# *SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE on CORPORATIONS and FINANCIAL SERVICES*

## *IMPAIRMENT OF CUSTOMER LOANS.*

In 2011, when the NAB commenced its inexplicable and unconscionable campaign to "exit" us, my husband and I had been loyal customers for over nineteen years with an exemplary banking record. All our banking was done with NAB. At the time we had 14 loan facilities totaling $4,000,000 secured against property worth $8,000,000. Our monthly interest payments were in the vicinity of $30,000 and our income from investment properties and our farming enterprise was more than sufficient to meet all our obligations.

Many of the loans were at least ten or more years old and had been used to buy the farm and establish our coffee business and to purchase several investment properties. This had been done with a view to providing for a self-funded retirement. We had never missed a payment, ever, and had had a good relationship over many years with our local managers. In fact the Bank sent us annual letters thanking us for maintaining our accounts so well.

All this changed abruptly in 2011. Many of the senior staff at the local branch, with whom we had dealt with for many years, were either moved or terminated. The new manager did not seem to understand how our numerous loans, co-borrowings and properties related to each other and, worryingly, did not seem interested to find out. Promises made to us regarding rollovers of loans and review of interest rates were continually not met or simply put off. Then in December of 2011 the Bank commenced a campaign designed to illegitimately remove us as customers that is still ongoing to this day. The actions of the Bank resulted in the forced sale of property worth millions of dollars into depressed markets, despite us having never missed a payment. In order to attempt to justify its actions the Bank egregiously misrepresented our financial position, manufactured defaults and breached our privacy by discussing our finances with third parties. As if this behaviour were not bad enough, the Bank went further, by also defaming us in stating we did not have sufficient income meet our commitments and that it was surprised we hadn't advised them of this situation ourselves. These incorrect and defamatory statements have caused us huge embarrassment and ongoing difficulties with our business and personal dealings with these people. While the Bank has apologized to us for the breach of privacy, it has not corrected the misleading and defamatory statements it has made.

In this Submission we will be addressing the following Terms of Reference:

1. c. practices of banks using non-monetary conditions to default loans
   f. extent to which borrowers are given an opportunity to rectify any genuine default event
   g. provision of reasonable written notice to a borrower when a loan is required to be repaid

2. a. the incidence and history of
   i. loan impairments; and
   ii. the forced sale of property;

   b. the effect of the forced sale of property in depressed market conditions.

**History**

In 1998 we bought land in Northern NSW and established an organic coffee plantation and roastery. At this time we already owned several investment properties, mortgaged to NAB. For fifteen years we toiled through the usual vagaries of farming - drought, flood and cyclones, planting and tending the trees, harvesting, processing, roasting and packaging coffee. We won over forty medals for our coffee and after a decade of hard work, our plantation finally began to break even. During the last three years that we owned the farm it had become a profitable enterprise.

In April 2011 we approached the Bank for an extension of $100,000 to any of our 14 facilities.

The reason we wanted to borrow an additional $100,000 was twofold:

1. To carry out renovations and improvements on our Farm/principal place of residence and to fund a marketing campaign in order to expedite a sale of this property and also to carry out urgent repairs on another residential property that was tenanted, and

2. To assist in covering a shortfall in income that we expected to occur when one of our commercial tenants vacated in 5 months time. (This tenant was paying $90,000 pa). We estimated that it might then take a further six months after this tenant vacated before we could find a replacement. Therefore we told the Bank that we believed it could take at least until April 2012 (ie.12 months hence) before we could secure a new tenant and would need the loan for a minimum period of 12 months.

However, the Bank would only agree to lend us the $100,000 for a term of 6 months, whereupon the loan would become repayable in full. When we went to sign the loan documents we discovered a further provision had been inserted stating that if the $100,000 was not repaid in full within the six months, the Bank could exercise its rights under securities taken over six of our other properties including our principal place of residence. This had never been raised with and we believe that its inclusion is a breach of the NCC s49(1).

Further, under this loan the Bank imposed an additional requirement that within five months of the commencement of the new facility we had to achieve the sale of either

our farm (principal residence), or the commercial building, which the tenant was vacating in five months time. Failure to do so would also result in default regardless of whether the $100,000 was repaid at the end of the six month term or not. Again, this term was not negotiated, and only discovered when we went to sign the documents.

These were unnecessary and predatory terms that were calculated to cause us in all likelihood to default and suffer considerable hardship. There was no apparent reason for the Bank to insist on such terms as all the loans were up to date and we had ample equity in all the properties.

At the time we sought this additional loan the amount of existing facilities with NAB totaled $3,900,000. This was secured against $8,000,000 worth of property and serviced by an annual income of $450,000. Therefore the new loan represented 1/80 of our total assets or about 1/40 of our total borrowings. Proportionally therefore this additional $100,000 was not a large amount and certainly the oppressive terms of the loan could not be justified given the potential hardship and financial damage to us if we could not meet them.

