15th NOV,1990
A.T.RIGG.

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Mr. David Elder,
Secretary,
House of Representatives Standing Committee
on Finance & Public Administration.
Parliament House,
CANBERRA. .A.C.T 2600

Dear Mr. Elder,

I desire to make a submission to the Committee and give evidence.

The submission is in the nature of allegations, with supporting documentary evidence. The allegations, in summary and by way of reference to the Committee's terms of reference, are as follows:

(a) "the importance of the banking system to the Australian economy."

I will allege that officers of the Commonwealth Bank of Australia, by Fraud, crippled the business of Tony Rigg Welding & Manufacturing Pty. Limited, thereby precluding the Company from selling manufactured goods on the domestic market and overseas and precluding the Company from entering into joint ventures overseas.

Particulars.
Officers of the Bank deliberately carried on the business of dealing in Commercial Bills, drawn in the name of A.T & D.A Rigg personally, to the overdraft account of the Company, including debiting bill roll-over costs, interest and fees to that account, for the purpose of absorbing the trading profits of the Company.

(b) "the profitability of the banking sector through time and in comparison with other industries."
I will allege, that officers of the Commonwealth Bank of Australia, by Fraud, caused the Bank to earn illegal and inflated profits from aforesaid Commercial Bills.

Particulars.
a) Officers of the Bank charged bill roll-over costs as a debt by the Company to the Bank, rather than as a debt by the Company to an independent dealer on the open money market.
b) Officers of the Bank charged compounded overdraft interest on the Bill roll-over costs, interest and fees.
c) Officers of the Bank illegally cancelled the Bill facility and debited the face value of the last Bill to the overdraft account of Company, and charged compounded overdraft interest thereon.

(d)(i) "Product innovation"
I will allege that Officers of the Bank, by Fraud, devised a finance package known as a Bills Discount/Endorsement Facility with Simulated Foreign Currency Loan Option, and marketed that package to small businesses.

Particulars.

(a) In 1985 representatives of the Bank held seminars and promoted the package to small business proprietors.

(b) It was represented as follows:
- that the foreign currency loan would only be offered in conjunction with the bill facility.
- that the transfer from the bill facility to the foreign currency loan was at the discretion of the Bank.
- that the foreign currency loan would carry low interest, that is, the Singapore Inter-Bank Offer Rate plus the Bank's margin.
- that the customer would have to accept the exchange risk.
- that any profit to the customer from a fall in the value of the foreign currency against the Australian dollar, would be credited to the bill facility to "soften" the roll-over costs.

(c) The bills were a sham as follows:
- the bills were signed in blank by the customer as to the identity of the acceptor or maker of the bill, Officers of the Bank illegally, and without authority, inserted the name of the Bank as the acceptor or maker of the bill.
- the bills were retained at the customers branch of the Bank.
- the bills were not discounted to independent dealers on the open money market, or at all.
- the "interest" representing the bill roll-over costs was fixed by the Bank.
- the transactions recorded in the Bank's internal documentation were fictitious.

(d) The foreign currency loans were a sham, as follows:
- there was no foreign currency loan, only a contractual pretence between the Bank and its customer.
- there was no foreign exchange risk, only a contractual pretence between the Bank and its customer.
- there was no nexcus between the Australian dollar account provided by the Bank to the customer and the foreign currency or currencies, if any, held by the Bank.
- the purported debit by the Bank of "exchange losses" to the account of the customer was a fraud.
- the purported charging by the Bank of "withholding tax" to the account of the customer was a fraud.
- the Loan Agreement entered into between the customer and the Singapore Branch of the Bank was a sham, entered into in breach of the laws of Singapore.
- the Forward Exchange Contracts entered into between the customer and his Branch of the Bank were a sham.
- the loans were approved by the customer's Branch of the Bank.
- security for the loans was taken by the customer's Branch of the Bank.
- the loans were administered by the customer's Branch of the Bank, or at a later time, Sydney Head Office.
- advice on currency fluctuations was rendered by Group Treasury in Sydney.
- when the finance package was offered to the public and the Loan Agreement entered into, Group Treasury knew the Australian dollar would fall against the Swiss franc and the U.S. dollar.
- the notices of demand were issued by the customer's Branch of the Bank.

- recovery proceedings were undertaken by the solicitors for the Bank.
- transactions recorded in the Bank's internal documentation were fictitious.

(d)(iii)"choice and quality of financial services."

I will allege that the quality of the financial service provided by officers of the Bank and its agents was abominable.

Particulars.

(a) Officers of the Bank displayed personal animus towards myself, including insulting my professional ability and my integrity.
(b) Failure to respond adequately, or at all, to my letters complaining about the conduct of the overdraft account to the Company.
(c) Failure to respond adequately, or at all, to letters from my solicitors questioning the conduct of the overdraft account of the Company.
(d) Fraudulent appointment of a receiver to the rentals of the mortgaged property.
(e) Misrepresentation by the receiver and misappropriation of rentals.
(f) Deriliction of duty by the receiver, including failure to have leases executed, failure to collect rentals, failure to increase rentals and failure to evict defaulting tenants.
(g) Failure to provide a foreign currency loan.
(h) Failing to charge interest at S.I.B.O.R plus Bank margin.
(i) Failing to provide a Fixed Rate Bills Endorsement Facility in accordance with a contract to do so.
(j) Failing to reverse illegal debits from the overdraft account of the Company.
(k) Failing to restore the approved overdraft limit to the Company.
(l) Manipulating the overdraft account of the Company, by reversing an isolated transaction to render Mr. & Mrs. Rigg personally liable to the Bank.
(m) Committing perjury in proceedings by the Bank against Mr.& Mrs. Rigg personally.
(n) Abuse of the legal process, as follows:
  - failure to provide particulars pursuant to the Rules of the Court.
  - extracting evidence from an affidavit, out of context, and making improper submissions to the Court.
  - engaging in protracted and spurious interlocutory proceedings.
(o) The Managing Director of the Bank wrote a letter to Senator Paul McLean, containing palpable falsehoods. The letter was incorporated into Hansard and thereby misled the Senate. The letter was relied upon, in part, by the Chief Justice of New South Wales to dismiss the appeal by Mr. & Mrs. Rigg.

(d)(iv) "information to users."

I will allege, generally, that officers of the Bank, failed to provide to me any or any adequate information, relating to the following:

- the true nature of the Bills Discount / Endorsement Facility.
- the true nature of the Simulated Foreign Currency Loan Option.
- the reason for transacting the Bill facility to the overdraft account of the Company.
- the conduct of the receiver of rents.

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will shortly provide to you the following documentary evidence;

1) A speech by Senator Paul McLean, entitled "Case History-Tony Rigg" and the annexures thereto.
2) A speech by Senator Paul McLean, entitled "The Rigg Incident" and the annexures thereto.
3) Pleadings and affidavits filed in the Supreme Court of New South Wales.
4) Copies of the Bank's files.
5) References relating to the standing of my Company in the industry.
6) Materials relating to offers to engage in overseas work and joint ventures.
7) Evidence in relation to the foreign currency loans will be given in conjunction with other witnesses.

Yours faithfully,

A.T. RIGG.

cc Senator Paul McLean.

RENTON, Mr Edward James, 8 Settlement Road, Yarra Junction, Victoria, and

RIGG, Mr Anthony Thomas, 2 Riverview Road, Nowra, New South Wales,

were called and examined.

CHAIRMAN - Welcome. The evidence you give before the inquiry is considered to be part of the proceedings of the Parliament and accordingly I advice you any attempt to deliberately mislead the Committee is regarded as contempt of that parliament. We have received your submission to the inquiry and authorised it for publication at an earlier meeting. Is there any alteration or amendment that you want to make to that submission?

Mr Rigg - Not really, only the fact that I was going to table 22 volumes today and I was reluctant to after your statement on Monday to the media. But I will make sure you get them if you require them.

CHAIRMAN - In that case I will ask you to make a statement now and we will proceed to some questions.

Mr Rigg - I will start from the beginning. In 1985 I approached the Commonwealth Bank people and they offered me a simulated foreign currency loan. I did not understand it greatly but I took it on the advice of the manager, John Irwin, and his staff that that was the way to go. Then it turned out that it was a simulated foreign currency loan with a discount facilities provision. Then we borrowed the money. On the first roll-over bill we signed it went into the wrong account. We borrowed it in the names of A.T. and D.A. Rigg. It went into the company name which is Tony Rigg Welding and Manufacturing Pty Ltd. I complained to a bank officer and he said to me, 'Yes, okay, we will fix it up when the complex is built'. I went along with it because he said it was easier to

do that. Anyway, when the complex was built I continued to complain and they did nothing. They finally crippled the cash flow of my company and I had to freeze the account. I then started to trade in another company. But with the simulated foreign currency loan they told me I would be paying 6 per cent to 8 per cent interest and with compound and interest I was paying in excess of 40 per cent.

My company was crippled. My exports were crippled. I have documentary evidence that BHP Coated Products, Lysaght Brownbuilt Industries, James Hardie and Company and Austrade were going to support me and help me to do joint ventures overseas. There was one in Taiwan that would have been worth millions; I was asked to quote on one in Israel, and that was worth in excess of $40m, $50m - it has all gone. I have been asked to quote on all other types of work overseas, but it has gone. My local business has gone because of what the bank staff has done; the bank has manipulated my accounts; it has destroyed my business. On a personal basis, or company-wise, it has cost me millions and has cost hundreds of jobs; it has destroyed the income of this country; there would have been millions coming into this country from the export of material and expertise overseas.

When this first started off, the manager of the Commonwealth Bank in Nowra - Alston is his name, it was published about the corruption, et cetera - made public statements of denials yet he, himself, manipulated the accounts of my own company and he is guilty of manipulation of accounts. Personally, I would like to see him vigorously prosecuted for destroying my business.

