

**SUBMISSION TO: AUSTRALIA'S JUDICIAL SYSTEM, THE ROLE OF JUDGES INQUIRY**

**BY ; THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE**

**EXECUTIVE SUMMARY**

1. This submission is made by [redacted] and relates to litigation since 1998 and the role of judges in the outcomes in Queensland and Commonwealth Jurisdictions.
2. It refers to practices of the Judiciary at Mediation when the judge was at the Bar, as a witness and the behavior of other judges when his evidence may have been discredited by science.
3. The role of the Courts when legislation is not investigated by the Judiciary making decisions that have consequences for a large part of the population.
4. The counsel for the other side at trial has now been discredited by the High Court after an Appeal by the Chief Magistrate of Queensland.
5. Two of the same judges sitting in that appeal sat in this one and some vital factual assertions by later application to other courts were shown to be incorrect.
6. It would appear the misuse of courts and the failure of the judiciary to require ethical standards may have undermined Government Rural Schemes deliveries. So much so that the system was changed 4 times in a short period for such a process and still the states of Victoria, Queensland and New South Wales showed different processes and outcomes as published by the Productivity Commission in their Draft Report into Government Drought Support.

7. This failure by the Judiciary in their Role of Equity decision making in the community has led to many unintended consequences amongst the recipient class.
8. Statements have been made by Senior Judges about the role of Mediation when illegalities occur and how to use mediations, to stop litigation.
9. In some cases banks have stopped in midstream, when knowingly making mistakes, that disadvantage their customers to encourage them to use Government Schemes. Banks have restricted access to the scheme and forced the customer into unviability.
10. One of the important parts of this submission; is the facts surrounding the identifying of bad banking practices and how they disadvantage customers.
11. These practices were identified by the Parliamentary Joint Statutory Committee for Corporations and Securities and their "Shadow Ledgers" Inquiry. The Inquiry identified ways the banks using the process were badly affecting customers. Even when practices were identified in the court, the judiciary right to the High Court ignored the situation.
12. The Customer concerned requested mediation the remedy identified by the inquiry and the bank concerned did not cooperate at all. Issuing further incorrect statements to justify their actions.
13. These points finally being admitted after the litigation had progressed through the Supreme Court of Queensland, Appeal , Bankruptcy Appeal and Annulment. Then the customer was found vexatious in July 2006. But two hearings remained in one he failed to join actions. But in the second the bank confirmed his defence to being vexatious, its failure in actions, to :
  - (i) Discover documents- Bank Statements,
  - (ii) to not discover documents at the correct time but to discover at a later date to the advantage of the bank.
  - (iii) To issue incorrect bank statements
  - (iv) To give incorrect information to the courts.

14. All identified in the 'shadow ledger' process but ignored by the judiciary and the courts.
- (a) Judges use the mortgagee supplied certificates of debt and affidavits and consequently accept them instinctively.
  - (b) When the PJSCCS identified the process as being bad banking the judges had to adjust to the facts. This they refused to do by accepting incorrect facts from practitioners and counsel, where the certificates and supporting document were all incorrect and where the bank concerned had known and issued statements outside of the established law.
  - (c) Continuing in the courts irrespective of an industry defined misleading and deceptive conduct situation to gain an advantage rather than mediate the position.
  - (d) This can only happen with the support of the courts and the judges.
    - (i) Discovery was refused even when requested.
    - (ii) Bank statements stated to be incorrect were accepted in content by the court defining the incorrect statements as correct because of a series of irrelevant entries . Judgments in courts in other jurisdiction between the same parties showed the complaint to be correct.
    - (iii) The bank concerned having their customer made bankrupt, charged him with stealing under mortgages when they had sold the cattle complained of being stolen.
    - (iv) Made him vexatious against themselves when they were being forced to admit in the next hearing they had not provided the proper bank statements and in some accounts any. This gave them an advantage in the courts, in taxation and in evidence for other processes such as reporting to APRA. ASIC, Treasury and the Reserve Bank.
    - (v) After the publishing of their corporate culture they were given the opportunity of admitting it has affected the actions but denied the point.
    - (vi) Clearly thousands upon thousands of customers were affected by the identified culture a complaint to APRA found the bank owing customers a published figure of \$12M in falsely deducted Stamp Duties.
    - (vii) When situations like this occur and the judges do not interpret the law involved for one customer it means the perpetrator is receiving an advantage from its own

fraud, before the court concerned.

