SUBMISSION

This submission is made to the;

Standing Committee on Legal and Constitutional Affairs.

This Submission will in the main deal with the subjects of:

1. Fraud ,
2. financial abuse,
3. barriers to older Australians accessing legal services, and
4. discrimination.

Submissions. 1. Fraud and Financial Abuse.

(1) By far the most important fraud for older persons is financial institution fraud.

(2) They are disadvantaged because of ;

(a) Competency both mental and physical,

(b) Reliance on other parties including financial advisers,

(c) Current jargon in the language,

(d) Change of legal and accounting processes,

(e) Technological change in industry.

(3) The most vulnerable time for many persons is at the time of collecting their life's savings, either as a superannuant or selling a business.

(4) The most important issue for most self employed is the way they exit their businesses.

(5) There has been a major shift in attitude in recent times to a position where financial institutions believe they have the competence to decide when business operations are viable or not.

(6) This has created a situation where courts and governments accept false decisions that may be only designed to provide profits for these corporations share holders and financial records for executive salaries.

(7) There has been a drive by Government to have the economy increase productivity generally.

(8) This commenced in the eighties and through Hilmer with supply based and inventory control to make items in production and for sale turn around shorter to free up corporate capital and has gradually filtered through to now the labour market reforms.

(9) However the concentration of funds in Australia from this process has caused a loss of objectivity and now the lack of forward planning is coming through as work longer programs.

(10) How did productivity affect business exits and superannuants.

(a) It is accepted that at least one of Australia's major banks and suspected others take the view that if they have money invested in a business immediately the owning entity signals it is willing to sell the bank will provide additional impetus.

Bank Processes to exit the customer at a profit for the bank.

(b) It is also accepted that the bank will use its power and expertise in any way it sees fit to maximise profits. We have just witnessed this in Ireland where a bank rather than support the laws of the country arranged to collect the profits by using its facilities to avoid the Irish, Direct Interest Related Taxation Scheme (DIRT), and collect additional fees and interest from the customer.(Document 1and 1A.)

(c) In Australia the Commonwealth has had several inquiries since 1990 but they have generally fallen by the wayside in delivering changes because of the attitudes of the courts where in Ireland the courts participated in the supervision of the investigations and made judgments.

(d) In Australia one investigation was the " Joint Parliamentary Committee into Corporations and Securities inquiry into "Shadow Ledgers". (Document 2).

(e) The basis of the 'shadow ledger' in the banks system of accounting was formed by a decision of the High Court in 1936 in *Dobbs v National Bank.*

(f) The basis is the bank instead of producing proper records of account can produce a certificate of debt and keeps the record for that account on a 'shadow ledger'. (Document 3) the example produced is a NAB

Memorandum Account document, in reality there is no memorandum account in the persons name.

(g) The bank by this method can produce whatever debt it wishes to the court, mediation or any other entity.

(h) The 'shadow ledger' is a not for value record and can only be produced in the court with certain verifications. However it can be shown the court accepts evidence of debt without enforcing those safeguards.

(i) After the 2000 inquiry the banks were required to mediate with affected customers and I believe one did in limited circumstances.

(j) The courts have not enforced this mediation.

(k) I will provide a circumstance of how this situation works;

i. The bank concerned was allowed to use whatever pressure it saw fit to force a customer to agree to the banks debt eventhough the bank concerned had withheld deposits from the persons account.

ii. In the circumstances the bank extended a Bill Facility for a limited time.

iii. The bank before the Bill Facility expired refused to renew the Bills eventhough fees were paid a suspected breach of the Bills of Exchange Act.

iv. The bank then credited the fees to the persons account six weeks later after refusing interest on the account at the end of the previous month.

v. The bank had to refuse interest because under the Queensland Property Law Act 1974 Sect 96 after accepting interest for a certain period of time, recovery was subject to three months notice.

vi. The bank issued a correct bank statement to the person for the period to the end of June showing these transactions. However three months would have taken the mortgage past the end of that financial year.

vii. Making the statements proceed into another tax year.

viii. The 'shadow ledger' inquiry was in August, 2000 and the case between the parties was in September, 2000.

ix. The judgment was produced by the court in October 2000 and the 'shadow ledger' inquiry reported about a week later.

x. At trial the bank issued a certificate of debt claiming interest for the period it held the deposit to issue the new bills out of the account and for the three months if it collected it refused the interest and if it had accepted the interest a new legal proposition would have occurred.

