Submission On
Misleading Statements

Made To

The House Of Representatives Standing Committee On Banking, Finance and Public Administration

“The evidence you give before the inquiry is considered to be part of the proceedings of the Parliament and, accordingly, I advise you that any attempt to deliberately mislead the Committee is regarded as contempt of that Parliament” - warning given by Stephen Martin (Inaugural Chairman of the Committee) to witnesses prior to them giving evidence.

26 October 1995

Mr Ian Fisher
Chairman
Foreign Currency Borrowers Association
PO Box 120
WINGHAM NSW 2429

Dear Mr Fisher

INQUIRY INTO BANKING AND DEREGULATION AND THE REVIEW OF CERTAIN RECOMMENDATIONS OF THE BANKING INQUIRY REPORT

At a recent meeting of the Standing Committee on Banking, Finance and Public Administration, Mr Ray Braithwaite MP raised concerns expressed to him by the Foreign Currency Borrowers Association that the Committee may have been misled in the course of conducting the 1991 inquiry into banking and deregulation and the subsequent review of certain recommendations of the banking inquiry report.

A witness giving false evidence before a committee may be found to be in contempt of the House and the Committee takes such matters very seriously.

Accordingly, the Committee resolved that I should contact the Foreign Borrowers Association and invite your organisation to substantiate, in writing, the claim that the Committee was misled by particular witnesses or organisations in the course of the conduct of the above inquiries.

Once the Committee has received the Association's written comments it will consider that material, including any further action which might be warranted with regard to this matter.

You should note, however, that the Committee would be obliged to provide any individuals or organisations who are alleged to have misled the Committee with an opportunity to respond to those claims.

If you wish to discuss this matter, the Committee Secretary, Christopher Paterson, can be contacted on (06) 277 2319.

Yours sincerely

DAVID SIMMONS MP
Chairman

Friday 30th August, 1996

The Chairman
Mr. David Hawker, MP.
House of Representatives
Standing Committee on Finance Institutions and Public Administration
Parliament House. Canberra. ACT. 2600

Dear Sir,

I acknowledge receipt of the letter of 26th October, 1995 written to us from the Standing Committee On Banking signed by Mr. David Simmons, the past chairman. We have been asked to substantiate in writing our claim that the Committee has been misled by particular witnesses or organisations in the course of the conduct of its inquiries.

Most of this material has already been brought to the attention of your previous Committee and Parliament but is now collated and represented with the Committee's request.

Preparation of this submission has been an enormously difficult and time consuming task for voluntary officers who are still struggling to recover from the financial ruin caused by their foreign currency loans. We ask how much more damaging evidence has to be presented before our Parliamentarians will act? It is not that there is a lack of knowledge. Your own newsletter, "Dollars and Sense", Issue No 3 of June 1991 admits the problem, and yet, we are still awaiting some action. **(Enclosures 1D, 1l, 1j, 1K, 1L)**

We have become thoroughly disillusioned with the Martin Inquiry, particularly in regard to its investigation into the Banking industry and its malpractices **(Enclosure 1J)**. The previous Committee refused our request to have two of our representatives (McLennan and Moser) assist the Inquiry. Yet the Committee accepted representatives from the banks. We have been frustrated at every move to receive justice.

FCBA reiterates its call for a **ROYAL COMMISSION** into the practices of the major Banks, in particular Westpac and the Commonwealth Bank by their marketing of foreign currency loans and the devastating results suffered by their borrowers.

The FCBA spent, in good faith, a considerable amount of time and money submitting to the previous Banking Inquiry a SUPPLEMENTARY SUBMISSION IN BOOKLET FORM in early 1992 **(Enclosure 1)**. This submission consisted of a detailed rebuttal commenting on ninety-nine (99) instances of the findings and conclusions contained in chapter 17 of the publication "A Pocket Full of Change". We doubt whether the previous Committee even looked at it in depth as receipt was never acknowledged.

However members of the FCBA maintain their confidence in Australia's democratic procedures and in particular our capacity as a nation to recognise and rectify injustice.

In this context we remember the pre-election statement of our Prime Minister, Mr Howard, when he promised:

> **"an equal dispensation of justice for all Australians".**

As I observed at the completion of the FCBA interview with the previous Committee on the 11th May, 1992:

"As you probably noticed we are still here. We have not gone away."

The issues that we continue to raise are still very relevant. We think that it is imperative that committee members fully read our oral evidence as contained in Enclosure 18.

For these reasons FCBA welcomes the opportunity to respond to the Committees request and we will of course be available to assist in all of the Committee's deliberations.

I attach the detailed response from FCBA in which evidence is provided to substantiate our claim that the Committee has been misled by particular witnesses or organisations in the course of the conduct of its inquiries.

Note: Pages 5 to 21 inclusive, of this document, make reference to 30 enclosures which are itemised on pages 22 and 23. All enclosures are contained in three large ring binders, a copy of which is in the possession of the Secretary of your Committee.

Yours faithfully

Ian Fisher
Chairman, Foreign Currency Borrowers Association.

SECTION 1.

The banks (particularly Westpac and CBA) repeatedly insisted that their marketing of FCLs was competition driven.

Without any shadow of doubt you were MISLED. ***(Enclosures 4, 5, 7.)*** There is ample evidence that customers were poached from other banks, that advertising was widespread ***(Enclosure 2D.)***, and that the banks tried to talk customers into taking FCLs. In the case of Westpac their marketing was so successful that it represented AUD $1.2 billion, ie. 6.6% of their 1985 year end loans. Albert Look *(Westpac's Queensland Manager International Business Development)* was given targets to meet. He was very successful with actual achievements, exceeding all expectations so much so that his targets were revised upwards. ***(Enclosures 1H, 2, 2A, 2B, 2C, 6, 24.)***

L.E. Taylor, Chief Solicitor and General Counsel for the CBA submitted to D. Elder *(Secretary, House of Representatives Standing Committee on Banking, Finance and Public Administration)* a submission dated 14th August, 1992 that included a list of 1987 advertisements placed in various newspapers. ***(Page S745. Enclosures 2D, 2E.)*** Despite many borrowers losing heavily in foreign currency transactions and seeking help from the Bank, CBA was still marketing the loans.

Enclosed are copies of a number of advertisements put out by banks during the 1982 to 1985 period. You may form your own conclusion. ***(Enclosures 2C, 2D, 2E.)*** However common sense would dictate that if a bank was not anxious to sell FCLs, then why advertise at all, and why would Westpac and the CBA aggressively market FCLs as indicated in Section 2 of this document?

SECTION 2.

