

The Commissioner,
Access to Justice,
Productivity Commission,
GPO Box 1428,
Canberra. ACT. 2601.

Dear Commissioner,

Re: Submissions of Lynton Freeman.

Numbered 9 and 12 and this further Supplementary
Submission after publication of your Draft Report

I refer to the above and identify how access to justice is denied by well-resourced entities against self-litigants, made impecunious by previous incorrect conduct in the dispute. Consequently the processes in bank customer management, where the bank demands mediation and Civil and Criminal, Bankruptcy and Vexatious defences are all reliant on the National Australia Bank (NAB) and its' practitioners' behaving properly for justice in legal process. The issues affect thousands of bank customers and the general community who rely on honesty from their banks. Until our society alleviates the problems with evidence and court presentation in the justice process we will continue to have access to justice issues with frequent users of alternative dispute resolution and court processes.

The opportunity to establish predicted injustice and government scheme corruption, from past experience with industry participants has been identified and particulars of the process, addressed within the context of requested Comment. One important issue, a farmer scheme public administrators, QRAA ruled the farmer eligible for interest subsidy (viable), but NAB refused to accept the subsidy payments or to allow him to move to another bank. By this act NAB collected additional interest on over \$200,000 commencing 1993. NAB prepared budgets and did not include the funds identified in a precedent McDonald v Holden [2007] QSC 54 (15 March 2007). QRAA accepted this situation because the farmer could not come to agreement with his banker of record, NAB. The bank between 2004 and 2012 made an "Enforceable Undertaking" with ASIC and APRA to audit accounts and admitted 400,000 accounts with false entries and this affected the farmer from Mediation to Vexatious proceedings especially when NAB representatives interfered with evidence before the court and created damage to the farmer and his family, personally and financially.

Yours faithfully,

L. Freeman

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Executive Summary

This submission examines and comments on the Access to Justice Draft Report Overview of April, 2014. However some of the information and recommendations miss the access to justice points in presentation especially when self-litigants are involved. Where a person is charged with being vexatious and the applying parties to the vexatious orders use incorrect or deny evidence at the time of the hearing, but admit any part of the evidence, before or after judgment, an offence should be available for prosecution. This unproduced evidence could cause removal of a personal freedom and access to justice.

A similar scenario occurs throughout civil law prosecutions where inequality of representation is involved. The effects of incorrect evidence at the time of hearing in the Federal Court and how it effects appeals is published in National Australia Bank Limited v Freeman (a Bankrupt) {2005} FCA 1895 (22 December 2005) the claimed defence is disregarded by the judge to make the defendant vexatious: The heads of the defence and proposed and new and fresh evidence are hereunder:-

a. false and illegal accounting.

At the time of hearing NAB was a party to an “Enforceable Undertaking “ with ASIC and was required to audit customer accounts. Part of the investigation came from the unidentified loss of \$350m by forex traders and other complaints from the defendant in the quoted judgment Between date of hearing and judgment NAB admitted (but did not advise the Judge) 3 heads of false and illegal accounting;

- Debit Tax 25 August, 2005 (corrected to 1999 –date overcharge commenced 1982)
- overcharged Account Fees 25 August 2005 (repaid to 1999) and
- Default Interest 10 Nov.2005 (Interest only loans refunded to 1999 – default interest in loan renewal process- some accounts were charged on more than one renewal- commenced 1992 and no accounts refunded before 1999) and then
- further particulars of the default interest published on 26 September 2006 and December, 2009.
- (all of these heads were pleaded and part of the defendant’s complaint to APRA (- March 2004).

Thereafter 31 other refunds were made until 2012, when NAB redacted the fees and default interest from the list between the date of service of another action and the hearing date. (The first false accounting came in 1993) and that process was admitted in September 2013 when NAB subsidiary Clydesdale Bank admitted and paid fines and

refunds in Britain for mistaken interest in 2005, passing it off as the fault of customers in 2010 and in 2013 refunding. In about 2007 paying \$32M+, to the Smart Qld. Initiative, fund. In New Zealand and Australia between 2006 and 2010, over \$1BN estimated in taxation fines and levies after a dividend taxation avoidance scheme. In 2014 NAB paid \$2M to public education after a share trading investigation by APRA and ASIC.

b. *Withheld vital documents from discovery.*

NAB refused to discover documents and statements for internal accounts held in the customers' name. It is believed it would have shown unlawful acts in his accounts and documents stated at "a", and cattle sales held by the bank showing the bank knew no cattle had been stolen. Deposits and withdrawals between accounts were authorised by fax to give the bank the authority, at the time. NAB would not produce the Bills authorities or copies, avoiding personal liability and vicarious liability for incorrect values to make the value of the bills the same as the banks' account lending authority. Now that the 37 admissions have been made between 2005 and 2012 NAB has admitted some of the account unlawful acts material facts that were denied in all courts including the incorrect bank statements in each instance a major part of the defence.

c. *Vital documents have initially been with held and eventually provided, at a much later stage, however the delay is an advantage to the first applicant or second applicant and a complete disadvantage to the respondent.*

All the documents at *b* were withheld and the realisation account because it will show if cattle sold unlawfully were paid direct to the receivers or to the NAB realisation account and equity, NAB indemnifies the receivers accounting. These include the receivers' cattle sale evidence, withheld to charge the innocent farmer customer with mortgage theft and to claim other entities cattle, produced under subpoena in another action in 2005. It is here appropriate to mention 3 Police involved in the criminal prosecution resigned 2 after the process was exposed and another after the cattle sale documents were found and they included evidence of unlawful processes of receivers' cattle sales including incorrect names as owners on official documents.

d. *Documents produced by the first defendant during the course of business and litigation were fabricated or meant to create a ruse.*

From the information above and civil court documents and the judgment in QCA 329 of 2006 (1 September 2006) no bank statements can be correct and the admissions between August 2005 and November 2005 place the bank statements as being incorrect even if the court wished to ignore the previous incorrect bank statements at the time of trial. NAB claimed they were correct before all courts even when it issued two series of statements for the same dates and sheet numbers with different entries, including different default interest charges admitted and refunded 14 December 2009. The admission by Clydesdale Bank shows these account statements were incorrect commencing 1993 and the later statements knowingly false.

- e. *Documents fabricated or incorrect from the Second Applicant used in litigation giving a false impression to the creditors and/or others'*

The second applicant was the bankruptcy trustee and he could not charge any statutory fees because of judgments where taxation and other false NAB accounting were identified to him and he did not investigate, but was responsible before the court. His application for \$20,000 + to defend actions on NAB accounts was based on admitted incorrect bank evidence including the original NAB bankruptcy debt.

- f. *The same Court avoided the findings of credibility on the cattle sale dockets exhibit 36 stating it did not have jurisdiction to make a decision.*

In 2005 the defendant through another action subpoenaed documents that showed the cattle sale dockets were not produced in criminal and civil actions and the claim the receiver sold other persons cattle and his agents and himself had hidden the facts was alive. The NAB has still not refunded those sale proceeds to the affected persons even though they have been identified to them.

This situation may come from the relationships between legal representatives, registries and the judiciary, receivers, or the Judge's Associate. That relationship can create the situation where background facts that should be brought to the court for acceptance or denial, remain off transcript with the undisclosed correspondence file. This occurred especially with appeals and self-litigants.

The submission, deals with the facts of incorrect evidence of debt and self-litigants within the context of the Draft Report headings and how that effects all involved and extends to social and economic impacts on others, not represented such as creditors in bankruptcy and government schemes. Relying on correct information from the ultimate beneficiaries of

schemes (Banks) where the claim is made by a conduit claimant (where the claimant is paid on behalf of another). The power of the ultimate receiver of the scheme benefits, over claimants is published in an independent study into drought funding by the productivity commission in 2008 Draft Report. The method of use of these funds and how they are used to produce bad practices and alleged corruption of farmers' accounts is detailed from other submissions to Commonwealth Parliamentary and Commission Inquiries demonstrating loss of access to justice without appearance.

In particular the facts of a financial relationship between a Farmer and the National Australia Bank (NAB) allowed the farmer to predict in an inquiry into Native Vegetation how QRAA would rule farmers unviable when compensation by government for native vegetation effects was required. This ruling would allow the farmers' bank to force sale him and the bank could then with default interest and charges, obtain the same subsidy (\$180,000) from Native Veg. or Commonwealth Exceptional Circumstances funds. This prediction was accepted in the 2003 Inquiry and by 2007 a judgment in the Queensland Supreme Court had established this was indeed the situation, that prosecuting farmer found himself in. The judgment fell to the farmer, but many farmers were victims to incorrect viability decisions. One reason identified is QRAA allowed the farmer's bank to deny acceptance of his interest subsidy, on his behalf and the bank claimed the self-litigant farmer unviable when he paid the interest the subsidy was denied on and traded for 4 years after the banks' declaration of being unviable.

The problem there being the assessment may have been incorrect in content in relation to the facts accepted in the 2007 judgment. Some of these facts were escalated when the NAB began to admit its incorrect charges to customers' accounts and did not pay refunds in all circumstances including cases of incorrectly charged default interest, paid to 1999 but admitted claims may exist back to the date of the Government scheme 1992. This allows the writer to illustrate some methods of withholding evidence by redacting the banks' website and lawyers in court situations bringing cases to stop claimants by escalating disputes to Criminal, Bankruptcy and Vexatious persons all when future admissions show incorrect law and facts with vexatious proceedings making it not possible to prosecute because the judiciary is influenced by the previous incorrect judgments.

