

SUPPORTIVE RESIDENTS & CARERS ACTION GROUP INC

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Consumer Affairs Victoria A0038178T;
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*"Just three years since opening, the agency has already returned more than **\$4 billion** to people who were cheated, and has helped tens of thousands of consumers resolve complaints": Senator Elizabeth Warren, Jul 28, 2014*

Mr Dargaville

Financial Ombudsman Service

Ltd by Guarantee by Banks.

Fax: 03 9613 6399

mdargaville@fos.org.au

Your review of your arbitration clauses that 'side with global banks'.

Abuse of Arbitration Schemes to "Stack the Deck":

We note Fos' ideas seem very similar to those in collusive meetings by representatives of 80% of 'bankers' as alleged by US Prosecutors, ie depriving lay people of assistance if ...'independent' Fos disagrees with the adviser, ...or advisers and Police cannot obtain documents which the banks 'lost' ...being documents you could simply ask the banks for. Little wonder Senators and the public want a Royal Commission. We suggest that your 'Inquisitorial System' draft genuine inquisitorial processes like those used in countries with the genuine Inquisitorial System, ie the accused has to produce documents. Otherwise your scheme looks like it is "stacking the deck".

OF
LESLIE C. OVERTON
DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

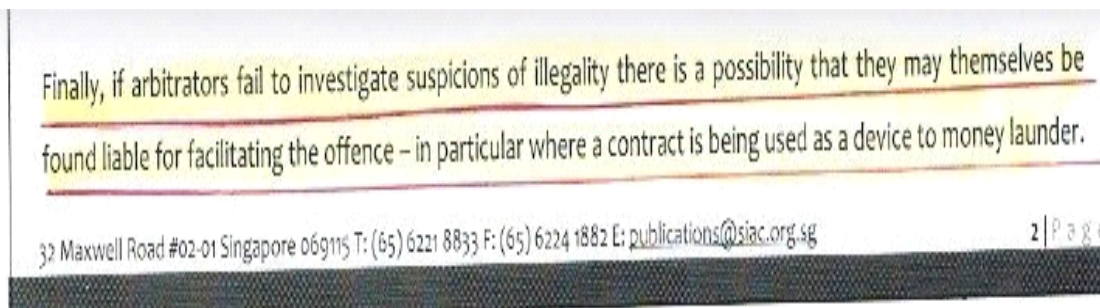
HEARING ON
“MANDATORY ARBITRATION REQUIREMENTS”

PRESENTED ON
DECEMBER 17, 2013

The United States argued that under American Express’ approach, companies could use a combination of class-action and joinder prohibitions, confidentiality requirements, and other procedural restrictions to increase the likelihood that a plaintiff’s cost of arbitration would exceed its projected recovery. Companies could then require acceptance of unwieldy procedures as a condition of doing business, getting hired, or purchasing products. That would deprive a range of federal statutes of their intended deterrent and compensatory effect, without promoting the actual use of arbitration as an alternative means of dispute resolution.

Facilitation and cover ups of international crimes:

As you will be aware from cases where rogues 'duck into Privilege':



and

Bribery laws with international reach

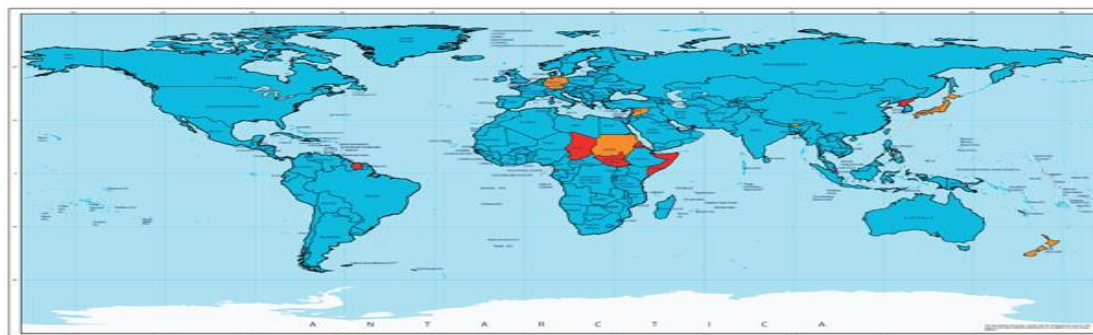
With the rapidly changing legal landscape in which governments and enforcers are increasingly cracking down on corrupt practices and a general international movement towards a "zero tolerance" of corruption, it is becoming more and more apparent that arbitrators must address indications of corrupt practices when these occur. Also, the extra-jurisdictional reach of certain anti-corruption legislation – notably the US Foreign Corrupt Practice Act 1977 ("FCPA") and the UK Bribery Act 2010 - means even arbitrators acting outside the relevant jurisdictions may need to be alive to the possibility of criminal offences being committed under those laws. Under the UK Bribery Act, for example, offences can be committed outside the UK if the corrupt act is by a UK national or a company incorporated in the UK, or by a company not incorporated in the UK but which carries on part of its business in the UK.

