

Executive Summary

(i) This submission adapts the litigation between a secured creditor (bank) and customer where mediation, supreme court civil actions, federal court bankruptcy, failed criminal charges and conviction as a vexatious litigant is involved. Where during the process the bank was offered the whole of its funds and refused to accept, then partial repayment and it refused even with bank Officers setting the value.

(ii) It appears the banks preferred method of securing control of unlawful acts eventually admitted in part was to force the customer to secrecy and obtain the whole of his book debt even when the bank was aware it had acted unlawfully. During the whole of this process the bank continually used unlawful economic power to force the customer to accept the banks' unlawful conduct. Eventually this bank, misusing, court record books, compromising discovery in criminal prosecution, to try to convict the writer, and misusing the charges, as a system to discredit him in all facets of his life and in judicial process even after a failed criminal prosecution and the customer's discharge.

(iii) This bank has denied at all relevant times the compromise of their defendant customers' accounts. Firstly after mediation appointing a substitute rural bank manager to his area to correct other customers' accounts and follow up and correct unlawful processes used to skew those accounts. Then denying discovery and hiding documents from courts and compromising appeal court record books by not attending the hearings and demanding their withdrawal of documents from the book after it had been settled, with the Registrar obliging. In others submitting evidence ruled out as inaccurate by previous courts and accepted as evidence in vexatious proceedings in the Federal Court of Appeal without question even when not presented in the original action. All this after it had publicly admitted after the vexatious hearing but before judgment and then appeal it had used incorrect default interest and the material facts affected the writers' accounts. This is a clear indication of justice denied by a major corporation using a court for another purpose.

(iv) By these methods this bank was successful in not having actions for unviable trading, refusal to accept interest subsidies from a government scheme and unlawful interest charges levied and failure to credit interest to an account to avoid section 96 of the Property Law Act 1974. The farmer / customer had not missed a payment. Unreliable convictions for bankruptcy, vexatious prosecution and orders to uphold the mediation deed are in doubt, because the bank admitted under the provisions of an "Enforceable Undertaking" with ASIC and APRA, that default interest fees and other deductions, were incorrect and the material facts applied to the customer's account were advised to APRA and ASIC. Following the bank refusing to settle actions between us quoting their reports to ASIC and ACCC as sufficient to support their position. Forty-seven acts of inappropriate and/or unlawful acts with customers' accounts were admitted including default interest.

(v) Statistically this bank after mediating with this customer realised it had the possibility of compromise in all the accounts of one rural manager and this remedial action involved appointing a reviewing bank manager to Gayndah, Queensland. Actually it had incorrect and unlawful deductions in over 400,000 customer accounts and 47 possible refund heads to account holders amounting to an estimated all up cost of over \$1Bn. Where incorrect claims for farmer interest subsidies and incorrect viability assessments for an estimated 97,500 customers may be required to be investigated and compensated. The easiest method to close the problem down was to totally destroy their customer's credibility by criminal charge and conviction where the evidence, the bank had collected the sale proceeds of some cattle stated to be stolen remained undiscovered, by receivers and their agents. Then Bankrupt him when they knew his accounts were incorrectly stated to over claim the quantum of debt. Thirdly when he pursued litigation to prosecute these points have him made vexatious against the bank and its lawyers to control future prosecutions and disclosures.

The financial advantages for this bank with the disadvantages for the customer, government and court service are detailed hereunder:

Summary: Initial Loss to the writer \$84,500 unaccepted deposits + unaudited incorrect interest –fees \$180,000 + and replacement sales and interest overcharged on the withheld deposits.

Sufficient losses to cover an audited debt and bank legal costs at trial.

Costs of mediation	5,000
Costs of travelling etc. estimated & legal fees	320,020
Loss of Property and recoveries at the time of sale (estimated)	960,000
Costs to bank, legal etc. (estimated)	\$1,000,000
Other Farmers accounts adjusted after mediation (write down)	undefined
Other farmer account adjustments and compensation avoided (approx. 25% of rural industry Accounts.)	(intangible profit) no cost
Refund to Governments of overcharged interest etc now admitted incorrect back to 1992 (estimate)	\$250 M plus
Estimate saved refunds to farmers accounts after 1992	\$100 M plus
Profit for the Bank from asset sales and failed precedents	CR \$350.960M (estimated)
Costs to the bank	DR \$1 M. (est)
Loss to the writer	DR \$1,549,520 +
Disputed, refused deposits and substituted sales	\$264,500
Loss to Govt Revenue (Farmer schemes)	DR\$350.96 M (estimated)
Provision of court facilities and mounting criminal trial etc.	\$500,000 (Estimated)

(vi)Net result.

This bank used Government provided services valued an (estimated) DR \$500,000 to obtain an actual and intangible gain of CR\$350,960M (estimated) for the bank from alleged inappropriate use of Government Schemes. That may have been corrected by the litigation or “Enforceable Undertaking” follow-up.

This figure does not include losses to other farmers. The writer lost DR\$1,549,520 without adjustments for sale at undervalue and other entities property compensation for the bank retaining their livestock sales. **The banks power over small business was secured through misplaced**

(Government) legislative and judicial enforcement allowing corrupting subsidy process.

(Opinion: The banks' power over small business (Dr Evan Jones)

newsweekly.com.au/article.php?id=760 and

Boule, Laurence “The dog that did not bark: mediation style” *The ADR Bulletin vol 4 no. 2, June 2001*

Partly adjusted and identified for investigation at Council of Australian Governments, Agricultural ministers conference 2005. Partly identified in judgment McDonald v Holden [2007] QSC 54 Mullins J (15 March 2007).

(vii)Adjunct;

As an adjunct to the litigation the writer requested the bank and its lawyers settle the dispute when the bank admitted its corporate culture in March, 2004 after he had identified and informed the bank in August, 2003 of the cultures existence. The bank refused the request and the facts were supplied to appropriate authorities and the Bank was required to refund an estimated over (400,000) customers and a total cost estimated at \$1 billion+ with inclusion of individual account audits in its “Enforceable Undertaking” 20 October 2004. These were similar headings to those commenced prosecution in the Irish High Court against the banks Irish subsidiaries between 1998 and its’ Officers’ disqualifications for 9 years commencing 2007 reduced in 2012.

(viii)The decisions of the lawyers to prosecute this customer, cost the bank,

DR \$1Bn + legal costs of \$1M (estimated) in refunds and administrative costs for 47 incorrect charges.

CR Recoveries about \$960,000.

DR possible future refunds now identified of \$350 M (estimated)

The customer/ writer,

DR The customer writer \$1,549,520 (banks sale recoveries + legal costs)

Other entities affected by failed access to justice.

DR Other entities- \$1M + for livestock + bankruptcy creditors + other customers etc. = justice denied.

Government and Courts,

DR Government- for the provision of Courts, infrastructure, Police and legal aid - \$500,000 plus.

CR Provisional estimated refunds available \$350M from interest subsidy refunds incorrectly granted and other subsidies provided to farmers and small business lost between 1992 (incorrect default interest commenced), partly defined viability decision in March 2007 and lost taxation revenue.

(ix) This submission identifies how corporations move to have police enforce civil jurisdictions when evidence is withheld of property sales in debt recovery operations to make a criminal complaint by a receiver. This was addressed by the Queensland Government in 2008 with the Property Law Act 1974 (Mortgagors' Protection Act) 2008. Produced in the Property Law Act (Qld) at Sections 85 (1)-(10). Where receivers appointed by mortgagees and mortgagees are required to give full information in property sales.

(x) There has been 4 major areas addressed by Government after unfavourable court judgments against the writer commencing with

- 2000; Inaccurate evidence of debt and failure to discover accurate bank statements by banks. Parliamentary Joint Statutory Committee on Corporations and Securities 'Shadow Ledgers' Report 2000.

(Mediation under the ACCC and ASIC mediation agreement was ignored by the bank and not upheld by the courts either in discovery of accepting evidence of incorrect accounting.)

- 2004; ASIC and APRA "Enforceable Undertaking" provisions were ignored in court actions by the bank making the undertaking.

(The announcement of the default interest refund affecting the writers' accounts was made on 10 November 2005 and affected all judgments thereafter. However when the writer was forced to return to court the bank denied the facts admitted and redacted its' web site, to withdraw those facts from publication between the date of the serving of the application and the date of the hearing, and the court found for the bank.

- 2004- Commonwealth Inquiry into Drought and Productivity Subsidies and in 2005 the Interest Subsidy was reported as not being properly used and the Queensland Government lost \$35M in funding and some services to Centrelink.

- 2008; Evidence and discovery inquiry by the Queensland Government and various acts changed including the Property Law Act 1974 as above.
- 2008: Productivity Commission Inquiry identifies different implementation of Exceptional Circumstances Interest Subsidies between states making the refunds.
- 2010: Senate Inquiry into the Judiciary and the Role of Judges and the Access to Justice Inquiries.