There are a number of other issues, the managing director of the Commonwealth Bank, Sanders, had a letter tabled in *Hansard* by the then Senator Stone; it contained probable falsehoods and I would call on the Senate to deal with Mr Sanders for contempt of Parliament. Also, that letter was used by the Chief Justice, Justice Gleeson, in part to give

judgment against my wife and myself. It contained probable falsehoods; it was also pointed out that the regional manager, a Geoffrey Kyngdon, had committed wilful and corrupt perjury. The Chief Justice did nothing. It was also pointed out to the Chief Justice that the roll-over bills and the bills discount facility is a sham transaction. And I call for the removal of Justice Gleeson for giving a judgment against us in which he had no right to do. I also call for the removal of Justice Young. He gave a summary judgment against us originally because we were not able to get evidence; and the QC representing the bank, a Mr Arthur Ammit, said in court, 'We have produced the evidence once; we are not going to produce it again'. They may have produced it on the table and said, 'There we are, you see it', and taken it away; and now we have the evidence to prove the corruption within the Commonwealth Bank.

CHAIRMAN - Mr Rigg, you have made quite a number of substantial allegations even in your comments just now and certainly, as I understand it, Senator McLean acting on your behalf, in tabling a number of documents and making speeches in the Senate, has gone to the same sorts of claims on your behalf and made them in that place.

Mr Rigg - That is right.

CHAIRMAN -Let me then take you to some of the issues that arise out of the case history as documented in the Senate *Hansard*.

Mr Rigg - If it is technical, I would have to call on Mr Renton to give the answers.

CHAIRMAN - No, it is not technical

Mr Rigg - Fair enough.

CHAIRMAN - It is based on what, as we understand - based on the Senate *Hansard* - are the facts of the case. Is it true that this is not a foreign currency loan as such?

Mr Rigg - No, it is a simulated foreign currency loan,

which is a sham.

CHAIRMAN - Now, as we understand it from the *Hansard*, in June 1985, the branch of the Commonwealth Bank in Nowra approved a bills debt discount facility to yourself and your wife. Is that correct?

Mr Rigg - That is right.

CHAIRMAN - It says in this *Hansard* that on 30 separate occasions between August 1985 and November 1987 the bill roll-over transactions were credited and debited by the bank to the overdraft account of your trading company and not yourselves.

Mr Rigg - That is right.

CHAIRMAN - It was supposed to go yourself?

Mr Rigg - That is right, they crippled the cash flow of the company.

CHAIRMAN - You made approaches to the bank on the first time that roll-over occurred?

Mr Rigg - That is right.

CHAIRMAN - Are you saying to this Committee that on 34 occasions following your original approach to the bank that it failed to alleviate the situation?

Mr Rigg - Yes, most definitely.

CHAIRMAN - Also included in the *Hansard* report, it says that by letter dated 3 February 1989, the senior manager, Nowra branch, Mr Don Alston, wrote to the company claiming that the debiting of the $750,000 to the overdraft account was an error and purported to reverse the entry. Is that correct?

Mr Rigg - That is correct, and the account was frozen.

CHAIRMAN - So the entry in fact was not reversed.

Mr Rigg - It was reversed, and they got judgment against us by reversing the entry of a frozen account.

CHAIRMAN - Why did it take so long with your approaching the bank, to have the situation changed?

Mr Rigg - I could not change it. They changed it because

they realised they could not sue the company. They had no authority to sue the company, so they reversed it out so they could sue us personally because of two separate identities. Because we own the property and the company is separate.

CHAIRMAN - But the bill facility was taken out, ostensibly in your name, but----

Mr Rigg - Personally.

CHAIRMAN - Personally, but debited to your company.

Mr Rigg - Exactly.

CHAIRMAN - But you made approaches to the bank in August of 1985 to remedy the situation at the first roll over.

Mr Rigg - Yes. Definitely.

CHAIRMAN - Why then did not the bank do so?

Mr Rigg - You tell me. I think it is up to your Committee to ask the questions because I tried and I tried and I was fobbed off.

Mr WILSON - What would have been different if it had been debited from the beginning to your personal account?

Mr Rigg - We could have handled the interest because we have a complex. Also, there are 12 units and the return from the complex would have helped pay the interest. We would have used some of the profits from the company to pay the interest as well. But they destroyed the cash flow of the company.

Mr WILSON - As they were doing it on 34 occasions, why were you not replenishing the company out of your own account, from which the interest would have been taken had it been directed directly to your own account?

Mr Rigg - I cannot answer that. They have just destroyed the whole concept. And also they then by fraud appointed a receiver of rents to the complex.

CHAIRMAN - You in fact had said, and I refer again to the Senate *Hansard*, that the bank illegally manipulated the account of the company for the sole purpose of making a claim against Mr and Mrs Rigg personally. That is the claim by Senator McLean.

Mr Rigg - That is right. Exactly.

CHAIRMAN - Do you endorse that?

Mr Rigg - Yes.

CHAIRMAN - It says also in the Senate *Hansard* that Mr Sanders' letter was an attempt to cover up the manipulation of the company's overdraft account. Do you endorse that?

Mr Rigg - Yes.

CHAIRMAN - It says that the allegation that was contained in Mr Sanders' letter was a palpable falsehood and examination of the bank's files shows that on the draw down of the last bill, the Riggs were not written to at all. The Riggs did not know of the maturity date of the bill. Is that correct?

Mr Rigg - That is absolutely correct.

CHAIRMAN - You also say here that the fact is that the regional manager of the bank, Mr Geoffrey Kyngdon, committed wilful and corrupt perjury. Is that correct?

Mr Rigg - That is correct.

CHAIRMAN - The Commonwealth Bank of Australia, through officers, manipulated the company's account, committed perjury, published palpable falsehoods, and perverted the course of justice. Correct?

Mr Rigg - Correct.

CHAIRMAN - The Commonwealth Bank of Australia, through officers, misled the court, misled the Parliament, and misled the people.

Mr Rigg - That is right.

CHAIRMAN - And you agree with all of those statements?

Mr Rigg - Absolutely.

CHAIRMAN - Did you go to court over this matter?

Mr Rigg - Yes.

CHAIRMAN - And what was the judgment handed down in the court?

Mr Rigg - We lost.

CHAIRMAN - How then would you respond to somebody who might come along and say, as Mr Argus suggested in reference

to the people that were caught in the foreign currency loans, that it is greedy people that are just crying 'foul' after the event.

Mr Rigg - I would not like to say it publicly! It is not true.

CHAIRMAN - Did you have the opportunity to examine files relevant to your particular case with the Commonwealth Bank?

Mr Rigg - No.

CHAIRMAN - You did not.

Mr Rigg - Not until after we got done. That was until after we lost our appeal. Once Justice Young gave judgment against us, a summary judgment against us, they even tried to have our application for appeal knocked out.

CHAIRMAN - But you did appeal?

Mr Rigg - We did appeal and we lost that because Justice Gleeson accepted Sanders' palpable falsehoods and also he did not even mention the fact, although it was mentioned by my counsel, that Kyngdon had committed wilful and corrupt perjury.

CHAIRMAN - Was that examined in the court proceedings?

Mr Rigg - It was in his affidavit.

CHAIRMAN - Was it examined in the court proceedings by your solicitors and barristers?

Mr Rigg - To my knowledge, and it would have been examined by the three judges.

CHAIRMAN - Therefore the judges had knowledge of that information in the course of those proceedings?

Mr Rigg - Absolutely. It was on the affidavit.

CHAIRMAN - And notwithstanding what you claim to be falsehoods and perjury and so on, they still came down and found in favour of the bank and not yourself?

Mr Rigg - Exactly.

Mr WILSON - Was what you described as the perjury actually tested in the court?

Mr Rigg - No, it was not even mentioned. It was

mentioned by my counsel.

Mr WILSON - What is the perjury that you allege occurred?

Mr Rigg - It is in the transcript.

Mr WILSON - What did he say that was not true?

Mr Rigg - He said the bill was presented. It was not presented. Presentation was dispensed with.

CHAIRMAN - You indicated to the Committee a moment ago that the files relevant to yourself that the bank held were not examined during the course of litigation.

Mr Rigg - We could not get hold of them.

CHAIRMAN - You had access to them subsequent to litigation.

Mr Rigg - We were then able to get hold of them.

CHAIRMAN - Why was it different after the event?

Mr Rigg - God knows.

CHAIRMAN - How did you become aware of the files and why did you go looking for them after the event?

Mr Rigg - Because we knew we were right. We were right, and that is all there is to it. The whole transaction is a sham.

CHAIRMAN - But who did you approach to have a look at those files? Was it the manager of the bank in Nowra?

Mr Rigg - No. They came under further proceedings on the position.

CHAIRMAN - What proceedings were they? Perhaps Mr Renton might like to comment.

Mr Renton - The initial proceedings were by Mr and Mrs Rigg seeking to rescind the various bills and also claiming damages. The bank cross-claimed seeking the amount of the last bill and interest thereon. It was in those proceedings that Mr Rigg alleges that Mr Kyngdon committed perjury. The allegation relates to an affidavit sworn by Mr Kyngdon in support of the cross-claim by the bank. Mr Kyngdon swore that the bank had presented the bill for payment and payment had not been met and, separately, that payment had been dispensed

with. Those are mutually contradictory statements of fact sworn on oath.

CHAIRMAN - In respect of the legal proceedings though, you just mentioned that after having gone through a lower court and then a court of appeal, Mr Rigg subsequently sought access to the documents yet again and at that point in time they were made available to him.

Mr Renton - Yes, that is true, Mr Chairman. Running in parallel with the proceedings relating to the bill was a set of proceedings by the bank seeking an order for possession of the Riggs' factory premises pursuant to the bank's security over those premises. It was during the course of those proceedings that an order was made that the bank's files be made available to us.

CHAIRMAN - And subsequent to Mr Rigg examining those files, what did they show to you?