We think your review should remove Privilege/Without Prejudice and ensure that Fos can assist Australian and/or international law enforcement with investigations.

Systemic Problems:

United Nations Convention against Corruption

Signature and Ratification Status as of 2 April 2014



Fos collect claims of frauds, forgeries, and documents that are part of dark pool packages of toxic products sold internationally to foreign government agencies. We agree with the Senate Committee's view that your systemic reports to ASIC should better sub-classify the range of potential conduct that could be criminal in some parts of the world rather than, in Fos' view, 'maladministration', 'human error', misapplied contractual terms, or 'programming errors'.

Some prosecutors go through lots of evidence, eg the 25,000,000 loan files in US v Citi which, last week, fined them 96% of the Q1 profit or the 'several million' Australian pages obtained by a foreign government prosecutor for a trial that Fos knows about. A better data system could be beneficial.

Case 1:11-md-02221-NGG-RER Document 306-1 Filed 01/07/14 Page 17 of 29 PageID #: 13912

along with several million pages of Amex-Australia documents, the plaintiffs assembled a detailed record of the Australia surcharge experience that is unavailable anywhere else in the



Clearly it would be wise to collate Systemic Problems.

We also refer to the United Nations Convention against Corruption, articles in the international media about Australia, your status as an agent of the Commonwealth Government's ASIC, and the outpouring in the Senate about you downgrading forgeries and frauds as mere paperwork 'mal administration'. We think your review should clear up how much intelligence your people personally have that could be useful to foreign prosecutors.

The Civil Illegality Defence:

Also, you should clarify how much contract law illegality you need before you will apply the illegality defence - if only to ensure that people better understand that Fos is not facilitating offences by 'siding with the banks'.

In Safeway Stores v Twigger for example, collusion to fix prices was enough 'maladministration' to prevent a company from suing its own rogue executives for the damage they caused when 'trade practices' fines were imposed - Fos should enshrine "Maladministration" as enough Ex Turpi Causa Non Oritur Actio to stop the civil offender from profiting.

However somehow Fos needs something more than forgeries, frauds, and obtaining a financial advantage by deception by staff who banks go on to reward with bonuses and who are humiliated at staff meetings if they do not get loans approved. Fos should enshrine evidentiary rules, such as rules that are used overseas in class prosecutions.

We think Banks should be required to claw back bonuses, including those of bank directors. Legislation to that effect is underway in the UK. That way the Banks can 'get refunds' from their staff (unless

We object to your 'discretion' to disallow 'legal' representatives on the ground that they do not have bank documents, eg that even Police cannot get from banks. It looks like you are stacking the deck while the Senate Committee's chairs are still warm.

After all, you know full well that banks assert 'privilege' or feign 'losing' evidence, so we say 'Fos should be the genuine Inquisitorial System that it says it is - by having the accused produce the evidence'.

We suggest that you require banks to produce documents. They have them in law firms - like your counsel's former employer whom we briefed - with Titles and unregistered (equitable) Transfers of Mortgage to foreign banks.

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR S/P) - insert only <u>one</u> secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME				
FEDERAL RESERVE BANK OF NEW YORK				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
33 Liberty Street		New York		10045 UNITED STATES
4. This FINANCING STATEMENT covers the following collateral:				
All accounts, chattel paper, inventory, equipment, instruments, investment property, general intangibles, documents, and all assets, now owned or hereafter acquired, that are identified, from time to time, by Debtor to Secured Party in writing, by electronic means (including by CD-ROM) or by any other means agreed by the parties, as collateral securing the obligations of Debtor to Secured Party under a written agreement between the parties, and all proceeds thereof; and all collateral, guarantees, letters of credit, surety bonds and other supporting obligations pertaining to the foregoing, and all proceeds thereof.				

Account status (either Open or Closed section must be completed)

Open (forward date from
last statement on ASSIST)

1 / 1

Closed

or (date account closed)

15/12/2019

Statement/s details (please provide statement/s issue date wherever practicable)

At least one panel must be complete

Account number	Ex SBV account number	Issue date of statement/s requested	Opening and closing statement/s request From To
12345678901234567890	12345678901234567890	15/12/2019	15/12/2019
12345678901234567890	12345678901234567890	15/12/2019	15/12/2019
12345678901234567890	12345678901234567890	15/12/2019	15/12/2019

Charging details – Refer CI 6/29 (83 Balmain Street Records Centre will pass entries)

Joint customer's
account number

12345678901234567890

or

Debit branch general ledger account

'Duplicate Statements Fee Forgone' 711

Fee waiver code (01) must be completed for all fees waived)

1. Invalid client (other than initial business)

2. Approved government exemption

3. Bank

4. Bank use

5. Original not received

6. Other

Debit 12/12/2019

Transfer of mortgage, charge or lease

Section 45(1) Transfer of Land Act 1958

Privacy Collection Statement

The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Lodged by

Name:

Phone:

Address:

Reference:

Customer Code:

The transferor transfers to the transferee the mortgage/charge/lease (exclude whichever is not applicable) for the consideration expressed subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer.

