SUBMISSION ON POLICY ISSUES IDENTIFIED IN THE INTERIM REPORT

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Submission for: My Self
Name of other person, business or organisation:
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Before comments I outline my case the cause of my interest .Much is withheld. The man referred to was myself.
A professional man officially stood down from professional employment 1994
his departure was aggravated having the character of an unfair dismissal
He was notified of a meeting of his his colleagues after and about the circumstance of his departure. He has no knowledge of the content of this discussion except that he was told he would not have to worry about finances.
He became concerned about his employment status when the CES would not allow him to register for unemployment on the advice of his employer.
On the 6/9/94 he was medically retired as permanently disabled
The credit union/ insurance agent and the head office of the insurer were advised of this event by the man. The insurance agent was advised several times. The head office of the insurer was visited at least three times in 1994. None of these visits passed the reception desk. There were at least two telephone conversations from the front desk to a person upstairs in the same building
An investigator claiming to be from the insurer called on the man in 1994 and after investigating the insurer repaid the defaulted sum owing "without prejudice".
an insured loan default and litigation by the credit union/insurance agent against him led to the mortgage and then loss of his home. This litigation proceeded from 1994 for almost four years in which the litigant , the mortgagor, the mortgagor's lawyers and the insurer knew the man was medically retired. The sheriff was so informed before the eviction. Three guards were employed to prevent the man from attending the forced auction of his home.
The lawyer for the mortgagor allowed the mortgage to be witnessed by a person unknown to the mortgagee.
The professional organisation that represented his interests would not advise or finance legal aid to him until 1996. The offer was rescinded in less than a fortnight.
employment records accessed through FOI in 1997 contain documented proof of unconscionable conduct by the employer
In 1994 the man went to Whistleblowers and raised his fears of losing his home. The chair thought that fear groundless but another party at the meeting an ex policeman looked at the documents and saw what the man claimed at the time affirmed, five legal cases to answer. No other person in hundreds of appointments with solicitors, lawyers including legal aid offices and members of state and federal parliaments, ombudsmen and the myriad of regulators and complaint 'mechanisms' inside and outside of the law hanbook ever came close to that agreement with the man's view than that of that single instance of clear judgment. Unfortunately he was not a person of authority, or a lawyer.
No formal resolution was ever suggested to him
In essence this means that the expert opinion is the law has no defence for a disabled person against the actions of a bank (ADI) acting unconscionably over the matter of an insurer refusing to satisfy the contracted cause, after misleadingly paying the earlier defaulted amount that had been almost fully satisfied by payments made by the disabled person.
It means that an ADI can be an agent for an insurance company but have no system of knowing that a person litigated against has a cause for contactual obligations, the best possible contractual reason for the default; and an obvious need for a reasoned and fair .response .
It means that a broker for a mortgage is not statutorily or ethically obliged to inquire of the liigant the circumstance of the cause or the legal justification of the action, or whether the cause was insured and/or satisfied.
Nor is the lawyer similarly obliged. Here is a regulative gap as wide as Sydney Heads.
In 1996 Paul Barry wrote in the SMH of the corruption involving cheating the tax payer out of an amount of 6 billion dollars, several times the "discounted" price of the privatised Commonwealth Bank. At least 100 of the wealthiest members of the legal profession were methodically using the bankruptcy laws to evade taxes, a huge number had paid no tax at all for a decade.
If the law is to be used as a tool for evasion of debts by an entity which is in itself a fiction of the law, then the mechanism of unethical intent is a ghost of a 'diabolical' idea, not the solid reality of an " immortal' organisation that contracted cause, conflict and litigation meet as a person as "it" is described, but a cynical, malevolent contrivance seeking, not justice, but the imprimatur of the court on outcomes that are intentionally the very opposite of the contracted obligation:

The existence and intent of action must reside in the "flesh and blood" that executes "its" drivers as it does in the other party.
The strangled restriction of inexpensive access to finance leads directly to a market of licenced intermediaries none of whom seem obliged to contact the cause or confirm the circumstance for seeking the loan.
What purpose can the broker possibly facilitate?
What is the real use of these intermediaries? They seem to be designed for obfuscation. If not then they have no purpose. They belong to the same list as matchmakers, but they have none of their obligations, nor concerns. Scrapping this role would force the agent for the mortgagor into ethical prescriptions for statutory requirements, removing a role pregnant with misconduct. The obvious answer to the corruption that this role introduces is vertical integration. Unless this commission weighs the substance of this role and can demonstrate a positive outcome for consumers it should be redundant. Let lawyers assume their own liability without a cost to the consumer. Good lawyers will suffer no consequence, the cheats will quickly retreat to safer practice.This culture of sterile statutory workers carrying pieces of paper from one room to another without effect in hives evacuated long ago by the queen bee has no other purpose than to construct the appearance of due diligence while the honey is stolen by the unchallenged misfeasance and misconduct of licensed thieves
With regard to procedural delay, would it be possible for a fund to be established to cope with emergency ongoing repayments, to be repaid to the fund by the party at fault, after the legal decision or some dispute resolution has dampened the energy of the cause for litigation? These requirements should have regulative force with punitive consequences for misfeasance and misconduct and exemplary remedy for unconscionable conduct. Suitable fines for each category should quickly fatten the funds until the activity atrophies, with de-licensing by default the alternative punishment; the only mechanism that really works is punitive where greed is the motivation .
Double indemnity by default is the disease of a corrupt and exploitive financial system; it is a market in misconduct and its' productivity illusionary. That the courts feed this virtually unregulated corruption without questioning the cause of cases is a fundamental fault in the governance of the ethical use of expensive public space, and should alarm the tax payer. A question like is this person insured against the circumstance causing his non-payment:? And/or, is the loan in dispute insured? And/or was the mortgage now in dispute required by a previously unsatisfied contactural obligation? would seem inevitably queries high on any real persons list.
The loading of fees for incidental expenses, 20 cent bridge fees magnified to $20, accompanying clerks charged at 600 % there real wages, legal aid restrictions because lawyers cannot cope with an hourly rate less than $300; the capped rate for legal aid lately is $150. How can the mortgagor informed by breach of privacy and defamation be allowed to add their defence to imagined fears of retribution by adding the cost of three guards to prevent the owner from attending the forced auction of the home he is being evicted from to the losses he has already suffered by their lack of due diligence. I know there would be many retired professionals that would envy working dispute resolutions for much less with superior consequences.
Because of the unchallenged procedures tolerated by the legal profession it is a magnet for corruption and corrupt practices that corrupt the financial services requiring legal processes.
Fair play is not an esoteric concept available only to the agile mind. Its' complexity may be, and that may require delay. But the clear behaviours of educated adults and their well trained children are based on the consensus view and is exhibited before us in our formative years and throughout our lives whatever the poverty of origin or circumstance. That is why when we walk about at night we do not expect to fall into holes dug in the footpath just before dark to that purpose. We share a basic knowledge of what is a good or bad behaviour, and people who do not have it should not have access to positions of trust. Certainly not one where predatory pricing is invisible to the regulator.
A culture is a set of common beliefs, behaviours and expectations. the aberrant response is always destructive. It either weakens the body corporate of social life by parasitism, or it destroys it like an invasive cancer. It has no redeeming positive effect.
Just as in the last 150 years the growth of democracy has seen the privilege of class diminish and access to rights grow in expectation, So these privileges are often seen in the light of exposed practices as camouflage for unjustified obligations. Once doffing your cap was a necessary regard for unnecessary people but now flits between deference and 'taking the mickey' ; It is the strangeness of our financial system that as Brahmin and Untouchables are swallowed in the modernisation of INDIA they are recreated in the fee structures and culture of Australian Finance. This is not a contagion justice can afford in our legal processes.
The culture of inaction by regulators has incubated the expansion of corruption in the financial service. I suspect that privatisation and the massive profits found there by inside traders and their lawyers placed blinkers on the regulators by default. The treasurer of one state wrote of 'snouts in the trough'. During this period of regulative inaction Banks lined up like pirates for an island anywhere offshore, preferably the Caribbean. Those who hide their bankbooks behind their bibles sang the praises of the un-holy trinity, Swiss bank accounts, offshore holding companies and double book keeping. Almost all the major financial crises since the oil emergency of 1973 has emanated from monetary policy and the corruption of regulative governance as a consequence of privatisation. The enormous productivity gains of technology, the internet, the mobile hand held computer and communicator, the paperless economy and the fractured nature of casual round the clock employment have far outstripped the damage done by the privatisation effect which in its establishment was rushed, often premature and has left the inheritance of the assets to those who least need it while vast numbers of people had no opportunity to share in the windfall. Consequently we are living in an age where the appearance of the commons relinquished is apparent but not real. Were it not so then the Commonwealth bank would

