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The Secretary,
Trade Practices Review,
Department of Treasury,
Longton Crescent,
PARKES. Act. 2600.

July 10th, 2002.

Dear Sir,

WITHOUT PREJUDICE

With reference to the above, during the year 1998 I was informed by a Constituent, Mr. Linton N.C. Freeman of the use of Government Subsidy Schemes by the National Australia Bank (NAB) to force Bank clients into disadvantageous situations. I was also advised that the NAB was using mediation as a process to safeguard themselves from prosecution under sections 51AA and 52 of the Trade Practices Act.

Federal Subsidies were due to Mr. Freeman, through the NAB, under the Rural Adjustment Act - Exceptional Circumstances Provisions administered by the Queensland Rural Adjustment Authority (QRAA).

Attached are a series of documents tables in the Queensland Parliament and an answer from the Minister for Primary Industries as to a Question on the responsibility for assessment of viability of applicants for this subsidy. In Mr. Freeman's situation, the NAB stated Mr. Freeman was unviable in August, 1996 and refused the client an Interest Subsidy on the basis of this assessment. However evidence to hand in the form of Bank documents suggests that Mr. Alder, a bank employee, in response to a Bank request that at the next review date Mr. Freeman increase his payments, was to force Mr. Freeman to sell up. The NAB then supported Mr. Alder's false assessment by 'forcing' Mr. Freeman to sign a Mediation Agreement stating he could no longer seek legal action against the NAB or its employees.

The Ministers answer to a 'Question on Notice' dated November 19th, 2001 states that in cases of viability, the Queensland Rural Adjustment Authority makes the decision and not the bank. However, a facsimile from the QRAA dated September 18th, 1997

to Mr. Freeman states that the outcome from an application for finance had to be finalised with his (Mr. Freeman's) lender.

The NAB on July 8th, 1997 had agreed to finance Mr. Freeman until September 30th 1997, stopping him from receiving an interest subsidy of $54,500. The Ministers answer in Parliament stated that as to November 19th, 2001 *"I understand there have been no instances to date where a banker has not been prepared to commit to 12 months support of an enterprise that has been approved for interest subsidy."* Mr. Freeman's Subsidy approval was dated April, 1997, consequently the NAB required to maintain support until April, 1998.

A Report of the QRAA dated April 24th, 19978 is attached showing Mr. Freeman was granted $54,500 subsidy on that date however the NAB, by challenging viability, refused to accept this money on Mr. Freeman's behalf. One week later, on May 1st, 1997 the NAB demanded a $30,000 payment be made by Mr. Freeman to reduce his overdraft. This meant in reality that the NAB had refused to accept a $54,500 QRAA subsidy on behalf of their client yet demanded $30,000 seven (7) days later. The bank used the demand of the $30,000 to refuse to 'carry' the client for a further 12 months thus calling Mr. Freeman unviable.

The losses shown by Mr. Freeman to enable him to gain his subsidy were $44,500 and, with the QRAA grant of $54,500, he would have been viable within the limits of the QRAA and the NAB as shown in a letter forwarded to me from the NAB dated August, 1998. The QRAA report of April 24th, 1997 gives the details required to substantiate this statement. This means that the NAB, knowing it was required to support Mr. Freeman as shown above for the next twelve months, went into a mediation process on December 4th, 1997, stating that it would not support Mr. Freeman on the basis he was unviable and facilities ceased in October, 1997, contrary to the Minister's statement.

The Mediator advised Mr. Freeman that the NAB held a disproportionate position in relation to legal power – once again inconsistent with the minister's statement. Feeling he had no other alternative, Mr. Freeman signed a Mediation Deed granting the NAB, on the basis of a Clause in the Deed, an assurance that he would not be able to litigate. This document was drawn up by NAB solicitors and states the period of the agreement for facilities was up to April 6th, 1998 (12 months from the date of the Interest Subsidy approval). Attached are the Judgements of the Supreme Court of Queensland and the Court of Appeal. Both rely on the Mediation Deed. It appears that any analysis of facts in either negated (Clause 96 of the Supreme Court Judgement and Clauses 44 and 47 of the Court of Appeal Judgement). Thus it can be shown that the mediation process and the Deed were being used by the NAB to stop future litigation and to prevent farmers from obtaining lawful subsidies using this refusal as a method of pressure that is accepted by the Courts as lawful. This is not the intention of the Legislation involved.

