
# Submission to the Joint Parliamentary Committee on Corporations and Financial Services ( JPCCF)

**4/5/09**

The following submission is put on behalf of my wife, **Barbara Ann Wright** and I **Richard B. Wright**.

The following submission is in relation to the diligence of banks and their associates in strategies to recoup financial facilities offered to clients in business perceived to be lucrative at initiation, but deemed to be unattractive due to changed circumstances at a later date. The deception, which evolves is based on a "partnership" type arrangement whereby the financier lending, is fully conversant with the subject and leads the client into it followed by a denial of any mutual arrangement and subsequent foreclosure. Costs and charges adjust according to the interest rate but banks ensure one counteracts the other so there is no downside to them.

This submission is compiled from material evidence to support the points made with more documentation available if it is deemed necessary. The following matters illustrate systemic failures in the accountability and transparency of those administering corporate law and its governance.

There is no direct reference to Storm Financial or Opes Prime however the lack of understanding of the financial institutions of *agricultural production* has lead to the majority of small farm businesses exposure to insolvency in a similar way to the victims of Storm and Opes. The methodology of the financial institutions in constructing deeds and agreements often signed under duress when times get tough, has been described as unconscionable conduct by legal advice particularly when clauses such as "in good faith" are incorporated without clear definition of what it means.

It is disappointing that the terms of reference appear to focus mainly on the two above-mentioned corporations when the big four financial institutions are probably the catalyst of their demise. Despite a Parliamentary **Joint Statutory Committee on Corporations (October 2000)** and the recommendations made within it, banking practice has not changed for the better. The Code of Practice, which came from that inquiry, is voluntary and therefore impotent. It has done little or nothing to redress the problems that that inquiry exposed. The failure of Storm Financial and Opes are symptomatic of the bigger problem evident in the increasing number of corporate collapses that are now apparent.

## SUMMARY.

The following summary provides a living example of what now appears to be common practice, it is supported by documentation on every point made, is underpinned by case law established in the NSW Supreme Court (1999) enhanced by a failed appeal and is appropriate in particular reference to:

1. Financial advisers. The relationship between bank and the client (rural in this case).
2. Regulators. The relationship between bank, the receiver, administrators, liquidators and the statutory Australian Securities and Investments Commission. (ASIC).
3. The statutory Australian Competition and Consumer Commission.(ACCC)
4. The relationship between banks, big business and the statutory authorities (ANZ, BHP, ASIC, ACCC).
5. Other jurisdictions.
6. Australian Taxation Office.
7. The agents.
8. The Courts. The relationship between banks and the Supreme Court of NSW and the NSW Court of Appeal.
9. The relationship between the receiver and the buyer of the undersold assets.
10. The Trade Marks Office. Statutory

## 1.The financiers

This submission is supported by a NSW Supreme Court action, which in essence established that *a receiver had failed in his duty of care to sell assets for not less than their fair market price*. Sect 420A (1) (a) of the Corporations Law was proven to have been breached. This case was never settled with the bank and was furthermore quantified as an error of $1,065,000 by the receiver in a transaction of approximately $3,000,000. The Judge in his wisdom left the opportunity open for the "bank" to be subjected to a supplementary judgement yet to be delivered. The citation of the case is **Jeogia v ANZ (1999) NSWSC 563.**

The receiver appointed was Mr Keith William Skinner of Deloitte Touche Tohmatsu The case was subject to an appeal by the bank's appointed receiver (Skinner) and that appeal failed. The citation of the appeal was **Skinner v Jeogia CA 40517199.** Delays of twenty months ensured the bank received interest and penalty interest at the same time funding the litigation using the Company's (Jeogla Pty Ltd) account. On the one hand the bank appointed the receiver and maintained he was independent and professional but statements issued showed the bank funded his appeal thus ensuring the insolvency of the company Jeogla Pty Ltd. My wife and I were the directors and control all the shares.

Due to the fact that this case was never settled with the bank, it remains unresolved and therefore is not subject to any statutory time limit. The case is unique in that the above mentioned litigation was successful but both bank and their appointed receiver have refused to acknowledge the judgement or negotiate settlement. The bank and its appointed receiver through their solicitor in common were more intent on intimidation and harassment than mediation including threats of bankruptcy based on false statements.

