

THE FLAWED AND DANGEROUS CREDIT REPORTING PROCESSES AT ESANDA FINANCE CORPORATION AND THE AUSTRALIAN FINANCE CONFERENCE.

"No business can prosper without a line of credit" – Paul Getty (paraphrase).

"Blessed is he that hath nothing left to lose for he cannot be intimidated" – 9th Beatitude

1. DISCLAIMERS AND CLARIFICATIONS.

1.1. INTENTIONS.

The intention in publishing this document is to expose to public view certain policies and procedures within Esanda Finance which may, under some circumstances, represent a danger to the interests of members of the public who may wish to do business with them. We do not accuse the company of deliberately setting out to cause damage to its customers, nor that any specific person indulges in illegal or unconscionable conduct at the behest of the company (though we do believe that there is a reasonable inference that in our case, some unknown person may have done so for personal reasons). Rather, we assert that certain business processes are inadequate or flawed and that management is either unaware of the situation or is indifferent to the consequences for its customers. Some of these processes were developed by the Australian Finance Conference (AFC) and are used by most of its members.

Typical outcomes of these policies include:

- According prejudicial and damaging creditworthiness references to customers on the basis of inadequate information,
- Circulating creditworthiness references to other credit providers through a secretive process of which customers are unaware and which denies them the right to challenge the fairness or accuracy of such references, and
- When customers do become aware of the company's actions, engaging in delaying tactics or providing the customers with false or misleading information, with the intention of avoiding any liability which may arise from its actions.

We do not know whether Esanda's deceptive behaviour follows from its awareness of the flaws in the policies under discussion, whether it is defending them because it finds them too useful to amend or abandon, or whether it is simply a knee-jerk reaction to any inquiry as to how the company goes about its business. The question is moot, as the consequences to the customer are the same.

1.2. THE ORGANISATIONS FEATURED IN THIS DOCUMENT.

1.2.1. The Main Players.

Esanda Finance Corporation Ltd. ACN 004 346 043.

Finance company and subsidiary of the ANZ bank. This is the company whose behaviour is the subject of this story. It is the author of a highly prejudicial creditworthiness report about our company which has caused us great damage over a period of ten years in its effects on the attitude of other companies towards us.

Australian Finance Conference Pty Ltd. ACN 000 493 907.

As described on the visitors welcome page of its web site:

Established in 1958, the AFC is Australia's national finance industry association. The AFC represents the interests and views of its members to government and provides a variety of other member services. AFC membership is open to companies in the business of credit, finance or financiers.

In the context of this document, the AFC has facilitated the dissemination of the creditworthiness information supplied by Esanda. Although the organisation as such does not appear to have behaved improperly in any way, the processes it has introduced are open to abuse by its members. Either the AFC is not aware of this or it has relied on the honesty of its members not to take advantage of the weaknesses in the processes it has promoted.

MyFamilyCompany Pty Ltd (a pseudonym).

The family company under which I conducted my business as an IT consultant/contractor. It was a customer of Esanda Finance between January 1988 and June 1993. The "our" in this paper refers to the company and the "I" to me. As I am a sole practitioner, these terms are used interchangeably except when specifically noted.

1.2.2. Other Finance Organisations.

The following companies played a part in this story but, with a couple of exceptions, are not the subject of criticism, other than that they are exemplars for the defensive and generally unhelpful attitudes pertaining throughout the industry. To be absolutely fair, some decent individuals within these companies have been more forthcoming with helpful information – not enough to enable decisive action, but enough to support our belief that there are people around in the finance world who are at least genuinely sensitive to the concerns of their customers and worry about the policies they are expected to follow..

Volvo Car Credit Pty Ltd. ACN 071 337 338.

A finance company commissioned to provide finance for the purchase of Volvo motor cars. Their documentation also uses the name Volvo Car Finance. It is not known whether Volvo itself owned this company or had any equity in it. The company name is still registered, but its Volvo contracts have been taken over by Primus Automotive Financial Services under a service agreement. It was responsible for forcing an unconscionable contract upon us which was only corrected after prolonged and expensive legal action.

Primus Automotive Financial Services. ACN 006 411 212.

A wholly owned subsidiary of the Ford Motor Company which provides finance for the leasing and purchase of motor vehicles. This company inherited our lease contract from the original Volvo Car Credit. It uses the trade names Volvo Car Finance and Volvo Car Credit, but it must not be confused with the company which previously used those names. It has been studiously correct in its dealings with us, but has not been helpful in providing information about the activities of the original Volvo Car Credit.

Capital Finance Australia Ltd ABN 23 069 663 136.

A finance company which offered non-standard terms for a car lease, modified in reaction to a creditworthiness reference from Esanda. The significance of this event is that another member of our family also had a contract with the company, this time on standard terms. We were therefore able to make a direct comparison and gauge the effect of the reference.

Flexirent Pty Ltd.

The Australian Securities and Investment Commission (ASIC) lists at least nine entities with variations on this name and it is difficult to establish which one is the customer-facing renter of office equipment. The one we mean is the one that was contactable through freecall number 1800 240 102 in Australia at the time these events took place.

2. INTRODUCTION.

In October 1987, Australia experienced a significant stock-market crash . This led to a serious recession which lasted until the mid-1990s. The period was notable for the many companies which went out of business and individuals who were made bankrupt. It was also notable for the unconscionable and dishonest conduct of many financial and business corporations as they fought to protect their interests to the exclusion of everyone else. The history of this period has been captured in some informative and entertaining books. Try “Westpac – The bank that broke the bank” by Edna Carew, “The Bold Riders” by Trevor Sykes, or the two books about entrepreneur Alan Bond by Paul Barry. A little report <document 1> documents some of our own experiences.

Throughout this period, our business – a small IT consultancy – was fully occupied with paying work and, by any measure, should have been untroubled by the turbulence going on around us. However, we were very badly damaged, simply by the fact that our clients did not pay us what they owed. Such money as came our way was used to pay creditors, rather than the government tax collectors, on the grounds that we were more likely to stay in business if we had good relations with our suppliers. The tax office did not like this (especially as the bonuses and/or preferment of individual tax officers was linked to the money they brought in) and unleashed a quite unconscionable attack on us which we were able to fight off, but only at the expense of losing our only large asset – a small house in a prime location that we intended to rebuild as our family home.

