SUBMISSION TO THE PARLIAMENTARY COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES (PCCF)

10/6/2015

The following submission is put forward following a motion put by the Member for Kooyong and Assistant Treasurer, Mr. Frydenberg to the joint committee on corporations and financial services in early June 2015. The matter outlined terms of reference pursuant to *the impairment of customer loans by banks and other institutions through constructive default.*

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

We were the only directors of a family Company Jeogla Pty Ltd.

We live in the Upper Hunter district of NSW at;

Telephone Mobile E'Mail

This submission is pre-empted by previous submissions put to the Senate namely;

1. Date 4/5/09 **Joint Parliamentary Committee on Corporations and Financial Services**
2. Date 18/12/09 **Senate inquiry (Economics Committee) into the role of liquidators administrators**
3. Date 23/7/13 in relation to **The Effectiveness of the Australian Securities and Investments Commission**

Despite considerable effort and cost to the taxpayer there has been little or no corrective action to the best of my knowledge to the problems illustrated throughout the above mentioned inquiries.

Back ground information

The action of the ANZ bank took place when primary production appeared to be bad business for money lenders concentrating on only the short term despite the necessity for long term facilities. The "corporate" model is more intent on twelve month cash-flows rather than five year business plans when it comes to anything agricultural. In our case we were placed into what is referred to as "asset management" but the bankers appointed to this task had little or no knowledge of the cattle breeding business and appeared bloody-minded and determined to get the money back. Our Company was one of the oldest ANZ clients and we were led into a false sense of security and advised that ANZ preferred to work in a true partnership sense when it came to us borrowing money. Bank personnel were changed and a panic mode replaced commercial realism. In reality the "business"

2

involved a highly fertile breeding herd of cattle self replacing every 18 months. Constant genetic improvement ensured good cash flow and we also invested in off-farm investments to minimise the risk of drought and the perceived unreliability of the industry.

This submission is underpinned by a major precedent set in the NSW Supreme Court (**Jeogla v ANZ NSWSC 563**) which established the principle within s420A of the Corporations Act 2001 whereby external administrators must obtain fair market value for the forced sale of property. This submission would be one of few authenticated by a successful challenge in the NSW Supreme Court. The strategy the bank undertook was to delay and procrastinate for some 23 months between the Supreme Court hearing and that of the Court of Appeal in order for the Company Jeogla Pty Ltd to be forced into insolvency. Interest and penalty interest as well as the receiver's costs to appeal were funded by the Jeogla Pty Ltd account. These costs appear on bank statements.

The Appeal (NSWCA **v Jeogla 40517199**) failed, further consolidating the previous case which is now established law.

The most recent correspondence from ANZ still maintain the receiver is a *highly professional insolvency practitioner.* The Bank to this day insist the Judge had erred. It is worth noting that ANZ did not appeal but their appointed receiver did, so in effect ANZ endorsed this unconscionable conduct. According to bank statements $500,000 was spent by the receiver to fund the appeal on our account.

Should it be necessary all documentation relative to the conduct of the banks, their valuers, their appointed receivers and administrators can be made available for scrutiny**.** In particular ;

1. Copies of the judgment from the NSW Supreme Court.
2. Copies of the NSW Court of Appeal (JUDGMENT)
3. Relevant reports as to Affairs from the receiver
4. Bank statements issued by ANZ later referred to as "shadow ledgers"
5. Letters from ANZ
6. Letters from ASIC
7. Letters from ACCC
8. Valuations.
9. Contracts of sale of undersold property purposefully redacted to disguise misappropriation.
10. Bankruptcy notices issued by ANZ.
11. Trade Mark identification and letters from IP Australia.

(a) In respect to the **conduct of the bank** in this case ANZ commissioned a valuation for land specifically ignoring the business conducted on that land. This valuation was used for the bank to issue default proceedings. It was not available for scrutiny at

any Court hearing and was regarded as confidential for the banks eyes only. At our own expense my wife and I obtained valuations based on business plans previously approved by ANZ. The ANZ valuation was approximately in line with the price achieved for the home property $6.5m. The valuation we had done by a reputable registered local valuer, amounted to $17.5m. The Court Case NSWSC 563 quantified the error made by the receiver on a meat value alone of $1,060,000. This took no account of the breeding capacity of the herd which was Internationally (ISO 9000) recognised with a history dating back to 1827. The *business* was self perpetuating with a 90% conception rate for all females within the herd for the previous ten years despite drought, but fertility or the quality assurance accreditation was of no account according to the ANZ and its appointed receiver.

