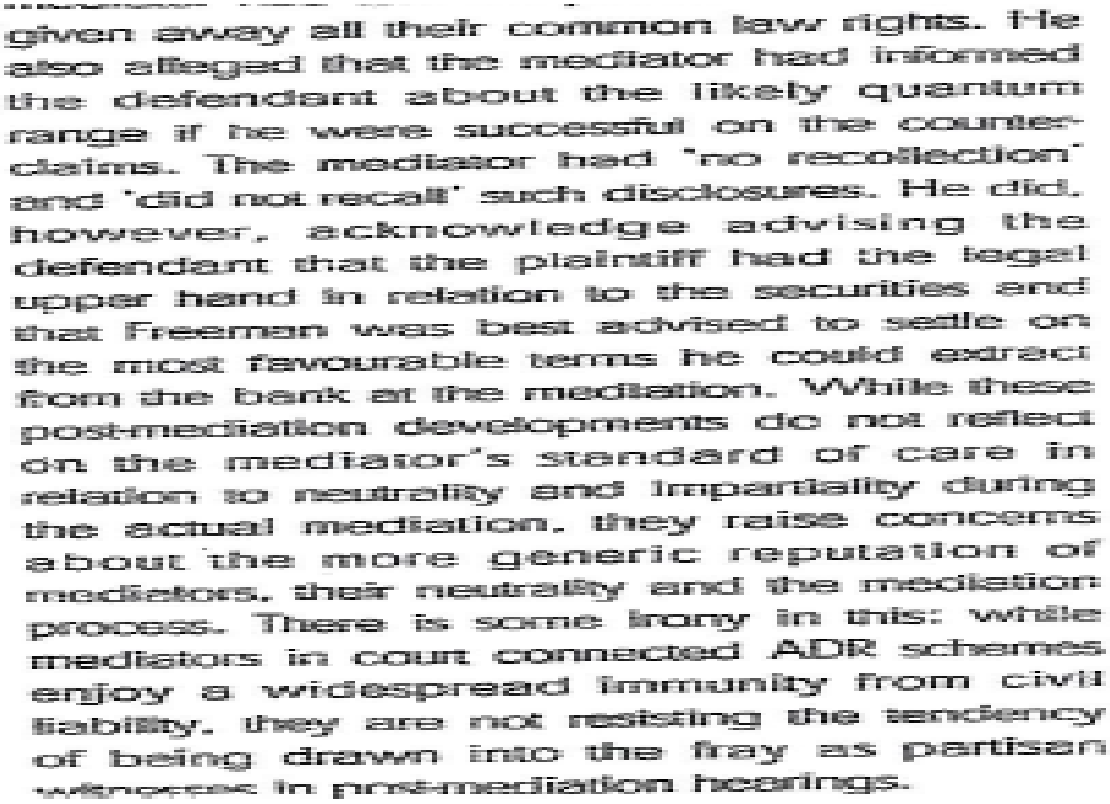
For further information on current or past refund activities, please select a menu option below.

Refund activities current year

Refund activities previous years

Additional refund information

"The dog that did not bark: mediation style" The ADR Bulletin vole 4 no. 2, June 2001.



given away all their common law rights. He also alleged that the mediator had informed the defendant about the likely quantum range if he were successful on the counter-claims. The mediator had "no recollection" and "did not recall" such disclosures. He did, however, acknowledge advising the defendant that the plaintiff had the legal upper hand in relation to the securities and that Freeman was best advised to settle on the most favourable terms he could extract from the bank at the mediation. While these post-mediation developments do not reflect on the mediator's standard of care in relation to neutrality and impartiality during the actual mediation, they raise concerns about the more generic reputation of mediators, their neutrality and the mediation process. There is some irony in this: while mediators in court connected ADR schemes enjoy a widespread immunity from civil liability, they are not resisting the tendency of being drawn into the fray as partisan witnesses in pre-mediation hearings.