Mr Rigg - That the whole thing is a sham.

CHAIRMAN - What did they show to you?

Mr Rigg - They showed to me, or to my lawyers really, I cannot quote the words exactly, but by legal advice it proves that the bank has been trying to get more and more interest from its customers.

Mr WILSON - How much more interest was it than if you had borrowed the money in Australia at current interest rates?

Mr Rigg - No, you misunderstand. I borrowed the money in Australia.

Mr WILSON - Yes, I know. But you borrowed it simulating as though it were overseas. If you had not had a simulated foreign currency loan and you had been doing it on bank overdraft, what was the difference between the interest on a bank overdraft account of $750,000 borrowing and on the simulated loan?

Mr Rigg - As I quoted, when they compounded the interest we were paying in excess of 40 per cent. If you take a second mortgage you are paying 17 or 18 per cent.

Mr Renton - I think we have to clarify that, Mr Wilson, by saying that the foreign currency loan was never actually provided. It was offered and accepted but it was not provided. Mr Rigg believed, as he stated, that he would be paying interest of the order of 6 or 8 per cent. In fact, he was not; and the interest that he was paying was on the commercial bill facility and upon each roll-over of a bill, the roll-over costs representing the interest were debited to his overdraft account, without any attempt by the bank to call for servicing of those debits. In fact, he was paying compounded overdraft interest as well on that; and he says that is what crippled his business because it absorbed his working overdraft.

Mr WILSON - But he had the $750,000.

Mr Renton - Yes, that was spent on capital works in building the factory.

Mr WILSON - What interest did he then expect to pay on that $750,000?

Mr Renton - He was expecting to pay 6 to 8 per cent interest.

Mr WILSON - But it was a simulated foreign currency loan. Assuming that there was some understanding that there could be variations in the capital repayment because of changes in the exchange rate, what would his position have been, compared with overdraft rates?

Mr Renton - To my knowledge, no analysis was ever done as to that. It was represented to Mr Rigg, and also to his accountant, as appears in *Hansard*, that the adoption of the simulated loan would mean, if the dollar rose against the Swiss franc, a notional profit to Rigg that would be used by the bank as an offset against the roll-over cost. In other words, that capital profit to Rigg would soften the interest payable on the bills.

Mr WILSON - And if the dollar fell?

Mr Renton - That was not mentioned.

CHAIRMAN - Can I take you back to the particular issue of the charges you have laid against the bank and the examination of the files. You indicated to the Committee that, subsequent to the court cases, two court cases which you lost, you then had access to the files of the Commonwealth Bank relevant to your own particular case. You have indicated that when you examined them, you believed that they were a sham and the scheme was a sham. Did you believe that there was a case of fraud indicated by the files, in regard to yourself?

Mr Rigg - Yes.

CHAIRMAN - So there was a clear case of fraud as far as you are concerned.

Mr Rigg - We have called for Senator Tate, the Minister for Justice, and for the Attorney General to have an investigation with the view to laying criminal charges. That was before Christmas and still nothing has happened.

CHAIRMAN - As I understand it, Senator Tate had the Australian Federal Police examine some of the issues that you had raised previously. On two occasions - and the Senator has reported back - there was no evidence of criminal neglect or anything else, or fraud, associated with this case. Is that your understanding?

Mr Rigg - No.

CHAIRMAN - Can I take you to a copy of what appears to be an affidavit which bears the common seal of Tony Rigg Welding and Manufacturing Pty Ltd which appears to have a signature, D. A. Rigg; a director, Ken Matthews; a secretary, Greg Tolhurst, I think, and a signature, A. T. Rigg, which reads:

APOLOGY

1. It appeared to Mr and Mrs Rigg that their Company, Tony Rigg Welding and Manufacturing Pty Limited from materials then available to them that fraud may have been committed by some unidentified person or persons in respect of their various accounts at the Nowra Branch of the Commonwealth Bank; and

2. Mr and Mrs Rigg and their Company therefore instructed their

solicitors to issue proceedings against the Bank and certain officers of the Bank.

3. During the course of those proceedings Mr and Mrs Rigg and their solicitors have had the opportunity of examining the Bank files and have satisfied themselves that the allegations of fraud are unfounded; and

4. Mr and Mrs Rigg and their Company now unreservedly withdraw all and any allegations of fraud and deceit previously made against the Bank and its officers and unreservedly apologise for the hurt, distress and offence caused by the allegations.

Did you sign that?

Mr Rigg - Yes.

CHAIRMAN - Why are you coming along now and saying that that is not the case?

Mr Rigg - Why? Because we were physically, mentally and financially exhausted. We were conned into signing that to give us a breathing space. And now the evidence is there.

CHAIRMAN - You were conned into signing a document of this nature.

Mr Rigg - Have you read the rest of the agreement?

CHAIRMAN - No, I am just asking you if you were conned into this.

Mr Rigg - Yes, conned.

CHAIRMAN - Okay. There was another part of the agreement. Would you like to tell us about that?

Mr Rigg - The other part of the agreement I have actually got in the case there, where the bank actually wrote the apology, we signed it and it paid for all the publications of the apology.

CHAIRMAN - What went with that apology? What was given to you; what guarantees were given to you to do that?

Mr Rigg - What guarantees? The guarantee that there would be no further action.

CHAIRMAN - And did you believe that was an appropriate

settlement after going through the courts?

Mr Rigg - No, I did not.

CHAIRMAN - You are still not satisfied?

Mr Rigg - No, I am not satisfied. One of the major reasons is that we signed that agreement about the end of November----

CHAIRMAN - In 1990?

Mr Rigg - We signed that agreement in 1989. I will digress a little bit. When they appointed a receiver of rents, Stephen Henderson Rogers of L.J. Hooker of Nowra, he was appointed by fraud. He started to collect rents in July - he took money from my tenants - he was not appointed until August. We could not get any information from him about how the leases were, et cetera. And he said to my tenants who were prepared to give evidence, 'Do not worry about new leases; do not worry about paying increases in rent'. Under the terms when a receiver is appointed I am entitled to that information. I had no information. When we signed that agreement, I thought I was going to get the information; but out of 11 units, I think there are two, maybe three current leases. We were going to borrow money against that complex with current leases. Now, why did he not do his job as a receiver? He has got to do his job as receiver by law; and he did not.

CHAIRMAN - All right. If you still feel aggrieved by the action of the Commonwealth Bank in respect of the simulated foreign currency loan - and we have gone down the track through the legal process, through an arrangement that you came to with the Commonwealth Bank - can you provide to this Committee written and documentary evidence that supports your continued claims that there has been fraud committed and that, by the actions of bank officers and those that you have run through and other people as well, in some way there was a matter for legal investigation that is still necessary.

Mr Rigg - Absolutely.

CHAIRMAN - You can do that?

Mr Rigg - I can do that.

CHAIRMAN - Will you undertake to do that?

Mr Rigg - I will do that. I will make sure you get 22 volumes.

CHAIRMAN - No, I want a report.

Mr Rigg - All right, I will provide a report.

CHAIRMAN - It has gone from 22 volumes to a report. You will provide supporting documents?

Mr Rigg - I will supply the supporting documents.

Mr ELLIOTT - Mr Rigg, what would be the motives for the Commonwealth Bank to undertake the sort of activities that you have alleged; to commit the fraud? What would be the motive on the part of the bank officers or the bank itself as an entity?

Mr Rigg - Frankly, that is what I would like to know. I think that that is up to this Committee to find out, to be quite honest.

Mr ELLIOTT - But in making the allegation of fraud, one assumes that you have formed some view in your own mind - and that is not just calling for matters to be investigated. You have made much stronger statements than that today.

Mr Rigg - Absolutely. Let me put it to you this way. If the bank had done as it said it was going to do, the bank and I would have had a very good relationship. With the support of the companies I have mentioned, I would have had extensive overseas joint ventures going by now and they would have done very well and I would have done very well.

Mr ELLIOTT - You mentioned that you have an accountant; and you had an accountant. At any stage through the process of organising the simulated loan arrangement did you seek any advice other than that offered by the bank?

Mr Rigg - Only really the advice of my accountant.

Mr ELLIOTT - What did the accountant say?

Mr Rigg - He was quite happy; but at that stage I do not

think anybody really understood the ramifications of the loans; and naturally I trusted the bank manager.

Mr ELLIOTT - Your accountant did not say that he knew nothing about that sort of arrangement?

Mr Rigg - That is right. He really did not. But we had meetings with the manager and he was happy with what he heard. But then the bank did not do what it said it was going to do. It manipulated the accounts.

Mr BRAITHWAITE - Mr Chairman, I am just a little bit unsure of the genesis of all this. Do I understand that $750,000 was made available, which was supposed to be under the security of your name because you own the properties, but the money went to the trading account and the money was used for improvements to property in your name?

Mr T.W. Tyrrell - That is right.

Mr BRAITHWAITE - Now, the allegation is that the $750,000 repayment of unknown amount as it was rolled over, caused the financial distress of the company. I go back to the question that Mr Wilson asked: would it have been possible in those circumstances, because your own companies - your own assets - were producing funds which you were going to use, to have made a switch? It might have been undesirable as far as you were concerned, but it would have been a legitimate way to do it.

The second thing that I want to ask is that along with others, the words 'fraud and corruption' have very serious connotations. You have agreed to supply a list of that process to the Chairman. I would like to have the level of the fraud and corruption included in the report. At the beginning - there must have been a reason. Was it at officer level or branch level, and to what extent might that have extended to your more recent allegations of perjury, which seem to come from the top level? I would like a phased resume of the fraud and corruption which you allege. Could you go back to the first question: would not it have been possible, as Mr Wilson suggested----

Mr Rigg - To change the accounts around?

Mr BRAITHWAITE - No, not to change the accounts, but to change the method of payment, so that when the company paid the amount, a simple transfer of the money available from your own private resources might have counteracted it.

