

The Drought Support Inquiry
Productivity Commission
LB2 Collins Street East
Melbourne Vic.

Dear Sirs,

Re; Your Inquiry and the 2004 Minister's Review.

In February 2004 I made a submission to the Minister's Review. In that submission were allegations about the National Australia Bank method of handling its involvement in Drought mitigation schemes through the productivity increase method.

Recently I was asked by AgForce to review the submission and support the requests to investigate in that submission with succinct proof in document if available.

At the time I was proceeding in the courts against NAB and still am but in areas not discussed here in detail, sufficient to affect the court process. The issues are detailed in an attachment and as I have over the years collected policies and recommendations and remedial action for various parts of the procedures including dispute resolution and I will submit these at a date closer to your hearings.

It is felt this process will allow you the latitude to make provisional recommendations on dispute resolution where certain guidelines have to be laid down for financial institutions negotiating with farmers, because it is too easy for those financiers to induce farmers to upgrade their properties and those financiers then sell the property of their customer, making a profit on money they could not normally invest at the community loss.

It must be remembered that the NAB in particular will only mediate with customers when it is in a position to pressure the customer, to the banks end.

I hope this submission will allow the viewing of my bank records to the point where recommendations on minimum records to be provided to mediations under the NFF scheme are made.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'L. Freeman', written in a cursive style.

L. Freeman.

SUBMISSION TO DROUGHT INQUIRY 2008.

EXECUTIVE SUMMARY FOR the *ECONOMIC IMPACTS* PROCESS.

1. **PREVIOUS REVIEWS. – 2004 SUBMISSION.**

Enclosed is a copy of a letter to AGforce Queensland dated 19 July 2008 with the documentary verification of the allegations in the submission.

THIS REVIEW

2. As part of the investigations involved are the policies of those entities having an influence on Drought Policy.

2.1 Commonwealth legislation and the Minister's Guidelines.

2.2 Qld. Govt and the Queensland Rural Adjustment Authority Act (QRAA) and Regulations.

2.3 QRAA operating policies and management structure.

2.4 Centrelink and its structure.

2.5 National Australia Bank (NAB).¹

2.6 Queensland Courts – where no longer is accepted a disadvantage argument between bankers and customers.

2.7 Australian Securities Investment Commission.(ASIC)

2.8 Australian Competition and Consumer Commission (ACCC)

2.9 Australian Prudential Regulation Authority (APRA).²

2.10 Australian Banking Industry Ombudsman.

2.11 Banking Code of Practice.³

2.12 Code of Practice Complaints Committee.⁴

3. All of the acceptable policies are only effective, if the corporate culture, of the entity, is to enforce those policies.

¹ Letter to Mrs Cunningham MP 31 July 1998.

² Guidelines for ADI commencing at 220-1

³ ABIO site

⁴ Mentioned in the ABIO – Code of Practice appeal procedure.

4. The foundation of the existing scheme is the implementation of honest banker's opinions.
5. These can easily be manipulated by individual financial services employees and consequently the whole purpose of the schemes become a money feast for those financiers.
6. It is established banks between 1996 and today may have misused the manipulation of opinions to influence the demise and to bring about unjustified long term unviability decisions against their customers.
The Bank and its appointees using court processes to bring bankruptcy, a criminal action, and a vexatious order, against their customer.

A.

By the process including,

Not discovering documents, *QCA 329/06 [35]*

By withholding documents until a time advantageous to NAB and not the client, *FCA 244/02 Letter Agforce 19 July 2004 Doc. 4. QCA 329/06 [37].*

By incorrect accounting, *FCA 244//02 , Letter AGforce 19 July 2008 Doc.4.and WCA 329/06 [35].*

By bank witnesses giving incorrect evidence. *QCA 329/06 [35][37]- FCA 244/02; Letter Agforce 19 July, 2008 Doc 4.*

B.

Then after a Government Inquiry into bank statements and their non provision and detrimental effects against the customer and misleading and deceptive conduct associated with the process. The bank continued and proved the findings of the inquiry ; By,

Not discovering bank statements. *QCA 329/06 [37].*

By withholding bank statements to a time advantageous to the bank not the customer. *QCA 329/06 [37][39][40][42][43]*

By incorrect accounting . *QCA 329/06 at [38][39][40][43].*

By bank witnesses giving incorrect evidence. *QCA 329/06 [37][38][39][40][41][43]*