(Best Practice Guidelines are introduced but from the materials above are ignored by the bank concerned. The Judicial Inquiry leads to Judicial Complaints processes).

Banking Competition is introduced as a method of stopping banks from causing customers to exonerate the bank from liability before cooperation to shift accounts to another financier.

- 2011- Commonwealth enacts legislation to make Vexatious Litigants orders apply to all jurisdictions.

(One submission shows how a vexatious declaration against one customer complaining about incorrect bank statements, fees and interest charges (*where the bank dispossessing him stated in the court the facts may be true*) caused violence as other customers reacted against their banks to avoid the same fate.)

- Class actions commence under the Banking Code of Practice contract between customer and banker.
- 2013. Court fees increase again. Productivity Commission inquiry into- Access to Justice and the Costs of Access to Justice, viability and the Social Impacts of accessing justice.
This submission addresses the above with particular emphasis on failed discovery and failure to act within the requirements of alternative dispute resolution by the bank with the failure by the courts to accept evidence from self-litigants. Creating inequities between the parties, government, judicial practice and other bank customers affected, by bad banking practice. Some social impacts for the victims of inequity in the courts are identified.

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INTRODUCTION.

This submission identifies how the access to justice is manipulated by frequent users of the court with credibility and influence over infrequent users and how the practitioners, court officers and judiciary are influenced by cultures already identified as bad, but ignored. It identifies how the Australian Competition and Consumer Commission and the Australian Securities and Investment Commission cannot cope with the volume of complaints and how class actions are the most suitable system to deal with the thousands of complaints not dealt with by any alternative dispute resolution process.

It goes further and identifies how the role of the codes of practice is negated by corporations and identifies the use of “Enforceable Undertakings” and how this process should allow the implementation of class actions irrespective of the admission of a corporate culture situation. The impact of restricted access to justice has supported legal lockouts through failed discovery and corporate cultures where themes involve failure to cooperate with investigations both internal and external to protect profit and outsourced and unlawful acts. It raises the necessity for removing indemnity in contracts in debt collection processes.

Qui- tam is raised as a method of Government to recover losses from failed publicly accessed schemes that have been manipulated by corporations and others to benefit their interests at the expense of the integrity and public benefit of the scheme. It raises the points associated with identification by submission to the productivity commission of problems with legal interpretation as used by financial institutions and supported by failed implementation ([Submission 324](#)). Then how judgments years after identification of the possible problems are then unavailable to individuals to obtain access to justice and suffer life destroying losses to possible corruptive processes by the ultimate beneficiaries of the Government compensation schemes.

It raises incorrect debts used by bankrupting petitioners to force bankruptcies and how the account falsifier is untouched by law and where discovery would allow proper identification of false facts in bankruptcies and how this failure is encouraged by appropriate courts. This involves the falsification of bank accounts identified by Parliamentary Committee but ignored by financial institutions to retain incorrect judgments. Because these are facts involving simple legal decisions they are ignored by the High Court allowing the financial institutions to retain the benefit of their incorrect facts presented to obtain the benefits of the bankruptcy act and other acts. Access to Justice in a society dominated by

corporations with profit as their motive can be discriminatory consequently customer justice not just corporate citizen social responsibility should be part of the corporate bottom line.

1. Real costs of legal representation and trends over time.

1.1 This section includes 1997 to today. In 1997 a major bank withheld deposits from my account twice in one year amounting to \$85,550. The background was the Government was paying interest subsidies to farmers financiers and my accounts had been misrepresented to allow the bank to claim maximum interest through the use of default interest. The material facts of this misuse have been admitted by the bank concerned back to commencement of the scheme in 1992 and farmers and others refunded back to 1999 after the bank was committed to an “Enforceable Undertaking” by Australian Securities Investment Commission (ASIC) and “Australian Prudential Regulation Authority” (APRA) but I have no personal knowledge of an account refunded or paid including damages where the default interest was used as leverage. (93AA, ASIC Act Vic National Australia Bank Ltd Media release 04-343 017029136 20 October 2004).

1.2 The issue being that when the bank realised it could by withholding my interest subsidy force me to a category “B” credit rating and increase interest by nearly the same amount as default interest they pursued this path by advancing me the funds I would normally obtain from interest subsidy. They issued a demand for the first advance of the funds for \$30,000 but this was after the second refusal to accept of \$54,550. The bank refused to accept my subsidy and refused to accept my viability assessment even though the Queensland Rural Adjustment Authority (QRAA) informed the bank I was viable. To allow me to transfer my accounts I was forced to mediation and the bank officers gave incorrect facts to the mediation of which the incorrect material facts are now publicly admitted but redacted in from the banks web site February, 2012. (www.independentaustralia.net/.../national-australia-bank-redacts-website-)

1.3 I was ill at the mediation diagnosed with delta- horse toxin possibly created by Organophosphate contact. This has been analysed in Boule, Laurence “The dog that did not bark: mediation style” *The ADR Bulletin* vol 4 no. 2, June 2001. After mediation the bank appointed a new rural manager to Gayndah and he contacted all effected customers and controlled the situation. The mediation costs \$5000 and the bank obtained an agreement for full payment of my debt as they presented it on or about 21 December 1997 after mediation. On 5 February 1998 the bank claim it would not support my account until that date was proven false as they accepted interest for the twelve months they said they

would not. By the time the matter was appealed in 2001 I had paid \$170,000 plus mediation costs and the account problems had still not been presented to the court. This style of shutting down corporate unlawful acts by using their power at mediation is encouraged by some legal practitioners. (*The banks' power over small business (Dr Evan Jones) newsweekly.com.au/article.php?id=760*)

In this instance the bank was able to turn a now found and admitted incorrect accounting and possible fraud into a recoverable debt a common legal process and a previously defined misuse of legal and court process. (*The principle in White Industries (Qld) Pty Ltd v Flower & Hart (a firm) (1998) 156 ALR 169*)

In order to support the claim of a recoverable debt the bank staff and practitioners acted to defend and pursue every legal avenue against the writer. This process caused the bank extraordinary funding, the original losses through failure to accept my interest subsidy including the cattle sold to compensate was \$180,000.

- (a) The bank had to identify and appoint a new bank manager to a closing branch (Gayndah) to control and shut down other customers' situations before they realised the facts.
- (b) They had to force the matter to court and bankruptcy, appoint a receiver and pay his costs and a bankruptcy trustee and appear in over 40 court appearances and trials.
- (c) In 2004 the bank concerned was forced into an "Enforceable Undertaking" by APRA and ASIC with individual account audits. I had applied to the bank directly to have them settle with me because I had identified their corporate culture in 2003 but they refused stating the facts had been investigated by ASIC and the ACCC. Their reports had been written by their lawyers and by the bank staff lawyer both had been shown incorrect by bank public admissions.
- (d) Neither the ACCC or ASIC continued because the Parliamentary Joint Statutory Committee in to Corporations and Securities (PJSCCS) had conducted an inquiry into "Shadow Ledgers" bank statements in litigation and the Australian Bankers' Association had agreed to mediate the circumstances this bank refused to mediate even though judicial interpretation of section 60(2) of the Bankruptcy Act allowed a commercially contracted mediation or arbitration to proceed after bankruptcy. This included the Banking Code of Practice.
- (e) The letter to the Judge shows how the Supreme Court of Appeal Registry by their method of completion of the Court Record Book aided the bank and its receiver to bring a criminal action against me for stealing as a mortgagee for cattle owned by others on my property. Even though the bank had processed the funds of the sales and been advised of the sales and the receiver

had collected the information of ownership, they manipulated the evidence in the court by not presenting the livestock sales accounts where the receiver had sold the other entities livestock and some as unbranded. I was acquitted and one person with knowledge of the ownership of the livestock stated to me before trial. "The trial is a waste of time". The costs for this situation fell to me, legal aid and the Department of Public Prosecutions (DPP) and Police. All Police involved are now resigned, the original bank manager and the Deputy Registrars involved and the Bankrupting Judge, the Mediator is deceased, the original bank Queen's Counsel no longer practices and the bank second counsel and other judges all deceased and the banks' solicitor at mediation was not practising at the time of trial.

- (f) In 1989 the cattle owned by some of the entities had been ruled as owned by them in the Federal Court and this bank also knew. The Federal Court refused to rule on the cattle in the Bankruptcy but in order to tell the Bankruptcy Judge of the circumstances of the criminal action they endorsed on the bottom of the Certificate of Debt recoveries under the criminal action. The Judge found me bankrupt
- *by extending an out of date petition for the bank,
 - *without discovery and knowledge of my true debt,
 - *without ruling on the livestock ownership including those identified by the Federal Court years before,
 - *without accepting evidence of a sale at undervalue in common law but
- Using Section 85 (1) of the Property Law Act 1974 (Qld) which was not pleaded.
- (g) In Bankruptcy the Court refused to accept my evidence on any matter and the Bankruptcy Trustee received \$30,000 from the Inspector General to defend the judgments. This being a wasted payment because the PJSTSC had ruled on mediation in my bank accounting and the problems had continued after mediation both continuously and separately, including the failure to put appropriated interest to my accounts after mediation, possibly avoiding section 96 of the Property Law Act 1966 so the bank could issue a demand.
- (h) By this time the bank and its receivers and the bankruptcy trustee had manipulated my defending or making application in the Mediation, the Supreme Court at Trial and Appeal, the District Court Criminal Complaint, the Federal Court in Bankruptcy, Appeal and Annulment, and the High Court where discovery and accounting were ruled as not important enough to make a judgment.
- The Government had supplied Judiciary and Court facilities.