Terms of Reference. (g)

11.12. The NAB constructed the mediation deed and ruled out any claims against the bank and claimed the incorrect account value as the debt. This fitted in with the current inquiries by ASIC, but varied the interest on Bills to exceed the published Bill rate for the period and the result was a Bill the same value as the NAB credit

provision value. The various tricks during this 3 months trying to have the farmer miss payments but in the end the bank refused a deposit to avoid the time provisions of the Property Law Act 1974 both to issue demand and issue a writ for non- payment of the debt.

* The bank only followed the law when it was convenient for their purpose otherwise they went through the motions and issued documents when it suited the bank From then on three sets of bank statements were issued for the same date and same sheet numbers all claiming to be the account value, all proven to be inaccurate because neither had credits for sale of assets inserted and all had different interest values. **(NAB Past Refund Activities- Default Interest 2010**) The actual set issued officially was denied in the court as being correct and when the farmer asked for the correct document the court denied the request and abandoned the NAB certificate of debt. The bank then relied on that certificate that was proven inaccurate but stated it as accurate and that was accepted by the court.

12 Terms of Reference; (h)

appropriateness of the loan to value ratio as a mechanism to default a loar during the period of the loan; and

12.1 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.

12.2 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).

12.3 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**

12.4 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)

12.5 Thus LTV and valuations were not of any use in the banks view except as bureaucratic processes to satisfy APRA Guidelines. A dispute between officers over settlement values stopped early settlement then the court agreed with certain conditions agreed. v National Australia Bank [2006] QCA 329 at [43]
Mr also referred to documents in the appeal record disclosing that the bank expected to recover perhaps $770,000 from the sale of "Glassford Vale", and internal NAB documents describing his debt as a "nonaccrual" loan. He relied on those to support his argument that the bank had agreed not to charge him interest and to take $500,000 only (and then increased the amount to $770,000). But all that those documents show is that the NAB only expected to recover $770,000, and no further interest. So far events have justified both assumptions. The property was sold for $770,000, and Mr did not pay any more in interest.

12.6 The moral dimension with LTV has already been discussed but the major problem for LTV as a guide is that it is controlled by the bank for the bank as a process, for effectively managing accounts to a result, the bank desires. In lending funds an LTV is just a negotiating element where APRA regards it as a standard in lending. It does not control credit unless stringently supervised or reduce risk as can be seen from above the true reason and similarly in 1000s of cases is used to cover-up bad bank practices by reducing lending values at the discretion of the bank and is used in mortgages as a system of control or used when the bank for whatever reason needs to exit a security..

12.7 In the case above the LTV $1,085, 714 was applicable to $760,000 the value the property was sold for but including the cattle and other sales, timber etc. the value was just short of the debt of $1,020,000 where incorrect interest values were used to bring the account value up to the approved lending limit of $1,020,000.

12.8 Perhaps ASIC may have to go to customer's accounts to prove manipulation of interest rates in the interbank lending rates. A quick search of ASIC complaints may even satisfy these facts from information already at hand.