The CBA and Westpac maintain their policy has always been not to aggressively market foreign currency loans. (See CBA evidence 22/5/91)

You were again MISLED. Please look at documents G1, G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15, G22, G29, G36, G40, G41, G43, G45, G46, G47, G50, G73B, G92d and G139. ***(Enclosures 2D, 2E, 3, 3A.)*** Pay particular attention to G7, G10, G29, G40, G73B, G92d and the CBA Manual, G139. Document G40 was written by R.G. Wilkie *(Manager International Division CTB Head Office)* to the Chief State Manager of Western Australia on 20th June, 1984 (six months after de-regulation). It comments about its competitors, withholding tax, and indicates how money was raised by way of currency swaps in order to circumvent withholding tax and Reserve Bank regulations. **This is a most damning document. Please read it.** For further expert comment within the above mentioned "G" documents, please refer to Enclosure 3A by J.R. McLennan, entitled Comments On CTB "G" List. These documents were tabled with the Committee by McLennan under privilege.

The CBA "G" list of documents was specifically referred to in the Federal Court of Australia - Full Bench Appeal, Quade and Others -v- Commonwealth Bank of Australia, wherein relief was granted by way of a new trial in view of the fact that the Commonwealth Bank "G" documents were not discovered in the lower court trial. ***(Enclosure 15.)***

The following is a paragraph lifted from a memo written by Westpac's Albert Look *(Queensland Manager - International Business* ***Development)*** to his State Manager's Office after Look attended a seminar in relation to FCLs conducted by Business Economics (Australia) Pty Ltd in Brisbane on 30th April, 1985:

"Commonwealth Bank of Australia took a rather aggressive stance in their presentation and marketing through the presenter and five officers circulating and handing out business cards". ***(Enclosure 4.)***

Westpac's Global Treasury Unit's Manager - Special Duties, Clive Alexander, describes in paragraph "X" of his affidavit of the 25th September, 1992, his attendance in 1983 of two International Business Managers Conferences. He points out that Mr R. Ramke *(Westpac's Queensland Manager of International Business)* outlined to the conference statistical details of his divisions performance in the area of foreign currency loans, clearly demonstrating that the promotion of offshore loans had degenerated into a contest between various Australian Divisions, particularly Queensland and New South Wales. ***(Enclosure 4A.)***

SECTION 3.

Both the CBA and Westpac maintain, the foreign

exchange loans were booked in Singapore and it was that branch which established the bench- mark interest rate and client borrowing rates for each drawdown/roll-over period.

The Borrowers have pressed the banks for documentary evidence to no avail. Many discovery documents indicate that the rates were set in Sydney and that the Singapore letterheads indicate a Singapore "branch". This would be like dealing with any local branch of that bank in this country and that the use of Singapore was for ulterior motives to evade Australian rates of taxation as indicated in the "G" documents mentioned in Section 2. of this document. ***(Enclosures 3, 3A, 10A, 15, 16.)***

Discovered telex documents from Singapore to the Commonwealth Bank's Sydney Office repeatedly ask "**Would you please advise AUD equivalent ASAP**. One discovered document indicates "CBA Sydney instructed Singapore on exchange rate to be used 2 days before the value date for drawdown". From this it becomes quite obvious from where the rates were set and from where the loans were controlled and puts evidence given to your Committee by the Commonwealth Bank's AJ Brown on 22/5/91 very much in question (page 2148), and further appears to confirm the existence of a plan to exploit borrowers. ***(Enclosure 27)***

SECTION 4.

THE LEGAL SYSTEM. "The legal system is the appropriate forum for individual borrowers to ventilate their claims". (CBA evidence 22/5/91)

And why wouldn't they say this! Because of the overall financial power of the banks, they can discourage most people from even contemplating court action, and with those borrowers who do become involved in litigation, the banks use every tactic to run them out of money and deny them justice. The ultimate limit of their intimidatory tactics is exemplified in the Drambo Pty Limited -v- Westpac Banking Corporation, Federal Court action Brisbane, G92 of 1991. There were numerous directional hearings prior to the commencement of the trial hearing on the 11th September, 1995. Westpac's instructing solicitors, Feez Ruthning raised a letter dated 30th March, 1995 addressed to Drambo's instructing solicitors, Paul Lynch & Co. This letter informed them that they would seek to recover costs from those companies or person who have funded Drambo's litigation. It is apparent in this case that Feez Ruthning was attempting to utilize the power position of it's client, Westpac.

During the trial, Feez Ruthning's solicitor attending, Richard Gaven, authorised a letter dated 1st November, 1995 to be despatched to certain people and companies informing them that they may have been involved in funding the Drambo litigation. The fact was that they did not know and it is apparent that confidential information in Westpac's possession was put into the public arena.

The ultimate aim of these tactics was to force Drambo into an early surrender. The implied threat was very real and Bettie A. McNee, Westpac's Group Secretary and General Counsel found it necessary to address letters under the date 13th November, 1995 to the recipients of this threatening correspondence. In her letter she advised that all previous advices were not to be construed as a threat and that the bank proposed not to "exercise their legal right" to recover costs in this circumstance.

It is not uncommon for banks to bankrupt plaintiffs in an endeavour to halt further litigation. Pertinent information concerning the Drambo action can be found by referring to copies of the above mentioned

letters and the newspaper articles. ***(Enclosures 28, 28A.)*** One would have thought that this typically un-Australian attitude, whereby the under-dog is kicked, would have been allowed to rest at that point in time.

When this information is absorbed and taking into consideration what follows in this submission, Westpac would have difficulty defending the allegation that they are guilty of unconscionable conduct and fraudulent behaviour. It would appear that Westpac's solicitors, Feez Ruthning, may have breached professional conduct standards. ***(Enclosures 28, 28A.)***

In the CBA's submission in May 1991, ***(Enclosure 27A. Pages S2519 and S2520)***, they quote Justice Terry Cole. Cole sat on the Ralik case and the Carrati case (that we are aware of) before sitting on the Countryside case. On the second day of this latter case, Cole made the remark "as long as you are aware of where this is all leading because it seems to me it is a fairly inevitable path". You wouldn't have to be a Rhodes Scholar to get the message that you should fold up the case right then. Out of the blue on the seventh day he made the statement **"I have not the slightest idea what managing a foreign currency loan is"**. A little later on the same day he remarked, **"Really, just a matter of looking at the exchange rate is it not?"**. Justice Cole appears to have had no understanding of FCL matters. With men like this sitting on cases, why wouldn't the banks be happy with the court system! The Bank had equipment worth millions of dollars and staff round the clock to manage its own foreign currency, and here is a judge accepting that all you had to do was look at the papers each day (after the exchange rates had shifted). Does your committee accepts this state of affairs!

