INQUIRY.; ***Access to Justice*** - **SCAG model bill concerning vexatious proceedings**

EXECUTIVE SUMMARY

This submissions deals with the realities of incorrect vexatious person judgments when the applying entity in this instance a bank later publicly admits the true facts that have been pursued by the convicted vexatious person. These admissions include unlawfully collected default interest that may have been subsidised by Government Schemes to assist farmers.

The method used was identified by the farmer concerned who had qualifications and experience in farming and business management and accounting areas and identified that this bank was allowing facilities to remain in default mode and collecting additional interest for long periods then renewing the facilities at its pleasure, especially in interest subsidy situations.

He was defeated in the courts by incorrect evidence and evidence of debt but his complaints have now mostly been admitted by the Banks 37 admissions and refunds in accordance with the rectification processes presumed necessary to avoid prosecutions under the Corporate Culture provisions of the Commonwealth Criminal Code 1995.

The fact this Bank acted unlawfully to deceive the courts is not acknowledged but in fact denied when their lawyers are well aware of the circumstances. The currently reported process with this Bank is that in the case of interest not refunded it allows the customer to appear in the court unopposed and if the customer wins it mounts an argument that it has not appeared and the action is to be reheard. Which entity is abusing process the Bank or the customer?

This submission therefor recommends a small number of provisions when vexatious orders may be abandoned statutorily. It identifies that corrupt practices especially in debt recovery litigation should not be rewarded and that the social stigma associated with being made vexatious is a life sentence, that is not always necessary and is particularly damning when based on publicly admitted incorrect facts.

SUBMISSION TO: Senate Legal and Constitutional Affairs Committee

INQUIRY. **SCAG model bill concerning vexatious proceedings**

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INTRODUCTION

In 1996 this convicted vexatious persons Bank refused to record and accept his deposits and renewed his facilities only for a short period after they were not renewed between February 1993 and June, 1996. This situation allowed the Banker to receive default interest at a substantially greater farmer scheme subsidised interest value. The bank then called the farmer unviable by not properly completing his budgets and balance sheets and sought to recover their inflated debt.

This eventuated in a dispute and then court action when documents were undiscovered, falsified accounts and incorrect documents were held back until they advantaged the Bank, the incorrect bank statements were stated many times to be correct . In fact in one situation in the court the bank practitioners denied the interest corruption admitted then refunded 26 days after the judgment where the court found the case the responsibility for false accounting was the responsibility of the Bankruptcy Trustee..

The Bankruptcy Trustee is not going to check accounts and verify values against a bank that may supply the majority of his work. In such a situation falsification of accounting is not going to be identified without court action to uncover the incorrect facts. In this case the vexatious farmer identified the Bank corporate culture from its subsidiary money laundering processes identified in an Irish High Court investigation against his known deceptions. The Bank admitted its corporate culture in March, 2004 just 6 months later but the court refused to accept this as evidence.

He continued in the court against the Bank and the Trustee who received $36,400 from the Inspector General to mount defences. The first three complaints he made were admitted by the Bank between the filing of the application to make him vexatious against the Bank and the Trustee and judgment.. However they were denied in the court in every jurisdiction by the Bank. But at appeal it was found the Trustee was responsible for the accuracy of the accounts.

Clearly there is a public interest where the Trustee has been granted funds to make a Bankrupt Vexatious by the Inspector General when the Bank making the application admits by inference that the bankrupting accounts as claimed in all jurisdictions at all times are incorrect as originally

claimed by the bankrupted customer.

1. With reference to the above ,whilst the legislation proposed is to be all encompassing it will stifle justice. Please find exhibited as "1"a report to your inquiry titled Australia's Judicial System and the Role of Judges. It shows how a number of Judges both in Federal and Queensland jurisdiction consistently accepted the evidence of a Bank against a self litigant AND THEN BETWEEN ADMISSION AND REFUND TO SOME CUSTOMERS, THE SAME COURTS FOUND THE SELF LITIGANT VEXATIOUS.