A question remains unanswered in that the extent of the error was of such magnitude that the receiver should not have been appointed in the first place and it appears the courts were presented with false and misleading statements in order for him to be appointed. Valuations which separate the business from the land, when one enterprise cannot operate without the other is a spurious practice designed to produce false impressions to suit the bank's predatory practice to replace an undesirable client with what appears to be a larger and therefore more attractive one. The case did not discriminate between valuable stud animals and commercial trade stock, nor did it

account for superior genetics or the fertility of the herd. In general terms, livestock are regarded as saleable *at current market value*. If a cow produces a calf every year she has an intrinsic value ten times that of the current market value realised in the year of sale. Another anomaly arises when valuable stud animals are used in the context of semen sales or embryo transplants. It is fundamentally wrong to suggest that a $50,000 bull in its prime could be sold at a meat value of 90c per kilogram. The business includes many components necessary to run it successfully. To sever the components of the business into unmarketable portions makes the "business" non-viable.

As a director of the Company I, **Richard B. Wright** demanded bank statements to which I am legally entitled, that until well after the above mentioned court case I had been denied. On receipt of the bank statements, no adjustment for the above-mentioned judgement was evident and a further $500.000.00 had been expended on the business on what could only be to pay for the receiver's appeal. The bank practice is to continue to charge interest and penalty interest on accounts that are in the hands of the receiver, written off as far as the tax department is concerned, beyond the control of the directors, and produced to provide evidence to the courts for bankruptcy purposes.

At no stage could we ascertain our level of indebtedness (if any) because the bank would not communicate, but rather directed us to the receiver, who was in control. We were advised at a later date that the statements sent to us were the wrong ones. We requested a copy of the correct statements but that request was denied because the Company was *in the hands of the receiver*. With respect the distribution of false and misleading statements is a breach of criminal law. It is apparent that banks, rather than correct any errors, have an advantage of advising clients that such errors should be corrected by litigation only. They are aware that the litigation will be paid for by the client, who has to extend his exposure, and borrow to service any legal action anyway.

## 2 ASIC (Statutory)

I monitored the *reports as to the affairs* (RATA) of the company with the Australian Securities and Investments Commission (ASIC). This is the body that claims to be **the consumer protection regulator**. There was little or no correlation between the receiver's reports and the bank statements. The RATA showed no reference to any adjustment for the result of the above mentioned Judgement ($1,065,000). The RATA showed no receipt for a list of assets as yet unsold or regarded as a "given" in the fire-sale conducted by the receiver in the first instance and afterwards the administrator of the Company. Correspondence from ASIC states "*the judgement error was not sufficiently egregious enough to warrant further action*". It was later established that ASIC were not advised of the above mentioned judgment figure at all. At a later date ASIC were provided with details of the judgement showing the amount of the error. The receiver was written to on no less than ten occasions seeking receipt documentation for the following assets;

1. A registered Hereford Stud
2. A registered Horse stud
3. The intellectual property of the business (TM no.795107)
4. The business as a whole
5. Plant and equipment and personal items
6. Accumulated tax losses

7. Cows with calves at foot and cows pregnancy tested with calves in utero.
8. Rent flow from real estate investments
9. The property unsold and unencumbered (without any mortgage attached) as part of the property known as Bald Hills
10. The costs orders as handed down by the NSW Supreme Court (50129/98)
11. The costs orders as handed down by the NSW Court of Appeal(40517/99
12. The adjustment of $1,065,000 quantified by Justice Einstein as the error.

The ASIC was also written to asking for the record of the relative sales of the above. The administrator was similarly requested to account for assets that were sold, not sold, or as yet to be sold. This administrator (**Sims** partners) automatically aligned himself with the ANZ and the receiver by stating. "*I do not have sufficient books and records of the Companies in my possession to determine the underlying cause of the financial difficulties which would have led the ANZ to ultimately take steps to realise its security.*" It would be conjecture to suggest such a statement is a cover-up or some money may have changed hands but the fact remains the bank has never settled the matter. The bank's reaction is to advise the administrator that they cannot discuss what they regard as the client's private business. If it is the case that ASIC accept statements from receivers who are on the record of breaching the law then it is condoning misappropriation. ASIC were requested to consider their undertaking to provide an independent mediation with ANZ as outlined in the Australian Banking Code of Practice (clause 36). I did not receive any reply to this request and in this process it was discovered Mr Robinson, the ANZ customer advocate, had been previously employed by ASIC. Again it would appear some agreement was reached to cover-up.