From the banks' submissions, it is obvious they have been relying on judgments in relation to borrowers who have run their cases under great personal and financial stress, and have been denied justice under our present legal system as stated by Professor Valentine. ***(Enclosure 8. Pages 1412 & 1413)*** **There is rarely any justice in our legal system where a bank is one of the litigants.** There are too many facets at a trial hearing that are stacked in the bank's favour including lack of discovery, fabrication and destruction of bank documents. ***(Enclosures 14, 14A, 14B.)*** We have reluctantly come to the conclusion that one of the main duties of the banks' is to ensure that **the bank's improper conduct is legitimatized** through the use of the court system. In many instances litigants opposing banks are denied justice by the law on both sides. There is an excellent example of this in the Somerset/Kabwand case. The affidavit of Pat Albion *(NAB Relieving Manager)*, dated 3rd September, 1987, states that he had absolutely no input into the document and did not read the same prior to execution. ***(Enclosure 8B.)***

Another prime example is cost. Transcripts with associated photocopying alone can reach as much as $30,000.00 in many cases and can be higher. There are so many unknown factors that virtually prohibit the bank's opponent from proceeding; e.g. preparation of counsel submissions alone following completion of witness evidence may run into thousands of dollars in additional expenditure; interpretation of the judge's decision may necessitate many directional hearings which are costly and totally unforeseen. Instructing solicitors work on a day to day basis calculating costs on an hourly basis and there is a reluctance to estimate cost on an overall basis. New fee arrangements are later introduced for the payment of professional costs on an up-front basis, otherwise action will come to a halt. This is often contrary to the client's previous standing arrangements. It must be appreciated too, that as the bank has deliberately manipulated the borrower's cash flow, he is destitute and "screaming for help".

SECTION 5.
"The FCL loan

facility is not a faulty 'product'".

(CBA evidence 22/5/91 and Westpac evidence 22/5/91)

Allan Cullen, the previous Chairman of the Australian Bankers Association, says **"...expert attention must be given to the borrowing and the borrower's position from beginning to end"**. ***(Enclosure 9.)*** His whole paper was along this vein. This is an admission that the product carried extreme risks and is virtually impossible for an unsophisticated borrower to manage; you have again been MISLED. It is significant to note here that Cullen presented these strong views at a seminar attended by the five Commonwealth Bank Officers on 30/4/85 and reported on by Look as mentioned in Section 2. Also refer to the Dibbs Crowther and Osborne letter penned by Garth Symonds to Bronwyn Bishop of the 5th April, 1994, ***(Enclosure 1E.)*** as well as "The Implications of the Cross Rate" by J. R. McLennan ***(Enclosure 1F.)*** and the internal Westpac letter written by F.C. Cass *(Chief Manager, Retail Lending).* This letter was written to both W.J McInnis *(General Manager, Retail Banking)* and F.A. Ward *(General Manager Credit Policy and Control)* on the 20th December, 1985. ***(Enclosure 1G.)*** Additionally, page 2067 of the official Hansard Report - Sydney of Wednesday, 22nd May, 1991 where Dr Noel Purcell rejects the claim the product was faulty or dangerous. You were MISLED by this evidence. ***(Enclosure 26.)***

The internal CBA memorandum from Group Treasury to the Chief General Manager-Corporate and International, Paul Hamilton, dated 4 October 1985, page 8, paragraph 6 of G document 73B states:-
In the CBA's written submission to you, pages S727 to S732 originated by LE Taylor, Chief Solicitor & General Counsel for the CBA, reference Enclosure 2E, he quotes : "For what it is worth, the Group Treasury view is that the CBA should **not** be actively encouraging borrowers to take open foreign exchange risks in situations where we know that these borrowers have no foreign exchange cash flows, and are instead wholly speculative in motive." reference page S729. What Taylor has omitted to do here is to quote the last five lines of the paragraph which states: **"There is a widespread lack of understanding of the magnitude of risk, and the short-sighted attraction of lower foreign currency interest rates has proven disastrous to many of our clients."** It will be seen that the content of this final sentence is highly incriminating of the bank and it is easy to see why Taylor has omitted to include this damaging material. In wilfully not disclosing the true picture, we say that the CBA's submission is highly deceptive and as a consequence YOU HAVE BEEN MISLED ONCE AGAIN.

Further, to conceal the foregoing highly incriminating material from your previous Committee at the time, the CBA referred to in Submissions Authorised for Publication Volume Ten, a "Memorandum - Foreign Currency Loans to Domestic Borrowers - 20/12/85, 89-104" reference S2534, when the List of Appendices' reference should have been the **same memorandum title bearing the date 4/10/85**. The fact is that the CBA should have included all of their specific reference documents and indeed not be highly selective, like they have. **(Enclosure 2E.)** Highly incriminating material has been concealed and YOU HAVE THEREFORE BEEN MISLED ONCE AGAIN.

In the CBA 'G' documents, Section G73B, John McLennan clearly illustrates that the FCL was a faulty product in the hands of the unsophisticated borrower. ***(Enclosure 3A, pages 10 & 11)***
The circumstance surrounding the approval and ongoing administration of Foreign Currency Loans is highly complex and it therefore became a **product** where the borrower was left at the mercy of the bank. The facility was out of his control, in so far as the borrower was concerned. The foregoing indicates that borrowers were the victims of a **faulty product** of which the bank well knew, it meant that as the sham unfolded they had to apply all deceptive means at their disposal so that the true facts would not be revealed.

SECTION 6.

Not responsible for exchange losses.

(CBA evidence 22/5/91)

The CBA on its own admission set up a Risk Management Advisory Service "toward the latter part of 1985" If it was 1985, then the borrowers were not told about it till the end of 1986. (Or perhaps you were again MISLED). They encouraged all their borrowers to visit the "Advisory" unit, and were told "if you do as we advise we will trade you out of trouble". Most were then **traded into thousands of dollars of more trouble by experienced juniors** (Arthur Brown's term as indicated on page 2158 of the official Hansard Report Sydney of Wednesday, 22nd May, 1991). ***(Enclosure 27.)*** We feel quite sure this was motivated by a policy to make large profits for the bank. Most bank employees responsible for giving advice simply had no experience in matters of this nature and were unable to put forward accurate explanations to vital matters when sought by borrowers. ***(Enclosure 2.)***

SECTION 7.

The CBA and Westpac uses the Rahme (David Securities) case as a precedent.

The Rahme *(David Securities)* -v- CBA action was one of the very first cases to be litigated and the Rahmes lost both the trial and appeal jurisdictions. The Rahmes are of Lebanese descent, their command of the English language was not good and it would be fair to say that they lacked comprehension of the laws of this country. Added to this dilemma was the fact that their legal representation had no precedents to follow, were inexperienced in loan litigation and apparently unaware of the pitfalls that their clients would encounter due to the CBA's lack of discovery and the CBA's legal expertise in loan litigation. The main problem here was that the policy/administration documents of the CBA, known as the "G" documents, were not produced in discovery. **The Rahmes would not have appreciated that unless complete discovery had been produced in the lower court, then their case would not only be flawed in that jurisdiction, but they would virtually have no chance of success in the Appeal Courts or High Court.** In subsequent Foreign Currency Loan cases, the CBA and Westpac exploited the favourable Rahme decision at every opportunity. If the Rahmes were to run their case today the decision would be reversed in the light of current information available.