It is my belief that the withholding of Government subsidies as a method of destroying viable businesses, operating lawfully and within legislative guidelines, should be made unconscionable conduct under the Trade Practices Act particularly when dealing the rural situations. I urge your Inquiry to highlight any remedy required to correct this situation.

I am also enclosing an English precedent Loyd v Mansell 1722 and highlight that the methods of fraud shown in this document appear the same as today and need to be addressed with legislation at Trade Practice level. I will, if requested, arrange for a further submission detailing how the frauds in the precedent are present in the Freeman case. The judgements appear to show the Court weighs towards the NAB in each situation creating an advantage for the NAB and an encouragement to continue these procedures.

I would respectfully suggest that as a consumer aid, all contracts including Mediation Deeds when involving the Trade Practices Act in any way, need to allow a cooling off period in any one negotiation, of at least seven (7) days. The pressure being levelled by Banks on their clients, and the disproportionate positions of power necessitates clients have at least this length of time to consider their actions.

The nest part of this case involves the Report on "Shadow Ledgers" and the provision of Bank Statements to Customers. Mr. Freeman's case in the Supreme Court of Queensland went to Court on September 25th, 2000. The Inquiry into Shadow Ledgers was held in August, 2000. Mr. Freeman's Judgement was handed down on October 11th, 2000 and the Report was handed to Parliament shortly after. The Queensland Court of Appeal failed to admit as evidence, or refer to the Report, or allow Affidavits supplied by Mr. Salmon, a contributor to the Report and an Expert Banking Witness, into evidence.

Enclosed is a letter to the Queensland Supreme Court Chief Justice written by Mr. Freeman dealing with this subject and others. In Queensland, Mr. Salmon's evidence states that disclosure by the Banks in litigation and to customers, is withheld. This report shows (and the Banks admit) how disclosure is withheld in litigation and some of the reasons why. Thus the fundamentals of any litigation involving the Banks may be flawed. This is shown in Mr. Freeman's case but is treated (by the Courts) as a "banking procedure" and is not addressed in their Honours Reasons (at 48 of the Court of Appeal Judgement).

I have obtained from Mr. Freeman a copy of the Bank employees' evidence and enclose a copy of Exhibit 4 from the Trial. These appear to show the Bank intending to withhold an interest payment from Mr. Freeman's Account, taking the opportunity to create a Tax Deduction for the NAB [Non Accrual], then writing the Securities down by $600,000 (another Tax Deduction) and issuing a Letter of Demand and Notices purporting to be Certificates of Debt - all being false and in contravention of the Land Act (Qld); the Property Act (Qld); and the Tax Acts.

The point I wish to make is that one withheld payment clearly illustrates that the procedures of the NAB involve these orchestrated results from one payment (not being credited on time) which may not be sufficient to clear the debt but is a clear indication of the Bank's intention to deceive. This simple deception allows the NAB to profit handsomely and disadvantages the client to the extent of allowing the Bank to breach (perhaps fraudulently) agreements with the customer (the NAB's own Mortgage) and breach legislation of the Commonwealth and the State. However, this action appears to be treated in an off-handed way by the Judiciary.

The Trade Practices Act needs to cover such deceptive acts in such a way as to insist the Judiciary take these acts seriously. The disadvantage to customers having moneys withheld from accounts to force them into default is a very basis Consumer 'Breach of Faith' currently being overlooked by the Judiciary. This must cease as it means that any consumer, residential or rural - any Mortgagor - is at risk of this same type of deceptive accounting.