It is clear this loan met the definition of a credit contract and was therefore regulated by the NCCP Act. It was apparent that the terms the Bank was insisting upon were unsuitable. There was a very large risk that we would not be able to meet the contract's financial obligations within the very short term provided for and this would lead to our financial hardship. The Bank was now linking millions of dollars of other loans to the performance of the $100,000 loan, and was intentionally setting us up to default.

There were several more suitable loan options available to the Bank that we believed we could have met, and we were subsequently proved right. We initially asked that one of our other facilities with the Bank be extended by the $100,000 as we had sufficient equity as well as income to meet the additional interest repayments. The Bank, without giving us any reason, refused to do this and would only offer us the money as a new loan with a six months term. We then requested that if a new loan was the only option, it at least be for a term of no less than twelve months. The Bank also refused this request without providing a reason. We also canvassed other alternatives such as reverse mortgage, but to no avail.

We told the Bank manager that this proposal was not only unsuitable but also an unnecessary stance for the Bank to take for a number of reasons:

1. One of the reasons we were seeking the loan was to ensure we could continue to meet our personal obligations while we found a new tenant for the commercial building. The building in question was two levels. There was sufficient income from the 1st floor tenancy to cover the interest payable, however the loss of the $90,000 ground floor tenant would have a significant impact on our income. It was unlikely that we could guarantee a new tenant by 30 September 2011 as the existing tenant was not vacating until 1 September 2011, i.e. 29 days earlier. It

was a large ground floor space that could not be readily subdivided and from our considerable experience letting commercial buildings over twenty five years we expected it could take a further six months or more after the tenant vacated before we could secure a new tenant. As it transpired this is precisely what happened – our judgment was borne out when we found a new tenant at a higher rent six months after the original tenant vacated and twelve months from the date the $100,000 loan. However this occurred six months after the Bank put us in technical default for failing to meet its inappropriately short six month term. This demonstrates we were correct in arguing that six months was an unsuitable term. The Bank cannot have complied with the requirements of NCCP Act in assessing this six month loan as not unsuitable.

2. We also believed it was unlikely we could guarantee to sell our farm property which was also our principal place of residence, within five months. We had had two agents actively marketing the property for twelve months and they both advised us that the market for our type of rural residential property was effectively dead. Both agents held hopes that things would improve but in the short term their advice was to take the property off the market and give it a rest for at least six months. Because the Bank forced the sale of this property we could not take this advice and ultimately sold the property for half the original asking price and had to walk away from our business, including stock and equipment, without receiving any payment for it. This was a profitable business we had taken fifteen years to establish and which had won numerous awards including National Champion Coffee at the Sydney Royal fine food show.

3. Similarly the undertaking the Bank required as a condition of the loan that we sell the commercial property (that the tenant was vacating), was oppressive, nonsensical and totally disregarded commercial realities. There was no reason for the Bank to force us to sell any property under fire sale conditions as no loan was in arrears and we had sufficient income to meet all ongoing obligations. To sell a commercial property without a tenant or with one that had indicated it was vacating would ensure we only received a fraction of the value that could be achieved once we had secured a new tenant. This was borne out when, after the tenant vacated, we received an offer (unsolicited) of $500,000 for the property, which we rejected. Once we found a new tenant the property was revalued for refinancing purposes at $1,400,000. To require us to sell the property before a new tenant was found would have caused us further unnecessary and substantial financial loss and is evidence of the Bank's bad faith and intent to damage us financially.

Our plan had always been to sell one or more properties when the market recovered. In the meantime we had demonstrated we could maintain all our loans in order. It was also our intention to substantially reduce debt once we did achieve a sale, including repaying the $100,000 loan in full. We had communicated this plan to the Bank. Because of the quality of the properties and equity we held this was not a hollow hope but a realistic and achievable plan.

It would not have weakened the Bank's position to allow us the twelve months or in fact simply extend any of our existing loans. Faced with no other option, as the Bank held security over all our properties, and needing to secure $100,000 to meet our immediate personal needs as explained above, we had no choice but to accept the take-it-or-leave-it offer and hope that against all odds it would work out. We also believed, given our long term and excellent banking record, and the Bank's long standing practice of always rolling our term loans over, that provided we continued to meet all our interest payments there would be no cause for the Bank to act differently this time. This was especially so given we would only required a further six month term.

At the time we believed it unthinkable that the Bank would call in $4,000,000 of facilities once the six month period expired. At this stage we were paying approximately $340,000 per annum in interest, nearly 3 ½ times the amount of the loan in question. What we subsequently realized was that the Bank was setting us up for default and intentionally insisting on an unsuitable loan in order to bring this about.