## 3 ACCC (Statutory)

ACCC were provided with documentation including details of the successful Court case. A submission was compiled in adherence to their request showing the *blatant disregard of the law to significant public detriment, which was likely to have educative effect of action and relative to primary industry, a good test of the Act.*
I advised the Australian Competition and Consumer Commission (ACCC) that a collusive arrangement appeared to exist between the bank and its appointed receiver using a solicitor in common. ACCC replied advising it was normal practice for the bank and its appointed receiver to have a solicitor in common. ACCC advised that *due to the fact that the bank, receiver and the solicitor are not competitors with each other they were not in breach of the Act*?
They were also advised of the apparent collusion between BHP and ANZ with directors in common overseeing the forced sale of the property Broadmeadow under which lies substantial coal deposits now mined by BHP.
**This is the body that claims to cover anti-competitive and unfair market practices.** ACCC were also advised of a conflict of interest that occurred when a mediator endorsed by the Rural Assistance Authority (RAA) failed to disclose the fact that his firm was retained by ANZ.
I advised ACCC of the forced sale of a property known as Broadmeadow in the central highlands of QLD to BHP when that company had two directors in common with ANZ namely Ms M.A. Jackson and Mr J.K. Ellis. I requested they investigate the minutes of both corporations in order for the named individuals to show where they declared the obvious conflict of interest. ACCC refused to do so. ANZ threatened me with defamation if this matter was pursued. I advised the bank of their own solicitor with- holding funds from the compensation payment for the mining and

severance of this property with the effect of automatically placing the company into default.

## 4 Other Jurisdictions

Banking Ombudsman was advised of the "error" quantified in the court, but this was *too large because that office could not address anything above $100,000.*

Legal Services Commissioner (LSC) were advised of the ANZ solicitor engaged by both the bank and the receiver, in a joint arrangement to compile illegitimate costs to ensure the destruction of the Company, Jeogla Pty Ltd.

My wife and I were the only directors and owned 90% of the shares. The LSC could find no evidence of any breach of the law and refused to investigate the matter further. This office acts on behalf of the legal profession and is most unlikely to carry out any investigation, which may reflect badly on its members.

The Commonwealth Ombudsman (Statutory office) advised that ASIC select matters for consideration in allocating resources against criteria which all complaints are assessed. The ignorance of agricultural matters within ASIC was consistently illustrated through many telephone calls. For example any reference to brands, ear tags, pedigrees or embryos were issues completely beyond their comprehension. The quickest way to avoid displaying such ignorance was to say they were not qualified to provide opinion, but nobody in the organisation *was* qualified or knowledgable on the subject.

The Institute of Chartered Accountants were furnished with all details of the massive error as outlined in the NSW Supreme Court and referred the matter to their disciplinary committee. The committee's decision was that they were not a litigious organisation and this matter would reflect badly on one of their members whom they represent. It is apparent this Institute condones accountancy errors of $1m+

The matter of liability has become such that "professionals" now deem it necessary to take out public liability insurance simultaneously advising clients that the business they operate is protected to a limited extent. Professional advice is sought and expected to be sound. There is limited opportunity to achieve redress from any error made by professionals resulting in an escape in the event of inappropriate advice given. It is common knowledge that the courts are the most intimidating and unattractive alternative for resolution.

**5 ATO** Statutory The Australian Taxation Office were requested to account for valuable taxation losses accumulated by the Company over the years it had developed run-down and unproductive land into highly productive and improved property. They were also asked for an audit to be carried out due to the fact that the receiver had not sold the assets mentioned in **2 ASIC**. Their advice was that, due to the fact that the Company was in receivership this matter was "*In the secrecy file*". They were also asked to ensure that the correct amount of stamp duty had been collected when the properties were undersold and if any adjustments were made, when this had been proven in the NSW Supreme Court. There is apparently no check-off between solicitor's trust accounts, which receive the stamp duty and The Stamp Duties Office, which receive it from them. Numerous other levies, in particular the transaction levy associated with the undersale of the cattle in the first instance and the correction to the value of the cattle by way of the judgment and that levy, which is a percentage of value of the cattle. It appears again that this request was just too hard to fufill.