Mr Rigg - We did not have the money in the private account, because that was the time when the Aussie dollar dropped and we were in the middle of leasing the complex. We had half the complex leased and money was coming in - we had to then use that money to support the cash flow of the company, because the bank was destroying it because it had just taken money out.

Mr BRAITHWAITE - Perhaps I will just make an observation. That means that if the money had been in your joint names for repayment, additionally you would have got into trouble because you did not have the premises leased to service the repayment.

Mr Rigg - When you are paying in excess of 40 per cent interest, I do not think you can service those sorts of loans.

Mr BRAITHWAITE - I am just trying to get it clear in my own mind.

Mr Rigg - I understand.

CHAIRMAN - Mr Rigg, we have asked you to provide some additional information, and we would be very pleased to receive that at your earliest convenience. It may well be, as is the case with all witnesses today, that there will be a need for further examination. Certainly, we have indicated this to Mr McLennan. I should make it public, because it was said in the private hearings, that we want to get him back so that we can talk to him about some additional information. So, if you can provide that to us, we would be most grateful.

think anybody really understood the ramifications of the loans; and naturally I trusted the bank manager.

Mr ELLIOTT - Your accountant did not say that he knew nothing about that sort of arrangement?

Mr Rigg - That is right. He really did not. But we had meetings with the manager and he was happy with what he heard. But then the bank did not do what it said it was going to do. It manipulated the accounts.

Mr BRAITHWAITE - Mr Chairman, I am just a little bit unsure of the genesis of all this. Do I understand that $750,000 was made available, which was supposed to be under the security of your name because you own the properties, but the money went to the trading account and the money was used for improvements to property in your name?

Mr T.W. Tyrrell - That is right.

Mr BRAITHWAITE - Now, the allegation is that the $750,000 repayment of unknown amount as it was rolled over, caused the financial distress of the company. I go back to the question that Mr Wilson asked: would it have been possible in those circumstances, because your own companies - your own assets - were producing funds which you were going to use, to have made a switch? It might have been undesirable as far as you were concerned, but it would have been a legitimate way to do it.

The second thing that I want to ask is that along with others, the words 'fraud and corruption' have very serious connotations. You have agreed to supply a list of that process to the Chairman. I would like to have the level of the fraud and corruption included in the report. At the beginning - there must have been a reason. Was it at officer level or branch level, and to what extent might that have extended to your more recent allegations of perjury, which seem to come from the top level? I would like a phased resume of the fraud and corruption which you allege. Could you go back to the first question: would not it have been possible, as Mr Wilson suggested----

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? Alston Rigg - demanding an additional $30 000.

Senator McLEAN(10.50) —It is by sheer coincidence that I happen to rise to use parliamentary privilege. I acknowledge the points that have been made by Senator Aulich about the seriousness of parliamentary privilege; I think that he and other honourable senators realise that I have used privilege previously and, therefore, am quite prepared to acknowledge the extreme seriousness that is associated with its use.

Honourable senators will be aware that on 14 September I was in the process of reading into the Hansard a case study of the abuse of a system of foreign exchange loans by the Commonwealth Bank against A.T. and D.A. Rigg. I was reading into the Hansard for quite deliberate reasons details of that case, and I had not quite finished.

Mr President, you and other honourable senators will be relieved that I seek only to finish that case rather than commence another one. On that occasion I sought permission to table the documents upon which I based the serious allegations. I was denied leave to table them on that occasion on the grounds that I had not given sufficient time for their perusal. I will be seeking leave to table the documents later. I have placed those documents in the hands of the Minister and shadow Minister on duty tonight at the table, Senator Button and Senator Watson. I gave them the documents at about 2 o'clock this afternoon.

I left Australia on, I think, 16 September, two days after I had mentioned the matter in this place. By sheer coincidence, three days later I found myself in Zurich sitting before senior Swiss bankers, one of whom made the quite unsolicited comment that the senior Australian bank officers who were involved in inducing Australian business people and farmers into foreign Swiss loans between 1984 and 1986 were nothing short of criminals and that they should be in gaol. That was a comment from somebody at the other end. I later asked if he was prepared to come to Australia and he said that he was prepared to come to Australia and give evidence on the matter which he had told me about. I believe that he may well be appearing before the bank inquiry shortly to support the very proposition I have been advancing for some time.

As a point of explanation to those who may read this adjournment speech, I am returning to a speech which was not completed on 14 September in order merely to finish it and seek to table documents in support of the allegations of fraud. I had made allegations of fraud and I was attempting to substantiate those allegations by reading and citing the documentary evidence in support of them. I am returning to a rather complex technical explanation about the draw-down facilities and procedures on bills relating to these foreign exchange loans. I had cited documentary evidence in support of the allegations.

The third point I make is that, upon the draw-down of the bill, which is the technique that was used, the net proceeds of the transaction-that is, the face value of the bill less the interest, fees and margins-was credited to account No. 181.829. All subsequent action sheets showed the net proceeds as credited to account No. 181.415 and, when the bank's accounting procedures were changed, showed the interest and margins of the fees as debited to the account, which had the same result for the customer.

The fourth point I cite from this documentary evidence is that the evidence nominated whether the bill was to be retained at the branch or forwarded to the money market dealing section. If the bill was retained at the branch, it was not delivered to an independent dealer on the open money market and therefore was a sham.

The action sheet shows that this bill was retained at the branch. In fact, all 34 bills were retained at the branch and were shams. Some action sheets were not properly

completed and are ambiguous on this matter. Nevertheless, in those cases, other documents issued by the bank established that the bills were retained at the branch.

The fifth point I make is about the documentary evidence. Upon the maturity of the bill, the face value of the bill was debited to account 181.415. All subsequent action sheets showed the face value of the bill as debited to account 181.415, but when the bank's accounting procedures were changed the transaction was nevertheless treated to that account. I will table evidence to that effect, with leave, shortly.

The purchase advice in respect of that bill, dated 14 August 1985, was issued by the Nowra branch to Sydney. The advice nominates the branch as 2585 and nominates the location of the bill as that branch. That is further evidence that the bill was a sham. Some purchase advices were not properly completed and are ambiguous on this matter. Nevertheless, in those cases, other documents issued by the bank establish that the bills were retained at the branch. The dealer's slip in respect of that bill, dated 14 August 1985, discloses that the bill was held at branch 2585, that is, the Nowra branch. This is further evidence that the bill was a sham. All subsequent dealer's slips disclose that the bills were held at the Nowra branch.

By a letter dated 14 August 1985, the bank advised Mr and Mrs Rigg that the acceptor of the bill was the Commonwealth Bank of Australia. That is further evidence that the bill was a sham. In the case of each subsequent bill transaction, except in respect of the last bill, the bank wrote to Mr and Mrs Rigg advising that the acceptor of the bill was the Commonwealth Bank of Australia.

Page 9 of the bank statement in respect of account 181.415, shows that, upon the maturity of the bill on 12 November 1985, the face value of the bill was $50,000 and was debited to the overdraft account of the company. That statement is evidence that the fraud perpetrated on the company was consummated. In the case of each subsequent bill transaction, the bank statements in respect of account 181.415 faithfully record the transaction and evidence the consummation of the fraud in respect of that bill.

By way of further example, I propose to deal briefly with the last bill. The bank sued Mr and Mrs Rigg and obtained summary judgment in respect of that bill. I will seek leave to table the following documents: the action sheet issued on 20 November 1987 showing that upon the draw-down of the bill the roll-over fees totalling $9,058.93 were to be debited to account number 181.415 and that, upon the maturity of the bill on 22 December 1987, the face value of the bill, $750,000, was to be debited to account 181.415; the purchase advice dated 20 November 1987, showing that the bill was located at Nowra branch; the dealer's slip dated 20 November 1987, showing that the bill was held at Nowra branch; the bill dated 20 November 1987, showing the acceptor as the Commonwealth Bank of Australia; and the bank statement, page 43, in respect of account 181.415 showing that on 23 November 1987 roll-over fees totalling $9,058.93 were debited to the account and that on 23 December 1987 the face value of the bill, $750,000, was debited to the account.

I call upon the Attorney-General for New South Wales to commission an investigation into the conduct of officers of the Nowra branch of the Commonwealth Bank of Australia in relation to Tony Rigg, with a view to laying criminal charges. In particular, I request that certain investigations be undertaken. First, in respect of each of the action sheets, I request an investigation identifying the bank officer who prepared and initialled the document and the bank officer who examined and initialled the document to determine whether these bank officers should be charged with fraud. Secondly, in respect of each of the purchase advices, I request an examination to identify the bank officer who completed and initialled the document and the bank manager who authorised the draw-down of the bill and initialled the advice, to determine whether those bank officers and bank manager should be charged with aiding and abetting the fraud.

I further request investigations to: thirdly, in respect of each of the dealer's slips, identify the dealer who initialled the document, identify the checking party who initialled the document and identify the authorising officer who signed the document, and determine whether those dealers, checking parties and authorising officers should be charged with aiding and abetting that fraud; fourthly, in respect of each of the bills, identify the bank officers who prepared the bill in blank as to the identity of the acceptors, identify the bank officers who were present when Mr and Mrs Rigg signed the blank bill, and identify the bank officers who inserted the name of the Commonwealth Bank as acceptor, and determine whether those bank officers should be charged with aiding and abetting the fraud; and fifthly, in respect of the letters of advice that were addressed to Mr and Mrs Rigg, relating to the drawdown or rollover of the bills, determine whether charges should be laid for aiding and abetting that fraud, against the following officers of the bank: S. J. Bennett, L. S. Greenaway, J. S. Irwin, K. D. R. Scarfe, C. J. Scarlett, S. A. Warne and D. M. Wilbraham.