This shows how access to justice is denied by courts and uncooperative powerful organisations when it is in the organisations interest. The material production of incorrect court facts is further exacerbated when the submission identifies, the Inspector General handed, \$20,000+ to a Bankruptcy Trustee to defend the incorrect accounting of the NAB in the Federal Court against the bankrupt farmer. In this case the Federal Court refused the farmer discovery and

continued a Bankruptcy Petition over one year after it expired against the provisions of the Bankruptcy Act 1966 (Cth). Justice was denied too many entities including the State and Commonwealth Governments defined in the Courier Mail, Brisbane in April 2005 where COAG agreed to a special process to stop illegality in drought and productivity interest subsidies.

The bank was a secured mortgagee so in effect the bankruptcy trustee through the Inspector General was handing NAB free legal representation, to defend its alleged misappropriations in interest subsidy, certificate of debt and perhaps wilful defaults or fraud. Where refused interest subsidies were more than the bank's demand at the time, or when the interest subsidy payment would have been within the limits of the cash shortfall and identified loss with herd number build up. It is pertinent to state at this time the interest subsidy offered to the farmer would have been recovered by government within 18 months of payment because it created increased productivity which in turn attracted taxation and goods and services tax.

In 2006 the farmer approached the Queensland Government with the problem and the NAB paid shortly after over \$32M to the smart Queensland initiative a similar amount to the State loss of Commonwealth Subsidy after reported corruption problems were aired at COAG in April, 2005. This was the same remedy process for banking malpractice as used in the banks' bad share trading practices in 2014. The Qld. Government then introduced the Mortgage Protection Act 2008 and other measures to protect bank customers. The 2008 Productivity Commission Draft Report into Drought Policy published material from other independent entities supporting similar problems with Drought Funds distribution indicating that the sums involved were substantial and continued.

The facts of the incorrect judgments where judges and registries failed justice and the governments by accepting incorrect evidence, the material facts of which are partly admitted and some redacted from the banks' website avoiding under, over and deducted payments in customers' accounts. These circumstances allow comments about citizens' knowledge of the law, mediation, internal dispute resolution, ombudsman, civil, criminal, bankruptcy and vexatious proceedings.

How this manipulation of a Government Scheme to avoid liability by a major bank highlights its use of Police, failed criminal prosecutions, admissions of incorrect evidence and systemic approval of incorrect facts later admitted against a self-litigant. Has to be analysed by costs to the community and this relies on verbal evidence allowing further detailed submissions.

SUBMISSION

I thank the Commission for this opportunity to comment on their draft report and submit the following:-

1. Chapter 2.

Exploring legal needs.

2.1 Comment

The finding that 17% of the population has some form of unmet legal need, does not consider the unidentified needs unknown to the party. A typical example is the situation in and repeated in Australia at some level, where the Clydesdale Bank undercharged its customers in 2005 but did not advise the customers until 2010 when using an unlawful recovery process and admitted liability in 2014. 42,500 customers were affected not including those leaving the bank in the interlude and those whose mortgages were paid out. However no admission has been made for those who appeared in court and the bank mistake in their accounts are not identified where it could create a further liability on the bank and show charges such as unconscionable conduct or fraud at trial or an equity account.

2.2 Comment

Unfortunately reliance on Ombudsman and the like are of no value against a powerful organisation if they refuse to enter an Ombudsman process. An example is the Parliamentary Joint Statutory Committee into “Shadow Ledgers” in 2000 reported that banks were misusing the not for value “Shadow Ledger” in proceedings and these were bad practice. Coming out of the inquiry mediation was recommended by the parliamentary committee and adopted by the Australian Bankers’ Association as policy. This extended through the banking Code of Practice contract to the Bankruptcy Act Section 60(2) that allowed for commercially contracted mediation and arbitrations to be carried out irrespective of an existing or previous bankruptcy. The Ombudsman advised the bank by Circular but NAB still did not cooperate.

However the National Australia Bank (NAB) refused the arbitration or mediation and used a letter from the Bankruptcy Trustee that the process of applying to the court for the arbitration or mediation came under Section 62 of the Bankruptcy Act where the Trustee refused to follow up litigation. Consequently the legal argument went to the lawyers for the bank irrespective of the right to commercial arbitration under Section 60(2) of the Bankruptcy Act

1966 (Cth) expressed in precedent because the person applying was a self-litigant consequently without standing in legal argument.

The presented form of mediation showing eligibility of the self-litigant was the subject of a complaint to the Australian Competition and Consumer Commission (ACCC) by the bank concerned effectively stopping bankrupts obtaining justice and possibly persons affected bankruptcies being found unlawful and others who were not secured bankers receiving payouts under the bankruptcy.

A letter from the Commonwealth Attorney General on 15 December 2006 described the situation as coming under the Banking Code of Practice contract between customer and bank. A NAB refund of default interest dated 14 December 2009 back to 1999 is pursuant to the Banking Code of Practice Contract it takes into account the facts of two bank statements issued in 2001 with different default interest charges and makes the NAB claim the provisions of the Code did not apply knowingly false. In fact this overcharged default interest could exist well before 1999. By refunding under the Code NAB may reduce bank liability but supports the Bankruptcy Act Section 60 (2) where mediation or arbitration under commercial contracts are not court process. This ADR process was denied on all occasions in all courts where it was raised in QCA 329/06 at [37] [38] [39] where NAB denied the bank statements included incorrectly charged default interest and were correct and refused to supply the correct bank statements. The court refused mediation or arbitration also on NAB representatives denying the above now admitted facts. The court ruled the costs were available for mediation.

A further comment heard at a Banking Ombudsman conference was that when commenced the Ombudsman made the decision and the staff collected the information. This was changed to the staff making the decision because the banks were losing too many complaints.

Consequently whilst the recommendation has legs, policy of the particular Ombudsman and users of the service need to be able to be forced to proper process.

A clear majority of litigants have trouble identifying the unlawful or illegal act as defined in legislation, common law or equity. Not all states have codified criminal law and the Commonwealth Criminal Code is limited in process. Civil Law is worse as far as knowledge of Torts and where inequities etc. lie. Clearly Consumer law commissions and the Australian Prudential Regulation Authority have more complaints than they have resources to investigate, stipulate and navigate outcomes. Class actions may help this inequity where circumstances fit but in others delays and inappropriate behaviour by the other parties bring much personal hardship. Whilst identification by other service providers is important a resolving supplier of legal services programs can be established at limited costs, where civil dispute advice can be accommodated at no cost. However demand may outstrip supply so it may be necessary to have

a first instance reference from a legal problem identification service as proposed. Not all advisers have the same knowledge or ability and whilst standards are important this reference service should be provided by the legal services industry itself whether by providing education or practitioners.

Another recommendation is for advertising of services then initial interview by a law firm is a form of advertising services, and a pro bono service. However many reasons exist including insufficient resources for law firms not proceeding. Perhaps a reference to a list of other pro bono lawyers could be held by the Attorney General after registration for the work by firms providing the service or firms accepting costs and % as a success payment.

2. Chapter 5.

Understanding and navigating the system.

No Comment

3. Chapter 6

Information and redress for consumers'

Comment

In litigation as opposed to, required or statutory services and issue arises with credibility of the service with confidence in practitioners. Many practitioners have different processes that are not always the best for their client and therein the problem.

- *Actions should be categorised before billing* into statutory work such as land transfers etc.
- debt recovery and other similar processes.
- Litigation against frequent users of the courts and where Best Practice Guidelines should be used,
- litigation that provides services or clarification to other entities including Government, such as clarifying public policy and legislation not involving compensation or recoveries, Enforceable Undertaking, breaches and the like,
- litigation that provides services to other entities particularly by Government where a financial advantage may be gained over other entities by misuse of public policy, elements of law, legislation or regulation.

- Litigation involving Government schemes, implementation, operation and misuse thereof, should be considered as a breach of public policy immediately a breach or incorrect fact is established as provided by either side.
- These and any other required categories would help recover costs with in some cases immediate liability for costs.

Self- litigants

- It would help any self- litigant to recover costs in litigation and force the profession to be mindful of the outcome especially where statutory breaches cause loss to other entities including government or statutory authorities.
- Self- litigants should be compensated by Government if representing Government in practice, because of behaviours that could have been discovered and avoided by proper process or attention to implementation of legislation.
- By this process when breaches of public policy are involved the judiciary may be required to inform the parties, at identification of the elements, that costs no longer strictly follow the judgment, but may be apportioned to or for the unrepresented Government. Where recoveries may be identified and commenced immediately following the judgment if the offending party denies alternative dispute resolution.
- Government can legislate a fixed industry price for its work to support under represented parties in litigation. Where powerful frequent users of the courts avoid prosecution by reason of their superior resources, to the detriment of others
- This process may help introduce a class of lawyer willing to plead the case of persons identified by the Commissions as wronged but the person is unable to provide funds for litigation. Where recoveries may be enforced by Government against offending entities outside of judgment. Including following up on “Enforceable Undertakings” where they are breached to the detriment of other entities. Traditionally “Enforceable Undertakings” are made and forgotten but many entities may still be affected and not compensated and so Government should have the right to recover against offenders in that instance their costs of firstly providing the Enforceable Undertaking, secondly of publication etc. and providing the courts and facilities used because of the breach and any other appropriate costs and support those affected without compensation require.

Draft recommendation 6.2.and 6.3

Comment

These are accepted but Government needs to appropriately create a base for litigation value that discourages consumer ability to pay as the limiting factor. Consequently it needs to provide a fixed value alternative and require lawyers to consider relief towards intrinsic values more than previously. Litigation must include the accounting of filing and court fees.

