SUBMISSION

to the Family Business in Australia Inquiry.

through the

Committee Secretary,

Parliamentary Joint Committee on Corporations and Financial Services,

P O Box 6100,

Parliament House,

Canberra, ACT 2600.

9 November, 2012.

Executive Summary

This submission explains some of the problems associated with family business financial regulation and processes to protect from predatory lending. However the theory applied is *endogenous money* as identified by Professor Keene from the University of Western Sydney. As sometimes happens theories that identify effect on family business lag behind actualities.

In order to help your committee to form a picture of how the current practices by Australian Securities and Investment Commission(ASIC) policy, Australian Competition and Consumer Commission(ACCC) policy and Australian Prudential and Regulatory Authority (APRA) policies effect family business a comparison with *endogenous money* theory and how these policies fit Australian credit practices is sketched.

The information has been taken from publicly available publications from the Economics Committee inquiries into banking and ASIC, ACCC, APRA and Treasury policy. It leads to conclusions that bankers oversee and create by inducing credit transactions,

*an increase in asset values, and

*lend credit on these increased values,

*sometimes denying,

*their customer the use of the asset; then

*when the community is saturated with debt,

*force sales of the then overvalued asset and/or other security,

*enforcing the credit contract.

By this methodology refinancing through aggressive use of taxation aids, such as "Non-Accrual' write down for assets, giving cash retention in the Authorised Deposit taking Institution (ADI) business, but maintaining dividends to equity stakeholders. Eventually lending rebuilding to the stage where credit facilitation once again lags ADI cash cover. This is partly relieved when the created credit for a new round of asset purchasing becomes a money deposit in an ADI and is then used as money or cash by the account holder.

Thus ADIs take advantage of their own credit facilities to the disadvantage of those family businesses willing to invest funds (deposits and payments) in both working and convenience assets and consumables, purchased with credit funds, at the convenience of the ADI. APRA

has created guidelines for credit control in housing but fails to set standards for business beyond large facilities and is sketchy at best with credit cards, savings accounts and other avenues of expensive credit facilities. These guidelines appear to neglect Small and Medium Enterprises (SMEs). Other than limiting ADI wide credit facilitation through ADI balance sheet guidance and equity write downs, possibly available as equity recovered after recovery action in the loan port- folio is completed. ASIC and ACCC policy being ineffective through sheer weight of numbers and capitulating to class actions and industry intermediary services.

Through this situation family businesses find it very difficult to break the credit cycle process, and are soft targets, for ADIs using money created by credit and turned to cash through ADI deposits, without raising equity from outside sources. ADIs now use created credit as sticky deposits in calculations for APRA credit control purposes. The extent APRA will allow ADIs to use Tier 2 capital (redeemable) and these deposits will partly govern the quantum of lending to family business.

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Introduction

Are you concerned, the value of your assets has diminished since 2007?

The Senate Economics Committee Post- GFC Banking Inquiry has identified at more than one submission the credit cycle and how the banks create credit and liquidity during the cycle and this becomes over heated demand, in asset sectors of the economy. (Submission 99*, Submissions to the Senate Economics Committee Post GFC-Banking Inquiry*- Professor Steven Keen, University of Western Sydney)

Whilst family business is a major part of the Australian scene the credit guidelines and ASIC and ACCC policies do not adequately protect business from predatory financial tactics. Money not earning interest is not of value to lenders and until this new round of Basel Committee, capital adequacy provisions, $A Deposits were of little consequence to ADIs' with currency risk small and securitisation available, credit ratings high for ADIs, APRA intervention was needed to force directional change in lending and deposit practices.

As Australia moves into the baby boomer retirement boom, the $A requirements on ADIs provides an incentive to maintain retirement funds in Australia for use by the younger generations. This creates a situation where Family Businesses can move to other forms of financing and where possible, may grow their business accordingly. It is a given fact that while credit facilities and mortgage booms were holding ADIs' did not upgrade their technology because their volume of work continually increased their productivity by association with increased loan to asset value and numbers from the credit cycle position

ADIs' now have to find ways of processing same day transactions, of moving accounts between organisations and processing less volume of applications and so increase productivity and efficiency throughout their business. This time in the credit cycle is the moment for identifying how the future credit creation process will be governed and how the need for efficiency will generate ADI profits balanced against available cash to family businesses. Whilst lending policies of APRA credit control and individual ADIs are deficient in business lending guidelines to family business, it is clear by the fact of this inquiry that all is not well in business and business generational change.