12.9 Loan to Valuation is totally unsatisfactory as a measuring stick of loan viability;

- It is not a measure of customer integrity. www.bankvictims.com.au/.../10905-banks-and-the-moral-dimension Sep 11, 2013
- It is not a measure of recoveries because banks manipulate the value of the account to bankrupt the customer to stop litigation by using bankruptcy. *v National Australia Bank [2006] QCA 329 at [38,39,40]*
- It is a bureaucratic measure manipulated by the bank to obtain the bureaucratic outcome desired and is expanded to sell money and contracted to recover securities at the banks will. *v National Australia Bank [2006] QCA 329 at [43]*.
- It is used as a force to injure customers or force them to involve security not necessarily ordinarily available such as guarantees. Here customers obtain a guarantor and the bank is in the position where it can recover against other parties especially in Example2 and 3 where unlawful acts and incompetence join to satisfy a deficiency in LTV audited internally as a measure of risk.
- In the example where NAB lent funds to a disqualified director, the bank used mortgage insurance to cover the debt.
- Where funds were lent by ANZ to the same companies, fraud charges and recoveries were used.
- In the case of Westpac, court process and bankruptcy were used and the only losers were Westpac and the guaranteed party as Westpac forced the LTVs to cover, Risk audited internally. If Westpac had not used LTVs' to cover the risk an intangible process and helped the customer to purchase the property and resell, without insisting he took a partner guarantor and in the process applying the asset value to the guarantor' LTV, then Westpac would not have lost at least $12M in the circumstances.
- LTVs' are so open to manipulation and the misuse of the system so misunderstood by those outside the banking system it is totally inappropriate to rely on such an intangible process.
- As is shown above the bank that relied so much on LTVs it required it's employees to manipulate situations to bring LTVs to appropriate levels was the one that lost most funds.
- In the case of NAB the farmer's incorrect accounting was manipulated by the misuse of valuation to establish LTV's to make him unviable. The bank made an unlawful profit from the original debt and when the calculations for loss by

the farmer and those like him are calculated a rough figure is $4bn. All these manipulated accounts come from extended LTV at the time of selling the money to the customer but reduced at the time of recoveries and so stated to be a breach of the contract and so the lender has a built in manipulable circumstance in the initial lending process. To recover its funds at what is seen as a reasonable circumstance, even if it is intangible and open to manipulation by the bank controlling the valuation and its process to establish the LTV and by that method not including all of the farmers assets in his viability decision.

13 Terms of reference "i."

conditions and requirements to be met prior to the appointment of an external administrator; and

13.1 Requirements to appoint an external administrator may be with the express approval of the board of a company. To include external administration in a finance contract puts too much responsibility on the financier. When a financier appoints an external administrator he appoints the administrator for his debt only. However the appointment affects all debtors, a public policy process has been brought into action.

13.2 In most of these situations banks do not audit their accounts and processes before appointing administrators. The situation with Bond Corporation and Bell Resources in Western Australia is an example. The banks concerned particularly NAB were aware when lending the funds of the shortcomings but recoveries appeared to be so lucrative it was viable to continue.

13.3 The situation needs to be considered is it the last act in a situation of bank cover-up of unlawful acts as above, or a genuine wind-up.

13.4 Individual financiers should not have the right by contract to appoint external administrators so the conditions involved must consider all parties concerned consequently administrators must undertake to act on the behalf of all claimants in the situation and lawfully and ethically conduct themselves accordingly under an express contract with the Inspector General, Treasury of other appropriate body.

14 Conclusion

Illustrated above are 3 instances where Loan to Valuation Ratio was used to corrupt situations the first one to cover –up bank corruption. By falsifying an LTV out of requirements by not putting to the mortgagor's account, his entitlement under Government Schemes over an 18 month period. After 4 years he was still trading and the Bank at the time of issuing demand, all his interests were in credit. NAB ignores the law, as it did in this case.

In this situation 3 Police involved have resigned and that was the reason for them not being charged. One Registrar in the Court and 2 Deputy Registrars have resigned or moved positions because they were all involved in false evidence and manipulation brought against the farmer. Judges know that a former senior Qld Judge has been immersed in covering-up the evidence of unlawful or illegal acts and that the Queensland Government because of this situation recovered funds from NAB.

If the Queensland Government does not move to secure its position and a class action issues it could at this stage include both Commonwealth and State Governments. The other unpaid disadvantaged entity is the farmer.

- This gives the position where corrupt practices using LTVs has become a sport amongst financiers and the variation of valuations where they are fully exploited to sell money and reduced to recover as a deficient LTV, may need to be further investigated. Especially where Government Schemes rely on bank honesty of purpose and that becomes blurred. **www.parliament.qld.gov.au/docs/find.aspx?id=5414T5121**

Signed : L. Freeman. MBA (Adv) Dip Ag, Dip RBM.

(23.07.2015).