Business conditions improved markedly as the 1990s rolled on and we were then faced with the task of rebuilding our fortunes. We had about ten years to complete this task (I was then over 60 years old) and we could only do it by taking full advantage of the gain in stock market and real estate values in the developing boom.

Our plan was quite simple. We had one substantial negotiable asset – a motor car valued at about \$25,000. If we traded this car in and took a lease (not hire-purchase) on another vehicle, we could get cash back for the trade-in and invest it on the stock market. Any money we made then would be used to buy a home on minimal deposit. Any increase in value would allow us to borrow against the property and re-invest in the stock market (or expand our business, if the opportunities so dictated). This was quite a high risk plan, to be sure, but there were not many other options available to us. In retrospect, looking at the way the stock market and real estate market developed, our calculations show that we would have succeeded handsomely. The house that we could have bought in 1995 for \$180,000 is now worth about \$750,000 and the various small investments we were able to afford showed that our investment strategies were very sound. In one particular year, we quadrupled our money, albeit from a very small base.

Unfortunately, our plans were thwarted from the beginning, because no finance house of any standing would lend us any money. Our own bank, which was seeing a six-figure revenue going through our account every year declined even to give us an interview – and all this for a loan carrying a risk factor of about \$7,000. Most people have credit cards with higher face values than that. At the time, we presumed that the banks, being risk-averse, were simply prejudiced against small business. However, in 1998, an event occurred which totally changed our perception of what was actually happening to us. The story is told elsewhere (see “The Volvo Brand – Is It Trustworthy”) but briefly, a finance company manoeuvred us into a highly disadvantageous contract. Their trickery relied for its success on the knowledge that no one else would lend us any money and when we finally took them to court (we won comprehensively) they admitted that there was a highly prejudicial creditworthiness report in circulation. Not only that, the information had to have been passed around in a highly secretive manner, as our records in all of the major credit reporting agencies were absolutely clear.

Our search to find out what was being said about us and how the information was distributed throughout the finance industry (without any chance of rebuttal) is the story told in this essay.

3. THE STORY.

3.1. PROLOGUE.

In January 1988, we contracted with Esanda Finance Corporation to lease a Volvo 240 sedan. The purchase price of the car was \$35,500. The contract was to run for 60 months, with monthly payments of \$721 and a residual of \$13,900. This 60-month contract finished six months after the original completion date in mid-1993, against a backdrop of company failures following the 1987 stock market crash and subsequent recession. Some of our clients went out of business owing us substantial sums of money and our cash flow was under pressure for a while. Fortunately, we always had plenty of work on hand and in the end, all of our creditors received every dollar they were owed, including all penalties and interest. The finance company knew what was going on and that some events were beyond our control. When the contract ran out, they gratuitously offered to allow us to pay out the residual on monthly terms over another eighteen months when they could have placed the car with a dealer and got twice the residual back for themselves. We only took six months to pay out the contract (in other words 12 months early based on the revised contract) and take possession of the car. We had no reason to believe that Esanda had formed an adverse opinion about our creditworthiness because no adverse reference appeared on any public credit reporting agency and we received a letter of commendation from the company saying that it would be happy to do business with us again.

3.2. THE DISCOVERY.

Over the years, we had a surprising difficulty in borrowing even small sums of money. Only one bank, the Sydney-based St. George Bank, seemed prepared to trust us. At the time, they did not have facilities in Melbourne to service small business accounts, but I, as an individual, was able to get a couple of small consumer loans. At the time, we believed that banks were not keen to lend to small business in general. However, late in 1998, an event occurred which made us realise that the situation was radically different from what we had hitherto believed.

We wished to trade in our 11-year-old Volvo 240 for a new model and take a lease on a current Volvo S40. We signed a purchase contract with a dealer, subject to finance, in the expectation that we would receive cash back for the trade-in. However, the dealer's finance officer reported that she was having great difficulty finding a financier for the deal, but said that the problem seemed to lie with a report from Esanda. At her suggestion, we made an application to Esanda which was accepted at first by the front office agent, but was rejected twice without explanation when submitted to management for a sign-off. Eventually, we were told that Volvo Car Credit, Volvo's own finance arm would provide the finance.

When we were presented with the contract for signature, we were horrified to find that we would be paying nearly \$6,000 more than standard terms. To add insult to injury, the finance company did not return to us the balance of the trade-in, but merely handed us a receipt for payments in advance, even though this was not stated in the contract. We did not wish to accept these terms but found that we had been manoeuvred into a situation where signing the contract was actually the least expensive option. The dealer had already registered the car, thus making it effectively second-hand and indicated that he would be looking for compensation for the loss in value.

We protested to Volvo, but after consulting the finance company, they endorsed the contract as a fair one and declined to become further involved. We therefore had to resort to expensive legal action. The documents obtained under the discovery process confirmed that a "Slow" credit rating had been received from Esanda. They also showed that the dealer and finance company had stepped outside their trade agreement which stated that no car should be registered until finance had been approved and the contract signed. Now this behaviour comes very close to criminal conspiracy and for the dealer and finance company to be prepared to take this chance, they had to know that no one else would lend us the money. This fact alone told us that the quoted credit reference had a meaning vastly different to that which had been previously advised to us.

We won the case comprehensively (the finance company refunded the overcharge and paid all of our legal costs, albeit at very modest rates fixed by legislation), but could gain no further information

from the defendants as to the significance of the reference, or indeed, how they came to hear it in the first place, as there was no indication in any publicly available database that we had ever done business with Esanda in the past. We therefore set out on a journey to find out all that we could about the practices of finance companies and the extent to which these were the cause of our financial difficulties.