Whilst not particularly discussed in this submission attempts to ease generational change have been prevalent in rural industry where the conditions of ownership on some Queensland Rural Land Leases changes on succession. Perhaps this precedent may encourage this committee to investigate similar concessions from regulatory provisions to effectively support family business. This could be a major unwritten benefit arising from this information gathering, inquiry.

Economic Theory - Applied

Professor Keen argues the theory of endogenous money is more important than "neoclassical economics" because the theory is based on the banking system operations. He argues empirical research shows (a) bank lending is not contained by the central bank,

(b) adds to aggregate demand,

(c) the level of private debt has important macroeconomic consequences, and

(d) can cause asset bubbles and financial crises when lending primarily finances, asset speculation.

The paper goes on to argue three indicators of financial crisis are:

(a) the level,

(b) rate of change,

(c) rate of acceleration of private debt.

This leads to the Reserve Bank necessarily monitoring inflation and unemployment. *(Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen,* Page 1).

His conclusion includes *" Monetary and fiscal policy alone are unable to restrain the tendency that the banking sector has to move from responsible to irresponsible lending over time."*

He explains this as "banks produce money by creating debt, and an increase in the production of debt increases economic activity.

The fact that mainstream economists ignore this debt –and-money-creation role of banks is why they did not see this crisis coming. Bizarre as it may sound, all accepted economic models today ignore the existence of banks. -------------------

The reason that banks are crucial is because a bank loan creates additional spending power for the borrower without reducing the spending power of existing savers". (Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, Page 7-8.)---------------

"Unlike a manufacturing firm which must have a physical factory to produce output, the key asset a bank needs to create money is an intangible one: a banking license. This alone enables it to create the primary asset from which it earns an income: loans. It necessarily also gives banks the capacity to create money demonstrated by double- entry bookkeeping."-------------------They cannot create currency of course, and their capacity to create money is dependent on profitability and finding

willing borrowers." (Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, UWS, Page 9).

AS an example he quotes "The recent case of a New Zealand petrol station owner who absconded after Westpac inadvertently gave him a$10 million overdraft when he had applied for a $100,000 one is instructive here. The extra $9.9 million of potential money created by that mistake required one less keystroke than creating the correct amount would have done: some hapless employee neglected to press the "." key and thus created 100 times as much potential money with slightly less physical effort than it would have taken to produce the correct amount. See

http://www.smh.com.au/business/10m-westpac-blunder-accused-found-out-about-error-on-tv-court-hears-20120517-1ysnp./html.

Regulators Roles

He advocates that real growth should be above 3% to balance rising population and labour *productivity (Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, UWS, Page 5.)*

*T*his brings a very different complexion to bankers' motivation, to the image bankers portray of being ever helpful to their customers and to regulators and politicians. Australia is now involved in an "OKUN" moment (Okun's Law) with growth consistently below 3%. Whilst this helps to explain the Reserve Bank Governor speaking up to encourage spending and the politicians advocating his "glass is half full" it complicates the problems of the regulators. Creating the opportunity to examine some functions of Regulators, Australian Securities Invest Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and the Australian Prudential Regulation Authority (APRA). The

ACCC specific headings are:	ASIC are:	APRA administers:
Credit, debt & banking	**Financial advice and services.**	**Banking Act 1959**
Managing debts	Banking Code of Practice	Supervision, Policy
Hints for dealing with your debts	Licensing and compliance	Statistics, Research-
Where to go for help with debt problems	Credit providers and financial	Authorised Deposit
Internet banking	advice.	Taking Institutions.

The Reserve Bank of Australia (RBA) conducts monetary policy, works to maintain a strong financial system and issues the nation's banknotes and oversees the payments system. The Bankruptcy

Court system and the Inspector General oversee bank debtors' processes, and various States Authorities; and reports ineffective consumer legislation; in conjunction with ASIC and ACCC. Is there a regulatory process pursuant to the Inspector General and the Commonwealth Ombudsman, for investigating the processes of Bankruptcy on behalf of the Bankrupt entity?

