

SUPPLEMENTARY SUBMISSION

This is a supplementary submission to the Access to Justice Inquiry of the Productivity Commission arising from newly published decisions **on how financiers are responsible for their mistakes**. This submission is a follow on because the quoted British decision has been made in relation to a subsidiary of the example bank in the original submission. It relates to housing loans and it was previously announced in about 2008 that all housing mortgages world- wide were of common wording and /or meaning in that particular finance house and its' subsidiaries.

In this instance the bank was fined 8.9M Pounds and ordered to refund 42,500 accounts with payouts between 20 and 18,000 Pounds averaging 970 Pounds with a mean of 497 Pounds. This relates to undercharging of interest as identified by the bank and when discovered it corrected customer accounts effectively meaning that incorrect bank statements were issued for the affected customers between the date of bank knowledge and the date of advising the customers and correcting their accounts. Consequently responsibility passed to the bank on issuance of the bank statements (*Final Notice, to Clydesdale Bank, Financial Conduct Authority 19 September 2013, 4, 25 P.11*). British and Australian Law are the same on accuracy of bank statements, where the bank is responsible for the accuracy of the statements and once issued it is binding on the bank with inaccurate statements failing at law.

The circumstances are a corollary for the situation where the parent bank failed to pay all persons effected by unlawful Default interest identified in November 2005 but not paid or corrected until 26 September 2006 and failed to compensate for damage even where those incorrect charges were used to force customers to accept the banks' will. This is a situation where access to justice has been denied to customers, government and others by a bank where the bank failed to fully advise customers of their claims and rights under an Enforceable Undertaking signed by Australian Securities and Invest Commission (ASIC) on 20 October 2004.

It is clear in Australia access to justice can be denied by failure to follow up on official agreements pursuant to legislation and that even though there were complaints of noncompliance no prosecutions were undertaken to force bank compliance. Therefore it should be considered whether control of finance industry prosecutions is best held by Treasury or in some instances such as enforcement of "Enforceable Undertakings" this should be handled by the Department of Public Prosecutions.

It can be shown that even in the Australian High Court corrupt or incorrect bank statements and discovery associated therewith failed to be examined and the law clarified. It is clear from the Final Notice issued by British Financial Conduct Authority on 24 September 2013 that the bank concerned

intended to operate similarly in England as it did here and that was unacceptable there and should also be unacceptable here for the same reasons as published.

This raises a significant issue affecting all headings identified in the previous submission but showing how 400,000(estimated) customers were possibly incorrectly or unlawfully treated by the parent bank making refunds in Australia. The main issue being that as in Britain the bank continued knowingly to issue incorrect bank statements disadvantaging customers current and past and not admitting guilt and correcting the situation because of the financial implications irrespective of the damage to those customers affected lives. There is no excuse for this behaviour especially when persons have been bankrupted and obviously incorrect factual judgments continued because the courts accepted false bank statements to 2012 well after the bank knew the accounts were incorrect.

One error identified in the first submission, in material facts is the bank published the incorrect charging of default interest on the 10 November 2005 and continued in every court including bankruptcy and vexatious proceedings charges in the Federal Court and the Supreme and High Court to continue the error with incorrect statements, finally announcing the material facts on 26 September 2006. The bank, continued to deny the incorrect bank statements involved in all courts and judiciary failed to acknowledge incorrect evidence from that bank in their courts. All customers affected were acknowledged back to 1992 by a statement to the Stock Exchange but the bank wished to deny those between 1992 and 1999 by not paying those refunds. This allowed the bank to avoid liability to refund interest subsidy payments made using these incorrect values back to 1992 and where the incorrect default interest was used to pressure customers to the bank's will and deny restitution, pursuant to Financial Conduct Authority reasons but not decided in Australian Courts because of the denial of known incorrect bank statements at all stages of the litigation.

The banks acknowledgement of unlawful behaviour by issuing incorrect bank statements and allowing the unlawful situation to continue whilst it investigated the circumstances was the basis for a fine of \$8,904,000 in England, but remains unchallenged in Australia for the reasons above. Consequently it can be shown where judges fail to recognise representatives from major organisations give incorrect information to the court, refuse to acknowledge and use the self- litigant rules, evidence legislation and best practice guidelines the whole of Australian society is disadvantaged by denial of access to justice to the self- litigant prosecutor. How many bankrupts and wind ups were created by the misuse of incorrect bank statements and will the judges and courts involved now force banks to honestly disclose their bank statement and consequently affidavits and certificates of debt? Now it has been shown they have been accepting incorrect evidence between the date of knowledge of incorrect bank statement values by the bank and the date of correction. Will the bank petition the courts to correct

previous incorrect judgments? Or will those affected continue to be refused justice for the purpose of furthering bank profits? In answering these questions it must be remembered that this Australian Bank redacted its web site to refuse the knowledge of its unlawful default interest charges, between the date of service of an action involving the similar law as identified in the Financial Conduct Authority Final Notice dated 24 September 2013. From the information in that Notice the British investigations were proceeding at the time of the redaction between 16 February, 2012 and a date of hearing in March 2012. The applications were unsuccessful and the bank denied it had done anything unlawful irrespective of the evidence of incorrect bank statements previously acknowledged; the court accepted the banks blanket affidavit and law. Then why did the bank admit early guilt in England and apologise to all concerned and paid refunds outside of 6 years and the fine.?

Please find attached a copy of the Financial Conduct Authority Final Notice dated 24 September 2013.

Lynton Freeman

19.10.2013.