3.3. THE SEARCH.

After the case against the Volvo agents, we started our campaign to try and find out what was the nature of the information which had done us so much damage. The recognised formal means of credit information interchange is a group of public credit reporting agencies (CRAs), such as Dun and Bradstreet and Baycorp (formerly called the Credit Reference Association of Australia, or CRAA). If you try to determine what your credit standing is with a finance company, it will always refer you to one or other of these agencies. In our case, between 1993 and 1998, our Baycorp record indicated a range of contracts from the late 1980's onward, all marked "paid in full". None of them had any flags indicating unsatisfactory conduct, although a comparison of the dates of occurrence and completion would indicate that some had been paid late. However, by the time we sought finance to lease our new motor car, all references had been deleted after five years (a requirement dictated by legislation). Our record was completely blank, except for a couple of inquiries from possible lenders. Nevertheless, even after these deletions, finance companies could find out within minutes, that we had an adverse report from Esanda and they placed greater store by this old report than all of our more recent excellent trade and credit reports. The last occasion when this report could be seen to influence a finance company's decision was, we believe, in late 2002, nearly ten years after the report was first filed. It was clear that some other circulation process was involved and this became an important parameter in our search. After all, if Esanda had handed over their report to someone else, the problem may not lie with Esanda but with the recipient of the report.

Obviously, we had to try and persuade Esanda to explain to us the exact nature of the information they held and the methods used to circulate this information. We also decided to talk to other finance companies who had rejected us in the past and seek their views on how they would (hypothetically) approach an application from someone with a similar credit reference to ours.

From late 2000 until the end of 2004, we and our solicitors wrote nearly 20 letters and about the same number of emails to Esanda, trying to find out what information they held on their files, who they had given it to and how the information had been transmitted. Throughout this period, the respondent on behalf of Esanda was a Mr. Rod Wolf. The only tangible information given to us (late in 2002) was a computer record which was so full of inaccuracies that, of itself, it was quite useless as the basis for any creditworthiness opinion. The only material of interest was a reference to "an unsatisfactory credit history to be resolved", a classification as "Slow" and a credit risk factor of 9. Mr Wolf was not at all helpful and most of the correspondence consisted of queries trying to get him to clarify what he had said in earlier communications. Esanda was clearly dragging its feet, hoping that eventually they could hide behind the Statute of Limitations which, as a rule, prevents legal action on commercial matters after six years (though exemptions can be granted by the courts).

3.4. THE BREAKTHROUGH.

Late in 2004, Mr. Wolf was replaced by a Mr. Jim Giles, who was considerably more forthcoming in his answers to our letters. We will discuss this correspondence later. However, he did make a comment which was of material assistance in our quest. He advised that, contrary to what we had been told previously, a "Slow" rating meant:

Unsatisfactory. Pays at irregular intervals to bring account up to date, or requires regular default notices.

Mr. Giles also made another reference, which we had never heard of before. He said that the ratings used by the finance companies were developed by a private company called the Australian Finance Conference, or AFC and that we should write to them for more information on this topic.

We did as Mr. Giles had recommended and wrote to the AFC. This resulted in a surprisingly candid and detailed exchange of letters and emails with the Director, a Mr. Ron Hardaker. This correspondence, too, will be discussed later. However, the material in all of this correspondence was such that we now felt that we had sufficiently detailed information to put the whole story together.

4. ANALYSIS.

4.1. THE 1988 CONTRACT IN CONTEXT.

As we indicated earlier, our difficulties in making payments to Esanda (and indeed our other creditors) were entirely due to a small number of debtors who went into liquidation owing us many thousands of dollars. The amounts owed to us by these companies exceeded the total of all of our late payments to all our creditors by a factor of two. They also had one thing in common. They owed lots of money to financial institutions and these institutions used their power and their banking processes to assist their clients to avoid paying us, so that more money would be returned to them when their companies were finally liquidated. A report mentioned earlier <document 1> describes some of these activities. We had other clients who went out of business, but somehow, they (mostly) managed to repay us every cent they owed us. Any criticism of us by finance institutions for not making payments on time is really chastising us for not being able to defend ourselves adequately against attacks on us by their peers in the industry, some of whom descended to the very boundaries of legality.

It is also useful to ask why we were so vulnerable to these difficulties placed in our way. The answer is that, as IT contractors, we were employed in a subcontract situation, where an agency or computer supplier would pay us to go and work for a third party (the client). The agency would pay us and the client would pay the agency. Now, if the agency does not pay us, what are we to do? Bearing in mind that contractors can only sell their time once, the simplistic answer is that we walk away and seek other work elsewhere. There are two problems with this solution. Firstly, such an action will be very damaging to the client, who is an innocent party. If the agency goes out of business, we are the natural beneficiaries of a replacement contract with the client, because of our familiarity with his business. If we walk away, we run the risk of being sued for damages or at the least losing our hardwon professional reputation. The second reason is that we simply considered it very unethical to damage our client's interests except for reasons of absolute force majeure. Unfortunately, the rearrangement of responsibilities always takes time, as the agency has to be forced to acknowledge its insolvency before the client can terminate his contract with it. From our perspective, so long as we had some money coming in and the prospects of improvement in the business climate remained, we had every expectation of meeting all of our contracted obligations, in due time. Under the circumstances, we felt that we should honour our obligations to the end client to the extent that we could. This attitude was, in the end, extremely beneficial to our lenders, because of the dramatic fall in interest rates during the period of our major lease/purchase contracts and the quite substantial late payment penalties built into the contracts of the day. It was also much appreciated by our clients, some of whom established long-term relationships with us.

In the case of Esanda, we were convinced that they concurred with our view, because in the entire five years of the contract, only once did they make even a passing reference to the possibility of recovery action, they extended the contract to help us to pay off the residual (which we did 12 months early) and they gave us a commendatory letter <document 2>.

4.2. MODES OF REJECTION, 1994-1998.

Our requests for finance fell into two categories. We sought finance as straight out loans from our own bank and another bank, to which we were prepared to move our company and private accounts if we were successful. In both cases, the amount borrowed was less than 10% of our gross revenue and we had negotiable assets (but no property) worth about five times the amounts of the loan. The other requests were all for lease finance to purchase a motor vehicle, so that we could use the trade-in money for investment purposes.

4.2.1. Bank Loans.

Not only did our current bank, Westpac, turn down our written application, they even refused to grant an interview to discuss whether they could offer more limited assistance or why indeed they could offer no assistance at all.

The other bank, Commonwealth Bank of Australia, did give me a lengthy interview which ended on a very positive note, at least in part because we promised that if the loan was successful, we would transfer our account (with revenues in excess of \$100,000 per year) and our two personal accounts to them. Nevertheless, I was disconcerted to receive a somewhat curt letter turning down our request on the grounds that our personal credit card balances were too high. Now it was I who drew attention to these balances at the interview, explaining that my wife and I had just returned from a modest overseas holiday (our first in 30 years) and advising that, being supported by two substantial incomes, they would soon reduce to more sustainable levels. The bank's remarks were surprising as the matter seemed to have been shrugged off at the time. These accounts had always remained within limits and the required payments had been paid promptly, so it is perplexing to see what relevance this had to a business proposition involving a different entity (our family company).