The number of occasions of incorrect accounts in Bankruptcy is not being investigated, except by Bankruptcy Trustees, where an obvious conflict of interest prevails. Public admissions (NAB past refund activities) and class actions are showing manipulation of bank accounting to give a particular outcome for bank statement purposes in recoveries, especially where corrupting practices have occurred. It is easy for a bank to wipe aside incorrect charges of $50,000 at the beginning of a litigation cycle to bankrupt a customer, where the ultimate debt is over $1M but does the court assess the materiality of the $50,000 overcharge at the time or the bankruptcy debt and relationship to the original debt. By the time the Bank has added default interest for several years, the true value of the account at the time is totally distorted. *(Commonwealth Bank of Australia v Heinrich [2003] FCA 540 (6 June 2003) Mansfield J.)*

<u>Enforcement of Created Credit</u>

The reality of these problems are shown by the NAB past refund activities and the APRA Report of March 2004 explaining the NAB corporate culture as denying problems from the appropriate authority (Page 76) and ASIC Enforceable Undertaking between APRA, ASIC and NAB 19 October 2004. How do the regulatory authorities deal with these problems of overcharging on created credit facilities? The courts enforce them to the advantage of the bank concerned.

There are now in Australia several examples of a bank being the only bankruptcy debtor or by far major debtor in Bankruptcy and the banks" accounts are incorrect dating back to the origin of the account. The damage in these cases cannot always be measured in dollars now because the facts of the problem as manipulated in the case of (NAB corporate culture) identified but not corrected and distorted to fit the outcome; under that culture staff are required to hide the facts.

At this time it can be assumed that the distorted borrowed funds are created credit and some perverse incentives to increase bank income may be consistent with:-

(a) turning over the banks current stock of money more quickly, e.g., (Banks are encouraging short term loans and credit cards)

(b) by persuading borrowers to repay debt more slowly, e.g., (Home loans typically 30 years are the most popular mortgage and encouraged by RBA policies of securitisation.)

(c) by creating new debt by new lending, e.g., (Bankwest is reducing existing debt by recoveries and lending new funds by credit finance)

(d) funding asset price speculation, e.g., (by concentrating on mortgage loans and retail banking) then

(e) finding willing borrowers. eg. (by conscripted offer and transference of short term to long term debt). *(Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, UWS, Page20-21)*

Regulatory Bodies and Economic Theory,

Treasury in its submission to the Senate Post -GFC Banking Inquiry, at Page 4 *"Basel 111 will require banks to have more and better quality regulatory capital. Banks will be subject to a maximum unweighted leverage ratio*. Criticism that RBA has not recommended monitoring debt to income ratios is said to indicate that well managed banks can be relied upon to ensure the aggregate level of debt is not a problem. The claim is RBA failed to identify the facts of;

(a) the capacity of banks to create additional aggregate demand by lending,

(b) the perverse incentives that banks face which encourage them to wish to create as much debt as they can persuade the non -bank public to take on. Ignored are the facts,

(c) that lending cannot be just for productive investment or immediate consumption, but also for asset speculation, and

(d) that asset-based lending creates positive feedback between change in debt and the level of asset prices which leads to crises such as the present credit crunch. *(Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, UWS, Page 19-20).*

The Treasury submission to the Senate Post -GFC Banking Inquiry, at Page 17 shows the following passage and end notes

Given that weak lending practices has been identified as one of the causes of the financial

crisis (particularly in the US), the Financial Stability Board (FSB) has drafted global principles for sound mortgage lending practices that seek to limit the risks that mortgage markets pose to financial stability and to better safeguard borrowers and investors.

These principles include:

- *effective verification of income and other financial information;*
- *reasonable debt service coverage;*
- *appropriate loan-to-value ratios;*
- *effective collateral management; and*

To counter the claim that business credit consumers are encouraged to overuse products and other anomalies Treasury states:

The ASIC Act has a broad jurisdiction over the provision of credit to small businesses and consumers, and advice and broking conduct in relation to such credit. The ASIC Act
– whether the borrower was required to comply with conditions not reasonably necessary to protect the lender's legitimate interests;
– whether the borrower was able to understand the relevant documents; and
– whether undue influence, pressure or tactics were used.

- *Small businesses19 are also able to rely on a broader range of prohibitions in the ASIC Act, including:*

– a broader prohibition in respect of unconscionable conduct (Section 12CB);
– a prohibition against misleading or deceptive conduct20 (Section 12DA); and
– a prohibition against the making of false and misleading representations (Section 12DB).
The Industry relying on codes of practice (– whether the borrower was required to comply with conditions not reasonably necessary to protect the lender's legitimate interests;
– whether the borrower was able to understand the relevant documents; and
– whether undue influence, pressure or tactics were used.