- Bank lawyers both internal and external refused to disclose their costs but the bank may have given indemnity to other bankruptcy trustee's lawyers, the receivers and paid witnesses and so had I.
 - \$30,000 had been given to the bankruptcy trustees by the Inspector General to defend the bankruptcy.
 - Criminal Prosecutions had been brought by Police and agistment paid to holding properties on cattle held as evidence and DPP had launched an unsuccessful prosecution and the witnesses had been paid by the DPP.
 - My other creditors at bankruptcy had lost their funds and a company I was director of have lost their assets because the Police held onto their cattle for 2-3 years. This company's bank accounts were with the bank concerned, and it by telephone call, and followed up in writing, transferred the moneys between my accounts and the company for cattle sales and this is shown on the bank statements. The bank wanted to sell the company's assets and part of that was forcing me to bankruptcy after pressure to mortgage the assets failed.
- (i) We proceeded in every court with further manipulations of evidence some of which have been advised to the Chief Justices of the Supreme Court and the Federal Court but in 2005 the Bank and the trustees made an application to make me vexatious against them. By then they had realised it was my evidence that caused some of the refunds and audit on their accounts so I wrote to the Chief Justice of the Federal Court and advanced how the incorrect evidence in that action would be negated in the future because of the corporate culture and its system of covering up corrupted accounts being investigated. Once again the court ignored my evidence of corrupted accounting but the bank, trustee and its practitioners did not inform the court of its public admission on 10 November 2005 judgment was 22 December 2005 of the incorrect default interest charged to my account and how it was used to put pressure on me at mediation and not debited to the account until after mediation.
- (j) In the appeal of the vexatious orders the bank practitioners used the incorrect certificate of debt from the bankruptcy trial as evidence again knowing or ought to have known it was incorrect and refused as evidence before the bankrupting judge. The court found against me and the high court refused the special leave. However I had detailed the corruption of a judgment in the District Court where the bank had refused to have sales of cattle given to them under the civil action for ownership following the criminal trial for cattle stealing. Once again the facts of the cattle sales were investigated but the sale dockets showing the bank and receiver knew who in truth owned the livestock were not used. I subpoenaed those sale records in another action and they were covered up by the presiding judge by refusing to hear the

matter at that time and allowing the bank the date for hearing they demanded and the remaining police involved were stated to have resigned.

- (k) The vexatious orders statutorily extended to the Supreme Court but the judge made an order restricting them to one action. Attached is the banks (Enforceable Undertaking, admission of regulatory necessity to correct accounts a list of the refunds made to customers and a published account of how the bank redacted its web site to hide the default interest and certain bank fees from the court and Government inquiries
- (l) Also enclosed is part of a judgment in QCA 329/06 on 1 September 2006 where the bank refused to acknowledge the default interest and bank statements were incorrect and where the evidence of other falsities was denied by their practitioners. The court accepted their submissions on law which may also be found incorrect by investigation.
- (m) On the 28 September 2006 the bank admitted the facts of the default interest refund and announced payment only on the refund not on the following unlawful or illegal acts possibly covering up their liability.
- (n) The bank has still not identified or admitted the true facts in the court system and the last actions were last year where the Federal Court made it clear that the bankrupting judge could be liable if they gave me a fraud at trial judgment and informed the bank and myself to settle the matter. The bank is still refusing to settle without going to court.
- (o) The true costs of this banks' behaviour is now available for analysis and I would consider all costs, both their internal and legal representatives, Government and mine and other persons effected such as the owners of the livestock who as yet have not received their compensation should be placed under this heading of real costs of legal representation.
- (p) All because the bank did not want to pay the \$180,000 they had lost me unlawfully pursuant to the interpretation in McDonald v Holden [2007] QSC 54 (15 March 2007) dealing with viability, interest subsidy and Native Vegetation compensation. A submission was made to the Productivity Commission Inquiry into Native Vegetation Compensation and this judgment accepts the material facts stated there where the misuse of viability rulings would be used to allow banks to sell up eligible customers and receive the funds and a further \$180,000 from the Farmers Exceptional Circumstances Fund after unlawful accounting.
- (q) Letters outlining the processes of corrupting each judgment are available and can be provided if required. All judges and some government authorities have been informed and in appropriate situations some legislation has been changed or introduced.

2. Level of demand for legal services.

2.1 As can be seen from above the demand for legal services may be forced by individual corporations but access to justice is denied by judicial interpretations and practitioners not being correct in presentations. (Submission 36 to the Inquiry into the Judiciary and the Role of Judges, Senate Legal and Constitutional Committee 2010). The refunds caused under this banks Enforceable Undertaking has identified the necessity for Class Actions to at least make corporations honest in some instances with vulnerable customers. Some of these 47 refunds were over \$100M and it could be that the total refunds and costs associated therewith would exceed \$1Bn and estimated over 400,000 accounts. This bank refused to mediate under Australian Banking Industry agreement with ASIC and ACCC and the courts failed to enforce it. Consequently claims under “Shadow Ledgers” and Enforceable Undertaking audits have gone unnoticed against individuals, legitimising class actions where these claims overwhelmed ASIC and ACCC resources.

2.2 It is noted in all the court appearances, the banks’ practitioners have not admitted or acknowledged the facts of the account inaccuracies and in fact denied their existence in all actions between 10 November 2005 and today. Five of the refunding headings including debit tax, fees and default interest were all advised to authorities by me from my accounts and included after investigation but still denied in the courts by the bank concerned and accepted by the judiciary.

2.3 As can be seen from the facts at “1” the Bank concerned is a frequent user of the court and demands preferential evidence acceptance and registry processes on their requests and how much these factors when considered have contributed to legal demand? In such a situation it is hard to deny the banks’ corporate culture has not continued into the courts and until today. Where it is preferred policy to force every dispute to court and then pressuring government to legislate the banks’ required changes to allow them the future outcome. eg. Farmers’ exceptional circumstances grant where it has been recently approved to be available to bankruptcy and consequently secured creditors. (Submission to the Senate Economic Inquiry into Exceptional Circumstances- Bankruptcy Act Amendments-2011.)

2.4 The themes of the corporate culture have been identified by APRA and admitted by the bank. Thus the demand for legal services has been advanced by corporations not accepting their responsibilities under alternative dispute resolution (ADR) or their customer contracts such as the Banking Code of Practice or the Best Practice Guidelines. In the case of criminal actions corporates and their appointees continue to increase avoidance of their responsibilities by using ADR. (The Hon Paul de Jersey AC, Chief Justice, presentation to the Queensland Law Society Symposium 2013 at the Brisbane Convention and Exhibition Centre 15 March 2013).

3. Factors that contribute to the cost of legal representation in Australia.

- 3.1** One common practice contributing to the cost of legal representation is the use of the system to force submission through financial capacity to pay. This is escalated by the courts , where:
- (a) practitioners are given preference and credibility in legal argument,
 - (b) presentation of evidence and
 - (c) preferred credibility of the contents of evidence.
 - (d) In instances with frequent users of the court this has become a culture where all credibility goes to frequent users' practitioners' advantage.
 - (e) Consequently many dispute resolution processes have been misused by the overzealous desire to win by some practitioners.
- 3.2** The failure of discovery and correct documents and accounting presented to courts. (PJSCCS Shadow Ledgers Report, NAB "Enforceable Undertaking" 20 October 2004, and refunds list). To the writers' knowledge no admission and refund or recognition of unlawful acts has been made by the bank required to audit accounts under its enforceable undertaking referring to "Shadow Ledgers" four years before or court judgments.
- 3.3** Both failure to discover and incorrect evidence create repeated appearance in courts with those deceived often being victimised by the other parties, the registries and judicial practice. In the above initial action the quote was \$50,000 total expected value \$55,000 but actual costs after monthly call overs \$170,000 to trial and \$50,000 for trial and appeal estimated similar value, but the writer then appeared for himself all up costs to November 2001 \$270,000. Banks costs are unknown. Bank advantage is retaining the interpretation variation between Victoria, Queensland and New South Wales on Farmer Interest Subsidies including incorrect viability definitions favouring the banker. This was spread over 25% of Australia's' rural market as stated by that bank.
- 3.4** Other factors include,
- a. distance to representation and courts,
 - b. cooperation between parties,
 - c. desire to settle
 - d. corporate policy demanding disputes be filed in the court,
 - e. desire of corporates to use third parties to escalate disputes.