The Quade case was also lost at trial for the same reasons ... lack of discovery. ***(Enclosure 15.)*** However, on appeal, the full Federal Court found that the Quade case be granted a retrial on the grounds that the bank had failed to comply with the requirements of a pre-trial discovery order. ***(Decision upheld by High Court.)*** **In view of this finding, we consider that all CBA decisions and negotiated settlements where there has been incomplete discovery of documents (the 'G' documents in particular) should be subject to review.** ***(Enclosure 16.)***

SECTION 8.

Secret commissions.

These secret commissions (hidden fees) were a source of massive profits to all major banks. There is evidence that nearly all borrowers were charged secret commissions during the drawdown of their loans. These additional commissions in some instances were as high as **$80,000** in a single drawdown. **To make matters worse, as borrowers were sinking and endeavouring to safeguard their positions, these banks also took secret commissions on their hedging contracts and even**

within the forward margin calculations. These secret commissions could have run into hundreds of thousands of dollars per borrower; and do not overlook the fact that there were thousands of borrowers. ***(Enclosures 8A, 11, 11A, 12, 12A.)*** See the affidavit of Ian McKay, dealer with the ANZ. ***(Enclosures 21, 22, 23.)*** **The banks also paid bonuses to their foreign currency dealers calculated on those secret profits to encourage this practice.**

The banks' method of implementing point taking procedures was extremely devious, and was **aimed at total concealment from the clients, the public, and the courts**. The boards and senior executives of the various banks appeared to condone and set these policies to **secretly profit from their clients**. This is clearly evidenced by the "Westpac Letters", The Bankers Trust scandal, and affidavits from senior bank staff. As documented in Official Hansard - Sydney (Monday 29th April, 1991), pages 1435, 1436, Supreme Court Judge, Justice Wood, handed down his decision on the Davkot -v- First National case on the 28th March, 1991, stated; "They [First National (Subsidiary of the NAB)] have no right to take any such margins. **Any margins they take must be clearly defined in documentation.**" ***(Enclosures 8A, 11, 11A, 12, 12A.)***

SECTION 9.
Unconscionable conduct and duress.

The banks made exorbitant profits as many clients accelerated to bankruptcy and financial destruction. This was achieved in some instances by banks applying penalty rates of interest as high as 5%. None of these horrendous risks were explained to the borrower when the loans were marketed. **No one would have taken out an FCL if the inherent risks such as these, known to the bank, were properly explained to a borrower.**

SECTION 10.
Tax evasion.

The banks utilised their Singapore Branches to minimise their Australian tax liabilities. This is emphasised in the oral evidence given to the previous Committee by Trevor King *(Eltran Group - Chairman)* in Sydney, 11th May, 1992. ***(Enclosure 18, pages 50 to 55.)*** By bringing their clients on shore before moving on them, the banks then booked their notional tax losses generated by these loans against their Australian tax commitments. In a submission, dated 13th May, 1991, V.T. Mitchell *(First Assistant Commissioner, Australian Taxation Office)* points out the role of banks in facilitating international profit shifting. In relation to FCLs, he states that the crux of the matter is **whether the Singapore branch acted as an autonomous and independent decision-maker, or whether it acted merely as a rubber stamp for decisions effectively made in Australia. As pointed out in Section 3 there is no doubt on this issue.** It should be stressed that **the ATO had difficulty in obtaining information and records** on this issue from the banks. A summary of both the information obtained and the action taken by the ATO can be found in Annexure "D" of the ATO's submission. ***(Enclosure 10A, specifically attached pages S2947, S2954, S2955, including Annexure "D" pages S2966, S2967 and S2968.)***

SECTION 11.
Deliberate misleading conduct.

The CBA and Westpac had borrowers sign loan contracts when the Bank was aware:-

a) That the borrower did not have to pay withholding tax (and that the borrower was unaware of this fact). under Section 261 of the Tax Act, yet the banks collected the tax.

b) The bank MISLED the borrower into believing the bank went out into the market and borrowed Swiss Francs, US Dollars or other currencies, and the borrower had to cover the banks so called parity loss which did not exist. ***(Enclosures 1E,1F, 2A.)***

SECTION 12.
Withholding tax.

Section 261(1) of the Income Tax Assessment Act provides that a covenant or stipulation in a mortgage, which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying income tax on the interest to be paid under the mortgage. If the mortgage was entered into after 13th September, 1915 it is absolutely void. In our view it is clear that **the banks should not have debited borrowers accounts with withholding tax.**

We note that the definition of withholding tax is that it is income tax payable in accordance with Section 128B. An internal memorandum, dated 2nd October, 1986, from R. Earl *(Westpac's Manager of Global Taxation)* points out the illegalities of Westpac's policy of charging it's clients Withholding Tax. R. Earl was advised on two occasions by D.E. Irwin of Price Waterhouse, Sydney on the 2nd September, and the 25th September, 1986 respectively that the provisions of Section 261 of the Income Tax Assessment Act would generally render void the obligation imposed on the borrower to bear interest withholding tax. In the second letter the author recommends not to seek a ruling from the Australian Tax Office as their interpretation of Section 221YL would open up a number of enquiries from the taxation office on Westpac requiring the borrower to gross up the interest withholding tax. ***(Enclosure 10C & 10F.)***

We have noted that the ANZ Bank has refunded to its borrowers $32M of illegally collected withholding tax. We note they were not fined for this illegal activity, nor were the perpetrators of this illegality brought to account. Has your Committee any evidence to confirm that the withholding tax deducted illegally from the borrowers by the other banks has been passed on to the Australian Taxation Office? ***(Enclosures 10, 10A.)*** Also refer to the Butterworth's weekly tax bulletins of the 13th October, the 17th and 24th November, 1992. ***(Enclosure 10B.)***

Additionally, refer to the CBA's internal memo from the International Division, Accounting Department, Sydney where the paper provides an overview of the Australian interest withholding tax position, dated 13th June, 1984. ***(Enclosure 10D.)***

The CBA, NAB and WBC have refused to follow in the same footsteps as the ANZ and it is our opinion that your Committee should seek an explanation from these banks as to why they will not disgorge this tax to their former FCL borrowers in light of the High Court judgement of David Securities -v- CBA, 7th October, 1992. ***(Enclosure 10E, specifically page 46.)*** International Currency Trading Corporation Pty Ltd, together with their three fellow Applicants, and Deutsche Bank AG, No. G593 of 1993, also received a favourable judgement on this matter by Davies J, 20 July 1994, Sydney. We also now have the most recent Federal Court Judgement by Sundberg J, 1 August 1996, Brisbane, Drambo v. Westpac No. QG92 of 1991, which confirms that borrowers' accounts should not have been debited with withholding tax. ***(Refer Enclosure 10E.)***

SECTION 13.
Fraud.