It will be apparent from what I have exposed here that there should be a public inquiry into bills discount facilities and simulated foreign currency options offered and provided by the Commonwealth Bank of Australia to small business proprietors. The appropriate form of inquiry, as I have argued previously, would be a Senate inquiry into banks but I now accept the fact that such evidence as I have tabled here should be placed before the joint inquiry for which submissions close on the 14th of this month. I seek leave of the Senate to table a number of documents, annex A through to X, relating to the allegations I have made.

Leave granted.

Thursday, 13 September 1990
Page: 2300

Senator McLEAN(11.44) —Honourable senators are aware of the fact that, for two years now, I have been tabling for their consideration examples of what I consider to be malpractice and corrupt practice in Australian banking. I have tabled in excess of 80 such cases. On the last two adjournment opportunities I have returned to flesh out detail in relation to a number of very significant cases. On 24 August on the adjournment I was in the process of dealing with what I termed the saga of Huon Valley Springs Pty Ltd, which, to my way of thinking, was one of the clearest examples that one could get that the Commonwealth Development Bank of this country deliberately stripped a private company of its assets and manipulated it into a position where it was deliberately passed into the hands, through a process of bankruptcy, of an awaiting buyer.

I had neared completion in describing that particular case and I was citing a conversation which occurred on 6 February 1986 between Mr Peter Allen, of Arthur Andersen and Co., who attended at the offices of Huon Valley Springs. He served a letter of notice on behalf of the Commonwealth Development Bank. The notice demanded payment of $525,020.10 within one hour. That notice was nothing more than a sham made in anticipation of a receivership and was the last link in a chain of seizure of the business. I had described each step along the line in that chain of events. Mr Short, who was the financial adviser to Huon Valley Springs, received this notice of demand and passed this comment:

The fact that you take over the company as receiver may jeopardise the whole transaction and the leases which form an important part of the company business.

Mr Allen is reported to have said:

I will advise the Commonwealth Development Bank to wait to put the company into receivership until the negotiations are finalised one way or the other.

The following day the Commonwealth Development Bank appointed Messrs Peter Allen and John Murphy of Arthur Andersen and Co. as receivers of Huon Valley Springs. On 7 February 1986, Messrs Dawson Waldron, acting for Huon Valley Springs, wrote to the Development Bank as follows:

We note that we have been instructed that the leases which form an integral part of our client's company business may be placed in jeopardy by reason of your appointing a receiver.

The Development Bank did not withdraw the receivers. I seek leave to table that letter in support of the statement.

Senator Alston — The document has not been shown to us in advance and we decline leave.

The ACTING DEPUTY PRESIDENT (Senator Crowley) —Senator McLean, perhaps you would care to seek leave again.

Senator McLEAN —I seek leave to table a document from which I have just quoted.

Senator Alston —The convention, as I understand it, is that documents are shown to those in charge of business on each side of the chamber, and in normal circumstances there is not a problem. But I would be reluctant to allow that to happen sight unseen. If

Senator McLean wants to show it to us, I will consider it on the merits; but otherwise I would refuse leave.

Leave not granted.

Senator McLEAN —Madam Acting Deputy President, I cite that by refusing leave to table these documents--

The ACTING DEPUTY PRESIDENT —Senator McLean, are you prepared to let Senator Alston have a look at your document and seek leave shortly?

Senator McLEAN —Yes, certainly. Perhaps he would like to peruse the other documents that I will be seeking leave to table as well. It is important. I am making very serious allegations against people who I am naming in this place. It seems not unreasonable and it seems principled that I should place the evidence for those allegations before the chamber.

The ACTING DEPUTY PRESIDENT —Thank you, Senator. I think it is also reasonable--

Senator Alston —I think, Madam Acting Deputy President, that you are saying what I was about to say. Senator McLean's comments underline the desirability of documents being shown in advance to those who ought to make the judgment about whether leave ought to be granted. I hope that he accepts that proposition, because it happens time and again that people are prepared to show documents and then they are allowed to table them. If these are serious documents, then the last thing we want is for someone to be able to get them through on a wink and a nod.

Senator McLEAN —I will, therefore, give Senator Alston the maximum time to peruse the documents which I will be tabling later in this speech. I have passed those documents over to Senator Alston; there are quite a number of them.

By agreement dated 8 April 1986 Allen and Murphy, as receivers, sold the assets and undertakings of Huon Valley Springs to Evanford Pty Ltd. With the indulgence of Senator Alston, I seek leave to table the document of proof.

The ACTING DEPUTY PRESIDENT —As I understand it, Senator Alston has sought permission to read those documents. Could the honourable senator defer seeking leave to table any further documents?

Senator McLEAN —I seek leave to table, at the end of my speech, all the documents cited.

Senator Alston —If that is a reservation of a formal application, then I will treat it as such.

Senator McLEAN —I will seek leave to table the documents at the end of my speech, which will be 23 minutes from now.

The ACTING DEPUTY PRESIDENT —There is no objection to that proposal at this point. The honourable senator may proceed.

Senator McLEAN —The punch line in this whole process is that Evanford Pty Ltd was a wholly owned subsidiary of Durna Pty Ltd and the directors were the same. I referred to these directors in my speech in the adjournment debate of 24 August. The directors of the company were Anthony Joseph Sofia, Dominic Vizzone and Maxwell John Reynolds. On 9 April 1986 ICLE Bank wrote to Durna, Evanford, Sofia, Vizzone and Reynolds referring to `your subsidiary, Evanford Pty Ltd' approving finance from Evanford. The letter provided for ICLE to receive 50 per cent of the trading profits and 50 per cent of the profits on sale of Evanford. I therefore call upon the Attorney-General of Tasmania to forthwith lay charges against Maxwell J. Reynolds for fraud and conspiracy supported by the documents which I have tabled previously and will seek leave to table at the end of my speech. I call upon the Attorney-General of New South Wales to forthwith lay charges against Bruce W. Naghten, James J. Vanner and Kenneth M. Simington for fraud and conspiracy. So endeth the saga of Huon Valley Springs.

Another of the 80 cases which I have tabled in the Senate is referred to by the Commonwealth Bank of Australia as `the Rigg incident'. That is its term for an incident which I have cited on a number of occasions previously. It has been the subject of correspondence between the managing director of the Commonwealth Bank of Australia and myself. That correspondence has previously been tabled by former Senator Stone and is available for the perusal of honourable senators.

I now propose to expose, to the Australian people, 'the Rigg incident' in detail. I am sad to say that honourable senators have not shown a great deal of interest in it, but many people in the community are very interested in the details. I will do so over a period of two adjournment speeches. I draw Senator Alston's attention to the fact that I will be tabling many documents because the allegations that I am making are very serious and must be supported by the documentary evidence, much of which has been previously tabled by leave.

In 1982 the bank saw the need to improve its return on foreign currency assets by providing foreign currency lending to Australian customers. I am going back to 1982 and I will describe, step by step, a profit making strategy which was pursued by all Australian banks. It finally led to-in what is known as `the foreign loans fiasco'-the demise of approximately 1,400 Australian businesses.

In a bank memorandum from the general manager dated 16 March 1982 entitled `Foreign Currency Lending to Australian Customers', it is stated:

The subject is considered important for the following reasons:

(c) The need to improve our return on foreign currency assets generally. In the study conducted last year . . . comment was made on the rate of return being achieved on our overseas assets-a return somewhat less than our domestic assets . . . there was an evident need to have a greater content of the higher yielding commercial loans on our books . . . our lending should be directed to areas that will give a higher return than is achievable from prime corporate business.

What this memorandum is saying is that customers at the bank-I am talking of the Commonwealth Bank of Australia-other than prime corporate business should be targeted by offering foreign currency loans at the highest return achievable by the bank. The new philosophy of banking was beginning to emerge even preceding deregulation-the philosophy of maximising profit even at the expense of customers. We see the beginning of the erosion of the ethos of banking in this country which has progressively got to the stage where we have nothing worse than an outrageous set of circumstances

in banking in Australia. Who the customers were, and what the margins were, is explained in the memorandum:

This lending should be directed to the small and medium size business area for development, investment and other financing requirements . . . I would see this lending attracting fees and margins a good deal higher than those for existing Australian borrowers . . . fees and margins could be pitched at levels to match or better those applying for domestic bill facilities.

So here we have the ethos of banking being spelt out in an internal memorandum. It is clearly targeting small business in this country and is beginning to create a foreign borrowing facility to maximise the bank's profits to the detriment of its customers. Domestic bill facilities traditionally carried high interest rates and high fees and margins.

What the memorandum is saying is that the bank will offer an expensive facility to customers who do not have the bargaining power to negotiate a better deal. That is naked greed. We have seen a good deal of it from the banking sector in the deregulated banking context since 1984-85.

Mr Rigg, to whom I have referred on a number of occasions in this place, never needed a foreign currency loan; all he needed was the first mortgage finance to build commercial lease premises and a factory at South Nowra. As we shall see, the bank's greed was such that Mr Rigg would be offered a facility calculated to extract every last drop of blood out of his business.

There was a problem in 1982-the cost of hedging against the exchange risk. The memorandum continues:

The more contentious risk is, of course, the exchange risk . . . it is now possible to use the hedge market to cover the risk which would mean that all up costs should broadly match the costs of AUD finance.

In other words, the cost to the customer of entering a hedged foreign currency loan was about the same as entering into a domestic loan. Accordingly the bank had a product it could not sell. The bank's greed was to overcome this. I will be seeking leave to table a memorandum.

How was the bank to induce customers to accept fees and margins for foreign currency loans which were pitched at levels to match those applying for domestic bill facilities? It is simple. The foreign currency loans were to be offered to the targeted customers in conjunction with a domestic bill facility. That ploy was explained in a bank memorandum by Messrs B. Moran and J. L. Edwards, dated 15 April 1982, entitled `Foreign Currency Loans to Australian Borrowers':

When considering applications for existing or prospective customers . . . it is recommended that the following course of action be introduced immediately:

* All applications of $250,000 or more for bill facilities to assist with capital expenditure (working or otherwise) are to be approved . . . as a `bills discount/offshore finance facility'.