As we feared, at the end of six months we had not sold either property and could not repay the $100,000 in full, however we had continued to maintain all our interest and principal payments up to date.

Then in December 2011, without any prior communication or statutory notice, (as required under the NCC), NAB sent the Letter reproduced below, informing us that it had commenced recovery proceedings against us for money owed. The Bank also sent this letter to people associated with us who had either no loans with NAB or, by the Bank's own admission, no loans that were in default.

The Bank gave no prior notice it was about to take this action even though a few days earlier we had met with the new branch manager to discuss amalgamating several loans in order to obtain a better rate of interest.

This letter was extraordinary in that it did not state why NAB was taking enforcement action, or what loans or amounts it related to and the author, described as a "senior legal counsel", did not provide their name or contact details on the letter (which is a breach of the Legal Practitioners Act) so we could not contact him/her and ask why such a distressing letter had been sent. Further, the letter did not actually emanate from the Legal Section of the Bank, but rather from the local branch.

The Bank also sent this enforcement letter to my elderly father, who together with my mother, were co- borrowers in relation to two of the investment properties we owned

jointly. My parents were in their late seventies and, as could be imagined, were extremely distressed to be advised that the Bank was taking action against them when all their loans were, and always had been, in order. This is the one and only piece of communication they have ever received from the Bank. It is also remarkable that my mother, who was also a joint mortgagor, was not notified of the enforcement action. The Bank only sent the letter addressed solely to my father.

The Bank also sent this letter to our former legal practice, which we had sold nearly a decade earlier. This firm did not even have loans with NAB and had no ongoing connection with us.

**Bank Enforcement Letter of 6 December 2011**

Below is a copy of the 7 identical pro forma letters were sent to us as well as to addressees who either had no loans with the NAB or none which were in default.

6 December 2011

Dear Sir/Madam,

Enforcement Action – Debt Recovery and Mortgagee Sale

We have been instructed that enforcement action is to be immediately commenced to recover the amounts owed by you to National Australia Bank Limited. Such action is now being prepared. All costs associated with such action, whether internal employee's costs or costs incurred with external solicitors and agents, will be payable by you and debited to your account.

If you wish NAB to consider any alternative arrangements in respect of your debts, please immediately contact or if email is preferred

Yours faithfully

Upon receiving this Letter, my father rang the local manager, and was told that all his loans (and therefore by extension our loans, as these particular loans were all joint borrowings with us) were in order. The manager wouldn't tell him why the Bank had sent him this distressing and false letter telling him action was being commenced against him if in fact it was not. The manager did go on to say to him that my husband and I could not afford our other loans and that she was surprised we hadn't told him ourselves. Not only was this false and defamatory but also a breach of our privacy. As you can imagine, an elderly man who has $1,000,000 of co-borrowings with people the Bank says are being less than honest with him suffers great distress which is not conducive to ongoing happy business or personal relations.

When we also telephoned the manager to ask why this letter had been sent to us out of the blue, she told us that it was probably "just a hurry up" as the Bank would like to "encourage" us to sell up and pay back our loans. When asked why, she replied that the Bank no longer wanted "our sort of business," which we took to mean agri-loans and small business loans. The FOS case manager also later confirmed this same sentiment. Apart from describing what the Bank was doing to us as akin to "crushing a walnut with a sledge hammer", he also said that the Bank, actions were "nothing personal, it is just that the Bank does not want to support your category of loan anymore." I can tell you, from our perspective **it is very personal when a Bank bullies, intimidates, and defames you in order to frighten you into paying back all money on threat of it seizing all your property.**

Despite our having clearly raised the concerns about the form and content of this Letter to the Bank and FOS more than four years ago, the Bank continued to use this "fake" enforcement letter on other customers until we sent our complaint to Legal Services Commission (LSC) setting out the numerous breaches of the Solicitors' Rules. This displays not only an arrogant disregard for the deceptive and damaging consequences of this pro forma letter but also how hollow any expression of remorse is that the solicitor and Bank professed to the LSC.

The NAB's use of unconscionable pro forma Letters was designed to create a sense of "urgency" "escalation" and "consequence". It is now clear to us that this letter was a dishonest tool, intended to frighten us into selling quickly or to refinance, where it had no legitimate basis for calling in our loans. It was sent to people associated with us who either had no loans or loans that were not in default, as a means to intimidate, embarrass and harass. We believe that the Bank manager was correct to characterize the Letter as just a "hurry up" as in fact it had no legitimate legal basis.

The Bank later admitted to the LSC that many Bank in-house lawyers had used this pro forma letter over a long period of time. We therefore believe it has been a well-used tool to intimidate and frighten other people into selling and paying back loans they should not have had to. This would not be the first time NAB has been caught out using these tactics. Fairfax journalist Nick McKenzie exposed similar behaviour in October 2010 in an article titled ,"Revealed NAB's dramatised debt collection tactics".