The Crimes Act of 1914 lists offences relating to the administration of justice. The section numbers and their related offences are:-

Sect. Nº	Offence	Sect. Nº	Offence
35	Giving false testimony.	**40**	Conspiracy to bring false accusation.
36	Fabricating evidence.	**42**	Conspiracy to defeat justice.
37	Corruption of a witness.	**43**	Attempting to pervert justice.
38	Deceiving a witness.	**63**	Forgery.
39	Destroying evidence.	**64**	Uttering.

There are many examples of above-mentioned offences having been probably committed, such as:- Fabrication of customer interview records (extremely vital documents) ***(Enclosures 14, 14A, 14B.)***, the destruction and the withholding of documents and perjury by bank employees. In so far as policy procedures are concerned, particularly with respect to Westpac and CBA, these banks have MISLED you. Their own documents confirm that they deliberately mislead the Committee even though they were required to be honest with the Committee. In his evidence given to the previous Standing Committee, ***(Enclosure 18 - page 42.)*** D. Lyons (FCL Borrower) stated; "I do not have to say that the Commonwealth Bank was lying: its documents say that." ***(Enclosures 13, 14, 29A.)***

The "Westpac Letters" as written by Paddy Jones, which utterly condemns Westpac, **must be read**. He was a senior lawyer with the bank's own lawyers Allen, Allen and Hemsley (probably the most senior law firm in Australia at the time). ***(Enclosure 12.)***

Banks represented and forcefully promoted to small business people and farmers requesting a normal loan, that an unhedged foreign currency loan was suited to their needs, the prime reason was that those clients were asset rich with high equity. At that time the bank was fully aware that similar borrowers had already lost all their assets through a FCL and the risks were still the same. The bank was also aware (but did not advise the client) that any losses made by the client became tax-free profit (capital) to the bank. ***(Enclosures 2, 2A, 2B, 2C, 2D, 2E, 3, 4, 4A, 5, 6.)***

In documentation sent to the borrower at drawdown, the bank set a market exchange rate favourable to themselves. Often this rate contained a secret commission of 0.7% or $7,000 per million dollars, additional profit to the bank. ***(Enclosures 8A, 11, 11A, 12, 12A, 22, 23.)***

Contracts stipulated foreign currency loan interest rates as in the range of 1.5% or 3% (as agreed) over SIBOR (Singapore Inter-Bank Offer Rate) or LIBOR (London). Banks took advantage of the borrower's lack of knowledge to charge them in excess of these rates. Throughout the course of the loan, large illegal secret commissions or points were taken by the bank on all foreign exchange transactions. This applied also to the very last transaction when the loan was ultimately re-converted to Australian dollars. ***(Enclosures 8A, 11, 11A, 12, 12A, 22, 23.)***

Banks pretended the loans were made from Singapore when clearly all decision making and production of documents and correspondence emanated from Sydney or Melbourne (Head Office). This was done to obtain the very low (10% or nil) tax rate in Singapore. The cost to the Australian Tax Office (Tax Payers), was millions of dollars in lost revenue. ***(Enclosure 10A, specifically attached pages S2947, S2954, S2955, including Annexure "D" pages S2966, S2967 and S2968. As well as enclosure 18.)***

Banks compelled the borrower to pay them additional sums as Withholding Tax even though their own legal advisers told them it was illegal to do so - as being in contravention of Tax Law 261. Discovered inter-bank memos between senior bank officers note this advice but elect to charge the tax anyway. **At least one High Court Judge, Justice Brennan, appears to have been critical of the**

bank's action to retain the withholding tax and in support referred to an American authority on the Law of Restitution and Disclosure 146.
(*Enclosure 10E, page 46.)*

Evidence indicates that little if any of the Withholding Tax extracted from borrowers, ever found it's way into the Tax Office. In spite of the bank's obligation (under the rules of discovery) to supply borrowers in litigation with this information, banks have failed to do so. ***(Enclosures 10, 10A.)***

Bank officers committed perjury under oath in foreign currency loan litigation. Even one former Managing Director of Westpac was condemned by Judges in two separate cases (not FCL's) for lying under oath. It seems that senior officers in particular were prepared to swear to anything to support the bank's position both in and out of court and no action is ever taken. ***(Refer to Section 13 on page 14 of this submission.)***

Nothing less than a **Royal Commission** into this whole foreign currency loan scam will achieve any measure of justice for the unfortunate victims, reimburse the Australian tax-payers and reconstruct any degree of popular faith in the integrity of the major Australian banks.

A former banker, Andrew Thompson M.P., said on the ABC's 7.30 Report (20th December, 1995) in his earnest call for a Royal Commission into the illegalities of foreign currency loans: "Until the area (of FCL's) is cleared the banks could not be trusted. There is great suspicion that villainy took place and could take place again, unless there is some sort of public act which demonstrates to the public that this will not happen again". It is observed that, the Sydney Morning Herald disclosed on the 3rd May, 1996, that the **ANZ is facing a police investigation into allegations that one of its managers altered his bank's diary notes presented as evidence in a court case won by the institution**. ***(Enclosure 29.)***

SECTION 14.
Negligence (To the detriment of the borrower).

We can supply various examples of this:-

The banks have admitted they did not have staff with the expertise or the resources to protect the client from foreign currency losses. ***(Enclosures 2, 2A.)***

The CBA repeatedly claims that its FCL borrowers always had the opportunity to hedge the exchange risk on their loans. You were again MISLED. Page 2156 of the official Hansard Report Sydney of Wednesday, 22th May, 1991, shows Mr A Poulter *(CBA's Chief General Manager of Group Credit Policy & Control)* stating that **the borrower could not hedge between roll-overs**. You could imagine how a borrower's loan would blow out in six months! ***(Enclosure 27.)*** Take a look at the evidence on page S2513 of the Commonwealth Banks' submission in May 1991, where they say **it was impractical to hedge a number of customers because the market was too thin**. By the second half of 1986, most borrowers were in the position where they could not service on-shore rates of interest, and could not afford to hedge. ***(Enclosure 27A)***

So that this is put in its correct perspective, evidence given by the CBA;s BA Poulter on 22/5/91 (Page 2156) is quoted:-

"In August 1986 we had a foreign currency product control group established within the State administrations to monitor and control the foreign currency loan lending. Later in August, the authority was given to our borrowers to enter into forward exchange dealings without the

establishment of a formal settlement trading limit. **This was to enable them, if they wished, to change their exposure from one foreign currency to another, between roll-overs. Previously, it was a matter of changing the currency or the hedge at the roll-over period. The facility was not there for them to speculate beyond the amount of their loan."**

SECTION 15.
False valuations by banks.