Industry codes of practice
Some lending industry bodies have developed codes of practice that their members can agree to comply with, usually as a condition of membership, so that they must become signatories to the Code in order to receive other benefits (such as access to professional indemnity insurance arranged by the industry body). (Treasury submission to the Senate Post -GFC Banking Inquiry, at Pages 18-19)

The last safeguard claimed by Treasury is the Uniform Consumer Credit Codes for consumers and small business. In view of the large number of small business and consumer submissions to the inquiry stating the position with Bankwest facilities and their finalisation by that CBA owned subsidiary examination of the circumstances of the purchase from HBOS and the British Government

40% ownership is required. Bankwest and the Commonwealth Bank in their submissions to the enquiry have denied the winding up of customers to support the capitalisation of Bankwest.

Australian Treasury Submissions

The Treasury Submission *states CBA publicly announced its intention to purchase Bankwest and St. Andrews (HBOS Australia's insurance business), for $2.1 billion. In addition, the agreement obligated CBA to capitalise Bank west so that it could repay its $16 billion in loans to HBOS.27*

CBA's acquisition of Bank west was subject to a number of Government processes. No approvals were refused and conditions limited to the Bank of Western Australia Act 1995, employees, some fees, branch network and a general condition to grow the Bankwest brand. In view of the necessity for CBA to pay HBOS $2.1 billion in purchase price and $16 billion in outstanding loans examination of Credit Quality and other processes under the APRA Prudential Standards and Guidelines 220 to 220-4 is justified.

Australian Prudential Regulation Authority (APRA)-

APRA authority on ADI Guidance is partly pursuant to Section 66 of the Banking Act (Cth)

The APRA Guidance Note for Credit Grading Systems (CRGS) is 220.4 and has been in existence since January, 2008. CRGS purpose is to provide a systematic assessment of asset quality and credit strategy. Principles at;

(a) the provision of insights into the quality of an Authorised Deposit Taking Institution (ADI') credit portfolio and its risk appetite at a point in time.

(b) -----

(c) Acting as an early warning system for the detection of asset quality by highlighting credits with above normal risks.------------------------This often allows for special monitoring of such facilities, and enables the development of strategies to eliminate any weaknesses.

(d) ------

(e) ------

(f) Improving portfolio management, especially when combined with applications that can identify degrees of risk associated with lending on an industry, geographic or counterparty basis.

The guideline identifies poorer quality facilities should include;

(1) special mention , where clients are experiencing difficulties , which if they persist could result in losses.--- subject to special monitoring, more frequent review, and management scrutiny;

(2) substandard, where definable weaknesses are evident which could jeopardise repayment, particularly of interest- the ADI is relying heavily on security;

(3) doubtful, where the situation has deteriorated to such a degree that collection of the facility full amount is improbable and the ADI expects to sustain a loss (defined Non-Accrual): and

(4) loss, where facilities are uncollectable within a reasonable period a transitional category to write –off.

The problem in this process belongs to doubtful and loss facilities where they have been restructured and then moved to substandard. Mortgagors and bank clients need to decide what category or group of categories their facilities grade. But they must keep in mind that if the bank writes off their debt either fully or partially it can be taken to the banks' Tier 1 capital for creating more credit in some provisioning circumstances after recoveries.

Whilst these circumstances do not totally subscribe to the Submission of (Professor Keen at 99 of the Senate Post-GFC Banking Inquiry, Page 15) they do provide an insight to his form of monitoring required and proposals to control credit creation and asset price stimulation. He maintains that Neoclassical models of the economy ignore Banks, Debt and Money and maintains the following definitions apply and perhaps in terms of banking assets and credit facilities APRA may comply. He defines;

(a) aggregate demand as income plus the change in private debt,

(b) aggregate supply as expenditure on goods and services and on financial assets,

(c) change in aggregate demand is the sum of change in income plus the acceleration of debt and this will;

(d) drive both changes in economic output and changes in asset prices.

It can be accepted by these definitions that the main driving force in housing price stimulation is mortgage debt. It is now a matter of record that banks conducted productivity drives by lending funds to encourage acceleration of small businesses and farmers then moved into recovery mode against those and others to increase bank productivity. These created funds could not be written off and thus had to go somewhere and that was the housing market. Banks increased their productivity (in theory)so as to keep pace with selling more loans continually financed by restoring capital from recovered created funds and created more funds lending on securitisation as the positive backup.