- f. desire of financiers to force the factors of the dispute to their advantage so that all disputes become recovery actions and consequently given evidentiary preference to the financier. The PJSCCS “ Shadow Ledgers Report showed the method of corruption of accounts irrespective of the responsibility of the financier to issue correct records of debt and this has continued using actual bank statements.
- g. The practices of corporates and others to remove evidence from their publicly available information.
- h. The practices of corporates in alternative dispute resolution processes to use pressure that has been regarded as legitimate, but later admitted after the corporate has won judgments based on that pressure to be an illegitimate practice (using incorrectly debited interest including default interest by financiers and incorrect viability assessments.
- i. Methods of charging out time to increase earning capacity of legal staff.
- j. Representation at call overs by barristers for agreed orders.
- k. Judicial failure to have knowledge of the law involved.
- l. Failure to discover by manipulation of representation.
- m. Judge Shopping.
- n. Failure by legal representatives to use the Best Practice Guidelines both State and Commonwealth and established practices when dealing with self-litigants.
- o. Failure by the Judiciary to enforce Best Practice Guidelines in dealing with legal representatives against self-litigants and weaker parties in anyway.
- p. Use of incorrect evidence from previous actions known by the corporate but not declared in court, to make victims of their legal practices abuse, vexatious. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/access_to_justice_federaljurisdiction/submissions.htm 5 and 6)
- q. Legislators changing the law to suit major corporates eg. Farmer exceptional circumstances grants of \$180,000 could not be included in bankruptcies previously. But now an incentive is available to secured creditors to overcharge accounts with Non-Accrual interest charges (not taxable but debited to the disputed account) to receive the \$180,000. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=economics_ctte/completed_inquiries/2010-3/bankruptcy_amendment_2011/submissions9.htm. Pursuant to the Bankruptcy Act 1966 (Cth) these funds should be divided 50% interest and 50% capital. When does the secured creditor apply the subsidy 50% to its taxable income? Secured creditors will

not discover current account values or debits and credits and the courts do not enforce the practice. Consequently courts force up the costs of recoveries and aid legal policy breaches against Government when a secured creditor is non-compliant.

- r. Secured creditors attribute all costs against the defending party at their choice of cost and representative charges even when the secured property holder succeeds. This does not create any incentive for honest cost effective legal representation by after judgment fees, legal firms.
- s. Secured creditors provide indemnity to their appointed receivers and sometimes bankruptcy trustees. The Commonwealth Inspector General provides his funds to bankruptcy trustees in legal actions so there is no incentive for trustees to investigate and provide proper services to other creditors against secured creditors' accounts. Thus incorrect debt values are allowed to continue in bankruptcy regardless of the responsibility under the Bankruptcy Act 1966 (Cth) for secured creditors.
- t. Generally the greatest contributor to legal costs is the behaviour of the practitioners, court officers and judiciary. Monthly call overs can be replaced by agreed orders and restricted representations thus forcing agreement avoiding court appearances.
- u. Mediation processes can be committed to legislation with inbuilt safeguards to restrict costs to the value of the dispute. This is discussed further under the following heading.

4. Whether the costs charged for accessing justice services and legal representation are generally proportionate to the issues in dispute.

4.1 In the litigation described above the financial institution could have settled the matter in 1997 for a write down of the account a taxation deduction for \$180,000 but used the value of the incorrect account to force mediation and used that as legitimate pressure. It's proffered value at mediation being less deposits for interest refused \$84,550 approximate adjustment for incorrect charges and interest undefined, livestock sold to replace the refused deposits and false charges approximately \$100,000.

4.2 It is described by Professor Boule on the admission of the mediator (a judge) that he stated "the bank had the upper hand" and I was at a disadvantage. But it is admitted by the bank that its accounts were incorrect through unlawful, interest and fees charges and by Judgment in McDonald v Holden QSC 54 (15 March 2007) the law at mediation was incorrect in its definition of viability the banks definition now being substituted by my viability inclusions in the mediation definition. The mediator's words related to the bank claiming if I did not sign the mediation they would sell

me up, which was also wrong in law. I had not missed a payment so Section 96 of the Property Law Act 1974 may have applied.

4.3 Thus the costs to enforce the legal process are known for the writer at \$220,000 plus and the bank expected to be over \$1M.

4.4 Partly because the bank wished to avoid the precedent of applied legal principles in Past Refund Activities, the incorrect viability judgment, the incorrect use of false accounting by secured creditors in mediations, Certificates of Debt in litigations and Bankruptcy. The important issue being the bank concerned did not refund alleged deceived customers for the whole period of the deceit in some instances only 6 years) but another bank has admitted and refunded accounts for the whole period (9 years) of its possibly defrauded customers (Walsh Liam, “Bo to refund \$46M as old bugs disrupt bank system” *Courier Mail Brisbane*, 16 August, 2013.)

4.5 Consequently the secured creditor outlaid over \$1M to avoid an initial write down of about \$230,000 and ownership of its responsibilities. Against an initial account write down of about \$230,000 and no viable recoveries considering it sold the secured property for less than its legal fees. This being necessary to bankrupt the customer and discourage identification of its incorrect practices also part of its corporate culture admitted and identified in the Walsh article. The Queensland Government addressed some of these practices at Section 85(1)-(10) of the Property Law Act 1974 in 2008.

4.6 Thus legal costs and representation are disproportionate to the value of the property involved. Further the bank representatives denied any legal costs were debited to the account but bank records showed some were, obviously discrepancies in accounting existed.

4.7 Summary: Loss to the writer \$84,500 + unaudited incorrect interest -fees \$180,000+

Costs of mediation	5,000
Costs of travelling etc. estimated & legal fees	320,020
Loss of Property and recoveries at the time of sale (estimated)	960,000
Costs to bank, legal etc. (estimated)	\$1,000,000
Other Farmers accounts adjusted after mediation (write down)	undefined
Other farmer account adjustments avoided (approx. 25% of rural industry Accounts.)	(Intangible profit) no cost
Refund to Government of overcharged interest etc. now admitted	
incorrect back to 1992 (estimate)	\$250 M plus
Estimate saved refunds to farmers accounts after 1992	\$100 M plus
Profit for the Bank from asset sales and failed precedents CR	\$350.960M (estimated)
Costs to the bank	DR \$1 M. (est.)

Loss to the writer

DR \$1,549,520

Loss to Govt Revenue (Farmer schemes) DR\$350.96M (estimated)

Provision of court facilities and mounting criminal trail etc. \$500,000 (Estimated)

Net result.

This bank used Government provided services valued an (estimated) DR \$500,000 to obtain an actual and intangible gain of CR\$350,960M (estimated) for the bank from inappropriate use of Government Schemes unidentified and/or may have been corrected by the litigation or “Enforceable Undertaking”. This figure does not include losses to other farmers.

The writer lost DR\$1,549,520 without adjustments for sale at undervalue and other entities property compensation for the bank retaining their livestock sales.

The Productivity Commission Draft Report into Drought Aid at EC Interest Subsidy interpretations.

The banks power over small business was secured through misplaced (Government) legislative and judicial enforcement for corrupting subsidy process. (Opinion: The banks' power over small business (Dr Evan Jones) newsweekly.com.au/article.php?id=760.

4.9 As an adjunct to the litigation the writer requested the bank and its lawyers settle the dispute when the bank admitted its corporate culture in March, 2004 after he had identified and informed the bank in August, 2003. The bank refused the request and the facts were supplied to appropriate authorities and the Bank was required to refund an estimated over (400,000) accounts and a total cost estimated at \$1 billion with inclusion of individual account audits in its “Enforceable Undertaking”.

5. The impact of the costs of accessing justice services, and securing legal representation, on the effectiveness of these services.

5.1 The impact of legal representation must be cost effective for a party. In these circumstances as detailed above the cost of access to representation gave the secured creditor unmeasurable advantage. It is an undeniable fact that courts give advantage to individual practitioners on aspects of law and fact. As seen from above practitioners do not always follow the Best Practice Guidelines, Commonwealth or State and the reason those Guidelines were introduced therefore is abandoned. As stated previously the Cost of enforcing the will of the Secured creditor was immaterial. Their need was to force a (White Industries situation) where the real dispute was negated by a legal process that

made the secured creditor a debtor in pursuit. The purpose for this approach is explained as the banks' corporate culture where the first theme relates to maximising profit from any situation and the second is to avoid detection for any wrongdoing and in fact more effort is put into covering up the facts than would have been made to satisfy the problem. This is amply demonstrated here so the access to legal support is very limited by resources and these can be lost in protracted situations where the judiciary accepts the submissions from corporate lawyers against all others.