The banks usually set their own valuations. These valuations in many instances known to us, cannot be considered a realistic market value at the time. The value placed on the property by the bank may either be highly inflated or highly deflated; depending on whether they wish to lend money or wind the client up.

In one well documented case, the bank manger increased the market value of the security for lending purposes from $210,000 to $475,000 in the space of 73 days, an increase of 126%. (Somerset/Kabwand -v- NAB Federal Court G65 of 1986) His Honour, Justice Spender, commented during the resulting bankruptcy that the manager's action in this case was fraudulent.

In another, the CBA's in-house valuer valued three adjacent properties at "Nil", "Negative" and "$103,500". The two former were sold in a matter of weeks for $160,000 and the "negative" valued property was immediately on-sold for $100,000. The third property was sold in a matter of a few months for $820,000. All three had been valued together by the bank, only some six months before, for "around $750,000".

It is imperative that Parliament have an independent authority appointed, similar to a Bond Board, to CONTROL all securities on behalf of both parties to a loan transaction. This authority would prevent a bank illegally foreclosing and appointing receivers for the express purpose of asset stripping. Further it would insure that residual indebtedness was not achieved so a bank could enforce bankruptcy.

SECTION 16.
Falsified bankers diary notes.

We have any number of these. Bankers diaries are mostly loose leafed. They can be substituted at will. Yet they all seem to be accepted by the judiciary - the bankers evidence is normally preferred. One can only be cynical and assume that they deem any diary is better than none. ***(Enclosures 14, 14A, 14B, 29.)***

SECTION 17.
Bankers statements.

We have evidence of bankers statements being prepared by the bank's legal department, solicitors and barristers for the bank officer to sign. It later transpires, in court under oath, these same bank officers give contradictory evidence. It would appear that bank officers sometimes sign their statements under

duress; as they know, if they proffer any adverse comments about the bank to their superiors, this could have career repercussions. At the same time the bank officers superannuation benefits could be in jeopardy if they protested. ***(Enclosures 29, 29A, 29B, 29C.)***

SECTION 18.

Discovery documents.

We have numerous examples of banks not producing all relevant discovery documents. The best example is that in relation to how the banks raised their funds. We know they raised their money through currency swaps that did not attract withholding tax or cause the banks to lose money on the fall of the Australian dollar. The borrowers suffered massive losses and the banks made massive profits; it could represent one of the greatest frauds in Australian history. (Refer again to Section 2.) Yet we have not been given a complete set of discovery documents in relation to it, nor are we aware of this information being produced to you. Borrowers have been treated with contempt by banks and we consider that your previous committee has been treated in the same manner.

The fact that discovery in any one case depends on the matter raised in the pleadings relating to that case is not correct. In our opinion, we totally dispute the oral evidence given by Dr N.J. Purcell (*Chief of External Relations - Westpac)* where he claims that in all cases Westpac discovery of documents was complete and thorough. ***(Enclosure 26, page 2077 & 2078.)*** As time progressed with FCL litigation, Westpac were forced to discover more documents, especially relating to the overall administration of their FCLs. However, they have completely refused to discover overseas administrative and specific documentation regarding their Singapore branch. Borrowers in litigation never, at any time, had ulterior motives. **They were simply seeking justice and the false evidence of Dr N.J. Purcell has denied them this justice.**

In subsequent litigation, Chief Solicitor and General Counsel of the CBA Mr L E Taylor has always signed the Bank affidavits that borrowers had complete discovery relative to their cases. However the Full Federal Court ruled in Quade's case, that there had not been full discovery. This decision was upheld by the High Court in 1991. It became obvious that discovery fell short of the required standard. How can borrowers be confident that there has been full discovery of documents in their cases by the banks? ***(Enclosures 15, 16.)***

Also highlighted in the FCBA publication, "Do You Trust Your Bank", is the issue of further and better discovery. The massive "Chinese Wall" of silence thrown up around these loans by major banks is slowly being breached and evidence is being compiled to demonstrate this fraudulent misrepresentation and conflict of interest. **Of great significance is the bank's refusal to supply documentation to demonstrate the acquisition and disposal of any Swiss francs.** In every case, when ordered to do so by the court, they have settled with the client. This confirms mounting evidence that only an onshore loan was supplied and all the rest was merely cosmetic to deceive the Tax Office and the RBA. ***(Enclosures 10A, 20.)***

We have examples of relevant vital figures and evidence being whited out. It is also confirmed by the contents of the written submission to your previous committee by J.R. McLennan, former Westpac banking employee. We direct you to his submission, dated 20th November, 1991 wherein his introductory statement he points out that it is clear that **Westpac has continued to adopt tactics deliberately intended to deceive the Enquiry and indeed the Parliament relating to the Foreign Currency Loan scandal**. In this comprehensive submission he examines actual cases where documentation, vital figures and evidence was withheld by the banks. ***(Enclosure 1H.)*** We have numerous examples of banks not producing all relevant discovery documents. Some of these documents involve large amounts of money. Under the criminal law, when sums of money in excess of $200 are involved, records must be made and kept for seven years. Failure attracts a possible $10,000.00 fine per document.

A common ploy of the banks is to purposely provide extremely late discovery; some during the trial and even up to seventeen months after the trial involving Westpac when senior bank officers had previously given affidavits prior to the trial that all discovery documents had been discovered. No action ever seems to be taken. For centuries it has been accepted that omission of evidence is of itself evidence, **i.e. guilt by silence**. In the Somerset -v- NAB case, the bank was forced to provide a further seven affidavits before the trial commenced re further and better discovery and then at the trial itself produced hundreds of pages of documents without covering affidavits. ***(Enclosure 8B.)***

SECTION 19.

Banks and receivers.

One would expect the receiver to be working in the best interests of the borrower. In practice nothing is further from the truth. **One must never forget that the receiver is going to get his next job through a bank action.** We have ample evidence of the receiver and/or the bank conspiring to frustrate and further sink the borrower. They have a decided vested interest to closely work with each other to avoid litigation. This is a very important aspect which should further support our call for a ROYAL COMMISSION.

SECTION 20.

Perjury in court.