* The CTB will have the option to exercise either facility at each rollover . . .

That is worth marking well. The bank was to decide, upon its own motion, whether to adopt the foreign currency loan on any roll-over of the domestic bill facility. I will be seeking leave to table a memorandum from which I have just quoted.

How is the bank to overcome the problem of hedging costs? This, also, was simple-make the customer wear the exchange risk. That ploy was explained as follows in a bank

memorandum by Messrs J. O'Brien, dated 6 May 1982, entitled, `Foreign Currency Facilities for Australian Customers':

. . . it is highly unlikely clients would readily accept foreign currency loans . . . unless they and the CTB are prepared to allow the facility to proceed on an unhedged basis. The statement is regularly made that the cost of hedged foreign currency loans is approximately equal to the cost of borrowing funds in Australia . . .

I will be seeking leave to table that memorandum. The bank left no doubt that it would not, itself, accept the exchange risk. Added to a bank memorandum of Mr J. B. Gledhill, dated 6 May 1982, entitled, `Senior Managers Comments', is a handwritten note as follows:

I assume it is intended that in no circumstances will the CTB itself accept any exchange risk in respect of overseas borrowings.

The response was yes, also written in the margin of the memorandum. I will be seeking leave to table that memorandum. Accordingly, if Mr Rigg had applied to the bank for finance in June 1982 he would have been provided with: (a) a bills discount facility with offshore finance options; (b) the option, to be exercised at the bank's discretion, upon any roll-over of a bank facility; (c) fees and margins to be the same as for the bill facility and the offshore finance; (d) Rigg to accept the exchange risk; (e) Rigg to pay withholding tax on interest payments to offshore lenders.

The mechanics applicable to the facility would have been, first of all, that Mr Rigg would sign a bill, leaving the identity of the acceptor of the bill blank. Secondly, the bank would negotiate the bill to an independent dealer on an open money market; the dealer's name would be inserted on the bill as acceptor; the dealer would purchase the bill at a discount, representing interest payable to the dealer; and the bank would credit the discount amount to Mr Rigg's account. I am describing precisely the procedure that was used in approximately 1,400 such negotiated offshore loans.

Thirdly, upon the maturity of the bill the bank would pay the full face value of the bill to the dealer and debit that amount to Mr Rigg's account. For providing that service, the bank would charge its usual fees and margins. The bank would not act as lender to Mr Rigg and would be in no way exposed. Fourthly, the bill could then be rolled over, or a foreign currency loan substituted. In the latter case, the bank would negotiate with an offshore financier to lend to Mr Rigg direct the foreign currency equivalent necessary to pay out the discounted bill facility. Fifthly, Mr Rigg would pay periodic instalments of interest in the foreign currency to the offshore financier, less withholding tax. Sixthly, any downward movement of the Australian dollar against the foreign currency would be a loss to Mr Rigg, payable to the offshore financier.

Seventhly, any upward movement of the Australian dollar against the foreign currency would be a profit to Mr Rigg, payable by the offshore financier. By providing that service, the bank would charge its usual fee and margins and would not act as lender to Mr Rigg.

Finally, upon maturity of the foreign loan, Mr Rigg might pay out the loan by way of a fresh bill facility from the bank, for the Australian dollar equivalent necessary to discharge the loan.

The bills discount facility with offshore finance options would have been in accordance with the normal market practice. However, that facility would deny the bank the substantial profits it could earn by going behind market practice and inducing customers to enter into sham transactions.

In the case of the bills discount facility, all the bank had to do was discount the bill to itself, inserting its own name as acceptor of the bill. The bill would be kept at the customer's branch of the bank and not negotiated on the open money market. The bank's money market dealers would fix the interest rate and the bank would lend the

money on the bill to the customer. In this way, the bank would receive the interest that would otherwise be payable to the independent dealer and would receive its usual fees and margins as well.

The offshore finance options would have been abandoned altogether. The bank would want to lend to the customer itself but would not accept the exchange risk of borrowing the foreign currency to on-sell to its customer. Accordingly, the bank would have to acquire the foreign currency by way of a currency swap, thereby incurring no exchange risk itself. The bank would then lend to the customer in Australian dollars but induce the customer to enter a forward exchange contract in the foreign currency acquired pursuant to the swap. Accordingly, the bank would `simulate' a foreign currency loan and `simulate' the exchange rate.

In this way the bank would receive the interest that would otherwise be payable to the offshore financier, would receive its usual fees and margins and would gain a potentially enormous profit from the downward movement of the Australian dollar against foreign currency. In reality, of course, there was no exchange risk for the customer, only a contractual pretence calculated to enhance the profits of the bank at the expense of the customer. Both of these sham transactions, if adopted by the bank, would, of course, be fraudulent.

The concept of currency swaps and simulated foreign currency loans were known to the bank in mid-1984. A bank memorandum from International Division, Accounting Department, dated 13 June 1984, entitled ,`Australian Interest Withholding Tax' provided as follows:

. . . avenues being used in the market to obtain withholding tax free funds include-

* Simulated or synthetic foreign currency loans, i.e. an AUD loan is obtained from an Australian resident (eg the CTB) and a hedge contract simultaneously taken out to `create' a USD liability. The USD equivalent of the AUD loan and interest are effectively sold forward. Obviously, this technique could also be used to create liabilities in other currencies as well.

* Currency swap arrangements . . . These transactions are, in effect, the same as simulated/synthetic loans except that physical currency is produced . . .

I will be seeking leave to table the memorandum from which I have just quoted.

The loan is described as `synthetic'-that is, artificial. The word `create' is in inverted commas, meaning that no actual United States dollar liability was created at all. In addition, no physical currency is produced. What that all adds up to is that a simulated foreign currency loan option is a sham.

The adoption of the currency swap technique avoids any exchange risk in respect of a simulated foreign currency loan. A technical manual entitled, Foreign Exchange in Practice, relied upon by the bank, provides as follows:

8.5 Currency swaps provide a powerful tool for manipulating cross currency cash flows without creating a net exchange position.

The applications of swaps include:

2) Simulated foreign currency loans.

I now quote from paragraph 8.10, under the heading, `Simulated Foreign Currency Loans':

Currency swaps provide a means of generating liquidity. A borrower may wish to borrow HK$ for 3 months. Perhaps he has no facility in place through which he can access either the local HK$ or euro HK$ money markets. Provided he can borrow another

currency, say US$, and enter into a US$/HK$ swap he has the means to generate the HK$ required. Generating liquidity in one currency by borrowing another currency and entering into a currency swap is known as a Simulated Loan.

I am still quoting from the handbook-the handbook from which people learn how to perform these simulated sham loans. An example is given as follows:

Step 1: borrow US$ for 3 months

Step 2: Sell US$ and buy HK$ spot

Buy US$ and sell HK$ 3 months forward

The cash flows are equivalent to borrowing HK$ for 3 months.

Step 2 represents a swap. The borrower has borrowed US$ and swapped them into HK$.

There is nothing sham about this type of transaction. It is perfectly legitimate. The borrower receives actual foreign currency without incurring any exchange risk. As we shall see, this is certainly not what the bank had in mind for its customers.

It is quite clear that the bank had the opportunity of providing an exchange risk free facility to its customers but did not do so. It is equally clear that the bank requires its customers to accept the exchange risk, even if it was a sham. A bank memorandum by Mr J. M. McAnary, dated 28 June 1984 and entitled `Simulated Currency Loans' provided that:

. . . a simulated currency loan enables a borrower to maintain his actual borrowing in one currency (eg AUD) but through a forward exchange contract can `simulate' a liability in another currency (eg CHF)-

that is, Swiss francs-

and effectively obtain the benefit of the lower interest rate of that currency . . . The overall result (in terms of overall cost and foreign currency risk exposure) will normally be the same as an outright borrowing in the other currency involved . . .

I will seek leave to table that memorandum.

The question arises: Why did the bank insist upon customers accepting an exchange risk? A bank memorandum from Corporate Banking Division, dated July 1984 and entitled `Simulated Currency Loans' contains an example. I emphasise to the Senate that I am quoting from internal bank documents that spell out this ethos and the methodology.

Senator Boswell —Did they fall off the back of a truck?

Senator McLEAN —They fell from somewhere. These documents spell out the procedures by which the simulated loans are actually conducted. I quote from this memorandum entitled `Simulated Currency Loans':

Example of Simulated Currency Borrowing

Customer wishes to `simulate' a Swiss Franc (CHF) borrowing for the equivalent of AUD 1 million for six months. In this example, assumptions for the starting date of the transaction are as follows:

CTB CHF selling rate-

- spot 1.9985

- 6 months forward 1.9311

In effecting a `simulated' borrowing, the customer obtains AUD 1 million net finance by say drawing bills under an acceptance/discount facility for face value of $1,064,603 which provides for discount and bank margin of $64,603 (all up interest cost of 13.1% p.a. on 365 day basis).

I am describing the detailed procedures known as the `Rigg incident', about which the Managing Director of the Commonwealth Bank wrote to me. I chose not to table this document in the Senate. It was tabled in the Senate by former Senator Stone at the request of Mr Don Sanders, and I have said publicly that it contains palpable falsehoods.

As I am running out of time, I will return to the Rigg incident at the next available opportunity. But in this procedure I am attempting to spell out in precise detail, with all of the documentary evidence for the Australian community at large to examine as its property, the internal bank documents which explain the procedure and which put the procedure in place-a procedure by which it is estimated 1,400 Australians were duped of their businesses by banks in this country. I am doing so, hopefully, in the public interest. I will return to this task of exploring the Rigg incident at the next available adjournment opportunity.

The ACTING DEPUTY PRESIDENT (Senator Teague) —Senator McLean sought leave to table various documents. Is leave granted?