2. As you would be aware this is common, however it is a publicly admitted fact this Bank admitted a corporate culture involving the Bank corrupting customers bank statements. This now made Vexatious litigant identified the Bank corporate culture in the courts by their process of locking in unaudited and unverified facts in the courts with a Certificate of Debt sworn by a bank officer without checking the account entries for correctness. The declared vexatious person was denied credibility and then submitted his identified accusations to the appropriate authorities exhibited as "2", no action was taken by the judiciary where all judicial authority accepted Bank evidence without question.

3. The crux of the complaint was the Bank had allowed an Officer to refuse his deposits and put the officer in the position where he did not renew the customers facilities and charged default interest and used the non renewal to force default and trigger a mediation then renewed the accounts again, all to force a viable business to the wall. The problem for the parliament is an annexed letter to the Attorney General of Queensland shows how the Chief Justice of the Supreme Court of Queensland was informed after a Commonwealth Joint Parliamentary Committee issued a report that enabled the highlighting of the problem of incorrect accounting process by banks in default actions exhibited as "3".

4. The judiciary in and out of court refused the contents of that report. Obviously discovery was the important ingredient the court refused the detailed discovery of the banks charges policies and consequently the problem continued and continues today. I note the proposed Legislation includes discovery processes where Banks could charge fees for facilities that should be provided to customers automatically and without question such as the bank instructions on interest and fee charges by this act, discouraged in competition policy. This is how this bank was able to discredit

the identification of true facts. I would expect, from every judge and magistrate since an admitted incorrect accounting commencing in1982.

5. The details of where the legislation breaks down.

In 2003 the Vexatious Litigant identified the corporate culture and wrote to the Bank accordingly exhibited at "4". In March 2004 the Bank admitted its corporate culture but refused to have an arbitration between the parties before ASIC, ACCC or APRA. No other party was capable of handling such a mediation or arbitration judiciously. The Bank continued its unlawful practices until today with identified admissions and refunds continuing.

6. The Bank applied in May 2005 to the Federal Court to make the self litigant vexatious however the Bank identified act of unlawfully extracting debit tax from his account, overcharging of fees and unlawfully charging default interest for long periods of time were admitted before, and refunds commenced but not to this person, then found vexatious (Press releases exhibited as "5".

7. The self litigant was stopped in every direction by the judiciaries inability to distinguish credibility of facts of accounting including the High Court a 2003 transcript is exhibited as "6"where the vexatious litigant complained of incorrect quantum of debt and non discovery and was refused Special Leave. It is now a matter of history but if the High Court had accepted the application the problems where the banks and lawyers and judiciary want to identify vexatious litigation may not be necessary because many of those acts involve complaints of incorrect evidence. The self litigant was found vexatious in the Federal Court then Vexatious in the Supreme Court between the 10 November, 2005 and 28 September, 2006 where the Bank admitted the facts of the incorrect interest amounting today to over $686,000. I enclose a submission to the Senate Legal and Constitutional Affairs Committee dealing with these matters exhibited as "1". The reason for the submission is that this particular bank as admitted used default interest on Fixed Interest Only Loans (FRIOL) to increase yield by not renewing those loans on the correct date and levying default interest until they were renewed. There is a serious question of legality when farmer scheme interest subsidies were involved and the farmer was receiving subsidised interest payments. The situation evolved if the scheme paid on maximum interest subsidy of 50% of say 10.% the farmer paid 5% and the Government 5% but if the farmer paid 12 % in default interest the Government paid 5% and the Farmer paid 7%..In some cases the Government paid 50% of the

default rate when it was below the maximum subsidy rate such as in FRIOL The Bank has only refunded to 1999 and obviously not admitted any of other incorrect practices (37 exhibited as "7") to date in any court, affecting this person.

8. As part of this process the Bank had him charged criminally for stealing livestock under the mortgage however at the same time, they were selling the cattle under the receivership that he was being charged with stealing. Obviously he was innocent but he could not obtain the evidence to show this fact until 2005 when the charges were heard in 2002. The evidence in the criminal court identified a Judge defined injustice, but in the civil court the progeny of these cattle were handed over to the bank because the evidence of the livestock sales was denied in that court. This related to all Bank witnesses including the receiver giving incorrect evidence in that court except those whose evidence was about cattle numbers on the property alone. In Queensland the Property Law Act 1974 has been changed to include disclosure of sale details by Receivers at Section 85(2)..