Positive Feedback Loop

He describes this process as a positive feedback loop where a change in debt feeds asset prices and household debt increases. Thus banks do not consider their own process costs or that new entrants will be stopped by entry costs or the pool of entrants will shrink. His analysis of the downswing is that falling house prices encourages attempts to reduce debt and the decline in mortgage debt

encourages house prices to fail and identifies a modest change in debt levels can create a huge fall in prices. Society is then stuck with debt-servicing and debt deleveraging depressing aggregate demand as asset prices fall well below the level at which the bubble began. *(Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, UWS, Page 23).*

Control of Lending.

Does the Reserve Bank control lending? The short answer is no. The quantum of cash in the system does not control lending as evidenced by the Government guarantee of bank deposits at $1M and now $250,000. This process was created to insure the system was not overrun with nervous customers, withdrawing funds at any given time. Therefore the relationship between deposits, bank lending and reserves can be distorted by the lag time in assessing reserves and the inevitability of created funds (mortgage funds) becoming available cash deposits. Thus central reserve banks have a diminished role in private credit control.

APRA Guidance Notes

APRA in recognising this situation has developed a prudential standard "Guidance Note at APS 220 for Credit Quality " and at "Guidance Note AGN 220.4 Credit Risk Grading Systems"(CGRS) in the latter APRA states it does not favour the imposition of CGRS for all authorised deposit taking institutions (ADI's). At" Guidance Note AGN 220.3 Prescribed Provisioning" APRA identifies the methods and grades security for mortgages and credit products.
For many bank customers during the period of their loans the following definitions become important because by defining the security APRA has made prescribed provisioning for ADI's where facilities (mortgages , credit cards etc) payments, become past due. At 10. It defines past due as "A facility is past due or irregular when a contracted payment (principal or interest) has not been met when due or is otherwise outside contracted arrangements". APRA then goes on at Categories of past due facilities to define grades for security and values that must be prescribed in provisioning for losses in the account, including realising existing security.
It defines category one in various scenarios amounting to fully secured residential mortgages secured to 100%of the outstanding debt. Category two as above 80% of the outstanding balance of a loan but less than 100%. Category three includes as anything other than residential property but not including category 4, overdrawn savings accounts, overdrawn limits on credit cards, overdrafts and line of credit advances. In all instances other than savings accounts the value for provisioning of

the account is the full value of the debt but for overdrawn savings accounts the provision is only applied to the overdrawn amount

APRA describes impaired facilities for capital and other APRA purposes include any facility (on or off-balance sheet) where there is doubt over the timely collection of the full amount of cash flows contracted to be received by the ADI (APS 220-6 at 23). APRA goes on to identify impaired facilities under the definition but the most important is (a) *a facility is 90 days past due unless otherwise well-secured and at a footnote states (arrears of contracted cash flows on a facility are not a necessary precondition for impairment).* Further considerations are imminent administration and bankruptcy, a write off has been taken even if the facility is not in breach, in respect of off balance sheet facilities the ADI is unlikely to receive the full value contracted. These four basic situations are adapted by knowledge challenged and unscrupulous bankers to fit customer situations, creating animosity and much angst amongst those relying on correct assessments of credit quality. At 34 Reliance on collateral must not: (a) be a substitute for an appropriate assessment of a party to a facility, in particular, the party's ability to meet its contractual obligations: or (b) compensate for insufficient information about a party.

Bankers' Prudence.

In provisioning for cash flows as part of credit quality APRA has adopted the Australian equivalent of the International Financial Reporting Standards (AIFRS) (AGN220.2, 7) to identify credit losses. This brings into point where bankers provide interest payments in the form of special accounts for customers to be used in loan repayments after draw down. Is the bankers' cash flow assessment at the time ignored to increase bank mortgage lending and just when does the bank intend to make the account non-accrual for taxation write- off and recover the collateral property. This is addressed by Keen *at Rely on Bank Prudence (d) that asset based lending creates a positive feedback between change in debt and the level of asset prices which leads to crises like the one we are now in. (Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen, UWS, Page 19-20).* He then goes on to say *In fact banks can add to aggregate demand by new lending- --in turn leads to the danger that unregulated banks will -----------generate and create too much debt by financing asset speculation rather than productive investment.*