4. Information Request 6.4

Comment

- Legal complaints bodies in Queensland have been ineffective for a very long time as far as small consumer complaints are concerned.
- Resolutions are so timely that many consumers complain that their denied complaint was in the post box when they arrived home from delivering it, to the authority.
- Consumers and complainants are not satisfied with the outcomes on many if not most occasions.
- Lawyer's affected personal feelings are unknown but seem to be considered in complaints investigations.
- In Queensland the Government HAS STILL NOT APPOINTED A PART OF THE COMPLAINTS BODY Organisation.
- Complaints against the legal profession have been a scene of much anguish for some time identified for special attention over 10 years ago.
- Queensland if not Australia needs an open inquiry into the legal profession and the backgrounding of the judiciary if any real judicious practice is to become accepted. As in many Australian situations the major legal firms control the parts of the industry important to their continuing profits and if they have an identifiable hand in the complaints process, that needs to be defined and adequate measures to comply with legislation and ethics provided.
- An important part to procedure and control is a necessity for Best Practice Guidelines to be enforced and stiffened to include prosecutions of non-complying corporates and their practitioners, especially when appearing against under resourced opponents.

5. Information Request 7.1

A responsive legal profession.

Comment (a)

Changes to regulation and special training for registry personnel, is needed. Previously in Queensland staff in registries were restricted to following the regulations without bias. However registry personnel over the years have sought to have a larger influence in making decisions. Consequently registry personnel are making decisions creating bias such as not properly allowing Appeal Record Books to include the necessary materials, using Indexes to advise of not included documents with the judge having them on request from the registry. This is a favourite method by prosecutors to have opposing persons charged with criminal offences such as stealing, where the evidence of the existence of the true facts is not included in a previous relevant judgment.

Registrars are writing to high profile defendants quoting incorrect law about regulated process and issuing decisive legal material as correspondence when the material quoted was at best incorrect. This can be interpreted to need much better courses and training for registry staff. It is suggested proper training guidelines, be put in place, with emphasis in higher courts where registry correspondence is available to judges on maintaining impartiality.

It means that secret correspondence with the Registries should no longer exist or be placed before the judge and that correspondence is open to all parties. This is followed by some judges and regulation needs to promote this situation. In one particular case the withholding of evidence from a court record book allowed the defendant to be charged with stock stealing as the court records of sales were withheld by misusing the court of appeal index to indicate they did not exist. One party and a Registrar relied on secrecy in registry correspondence as a defence with the wronged party not being able to defend this process because of the rule of Registry correspondence.

Governments need to educate Court staff and to find a method to make staff personally responsible for their mistakes, biases and negligence or evidence problems that create further litigation or injustice.

Information request 7.1

Comment (b)

Whilst lawyers are complaining there are too many graduates. The reality is we are becoming more litigious without representation. The time for greater use of Best Practice Guidelines and failed restricted discovery and facts of court room failure of the judiciary to recognise the correct facts of a case and so apply the law incorrectly are becoming overwhelming. Whilst this inquiry is looking to come to grips with these issues perhaps some basic principles need to change.

- There is evidence the judiciary disregard Government inquiries where the basis of policy and changes, uphold the law as it currently exists. Inquiry reports could be admitted as reference material before the court.
- That identified unlawful or bad policies and procedures found in these inquiries is ignored when the reports are placed in evidence, in particular avoiding decisions distasteful to frequent users of the courts such as banks etc.
- That judge shopping is a favoured process.
- That in some instances judges may have represented an organisation before them or continue business with that appearing organisation. In one famous case in Queensland a self- litigant objected to a judge who was an adviser to the law firm carrying out the prosecution.
- In the case of the finance industry it is time to allow the Attorney General and Public Prosecutions and Police to investigate major players' practices and extend this Inquiry to identify rules and processes for such procedures or such other process as is required.
- It is a miscarriage of Justice proffered by the profession where major industry players and others agreeing to "Enforceable Undertakings" under the ASIC and APRA, Acts are not prosecuted for breaches of those undertakings after agreement. We won't do it again process is shown to be ineffective.
- Without the follow up prosecutions any old excuse will do and this is one area the profession does not comment, yet is so fundamental to financial industry operations and its' relationship with the legal profession and law enforcement generally.
- False evidence is frequently identified in these processes, when material facts showing a corollary are denied in courts after public admissions under an enforceable undertaking.

Information requests 7.2 and 7.3

No comment

Information request 7.4

Comment

Under this heading there is a public purpose unrepresented in previous inquiries. When a self-litigant appearing against a well- resourced frequent user of the courts is required to prosecute a situation where Government schemes or with a Government benefit where a public policy situation requires proper prosecution.

It is a fundamental question should Government support the self-'litigant and should that support, extend beyond a personal recognition. Obviously if the self-litigant loses it may have detrimental effects on, the class affected, Government, legislation and the public generally.

The background to this statement is that in litigation between a bank, the self- litigants' bankruptcy trustee defended an action where the Trustee was given over \$20,000 in Commonwealth Funds through the Inspector General and the basis of the case was alleged fraud in accounts produced by the secured creditor (bank) including a Commonwealth Subsidy scheme, the bank ultimately receiving the subsidy but not accepting the funds of the bankrupted customer on admitted false evidence. The facts of the situation were:-

- The NAB incorrectly debited interest to the account in 1993 as described and identified in my previous submissions at 9 and 12. The appropriation remedy described in Financial Conduct Authority "Final Notice" Clydesdale Bank PLC (NAB Subsidiary) (24 September 2013)
- NAB then incorrectly charged default interest to the account between 1993 and 1996 admitted on 20 November 2005 and described and refunded on 26 September, 2006 and December, 2009 going back to 1993.
- They then in August 1996, by refusing to accept and support an interest subsidy claim of \$30,000 made the money available under overdraft and caused the account to become Risk category "B" increasing the interest rate to the previous default rate.
- Where "A" would have been retained if either the \$30,000 had been supported or the true accounting used to that date.
- The bank manager then made various demands for \$30,000 long before the funds were required to be paid and did not hand the correspondence to the bank in his 3 monthly reports.
- By April, 1997 QRAA had provided NAB a subsidy payment of \$54,550 on the farmer's accounts which NAB refused to accept and apply to his accounts.
- On 1 May 1997 the farmer received a formal demand for \$30,000. It is believed that demand was unlawful because of the failure to accept the greater valued deposit 6 days earlier.

- The \$30,000 was paid in the next three months if the subsidy had been accepted. Through timber receipts and funds lent a company agisting cattle on the property after cattle purchases from the farmer.
- In July, 1997 the QRAA Inspector inspected the property and found the property viable both short term with subsidy and long term.
- In August 1997 the farmer approached the bank to refinance but NAB refused the farmer to move to a new bank or renew his facilities past September 1997 quoting unviability.
- A consultant was appointed as viability investigators but did not include any of the property regular sales items other than cattle on the banks' instructions and they were in a build-up situation, thus the borrowings, and without the subsidy. He declared the customer unviable similar to NAB. The assets not assessed were regular timber sales, farming for cash crops and property related contracting and agistment income. The folly was that when the receivers took over the property in September 2000, they continued a timber sales program immediately and secured agistment contracts. Selling timber until the day the property was sold.
- In September 1997 the bank demanded mediation of the situation stating the customer was unviable as the point of the mediation. The letter noted the new banker available and demanded the farmer exonerate the bank to be allowed to shift.
- The mediation was conducted in December 1997 after the bank again debited unlawful default interest for values between the date of the completed contract and the new one.
- The mediator stated the bank held the upper hand which was incorrect and highlighted in a study of the situation by Laurence Boule "The dog that did not bark; mediation style" *The ADR Bulletin*, vol 4 no 2 June, 2001.
- The account was debited to the trading account in full on 19 December 1997 and was considerably below NAB lending authority.
- The terms of the Mediation Deed included the debt be charged to a Bill and the interest rates of these Bills was manipulated to bring the debt to the quantum of the lending authority.
- By February, 1998 the interest was paid to NAB for the period they had refused to accept subsidy and they demanded another Meeting. They produced a further Deed which obviously would have included a company property where the customer was a Director. The Deed was after the bank had unlawfully debited the Bills interest to bring the debt to the NAB lending authority for his accounts. It remained unsigned and a letter avoiding the previous Deed presented to NAB.

- In April, 1998 interest was paid by written appropriation in compliance with Sections 96 and 84 of the Property Law Act 1974. NAB did not put the funds to the account on the date paid.
- They then issued demand and a writ both alleged as outside the provisions of the Property Law Act 1974. The farmer having paid the interest, appropriated in writing, to that purpose at the time of issuing the writ.
- At trial in 2000 the Judge accepted the evidence of the Mediator who by then was a brother judge, the bank officers and discredited the evidence of the defendant farmer avoiding judgment on the quantum of debt. Even though the farmer had traded the four years the bank and consultant said he could not and so disproved by fact the unviability claims of the bank at Mediation. NAB solicitors then swearing an incorrect quantum of debt for the issued Warrant of Execution were aware at the time the quantum was incorrect.
- The NAB had the receiver complain to Police the farmer had stolen the cattle bought from him and processed through his and the company concerned NAB accounts. When selling these cattle that were left on the property some were sold by the receiver as unbranded or in other incorrect names, at auction.
- During this period NAB issued a bankruptcy petition before the property was sold but had issued 3 series of bank statements for the account for the same dates and sheet numbers each one with different default interest values rising each issue. This situation is also covered by the admissions and fines of the Financial Conduct Authority against (NAB subsidiary) Clydesdale Bank September 2013.
- NAB started with a complaint of about 460 head and abandoned about 360 before trial and the judge stated to the Public Prosecutor that there was no justice in this case. The issue was then the police, receivers and their agents did not produce the cattle sale dockets where they sold cattle the farmer was accused of stealing and they were the mothers of cattle he was accused of stealing and tried over. The bank solicitors and the Court Registrar at the civil Appeal left out the cattle sale dockets from the Court of Appeal record book only identifying the dockets were in the registry, in the index and the Judges stated no cattle sale dockets were produced at judgment. So NAB manipulated the independent record of cattle sales and the acquittal came because of the records of cattle ownership produced regularly for the accountant used in the Federal Court and in the Bankruptcy hearing where the judge refused to examine the facts.
- In September 2001 the Federal Court refused discovery of the correct bank statements. There were three sets of bank statements for the same dates that were incorrect and the required evidence could have shown the true state of the account since 1993 when all

statements thereafter were incorrect. These include court recorded denied facts admitted as late as December 2009 and still denied in courts in 2012 against the Best Practice Guidelines and Qld Law Society Practice instructions with self-litigants.