(viii) Justice is not being done or seen to be done, by the public.

15. There has been a remarkable situation develop with Drought Subsidies;
- (a) Whilst the Government is abandoning the current scheme for whatever reasons.
  - (b) They have requested a report from the Productivity Commission and part of that report is a Social Impact Assessment..
  - (c) This gives this committee a reasonable opportunity of identifying the social impacts associated with the failure of the courts to enforce statutorily granted subsidies to another industry.
  - (d) The impacts of which have been felt in the community for some time.
  - (e) This can be followed by court cases and complaints to the various Chief Justices and Attorney's General.
  - (f) When it was shown to the [redacted] had advertised a judgment that used incorrect facts, found by another court to be incorrect, and that he should have known they were incorrect. [redacted] was very pleased to have the adviser made vexatious.
  - (g) That judgment raised a method of corrupting interest subsidies to farmers to the benefit of the banks, [redacted] appeared to have done nothing to help Queensland or the Commonwealth find justice or correct the misinterpreted Regulations controlling the scheme.
  - (h) Last year \$660M was handed to bankers in interest subsidies but the productivity commission draft report states *some entitled are left out*, but the banks control who receives subsidy by their input. Obviously they are going to put bank interests first.
  - (i) This can only occur when administrators are relying on misinterpreted use of the legislation. The role of judges in the community is to distinguish the use and interpret the legislative meaning of the law and in particular that scheme, they failed.
  - (j) The fact they have been induced to use the [redacted] cases for guidance means the judges concerned have a responsibility for misinterpreting the law to allow injustice as described in the draft report to continue.

16. In order to obtain Justice complaints were made to the following.
- \* The Chief Justice of Queensland - 3.
  - \* The Attorney General of Qld. - 2 submissions and correspondence.
  - \* The Premier of Qld. 1 submission and preceding correspondence.
  - \* Chief Justice of the Federal Court- 2.
  - \* Commonwealth Attorney General , the Prime Minister and Treasurer, and Minister for Primary Industries all kept informed at the pleasure of Kaye Elson MP for Forde.
- The Attorney General's Office issued the correspondence and they eventually proposed a settlement process after all court hearings and judgments to that time.
- The process under the Banking Code of Practice would have been able to make the situation just for the bank customer but the bank refused.
17. Clearly there is now sufficient material for the committee to consider at its pleasure how judges are allowing injustice, and how self litigants in court process, not being given justice affects the whole of Australian Society.
18. It has been for too long a culture amongst the legal profession and judicial officers generally to disadvantage self litigants. It is recognised that counsel ethics demand truth and high standards and if that was the criteria in this case there would have been no judicial mistakes or Registry problems and no necessity to follow up the problems with the complaint.
19. From the material supplied it will be easy to recognise every one concerned in the complaints procedure was properly briefed and sufficient material advanced.
20. The judiciary complain they require more and more power to deal with modern law. However the right to committee hearings (jury) on fact and fact and law at appeal, were hard won and if the modern society is to permit these to be changed then the law must make it so there can be no mistake.
- \* Appeal to a single judge usually fails because a single judge is very much bound by the notion of maintaining consistency even when it is incorrect.(

21. The Parliament would therefor be justified in considering ;
- (a) the opportunity for Judges decisions, be infected by corporate culture either in the court process and courts generally.
  - (b) whether legal profession ethics are sufficiently developed to permit greater reliance on their integrity.
  - (c) whether cultures from organisations using the courts on a regular basis, infect the system.
  - (d) What the offences judges could commit when sitting and counsel in front of a judge.
  - (e) A charge of negligence is insufficient.
  - (f) The way a judge weights his evidence and any social impacts he may cause when dealing with Acts and Regulations where one party accepts the funds on behalf of another especially in business.
  - (g) If judges will judge other judges behavior. He is my friend culture.
  - (h) Whether judges can accept criticism generally,
  - (i) and self criticism.
  - (j) Whether any change in policy direction of appointing judges will cement the culture already existing or allow dynasties to develop taking the law in its direction.
  - (k) Too much authority for too long is an invitation to temptation and judges are human, even with their ceremonial dress.
22. I wish your committee every success in trying to find ways of furthering justice.
23. I hope this submission will be of value in your deliberations.

19.4.2009.