5.2 Therefore the experience and credibility of the legal representation is utmost in a situation where a corporation has a culture of the above themes. The second theme is described as Factors where the Bank admits it: (*Freeman v National Australia Bank [2006] QCA 329 (06/0219) Brisb* *McMurdo P Jerald JA Holmes JA (1/09/2006) at*

- a. failed to discover documents, [38]
- b. to discover documents at the incorrect time but at a later date to the advantage of the bank [39]
- c. to issue incorrect bank statements, [40]
- d. to give incorrect information to the courts. [38][39][40][41][43].

But denies these material facts before the judiciary and because they are represented by a practitioner receive untold credibility for incorrect facts, now admitted. This puts the judiciary and the system at serious risk of losing its credibility and it is accepted generally that the failed factors are ordinarily part of bank litigation, which may be practice for banks generally in dispute. ("Shadow Ledgers" Inquiry).

Consequently the impact in this situation of legal representation was lost funds and recoverable funds to the secured creditor, and loss of my business, home, my own family's security and other entities livestock. In any action involving a bank in Queensland most Judges appointed are Judges who bank with that bank or have represented it as a practitioner previously or hold shares in that bank.

In this situation the effectiveness for all parties including the court service of legal representation has been nil. Lawyers are not all knowledge persons and consequently can- not foresee the ultimate result of litigation to either party. They do tend to present their personal feelings at a time appropriate to them.

The bank paid more in legal fees than it recovered when it could have obtained more than its' equity value at mediation and by considering the present claims for falsifying my accounts, by using the themes of its corporate culture. I lost my life's work, home, family home and children's security with

other entities being affected through incorrect sales of their livestock by the banks' appointed receivers and to incorrect facts presented to legal processes. Consequently legal representation is only as effective as the mediator, arbitrator or judiciary allow it to be.

Other bank customers all 400,000 obtained unforeseen refunds from forced audit of incorrect and/or unlawful bank practices. The outstanding feature, being the banks' outlay of \$1M to stop the possible detection of the use of unlawful default interest, in farmer subsidy schemes, for the whole 18 years of the scheme and its application even now and the incorrect farm viability decisions until 2007.

6. Economic and the social impacts of the costs of accessing justice services, and securing legal representation.

6.1 These impacts are the most appropriate for justifying class actions and how they support individual claims against major corporations that misuse their power or operate with corporate cultures that foster unlawful acts by seeking to turn them into profit. They also support the use of qui-tam actions where legal firms can proceed against entities in breach of legal policy and recovering these should be extended by agreement with government on the fruits of that litigation.

6.2 This situation is unusual in that some of the effects have led to social impacts beyond normal litigation outcomes. I have tried to counter any representation banks have made to obtain inequitable legislative outcomes against factual outcomes. Thus where the judiciary has failed to give judgments for myself I have advised the public or legal policy and other issues to the appropriate authority for follow up. Some of these have made fruit and that is reflected in out- comes produced hereunder. Obviously there will be further outcomes I am unaware of for other parties. None of these outcomes would have occurred if the bank had not forced me to lose my financial reserves. Thus they are impacts out of accessing justice services.

6.3 Listed outcomes to date.

6.3.1 Writer:

1998- The bank at mediation continued to create further ruses.

2000-All financial resources were lost after judgment in 2000 including income and home.

At the same time the PJCCS advised the banks accounting in litigation was flawed and the ACCC completed a document to request mediation from the bank. This was refused.by the bank even when they admitted some intentional failures to credit funds on time.

2000-The writer became a self-litigant.

2000-He was charged criminally, on receiver's complaint, evidence withheld by the bank and receiver's agents to cause the complaint.

2001- Appeal from original action lost.

2001 –discovery was refused in the Federal Court.

2002- Bankrupted after self- representation.

2002- Criminal action– writer found not guilty and discharged.

2003- Receivers obtain a split judgment on livestock stated to be stolen.

2004- Federal Court appeal and annulment,

2004- Bank admits corporate culture and refuses to settle with the writer and others.

The writer advises APRA of the facts of bank corrupted accounting for his court actions.

2004- APRA causes the bank to an “Enforceable Undertaking” and the bank commences refunds.

2005- Bank identifies the writer's account corruptions and applies to make him vexatious. The writer discovers the hidden documents from the criminal hearing and hearings to claim other entities livestock.

2006- found vexatious and appeal fails but the bank uses the incorrect evidence and it is accepted by the judges.

The bank denies their identified facts of the accounts in every court, but admits the material facts of the account corruption after the hearings on 28 September 2006.

2007- Bank refuses to mediate under the Banking Code of Practice.

2008- Various actions are unheard by the courts relying on incorrect facts to deny the hearings.

Queensland Government implements an inquiry into bank discovery processes and finds the process flawed and changes the Property Law Act with the (Mortgagor's Protection) Act 2008 to statutorily force disclosure. This may stop receivers, banks and agents from falsifying criminal action and profiting by non-disclosure.

2010- Bank refuses to settle the actions even after the true facts have been admitted on accounts and livestock sales and manipulated evidence.

Writer's submission at 36 of the published submission.

The Senate conducts an inquiry into The Judiciary and the Role of Judges and Access to Justice. Legislation to conduct judicial responsibility is introduced and the Best Practice Guidelines are published.

2012- In the Federal Court the bank denies the facts of the incorrect accounts. It then redacts its website to hide its liability as it did not pay refunds for over 6 years for default interest.

2013- Another bank publishes its refunds for incorrect interest in accounts and that is to the date of the first mistake nine years out.

6.3.2 Writer's legal practitioners

The legal practitioners claimed over \$250,000 in charges and costs.

*The first at mediation \$5000 plus mediator \$3000.

*the second \$170,000,

*the third and subsequent over \$75,000.

*the defence finance in the criminal trial came from Legal Aid.

6.3.3 Secured creditor (bank)

1997- Mediation costs, fees and bank fees to bank demand, \$15,000 approx.). Solicitors then involved in the (White Industries affair with Abuse of process for bringing an unsubstantiated action as a defence) and did not appear again.

1998- The bank has had the same solicitors but various counsel and estimated costs over \$1M.

*All recoveries were available to the bank and the receivers and were manipulated to be within \$50,000 of the original debt. By refusing offers for the property above the value the receivers sold it for.

*That debt is now shown and admitted to be incorrect since the first year of the relationship between the bank and the writer, and the bank refuses to settle.

*This will force the matter back to court.

6.3.4 Secured creditors'- legal practitioners.

First Solicitors and mediation admitted costs \$15,000 (approx.)

Second solicitors and subsequent costs were denied to be charged to any of the writers' realisation account.

Second solicitors estimated costs over \$1M.

6.3.5 Bankruptcy Trustee.

The bankruptcy trustee was involved with the bank in continuing litigation without investigating the Secured Creditors' account. Consequently he paid legal fees but applied to the Inspector General for relief and received \$30,000 (approx.).

6.3.6 Bankruptcy Trustees'- legal practitioners

The bankruptcy trustee maintained the relationship with the same Solicitor after he become a separate practitioner and thus had two solicitors and one counsel.

Inspector General produced \$30,000 to those practitioners.

Other legal expenses considered to be covered by the bank.

6.3.7 Receivers- appointed by the secured creditors.

All receivers costs and accounting are covered by the mortgage except those charged to the writers' account which are not identified by the process.

This has been corrected by the application of Section 85(1) - (10) of the Property Law Act 1974 (Qld) where details of the receivers and bank relationship are required to be produced.

6.3.8 Other entities

One of the greatest financial losses occurs where debt collection processes are manipulated by secured creditors facilitating through their accounting their own ends. Consequently the bankruptcy hurt some monthly account holders and other secured creditors and employees.

The entities, agisting cattle on the property where the bank and receiver charged the writer with stealing and did not acknowledge the sale of their cattle, then withheld the records of the sales from the court processes, both criminal and civil.

6.3.9 Other entities –legal representation

All other entities were forced to legal process and were disadvantaged by the withholding of the evidence of the receivers selling their livestock and so lost those and others that were held by the Court as evidence in a civil action for ownership.

6.3.10 Courts

The Courts generally have lost credibility and the effects on individual judges and their credibility with the legislature and others. It is important to note the only entities making any money out of this whole situation are the lawyers, who have continuously kept these matters before the courts without admission of their clients' own identified and published material facts that affect the outcomes against a self- litigant. Perhaps being:

- A. outside of legal ethics,
- B. against practice guidelines,
- C. contrary to the best practice guidelines, and
- D. contrary to the judgment in *James Laferla v Birdon Sands Pty Ltd* (1998)
NTSC (20 August 1998)

6.3.11 Queensland Government

Following the admission by the secured creditor and refund of default interest some of which applied to interest subsidy and business subsidy accounts, no announcement or enforcement procedures have been identified where a refund of the unlawfully collected subsidy by the bank, has been returned to either the Queensland or Commonwealth Governments. (Wardill, Steven “Ministers agree to disagree”, *Courier Mail Brisbane*. 5 April 2005.) This being effective because the bank collected ordinary interest and forced customers into its’ desired actions when previously unlawful default interest was added to principle for interest charges on which subsidy is claimed.