- In February, 2002 the Federal Court Bankruptcy Judge brought on a bankruptcy hearing when the NAB petition was out of time. The judge found the farmer bankrupt.
- The Qld Commercial Settlements Act or similar covering the duties of Mediators was withdrawn, immediately after Professor Boules' article.
- In 2003 before Justice de Jersey an application to have the accounts adjusted pursuant to the Mediation under the "Shadow Ledgers" inquiry, the Banking Code of Practice and Section 60(2) of the Bankruptcy Act 1966 (Cth) was refused but the bank later made admissions under the same Code in December 2009 paying refunds back to 1999. In the farmers accounts the two refunds could go back to 1993 having a compounding effect with the admitted unlawful default interest pursuant to the bank admission of unlawful default interest in interest only loans being admitted on 10 November 2005.
- The farmer then proceeded in the Federal Court under the Bankruptcy Act but NAB refused to admit the false accounting and again in February, 2004. However the farmer had used the NAB Irish subsidiaries money laundering processes and simple audit procedures to define similar acts in his and other accounts in Australia, to identify a culture of cover up by NAB in litigation. He advised NAB this was a corporate culture and asked for settlement.

This corporate culture allowed predictions of Bank behaviour when accounts were incorrect or mistakes occurred and was the same culture limbs as accepted by NAB under its' Enforceable Undertaking with APRA and ASIC.

In 2001-2 Professor Evan Jones in a Victorian Newspaper had published how the farmer's interest subsidy had been refused and he was forced to mediation. Professor Boule described the mediation and that fitted the rest of Professor Jones's report of bank's being exonerated for incorrect viability claims in court process. Several cases had been heard in Victoria and some in Queensland it was obvious when banks used unviability they were winning the cases.

However just as in the farmers quoted subsidy refusal the period the farmer survived without subsidy was not taken into account and that was if the farmer traded 1 year paying his interest the subsidy was refused for a purpose other than the bank receiving interest. If he traded 4 years he could not have been unviable with subsidy at the time of refusal.

Applying these facts to all banks and as a consequence of the necessity for vegetation management compensation, the banks would lose security value and the property without productivity increases, earning capacity, both causing the banks to claim unviability. These facts allow the administrators of the scheme to call the property unviable because the bank would be able to claim the vegetation management compensation was insufficient and not paid against their security value, but to the farmer.

These bank claims created a situation where the self- litigant (farmer) could identify and predict future corruption of Government schemes by secured creditors and in those types of support schemes generally. Scheme corrupting processes with farmer viability was eventually unravelled by [McDonald v Holden (2007)] over 4 years from the date of the Inspector General's provision of \$20,000+ in funds to the bank appointed bankruptcy trustees supporting incorrect evidence of bank debt.. The judgment unwound the relationship in viability between time income and farmer assets available to provide or continue viability.

The predictions are at clause 8 and 9 of Submission 21 to the Productivity Commission "Native Vegetation" Inquiry of 2003 and read:-

The most significant measure to mitigate negative impacts of changes to environmental legislation was the productivity scheme associated with Exceptional Circumstances Commonwealth Provisions based on the Minister's Guidelines in 1992 and 1995.

The provision of a productivity plan and its inspection by the QRAA Officer and Reports were all good administration and made the provisions of the plans of the scheme easily complied with. However the National Australia Bank as will be shown here did not operate the scheme within the provisions of the Law or with the intentions of the Legislation. The disappointing part of this is when the situation of deception was put to the Supreme Court of Queensland and the Court of Appeal the decisions were based on Common Law not the relevant regulations or Equity which leaves a huge gap and puts in doubt all the in built administrative procedures to ensure compliance by the financial organisations.

To demonstrate a better system of control of financial institutions is the following explanation of how the system is abused by the NAB.

- A. *The NAB agreed in June, 1996 to accept my interest subsidy payment.*
- B. *In July, 1996 .A directive only 3 years into the scheme was issued to the New Bank Manager for an increase in Payments at the Next review.*
- C. *In August, 1996.The Bank manager against the agreement with QRAA demanded \$30,000 from me or he would put me through Mediation .*

- D. In February, 1997. He was given a copy of my budgets to QRAA and an action plan.
- E. In April, 1997. He told the QRAA that he would not accept the money of \$54,500 Interest Subsidy until after he had completed a Review.
- F. In May, 1997 7 days later. He informed me I was to reduce my account by \$30,000 and that the Bank would not accept my Interest Subsidy.
- G. In August, 1997. He made representations undefined on account restructuring to an investigator appointed with his approval who called me unviable.
- H. In July, 1997 the QRAA Inspection Officer called me viable both long term and short term.
- I. THIS MEANT THE SYSTEM HAD BEEN VIOLATED AS THERE WAS NO WAY THE MANAGER IF I HAD REDUCED MY ACCOUNT BY THE AMOUNT OF \$30,000 COULD NOT CLAIM TO THE BANK THIS WAS MY SUBSIDY PAYMENT AND DO AS HE WISHED WITH MY INTEREST SUBSIDY OF \$54,500. THE BANK MANAGER ON 10.6.97 TOLD NAB HE DID NOT THINK I WOULD RECEIVE MY QRAA SUBSIDY.
- J. Consequently as system of accounting better than the existing one has to be introduced to control payments made under Government Subsidies so that there is a clearly defined path to stop the potential for corruption of payments by financial institutions and their staff.

At 9 of Submission 21 to the Productivity Commission “Native Vegetation” Inquiry of 2003 and read:-

. I have already demonstrated how the National Australia Bank has used Government Productivity Subsidies to force customers who were not in financial difficulty into sell up positions. This also demonstrates that a corrupt banker can turn under the existing scheme the bank customer’s subsidy to his own personal use and use the bank and QRAA processes to blackmail the customer into submission.

The point being that the premise in law that a mortgagee should always receive their money back creates a conflict when Government Subsidies are unlawfully withheld for the purpose of destroying a business for profit for the Bank and to cover up the corruption of the subsidy process. These basic faults have to be rectified by Government before more money is thrown at Banks and their practices ratified by courts.

At COAG in 2005 the Agricultural Ministers agreed to fund a special purpose computer program to identify corruption of Government Drought and Productivity Schemes. Queensland lost \$35M in funding.

- By 2005 NAB had realised the information of their corrupt accounting had come from the farmer and moved to make him vexatious before publication of the necessary admissions and refunds.. His defence material facts were ;
 - *a. false and illegal accounting.*
 - *b. Withheld vital documents from discovery.*
 - *c. Vital documents have initially been with held and eventually provided, at a much later stage, however the delay is an advantage to the first applicant or second applicant and a complete disadvantage to the respondent*
 - *d. Documents produced by the first defendant during the course of business and litigation were fabricated or meant to create a ruse.*
 - *e. Documents fabricated or incorrect from the Second Applicant used in litigation giving a false impression to the creditors and/or others'*
 - *f. The same Court avoided the findings of credibility on the cattle sale dockets exhibit 36 stating it did not have jurisdiction to make a decision.*

- Between the date of the vexatious hearing and the date of the judgment NAB admitted it had incorrectly charged about 200,000 customer accounts Debit Tax and Fees. Then 50,000 unlawful default interest since 1999 but did not numerate those affected from 1992 to 1999. All of these heads affected the farmers' accounts.
- They also fitted the material facts of his defence in the vexatious proceedings and all other actions.
- In a cover-up situation NAB refused to identify the facts of the unlawful default interest until 26 September 2006 and the obvious incorrect bank statements were denied in all 6 hearings including courts of appeal between October 2004 and 26 September 2006. It was then also denied in a High Court appeal against the Vexatious Proceedings finding.
- On 15 December 2006 the Commonwealth Attorney General issued a letter stating that the Banking Code of Practice applied to the circumstances which meant the decision to refuse mediation pursuant to section 60(2) of the Bankruptcy Act 1966 (Cth), Shadow Ledgers and the Banking Code of Practice was at least in dispute and is now ratified by situations such as Storm Financial prosecutions.

False viability claims

The judgment incorporating the previous predictions is McDonald v Holden [2007] QSC 54. 15 March 2007. Mullins J.

ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – RELEVANT CONSIDERATIONS – where the applicants seek judicial review of the respondent’s decision to refuse the applicants’ application for exit assistance under the scheme approved under the Rural and Regional Adjustment Act 1994 (Qld) – where the respondent did not take into account the assets of the individual partners in an assessment of the sustainable long-term viability of the applicants’ farm business –whether respondent failed to take into account a relevant consideration.