How much the past productivity drives have contributed to Australia's coming problems may be assessed in terms of the economic scale of the productivity drive and the cash generated by banks

creating credit during the drive and where that cash finally settled. Created mortgages from this period whether in the terms of moral risk (values less than the sum owing) or in recovery or being serviced are mostly secured by APRA defined category 1 collateral and the valuation of these facilities is *identified* by *APRA in the Estimated future credit losses over the life of the portfolio.(APS 220-12at 52-53.).* This APRA Prudential Standard APS 220 "Credit Quality" then goes on to support the asset speculation theory at (Senate Economics Committee Post GFC-Banking Inquiry- Professor Steven Keen , UWS, Page 19-20) where APRA states *Irrespective of the approach applied by an ADI to determining provisions in accordance with AIFRS an ADI must maintain , unless APRA otherwise agrees , in writing, a General Reserve for Credit Losses-------A General reserve for Credit Losses represents a reserve established under this Prudential Standard that, as a minimum covers credit losses prudently estimated but not certain to arise over the full life of the individual facilities making up the business of the ADI.(refer AGN220,2) For these purposes a General Reserve must be reported on an after tax basis.*

In APRA Guidance Note AGN 220.4 (CGRS) at 2 (b) APRA states *for applicable exposures , the system should cover both performing and impaired assets to provide for the migration of an exposure from fully performing to loss status: at*

(g) poorer quality facilities should include at least 4 categories along the lines indicated below:

Special mention, where clients are experiencing difficulties which if they persist, could result in losses – such clients should be subject to special monitoring, including more frequent review and management scrutiny;

substandard, where definable weaknesses are evident which could jeopardise repayment, particularly of interest – the ADI is relying heavily on available security;

doubtful, where the situation has deteriorated to such a degree that collection of the facility amount in full is improbable and the ADI expects to sustain a loss; and

loss, where facilities are considered uncollectable within a reasonable time frame – this should be reviewed as a transitional category for facilities which have been identified as requiring write-off during the current accounting period.

The customer's dilemma.

For thousands of bank customers who every year rely on their bank manager to report their accounts correctly and find them moving between the categories of their bankers internal credit ratings, these broad categories of facility grading may provide an opportunity to assess their own

situation if their accounts become delinquent. It is obvious that at any given time some ADI is moving clients between categories through either changing industry or internal conditions and policies or because of identified customer problems. The most interesting of these is where interest is provided in a facility contract to go to a special account for repayment for a period of time on draw down of the facility. How do these loans fit the APRA categories during their existence?

Can lending institutions be held accountable for not following guidance notes and Prudential Standards and how does the manipulation of accounts between categories to maximise profit for a financial institution become accountable? Whist Professor Keen has shown some theories that could contribute to assessing lending institutions policies; and APRA interprets legislation and sets Prudential Standards and Guidance Notes; ASIC and ACCC customer and organisation behaviour; Australia still has a major problem with ADI credibility. In the case of National Australia Bank (NAB) and Australia and New Zealand Bank, both admitting corporate cultures since 2004 and in the case of NAB a far reaching APRA investigated; and ASIC published "Enforceable Undertaking "completed 19 October, 2004. NAB Deputy Chief Executive Officer, Michael Ulmer, on retirement in 2011 (Richard Gluyas, "The Australian " 19 March 2012 at 19-20) identified industry culture as the problem that needs to be addressed between corporates and certainly lays the responsibility for industry perception on the participants. In some ways culture and customer orientation are the main differences between Australia's Banks. Customers may need to assess:

* bank policies; by resorting to social media, public complaints, court lists and willingness to admit mistakes and review decisions by a future mortgagee.
* Consumer groups need to assess the problems encountered by customers at each institution and flexibility when the institution is incorrect in dispute.
* The problem of institutions destroying customers to cover-up problems may be a very real issue in some circumstances.
* The ability of dispute resolution personnel in most legal firms is pushed when it comes to admitting to a lucrative account they may be required to take a haircut and pay customer compensation. So in many circumstances resolution is by way of the court where unfamiliar circumstances rule the situation.
* Thus persons considering borrowing funds must look much deeper than is the money available and what the interest rate is at the time.
* The current Senate Inquiry into Banking is facing a dominance of circumstances surrounding Bankwest and Commonwealth Bank customer complaints, but I have not seen any complaints by those banks <u>about not getting their money out</u>.

The banker's deception.