7. In Queensland the Chief Justice of the Supreme Court in 2003 stated at a finance industry conference, it was the intention of the court to avoid the inequality argument for customers against banks.
7.1 Freeman suffered from Delta Horse Toxin at the time of a mediation with his bank and this toxin carried as some of its symptoms confusion, depression and possibly anxiety.
8. The remedy for banking disputes is mediation, and consequently when NAB refused mediation after the bank statements inquiry in October, 2000, after the trial on 25 September 2000 and the publication of the mediation sample agreement on the 26 September 2001, it breached the Banking Code of Practice.
9. However after the hearing in QCA 329/06, which dealt with the inquiry points, NAB requested to have the costs mediated.
10. Which means the bank accepted the process of mediation under the Banking Code of Practice and used the court process by ;
 - a. Not discovering documents,
 - b. Withholding documents to NAB advantage,
 - c. Incorrect accounting,
 - d. Incorrect evidence,

After the parliamentary inquiry, to avoid mediation a clear breach of the Banking Code of Practice, provisions and an agreement between the industry and the ACCC and ASIC and ABIO.
11. Consequently a fundamental failure of drought policy is the inability of drought subsidy recipients to receive fair and open process under the current legal positions.
12. This is the major Economic Impact.
13. A partial remedy may be for the commercial banks to deposit equivalent value to their Farm Management Deposits with the Reserve Bank for the purpose of providing specialised rural lending through a commonwealth entity. To alleviate the problem when commercial banks need to increase their cash flow by not reducing dividends, but making various increased demands on their customers. The Government has provided a guarantee for savings it is now time to provide

guarantees banker's offending to small business and farmers who are powerless and constantly at risk, of changes in commercial bank management to maximise bank profit.

14. Others are;
- A. Those discussed in the 2004 submission remain constant and deal with community acceptance of unfair banking practice in debt recovery. Bankruptcy and the sale of assets at an undervalue.
 - B. The next being failure of the courts to enforce unfair advantage defences against bankers.
 - C. The manipulation of the drought system to allow corruption of individual bank records and the willingness of QRAA and others to accept that financial institutions are always correct and should not be questioned has cost farmers dearly.
 - D. It has to be remembered since the 1960's this country has financed itself to economic growth by the redistribution of the agriculture sectors wealth.⁵ The sales of properties etc. being a part driver to banking sector refinance.
 - E. In 2000 there was an inquiry into some parts of finance industry accounting and since that date updates in APRA Guidelines etc. But the updates to ASIC and ACCC authority has weakened the practices of those entities.
 - F. At the commencement of the 2000 inquiry the problems were handled by ACCC but by handing the complaints to ASIC they became an industry problem and since then to my knowledge at least two further investigations have denied any problems existed.
 - G. The reality is with the three year only period for investigation and possibly a civil action period of 6 years it is not long enough to find the evidence of accounting corruption because of failure of the courts to allow discovery of bank records.
 - H. In the Federal Court section 14 and 15 of the Act stop discovery in most circumstances.

⁵ Courier Mail, Brisbane 20.8.2008 'Our Agriculture is Doomed' by Ben Rees, Page 26.

- I. In the Supreme Court exact document relevance can be imposed and where this becomes a problem, is that bank accounting and records can vary and debits and credits for the same entry manipulated between accounts.
- J. The financial institutions from their own legal service of *Weaver and Craigie* are aware that they are contractually required to provide accurate, bank statements regularly and to accept deposits and withdrawals as per customer instructions.
- K. Consequently regional economics depend on the financial institutions in an area policy to drought relief.
- L. The change in 2005 to grants for any purpose may be worthwhile but it loses the independence of the funds in others.
- M. The exit payment being \$150,000 but now eligible funds under bankruptcy means the temptation for financiers to allow customers to claim the payment then place predatory fees and interest against that customers account and force their customer to hand over the exit funds, is too easy to be carried out.
- N. It is necessary for any report from this commission to establish procedures and audit guidelines to stop predatory financiers from bankrupting their customers. By that process the financier obtains the whole of any customers assets and income after the financier has refused to allow a customer to accept his drought funds or refinance.



L. Freeman
20.8.2008.

SUBMISSION

30 June 2008.

**To the Productivity Commission – Inquiry into
Commonwealth Drought Policy Review - 2008.**

1. **Previous Reviews**¹– In 2004 I had been in the court system for 6 years because the National Australia Bank had refused to accept my interest subsidy in 1996.
 - 1.1 I made the attached submission, with the appeal judgment in the Bankruptcy proceedings, and the annulment application judgment where the court referred to the Drought Interest Subsidy Regulations, and the relevancy of a disease at mediation (16 months after NAB ruled my account unviable), known as Delta Horse Toxin and fresh evidence applicable to the sale at an undervalue of my assets. With a description of the circumstances by Sydney University Political Science, Professor Dr. E. Jones.²
 - 1.2 In 2006 I was able to obtain fresh evidence and consequently in an abuse of process action in the Supreme Court Judgment QCA 329/06. Facts affecting the original cases were considered by that court and rejected because the actions belonged to the Bankruptcy Trustee who refused to investigate, prosecute or assign them and this was supported by Federal Court judgment.
 - 1.3 So in an unusual situation, this forum has a situation where judgments in the High Court , the Federal Court and Full Court, and the Queensland Supreme Court, District Court and Magistrates Court³ are all by fresh facts found by a Court of competent jurisdiction

¹ Letter to Agforce 19 July, 2008 with submission and documentary proofs of allegations.