In 2001 the writer made the Chief Justice aware of the incorrect evidence in his debt pursuant to the incomplete facts disclosed and the PJSCCS “Shadow Ledgers: inquiry of October 2000. This has been renewed and expanded with the publication of the incorrect default interest charges by the bank concerned under its past refund activities arising from identification of its auditing of individual accounts pursuant to its “Enforceable Undertaking” with ASIC and APRA.

Settlement by the bank at mediation forgiving the \$240,000 now identified as a bank write off situation would have saved the Queensland Government inquiries into discovery and legislative changes, overheads and fixed costs and variable costs for over 30 appearances in the Supreme Court and 5 in the District Court and 3 in the Court of Appeal and investigations by Police (all of the investigating Officers in the first instance have now resigned.)

Estimated value cannot be accurately completed because of unpublished relationship between public service fixed and variable costs.

6.3.12 Commonwealth Government.

The Federal Court appearances are over 20 with 20 appearances in the Federal Court of Appeal. The Federal Court also now has a problem of credibility as the failing to give the writer discovery of his bank accounting records and the bank manuals was shown to be ineffective. The Chief Justice being advised of the incorrect charges associated with his account in July, 2005.

- A. By the Shadow Ledgers Inquiry and the refusal by the secured creditor to mediate the account value and incomplete and incorrect bank statements under the ABA agreement both before and after bankruptcy. This was agreed by the Australian Bankers Association with the ACCC and ASIC where the ACCC supplied a sample application to the bank concerned and this was supplied.
- B. In 2005 the same prosecuting bank admitted the common facts and unlawful charges to accounts of some of complaints of the writer but did not publish the details, discover or admit the details until 26 September 2006 where 6 vital court appearances in both single judge and court of appeal jurisdiction had been heard. In each of these circumstances the practitioners

failed to admit the facts that were pleaded and refunded to other customers on 28 September 2006. A vital point in litigation against self- litigants.

- C. Bankruptcy proceedings and all other actions could have been avoided by the Judge at Bankruptcy permitting discovery and/or the bank admitting the facts of the incorrect accounting and incorrect quantum of debt being charged to the writer's account and failure to credit appropriated interest payments to allow issue of demand.
- D. All costs both fixed and variable after publication of the "Shadow Ledgers" Inquiry and agreement to mediate un-provided and incorrect bank statements must lie with the bank concerned. Perhaps in circumstances such as these where the bank irrespective of the law or independently identified facts continues prosecution of a customer to bankruptcy and beyond the Government should have the right to ask such a regular user of the court for reimbursement on admission of facts denied in courts. In this instance affecting bankruptcies since 1982 and including legal policy concerns;
- because the bank concerned misused government supplied courts, staff and facilities,
 - caused damage to individuals and services to victims who may never replace their lost lives, including suicides, and cause extraordinary outcomes, including violence. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/access_to_justice_federaljurisdiction/index.htm Subs 5-6.

7. Social Impacts – Community Impacts- individual impacts- family impacts.

7.1 Community Impacts

- A. It has long been known but unsaid the biggest social impact in access to justice is the judicial decision or alternative dispute resolution agreement.
- B. There are several social impacts under this heading that are major in fact and law.
- B.1 This litigation shows that financial institutions will firstly appropriate unlawfully gained funds to their own use.
- B.2 They will seek to avoid responsibility from these facts at management and board level by using economic power to negotiate at government level for advantage.
- B.3. Financiers will use alternative dispute resolution and the court system against customers and government and employ whatever methods they can to win any dispute.

- B.4 They will not make restitution in full where it can be avoided and will not admit and resolve disputes against individuals even where they have made an “Enforceable Undertaking” to do so.
- B.5 In the instance of legislative interpretation and government funds they may seek to employ lawful or unlawful means to obtain the most beneficial outcome for the institution. Irrespective of the intention of legislation and their customers’ financial and personal wellbeing,
- C. The productivity commission interim report into government drought strategy of 2010 details at page 143 the difference in interpretation of the Commonwealth Interest Subsidy and drought program between states and that accepted applications in one state were refused in another.
- C.1 In the circumstances above the writer found himself facing a false viability assessment and this was confirmed by the Queensland Rural Adjustment Authority and by his detailed reply. The whole of the bank process in alternative dispute resolution and appointing a rural bank manager to Gayndah Queensland appeared to be to correct customer accounts and thus isolate the situation.
- C.2 This control continued with unfavourable judicial decisions in Victoria and Queensland until the judgment *McDonald v Holden* [2007] QSC 054 Mullins J 15/03/2007 including all assets and income in rural viability assessments. Previously where consultants had no expertise in one area others could be ignored for viability purposes. Eg. An agronomist may not include, timber royalties, livestock income, on property contracting income and that would skew the result. When this was taken up with this bank in reply the bank ignored the facts and continued to use the incorrect report.
- C.3 This variation in legislative interpretation had the social impacts associated with forcing thousands of Queensland and Victorian farmers in particular, off the land. It allowed banks, credit creating capital and to rearrange their credit facilities irrespective of scheme intentions and legislation.
- C.4 Other bank defences included,
- a. failed recognition in bankruptcy of the PJSCCS “Shadow Ledgers “inquiry agreement with the Australian Bankers Association with ASIC and ACCC to mediate incorrect and unsupplied bank statements in litigation. The social impact being that many bankrupt farmers and small business persons and their creditors were not receiving the benefits of this financial institutions “Enforceable Undertaking” when refunds were appropriated but redacted from

the web site, stopping claims other those refunded.

<http://www.independentaustralia.net/2012/independent-australia-journal/investigations/national-australia-bank-redacts-website-to-hide-customer-refunds/>

- b. This undertaking had identified about 47 incorrect charges to accounts with the account audit process being prompted by advice to APRA of the financial institution unlawfully deducting,
- * debit tax,
 - * various account keeping fees,
 - * unlawful default interest,
 - * unlawful and excessive charges,
 - * not following taxation legislation, and
 - * and bankrupted and persons with unfavourable judgments are forced to return to court to obtain account remediation even when these account adjustments, showed they would no longer be bankrupt or the judgment unfavourable.
- c. This style of behaviour in litigation gives rise to necessity for class actions and the use of the Bankruptcy Act 1966 (Cth) where pursuant to Section 60 (2) arbitration and mediation may be available between commercially contracted parties, where the contract includes remedies such as the Banking Code of Conduct arbitration between the customer and the bank.
- d. Courts are ignoring this interpretation of the Bankruptcy Act creating unnecessary anxiety and social impacts on those affected by Bankruptcy including the bankrupts creditors, family and associates. In the instance of professionals bankruptcy may disqualify them from their profession. .
(www.independentaustralia.net/tag/lynton-freeman)

D. **Individual Social Impacts**

- D.1 One of the aims of access to justice may be to provide an adequate service without placing the litigant in financial peril. By this process,
- a. the litigant may be able to retain their assets and livelihood irrespective of the outcome.
 - b. litigation for the individual quoted above involved,
 - * failure to purchase the correct food to treat an illness,

- * failure to afford some medications for a scientifically diagnosed physical disease that affected his ability to function,
 - * being a victim of bank financial blackmail, and the restricted income from that process,
 - * knowing and witnessing the suicide of persons known to him because of the same (now admitted) corrupt acts he was prosecuting,
 - * losing his livelihood,
 - * losing his home,
 - * losing his property,
 - * his life's work and associates,
 - * being homeless, and
 - * when the financial institution requested, Centrelink refused his application for assistance.
 - * being locked out from other professions and occupations he was qualified for,
 - * not settling with or having the bank deal honestly with his accounts at any time commencing 1992. *(The bank admitted incorrect default interest charges to that date)*
 - * when the bank did settle with others, because of his identifications of the corrupting of government schemes.
- c. Facing social, humiliation, and isolation and the loss of natural justice by having the agents of the bank make unfounded criminal complaints against him after Court Officers were misusing evidence procedures to create evidence and circumstances.
- * The first affect being police intrusion into honest business dealings to try to find something unlawful,
 - * knowing the bank wanted to destroy him, businesswise, personally and physically by having him convicted for an offence when the same bank made the transactions between entities accounts and where taxation was identified on the result of those transactions.
 - * having the bank's practitioners support his application for discovery then realising it would give him an advantage with their solicitors not appearing at a hearing and their counsel appearing, objecting to his affidavit and discovery being refused.
 - * A judge upheld this decision and consequently the person was bankrupted.
 - * The property in the criminal action belonged to other entities and the judge in bankruptcy extended a petition out of time and refused to accept his evidence on any

defence including the third party property and where funds had been in appropriately applied to his secured creditors account to issue demand and commence court actions.