29] *As a matter of common experience, drought conditions are not necessarily determinative of the long term viability of a farm business. It was not suggested on behalf of the respondent that drought was determinative of the potential for long term viability of the property. There is nothing in the material on the QRAA file relating to the applicants’ application that suggests that drought should be considered as a long term condition. The respondent erred in taking the drought into account as a relevant consideration in determining the long term viability of the property, without taking into account the assets of the individual partners to sustain the farm business in the interim period.*

The Productivity Commission held an inquiry into Drought Support in 2008 and its relevant findings are at Page 141-145 of the Draft Report 2008. It states:

At page 142; the main criticisms from inquiry participants on the accessibility of ECIRS relate to the viability or (otherwise) of applicants. A number claimed that despite the eligibility criteria for ECIRS , many viable farms in EC areas in need of carry-on finance are unable to access business support under ECIRS.

In Queensland, QRAA complied with the wishes of the financiers and thus gave financiers control of farmers. NAB refused Interest Subsidies on the will of their bank manager and if he required a farm to be sold up for whatever reason he could call the farm unviable and refuse subsidy and force the farmer out with support from QRAA.

Senate Legal and Constitutional Affairs Committee in 2010 held an Inquiry into *Australia Judicial System and the Role of Judges*:-

An Executive Summary at Submission 36 showed the same material facts of evidence manipulation in the courts as the defence in the vexatious proceedings above:

These points finally being admitted after the litigation had progressed through the Supreme Court of Queensland, Appeal, Bankruptcy Appeal and Annulment. Then the customer was found vexatious in July 2006. But two hearings remained in one he failed to join actions. But in the second the bank confirmed his defence to being vexatious, its failure in actions, to :

- (i) Discover documents- Bank Statements,
- (ii) to not discover documents at the correct time but to discover at a later date to the advantage of the bank.
- (iii) To issue incorrect bank statements
- (iv) To give incorrect information to the courts.

However the Vexatious Proceedings Act 2005 meant once he was vexatious in one court he was vexatious in all courts.

- By February, 2012 NAB had admitted 37 incorrect debits and credits in Australia alone and in New Zealand, Britain and Ireland but it had not paid the 2005 British unlawful interest mistakes by Clydesdale Bank, where it took 5 years to identify the mistakes in accounts and then manipulated the customers to make the banks mistake good along with penalty interest. It then took another 4 years for fines and refunds to customers to be paid. In Australia most refunds were paid within 6 years of notification but in the case of the unlawful default interest in interest only accounts over 14 years, it was redacted in 2012, hiding its application. The issue being NAB had only paid the refunds for 6 years when they were due back to 1992 and the default interest refund on personal accounts for 10 years and that was exposed by the farmer's action in the courts.
- There were 4 other heads not refunded by NAB and notified to enforcement authorities results of which are yet unpublished.

In the Federal Court in 2012 the NAB denied any incorrect charges to the farmers' accounts but the first incorrect entry was the incorrectly debited interest in 1993 and now the admissions and fines paid by NAB subsidiary Clydesdale Bank in Britain, where the law on appropriation is the same as Australia shows the Vexatious Proceedings material facts defence was correct again and all judgments commencing 2000 are incorrect.

In a further twist other Australian banks were paying the interest mistake refunds back to the date of the first mistake identifying their thinking was overcharged interest debits to customer accounts could have a much more serious charge attached.

This now begs the question how many persons were destroyed on false viability claims by bankers and how many persons are falsely charged with incorrect debt by the NAB in particular, and how much injustice has to continue until access to justice is not denied through denying false accounting and making vexatious proceedings claims?

Clearly the Inspector General providing \$20,000+ to the Bankruptcy Trustee, to support false accounting by NAB, admitted false publicly, but denied in courts, where practitioners receive immediate credibility, because of their court officer status, has cost the government schemes and the farmer personally. The reality being the Trustee could not charge the bankruptcy fees of \$2000 against the farmer because a judgment of the Court had stated that NAB had not issued incorrect bank statements for default interest and the bank 3 weeks later admitted the details of the incorrect statements publicly. But this was an appeal action and the Supreme Court Registry had not included the incorrect statements evidence in the record book.

- By ruining his life, to cover up NAB mistakes and liability, causing him to stand trial for stealing as a mortgagor when the bank appointed receiver had sold some of the alleged stolen cattle and others part of the defence evidence, knowingly, without discovering the sale documents and the farmer was acquitted,**
- where he was bankrupted unlawfully, because his account could not be reconciled because the courts had refused discovery at the banks' request and the judge extended a petition against the provisions of the Bankruptcy Act 1966 (Cth).**
- When he was made vexatious, after advising APRA of NAB Accounting misappropriations, by the same Federal Court judge that found him bankrupt.**

This could be a method of cover – up especially when an application for Fraud at Trial including the vexatious decision in 2012 was refused on the grounds the matter was heard before, when NAB withheld the evidence unlawfully at the first hearings and now admits and publishes the facts denied in the original proceedings and all relevant proceedings thereafter, fulfilling the material facts of the defences.

The Commonwealth through the Bankruptcy Trustees' \$20,000+ subsidised the defence of misappropriations in its own farm drought schemes, at the same time in 2005 reducing Queensland's subsidy because of bad practices. A report by the farmer to the Premier of Queensland in 2006 may have caused the NAB to pay over \$32M to the Smart Queensland Program from the social responsibility section of its balance sheet. This year it also paid

**\$2M from the same account section after being identified as unlawfully share trading.
These funds are to go to public education.**

The follow up is submission 9 to the inquiry of the Senate Economics Committee “Bankruptcy Amendment (Exceptional Circumstances Exit Package) Bill 2011 of 21 September 2011. Reality was that in the Drought and Productivity Interest Subsidy Schemes between 1992 and 2010, the official identification of the facts in the Productivity Commission Inquiry into “Drought Policy” Draft Report of October 2010 commencing at page 141 with particular emphasis on the Victorian situation at Page 143 showed the problem. This same situation occurred in Queensland where secured banks could use non-accrual accounting to claim subsidies on unpaid interest locking out the other affected entities in bankruptcies.

In 2000 the Parliamentary Joint Statutory Committee into Corporations and Securities Inquiry into “Shadow Ledgers “ identified where incorrect bank statements could be issued for prosecution processes against bank customers and how this was bad bank practice. Some banks including NAB refused to mediate as recommended by the committee and agreed by the Australian Bankers Association (ABA), The Banking Industry Ombudsman, (ABIO) Australian Securities Investment Commission (ASIC) and Australian Competition and Consumer Commission (ACCC) amongst these banks was NAB that admitted over 37 incorrect account debits making refunds between 1999 and 2011. Within these was a default interest charge where they charged unlawful default interest between facility expiring and renewal date commencing 1992 the date of the Interest Subsidy Scheme commencement.

It is a reasonable assumption that the bank claimed interest and fees subsidy on all these mistakes during the period of the scheme and did not advise the Government or repay over-claimed subsidies. This leaves open a serious proposition did the bank when it realised some of these mistakes which involved over 400,000 customers and over a \$1Bn in refunds, refuse customers interest subsidies to sell the customer up before the facts became public knowledge. An indicator of this behaviour was they made public statements of the false default interest on 10 November 2005 and published the refund on 26 September 2006 after several court cases where it was relevant and defended by NAB representatives, where NAB obtained the judgment. Then when a further case went to court in 2012 redacted their website so the facts were obscured and could be denied.

In these circumstances some bank customers receiving interest subsidies were charged default interest for 3 years and forced to sign mediation agreements allowing the bank to sell their

properties if the farmer did not within 3 months. The bank then forced the customers to Bills and in at least in this case manipulated the value of the Bills by incorrect interest and using the original incorrect account value, to make the quantum the same value as the banks security value.

To verify the facts of this situation the person concerned compiled a report tabled in Parliament showing how these circumstances came about because Judges and Registrars incorrectly interfered in process.

Consequently if funds had been provided to the person supplying reports to Government of these unlawful practices as admitted by the bank concerned;

- How much human agony and redistribution of wealth from government and farmers to bankers would have been saved and social impacts avoided?
- The person was in the court from 2000 to 2012 and the bank falsified all bank statements, all affidavits of debt and misused the court process to cover up its' liability continuously and had late affidavits accepted by the court where the farmer was refused.
- This is especially a disadvantage in the Federal Court where fresh evidence is refused on appeal and litigation between the parties is usually heard before the same judge.

Government helping worthy litigation supporting its relevance and showing the governments' position, should be examined by this commission and may include such things as legislated discovery such as exists in Section 85(2)-(10) of the Property Law Act (Qld) 1974. An immediate requirement on financial institutions or fiduciaries to supply account statements and be responsible to customers and Government where relevant, for immediate recovery to Government for mistakes, may help resolve the questions of liability, for false accounting to obtain a benefit by major organisations and make the judiciary more aware of public policy considerations.

These circumstances make it possible in similar situations where Government liability will extend to a recipient of services, for Government to justify providing funds and/or practitioner support for litigation.

Proposed recommendation.

- **Where, a disadvantaged individual or self-litigant is representing Government, by the fact they are appearing in the court, against a government scheme participant, where claimed incorrect information has been used, by a contributing information party to**

the scheme, obtaining a financial advantage, should trigger government legal support including financial, for the disadvantaged party.

Information request 7.5

Comment

Whilst this program directly affects Mediators and in some cases Arbitrators, these may find themselves dependant for work from major users of their service. Some banks refuse to accept certain mediators. So specialist arguments for those areas as described are most important as the choice of mediator is equivalent to judge shopping with the mediator not receiving a judicial salary package. There is an urgent need for industry specialists to be available to self-litigants as part of the court process such as a McKenzie friend or court provided expert witness.