² Professor Evan Jones article published in 2001.

³ QSC 86/2006 at (5)(a)-(e) and 31 (a)-(d)

(Queensland Supreme Court of Appeal)⁴ to be incorrectly factually based, by the bank using the processes of;

- (a) failing to discover evidence, [37] QCA 329/06 (1 September 2006)
- (b) discovering evidence not at the appropriate time, but at a time suitable to the bank. [37][3][39][40][43] QCA 329/06
- (c) Incorrect accounting. [39][40] QCA 329/06.
- (d) Incorrect evidence by bank witnesses. [35][37][38][39][40] QCA 329/06.

The appropriateness, effectiveness and efficiency of the Commonwealth State and Territory Governments business support and income support measures.

2. Policies known; relating to supplying drought support, of the

(a) Commonwealth Minister are expressed, in the Federal Minister's Guidelines,⁵ and

(b) Queensland Government in an answer to a question on Notice in the Queensland Parliament by the Queensland Minister.⁶

* The Queensland Rural Adjustment Authority by reports and correspondence.⁷

(c) The National Australia Bank in a series of letters and documents and a corporate culture as described by Australian Prudential and Regulation Authority in 2004.⁸

(d) The courts in a public address by the Queensland Chief Justice and various judgments.⁹

(e) The Australian Competition and Consumer Commission.¹⁰

⁴ QCA 329/06 at [37][38][39][40][43]

⁵ Guidelines published 1995-98

⁶ Answer- Qld Parliament 587- 19 .11.2001

⁷ QRAA file 24.4.1997- Inspector's report 3 July 1997, QRAA Fax 21 September 1997, Answer to Crime and Misconduct Commission report, 2007.

⁸ NAB letters dated 15 September 1997 and Mrs. Cunningham MP July, August, 1998.

⁹ Address to finance Industry by de Jersey CJ 2003.

¹⁰ Letter dated 21 August, 2000 and Mediation Agreement 26 September 2001.

- (f) The Australian Securities and Investment Commission.¹¹ ASIC can investigate misleading and deceptive conduct only, before the court rules.
- (g) Australian Prudential Regulation Authority.¹²
- (h) Australian Banking Industry Ombudsman¹³
- (i) The Banking Code of Practice and its appeal procedure not being effective.¹⁴

2.1 The policies as shown above vary by application and practice between the various bodies.

2.1.1 In 2006 there was a Crime and Misconduct Commission(CMC) investigation into the processes of the Queensland Rural Adjustment Authority(QRAA) practices in my situation.

This did not identify any incorrect practices by QRAA.

2.1.1 In July and August 1998, MrsCunningham MP investigated the bank processes, and the Minister's identification of QRAA practices, because the bank and the QRAA practices did not correspond.

2.1.2 (a) The bank advised that they did not know the sum of my interest subsidy, in May 1997, but QRAA records showed they did.¹⁵

(b) The bank advised they regarded my account as unviable in August, 1996.

¹¹ Letter dated 4 October, 2007. Judgment referred to is QCA 329/06 [41][43]

¹² ADI Guidelines in 2002 and 2008.

¹³ ABIO Bulletin 27 dated December 2000, referring to bad and Doubtful debts and misleading and deceptive conduct by Bankers.

¹⁴ Attorney General's letter of 12.12.2006 and Code of Practice Enforcement Committee. correspondence.

¹⁵ NAB letter to Mrs Cunningham 31 July, 1998. QRAA report dated 24.4.1997.