**6 The Agents** All agents involved in the undersale of the properties and stock in the business were advised of the outcome of the case. The receiver paid them commission, and rather than correct the mathematics of their income agents chose to ignore the problem. No agent would like the publicity of being shown to undersell or be involved in inappropriate practice. Similarly "professional" accountants and solicitors were engaged by the receiver under instructions from the bank and were paid accordingly, all such payments being made from the company account. A big attraction for the agent is to support the new entity in ownership and procure business into the future putting past misdemeanours behind them. Because the receiver engaged these agents the perception is that any problem is that of the receiver and "they were only doing what they were told". None of the items listed in **2 ASIC** were on the contract of sale.

## 7 The Courts

His Honour, The Chief Justice of NSW Justice Spiegleman recently advised the Law Society of NSW "That Justice was not being delivered because it had become too expensive for laymen to afford". Not only is this an indictment on the system, it is immoral.

It is a fact that when in litigation, it is in the best interests for financiers to adopt a protagonist strategy of purposeful delay in the knowledge that interest and indeed penalty interest is being applied to borrowings. This is termed as **abuse of process.** Furthermore it is common practice for banks to receive the benefit of a tax write-off even before foreclosure.

(Ref: Parliamentary Joint Statutory Committee on Corporations and Securities October 2000 PJSCCS) It becomes impossible for banks to undo the "scrambled egg" which would exacerbate any possibility of correcting mistakes because it **costs.** It becomes dishonest to cover up proceedings by precluding the client any access to bank statements. Modern day electronic transactions can be accountable in seconds. Despite the recommendations of the Banking Code of Conduct and the legislation which followed the above PJSCCS it has not been regulated is voluntary and little of it has been adopted. A document entitled the Banking Code of Practice is available at Banks but its recommendations are optional and of no consequence. If it remains the domain of the Court system to "regulate" by litigation it is impotent because to the Layman it is unaffordable. Despite the aforementioned citation (**NSWSC 563**) and its established legal precedent of forcing *the sale of assets at fair market value* it now appears to be common practice for valuers to provide valuations "within a range" the deviation allowing for 60% flexibility. The business under attack is severed into unmarketable components which are then undersold or considered as a given because of the difficulty of selling at fair market value. The friendly purchaser ignores any suggestion of impropriety because of the huge windfall he has gained and even engages the receiver in a statutory hearing to support a suggestion he has sold assets at fair market value. Despite adverse findings against the receiver the bank continued to use him.

## 8 The arrangements ANZ/ BHP/ Deloittes/ Roche Group

The global "competitive" market policy governments adopted, provided the bigger players with huge opportunity to organise corporate arrangements to expand without inhibition:

1. The bank within closed walls has directors in common with large corporate entities (BHP ANZ) both of who have a commercial interest in expanding business.
2. The bank seeks out another corporate client utilising a so-called independent Corporate accountancy firm (ANZ/ Deloittes) in the knowledge it has an opportunity to procure another account.
3. The bank minimises risk of error by engaging the same solicitor as the appointed receiver from Deloittes. Deloittes are provided with incorrect statements and valuations by the bank, which is produced in court as evidence as to solvency/ insolvency.
4. BHP has the opportunity to buy access rights for mining from a pastoralist but is frustrated by a mining compensation hearing in the QLD Mining magistrates court and advises ANZ of the problem.(Complicated by WIK decision)
5. The WIK decision handed down by the High Court automatically impacting on confidence in investment in pastoral lease country because "security of title" could not be guaranteed. This decision was used to depress the value of this asset to a fraction of its worth. ANZ maintained *it was not their problem.*
6. The Roche Group, who is the major earth moving organisation engaged by BHP uses Deloittes to seek out a substantial rural investment so the group can gain the significant tax advantages such an investment can offer.
11. Bank via solicitor delays payment of compensation to pastoralist ensuring he is in default.
12. Rural Assistance Authority engaged to conduct mediation farce.
13. Deeds forced by ANZ for pastoralist to sign while simultaneously withholding cheques to pastoralists employees during RAA hearing chaired by mediator already an ANZ appointee who doesn't disclose conflict of interest.
14. Roche Group advised of imminent fire-sale of substantial property of pastoralist.
15. Auction organised by agent under instructions from receiver already in breach of the law.
16. Attendees realise the farcical nature of the procedure and withdraw from auction.
17. Property sold at gross undervalue and cattle discounted by $1m. Windfall to Roche Group.