(b) **The role of property valuers** in any constructive default is critical when misused as in the case of the forced sale of our business. The value of the land cannot be divorced from the value of the business if it is the business that is being forced to sell. A sale is defined as that between a willing seller and a willing buyer. We never acknowledged the appointment of the receiver and he was later proved to have breached the law. Livestock cannot be run without the land to run them on. In a meeting between the so called ANZ customer advocate (an ex ASIC executive) held at ANZ Muswellbrook NSW it was pointed out to him that if the staff and furniture were to be removed from the premises only bricks and mortar would be left- no business. Valuers are asked for what purpose a specific valuation would be used and they often differ. Many valuers will reference UCV's (unimproved capital values) as a benchmark to apply spurious figures for the purpose at hand. Others will investigate local sales in the area and some will be paid for specific valuations to suit the banks purpose. It is unlikely that a motor car with the engine sold separate from the vehicle would make the same money as the complete working model. Jeogla station was the first property to adopt accredited quality assurance in Australia.

(c) **Typically ANZ would** undertake a valuation and charge the client for the costs of doing so. In our case we gave no permission to any bank personnel but were made aware of this practice when regular bank statements arrived. This was part of an intimidatory strategy as well as numerous hidden costs and charges all contributing to the demise of the business.

(d) **The insolvency practitioner** was proven in the NSW Supreme Court to be incompetent and it is documented that in one transaction alone he undersold a $3m asset for less than $2m. In an attempt to avoid scrutiny he maintained he engaged other professional expertise to do his job. in his wisdom rejected this proposal. On this basis it would appear that ANZ ignores the law and is in contempt of Court. On numerous occasions the receiver was written to and asked to provide details of the whereabouts of receipts for numerous assets under his control. Despite the judgment against him ANZ maintained his appointment. (the receiver) refused to provide any detail of assets sold, receipts, or accounts

furthermore he would not give us access to any bank statements so there was no way to check off between the RATA (reports as to affairs) and bank statements. The Institute of Chartered Accountants were asked to investigate the receiver's actions and were provided with details of the receiver's breaches of law but they would not pursue the matter relying on ASIC to carry out any investigation. ASIC were written to on numerous occasions also being asked as to the whereabouts of assets. They (ASIC) ignored the Judgment on the basis they did not believe the case was "*sufficiently egregious enough to warrant further action*". It was later discovered ASIC knew nothing of the Court case or the error quantified in the Judgment. In order to indicate the severity of this case it is important to consider the following assets which were not accounted for by ANZ, ASIC or

1. A registered cattle stud (sent to slaughter under the direction of the receiver)
2. A registered horse stud sold at a doggers price under the direction of the receiver
3. The "business" ie the breeding cattle herd.
4. A registered Trade Mark TM no 795107 (150 years of intellectual property)
5. The progeny of the breeding herd (approx 2000 calves)
6. Plant and equipment (no competitive auction)
7. Accumulated tax losses; by way of explanation this family company had as one of its core components the development of other properties and directed those tax losses towards drought mitigation, or property improvements over many years improving such properties to the highest Internationally recognised standard.
8. Unencumbered lands thrown in to the purchasers of the home property
9. Costs orders as handed down by the NSW Supreme Court
10. Costs orders as handed down by the NSW Court of Appeal.
11. Cash flow from real estate
12. Our home
13. Personal items.

With no prospect of identifying any sold assets on the receiver's Reports as to Affairs (RATA) and in sheer frustration and annoyance I demanded from ANZ the bank statements, which as a director is my legal right. These statements we were advised were for the banks eyes only and later established as "shadow ledgers". Following the receiver's failed appeal an administrator were then appointed and they invited ANZ to attend a shareholder's meeting at which they stipulated the Company had no funds to pursue any assets unaccounted for.

With respect I remind the **PCCF** of the following text of criminal law which states;

1. **A person who, with a view to gain for himself or herself or another person,dishonestly:**
   (a) Destroys defaces conceals or falsifies any account or any record or document made for accounting purposes; or
   (b) In furnishing information for any purpose produces or makes use of any account, or record or document of the kind referred to in paragraph (a) which to his or her knowledge is misleading or false in any material particular; is guilty of an offence, on conviction by imprisonment for seven years.
2. **For the purpose of this section, a person who makes or concurs in making an account or other document an entry which is misleading in any material particular from an account or other document shall be taken to have falsified the account or document.**

Bank statements issued show specific reference at the bottom of each page to the following namely; *Please retain these statements for taxation purposes.* It would appear ANZ receive the benefit of any tax losses by way of write-off.

Quite apart from the receivers incompetency he controls of the business following his appointment. It is estimated that further millions were pilfered by the actions of this receiver even after the judgment against him. My wife and I challenged the ANZ Bank,(not the receiver) but the bank funded the appeal as statements show. The chain of responsibility started with ANZ.

(e) To the best of my knowledge **the recommendations of the Financial System Inquiry** have largely been ignored. Injustice lasts forever and without compensation for proven errors in law, sections 34 and 36 are impotent. ASIC does not and cannot accurately ensure reports as to affairs submitted by receivers or administrators are comprehensive and accurate, and as in our case, could not identify receipts for the aforementioned assets dispensed with by the receiver and his agents. The non-monetary conditions of default involve intimidation, threats and even violence by agents such as debt collectors etc.