Leave not granted.

Senator McLEAN(3.43) —The Senate will be aware that during the adjournment debate yesterday afternoon I undertook to explain to the Senate the circumstances surrounding what is known in Commonwealth Bank circles as the Rigg incident. It fits into a number of cases that I have been elaborating before the Senate-in excess of 80-over the last two years. I have chosen in recent weeks to provide greater and greater detail in relation to some of these cases.

Before proceeding with the Rigg case, which I had only partially described yesterday, I would like to comment on a procedural problem that came up during the process of my describing this and presenting matters to the Senate.

I have been naming people involved in what I consider to be bank malpractice and fraudulent practice. I have been making very serious allegations after long and deliberate consultation with legal advice. I am using my privilege.

I am sensitive to the fact that it is a profoundly significant thing that I am doing. Yesterday, as I have done on many previous occasions, I sought to table the documents upon which I base the allegations. Unfortunately, I bumped up against a procedural problem because, under the Standing Orders, any one senator can refuse leave. What happened as a result of my being refused leave by Senator Alston yesterday was that, when formulating a prima facie case, I was denied a fundamental legal procedure-to table the evidence upon which I base it. If in any other court of the land a lawyer said, `Do not table your evidence'-

Senator Tambling —We are not a court.

Senator McLEAN —I am just referring to a legal procedure and I consider this to be one. I will withdraw that phrase if it is a distraction. I am making serious allegations under privilege. I am seeking to put before you, Mr Acting Deputy President, and the Senate at large the evidence of those allegations. I have been denied leave, and that was the privilege of that senator. But I am just saying that it contravenes a basic procedure.

The ACTING DEPUTY PRESIDENT (Senator Peter Baume) —Order! There are other procedures available to you, senator.

Senator McLEAN —I will be seeking leave to table documents in support of it.

The ACTING DEPUTY PRESIDENT —There are procedures other than seeking leave.

Senator McLEAN —I will be seeking leave to table documents today. If it is refused, that is fine. I will just cite the fact that I would normally have been seeking leave. If the other procedures are, as you have suggested, Mr Acting Deputy President, that I pass those documents over for perusal beforehand, which has been a convention-and I accept that-it places into the hands of somebody other than myself the decision as to whether I table that document in support of my allegation. Frankly, I believe that I am the one who should make the decision as to whether I choose to table or not to table documents in support of my allegations. I do not deny the fact that other senators have their right to make a judgment but, frankly, I believe that I am the one who should make the judgment about whether a document is relevant to an allegation that I am making. So I

was frustrated by that procedure yesterday. I may be frustrated again. I may have to devise an alternative procedure, but I have not been able to do so in the meantime.

I was describing to the Senate a very complex case of Mr and Mrs Rigg of Nowra who were encouraged by the Commonwealth Bank of Australia to enter into what was known as an offshore borrowing option. Offshore borrowing options became quite common between 1984 and 1986. It is estimated that approximately 1400 Australians were enticed into this attractive bank product and, as a result, went bankrupt and lost their businesses and their farms. I contend that it was a deliberately contrived banking practice that contravened the fiduciary relationship, which is the fundamental obligation on the bank to consider the interests of clients and the interests of the bank equally. It was driven by the new modus operandi under deregulated banking of maximising profit at virtually all cost.

Senator Macdonald —Have not people sued banks?

Senator McLEAN —They have and they have sued successfully. I am being asked whether it is possible to pursue this in a court of law. Of course it is, but it is a question of whether a person has any money left to do that. The very nature of the problem of many people on whose behalf I am speaking today is bankruptcy or a lack of funds. That is their problem. They are often broken not only financially but also emotionally, psychologically and maritally, and most of them are not in a position to proceed. The Riggs are not in a position to proceed. They have been to a court. They are not in a position to proceed to appeal because they are totally without money.

Senator Macdonald —Are they not entitled to legal aid?

Senator McLEAN —They are not entitled to legal aid. I was in the process of elaborating on the mechanism of this procedure of offshore borrowing options. I had been citing a number of documents, and I was elaborating on why the bank would insist upon customers accepting an exchange risk, which is an inherent risk in this procedure, as opposed to accepting it itself. I was citing a bank memorandum from the Corporate Banking Division of the Commonwealth Bank, dated July 1984 and entitled, 'Simulated Currency Loans'. It gives an example of simulated currency borrowings that the customer wishes to simulate. 'Simulate' is a key word. We are talking about pretend, unreal loans that never actually become a reality. They were contrived and simulated, and that variant is a very important point. The memorandum gives an example of a simulated currency borrowing where a customer wishes to borrow a simulated, say, Swiss franc borrowing for the equivalent of, say, $1m for six months. In this example we assume from the starting date of the transaction that the Commonwealth Trading Bank Swiss franc selling rate, the spot rate, is 1.9985, while the six months forward rate is 1.9311. The memorandum states:

In effecting a 'simulated borrowing' the customer obtains AUD 1 million net finance by say drawing bills under an acceptance/discount facility for face value of $1,064,603 which provides for discount and bank margin of $64,603 (all up interest cost of 13.1% p.a. on 365-day basis).

The customer sells forward in Swiss francs for six months to the equivalent of his Australian dollar commitment including interest-that is, $1,064,603 at 1.19311, which equals 2,055,855 Swiss francs. We presume that the spot exchange rate for Australian dollars and Swiss francs does not change between the start date and the maturity date of the transaction. At the maturity date, the customer would receive a compensation payment for the close out of the forward contract.

The sale price of the original contract would be $1,064,603, and the purchase price in Swiss francs, as I said, was 2,055,855. A table shows the consequences of that transaction, and I seek leave to incorporate that brief four-line table, rather than attempt to verbalise it.

Senator Tambling —I haven't seen it.

The ACTING DEPUTY PRESIDENT —I would suggest that Senator McLean make the table available to honourable senators.

Leave granted.

The table read as follows-

Net compensation received:...AUD 35,904

Accordingly, total cost of borrowing would have been:

Discount costs in (1)...$64,603

Less compensation above:...$35,904

$28,699

which equates with an overall interest factor of 5.66 (360 day basis).

Senator McLEAN —The outstanding feature that emerges from this example is that the customer has already been locked into an expensive bill facility. Upon the drawing down of the bill, the net finance of $1m is credited to his account. Upon the maturity of the bill, the gross amount of $1,064,603 would in the normal course be debited to the account and the customer would be liable for the bill drawing down cost of $64,603. What the bank is saying is that if the customer enters into a simulated foreign currency loan and makes a profit on the exchange risk that profit will soften the bill draw-down costs-in this example by $35,904. It is quite evident that the bank used the exposure to the exchange risk as a marketing ploy to induce customers to accept the expensive bill facility. What is happening therefore is that this softening of the risk is being used to induce people into transactions. The other reason for the bank insisting upon its customers accepting an exchange risk is self-evident. In the example given above, there is a qualification:

. . . the final result of a simulated borrowing, as with an actual foreign currency borrowing, will depend upon the movement in the spot rate of exchange for the currency(ies) involved.

What this means, in effect, is that if there was a downward movement in the Australian dollar against the Swiss franc, the customer would suffer a loss and that loss would be added to the bill's draw-down costs. If the bank had been honest it would also have given an example showing how the exchange loss would increase the bill's draw-down costs, but of course the bank was not motivated by honesty; the bank was motivated by greed, as I outlined yesterday.

On 9 October 1984, the bank held a seminar at Wollongong. Mr Rigg's financial adviser attended the seminar. Mr Rigg later attended a similar seminar at Nowra. At Wollongong Mr Phil Henshaw, the bank's senior foreign exchange dealer, delivered a paper entitled Management of Foreign Exchange Risk. The paper dealt with offshore versus domestic financing. I seek leave to incorporate in Hansard an eight-line table wherein a comparison is made.

Leave granted.

The table read as follows-

Borrow AUD domestically for 90 days 10.50% p.a.

Borrow USD offshore for 90 days 11.75% p.a. + withholding tax 1.1% p.a. + forex spread say 0.1% p.a.

Borrow AUD domestically for 90 days 10.50% p.a.-benefit of selling CHF forward outright 2.50% p.a.

10.50% p.a.

Total 12.95% p.a.

Total 8.00$ p.a.

Senator McLEAN —I thank the Senate. Mr Rigg's financial adviser took notes on Mr Henshaw's address as follows:

Simulated Forex Borrowing

Borrow Aus on Bill line 180 days, pay Aust interest rates

Forward Hedge transaction, say Swiss franc 180 days

Agree to sell to bank . . .

He makes comparisons between the outcomes of agreeing at various rates over certain time periods. I seek leave to table that document. I do not know whether leave will be granted. Any of these documents which I am seeking leave to table and for which leave is being refused are available from my office to anybody who seeks them.

Leave not granted.

Senator McLEAN —It is quite clear from an examination of the paper and the notes that Mr Henshaw was promoting the same scheme as referred to in the example above. That is, the customer commits himself to the bill costs and, depending upon the currency fluctuations, makes a profit which softens the bill costs or, alternatively, makes a loss that increases those costs. Again, no example is given of a case where a customer makes a loss that increases the costs. What Mr Henshaw was promoting at the seminar was nothing more than a shabby ploy to line the bank's pockets at the expense of customers and, I would suggest, clearly in breach of the fiduciary obligations under law.

By a letter dated 5 June 1985, the bank made an offer to Mr Rigg which reads as follows:

. . . we have approved facilities on the following basis:

1. Anthony Thomas and Dorothy Anne Rigg

A Bills Discount/Endorsement Facility (including a Simulated Foreign Currency Loan Option) . . .

Your covering fully at maturity of the hedge contract, any exchange loss that might eventuate should an adverse exchange rate movement occur. The Bank will discount each bill in accordance with market practice . . .