We have various examples of bank staff blatantly perjuring themselves in court. Yet they get a smile of approval from the supporting bank team when they step from the witness box and no further action is ever taken by the judiciary, their bank management, or the directors. This has led to the conclusion perjury is condoned by the banks. **What does this say about the banks' corporate governance standards?**

A classic example is the testimony of Albert Look *(Westpac Queensland Manager - International Business Development)* heard in the Queensland Federal court during the Thannhauser -v- Westpac case. Justice Pincus described Mr Look's testimony as being totally unreliable and untruthful. **We consider that Albert Look has given false testimony in five FCL litigation actions where he was called upon to give evidence.** ***(Enclosure 24.)*** Stuart Fowler, (since deceased) a previous Managing Director of Westpac, was also found to be untruthful by Justice Keely. His Honour's comments in his judgement were; "I have reluctantly come to the firm conclusion that Mr Fowler gave a number of untruthful answers which were intended to mislead the court." ***(Enclosures 29, 29A, 29C.)***

SECTION 21.

Banks' legal costs as a tax deduction.

Legal costs incurred by the banks are treated in a different manner to those associated with the borrowers in that the banks' costs are tax deductible. It therefore follows that the tax-payers of the country are subsidising the banks' litigation costs through tax deductions.

SECTION 22.

"Rico" legislation.

This is legislation that was introduced into the US Legal system to combat Mafia racketeering, shams, and frauds. It has become most effective and most banks, institutions, etc in the US are wary of it. To be successful under this legislation, it must be proved that the fraud or misrepresentation is a "pattern" within the institution. It was recently used against Westpac by a Nevada goldmining company. They came to Australia where they established the "pattern" by noting that Westpac had been sued for secret commissions on a number of occasions.
We recommend that after all matters have been aired before a ROYAL COMMISSION and appropriate remedial action taken, that legislation similar to the RICO legislation be introduced into this country.

Roughly the legislation runs as follows:-

- Trial is by jury.
- Trial to be available for contingency funding, ie average citizen is able to run the trial. Average percentage to a law firm is 30%.
- Damage is three times the amount of the original damage.
- If found guilty the institution or company loses their right to trade. e.g. Banking license.
- Company officers are charged under the criminal code.

We consider that after millions of dollars have been spent on **the Banking Inquiry**, it **has been used by the banks as a farce** to absorb all the energy and fury of the people who have been robbed by the banks and to delay a ROYAL COMMISSION. ***(Enclosure 30.)***

SECTION 23.

Detailed response by Westpac to submissions.

Made to the Committee by the Foreign Currency Borrowers Association (FCBA) and by individual Westpac Foreign Currency Loan Borrowers.

29th August, 1991 - Submission pages S4175 to S4246.

1) Submission page - S4199 D1 ENCLOSURE 18A
Quote "Only three cases against Westpac have proceeded to judgement". This statement is misleading by omission because all three judgements were in favour of the borrower.
(Supplementary Enclosure 1C.)

2) Submission page - S4202 D8 ENCLOSURE 18A
"The suggestion that Westpac aggressively marketed foreign currency loans to its customers is unfounded". The bank's own documents give the lie to this statement.
(Supplementary Enclosures 1H, 2A, 2B, 2C, 2D, 2E, 6, 24.)

3) Submission page - S4221 G1 Paragraph 2 ENCLOSURE 18A
"No such 'secret' commissions or margins are or were charged or levied by the bank".
This statement is patently false as evidenced in affidavits and court transcripts.
(Supplementary Enclosures 8A, 11, 11A, 12, 12A.)

In your previous committee's report, "Checking The Changes", paragraph 6.53 Page 114, documents three statements from Mr F. Conroy *(Managing Director of Westpac)* all of which appear to be false. ***(Enclosure 25.)*** He also stated, "There would be no response to the serious allegations made". In 1985 Mr Conroy was Westpac General Manager Asian Division and General Manager Westpac Finance Asia Ltd and therefore must have been fully informed of these matters. **We ask in the public**

interest why your previous Committee accepted these remarkable announcements considering they had not seen the final report of the Coopers and Lybrand investigation and why there were no further issues pursued as to the allegations.

Supplementary submission to the Inquiry by Westpac dated May 1991 and official Hansard Report Sydney - Wednesday the 22nd May 1991, Westpac management *(A. Ayre, A. Moore, N. Purcell, and I. Town)* personal presentations. ***(Enclosure 26.)*** The whole thrust of this and F. Conroy's ***(Enclosure 25.)*** documents shows Westpac's determination to misrepresent facts and to mislead the inquiry. Emphatic rebuttal evidence can be found in the Dibbs Crowther Osborne letter to Bronwyn Bishop ***(Enclosure 1E.)*** which again highlights the absurdity inherent in Westpac and other banks' submissions. We also wish to point out J.R. McLennan's letters to the Secretary of the Banking Committee, David Elder, entitled "The Implications of the Cross Rate". ***(Enclosure 1F, pages S1359 to S1361. Enclosure 2A, with attention to pages 11 to 37. Further reference in Enclosure 1H.)***

SECTION 24.
Conclusion

We look forward to a considered reply from your Committee which would indicate that the material submitted to it by us has been thoroughly read and analysed and a recommendation made to Parliament for a ROYAL COMMISSION.

The ROYAL COMMISSION into the NSW Police was fobbed off for years by the politicians and corrupt police. We have the same situation in the banking industry where those who have made and are making enormous profits in the financial industry will endeavour to delay this ROYAL COMMISSION as long as possible. ***(Enclosure 17.)***

We feel that individuals with integrity such as John Hatton, former Independent Member of NSW Parliament and responsible for the Royal Commission into the NSW Police, are extremely rare in the Federal political system. In particular, we consider that we have justifiable reason to question the determination of the members serving on the previous Committee over the period of its existence, to tackle the banks. With a few notable exceptions our association has lost faith in the Banking Enquiry and the initiatives of Parliament over this issue.

We demand appropriate changes necessary to curb the excesses and lack of integrity eating at the heart of our banking system. We consider your Committee must recommend to Parliament the implementation of the RICO Legislation as current in the United States.

We realise this submission includes material somewhat outside the scope of the evidence that you have called for, however, our paramount aim is to illustrate the extent of the serious misconduct of the banks and, in particular, their misleading of the Committee: - a Standing Committee of the Parliament of Australia, representing the people of the nation. The banks' behaviour is not only restricted to matters related to Foreign Currency Borrowing, but also to the normal everyday bank business of lending in Australian Dollars. In this regard we refer you to Enclosure 14, 14A and 14B which is a submission addressed to Senator Amanda Vanstone, dated 23rd January, 1996 that highlights banking malpractice. This submission was raised by John A. Salmon, a former bank manager with the National Australia Bank who enjoyed 36 years service and has been acting as a Bank Consultant for the past 8½ years. Mr Salmon's submission to the Senator presents an outline of seven cases regarding loan litigation which all incorporate the fraudulent behaviour of banks. These banks were successful in winning several of the court actions by resorting to such fraudulent behaviour.