have been offered as shares to all those groups so often ignored in share offers. At the time the Commonwealth bank was privatised it was for a ridiculously low price in relation to its potential earning capacity. Here was an opportunity for the Commonwealth Bank shares to be gifted in the first instance in a just proportion to disadvantaged groups of people inversely equal to their economic status. How many Queensland aboriginals who spent their childhood being cheated out of an education by a government that spent on their school education a quarter of the education budget spent on the average student, also became shareholders of the privatised Commonwealth Bank?How could the effect of a relatively small gift of a four to one "mums and dads" share offer to disadvantaged indigenous Australians possibly effect the trading outcomes of this wealth factory? The same could be said for widows with children, permanently disabled pensioners, and other disadvantage groups. Instead the bank was offered to 'interested mums and dads', the lions share going to the preferred institutional investors a plethora of banks and superannuation funds, in other words to the already advantaged was gifted the greater part of what was essentially the written down value to all. Here is the apparent giving back of the commons, but an actual transfer of wealth from the most needy to the most greedy by default. The legacy of privatisation has been the huge growth in executive salaries and rewards that are unrelated to real productivity gains ending with the farcical saving of the actors most at fault by the taxpayers in the capitol of capitalism itself. Having seen the emporer naked, we allow the paradox of not requiring the relinquished crown, of not demanding it as part payment for the reconstruction that must replace the damage consequent to the actions this commission has at it's focus. The legacy of over compensated executives and benefits that have no correspondence to performance or duty as are required by public sentiment and the satisfaction of shareholders, has left our legal jurisdiction wanting; confused and unlearned in this challenging, fast changing , environment. In 1996 Paul Barry wrote a devastating account of the legal industry and their role in tax evasion calculated at a little less than six billion dollars. This was some multiples more than the privatisation of the the Commonwealth Bank in the same decade. At least 100 of the richest lawyers were using the bankruptcy law to repeatedly' cheat the tax department of debts the magnitude of harbour unit values. Mr. Barry's confirmation of my experiences that the lack of regulative oversight was endemic and has spawned a culture of corruption in legal processes, won him the Walkley award . The courts have responded with a white flag, surrendering a millennia of rights without either understanding the how , the why or the what? How can a financial sector regulated by corrupt legal procedures not become corrupted itself.

It is more than envy of success that defines the community attitude to the law. Money and it's direction are the substance of most legal processes. You cannot separate the law and the economy. They are both heavily dependent on data and communication.

The impasse of our legal culture is the problem of data. In the virtual reality it constructs a problem to test the ownership of ideas and their economy. The problem of data is we cannot define the boundaries of ownership or currency 20 years ago it was obvious that the power of the internet was it's ability to say without fear of retribution"the emperor has no clothes", to unlock the drawers of bureaucracy, to quickly and inexpensively resolve conflict, and to grant access to every mind that seeks it the necessary knowledge to make life better. Within the last two decades it has fulfilled this promise beyond imagination and resisted the power of authority to contain it.

In 1998 the intent of authority was to contain it in an economic model that constrained it to markets and marketers and inside traders. The same old barriers to knowledge that in the past were necessarily excused by circumstance could now be accessed instantly , without travel, inexpensively, without intermediaries. and effectively without the restrictions of local causes, without censorship.