4.2.2. Car Leases.

This is the really interesting part of this essay. Bear in mind that the maximum risk on a lease is about 15% of the purchase price of the car and this declines with time. At some point during the contract, the car value will equate to the amount of the loan outstanding and it will thereafter exceed it. In effect, the risk becomes negative. Remember also that the car belongs to the finance company and is therefore not a negotiable asset in any way. From a finance company's point of view, a car lease is one of the safest transactions available.

With two exceptions, all of the companies we approached rejected us, some within minutes of receiving the request. The only two who did offer finance required a deposit which not only negated the risk but amounted to us giving them a loan in order to secure the finance ! This had an eerie resonance some time later when a computer rental company asked for a 30% deposit and higher repayments before they would rent us a computer.

In most of the cases where we were rejected, we pressed the companies to tell us why they were adopting the attitude they did. The uniformity of their responses was quite extraordinary. It was as though they were all reading from the same handbook !

- Nearly all of the companies referred us to the Credit Reference Association of Australia (CRAA), now called Baycorp. This was a totally pointless exercise, as our records were absolutely clear and could not have influenced their decisions in any way.
- Many companies refused to discuss the matter, stating merely that their decisions were based on various business criteria. They would not tell us what these criteria were, however.
- The companies who offered us finance tried to claim that their offers were structured in line with our requirements or that we had accepted the terms and then withdrawn. Of course, such statements are quite silly. After all, who goes into a finance company's office and volunteers to pay more than the going rate for their services !

- Several companies stated that their decisions were made by computer. Some of them tried to explain how these computerised systems worked. Their explanations were simply not credible – and in some cases, almost laughable. For example, a Mr. Bucket of Citibank asserted that their computer simply counted the entries in a CRAA record, without any consideration of what the content of those entries was.

The only conclusion one can draw from these exchanges is that they are designed to mislead and that finance companies are not prepared to submit their business processes to any sort of honest evaluation.

4.3. THE ROLE OF THE AFC IN THIS MATTER.

Before turning to the behaviour of Esanda, the role of the AFC must be discussed, because it provides the context in which the behaviour of Esanda and its other members must be studied. Our correspondence with Mr. Hardaker consisted of a preliminary exchange (<document 16> and <document 17>) a number of emails where matters were discussed off-line and a final exchange of emails (<document 18 and <document 19>) which summarised and confirmed the information provided by Mr. Hardaker.

4.3.1. The AFC Facilitation Process.

Mr. Hardaker describes a process introduced by the AFC to facilitate the interchange of information between its members which possesses the following features:

1. The AFC circulates periodically a list of contact telephone numbers providing direct access to persons within member companies who can speak authoritatively for the company on credit reference matters.
2. To maintain consistency in the transmission of information, contract behaviour is classified as "Satisfactory", "Slow" or "Bad". Each of these codes maps onto a description as to how the contract was conducted. There is no scope for qualifying the message transmitted in this way.
3. When a prospective customer fills in an application form and lists previous finance contracts, members may call one another and be told how the contracts were conducted. This process bypasses the CRA completely, but is rationalised by Mr Hardaker on the grounds of economy and speed, because it is costly and time-consuming to contact a CRA for every potential contract. He also makes the point that regulations governing the data that can be held by a CRA preclude the storage of some information that is necessary for the evaluation. As an aside, these same regulations also discourage members from storing information which may result in them being defined as a CRA and hence falling within the regulations.
4. Alternatively, members can contact a CRA and, in addition to reading the credit references stored there, they may note inquiries and searches conducted by other members and contact those members to determine the outcome of those inquiries. This statement seems at odds with item 2 which is specifically designed to avoid consulting a CRA.
5. When inquiries are made through this process, the reporting company will note in the customers record that it has responded to the inquiry. This information is available to the customer on request. However, there is no requirement for the company to inform the customer that it has made a report to another lender.
6. There is no requirement that a prospective lender advises an applicant for finance which companies it has consulted or what reference those companies provided.

4.3.2. The Use and Abuse of the AFC Facilitation Process by its Members.

The lenders with whom we had dealings included three out of the "Big Four" Australian banks, a very large international bank and the finance arms of prestige motor car manufacturers. They are, in general, not niche or fly-by-night companies. They also represent about 15% of the membership

of the AFC, which is a large statistical sample. It is reasonable to assume therefore that the behaviours documented here apply to the majority of AFC members.

1. Neither Esanda nor any of the prospective lenders that we approached would give us any meaningful information about the creditworthiness information in circulation. The nature and variety of responses, all of which have the same end result, shows quite clearly that there is a specific and widespread intention to hide the process and its outcomes from the customer.
2. The uniform responses of all of the prospective lenders show quite conclusively that no distinction is made between a "Slow" and a "Bad" rating. This may be simply a matter of laziness, but given point 1 above, there may be an intention to deceive the customer in this regard also. A "Slow" rating might be acceptable to a customer who believed (as we did) that this was a qualification inviting some discussion, whereas a "Bad" one would undoubtedly prompt a very emphatic protest. After all, a customer who knows that he or she has a "Bad" rating will either not apply for finance at all or would raise the matter immediately if it was considered to be undeserved.

The history of our interactions with members of the AFC suggest that, in fact, the usage of the reference process has actually been significantly subverted by members of the AFC. We believe that the process works like this:

1. Inquiries of any description to Baycorp by a member are treated as invitations to consult that member about the creditworthiness of the person or company inquired about.
2. Because any inquirer can be contacted, even if they have not actually done business with the person or company inquired about, there is great scope for the transmission of hearsay or malicious references. We do not accuse all members of the AFC of doing this. We simply state that because of the lack of transparency and audit, the way is open for any member to use the system to cause injury to customers, if they are so inclined. For example, the reference given to Volvo Car Credit in 1998 did not include any information about when the "Slow" contract took place. In other words, it was possible to infer that the contract was of much more recent date than was the case.