- (c) But court and bank records show they required an increase in my payments as from July, 1997.¹⁶
- (d) The bank in their policy advice stated when they refused to renew facilities, QRAA automatically made the applicant unviable.¹⁷
- (e) The Minister said QRAA inspected the property and this happened.¹⁸
- (f) QRAA stated the property holder had to agree with the financier before QRAA granted subsidy.¹⁹
- (g) On April, 24 , 1997 the bank refused \$57,600 interest subsidy, and demanded \$30,000. Then in August 1997 stopped my account from being transferred to another financier after at least \$59,000 had been made available, to reduce the account. The money being used for the same purpose as the \$57,600 subsidy was made available for. But these funds were not defined for interest as a Quistclose Trust unlike the interest subsidy funds.²⁰
- (h) Then on 15 September 1998 after falsifying my account records, and refusing to cooperate with my shifting my accounts to another bank, between August, 1996 and September 1997 offered mediation without making a date.²¹
- (i) The bank did not issue a Notice under section 96 of the Property Law Act 1974 where they

¹⁶ QCA 473/01 (2 November 2001) P.5 [16]. Document 3 (e) of the 2004 submission verification.

¹⁷ NAB letter Mrs. Cunningham 30 July 1998.

¹⁸ NAB letter to Mrs. Cunningham 30 July 1998. AG force letter 19.7.2008 Doc 2.

¹⁹ Doc. 1 AGforce letter 19.7.2008. QRAA Fax September 1997.

²⁰ AG force letter 19.7. 2008 Doc.2 and 3(e) NAB letter 31 July 1998. ; Mediation Agreement 2 12.97.

²¹ Agforce letter 19.7.2008 DOC 2 (e) NAB letter 31 July 1998.

demanded moneys from a mortgagee who had not missed an interest payment.²²

- (j) The bank demanded the whole debt and exoneration from any claims on 4 December, 1997²³ when I was suffering from Delta Horse Toxin and their witnesses denied they could see a fever or any other symptoms including my TMJ (affected jaw movements) , fever (sweating and dry mouth) mental effects from fever, anxiety (need to get away from the mediation) and confusion.²⁴
- (k) On 4 March 1998 the bank made an agreement to settle for \$500,000, but after submissions from my bank manager increased the sum to \$770,000 in April, 1998.²⁵ The manager complaining they had not issued demand against my account on 5 March, 1998 as contracted in at the mediation.
- (l) I had raised the \$500,000 and now could not go back for \$770,000 after the meeting making the agreement on 4 March 1998.²⁶
- (m) When the new financiers telephoned the bank to settle with the \$500,000 about 6 April, 1998, the Bundaberg Branch referred them back to me. A later discovery showed the Bundaberg manager had a disagreement with the asset structuring section, because demand was not issued on 5 March 1998.
- (n) I had paid the interest to continue the facilities on 6 April, 1998 but the bank did not place this

²² Sect. 96 Qld. Property Law Act 1974. Agforce letter 19 July 2008 3 (e).

²³ Mediation Agreement dated 2.12.1997 Agforce letter 19.7.2008 Doc 3 (e).

²⁴ Medical Certificate dated April, 2000 and Notes and copies of Medical Records.

²⁵ Agforce letter 19.7.2008 Doc 3 [40][41] QCA 329/06

interest to the account until, 15 May, 1998, making my account 'non accrual' on 7 April, 1998.²⁷

- (o) By these acts the bank may have breached various acts including the Property Law Act 1974, sections 96 and 98, The Income Tax Assessment Act 1936²⁸ and its enforcement Acts, or its replacement, the Queensland Criminal Code, the Commonwealth Crimes Act and the QRAA Act and the Commonwealth Regulations.
- (p) The facts relating to these and further illegalities are found in QCA 329/06 (1 September, 2006).

2.2 Effectiveness of Support.

The effectiveness of support has to be measured in all aspects. But for the purposes of this paragraph two issues stand out:

2.2.1 Economics;

The provision of financial support in the form of productivity subsidies is excellent, but the regulations, equity and common law have not been enforced by the courts.

The changes made to subsidy provision after 2002 and again 2005 reinforced the Federal Minister's contention Queensland Subsidies were being politically manipulated.

²⁶ Agforce letter 19 July 2008 Doc 3 at [40][41][43] QCA 329/06

²⁷ AgForce letter 19 July 2008 Doc 3 at [39][40][43] QCA 329/06; Doc 4 Bankruptcy Judgment; Doc 6.QRAA Report.

²⁸ Agforce letter 19 July 2008 Doc 3 (i) Commissioner of Taxation v National Commercial Bank of Australia [1983] 72 FLR 116. 3 Bowen CJ, Fisher, Lockhart JJ.