9. Under the proposed legislation this vexatious litigant may have been vexatious at a very early stage and this Bank would have successfully in line with their culture of not discovering facts in courts have not been forced to admit and refund over 200,000 customers and perhaps $1Bn in over charged fees, taxes, insurances and interest. These situations weigh heavily on Governments, who may legislate power to a judiciary, not aware of its' failures in assessing, evidence,supporting lawyers who want to win cases, regular users of the court and politicians who do not want to say no, to such people. But do the new provisions create justice? I think not.

9.1 Whistle-blowers and those forced to expose corruption to obtain justice will be extremely disadvantaged as these recited facts and instances show. Corrupted practices in debt collection and banking in Australia can be a way of life for some and the victims are not protected by the Bankruptcy Act 1966 (Cth) or it seems any other Act. The only opportunity is to continue in the courts exposing the corruption of the processes.

9.2 This material quoted is not coming to light, because of the court process, but because the Commonwealth Members, Ministers and Departments accepted responsibility to support the exposure of the true facts of this Banks' behaviour. It is now being shown how the Bank has misused the Court service in Parliamentary Committee just how the process of "rip off " of

Government Funds occurred. Remember the courts have accepted the Banks' incorrect facts(now admitted 10 November 2005) at the same time the courts convicted the person and refused his defences and made this person vexatious on 22 December, 2005 and May, 2006.The Bank making the interest refunds on 28 September 2006 after a further trial, where the facts of the admission and refund could have been admitted to the Court, but were not by the banks practitioners in the Queensland Supreme Court of Appeal, the Full Court of the Federal Court and the High Court correspondence exhibited "7".

10. I exhibit the Banks past admissions and refunds, the press releases on the debit tax, some fees and the unlawful charging of default interest, and the vexatious judgments exhibited as '8' that show the courts are in many cases incapable of defining correct and incorrect evidence especially when it is a self litigant against a regular user of the court system.

10.1 In each judgment words that have a similar meaning are quoted as the defence; and they are ;

* The Bank has not discovered documents,
* the documents not discovered are supplied at a time advantageous to the bank, and disadvantageous to the opposing party,
* the Bank has issued incorrect documents.
* The bank representatives have given incorrect statements to the court.

10.2 All of these material facts are supported by the Banks admissions and refunds;

* where the Bank did not discover the materials to verify the values of primary entries on the bank statements. (applied for in discovery, but refused by the court, on Bank objection).
* where after APRA intervention the Bank identified the now admitted and refunded incorrect primary entries on the bank statements.
* where the Bank now issues correcting bank statements
* where the Bank practitioners did not admit the facts of the admissions and refunds against a self litigant and in fact denied the true facts and stated the bank statements were correct either by submission or by staying mute in every judgment.

10.3. Unfortunately the judiciary accepted the word of the Bank practitioners and did not accept the facts that were only admitted by public statement at the time from the self litigant

and this is common legal practice. Consequently the person that first identified the Bank corporate culture was found vexatious, from incorrect statements from those who the order protected and gave absolute advantage and absolute disadvantage, to the person now shown to be correct by the admissions of the Bank taking advantage of the vexatious orders . In particular to avoid a correcting application in the court, on the true facts of an incorrect quantum of debt, that led to the exposure of a deception allegation, against Government subsidy claims and recipient banks of those subsidies. Exhibited is a submission to the Senate Economics Committee in its inquiry into farmer subsidies and the Bankruptcy Act amendments. The bank concerned identified approximately 50,000 affected FRIOL customers but did not admit that incorrect default interest affected farmers..

Clearly this bank has used the Vexatious proceedings orders of the Commonwealth and Queensland to stifle proper litigation both by the facts of the proceedings and using the granted orders possibly unlawfully. Where the High Court had refused to investigate a quantum of Debt and discovery process now admitted by the same prosecuting bank.