An example is the National Australia Bank (nab) and subsidiaries of Bank of New Zealand (BNZ) and Clydesdale Bank, Australia and New Zealand Bank (ANZ) and Bank of Queensland (BOQ), have all announced refunds of interest to customers in the last 2 years. Both ANZ and BOQ announcements have included refunds back to the original date of the overcharge but do not include announced payments to any customers who have been before courts. The nab only refunded their customers back six years despite acknowledging refunds were necessary back to 1992 and then redacted their web site to hide that default interest refund. It could be identified that under no circumstances did nab wish to pay the refund and once again no admission was made that court based litigation was affected. From information to hand many of these refunds would be sufficient to avoid bankruptcy and some banks' do not admit in court their public admissions of failed accounting.

This is a publicly identified failure of Australia's group of corporates that publicise their honesty in public dealing and client relationships.. There are many entities bankrupted at the pleasure of their bankers based on the issue of a debt, but what is the banks attitude when the situation is reversed. The NAB in Australia, NIB in Ireland and Clydesdale bank situations showed the attitude was to try to deceive the customer into accepting responsibility for the banks' mistake and then penalise the customer accordingly including those having left the bank for various reasons including false claims of debt. Why should these banks be able to avoid their responsibilities for false accounting?

There is a position for special examiners of record to make submissions to court with the applying party for appropriate action in the above circumstances and other appropriate situations.

It is an access to justice issue that can be resolved through this inquiry by recommendation and should be. It is not good enough for organisations prosecuting unpaid debt and having preferred evidence status in the courts to demand publicly defined and refunded misappropriations be denied in the courts and continue previous judgments that they know are unlawful. In one particular situation a failure to admit has maintained a court process since 2000 at each turn the NAB admitting publicly its' misappropriations but not in court process and has obtained judgments. The situation being so bad the bankruptcy judgment misappropriations are denied and other persons' property sold by the receivers unlawfully has not been refunded even though the bank admits the necessary facts.

6. Chapter 8: Alternative dispute resolution.

Mediation

Information request 8.1

Comment

Mediation creates a further complication if parties are not cooperative and once again it is the frequent users of the courts such as banks insurance companies etc. that will not cooperate at mediation or may manipulate the situation. eg.

In one instance a bank insisted its barrister conduct the mediation, after the mediation the barrister became a judge. When the matter came to court that the mediation was incorrect the other litigants barrister refused to identify the judges (mediators) mistake. An academic study of the situation identified the negligence and published the circumstances. The act that identified the false statements by the mediator could have been a fraud was then withdrawn.

The Chief Justice was aware of the situation but some 13 years later brought up the subject of unequal situations in mediation.

The public generally are unaware of the Mediation Deed limitations where equity will allow an account to be taken after a Deed is effective. Lawyers do not take advantage of these situations especially when dealing with banks where accounts taken after deeds should have multiple, bank admissions of incorrect charges placed to accounts, where publicly notified refunds could

automatically bring an equity account for those that signed Deeds and Court determined situations.

Evidence of this material is publicly available on request.

In the instance of arbitrations best practice guidelines should set the situation for behaviour either by lawyer or self- litigant and these are published by the Commonwealth Attorney General. Whist everyone loves a winner sometimes winning in alternative dispute resolution process can create a disaster for all concerned.

Two examples of bad conduct involve banks and customers in one the customer was duped into signing the Deed because the Mediator used words such as the bank had the upper hand when in fact the true legal strength lay with the customer. This finished in a court process and it became known that the bank refused to accept the customers pay out of the account until he had attended mediation and gave away all his common law rights and signed a deed to that affect.

Secondly another bank required the outline of a customer's mediation argument before attending. All the customers attendees arrived for the mediation and were told the bank would not be attending. These people had travelled in some cases 3 hours and 5 hours to attend this mediation. The bank concerned then continued to manipulate the customer's accounts until it placed him in a situation where his attempts to settle their differences were scuttled. This real issue was the bank responsible for misleading and deceptive conduct as alleged by the customer. He was eventually dispossessed and the property sold up to satisfy the secured lender (banks') account.

Proper regulatory process is required and where parties refuse to attend alternative dispute resolution processes and those parties are frequent users of the court or have particular financial advantage judicial process should consider the reasons for non- attendance. Secondly the changes under the competition policy where accounts can be moved to another financier without interference may allow recommendations in the Banking Code of Practice and other relevant processes to identify that fact as a reason for alternative dispute resolution.

7. Chapter 9; Ombudsman and other complaint services.

Ombudsman

Comment

Ombudsman who are financed by the industry they provide a service to sometimes find themselves changing operations to support heavy users of their service. It is a matter of record that the Financial Ombudsman had to change his method of operations to allow the investigating staff to make the decision because the banks were losing too many claims.

Whilst ombudsmen are often denied information and support from the perceived offending party, it is well to remember their methods and decisions are separate to other organisations. The tie between the Code Enforcement Office and industry ombudsman should be dropped and the Code Enforcement Office is able to act independently when required so that claims outside the ombudsman's jurisdiction can be handled without court action.

8. Chapter 10: Tribunals

No Comment

9. Chapter 11: Court Processes

Comment. 11.1

Anybody completing such a task is going to be hard pressed to avoid subjective decisions in favour of objective evidence unless it is handled in an inquiry situation and even then subjective bias is possible.

The recommendations at 11.1 are relevant when dealing with public policy issues but become blurred when dealing with Fraud and Torts. There is a head relating to claims for criminal acts and some other equity issues that are based on strictly obvious evidence such as false accounting, deceit etc. and these would easily fit the recommendations.

Court process has been discussed repeatedly through this submission in the appropriate section for the particular recommendation. The reader may recall these identified situations for the purpose of comment here. In particular:

- Registry staff and practices,
- Secret correspondence files,
- Results from above,
- Judiciary disadvantage in information recognition and provision by Registry staff.
- Relationships between the practitioners, court staff, Judge's associate and the Judge and others, when background information is held out of the court record.

- When should prosecution take place, where orders such as vexatious persons that restrict freedoms and are a life sentence are claimed, to be brought about by incorrect evidence and the party providing such evidence is defending the vexatious orders, after it has admitted facts supporting the false evidence claims, by the declared, vexatious persons?
- Should judges be held responsible for any orders where they have clearly accepted incorrect evidence and statements from practitioners?
- The Commonwealth should consider where incorrect evidence admitted as incorrect is accepted by a court introducing a section for Fresh and New evidence after trial in the Federal Court Act.
- The Commonwealth should also consider a provision for false evidence to any tribunal other than perjury upon conviction be punishable by a term of imprisonment.
- This provision should include Officers of the Court.

Comment 11.2

- Discovery is the greatest problem in litigation because the fear of the unknown scuttles all minds if discovery is revealed to be of disadvantage.
- A blanket fit for discovery is when dealing with multi-national organisations the cloud will control evidence and whether the cloud documents are discoverable and how, when and where may be questions yet to be determined.
- Discovery generally fits the following:
All litigants:
 - Should discover all account details and necessary documents to help the court as defined in legislation such as S. 85 (2)-(10) of the Qld. Property Law Act 1974 with punitive damages and appropriate legislative penalty.
 - Litigants should be penalised in credibility and possibly fined and costs provided when they withhold documents from discovery and then discover them when it is of advantage to their side and disadvantage the other side. If the withholding side is represented and the lawyer has previously admitted discovery of those documents is required and then it is later revealed no discovery, affected outcomes the practitioners must be held responsible and complaint is available to the affected litigant.
 - Failed discovery allows illegalities to creep into litigation such as incorrect documents, incorrect judgments based on incontrovertible facts, denied at the time, but later admitted

publicly and in Federal jurisdictions these fresh facts are generally unavailable at Appeal or in later actions including fraud at trial.

- The Federal Court Act needs to include a similar section to 668 of the Qld Uniform Civil Procedure Rules allowing discovery of new and fresh evidence.
- It needs to be considered if failed discovery is punishable under Section 126 of the Qld Criminal Code Act 1898 where false information to any tribunal is punishable by imprisonment. Whilst this section came into being after Fitzgerald it was to stop verballing by Police. Failed discovery in many instances is equivalent to verballing by the mere fact that if the proper material was before the court, the judgment may be different.
- Especially in some cases no charges can be made, so those persons such as police withholding documents from discovery may be verballing indirectly.

The material in the previous part of this submission shows how withholding of discovery both in criminal as well as civil matters skewed the decisions and caused much more litigation than was needed. Where one litigant made complaints to independent regulatory bodies, to obtain the admissions that could have been avoided by honest and proper discovery by the offending prosecuting bank. Illustrated previously are methods of failed discovery and producing evidence that have given a creditor, admitting its accounts incorrect before those admissions, escalating by means of that failed discovery and evidence manipulations to force the overcharged debtor to mediation, civil, criminal ,bankruptcy and vexatious judgments all based on incorrect evidence

Failed discovery is failed access to justice and all the complaining about costs for prosecuting parties will not change that fact.

10. Chapter 12; Duties on Parties.

Comment 12.1.

Whilst there is a quantity of English law on party behaviour Australia is relatively underwhelmed. Best practice Guidelines is one support mechanism and it should apply to all litigants where possible. There is no conceivable reason why a dispute cannot come to court just for determination of compensation and costs. But that is avoided by all major corporate litigants they use their deep pockets to try to avoid liability at all turns.

A simple audit process is;

- Were the facts and documents discovered, and at the appropriate time.

- Were they produced to give the discovering party an advantage and the other side a disadvantage?
- Is all the evidence recognised as truthful and is all the documents correct for the purpose of the court?
- Can it be considered and later shown that evidence from one side is incorrect under current evidence rules and legislation.
- Are all statements from the bar table correct, lawful and ethical.
- Have the best practice guidelines been followed and in the case of self- litigants has the other side been cooperative within the terms of the established practitioner guidelines.
- Have admissions been made or is one party denying justice by making ridiculous demands on court time, by forcing parties to prove facts where they have manipulated the evidence in some way to avoid proof of the true position.
- Does the evidence at trial apply to the headings and facts pleaded.
- Are the witnesses cooperative and available?
- Were the parties cooperative and practitioners acting to assist the court?