We would not be surprised to learn if this usage of the process is in conflict with privacy and lending regulatory requirements

4.4. THE BEHAVIOUR OF ESANDA.

We identify six distinct issues with the way we have been treated by Esanda.

4.4.1. The Analysis Of The Original 1988 Contract.

This was a major contract (the second largest in terms of value that we had ever undertaken) and we were well aware that it might be the yardstick by which other requests for finance were judged. We were confident that the staff we had dealt with at Esanda would be able to put it in its proper context, but it would be naive to assume that documentation on file would, in the course of time, continue to reflect the reality of the situation. We therefore took some pains to document the course of the contract, warts and all, in the expectation that we would probably be asked to discuss it with future lenders. In June 1993, just before we made the final payout, we asked Mr. Leeson, our account manager, to prepare a history of all payments, which he duly supplied <document 3>. Looking at this report, no doubt Esanda will say that because in their books payments are credited to the most outstanding payment, many payments were late. We counter that by saying that the Esanda approach is merely an arbitrary accounting artifice and that there are ways of looking at the report which reflect the actual circumstances much more realistically.

We prepared an alternative analysis <document 4> which displays the following features:

- During the 60 months of the contract, there were only 5 separate months when a payment was not made. These lapses coincided with the difficulties we experienced with insolvent clients, as described earlier. Multiple payments were made in other months.

- The contract had been re-written to terminate in mid-1994. As we paid it out in June 1993, the contract technically finished 12 months early.
- The total amount of penalties and additional interest equated to five monthly payments. As there was only one payment outstanding at the conclusion of the original contract, one could argue (with tongue only slightly in cheek) that all payments were actually made on time, with only the interest being overdue.
- On one day in December 1991, five cheques were banked on the same day, and this is an interesting story in itself. One of the tricks used by our clients' bankers was to spin out the time before reversing a cheque payment and use that period to try and persuade us that business was improving and that we should put in an invoice for the current period (which, of course, they had no intention of paying). To try and get around this ploy, I deposited a number of post-dated cheques with Mr. Leeson. Real post-dated cheques were illegal, because they were considered to be promissory notes attracting stamp duty, so our cheques bore the date of issue, but each had a paper identifying the intended month of payment stapled to its face. As soon as a cheque cleared, I would ring Mr. Leeson and he would deposit the appropriate cheque immediately. The intention was to challenge our own bank to observe the clearance convention and to take up the matter with the paying bank. (Unfortunately, this did not work too well. Our bank advised that the 5-day clearance period was only a convention and, legally speaking, a bank can recall a cheque at any time). While Mr. Leeson was on holiday, another company official took all of the cheques out and paid them all in at once. As we were only a couple of months in arrears at the time, he was actually banking several future payments and probably did it to meet some quota or score bonus points. This had a terminal effect on our relationship with our bank and disturbed our payment schedules for a while. Mr. Leeson was most distressed and indicated (though not in so many words) that he had arranged for disciplinary action to be taken against the employee concerned.

On the analysis presented here, the profile of our account simply does not match the rating of "Slow" as described by Esanda's Mr. Giles either with regard to irregularity or threats of repossession or legal action.

4.4.2. The Abuse of the CRA Process.

Esanda never reported the outcome of our 1988 contract to the CRAA. However, in 1995, a car dealer made a casual request on our behalf to Esanda for finance. This was rejected over the phone and about a month afterwards a note appeared on our Baycorp file to say that Esanda had made an enquiry in relation to a loan application. This was an unnecessary procedure, as we had made no formal application and they had summarily rejected our request. However, as we have seen from the AFC correspondence, lenders check CRA records to see which other companies have also been making inquiries and they then consult them to determine the outcome of the request. A sensible reading of these events is that the original contract assessment was not placed on the CRAA database either because no adverse reference was originally intended or because the intention was to protect it from challenge (CRAA allows space for customers to dispute lenders opinions) but the inquiry report placed there artificially was an invitation to lenders to consult Esanda privately without us knowing about it. Interestingly, Esanda did not inquire about our CRAA record after we had requested finance from them in 1998, but of course, they knew that a flag had already been set on the Baycorp database.

Our interpretation of these events is borne out by another occurrence which took place in 2000, when Esanda made another inquiry about our CRAA record with regard to something called an ASC search. This might have been an innocent event. However, on this occasion we had not made any further request for finance, nor did the event correlate with any interaction with Esanda. We cannot think why Esanda would have suddenly needed this information at this point in time. However, this inquiry was made very shortly before CRAA had expunged all previous Esanda references from their database. It is also about the time that, according to its stated policy, Esanda should have been removing our record from its files. As the record was still on file in 2002, it must have been refreshed in some way at that time. It is not unreasonable, therefore, to infer that the

inquiry was put on file at the same time, to ensure that lenders would continue to consult Esanda and be handed their damaging credit reference. In fact, it is probable that the response from Flexirent (the encounter is described below) could be linked to the existence of this record.

4.4.3. The Handling of our 1998 Request for Finance.

We submitted a request for finance on Esanda's own form, giving details of all of our trade accounts, credit card accounts and so forth. Our request was processed by an agent in Esanda's head office (a Mr. Graziano Giannone), who gave me a tracking number of DAP2317. He retrieved our details from the database, confirmed the "Slow" rating, but advised that he was going to accept the proposal anyway, as the information was so old and was contradicted by our later excellent history. However, when he took it to his supervisor for what should have been a routine sign-off, he was instructed to decline the proposal, but was not given any reason why. A request for an interview was also turned down. Mr. Giannone was very apologetic and said that this occurrence was extremely unusual. I later faxed Mr. Giannone a copy of our letter of commendation and he again attempted to have the proposal accepted, but without success. There is no reason to suppose that Mr. Giannone was not processing our application in accordance with laid-down policy and hence, one can reasonably assume that the refusal was specifically directed to our company by someone with malicious intent or who was acting in accordance with policies not known to the front-of-house staff and which could not therefore be conveyed to the customer.