- 2.2.2 Consequently the results required by Government and the social impacts expected from the support have not been forthcoming.
- 2.2.3 The main problem is the ineffective ability by Government at all levels to control some financial institutions.
- (a) Banks are selling their money to entities that do not need the facilities for the purpose of increasing their productivity, but,
 - (b) at the most opportune time to the financial institution after the farmer has completed his productivity works, the institution manufactures a default, to recover all its funds.
 - (c) The case in question was clearly shown in the records of the QRAA updated on 24 April, 1998 in the writer's circumstances.
 - (d) Interest subsidies of \$56,500 were granted but refused by the bank who at the time demanded \$30,000.
 - (e) The bank stating the property was unviable but I traded the four years they said I could not August, 1996 to September 2000 and only displaced by the SC Judgement of 11 October 2000.
 - (f) I paid all my interest for the years they stated I could not. Paid legal fees in excess of my interest and reduced my debt during the 4 year period.
 - (g) With my last interest subsidy of \$56,500 I would have been able to retain my breeders and instead of just paying my way, paid NAB out by 2000. The year we proceeded in the court.
- 2.2.4 Clearly the subsidy scheme was effective, but the control of the scheme was not. The frustration with the QRAA work was shown at COAG 2005 when in April, the Federal Minister again withdrew

support from QRAA by \$30M and gave the Sugar Industry scheme to Center Link.²⁹

2.2.5 In a lecture to a Finance Industry Conference³⁰ in 2003 the Queensland Chief Justice stated no longer were circumstances of inequality to be accepted in dealing with finance industry customers.

2.2.6 At about the same time Mrs Cunningham MP put before the Queensland Parliament a Farm Debt Mediation Act that was rejected, to help restore the massive disadvantage finance industry customers face against fully secured, court backed bankers etc.

2.3 Effectiveness and Efficiency of Land Use.

2.3.1 I have covered this subject in a submission to the Productivity Council inquiry, into Native Vegetation, Fauna and Flora in 2003. I attach a copy of that submission.³¹

2.3.2 The correct use of resources varies from time to time with markets as can now be seen cropping is now the most economically desirable farming enterprise.

2.3.3 The most important aspect of drought support is its ability to allow flexibility in the paddock. Because to switch enterprises requires capital and time and to maintain improvements including farm soils and land improvements requires time and money, drought funding allows these activities.

2.3.4 However there must be a better system of ensuring farmers who take up productivity scheme funded activities are secure from predatory financial institutions.

3. **Industry Expectations on dispute;**

²⁹ Courier Mail article April, 2005.

³⁰ Outline of Submissions made by De Jersey CJ. Banking & Financial Services Conference 7 June 2002.

³¹ Productivity Commission Submission- 2003 (Native Vegetation)

- 3.1 Banking that disputes be settled at mediation or in the court to the absolute advantage of the Bank.
- 3.2 AgForce expectations are disputes with Bankers and Queensland Rural Adjustment Authority will be settled pursuant to the Banking Code of Practice and the Farm Finance Strategy and Acts and Regulations.³² as stated in the Minister's statement to Parliament 19.11.2001.
- 3.3 Australian Banking Industry Ombudsman and Banking Code of Practice explained by the Commonwealth Attorney General.³³
- 3.4 Code Compliance Committee.³⁴
- 3.5 The Australian Prudential Regulation Authority provides guidelines on the process of Authorised Deposit Taking Institutions when dealing with diligent facilities.³⁵ These guidelines have not been followed by the bank in my situation and I believe others. The ABIO provides a document showing when manipulation of accounts is misleading and deceptive.³⁶ Weaver and Craigie in 2001³⁷ produced a document supporting and describing the banker- customer contract, where bankers are required to;
- (1) Whether demand has been served or not
issue and provide bank statements,
 - (2) be responsible for their contents to be correct,
 - (3) take responsibility for deposits after acceptance.
 - (4) appropriate funds in the way the customer nominates.

- 4 The Submissions of 4 February 2004 to the Drought Review Panel Secretariat have now been further confirmed by Judgment between myself and NAB in QCA 329/2006 (1 September 2006). This judgment is not published on austlii.com.au only on the Queensland Supreme Court of Appeal, site.

³² AgForce letter 2 May 2008.

³³ Letter dated 12 December, 2006.

³⁴ Letter October, 2006.

³⁵ APRA Guidelines. 2008.

³⁶ ABIO Bulletin 27 December 2000.

³⁷ Banking and Lending Practice at 222-225, LBC 2001. By Weaver and Craigie.