However it must be remembered in Queensland complaints by self-litigants against established legal firms will be ignored by professional investigative bodies and judges will give strict preference to practitioners and in some cases ignore practitioner bad practices.

Comment 12.2

Alternative dispute resolution has a limiting factor when dealing with frequent users of the court. The frequent user expects to win in the court and I am sure courts are mindful of what will happen if they don't and so unknown entities against frequent users are immediately disadvantaged. Further if a party to mediation can put up a reasonable case at mediation it is most probable that the other side will continue the unlawful practices, because there is no way to stop them, until they drain the opponents' resources.

Consequently to make these practices work some form of recognition that the practices of the complaint are continuing damage and that will be taken into account at a further legal process. There should not be a limit on dispute type or value but a limit on the process where at a particular type and value all evidence should be sworn and verified. Some financial organisations have taken unsigned statements into mediations and used them as evidence. The losing party finding out subsequently that the statement was refused signature because it was incorrect in content.

Comment 12.3

No Comment

Comment 12.4

Comment

- All practitioners involved should be required to certify they have completed the proceedings in accordance with best practice guidelines and in the case of opposing self-litigants identify all conceded facts by affidavit either during the proceedings or attached to the certificate.
- The certificate and attachments be handed to the self-litigant at the end of proceedings or in the case of representation be exchanged with instructions both instructing parties be handed copies separately.
- That breaches of the guidelines immediately impose a penalty and if defining, revoke the judgment or appeal with the leave of the court.
- In alternative dispute resolution the principles identifying incorrect statements and incorrect or false evidence should apply and the rules of evidence considered. In Queensland section 126 of the Criminal Code 1898 could be extended to mediations unless a mediation is considered a tribunal and the evidence is of such a nature not to be perjury but incorrect.

Comment 12.5

Comment.

This submission has already demonstrated at 7.4 and others how the disparity in resources and credibility works to support unlawful activities and the recognition of this is not even considered when self-litigants face frequent users of the court such as banks, insurance companies and the like.

Clearly best practice guidelines need to be adhered to and other conditions with self-litigants as well. The disadvantages of represented to unrepresented persons before judges is shown clearly where a represented bank was able on 3 prosecutions and a mediation with the self-litigant obtain success and then admit the circumstances of unlawful acts that fitted his complaints all denied before judges. The corruption of evidence and process continued into criminal prosecutions where the bank lawyers stopped evidence that if presented may have caused the

receivers to be charged with stealing. What the lawyers did not realise was the self-litigant was accidentally listening to their instructions.

There is a fundamental mistake made by reviewers of court processes.

- Lawyers want to win,
- Not all lawyers are prepared to act with propriety,
- Frequent users of the court expect the judiciary to be skewed to their side.
- Infrequent users of the court and self- litigants have to face suspicion even from their own representatives if other lawyers state incorrect propositions to undermine their credibility.
- All self-represented persons in courts are seen by all concerned as having a lesser value case than those represented.
- Capable self-litigants in one discipline possibly the cause of the dispute are written off by stigma against well- known representatives by judicial practice. It is this class of litigant that can complain to the Bureaucracy and Government to change the law. These situations are the most trying on a Judicial Officer's ability to interpret witness' evidence as the Officer is most likely to know the layman's view before the trial. Consequently reinforcement of that view by a familiar representative against an unknown person of unfamiliar expertise is naturally detrimental to self-litigant's case.

In the identified situation the Commonwealth Government provided \$20,000+ to a Bankruptcy Trustee against a self- litigant to support a secured creditor bank in the courts where that bank eventually admitted the facts of the self-litigants case were correct in law.

The eventual result was the Governments provided facilities to an estimated value of \$500,000 for corrupted police investigations, for courts and over \$20,000 in subsidies to support NAB and its appointed receivers, agents and bankruptcy trustee. When the account concerned was a secured account with NAB (the Bankruptcy Trustee had no claim to the value of the account through distortion of its values.)

All the while NAB was continuing to debit other farmers accounts and allegedly claim interest subsidies on various unlawful account charges. Then when the self-litigant identified the NAB unlawful account deductions to APRA, NAB was forced to refund 37 heads. Including those he had identified and the courts failure to allow discovery as requested and rejections of his evidence was exposed, but a few days before, the bank defined one admitted unlawful act(and partially paid refunds), which affected his accounts the NAB legal representatives were still claiming, NAB had not acted unlawfully in his accounts. The NAB representatives continued these claims even now and swore affidavits in the Federal Court in 2012 accepted by the

Judiciary that were known incorrect at the time. In contravention of the best practice guidelines and the Law Society rules governing litigation against self-litigants by large corporations.

The legal representatives are refusing to admit they knew determining facts were incorrect and the Judiciary accepted those incorrect facts and that has been very expensive for Government.

The Queensland Government took a report from the self-litigant seriously and that report is tabled in Parliament and may have supported the donation of over \$32M in compensation to Queensland through the Smart Queensland initiative and NAB social responsibility in its balance sheet.

The Commonwealth and farmers affected were relying on court judgments and so the judiciary not determining the correct facts have cost those entities dearly, thus facilitating a failed access to justice.

All actions involving self- litigants need to be subject to best practice guidelines.

Comment 12.6

Comment

- Vexatious litigation is an excuse for regular users of the court to justify false evidence. In the case of banks, Australia has the same laws of appropriation as Britain and these to my knowledge have been wide open to abuse since at least 1936. NAB admitted incorrect debits for Debit Tax in accounts back to 1982 and the Shadow Ledgers inquiry identified the way that these public policy issues were capable of being avoided in the courts by issuing not for value account statements.

In the case illustrated the farmer was made vexatious between the date he identified to APRA, NAB was incorrectly debiting accounts with Debit Tax, Fees, Default Interest, interest and charges. This identification came after he applied to NAB for settlement under their corporate culture when the culture admitted in the APRA report of March 2004 was the same as he had identified in August, 2003 and told the bank it was the way they operated in the courts. After the vexatious hearing and before judgment NAB admitted Debit Tax, Fees and default interest all these affected the judgment and hearing evidence. NAB did not inform the judge and these facts could not be used at appeal because the Federal Court Registry bound the Court of Appeal Record Books and left out the supporting evidence to these headings after the record book had been determined before a Registrar and the bank had not attended.

These same Registry actions occurred twice in the Supreme Court Appeal jurisdiction and once in the Federal Court. But the question is how can someone be vexatious in a case where over \$100,000 of incorrect account debits are falsely entered into the debt and the bank concerned recovered that value from asset sales claiming the secured account was correct in affidavits and supplying supporting receivers bank statements. \$100,000 was more than enough money to pay any other debtors under the bankruptcy. This does not include the values from the sale at an under value of the assets denied in the court by using incorrect facts again, in particular the relationship with the receiver who sold unrelated party's property and could not afford along with the NAB to have those facts identified. They have now been partially identified in court judgments with some animals returned.

Firstly all people applying for vexatious orders should certify all evidence used in any tribunal against the defendant is correct and if any is subsequently shown to be incorrect, those complainants should be guilty of a criminal offence. Vexatious orders are a guilty judgment and are a life sentence to restrict freedoms and should be considered that way by the courts.

- All vexatious litigation judgments should be subject to investigation by independent authorities before submitting to courts. The illustrating case at 7.4 identifies this point both APRA and the Queensland Government believed the self-litigant and both were able to fulfil their functions after investigation. These are mitigating circumstances where the judiciary failed to distinguish the true facts from the beginning of the litigation and that continues.

The Justice system in the illustrated circumstances has made itself untrustworthy to make any decisions including vexatious decisions as there are others with similar circumstances also involving self- litigants, incorrect bank account values and vexatious proceedings orders. Where the secured creditor bank knows the accounts are incorrect but will not agree to the correct values and the courts continue the false facts. In one of these cases the circumstances are so bad that the bank concerned will not release the self-litigant from bankruptcy and continues to charge interest to the account even after agreeing to release him from bankruptcy when the persons' family paid the incorrect debt to effect the payout demanded.

This style of corruption becomes known throughout the community as the persons concerned have accountants and others who have certified to the incorrect values. So

eventually the social impacts result in violence not necessarily from the vexatious person but from others protecting themselves against the same outcome. What is a big joke for lawyers destroying a life by false evidence and accusation then becomes a serious community problem for others who are suspected of proffering the same outcome. In Queensland we had the Fitzgerald Inquiry when verballing was happening by police, we need a national inquiry into vexatious proceedings orders and their life sentences especially now it can be shown that public admissions of incorrect facts that would normally be unlawful against the applicant to the orders are denied by other court officers interference, advantaging the applicant for the vexatious orders. The judiciary continuing the orders without taking into account public policy with admissions of incorrect facts, at the time of conviction and evidence, showing the applicant for the orders had admitted facts that were false at the time of the vexatious orders being granted.

Vexatious orders can be unjust and the life sentence is forever applied. In some instances disadvantaging third parties such as government in recovery actions, creating lost access to justice for other effected parties.

- Lowering the terms of the orders and their introduction at lower levels will only encourage more unjust applications involving more unjust life sentences.
- Most Jurisdictions already publish the names of vexatious persons.