The delight of scholars in shared wisdom as the cause of more debate can also be the source of a jealous protection of privilege. The market model would have constrained the flow of data to profit , filters and delay, reducing it,s effectiveness to the marketing ambitions of the appetites of the inside trader and the IT 'savvy'. Knowledge would become a commodity and not a right. This would have crippled the web's facility and denied its creative potential to all but those licenced creatures so beloved of historical privilege that they must have the ideas of others as their own and use them to that end.

The economy of this resource demands a universal ethic, but it's efficient mining requires breach of privacy. It cannot be a market without corruption of the law.

In the atmosphere of the greatest peacetime privatisation of publicly owned assets and the accompanying devolution of regulative oversight to self governing sanction the courts have tolerated theft and misrepresentation, breaches of privacy and a mountain of abuses all virtually sanctioned by existing procedures because regulators are unable to decide the jurisdictional boundaries or unwilling to translate them to the virtual world of the internet. Here is a dilemma drawn from two worlds; the old world of history and evolution we are constrained to by immediate location where law evolved, and the virtual world of immediate data, and imminent probabilitys and their infinite possibilities.

Only the fairer edicts or the most popular decrees survive the generations. Those laws that in best sympathy with our behaviours and the enlightened knowledge of their causes are left to govern us. Thus the ultimate arbiter of equity in our world, or at least of democracies, is the sympathy of the common people. in this world the tool of equity is the sharp end of justice; no other definition can constrain the behaviours of a free people but the consensus of the common people; the cultural expectation of democracy's participants is a just outcome; the tipping scale of intent found in the weight only of argument and action: This distillation of intent from the sieve of circumstance of word and action is the limit of justice, and the ultimate judgment of the court rests upon this intent. The intent however does not come complete from an abstraction of the law, but from the fit it makes with that common expectation and behaviour; it's roots are in the sympathy of our human natures.

Against the weight of this intent nothing of the virtual world of the internet has any purchase. Here are the horns of the

dilemma. The failure of the regulator to enforce sanctions in the real world, subject to the facility to enhance corruption made possible by unregulated virtual procedures for which there is no jurisdictional agreement. Intent for the real world is nothing to the other, legally or virtually. We are travelling to the past again not via Einstein or Dr. Who, but by a yellow brick road, paved by Asic and Apra, and bit coin.
What is needed is a specific filter for complaint mechanisms that could have tied the experience to the cause if not quickly because of the complex risk management requirements, at least efficiently and connecting specific solutions to a path of least damage to the client. These algorithm's are easily constructed. If they existed in a formal system the filters, the complaints, and whistleblower warnings could be integrated, weighted and resolved without passage through a corrupt process that is intended to profit the wrongdoer, the lawyer and the litigant and leaves an unjust outcome and a victim exhausted of will or means. Security, identity concerns, and safety mechanisms can be inserted at all levels of such an algorithm. If the industry is bound to a statement of values reflecting community standards, it is the first entity that should be created to establish that vision. because I could find no-one in the statutory regulators of government who seemed to understand or recognise the statements that are the terms of reference of this commission when I first wrote about all but one of the terms of reference in the same depth and passion as the commissioner has demonstrated twenty four years ago.
You are right commissioner, we do not need new laws, we need the old laws to be recognised, understood and followed. And the pre-requisite for lawyers and the execution of litigation for insured and uninsured financial matters by agents, be at least a pass in ethical theory, ethical practice and the cultural norms. I did not find any person in regulative or complaint mechanism roles apart from one who recognised the principles of the commissons terms of reference or gave a hoot about them.

Nothing corrupts the economy more than corrupt legal process.
Nothing corrupts society more than a corrupot economy
Nothing alienates the victim of a corrupt financial system more than to be the victim of unconscionable conduct.
All of these things are endemic to a corrupt culture
Ian Harrison.
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PS sorry, not enough time to check the spelling or edit.