- 4.1 As shown previously by combining the judgments QSC 86/2006 at [5](a)-(e) and 31 (a)-(d) where NAB had me made vexatious in one action S 4013/98 with the judgment QCA 329/06 at [35][37][38][39][40][43] it can be shown the rejected material facts in QSC 86/2006 are supported by the Queensland Court of Appeal in QCA 329/06 at [35][37][38][39][40][43].
- 4.2 This in effect means all actions, because S 4013/98 was the original action are tainted but the bank using Bankruptcy to protect itself from further litigation in 2001, has quarantined the Commonwealth and all my creditors which were mainly my monthly accounts and vehicle leases from being paid by using their secured creditor base.
- 4.3 The facts exposed in QCA 329/06 also show that the bank relied on a Certificate of Debt at [37][38][39][40] which enliven the provisions pursuant to section 85 (1)-(5) of the Queensland Property Law Act 1974. This section has a provision that any clause in a contract designed to avoid these provisions, is illegal for the purpose of notices of mortgage property sold.
- 4.4 Both this provision and the failure to identify interest payments³⁸ before the non-accrual date of my accounts give rise to a claim the bank contracts, breach public policy. Because of incorrect accounting and taxation benefits illegally obtained by falsely issuing bank statements to myself and changing the character of deposits to my accounts. That is whether under the taxation act non-accrual provisions they are credited to bank income or profit and further whether the deduction for the write down is claimed in the year of the write down.
- 4.5 The third part to a breach of public policy is NAB using their contracts to appoint the receiver my agent and using his contracted indemnity to sell my

³⁸ [3][40] QCA 329/06

family's livestock.³⁹ By this act selling the evidence that showed I was innocent of the criminal charge of stealing as a mortgagee and converting other persons property to the use of NAB, deceiving the police investigation and the Federal Court, and collecting the proceeds.⁴⁰

5 This was achieved by the bank in the Bankruptcy Court, when the Registrar in September 2001, relying on section 15 of the Federal Court Act, refused an order for discovery. Then on 12 December 2001 the Judge on appeal continued the non -discovery process.

5.2 This was reflected against the writer, when in the FCFCA bankruptcy appeal judgment in 2003 the court accepted and relied on bank evidence not produced at the original Bankruptcy hearing, and this fact was mentioned by the judges.

6 All these circumstances, appearing in more akin situations, culminated in April, 2005, when the Commonwealth reduced the Queensland Drought Funds and gave the Sugar Scheme virtually a Queensland only scheme to Centre Link to administer.

7 Following on from this situation whilst the courts continue to rely on certificates of debt and Government Schemes are not administered to the benefit of the target, then the opportunity for well designed processes in finance institutions, to produce the institutions, desired outcomes will continue, to skew the reality.

8 The social impacts shown in the submission of 4 February, 2004, still exist as shown by a letter received from AgForce dated 2 May 2008.⁴¹

9 I believe it is now published that NAB the biggest Rural Lender now intends to have it's asset structuring accounting centered in India, which means it relies further on certificates of debt and without the proper protocols in place, discovery will be further denied, and control of the acts

³⁹ [35] [37] QCA 329/06

⁴⁰ Published article by Professor Evan Jones , Sydney University., 2001.

⁴¹ Letter enclosed defining Agforce policy on dispute resolution.

and regulations in relation to taxation and government schemes will be centered outside of australia.

- 10 Thus the Government now needs to urgently include in Bankruptcy and the Acts pertaining to all Government Schemes the provisions of the Banker- Customer Contract shown in the Weaver and Craigie legal comment paper attached.

10.2 Banks are responsible to provide all requested Bank statements, accurately and that Banks are responsible for deposits and it be an offence if a bank refuses a deposit from a Government Scheme where the deposit exceeds any demand made by the Bank.

- 11 It has been reported that State and Federal Courts are in competition for Commercial actions and this may be the reason that financial institutions are given exceptional leeway before those courts. But it is a very sad situation when because of this competition the whole community is disadvantaged to the benefit of the share holders of a few financial institutions.

The impact of the Provisions of Support at the;

12 Individual Level,

- 12.1 The impact in my circumstances were that the interest subsidy support gave the flexibility to increase productivity.
- (a) Additional crops even with partial irrigation.
 - (b) Regular turnoff of livestock.
 - (c) Improved permanent pasture establishment.
 - (d) Easier environmental control of native species by greater concentration of effort to improved country.
 - (e) Greater productivity from farmed timbers and silviculture activities.
 - (f) Retain employees and their families.

13 Regional Level,

- 13.1 The regional impact was that in the year of greatest drought, the only harvested crop of rain grown oats, known in central queensland came from my property.
- 13.2 This occurred because the irrigation land could be used for that years livestock turnoff and when the drought deepened, the next year the riskier rain grown crop, harvested from the year before, allowed, turn off by being fed in the paddock through appropriate feeders.
- 13.3 Maintaining the system, cash flow etc.
- 13.4 Recently abattoir operations in various parts of the state have curtailed their kills because of lack of numbers. With banks forcing property sales this will only escalate as orderly marketing is lost.
- 13.5 Timber sales continued to regional mills and diversity of the resource improved by effective practices.
- 13.6 Livestock turnoff continued to regional works and was increased because of bank demands.
- 13.7 Facilities such as schools and local facilities and businesses were maintained and in some cases stimulated.