*All of these factors create a situation where this organisations corporate culture of not admitting fault unless it is the lesser of the liabilities and in apparent circumstances seek to obtain a financial advantage even from those circumstances by not correctly refunding the customers effected and then redacted web sites to hide these facts.(www.independentaustralia.net/.../national-australia-bank-redacts-website)

D.2 Impacts when facing situations where judges could desire judgments to be maintained to protect their reputations and not to show they were incapable of detecting truthful persons before them and accepting incorrect evidence and facts from practitioners opposed to self-litigants.

a. In these circumstances where a bank has used an action to enforce a mediation deed made after the bank has acted unlawfully, it is seen as a bank enforcing its debt.

b. This falls into the category of banks bankrupting and charging someone with a criminal offence to exonerate and cover up their own unlawful acts.

c. This in itself creates social impacts on the individual and his family beyond normal unpaid debts. Especially where the bank concerned had refused deposits from third parties and advanced the funds those deposits would have covered and used those advances to force legal process. Then force the process when funds are provided to settle the account absolutely with illegalities included but they refuse to allow the person to shift without exonerating the bank in writing.

Where no access to justice is clearly identified

* in instances where bank statements and accounts are clearly incorrect and other persons face the same prospect of being made vexatious for pursuing the same facts, it is shown these impacts are shown to turn individuals violent

(access_to_justice_federaljurisdiction/submissions.htm 5 and 6)

* to protect their families from identified unjust acts against themselves,

* where persons opted to suicide at the bank managers' door,

* held the bank manager at gunpoint and demanded return of their mortgage,

* the bank was forced to withhold legal action and deal honestly with their customer.

- D3 The system is skewed to defuse applications for hearings against self –litigants and those suing, the heavy users of the court system. The social effects from this practice is creating community disadvantage and as above in certain instances violence.
- D.3.1 In the litigation above is stated 4 major situations that affected the public and specific bank account holders that the **litigation revolved around but remains unheard**.
- a. Whether mediations can be overturned was heard and found in favour of the mediation deed however the facts of this litigation now lends itself to a different approach where a secured creditors account in this mediation may be incorrect in bankruptcy . This is challenged by Professor Boule in 2001 “where the mediator stated the bank had the upper hand” to the writer at mediation. Justice de Jersey CJ in 2013 was critical of mediations, discovery and criminal action processes (<http://archive.sclqld.org.au/judgepub/2013/dj150313.pdf>).
 - b. Bankers withholding government scheme deposits from farmers’ accounts and using that process to lend further funds to the same farmer and then using that process to sell the farmer up, clearly not in the spirit of the government farmer scheme. But forcing the farmer to mediation to exonerate the banks’ behaviour. This viability approach went to trial in McDonald v Holden [2007] QSC 054 Mullins J (5.3.2007) and was found by the Court in favour of the farmer. The social impacts were put amongst the community during the period of the first unheard evidence between 1997 and 2007, with identification of banks’ and government schemes using this unlawful practice in the Productivity Commission in the Native Vegetation Inquiry until 2007 and beyond.
 - c. The ‘Shadow Ledgers’ Inquiry by the PJSCCS was produced one week after judgment in 2000 and identified that banks were using this accounting to disadvantage customers in dispute and the bank admitted it had not properly credited funds to the writers’ accounts between trial and appeal. This bank refused the ACCC generated mediation practice and refused to admit these facts before the court of appeal against the writer a self-litigant. In the following bankruptcy process discovery of the missing bank statements under “shadow Ledgers” was denied by the court. This circumstance was therefore not investigated and had the social impact that the bank concerned refused to cooperate with other effected person and gave conflicting accounting versions between state and federal jurisdictions in defining bankruptcies.

To lessen the social impact of these acts by the bank concerned was addressed by the Queensland Parliament by changing the Property Law Act 1974 (Qld) at Section 85 (1)-(10) and making the mortgagee and receivers responsible for discovery of documentation in receiver sales when the receiver is appointed by the mortgagee. This was titled Property Law (Mortgagors Protection) Act 2008. This change also reflected the circumstances where the receiver, the bank and their agents withheld evidence from the court that affected a case for stealing as mortgagor when other entities property had been sold that showed the mortgagors innocence and the banks' influencing a civil action to obtain the other entities property.

The social impact is that access to justice may be denied by various methods including incomplete police investigations and those willing to withhold evidence from courts. These practices affect all parties not just those before the court but others and practices as shown above which hopefully will have a major impact on all social impacts associated with debt collection.

- d. The facts of incorrect quantum of debt produced by a secured creditor were produced to the Federal Court after the bank "Enforceable Undertaking" on 20 October, 2004. All applications by the bank were granted by the courts irrespective of the facts and the ASIC and APRA undertaking had no effect of forcing the bank to admit the true facts of the account inaccuracies in the court process. There were 6 actions in various jurisdictions that raised these facts in all the actions the bank protested the accuracy of the accounts and the court found for them. However the last opportunity to appeal to the High Court was in September 2006 and the bank admitted the facts of the incorrect default interest that affected all stages of the litigation on the 28 September 2006.

The social impacts commence with the bank not refunding litigants in previous actions or admitting any default in court actions even where between the dates of advice to the Stock Exchange was 10 November 2005 and admission of the common material facts and refunds on the 28 September 2006. The courts do not want this happening but will not overturn previous judgments easily even when it is written in the judgment that the default interest and bank statements were incorrect after bankruptcy by a secured creditor where the creditor is responsible for the account. Then when this was returned to court the bank concerned redacted its

website to hide the facts of the refund even though its Enforceable Undertaking continued until 2011 of thereabouts.

Consequently this refund for incorrect interest charges is a corollary with the identification of incorrect interest payments by another bank and they have refunded their customers for the whole period of the mistake going back 9 years and where the default interest overcharge was only refunded to 6 years. Further social impacts arise out of this situation with the problems associated with the bank customers knowing their bank may be deceiving them and paying record profits to its shareholders and executives.

- e. In these instances it may be stated that access to justice is denied because of the familiarity between the judiciary, regular practitioners and the regular user of the court. One thing to consider is that in some jurisdictions it is a fact that judges who previously represented a bank or are customers of a regular litigating bank are appointed as the presiding judge. This may arise because the jurisdiction is in competition for the regular users, actions and this practice encourages business. It is important to note that this practice was in action before the recent increases in court fees and that the previous Chief Justice of the Federal Court identified legal costs for similar actions in the Federal Court were \$250,000 opposing the Victorian Supreme Court as \$25,000.

8. Impact of the structures and processes of legal institutions on the costs of accessing and utilising these institutions, including analysis of discovery and case management processes.

8.1 *This impact can be summed up as an admitted corporate culture where the themes are*

- *The profit motive or performance culture and its skewing of the 'business partnerships' balance between risk management and decision making; and*
- *A close management of information flows that discourages the escalation of issues of concern to the board or to relevant external parties. (APRA Report 23.3.2004, Page 72)*

8.1.1 This banks lawyers following instructions directly from the bank CEO bank replied they had provided reports to APRA and ASIC and refused to settle matters after correspondence showing the factors effecting litigation between us would be shown unlawful. These were:

- A. Failure to discover documents including bank statements,
- B. Discovering documents at a time disadvantageous to the opponent bur advantageous to the bank.

- C. Issuing incorrect documents including bank statements.
- D. Providing incorrect statements to courts.

8.1.2 The writer then contacted ASIC and APRA and the bank were forced by APRA pursuant to Section 93AA of the ASIC Act to an “Enforceable Undertaking” to complete audits into individual accounts. These audits showed incorrect deductions of 47 items to accounts involving an estimated over 400,000 accounts and estimated total cost exceeding \$1Bn with refunds for incorrectly deducted for Government Fees , Interest, default interest, Bank Fees, taxation and incorrect account values for the purposes of Government Subsidy Schemes.

8.1.3 None of these incorrect deductions have been paid to any customer with court proceedings to the writers’ knowledge. This litigating bank had ignored the “Shadow Ledger” Inquiry to settle matters between the parties and now was self- confessed and making refunds to parties that were eligible under “Shadow Ledgers” but still refused to acknowledge any incorrect accounting in the writer’s accounts in any court.

8.2 This bank has now put at risk the credibility of every court facilitating its actions. It is rapidly moving into exposure as an institution that relies on incorrect evidence and the failure of courts to support processes, of discovery and case management. This banks’ solicitors resisted any applications to case management.

In the Federal Court even after the “Shadow Ledgers” Report the court denied discovery of documents against this bank. The issue being that the solicitors agreed certain bank statements should be provided but at the hearing the solicitors did not appear and the banks’ counsel refused to accept the writers’ affidavit showing the agreeing letter and discovery was denied even when the parliamentary report on “Shadow Ledgers” was in evidence and the writer gave specific evidence of the missing documents.

8.3 Clearly this bank was following the factors the Corporate Culture identified by APRA. The value of supplying the requested evidence was negligible but it was vital to the writers’ bankruptcy and the material in this section identifies the interaction. Court policies avoiding discovery for defendants in both the Federal and State jurisdictions, therefor have played absolutely disadvantaging personal and litigating situations.