An eye opener to Australians, where credit creation opportunities for banks developed on the back of escalating asset values and many borrowers lost their live (*) savings and in some cases livelihoods as banks recovered funds on depreciating asset values. The bank complaining about the depreciation of its customer's assets and complains it needs to recover their loan by sale of the asset, is the same bank supplying the credit to increase the market value of the asset, at a time convenient to the bank and collecting interest and mortgage reduction payments driving further asset value increases and profitability until the community is saturated with debt.
That increasing the provisions for bad debts shores up the bank balance sheet, reduces taxation and can change yield and intrinsic value of the Bank shares by changing the cash dividend value of future earnings. Do you consider banks overestimate their bad debt write downs?

Recommendations

1. **A definition of family business should be encompassing and allow for lawful adequacy** in permitting and creating class concessions in taxation, finance, title, governance, culture and enterprise structure.
2. Information and statistics are impractical at present. The corruption of enterprise information during the productivity drives where banks and organisations associated used incorrect statistics and calculations destroying many viable businesses. Productivity is not profit and it is hard to reconcile any statistic replacing a $ profit value as a measure of business efficiency.
   Thus reliability of information input and conclusion can affect the whole class of family business and should be beyond varying factors by individual measurement when required.
3. The measure of contribution of family business whilst statistically important can vary most notably in the enterprise culture and community contribution**. One of the most important ways government can help is to help adjustment where industries no longer have some geographical markets but expertise remains**. e.g., many local brickworks have closed but the expertise may be valuable in other parts of the world where brick making is not as developed and plastering common brick surfaces is the preferred building process.

- For the purpose of this article;

A *live saving* is one available to recovery action, not e.g., Superannuation, property in trust or life assurance-insurance policy or personal choses pursuant to Section 116 (2)(g)(1) of the Bankruptcy Act 1966 (Cth).

4. Most structural, organisational, technological, geographical and governance challenges are associated with financial structure and enterprise abilities. **Whilst structural, organisational and governance can be addressed easily by legislation.** Technology and geography are practical. Both can be aided by efficiency, e.g., carbon kilometres and government policy and subsidy or concession but both by themselves can be a practical barrier to enterprise survival.
   Government can improve the facilities for family business **by highlighting its contribution.** Then **acknowledging, in** planning, development and operation, acceptable practices, flexible, but **ahead of community and legal standards**.
5. Family Trusts are an acceptable proposition for many family businesses and can preserve governance and facilitate organisation process and governance. However from recent press reports in high profile family situations, **perhaps legislation to cover the Quist close responsibilities and sale at undervalue in trust legislation could support family business and wind up and bankruptcy in family business situations.**
6. Cost and value of finance is addressed previously as stated no category specifically for family business is in the APRA credit Guidelines 200-1.2.3.4.and 22**. Perhaps it could be possible early on to establish a common law definition for family business as part of the APRA credit guidelines and establish a category within those guidelines for family business.**
7. The preceding submission deals with the problems and recommendations for businesses, consumer organisations and regulation both during and post GFC and lays out a sketch for information gathering, from economic theory of credit creation and ADI process to regulation and individual safeguards, where family business situations are included and can be improved. The necessity for improving credit control has been internationally recognised and Australia is part of the process. **However the legislative and business, problem of inclusion in credit control a *family business sector* has to be addressed including debt roll over, during the process and at succession.**

REFERENCES

The Senate Economics Committee Post- GFC Banking Inquiry

Submission 99*, Submissions to the Senate Economics Committee Post GFC-Banking Inquiry*- Professor Steven Keen, University of Western Sydney)

http://www.smh.com.au/business/10m-westpac-blunder-accused-found-out-about-error-on-tv-court-hears-20120517-1ysnp./html.

Commonwealth Bank of Australia v Heinrich [2003] FCA 540 (6 June 2003) Mansfield J

APRA Report of March 2004 explaining the NAB corporate culture as denying problems from the appropriate authority (Page 76)

ASIC Enforceable Undertaking between APRA, ASIC and NAB 19 October 2004.

Treasury submission to the Senate Post -GFC Banking Inquiry

APRA Prudential Standards and Guidelines APS 220 to 220-4.

International Financial Reporting Standards (AIFRS) (AGN220.2, 7)

NAB Deputy Chief Executive Officer, Michael Ulmer, on retirement in 2011, (Richard Gluyas, "The Australian "19 March 2012 at 19-20.)