10.4 To establish a realistic outcome to the situation and to avoid the unnecessary embarrassment to Courts involved the vexatious litigant settled on a policy even though he was bankrupt to establish a request for mediation as the remedy after the vexatious orders. This served the purpose above but allowed the Orders now possibly fraudulent to be removed, without a fresh evidence application as such. In every court this was refused even though the Banking Code of Practice and Section 60(2.05) of the Bankruptcy Act 1966 (Cth) may have applied because the Code of Banking Practice is a Commercial Agreement. The Bank objected and the Courts agreed condemning themselves to frauded trial actions on fresh evidence and dating back to original actions in the Supreme Court of Queensland in 2000. This remedy is not applicable now because of the restrictions in the new Commonwealth Legislation dealing with vexatious actions and mediations.

11. Conclusions

As described in the letter to the Attorney General this Bank does not allow the correct use of mediation or arbitration irrespective of its contractual obligations , It uses the court system ;

(i) To control the information it produces to customers through court ordered

discovery.

(ii) By this method and practices it controls the outcome of judgments..

(iii) As stated above the admission of manipulation to default interest, of facilities.

* was announced on 10 November, 2005 and compensation paid to some customers from 28 September 2006, the bank admitting the problem back to 1992, refunding to 1999.

* 1992 was the commencing year of farmer interest subsidies,

* no bank wants to refund to the Government or customers, over charges,

* so the easiest way to complete the "cover up" is to destroy the knowledge; by

* court process, controlled by manipulation of information and removing public admission of the facts, including removal from the Banks' ordinary web site, leaving allegations only.

* where fresh evidence can be controlled, by making opposing litigants vexatious. Attached to the Attorney General's letter are two transcripts where the bank practitioners used the vexatious orders to stifle justice. One (1) by insisting an application to avoid the orders was required , by the court, which was untrue and two (2) where the court was misled by practitioner advancing incorrect facts by remaining mute about the correctness of admitted incorrect bank statements.

* The social impacts from incorrect vexatious orders outweigh prison sentences they are for life and in many cases such as this described, only serve to support incorrect practices, by the prosecuting party.

12. RECOMMENDED INCLUSIONS IN VEXATIOUS LITIGATION LEGISLATION TO SAFEGUARD PUBLIC INTEREST. AND CONTROL, THE MISUSE OF FRESH EVIDENCE.

a. It is submitted that any litigant admitting publicly a corporate culture in its organisation involving credibility can not apply for vexatious orders against another within Australia.

If the period of the admission is relevant to the timing of any litigation against the party making the admission or is defined within the meaning of the Commonwealth Criminal Code 1995 as a corporation operating unlawfully within the themes of its corporate culture, the order should not be made and abandoned immediately by the fact of the admission or Criminal Code definition.

b. That it is a defence to any vexatious order that identified incorrect facts or circumstances adjudicated by any tribunal should be a bar to an application for the order..

c. That in the instance of a Certificate of Debt or other sworn document of moneys owing where the authenticity or truthfulness of the document or contents comes into question, that vexatious proceedings be stayed or abandoned . On evidence of the Certificate of Debt or document being incorrect either in quantum or content including the face of any annexure or exhibit in evidence in any proceeding between the parties, submitted by the applying party. An application for Vexatious Orders by the issuing party to any court is permanently stayed.

d. That in the circumstance of a public admission of incorrect facts affecting any Certificate or Affidavit of Debt, any Vexatious Orders in effect at the time be immediately abandoned and permanently stayed.

e. That pursuant to this Act any person found vexatious under any of the above circumstances against any party has a right to compensation for any losses whatsoever caused by the party or the evidence used to obtain the order or the vexatious order unlawfully applied for and maintained by incorrect facts and evidence.

f. That any party and any representative of any party applying for vexatious orders against any other party where any of the circumstances between "a and d " apply is guilty of an offence to be inserted in the Commonwealth Criminal Code Act 1995.

26. January, 2012.