14 State Level,

- 14.1 In the same year my bank, decided that those farmers who had completed their works that they had advanced funds to, were to increase payments or securities be realised.
- 14.2 Before I had the opportunity to increase payments; my bank customer rating being AAA; my then manager,⁴²
 - created a false budget not accepted by the bank, but used later as evidence at mediation and in the court by the same bank.

⁴² BDD report June, 1997.

- Updates and a review by the Farm Financial Counsellor and the provision of QRAA funds after their investigation made the bank's budget obviously incorrect.
- Reported the falsified situation to Asset Structuring for realisation of the assets avoiding the bank's checks and balances through credit control.
- Building a falsified file, by making false demands were explained in the original trial by the bank witness/ manager, as ' the customer does not have to know the date his funds are due for repayment.'

14.3 When this is projected on a state level, the financial institutions are misusing the drought and productivity schemes to obtain profit by falsely putting customers to the scheme through misrepresentation of the facts of the schemes.

14.4 This has to be supervised and I suggest a visit from the QRAA inspector at the time of granting subsidy, to verify the contract between the bank the customer and QRAA. In Queensland as my judgments show both state and federal courts have not supported the misrepresentation of the schemes, the bank's position or upheld the contract between the parties.

14.5 The social and environmental impacts are projected to all employment, business and community provided facilities with some Non Government Organisations shouldering a greater burden than Government provided services.

Lost in these circumstances are the daily health, and welfare requirements, and the particular requirement to provide specialist medical care. One particular need has arisen that rural areas as much as heavy industrialised areas of the state. They need properly trained environmental doctors. My Delta Horse Toxin was identified by an environmental specialist after years of problems being acute more regularly from about 1994- 2000 when I was placed on a non resistant

antibiotic for 6 months and medication for 12 months. In this case early diagnosis would have saved all the court problems. However only one doctor in the whole of that time prescribed antibiotics and that was not the correct one but it gave temporary relief. All the others ranged from vertigo to tropical fevers.

Impediments to improved self-reliance and preparedness for periods of financial difficulty.

15. Impediments to improved self reliance.

Finance.

- 15.1 Reliance on commercial finance where the parties are not contracted by reliable written contracts, where the financial institution can vary the contract at will.
- 15.2 No fair method or legislatively supported method of mediation where the weight of the mediation is not infected by financial institution pressure being accepted as lawful.
- 15.3 Mediations should be a business decision not a totally legal process where falsification of bank records and evidence, and legal process (notices etc.) are accepted by their customer through pressure by the financial institution. The contract then making a resulting action, unavailable to the customer at law.
- 15.4 Contracted and in some circumstances, statutory, indemnity for receivers appointed by financial institutions, should be abandoned as encouraging financial institutions to unlawful use the property of others.
- 15.5 A financial or accounting committee, that can be appealed to when judges, make mistakes in accounting in judgments or before court hearings.
- 15.6 In my instance the judge in the bankruptcy court ruled there was no case to answer on false bank statements, when in the same judgment

it was shown, livestock of others had been sold by the receivers and credited to my account and statements issued showing the sales.

- 15.7 Under the present scheme where exit payments are subject to bankruptcy, corruption of accounts by financial institutions is inevitable, as bankruptcy is a bar to further court actions.
- 15.8 The opportunity to extend facilities until interest swallows up the \$150,000 is too tempting to Australian financial institutions.
- 15.9 If the institutions and the Government intends for this situation to remain then, non accrual declarations should be refused on those accounts, where the banks proceed to bankruptcy.
- 15.10 If the institution then proceeds to bankruptcy it should be denied any claim against the exit payment. Otherwise the financial institutions will have the Government providing legal fees and deferred interest for every bankruptcy of a farmer.
- 15.11 The institution will pay no tax on the interest collected or debited after the non-accrual declaration, but claim the interest for the purposes of the bankruptcy act and trap the government into a windfall payment to the financial institution. Also, where they will claim legal costs against the farmers debt recovery, under their contract, and avoid taxation on the exit payment for the financial institution, using their own staff as recovery enforcers.
- 15.12 An example of this was recently investigated and found correct against the NAB Irish subsidiaries by the Irish High Court,⁴³
- *. where the subsidiaries transferred depositors funds under sometimes false names overseas, and
- obtained insurance bonds to avoid taxation, then
 - lent the customer back the funds that purchased the bond,
 - the NIB obtaining interest and fees on the transactions.
- 15.13 At present there is a call from NAB to avoid taxation on savings. How long before they make the same moves in Australia as Ireland? and is

⁴³ NIB & Anor v Dir Corporate Enforcement [2007] IEHC 102 (20 March 2007) Murphy J.

the Government and the courts strong enough to stop a process like the Irish, once it commences. I think not, legislative and statutory prevention is better than cure. I enclose a copy of the most recent appropriate Irish Judgment.⁴⁴

Regulation

15.14 Regulation of Drought Schemes has moved more and more towards the expediency, of recovery of financial institutions and their methods of profiting from Government Schemes.