4.4.4. The Delays and Misdirection By Esanda In Response To Our Requests for Information.

Our inquiries at Esanda actually began while we were researching the Volvo case. The documentation received from Volvo Car Credit had a hand-written notation that 'Joanne at Esanda reports that a contract was "Slow" ', so we asked Esanda to explain what it meant. Mr. Wolf would only say that "it meant what it said". In the light of Mr. Giles' later admission, this was simply not true. Over the next couple of years our correspondence more or less went round in circles. Late in 2002, after we had intimated that we would be referring our case to various regulatory authorities, we finally got a printout of our record on Esanda's computer <document 5>. Unfortunately, it raised more questions than it answered, as our analysis of it <document 6> makes clear and the exchanges still went on and on. Our lawyers were quite frustrated as the sample correspondence (<document 7>, <document 8>) attests.

The correspondence with Mr. Giles (in reply to our letters <document 9>, <document 11> and <document 13>) also contains some problematical material, though we do believe that his intentions were to be more helpful than Mr. Wolf. In his first letter <document 10> he states that

The common terminology ensures credit providers are able to make consistent assessments of the potential level of risk involved in approving an application for credit. This reduces any chance of misinterpretation between members.

However, later on, he says

. . . we are unable to speculate as to the reasons why other lenders have declined your finance applications and the structure of the offers they have made to you.

These statements are not necessarily incompatible, but their credibility rests almost entirely on the nature of the information being transmitted. His second letter <document 12> lists three categories of risk and it is naive to believe that when lenders give out a rating of anything other than "Satisfactory", they are unaware of the most likely outcome.

There are also statements by Mr. Giles to the effect that

- 3. When Esanda provides a Credit Reference to an AFC member, a note indicating the date the Reference was provided and the member's details is placed on the Esanda customers contract file.***
- 4. All information that is provided in a Credit Reference is information which a customer may request to access.***

These statements do not accord with the facts, as the record presented to us by Mr. Wolf contained no references to any other AFC members. At the very least, the request from Volvo Car Credit should have been present (in a way, it was – the Volvo refusal, which was based on an Esanda reference, was used in a circular sort of argument to justify Esanda's position !). Nor can Esanda equivocate and say that we did not ask for that explicit information (which we did not even know existed at the time). Our repeated requests were for ALL information referring to us.

It would be nice to believe that the more candid attitude displayed by Mr. Giles reflected a change of policy in Esanda. However, a final letter <document 20> from Mr. Giles (after we had sent this document to management for comment) reverted to the prevalent finance industry mode and suggests again that they simply felt that they were safely behind the Statute of Limitations barrier.

4.4.5. The Inadequate Design and Poor Management of Esanda Customer Records.

Most of the data in Esanda records consists, as one would expect, of the parameters under which a loan is granted; identification details, assets and liabilities, income and so forth. Creditworthiness information is confined to two items of data only. A word ("Slow") and a number (risk factor). There is also room for a note, which in our case held a highly ambiguous but unsupported reference to a previous bad credit history. A more appropriate use of this field would be to advise that the circumstances leading to the poor opinion were unusual and that prospective lenders should perhaps discuss this with the client, but there seems to be no policy controlling the use of this field. There is no accurate information about our 1988 request for finance, but there is some quite remarkable misinformation. The only car dealer whose name appears in the record is one who we had never done business with, it is alleged that I lived at home with my parents (who actually live in the UK) and the record asserts that I had \$30,000 in cash at the bank. This last fact in itself should have allayed any creditworthiness concerns. Given the length of time, these records remain current, one would have expected some supporting information on file to justify opinions that can have serious or catastrophic consequences for some clients. One would also have expected a periodic review to check the accuracy or relevance of information on file, which may change in the light of subsequent information. None of this is apparent in the material provided by Esanda (though there is plenty to suggest the opposite).

Credit references are maintained for five years by Baycorp and other publicly accessible databases. Any person or company mentioned adversely has the right to place their own statement in the database and it will be circulated along with all of the other information requested by would-be lenders. (We did place a precautionary note to say that we had a report available describing our experiences during the period covered by the CRAA record). Esanda, however, asserts that they keep and circulate records for seven years. This means that, even if Esanda used Baycorp to disseminate creditworthiness information, there would be a two year window, where the subject of the report would have no vehicle for commenting on any matter that they considered misleading or incorrect.

In our case, Esanda did not even adhere to their own policies. The copy of the report which we received was dated November 2002, more than nine years since the original report was posted. About the same time, a company called Flexirent, who rents out office equipment and computers was approached on our behalf by an Apple dealer to arrange a three-year rental contract for one of their computers. In my presence, he rang the company and was put on hold for about five minutes. He was then told that they would only write the contract if we paid a 30% deposit, with monthly rates which would result in our paying nearly 20% more than standard rates. In making this offer, the only information provided to Flexirent was the name of our company. The dealer could not comment on the rates, but did say that he had never heard of a deposit being required. Now, we have no way of knowing whether Flexirent had access to the Esanda report. However, the way in which the decision was made so rapidly and the unpleasant resonances with our Volvo contract makes it more likely than not. This means that the information about us remained in circulation for nearly ten years.

From the foregoing, one may confidently assert (1) that the design of Esanda's credit reporting system is deficient and overly simplistic and (2) the management of this system does not appear to

be conducted with any stringent, auditable rules. Both of these features can create enormous vulnerabilities for their customers – as indeed our own case demonstrates in a dramatic way.

4.4.6. The Possibility Of Malicious Action By An Esanda Employee.

Several features of our Esanda records suggest that human intervention in their management had taken place:

- No reference of any kind was ever placed on the CRAA database. This suggests that either the original intention was to provide a positive reference if asked (this would accord with our treatment by Esanda during the contract period) or that there was a deliberate intention to hide the fact that an adverse report was to be circulated. The gratuitous extension of our contract (which was paid out 12 months early) and the issue of a letter of commendation tend to support the former view. Also, in the latter case, while all AFC members are notoriously defensive with regard to their credit references, it is difficult to imagine a large public company like Esanda deliberately adopting such devious measures as a matter of policy.
- The inquiries made to the CRAA database have already been described (see 4.4.2 above). The entry in 1995 relates to a loan application that was never made. A salesman made a casual telephone inquiry on our behalf to ascertain how much a lease would cost us. Whoever responded to the query declined to offer any terms. However, this occurrence might clear up a strange anomaly in our records. It is entirely possible that the respondent, knowing that we were contemplating a purchase, placed the inquiry notation on the CRAA database and then amended our record to insert the "Slow" reference and to accord with the CRAA notation. However, by that time (a month later), he may well have forgotten the name of the motor dealer (as the communication had been by telephone) and entered Box Hill Motors (with whom we had never done business) instead of Reg Hunt Motors, from whom we had bought two cars. This could also explain the contradictory nature of much of the other information in our record. The fact that no inquiry notation was made on the CRAA database in 1998 (when we did make an application) but another was made in 2000 (just before the 1995 notation was deleted) suggests strongly that the notations actually entered were meant to serve another purpose, i.e. to attract the attention of other lenders and enable the circulation of an untrue reference. The poorly regulated AFC procedures make this singularly easy.
- If it is a fact that Esanda purges its records after seven years, then one would expect it either to be a fully automatic process (all complying records would simply disappear) or that a formal review of records would be carried out and any decision to retain the record would require a notation to report the action and to say why it was being done. Now we have had no contact with Esanda since 1993, so there could be no possible reason for keeping the record open. Nevertheless, this adverse record remained in the database and was circulated for almost ten years without any critical examination, and it is a very reasonable inference that this record has deliberately been manipulated to keep it on the database by someone with malicious intent.

There is a manager in the ANZ bank itself whose arrogant behaviour angered us to the point that we closed our account and reported the person to the regional manager. We received a reply which fell somewhat short of an apology, but did express regret and implied that the manager had been taken to task in some way. However, this person is not a likely candidate, unless he had been banished (so to speak) to an outpost of the ANZ empire.

A more plausible candidate would seem to be the person who embarrassed us by ignoring the progressive payment arrangements that we had made with Mr. Leeson and who had been disciplined. It may well be that this person had risen to be in a position to distribute the adverse reference by 1995 when we made a casual inquiry and saw an opportunity for revenge by manipulating records to our disadvantage.

4.5. THE BEHAVIOUR OF OTHER FINANCE COMPANIES.

4.5.1. Primus Automotive Finance.

When Ford Motor Company acquired Volvo, our contract was assigned to Primus, a Ford subsidiary. They also took over the name Volvo Finance, which had until then been used by Volvo Car Credit, the original financiers of our S40. We do not know whether this takeover was prompted by the bad behaviour of Volvo Car Credit or was simply a management rearrangement following the acquisition. It is also interesting to note that Volvo has also terminated its arrangement with the dealer who sold us the car.

Because they had taken over our contract, we thought that they might still have material on file which would be helpful to us, so we wrote and asked them if they could give us any further details, particularly regarding the role played by Esanda. We enclosed a copy of our essay on Volvo. Their reply <document 14> was most interesting. They suggested that we were defaming the name of Volvo Finance, although all we were doing was publishing documents which supported our case and just happened to have a very prominent letterhead. They also expressed the opinion that our allegations lacked substance. This is really quite odd, considering that we had four fat files of documentation on the matter and at no time did the previous management ever deny our interpretation of events. One would have thought that they would have been keen to restore the good name of Volvo Finance, after it had been significantly besmirched by Volvo Car Credit. Even if they were reluctant to air an embarrassing subject, the sensitivity of the matter might have prompted them to claim (truthfully or not) that Volvo Car Credit must have removed any relevant material before the handover.

The contract and a refinance to pay off the residual on terms (again!) have, of course, run to completion without any problems.

However, there is a little curiosity in this connection. I had to sign fresh guarantee forms, which I did. I was then advised that they were not among the papers I had returned to them and asked me to sign another copy. I did so, but returned the papers with a letter <document 15> which expressed my concern that there was an unattached guarantee form in circulation which conceivably could be used by an unscrupulous person to get finance from them or even another company, making us guarantors. I asked Primus to countersign my letter and return a copy, just to say that they had noted my concerns. To date, we have not received this confirmation, nor indeed have we received any other documentation on the contract extension. Naturally, we have taken care to have the matter legally documented, just in case ! Of course, no one is saying that Primus is in any way dishonest. It is simply that, given the history of the contract, one would have imagined that they would be treating our contract documentation with some care and, in its absence, their behaviour reinforces the sense that, like other Volvo enterprises, they have little or no concern for their customers' interests.

Oh, one last thing. The name Volvo Car Credit has once again appeared on their documentation !

4.5.2. Capital Finance.

We approached Capital Finance because they had made the initial offer of finance which gave (the original) Volvo Car Credit the idea for the scam. The difference between the offers is that, although Capital Finance wanted a large upfront deposit, the monthly payments were so low that at the end of the day, we would have paid no more than someone on standard rates. We also had another reason to consult them. Capital Finance had advanced money to my wife to purchase a car. Her salary was less than a quarter of the company revenue, but they were prepared to write a contract with a risk factor twice that implied in our contract. More recently, they have given her an unsecured personal loan with a risk factor of similar value.

They replied promptly and civilly to our request (even expressing some sympathy for our situation), but declined to get involved in any matter relating to another finance company or even to discuss the credit reference process in general. It seems rather sad that a company who seems to have a more developed ethical stance than many of its peers should still believe that solidarity within the

finance industry is more important than rendering assistance to someone who has suffered serious damage inflicted by one of those peers.

5. SUMMARY.

There are two threads running through this inquiry. The first is the quality and usage of the systems used by finance companies and the AFC to store and distribute creditworthiness information about their customers. The second is the degree to which these organisations will try and avoid having their systems exposed to scrutiny. We will look at each of these in turn.

5.1. QUALITY AND USAGE OF SYSTEMS.

5.1.1. Esanda.

The progress of a finance contract, as in all activities involving money, is vulnerable to all sorts of pressures. From a customer's point of view, those pressures may be caused by their own misjudgement or greed. They may be caused by outside events, such as the loss of employment, illness or injury. They may be the result of activities by other financial organisations, justified or unjustified. The point here is that judgement should not be passed on the pattern of repayments but on how the customer reacted to these adverse situations. Our own experiences show that making a fair assessment of a contract is a matter of some complexity. The Esanda system fails almost totally in this regard. The only measures are a code word, which is supposed to be one of three possibilities, but may very well be one of two and a single-digit number called a risk assessment (which Esanda says is only for internal use and not divulged to other organisations). No information is kept on file to demonstrate how these values are calculated. The only description we have is a statement that the code is related somehow to the number of late payments. The definition of a late payment, as it is used in the Esanda system, is open to question. We were able to construct an alternative definition, which was far more reflective of the real world and which would have justified a quite different interpretation to the one adopted by Esanda. Their definition was also so inflexible that it is incapable of properly representing the circumstances which caused a payment to be late. Bad as this system is, because of its crude mechanistic nature, it would be marginally acceptable, if there was scope for the inclusion of background material, against which the ratings could be judged or if the customer were kept fully informed and could challenge the rating..