- In the State Jurisdiction documents of the sale of cattle by the banks’ receivers were withheld to cause the writer to be charged with stealing those same cattle.

- In Federal jurisdiction the refusal of discovery of bank statements where some bank records allowed the bank to claim an incorrect quantum of debt and bankrupting the writer.

8.4 Disadvantages of self-litigants facing a banks well known legal firm means the credibility of the defending self-litigant is not considered and so his case is down to when the bank makes a rare mistake. As is shown above this banks' corporate culture has infected court processes and irrespective of the costs involved these failures to discover were clearly aimed by ruthless legal process to firstly charge and convict for stealing and secondly to bankrupt a customer where the customer had identified the bank had incorrectly dealt with Government Schemes.

8.5 Queensland has changed section 85(1)-(10) of the Property Law Act 1974 to correct this problem through legislating to support judicial discretion where person's liberty is put at risk by undiscovered property sales records. A contracted part of most mortgages is responsible for their appointed receiver's records of account and a mortgagor indemnifies the receiver and this is legal policy continued by the High Court.

The Federal Court is yet to address the problem of a corporate culture such as above being identified and its themes infect court process and how to deal with the problem of the corporation retaining incorrect judgments.

8.6 In this situation the costs of the bank providing discovery were negligible but the failure to provide spelt catastrophe for their opponent and the costs extended to legal aid at the criminal trial, legal costs for 5 civil actions for livestock ownership with applications to discover the missing documents in the Magistrates and District Court to the Court of Appeal. Then in another action they were subpoenaed and discovered 5 years later. The bank has still not settled the incorrect judgment and defended a fully resourced action for malicious prosecution and this was successful when the relevant documents were withheld from the court by the Registry on bank request.

9. Alternative mechanisms to improve equity and access to justice and achieve lower costs civil dispute resolution, in both metropolitan areas and regional and remote communities, and the costs and benefits of these.

9.1 In this instance and in many instances alternative dispute resolution has been misused to advantage the secured creditor but is denied when it favours the account holder and courts will not force the matters to mediation or arbitration. These practices forced the writer to bankruptcy, facing criminal charges and allowed an Enforceable Undertaking to be ignored when the secured creditor was aware its' account in Bankruptcy was incorrect. Its' representatives denied all knowledge of

incorrect accounting in the court at the same time it was admitting and refunding 47 incorrect account values, 7 of which applied to the writer. These amounting to estimated costs of over \$1Bn and affected over 400,000 customers.

9.2 Access to Justice and alternative dispute resolution is thus ignored by that secured creditor and its' disregard for its' customers life and others is ruthless to the point where it may be said "its preferred outcome is the customers' demise". Consequently no dispute resolution process is insulated from dishonesty or any court from judicial failure and in the case of powerless self-litigants, just another customer to be denied his compensation and replacement of losses and generally disregarded. Where honesty at the original mediation would have resulted in an appropriate outcome, this institution used mediation and its' unlawful account value to force a proposition now enforced by judgment. In this instance academics have placed at least part of the inequitable dealing on the statements of the mediator. This brings into consideration the behaviour of mediators and arbitrators and gives rise to the argument they should come under suitable mediation and /or arbitration legislation.

9.3 OTHER PERSONS IN THIS POSITION SUCH AS OMBUDSMAN HAVE A PATH TO SUITABLE LEGISLATION TO GUARANTEE FAIRNESS IN DECISION. However it is fair to say that where frequent users of these services exist such as banks, the consistent decision making, by an unnamed person other than the appointed Chairman in APRA and the appointed Ombudsman, in the Financial Ombudsman service, can lead to disputable decisions by those statutory organisations.

9.4 It is the writer's experience that the Banking Code of Practice is ignored by some banks as a method of guidance to decisions and it remains to be seen how it has affected business, since being the originating contract between the bank and the customer, complained of in the Storm mediated settlement with one major bank. Where bankrupts made applications for refunds of their lost investments potentially unlawfully appropriated by that bank. It is sufficient to say that individuals would have found it impossible to fund such cases and it could be expected denied justice for the same reasons as stated previously.

9.5 Of the 47 refunds after the Enforceable Undertaking of 2004, only one is now the subject of class action. However it is a fact that thousands of court cases, lawyers and judges were so blind that they did not even consider incorrect bank accounting to obtain the banks' desired results in litigation. Clearly all of the refunds may qualify for class action.

- a. The writer received legal aid for the criminal case only.
- b. The Shadow ledgers inquiry proposition of un-provided and incorrect bank statements and quantum of debt may be actionable in Class Action.

- c. The 7 items that applied to the writer's account may all have been actionable under class action but only one is being pursued.
- d. It is noted the Bank of Queensland has admitted a possible fraud in interest calculations and appropriation to accounts and is now refunding all customers affected over 9 years. Advice whether any persons where litigation has been involved are affected and refunded or the account adjusted is yet to issue.
- e. It is clear from the violence generated from the threat of a bank using incorrect debt values and manipulating accounts to default and dispossess customers with immunity that these practices by lenders are now causing community wide social effects. It is for that reason alone all alternative dispute resolution processes need to be available but justice needs to be seen as well as done. The social impacts of the perceived unlawful activity would outweigh secured creditors court applications and may satisfy class action requirements.

10. Reforms to lower costs.

- 10.1** Properly enforce alternative dispute resolution procedures and practitioner's liability with opportunities to put unsatisfactory resolutions aside in a cooling off period is essential to mediations. (Judgment McDonald v Holden).
- 10.2** Some consent orders and call overs can be produced by correspondence and regulation in the writers' case this would have saved \$5000 per month over a two year period for call over representations.
- 10.3** Affidavits of debt need to carry a provision for immediate recall to court where subsequent incorrect values apply. Thus equity provisions need to be inserted in the Bankruptcy Act 1966 (Cth) regarding the value of secured creditor accounts. Clearly these accounts are operated out of the Bankruptcy Act by the secured creditor consequently provisions excluding that account should apply when the secured creditor is the applicant for bankruptcy.
If legislation and contracts through courts give enforceable rights in bankruptcy to secured creditors then it must be that the right to reject and identify incorrect evidence must exist for a bankrupt. The secured creditor s' Enforceable Undertaking audits, admissions and refunds, and the Bank of Queensland refunds, give rise to better legislation to stop the manipulation of accounting evidence by secured creditors to obtain a desired result. Or the fundamental rule in law that judges expect their facts from evidence to exist absolutely in all courts when they first examine witnesses or evidence becomes extinct.
- 10.4** Vexatious Orders should not be imposed to force closing down of litigation when any evidence between the parties is a material fact and subsequent evidence may show the facts to be incorrect.

Incorrect evidence should not be rewarded, community effects from bankruptcies is bad enough, without the added reward to false evidence producers of being immune from further prosecution.

- 10.5** It must be considered that the admissions under the Enforceable Undertaking of 20 October 2004 were still being made in 2011. Perhaps when an enforceable undertaking or other statutory requirement to audit accounts is imposed specifically the date for liability of the subject organisation in civil matters should commence from the extinguishing date of the enforceable undertaking. That enforceable undertakings requiring audits of accounts should include provisions that in the case of any person being convicted and the facts of the audit show unlawful acts affecting that person they are immediately reimbursed, exonerated and compensation applies. Australian law demands that bank account records are correct and the responsibility is on the bank concerned to accurately keep the account and make and provide accurate statements.
- 10.6** Access to Justice is constantly a moving target however improvements such as the requirement the judiciary impose best practice guidelines into litigation may create some even handedness across practices. A much improved system of legal discipline needs to be implemented that stops the use of incorrect facts unconditionally by practitioners against self- litigants and generally to complement best practice guidelines and when such occurs there is a statutory remedy beyond judicial reach such as suspension of the practitioner immediately.
- 10.7** Australia needs to recover the loss of credibility in legal process through adequate access to justice. Shortcuts such as disclosing criminal defences before court hearings will only help justice where prosecutions have complete evidence and force matters to appeal and extra provision of resources. It is very doubtful that prosecutions will be dropped because of disclosure of defence and in fact it is shown that Police Forces around Australia may adjust evidence provided to circumstances when required to gain certain convictions. Justice is no longer the intent of prosecutors and courts, gaining the conviction, truth in conviction are being lost to dubious methodologies.
- 10.8** Judges could make immediate orders to alternative dispute resolution after any judicial process would solve the problems associated with frequent users of the court avoiding the results of Government Inquiries including bankruptcies to decide at least evidence issues to canvass similarly to court of appeal record books but including discovery. It is noted that this bank representatives did not appear at the record book hearing but later requested the Registrar remove certain documents which the Registrar did and skewed the appeal hearing in favour of the bank. The High Court refused to hear the issue.

11. Data collection across the justice system that would enable better measurement and evaluation of costs drivers and effectiveness of measures to contain these.

No contribution.

[The Commission notes that Mr Freeman provided a number of attachments and other information to support this submission]