That is;

- (a) They provide funds to customers for the limited time of the subsidy,
- (b) then withdraw the funds and instead of a walking away so the customer can change financiers,
- (c) make unlawful demands,
- (d) to bankrupt the customer to the advantage of the financial institution,
- (e) irrespective of the intentions of the scheme or any other consideration.
- (f) In my situation the bank refused to cooperate with refinancing at least three times and issued 'dummy'⁴⁵ bank statements after a government inquiry identifying the method, to force bankruptcy instead of an industry scheme to mediate the situation.
- (g) It is therefor necessary to restrict bank's lending to an identifiable period after the cessation of subsidy. To stop banks from obtaining the higher interest under the scheme until the subsidy is exhausted and then recovering from that farmer and relending to another farmer until his subsidy is exhausted etc.

⁴⁴ Irish High Court, Companies Act Judgment on NAB employees, the corruption of accounts and bank records

⁴⁵ QCA 329/06 [38]

Practice and Limiting Factors.

- 15.15 Since the 2002 phasing out of Productivity Subsidies and now the interest of the Commonwealth in reintroducing the principle, the internal practices of the fund distribution authorities need to be audited for process.
- 15.15.1. In the Queensland Rural Adjustment Authority, it is stated that all applications are placed at a central point. It is then possible that a favored bank customer or disfavored customer could be affected by a QRAA officer with outside loyalties, by their searching out and assessing that file, perhaps at will.
- 15.15.2. Files should be distributed for assessment to individuals not previously associated with the lender involved.
- 15.15.3. Culture should be to the advantage of the farmer because the financial institution has all the existing contractual and legal support.
- 15.15.4. Clearly Government Support for variations in weather conditions (now accepted as partly man made) is necessary as an impact of whole society strategy.
- 15.15.5. To adjust that to small business and weather dependent industries where rainfall is critical in a time of change, requires forethought of strategies, other than subsidies and controlling the profit motive of financial institutions.
- 15.15.6. There are several indices for assessing rainfall deficiencies , in Queensland there is a Forestry

Drought Index, that measures rainfall deficiency at a particular time of the year, in a particular area.

- 15.15.7. This is a independent and district wide method of assessment and there are others.
- 15.15.8. Depending on the type of enterprise rainfall in a particular time frame is critical and if unreliability continues then seasonal patterns may be lost in favor of opportunity enterprises.

Preparedness.

- 15.15.9. The use of technology and australian natives such as central australian millets and desert dwellers like parakelia should be considered for upgrading to commercial status as fast growing alternatives on marginal rainfall conditions.
- 15.15.10. In business whilst statutory deposit schemes are available, perhaps inventory replenishment schemes may be considered.
- 15.15.11. In small convenience and service industries, stock replacement and work replacement schemes such as distribution of Government maintenance works.
- 15.15.12. Unfortunately all forms of endeavour and health and welfare are effected in some way by weather and in a changing environment constant adjustment is needed to set acceptable policy.
- 15.15.13. Whilst the concentration of human activity to centralised communities and services seems practical in some ways in others it is a logistical, health and security nightmare.

- 15.15.14. Government policy on climate change is going to effect rural industry productivity and to alleviate this a new range of guidelines and strategies needs to be adopted with consultation to avoid the concentration of available, workable land assets in the hands of a few.
- 15.15.15. Whilst this may be the best way in terms of public administration it is obvious in our society the bigger the entity in a particular way, the more it, as the tail wags the dog.
- 15.15.16. Thus as productivity and efficiency require a culture of more attention to profit making. Then the situation arises where stake holders have the opinion that they do not agree with the business behavior of an operator, but want an interest in that business, because of the profits it makes.
- 15.15.17. It is very important this is discouraged, as the current behaviour of financial institutions, lends itself to this culture. When Government Schemes are allowed to be manipulated by predatory corporations to their advantage, then the social, environmental, economic and community, impacts are skewed to all others.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher. It appears to be a personal or official signature.