INDEX OF ENCLOSURES

10A. ATO submissions to banking enquiry 13th May 1991. Submission pages S2954, S2955. Annexure "D" pages S2966, S2967, S2968.

10B. Butterworths Weekly Tax Bulletins dated 13th October, 17th and 24th November, 1992 re withholding tax.
10C. R. Earl's memo from group taxation department 2nd October 1986. Two letters to R. Earl from D.E. Irwin of Price Waterhouse.

10D. CBA's memo re withholding tax from the International Division - Accounting Department, Sydney dated 13th June, 1984.

10E. High Court judgement re withholding tax of David Securities and CBA, specifically page 46, dated 7th October, 1992. Federal Court judgement re withholding tax of International Currency Trading Corporation and Deutsche Bank, 20 July 1994. Federal Court judgement re withholding tax of Drambo and Westpac Banking Corporation, 1 August 1996.

10F. Subordinated debt Westpac Annual Report 1985.

11. SMH Business reported that Westpac Forex Dealer admits to point taking, dated 20th September 1995.

11A. Sunday Mail Article re Westpac accused of secretly retaining points, dated 24th September, 1995.

12. Westpac letters PPL Managed Loans.

12A. Financial Review dated 18th October, 1995 re Bankers Trust tapes.

13. Letter Alan Jones to David Murray (Managing Director, CBA) dated 3rd May, 1995

14. Letter to Paul Elliot MP (Chairman - Standing Committee) from J. Salmon dated 15th June, 1992.

14A. Letter to Paul Elliot MP (Chairman - Standing Committee) from J. Salmon dated 27th July 1992 re inadequacies of bank discovery in the litigation exercise.

14B. Letter to Senator Amanda Vanstone from J. Salmon dated 23rd January, 1996.

15. Federal Court Judgement **-** Quade and Others v CBA, dated 7th, 8th June 1990 and 14th February, 1991 - Sydney.

16. Newspaper article from the Sydney Morning Herald, dated 4th October, 1991, reporting Quade beats the CBA 5 - Nil.

17. SMH Article - Dated 25th January, 1996, re Westpac political donations with attachment showing breakdown of donations.

18. Hansard report Sydney - Banking report 11th May 1992. Five submissions by FCBA Committee members, I. Fisher, T. King,
D. Lyons and T. Tyrrell as well as a non committee member, G. Moser.

18A. Pages S4198, S4202 and S4221 of a submission dated 29th August 1991 by Westpac in response to FCBA submissions. Specific attention to pages 4196, 4197, 4199. 4202 and 4221.

19. Booklet - Which banks are still bastards.

20. Booklet - Do you trust your Bank including covering letter.

21. Discussion paper ANZ Bank, International capital markets May 1984 with attachment comment by Geoffrey M Cohen.

22. Statement and affidavit of Ian McKay (ANZ Foreign Exchange Dealer) dated 24th August, 1993. Also included is the booklet, Management of Foreign Exchange.

23. SMH Business reported that the ANZ took points on Forex, dated 23rd April, 1996.

24. Extract judgement Pincus J. Thannhauser v Westpac dated 9th December, 1991.

25. "Checking the Changes" (Speech by F. Conroy, Managing Director Westpac to the Securities Institute of Australia). Extract of page 114, published October, 1992

26. Hansard report Sydney - Statements by A. Ayre, A. Moore, Dr N. Purcell and I. Town of Westpac, dated Wednesday 22nd
May 1991. Special attention to pages 2067 & 2077 by Dr N. Purcell.

27. Hansard report Sydney - Specific attention to pages 2156 and 2158, statements by A. Brown, R. O'Brien & B. Poulter of CBA, dated Wednesday 22nd May 1991.

27A. Responses to questions on foreign currency loans raised by the committee CBA dated May 1991. Special attention to page S2513.

28. Letters from Feez Ruthning to Messers Lynch & Co re Westpac intimidation during Drambo case,
dated 30th March, 1995, 1st November, 1995, 13th November, 1995.

28A. Newspaper articles re Westpac intimidation during Drambo action - Federal Court G29 of 1991.

29. SMH Business - police enquiry into ANZ bank manager re alteration of his bank's diary notes, dated 3rd May, 1996.

29A. SMH Business - court studies perjury by former CBA Parramatta branch, loans officer, A. Sloss, dated 14th May, 1996.

29B. Financial Review - Fraud police raid the Bank of Melbourne HQ re fraudulent securities trading, dated 15th May, 1996.

29C. Courier Mail article dated 17th May, 1996, Easton jailed for perjury.

30. "RICO" legislation.

SECTION 5.

"The FCL loan facility is not a faulty 'product'".

(CBA evidence 22/5/91 and Westpac evidence 22/5/91)

Allan Cullen, the previous Chairman of the Australian Bankers Association, says **"...expert attention must be given to the borrowing and the borrower's position from beginning to end"**. ***(Enclosure 9.)*** His whole paper was along this vein. This is an admission that the product carried extreme risks and is virtually impossible for an unsophisticated borrower to manage; you have again been misled. It is significant to note here that Cullen presented these strong views at a seminar attended by the five Commonwealth Bank Officers on 30/4/85 and reported on by Look as mentioned in Section 2. Also refer to the Dibbs Crowther and Osborne letter penned by Garth Symonds to Bronwyn Bishop of the 5th April, 1994, ***(Enclosure 1E.)*** as well as "The Implications of the Cross Rate" by J. R. McLennan ***(Enclosure 1F.)*** and the internal Westpac letter written by F.C. Cass *(Chief Manager, Retail Lending).* This letter was written to both W.J McInnis *(General Manager, Retail Banking)* and F.A. Ward *(General Manager Credit Policy and Control)* on the 20th December, 1985. ***(Enclosure 1G.)*** Additionally, page 2067 of the official Hansard Report - Sydney of Wednesday, 22nd May, 1991 where Dr Noel Purcell rejects the claim the product was faulty or dangerous. You were then mislead. ***(Enclosure 26.)***

Internal CBA memorandum from Group Treasurer to the Chief General Manager-Corporate and International dated 4 October 1985, page 8, paragraph 6 of G document 73B states:-

"For what it is worth, the Group Treasury view is that the CBA should **not** be actively encouraging borrowers to take open foreign exchange risks in situations where we know that these borrowers have no foreign exchange cash flows, and are instead wholly speculative in motive. *The following sentence was not quoted and this is the most misleading section.* **There is a widespread lack of understanding of the magnitude of risk, and the short-sighted attraction of lower foreign currency interest rates has proven disastrous to many of our clients." (*Enclosure 2E, page S729).*** In the House of Representatives Standing Committee on Finance and Public Administration, Volume 10, page S2534, the CBA quoted Memorandum - Foreign Currency Loans to Domestic Borrowers **20/12/85** but omitted to include a similar document with the same heading dated 4/10/85