xi. After the 'shadow ledger' inquiry the Australia Banking Ombudsman issued a Bulletin in December, 2000 describing this application of the 'shadow ledger' concept as misleading and deceptive.

xii. The bank concerned has refused to mediate the issue to this day.

xiii. Instead issuing statements the bank manufactured on the same sheet numbers for the same account three times all being different in content and accounting all having the taxation record endorsement and claiming each one was the legitimate bank statements for the purposes of court process.

xiv. At appeal some six months later after refusing mediation the bank blocked the evidence from coming into the court against a self litigant, that in itself being a breach of legal responsibility by its practitioners.

xv. The bank then sold property of third parties through receivers and agents, knowing the property belonged to third parties and did not put the proceeds to a discovered account of their customer.

xvi. The bank then for the purposes of bankruptcy issued a further 'shadow ledger' not showing the sales of the other parties property.

xvii. At the same time charging interest on that property sale and their customers property sales for about one year until crediting the customers property sale on a 'shadow ledger' to bankrupt the customer.

xviii. The Federal Court refused discovery based on the bank's legal practitioners submissions and the court could not follow the transactions described above and bankrupted the customer.

xix. Before bankruptcy the bank concerned had charged the customer with stealing under the mortgage but as the criminal hearing progressed it was acknowledged by the customers employees that the property of the bank receivers took and sold belonged to the other parties.

xx. The person was acquitted but the bank eventhough it knew the property belonged to the other parties continued in another court to claim the property. The banks legal team putting before the court a judgment they knew to have incorrect facts recognised against the customer's credibility and the court deciding ownership accepted these facts as true.

xxi. Consequently the independent parties lost their property and some their property was sold between the date police dropped the first stealing charges against the customer and the date the customer was recharged by police.

xxii. The customer charged the bank with malicious prosecution and abuse of process the court concerned stated the cases belonged to his bankruptcy trustee, and so he was refused compensation.

xxiii. As part of the process the original sales of the other persons livestock and the false bank statements were recognised by that court.

xxiv. This means that in the Federal Court for bankruptcy, if the discovery had proceeded, the person would not have been bankrupted because of the bank using its contract provisions to hide the sale of other persons property and the fact the contract gave indemnity of recovery costs to the bank and the receivers, encouraged these acts.

xxv. There are now three judgments in existence one showing how the bank misused the original actions and the bankruptcy court, one showing the fresh evidence in the original court and how the Bankruptcy Act stopped the customer from going back to

the original court and one in the High Court saying the provisions of the PJSCCS 'shadow ledger' report was of no evidentiary value, when it identified the mediation procedure and outlined the misuse of 'shadow ledgers' directly applicable to these circumstances.

xxvi. All these problems can be traced back to the community believing banks operate honestly and their accounting is correct at law.

xxvii. Obviously the Government now has to produce legislation that states as soon as a bank statement is seen to be incorrect an equitable liability descends on the institution, equivalent to fraud and that any legal practitioner producing incorrect accounting to the court is liable to imprisonment in the case of a self litigant, knowledge is not necessary, the only requirement being the practitioners ought to have known.

xxviii. That the time limit for such actions be expanded to that applicable to a concealed fraud proposition.

(l) How many older persons could withstand this corruption of the proceeds of their life's work exit?.

(m) As the credit cycle turns this type of situation will continuously be repeated and in fact has been, I am sure many times to date.

(n) Older persons just by the fact they are older lose their credibility and so need special support from financial institutions who have had hundreds of years to make the law they require to protect their interests lawful or otherwise.

11. This situation spells it out clearly that multi national corporations in finance do not necessarily regard their customers or others property and rights with respect and the only safe guard for other parties is legislation.

12. Judge made Law, Legal Ethics and industry responsibility do not compare to dollar profits and executive bonuses. Consequently if the Government does not want to be in the position where it foots the bill for those who exit businesses and are deceived as superannuants, it is necessary to create

responsibilities on those organisations who perpetrate those activities through detecting false accounting and enforcing practical recovery procedures for self represented and untrained persons.

13. Perhaps one of the most helpful ways would be to encourage the tort of unlawfully interfering with business with specific attention to deposit taking entities.

I thank you for the opportunity to make this late submission and attachments.
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L.Freeman.
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