The management of the system appears to be very loose. Officially, Esanda keeps records for seven years, which is two years longer than Baycorp or Dun and Bradstreet, the benchmark public credit reporting systems. However, our records were kept on file and distributed to other financiers for almost ten years, to our profound disadvantage. The quality of data in our record, as given to us (who knows, there may other information that we have not been given) includes unsupported and vaguely derogatory statements and many errors of fact. There appears to be no auditing or aging of data. In other words, the behaviour of a customer years ago, which may have been dictated by difficult circumstances at the time, is considered to be a good guide as to how that customer would behave now, even if the circumstances were much more favourable. All of these features render the system extremely vulnerable to abuse by individuals within the company and we believe that this is in fact what happened. Certainly it is the explanation that best fits all of the available evidence.

The timeline of Esanda activities which were prejudicial to our interests is, according to the evidence available:

1. January 1993. Original contract with Esanda ends. Esanda extends it until mid-1994 so that we can pay off residual in instalments.
2. June 1993. Contract is paid out and ownership of car transferred to DAPL. Esanda gives us a letter of commendation. The contract information is not supplied to CRAA.
3. November 1995. A Volvo dealer made a casual inquiry of Esanda on our behalf to establish leasing rates for a new car. The Esanda executive declined to quote.

4. December 1995. A notation is made in our CRAA file by Esanda in relation to an application for finance, though no application had been made.
5. December 1995 to December 1998. All requests for finance were either refused immediately or were responded to with unacceptable terms.
6. December 1998. Made application to Esanda for car lease finance, which was refused immediately. Esanda did not make a notation in our Baycorp (CRAA) record.
7. December 1998. Signed contract with Volvo Car Credit under protest.
8. March 2000. Began correspondence with Esanda to try and get creditworthiness information on myself as an individual..
9. June 2000. Esanda made a notation in Baycorp file with an ASC request.
10. August 2000. Engaged lawyers to seek information from Esanda.
11. December 2000. All references in CRAA prior to 1998 expunged from record.
12. August 2002. Legal action against Volvo Car Credit settled in our favour.
13. October 2002. Copy of record (with many inaccuracies) received from Esanda.
14. October 2002. Flexirent responded to request for computer rental with unacceptable terms.
15. July 2004. Esanda advises of involvement of AFC.

5.1.2. Australian Finance Conference.

The AFC has been very frank in its correspondence with us, but at the end of the day, the information they supplied really only describes how their processes are supposed to work and in fact seem to bear little relation to what happens in practice. We observe three main areas where we believe that AFC intentions have been subverted by its members.

1. Customers are supposed to be kept informed about credit references supplied by previous lenders. We found no instance at all where this policy was honoured. In fact, the reverse is true. Responses to requests for information range from curt refusals, through elaborate but unbelievable explanations with no material content to downright lies. Even when information is eventually supplied, it is only after long delays, making corrective action difficult or impossible.
2. The reference process introduced by AFC was designed to be an alternative to the need to consult CRAs, in the interests of efficiency and economy. It has degenerated into being an unaudited and secret means of information interchange. Information about previous contracts is intended to be gleaned from applications for finance submitted by customers, but members also refer to CRA databases, not for the records contained therein, but for lists of lenders or prospective lenders who have previously examined the database. These are then consulted directly, so that the customer has no information about such interchanges. It also permits the transmission of second-hand or hearsay information, which may be out-of-date, distorted or untrue.
3. The three codes advocated by the AFC have atrophied into two. As our own experience attests, a "Slow" rating is considered to be equivalent to a "Bad" rating. After all, if a "Slow" rating attracts only refusals or offers being conditional on very large deposits, what alternative is left for a "Bad" rating, other than to send some violent men around to trash one's office for daring to ask for finance ?. There would be less objection to the two-code system, if the "Slow" rating were not used to lull the customer into a false sense of security.

At one point, Mr. Hardaker expressed the view that most decisions to offer finance to a customer were based upon a computer analysis and that references of the type under discussion were used "only at the margin". However, as an IT practitioner, specialising in database design and implementation, I am well aware of the limitations of such systems and that there would certainly be a relatively small number of cases where the computer could not reach a definite decision one way or another. The natural solution would then be to refer back to

other information, either written on paper or provided in conversations. In other words, while the AFC reference process would only affect a small number of finance applications, it was absolutely central to the decision-making process and therefore deserved to be closely audited or to have additional features built in to protect the customer's interests.

6. EPILOGUE.

At the time we began this odyssey, our only aim was to obtain redress for what we regarded as unfair and damaging treatment. However, as time went on and we had an opportunity to observe the practices of Esanda and other members of the finance industry in some depth, we realised that they were so flawed and secretive that there could be many customers who could be as vulnerable and who suffered as much as we did. Clearly, there would have to be changes, either in the culture of these organisations or in the legal framework within which they operate. The only real way of securing such change is by the dissemination of information, so that the scale of the problem becomes apparent and the minds of the public, our legislators and company officials alike are forced to confront it and devise appropriate solutions.

We are fortunate in this age to have a really powerful medium for this purpose – the Internet. Unlike the TV, radio or print media, where the news is a nine days wonder and then is lost forever, the information is re-presented every time someone conducts an appropriate search. The pool of people who are aware of the facts widens constantly, including those with their own stories to tell.

We have therefore decided to try and build a web site for the presentation of accounts of corporate behaviour which, while not illegal, are damaging to customers' or to the general public's interest and needs rectification. Although our focus here is on the finance industry, because of its potential to impact directly upon the lives of all us, it could potentially be broadened to include government departments, legal practitioners and so forth, all of which can have similar impacts.

Note: In the event, I never had the time or the resources to set up the web site. However, the appearance of the web log (blog) has offered new opportunities for the presentation of this material and (hopefully) the conduct of some useful discussion.