11. Chapter 13. Costs awards.

Comment 13.1 and 13.2

- In Queensland and possibly all Australian states the Department of Public Prosecutions has private practitioners available for prosecutions. In actions involving pro bono services where costs may be recovered first right refusal may be given to these practitioners. Some method of prosecuting the thousands of cases piled up in ASIC, APRA, ACCC and other commissions where claims of unlawful behaviour exist needs to be identified and prosecutions commenced. Breaches of “Enforceable Undertakings” are uncovered but remain without follow up. This brings a perception of failed process and obvious injustice.
- Whilst class actions may help, the writer is not the only person told by ASIC it cannot prosecute an obvious crime and obtain compensation for an individual and Government. If

the courts are going to continue with vexatious proceedings orders there has to be a method of representation for those found vexatious with protection for representation for the lawyers concerned. Otherwise the social impacts will create an undercurrent of civil disobedience.

In Queensland because practitioners have a ready access to judge's associates there is a perception the judiciary is biased to the big end of town. This spills over into the belief the only time a case is properly heard is when two well- resourced parties appear.

Other reasons for pro bono prosecutions where practitioners may recover costs from the other party after judgment or on identification of any of the following, include:-

- Bankruptcy prosecutions against secured creditors,
- Bankruptcy prosecutions against Trustees where the Trustee is responsible for the accuracy of a debt and the debt is subject to further prosecution,
- Where Government Inquiries and Parliamentary Committees have identified bad, illegal and unlawful acts that need to be incorporated in the common law or equity and an opportunity presents that would be prosecuted by an unrepresented party.
- Anywhere an under resourced entity has identified the elements of a breach of public policy as part of a civil prosecution including breaches of Commonwealth and State and Territories Statutes where those breaches, material facts as proven, could be the elements in a criminal prosecution
- This may include breaches of Commonwealth Acts and include the legislation empowering or controlled by the Commissions including APRA and Government schemes.
- The prosecution may be initially, overseen by the Attorney General if the material facts as entered in the judgment are not the elements of a readily recognisable offence and/ or the losing party objects after judgment.

12. Chapter 14- Self –represented litigants.

Comment 14.1

- The first and possibly the most important aspect for courts in self-litigant cases are to remove the stigma of self-representation.

- On some occasions self-represented parties have a practical knowledge of unlawful or illegal practice (a common law usage) beyond that of the legally trained persons involved in the process, including registries, judges and opposing counsel.
- In these actions proceeding in the court can lead to a travesty because quite simply the legal part of the prosecution is only a method of cover-up where the legal expertise will be played to by the practitioners and the judge will comply.
- It must be a commencing question by all judges involving self- litigants if there is any reason why they cannot complete their prosecution.
- If there is any reason they consider the other side has been disruptive of their preparation or presentation.
- If there is a practical reason the self – litigant considers the prosecution to be unlawful, unfair or outside contractual or other community usage.
- If there is practical reason the self-litigant considers the prosecution lawful. Eg. In one instance a self-litigant failed to obtain a certificate of judgment on a revised quantum of debt after a bank had falsified the affidavit of debt in another court. The bankruptcy Trustee and the Judge were given a copy of the published court of appeal, judgment but the judge would not accept this document consequently the practical solution was lost to the self-litigant in a bankruptcy where the quantum of the mistake would have covered the debt absolutely. This begs the question how many other accounts in the bankruptcy were unpaid because of this situation. Even asking the bank and Trustee representatives being the same solicitors at the hearing, where they relied on the quantum on the petition, did not help. The NAB then claimed the funds as being recoveries to the secured debt. The judge hearing the action stated he applied to the Chief Justice to hear the matter.

This prompted a complaint to the Chief Justice who fobbed it off and a High Court application which was also refused. This is an access to justice refused to the other claimants in the bankruptcy where a practical summation by the judge where he could have adjourned the hearing and asked for a certified copy of the appeal judgment would have satisfied the law and justice.

In another instance a person particularly skilled in accounting was a McKenzie friend and identified in a bank guarantee case that where a company was in liquidation and a Director had acted unlawfully the director could be required to satisfy a sum identified by the liquidator. The bank concerned had accepted two guarantees of another company with assets sufficient to satisfy the debt the liquidator could demand. The bank took one guarantee from a company with no assets or cash but who had a common shareholding, who was the unlawful director of

the first company but lawful for the guaranteed company. This meant that the bank was guaranteed the value on the loans on the first company if the liquidator claimed the shareholding by the director in the second company. A mortgage broker was involved so the credit to the first company provided by his application may have been unlawful. The bank did not sell the property of the guaranteed company for 4 years so in fact the only person to lose was the second shareholder of the guaranteed company.

This is another practical situation where the judge needed to refer the law to the self-litigant.

In another situation the Court of Appeal directed an applicant to an equity claim but the bank concerned had not admitted the situation in the court and the applicant considered there was several unadmitted corruptions in the account. He therefore could not satisfy the court request without the bank discovery and /or admissions of fact, both absent. When the judgment came down it was to satisfy that another judge had not made a mistake in a previous judgment. In equity the NAB was required on an account to admit all errors. The bank practitioners even though they knew did not complete the submissions, diverting the liability to Government.

Comment 14.2 -14.3

- Most requirements of self-litigants particularly in the first instance is knowledge of practice and if the law allows the practical problem they have identified to be prosecuted and if so how?
- The most frustrating to self-litigants is when a document obviously shows the other side has committed a readily recognised unlawful act and the other fails to settle the matter.
- This must be considered to be a proposition to defeat justice if the other party continuously relies on manipulated evidence of material fact such as false accounting and defends it by making applications to have the action thrown out because the person opposing is a self-litigant. If the other party is a frequent user of the court the chances are the judges will follow their application and dismiss the case.
- This type of judicial- practitioner behaviour is unacceptable under the best practice guidelines so one of the most important issues for this question is the extension of best practice guidelines in total to self-litigant actions.
- There are grounds for self- represented parties to be given help where the action may involve a breach of legislation leading to a public policy issue and the best method to insure representation is to allow the self-representative to have a legal representative on a costs order benefit basis and if the self-litigant agrees a percentage of a success judgment and all contributing expert witnesses may be paid in this way.

- Because of the public policy involved the Attorney General may agree to a similar agreement with government if the judgment affects revenue.

13. Chapter 16; Court and Tribunal fees

Comment 16.2

- All the concession points are accepted except the necessity for an assets test as well as a health concession card. Perhaps the conditions of the card dictate the asset test value.
- The best method for fee relief is for money judgments where the disadvantaged person wins to involve the court recovering from the other party, by statute entered as a judgment against a financially capable losing entity.

14. Chapter 23; Pro Bono services.

Comment 23.1

- The past areas of expertise are a worthy initiative but may cause anxiety if the information is incorrect.
- However if the person is appointed under court supervision adequate protection may be provided to the individual providing the advice.

Comment; 23.2.

- If pro-bono actions are to be effective by co-ordination it must be considered the beneficiaries of the service. Consequently if government may be benefited by a public policy issue then perhaps it could be arranged that issue extends a claim for government recognition of the benefit with appropriate remuneration and costs judgments... The definition supplied to this work previously at comment 13.2 and 13.4 may help explain the situation...
- Comment 13.1 and 13.2

- *In Queensland and possibly all Australian states the Department of Public Prosecutions has private practitioners available for prosecutions. In actions involving pro bono services where costs may be recovered first right refusal may be given to these practitioners. Some method of prosecuting the thousands of cases piled up in ASIC, APRA, ACCC and other commissions where claims of unlawful behaviour exist needs to be identified and prosecutions commenced. Breaches of “Enforceable Undertakings” are uncovered but remain without follow up. This brings a perception of failed process and obvious injustice.*
- *Whilst class actions may help, the writer is not the only person told by ASIC it cannot prosecute an obvious crime and compensation to individual and Government action. If the courts are going to continue with vexatious proceedings orders there has to be a method of representation for those found vexatious with protection for representation for the lawyers concerned. Otherwise the social impacts will create an undercurrent of civil disobedience.*
- *In Queensland because practitioners have a ready access to judge’s associates there is a perception the judiciary is biased to the big end of town. This spills over into the belief the only time a case is properly heard is when two well- resourced parties appear.*
- *Other reasons for pro bono prosecutions where practitioners may recover costs from the other party after judgment or on identification of any of the following, include:-*
 - *Bankruptcy prosecutions against secured creditors,*
 - *Bankruptcy prosecutions against Trustees where the Trustee is responsible for the accuracy of a debt and the debt is subject to further prosecution,*
 - *Where Government Inquiries and Parliamentary Committees have identified bad, illegal and unlawful acts that need to be incorporated in the common law or equity and an opportunity presents that would be prosecuted by an unrepresented party.*
 - *Anywhere an under resourced entity has identified the elements of a breach of public policy as part of a civil prosecution including breaches of Commonwealth and State and Territories Statutes where those breaches, material facts as proven, could be the elements in a criminal prosecution*
 - *This may include breaches of Commonwealth Acts and include the legislation empowering or controlled by the Commissions including APRA and Government schemes.*
 - *The prosecution may be initially, overseen by the Attorney General if the material facts as entered in the judgment are not the elements of a readily recognisable offence and/ or the losing party objects after judgment.*

- In terms of data collection for pro bono services, it may be varied to fit the requirements of the collecting authority not the service provision and so careful attention to detail is necessary. There is an argument for pro bono work to be linked to further study options including masters and doctorates degrees especially where legal practice is involved.
- A register may be maintained by the Attorney General where services offered can be more easily controlled in fitting with the report recommendations and this reply's comments.
- This also allows the opportunity for supervision and certificates of adherence to best practice guidelines in litigation. This could also help define practitioners' bad and unlawful behaviour when complaints are involved.

15. Chapter 24: Data and evidence.

Comment 24.1

- One of the major constrictions to data collection is it appears the Law Society is sponsoring judgments being redacted or simplified and reduced versions published which is a serious impediment when content of both sides is not published completely.