Also attached are Affidavits from Mr. Freeman and Banking Expert, Mr. John Salmon outlining the facts and circumstances of this case to the Bankruptcy State. The failure of the system to cope with the Parliamentary Joint Statutory Committee on Corporations and Securities Report into Shadow Ledgers and the implications to litigants, has been advised in a letter to the Chief Justice of Queensland by Mr. Freeman (copy attached). The Judge in Bankruptcy defined Mr. Salmon's Affidavits as describing the behaviour of the Bank, avoiding the non-disclosure at Trial and other relevant issues.

The problem for Bank Customers, that the Trade Practices Act does not stipulate that evidence of investigating authorities is admissible if taken in a forum covered by the appropriate definition under the Commonwealth Criminal Code for evidentiary acts or in Parliamentary Inquiries requiring similar standards of evidence.

There is no doubt the problem of false evidence to Courts and Customers has been uncovered by this Report and also shown in Mr. Freeman's case. I also contend that the following questions were proven in Mr. Freeman's case namely:

- That the Bank failed to inform rural customers that their debts had been written off;
- That the Bank used a Shadow Ledger System to improperly gain Tax Benefits;
- That the Bank wrote of loans as bad debts while still receiving interest payments to service those debts; and
- That the Bank refused to issue account statements to customers.

It appears that the only way to deal with Banks under Consumer Legislation, whether in complaint or litigation, is to have the Trace Practices Act require the Bank:

- provide Audited Accounts in all such circumstances, providing appropriate penalties and
- A documentary fraud penalty for false documentation.

The above circumstance demonstrates the apparent acceptance by the Courts for such Bank actions which destroy a litigants legal rights. The doctrine of Equity that states *'a person should not profit from their own fraud'* has been put aside in the instance of consumer protection and financial institutions' dealing with small business.

In recognising the methods used by the NAB to manipulate the file and accounts of Mr. Freeman, I am attempting to formulate draft legislation to deal with

a number of the problems uncovered. This bill would deal with Mediation involving financial institutions and the above Equitable Doctrine of Unconscionable Conduct. Once complete, I would be happy to send you a copy if you are interested.

I would request you please investigate these matters and make the appropriate recommendations to Federal Parliament for inclusion in the Trade Practices Legislation as the matter has now become urgent. I note the Report on Shadow Ledgers and the provision of Bank Statements to Customers recommends on pages 10 and 11 at 1.53 that Mediation Services be provided to all affected customers by the Banks. Thus the need is already established in an area recognised for withholding of consumer information and poor consumer practice.

As you would realise, Mr. Freeman's case is arousing a definite public interest and I expect continuing public debate. I am enclosing a copy of a published article from the University of Sydney, Political Economics Department giving an outline of the facts of the Freeman case sufficient for your purposes.

In preparation of these documents and this covering submission, I would acknowledge the assistance of Mr. Freeman. His case has been complex and carried out over a long period of time. He was best placed to prepare those more complex elements of his experience. I also apologise for the extent of documentation forwarded. It appeared however, to best represent the details of this case and its general application to the broader community.

I look forward to the results of your Review.

Kind regards,

Liz Cunningham
Member for Gladstone.

Attached Documents

Parliamentary Speeches	Liz Cunningham
Parliamentary Documents Tabled	Includes QRAA Report of 24.4.97 Minister's Answer - 19.11.2001 QRAA Fax to Freeman 18.9.97 Judgement S 4013/98 . CA 9718/2000 Report on Shadow Ledgers and the Provision of Bank Statements to Customers.
Affidavit of L N C Freeman October 2001	Includes Exceptional Circumstances Guidelines Mediation Deed 4.12.97 Two letters from NAB to Cunningham (July, August 1997) Report on Shadow Ledgers and the Provision of Bank Statements to Customers Letter of Demand, Certificate of Debt
Affidavit of J S Salmon dated 2.07.2001	Includes Write Down and Method of Withholding Deposits
Affidavit of J S Salmon dated 20.7.2001	
Evidence of P. Fuhrman Luck 25.9.2000	
A copy of Exhibit 4 of S 4013/98 29.9.2000	Referred to in Luck's evidence
Sydney University Article	
Case Loyd v Mansell 1722 Perre Will Vol II.	