(f) **The extent to which borrowers are given an opportunity to rectify any default** is also a false premise. The perceived debt in our case was proven by the Courts to be wrong however despite every effort made by my wife and I, no re-financier would consider assisting until the twenty three months period between the judgment and the appeal had transpired and disputes settled. During this time interest and penalty interest was applied thereby creating debt. Bear in mind this period included delays and procrastination created for the purpose of getting beyond statute. It is impossible to negotiate with a bank which claims to have appointed a *"highly professional insolvency practitioner"* directed by a solicitor in common with that bank both of whom are in contempt of court. The ANZ refused to settle or negotiate

(g) The **definition of reasonable written notice** to a borrower is subject to negotiation between the parties and should not be at the sole discretion of the lender. For example as in our case National circumstances changed. The Wik decision was handed down by the High Court of Australia at which time ANZ wrote pointing out that this decision was of no consideration to any lender but rather the responsibility of the borrower. This decision could well have been the catalyst for the ANZ to panic into the foreclosure of our business. Jeogla Pty Ltd had borrowed from ANZ to purchase a property in Central Queensland after which the High Court ruled that pastoral lease holders would bear the brunt of the impact. The fact that land title became insecure had huge consequences on confidence in investment where the property concerned was unsaleable.

(h) As pointed out above, **the loan to value ratio** in the case of the particular property "Broadmeadow" Moranbah Queensland created uncertainty for years and no capital gain benefits could be had until the full impact of the WIK decision manifested back to the business generated on that land alone. The Howard Government ignored the plight of pastoral lease holders many of whom have suffered since. At the time of this unreasonable demand from ANZ to sell, it was discovered that two directors of ANZ also had directorships with BHP the entity which purchased the property in the forced sale,
ACCC were advised of this conflict of interest at the same time they were advised of the cartel arrangement which exists between receivers and banks with solicitors in common. They took no action.

(i) Prior to the appointment of an external administrator strategies of intimidation are engaged to harass owners and threaten employees into co-operation with receivers with the loss of jobs if they don't assist in the procedure. Cheques are bounced and any mediation procedure through become farcical when it is discovered the mediator is a known associate of the bank. Despite swearing that no conflict of interest existed this was later proven to be a fact.

(2) The writer will willingly assist the committee in any way he can to give **as much evidence** as is necessary to expose the corporate fraud which now exists in the de-regulated financial services sector. As a primary producer I have had the privilege of sharing my experience with many farmers and graziers some of whom are entering their fourth year of drought. The principle of establishing that *assets must be sold at fair market value* can be difficult to maintain in drought circumstances but the concept of making money out of others misfortune is abhorrent.

(a) The incidence and history of:

(i) **loan impairments**; (outlined in a book entitled Hold Fast with a website www.hold-fast.com.au

(ii)**the forced sale of property** (also in the above book). In recent times I have assisted numerous landholders in central Queensland under threat of forced sale in order for them to avoid foreclosure and carry on. The main principle which banks conveniently overlook is that they regard breeding cattle as meat only.

(b) **Drought and depressed market conditions** provide the opportunity for financiers for commercial reasons to aggregate drought affected areas and finance a "bigger and better client". This ruthless strategy with bullying leads to traumatic stress, destroys families and can be directly related to the disastrous rural suicide statistics.

(c) I can provide copies of **valuations** of both rural and residential property with evidence of forced sales at 30% of real value. The NSWSC hearing quantified an error of $1,060,000 in a $3m transaction of cattle alone.

(d) **The legal obligations on lenders** needs adjusting to where a lender cannot simply hide behind their appointed receiver/administrator as the hit-man but take responsibility for their actions. If a Judgment is handed down in a Court an "estoppel" should be applied until the matter is resolved to the satisfaction of the court. For a lender to carry on extracting interest and penalty interest whilst simultaneously using delaying tactics is clearly unconscionable conduct and appears to be criminal. The legislation is inherently inadequate if companies can be driven into insolvency through no fault of their own. Furthermore if it is proven in a Court of law, then compensation should be paid. Alternately it would be appropriate to re-value the assets realistically, have an independent tribunal and create an opportunity for settlement. A banking code of practice was formulated following previous inquiries specific to dispute resolution but this has been ineffective as a remedy because it is simply ignored. This code of practice included an undertaking from banks and ASIC for a dispute resolution process but we requested this opportunity but were denied.

In putting forward this submission I have followed the terms of reference to the letter in order for the committee to follow the detail. It would be a mute point to determine whether the joint and several actions taken constitute crime, but when it is proven in any court that $1m is missing and unaccounted for the writer would like some clarification from the committee. I would welcome any opportunity to expand on any points which have been raised at any hearing conducted in the future. Please advise if copies of specific documents are required to verify the aforementioned detail.

Yours sincerely Richard B. Wright