## 9 The Trade Marks Office Statutory body IP Australia

The business had a history of over 150 years and had developed a reputation as one of the most prominent cattle operations in Australia. This reputation is on the public record and evolved as a result to one of the most committed families to primary industry in the country. It was deemed necessary to apply for a Trademark in order to protect the valuable intellectual property associated with it. The "Logo" used to promote the business was the cattle brand which was registered by Richard & Barbara Wright who managed and directed the Company and were the major shareholders. **Trade Mark number 795107** remains the property of Richard & Barbara Wright in classes 29 (meat) and class 31 (cattle). A critical component of the intellectual property and reputation was the historic protection and production of quality meat and livestock with specific genetics The history of the business was regarded as a most important component of the business.

IP Australia took it upon themselves to issue another Trademark at a later date exactly the same i.e. **TM 846659**. With respect I would ask the inquiry to consider the implications if an entity were to issue a trade mark which was the exact replica of Coca Cola.

My wife and I continue to run cattle using the V1V identification however it has been grossly compromised by the erosion of the quality aspects of the management by the Roche Group. Cross breeding has largely damaged this trade mark. If it is the jurisdiction of the TM office to protect intellectual property in this case it has been an instrument leading to the destruction of that property.

## Legislative or regulatory change

It would be irresponsible not to recommend any change to a system, which has delivered a disaster to my family through a stupid error, but sadly such errors can be orchestrated through manipulation of valuations, ignorance and intimidation for a spurious outcome.

1. Regulation of banks to ensure correction of errors made followed by adequate compensation for damages.
2. When a judgment is handed down an estoppel should apply until such times as the matter is settled to the satisfaction of the Court which administered the case.
3. Appeals should not be able to allow the destruction of a business by way of abuse of the system with purposeful delays, non-discovery of documentation, the use of wrong statements that may be compiled for tax purposes as opposed to real values.
4. Mandatory accountability for errors made through audits between the statutory bodies. ATO, ASIC, APRA Stamp Duties Office etc.
5. Severe penalties for any individual or corporation failing to notify conflicts of interest.
6. Agents returning commission, which has been paid after the courts have proven inappropriate practice.
7. Publication of breaches of law that have become "case-law" for the public benefit.
8. Compensation for proven errors by way of **re-valuation** of the complete business, which has been wrongfully destroyed and adjustment made between before and after sale where litigation has taken place.
9. Legislation established to prohibit the practice of pursuit to bankruptcy before the litigation is settled or deemed to be settled by the courts.
10. Professionals to be struck off if their advice has led to damage to an extent greater than their public liability insurance cover. Particularly where a breach of Corporation law has been established and proven.
11. Compensation for damages from the action of a statutory authority making an error in respect of the issue of a Trade Mark.
12. Establishment of clear guidelines as to the difference between Criminal law and Corporate law when errors of in excess of $1m are made.
13. No immunity for Directors, controllers or administrators by way of purposeful bankruptcy to avoid punishment and criminal proceedings become automatic in such an event.
14. If an error has been proven in the courts, not only should it be accounted for, compensation should be mandatory. The receiver was to blame for his incompetence but the bank appointed him. This is where the buck should stop.
15. Receivers, administrators and liquidators should at all times be independent of the financial institution that appoints them. The scheme of arrangement that is in operation at the moment invites the collusion and corruption that has been outlined in this submission.

This submission is small evidence in what is a grave miscarriage of justice. It is put to the committee in good faith in the hope that more detail can be exposed. If the

committee agrees to invite me to give evidence at any public hearing that may be considered I would be most willing to oblige.
Yours Faithfully

Richard B. Wright

**Overveiw/ The business** and forced sales.

| Property | Hectares | Stock |
|---|---|---|
| Jeogla | 6677 | 6000 cattle<br>1100 sheep |
| Hernani | 1000 | 680 cattle |
| Warrabah | 3972 | 1500 cattle<br>6500 sheep |
| Broadmeadow<br>Moranbah QLD | 44,885 | 8500 cattle |

Off-farm investments;

Richardson's Arcade Armidale comprising 17 specialty shops

Dumaresq street Armidale 600 sq metres trade space