2. Tony Rigg Welding &Manufacturing Pty Limited

An overdraft limit . . .

We confirm acceptance of the Bank's offer.

(Signed: A T Rigg D.A. Rigg.

I seek leave to table that letter.

Leave not granted.

Senator McLEAN —I offer copies of that letter to anybody who seeks them from my office. I presume that for all of the annexures that I will be referring to hereafter this will be the situation. The bank contracted to provide Mr and Mrs Rigg personally a bill discount facility with simulated foreign currency loan option. The bank contracted to provide to the Rigg company an overdraft facility. Mr Steve Bennett of the bank's Nowra Branch had handed to Mr Rigg a copy of the memorandum dated July 1984 entitled `Simulated Currency Loans' and which I previously described. Mr Rigg states that he accepted the bills discount facility in reliance upon the representations made in the memorandum and the representations made by Mr Henshaw to his financial adviser that the simulated foreign currency loan would soften the costs payable on the bill.

The bank even congratulated itself on the representations made to Mr Rigg and his financial adviser. A bank memorandum of Mr W. J. O'Reilly, Acting Senior Manager, Nowra Branch, dated 6 May 1985 states:

. . . an invitation was extended to Mr Rigg to attend a seminar conducted by this office by Group Treasury staff on foreign currency lending. Mr Rigg was impressed with the obvious expertise the bank has in that area.

The memorandum continues:

Any shading of fees will create a good impression with (Mr Rigg's financial advisor) with whom we have a good working relationship. He is likely to refer more of his clients to us if he knows we are prepared to be flexible . . . He conducts his personal banking with us and we consider it only a matter of time before we obtain the business connection as well.

The memorandum, which was addressed to the Regional Manager, also stated:

Your office is well aware of our recent marketing efforts in this area and the substantial gains made from other banks. Approval of this application will further our sound reputation in the local business community.

When Mr O'Reilly wrote those words he was not to know that the approval of that application would lead to the bank being regarded with hatred, ridicule and contempt by the local business community for the manner in which it breached its fiduciary responsibility and pursued a practice which subsequently sent approximately 1,400 small businesses to the wall.

The bank did not provide to Mr and Mrs Rigg the bills discount facility in accordance with the market practice. The bank did not provide to Mr and Mrs Rigg the simulated foreign currency loan. On 7 April 1986 the bank offered Mr and Mrs Rigg, and Mr and Mrs Rigg accepted, a fixed rate bills discount facility. The bank did not provide that facility either. What the bank did was to provide a series of sham bill transactions, whereby the bank pocketed not only the usual fees and margins, but the interest as well. Moreover, the bank, by fraud, debited the bills roll-over costs to an overdraft account of the company, thereby earning additional compounded overdraft interest on these debits.

The consequence of that fraudulent conduct was that the bank absorbed the company's working capital and crippled the business, thereby destroying valuable export

earnings for Australia. The Senate will recall that I cited an example in which I made similar observations about the Huon Valley Springs saga.

The bank well knew the standing and potential of Mr Rigg's business. The bank well knew the consequences to Mr Rigg and his family that would flow from any fraudulent misconduct. I refer again to the memorandum dated 6 May 1985:

Mr Rigg has proven management ability and the Company has shown it can operate profitably . . . The arrangement with Lysaght Brownbuilt Industries and the assistance of the Department of Trade should ensure that lucrative overseas markets will open up . . . As the Company will be earning offshore income it will have a natural hedge against exchange rate movements for its foreign currency option . . . This will be the first simulated borrowing at this office where an exporter has been involved.

I repeat the phrase:

This will be the first simulated borrowing at this office where an exporter has been involved.

The memorandum continues:

The overall project is considered viable as it will be the only warehouse of its type south of Wollongong, where the majority of building trades will be represented.

Earlier I suggested that if the bank wanted to go behind market practice with a sham transaction, it would discount the bill to itself and insert its own name as an acceptor of the bill-a procedure which I outlined yesterday. The bill would be kept at the customer's branch of the bank and would not be negotiated on the open money market. That is what happened in the Rigg incident.

The seeds for the fraud were sown in the memorandum dated 6 May 1985, where the Riggs' repayment capacity was demonstrated, in summary, as follows:

A T &D A Rigg:...86,000

Tony Rigg Welding and Manufac-

turing P/L:...56,470

Their total capacity to pay was $142,470, less various items amounting to $24,800; the net amount was $117,670. The memorandum concluded:

$117,670 will be available to meet an estimated interest expense per annum of $75,175 on the bills discount/endorsement facility of $485,000 . . .

What the bank was saying was that the capacity of Mr and Mrs Rigg to service the bill facility would be dependent upon utilisation of the income of the company to supplement income derived from Mr and Mrs Rigg. This was taken further in a letter from the bank to Mr and Mrs Rigg dated 26 February 1986. I quote:

. . . we have reservations as to your ability to meet interest costs on your indebtedness once the development is fully completed and tenanted. The following table is an assessment of estimated net income and interest costs . . .

There is a table of about eight lines which is in fact contained within the letter. I seek leave to incorporate that table in Hansard.

Leave granted.

The table read as follows-

$

Net rental income

98,000

Less rental payable by Tony Rigg Welding &Manufacturing Pty Limited:...

12,000

$86,000

Add net income available from Tony Rigg Welding &Manufacturing Pty Limited as per budget provided at time of application:

60,000

$146,000

Less proposed interest costs based on current interest rates and estimated debts on completion say $750,000 (including overdraft) x 20%:

150,000

Deficiency:

$4,000

Senator McLEAN —I thank the Senate. The bank is now saying that the whole of the net income of the company will be required to service the loan-a different requirement from that which it had outlined in a previous memorandum.

The bank is now foreshadowing an interest rate of 20 per cent per annum on the bill facility. The bank is now foreshadowing that the servicing of that exorbitant interest rate will absorb all the income of Mr and Mrs Rigg in the company. What happened to the simulated foreign currency loan? What happened to the overall interest factor of 5.66 per cent, shown in the earlier table in the bank memorandum dated July 1984? What happened to Mr Henshaw's estimated 8 per cent per annum in the light of this now incurred 20 per cent per annum?

How could the bank take the benefit of the 20 per cent interest for itself? The answer is simple: discount the bill to itself. That is what happened-because it had left this option open to itself. How could the bank ensure that the net income of the company serviced the interest? The answer is simple: debit the interest to the overdraft account of the company. That is what happened.

However, there was a problem. If the net income of the company was to service the interest, the only working capital available to the company was the overdraft facility. If the interest payments were debited to the overdraft account, those debits could take the overdraft over the approved limit, causing the bank to bounce cheques and effectively cripple the business-and that is what happened.

Indeed, the bank well knew the consequences of its fraudulent conduct. In a diary note by Mr G. S. Judge, Senior Manager of the Nowra branch, it is stated:

Mr Rigg telephoned to complain about the dishonour of the company cheque for $4,310. Interest of $6,860.80 was charged on 23 December 1986 which took the balance over the temporary limit of $138,000.

Mr Judge knew the bank was crippling the Riggs' business. Why did he do nothing about it? Why did he not reverse the fraudulent debits out of the overdraft account? Why did he not implement a simulated loan without exchange risk?

In a letter from Mr G. R. S. Kyngdon to Rigg, dated 19 February 1987, it was stated:

We understand your concern that the interest charges on the bills are placing heavy pressure on the company's overdraft account and restricting your ability to continue to trade. To alleviate this problem we are prepared to allow temporary excesses on the overdraft account of 150,000 . . .

I would normally have sought leave to table that letter, but a copy is available. That was a stupid and meaningless gesture. The next interest debit took the overdraft over the new limit. Kyngdon knew the bank was crippling Rigg's business. Why did he do nothing effective about it? Why did he not reverse the fraudulent debits out of the overdraft account? Why did he not implement a simulated loan without exchange risk?

I suggest that the reason Judge and Kyngdon did nothing effective was that they did not want to. I suggest that the bank had embarked upon a deliberate strategy calculated to extract every last drop out of the Riggs. I suggest that the bank did not care if the Rigg business was crippled. I suggest further that the bank wanted Rigg to go under, so that the bank could realise on its first mortgage security. In June 1987 the bank's fraudulent conduct finally crippled Rigg's business. A letter from Mr G. S. Judge to the company dated 19 June 1987 stated:

We regret that we are not in a position to honour further drawings including your weekly wage cheque unless covering funds are provided.

I would normally have sought leave to table that letter.

I turn now to the documentary evidence of the fraud. Bills were drawn down or rolled over on 34 separate occasions. Upon each occasion the transaction was evidenced by various documents prepared and issued by the bank. The first bill was discounted on 14 August 1985. The action sheet prepared at the bank's Nowra branch shows the following: first, the names of the customers were A. T. and D. A. Rigg. All subsequent actions named the customers as A. T. and D. A. Rigg. Second, the account number of the customers was 181.407. That number was crossed out and the number 181.415 inserted, that is, the current number of the overdraft account of the company. That is significant. That action enabled the fraud whereby the bill draw-down, or roll-over costs, representing interest on the transaction, together with the bank's usual fees and margins, were debited to the overdraft account of the company. All subsequent action sheets nominated the account number of 181.415. The third matter appearing on the action sheet was that upon the draw-down of the bill the net proceeds of the transaction, that is, the face value of the bill less the interest, fees and margins, were credited to account No. 181.829. All subsequent action sheets showed the net proceeds as crediting account No. 181.415 or, when the bank's accounting procedures were changed, showing the interest and margins as fees debited to the account, which had the same result for the customer.

I have only a little more to present and I shall have to return to this on a future occasion. What I am doing, quite deliberately, is putting into the Hansard a classic case of the exercise of the overseas currency option debacle. The Rigg case is an outstanding one, and I am putting it in detail so that it can be read and observed by other Australians. On a future occasion I shall have to return to the short remaining explanation of that account.