Land: (volume and folio)

Mortgage, Charge or
Lease No.:

Consideration:

Transferor: *(full name) X Bank*

Transferee: *(full name and address including postcode) Y Bank*

Date:

Signature by the transferor
in the presence of:

Signature by the transferee
in the presence of:

You claim to be an Inquisitorial System - yet you don't require banks to refute allegations with proof as is the case in real Inquisitorial Systems.

Fos should stop impersonating genuine courts and genuine ombudsmen. You are a commercial arbitration scheme run by bank-directors and you stack the deck.

You apply your own 'decisions' rather than Court decisions: and disregard the views of police who inform you they believe fraud was committed. No wonder international media question Australia's hypocritical 'do as we say, not as we do' attitude to crime and graft.

We believe Fos, as 'judge-investigator' should stop discussing the downgrading of 'findings' and 'sentences' to 'you lost the evidence' 'crimes' with the 'accused'.

Indeed we think you should draft clauses that say you can rely on Police when they write (as they have on your files) that they believe on the civil standard that a criminal fraud was committed. This might

help the public see that there is a real point when Fos fobs them off to Police on a goose chase (rather than Fos asking 'the accused' to produce the evidence).

Fos should publish findings of facts and explain your legal opinions, or else the public think - as per evidence at the Senate Committee - you are covering up misdeeds.

As some countries have genuine Inquisitorial Courts (and firing squads), we think Fos should go to Vietnam or Indonesia to study the Inquisitorial System.



We believe Fos management has a duty to all its directors of all its bank-nominees' member banks. Siding with the banks could have ramifications that go all the way to Headquarters and Audit Committees, regulators like the SEC and Stockholder Meetings.



June 9, 2014, 6:01 PM ET

FCPA Hits Companies Harder if They Committed Fraud

By

Samuel Rubinfeld

Wall Street Journal

It's more than just the bribery.

*A study of U.S. Foreign Corrupt Practices Act enforcement issued by the Searle Civil Justice Institute, a research division of The Law & Economics Center at George Mason University School of Law found public companies lost an average of 2.9% of market capitalization as a result of an investigation. But, the study found, the number masks an important distinction: Companies charged with bribery only suffered an initial 1.5% loss, while those charged with bribery and financial fraud saw a initial drop of **16.3% in market cap.***

Eg: there was a 6.5% drop when 'Fos file secrets' became known years later.

1.3610 +0.00% 17,068.26 +0.54% 1,985.44 +0.55% 4,485.93 +0.63% 3.48

Citi Sees Negatives For American Express With DOJ Lawsuit (AXP)

Roger Nachman (/users/roger-nachman), Benzinga Staff Writer October 05, 2010 7:52 AM

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/axp.jpg)

Citi Investment Research sees potential negatives for American Express [Company](#) (NYSE: [AXP \(/stock/axp#NYSE\)](#)), after the Department of Justice filed a lawsuit against the company. It has a \$55 price target on shares, to go along with its Buy/High Risk rating.

In the research note, Citi writes, "AXP's shares were down 6.5% on the DOJ news as investors have little tolerance for regulatory issues and were caught off guard. We can't rule out some near-term carry through on the downside (<3%) but we expect valuation to provide good support and fundamentals to ultimately drive the shares higher. Clearly the DOJ news is a negative and puts an overhang on the stock but the bear-case business risk needs to be kept in perspective and this could play out over several years. In addition, our sense is that AXP is poised for healthy Q3 results on resilient spending (Oct 21st). Reiterate our Buy rating for this high quality global franchise."

Shares of AXP lost \$2.73 to close at \$39.05, a loss of 6.5%.

"Were caught off guard" and "Little tolerate for regulatory issues" are the sort of things you members could suffer if your 'siding with the banks' results in Royal Commissions or in the Government forming task forces like the ones that fined Citigroup \$7 billion last week.

Fos staff should be careful when dealing with global banks under global laws that apply to Australian-based subsidiaries. Are your competancies enough?

Conclusion: Fos as an agent of bank-members and ASIC has a duty to its Banks Headquarers and Stockholders, and Fos must not be an embarrassment to Australia's international reputation.

Yours,

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