It could also be argued this letter is a breach of the NSW Crimes Act 1900, s.192 G, in that the Bank intentionally wrote a "false and misleading" letter with "the intention of obtaining a financial advantage or causing a financial disadvantage."

Section 2.2 of the Banking Code of Practice requires the Bank to "act fairly and reasonably in a consistent and ethical manner, considering [our] conduct, [their] conduct and the contract between us." Given the Bank had no basis for sending this letter and had not in fact commenced any action against the recipients of this letter as claimed and had not even sent the requisite statutory notices, or given the minimum thirty days to rectify any alleged breaches as is required under the NCC, it is clearly in breach of the Code.

Section 34.2 of the Solicitors' Rules states that any letter that makes statements calculated to mislead or intimidate and which grossly exceed the legitimate assertions, is a breach of the Rules.

The Bank also had no legal entitlement to include a statement in the Letter that costs would be payable and debited from the relevant bank account, for the following reasons:

- There was no banking relationship with our former firm and therefore there were no contracts or documents to give the Bank the right to charge costs.
- The Bank stated numerous times that no action was being taken against my father because none of his facilities was[1] in default. Without a default the Bank had no basis to claim costs.
- No costs could be charged against our accounts, as we would have defended any enforcement action. The Bank could only charge such costs without a costs order if the action was undefended.

To date the Bank has not withdrawn this letter or apologized for the distress it has caused to the recipients.

We told our local manager that it was unreasonable to expect we could pay back $4,000,000 of debt immediately as required by the Enforcement Letter, given the economic downturn and poor state of the property market and we needed more time. She responded by telling us it was out of her hands as our file was now with the Bank's enforcement section, and she could not give us the contact details of anyone who we could speak to there. This again exposes the illegitimacy of the Letter which stating that we should contact her as our local manager to discuss alternative arrangements. When we asked to speak to the author of the Letter, she also declined to tell us who that was or even what State it came from. When pressed as to what the whole extraordinary situation was about, given we did not believe we were in default, her answer was that she thought the letter was "just a hurry up". We then wrote to the Bank, protesting that

it was unconscionable to call in [2]our loans when we were not in default and asked again for the name of the "senior legal counsel" who supposedly sent the letter. We did not receive a reply. NAB's only response was to begin manufacturing defaults in order to justify their action.

This started with appointing valuers to revalue our property, at considerable expense to us, in order, we believe, to try and trigger the loan to value default provisions. However even though valuations came in very low, they still showed our equity was more than sufficient to support the loans. Having failed to trigger default by revaluation, the Bank next resorted to cancelling the automatic payment authorities without telling us, causing our loans to not be paid automatically from our accounts. This technically put us in default until we realised what had been done and rectified it by paying the interest manually.

Next, the Bank claimed our income to loan ratio was insufficient to support the loans. We challenged the Bank to show that this was the case. The manager came back with a spreadsheet that misstated our income to be $120,000 less than we were actually receiving and showed interest that was more than $75,000 higher than we were paying. Despite our providing accountant's statements, Bank statements and tax returns to prove the true position of our finances, the Bank refused to correct the mistakes.

**Finally the Bank said it didn't matter what our financial position was anyway as they were going to rely on clauses in our mortgage contracts that allowed them to call in loans at any time without cause. At this point they also began to impose "penalty interest" (their term) upward of 20% on several of our facilities.**

Banks are not entitled to charge penalty interest; the Bank can only charge a default interest rate where it is a legitimate pre-estimate of the extra cost of administering an account that is in default. In our case the manager told us the "penalty" interest was being charged to encourage us to sell quickly.

We lodged a complaint with FOS and during the subsequent conciliation conference the Bank manager conceded that she had breached our privacy in discussing our personal finances with third parties and apologised. However, in an attempt to justify its actions against us to the FOS, the Bank dishonestly claimed we had been in default on four separate occasions. Of these, two related to a Council Bond taken out by us and four other people. The Bank concocted a story that the Bond had expired and they were not going to renew it as there was a concern with the debt servicing ability. This was a total fabrication as the Bond had no expiry date and had always had been in order. This was not a loan facility, only a bond, to which we and four other people paid $320 pa between us by way a fee. There was no loan to service. The other two alleged defaults involved an overdrawing of our personal cheque account by approximately $300 following overnight payments of a private health insurance premium and a car lease payment. Both were remedied the same day from money transferred from other accounts.

It is important to note not one of these trumped-up "defaults" actually related to any of our fourteen loan facilities and therefore they were not loan defaults at all. When we proved the dishonesty of this claim the Bank simply backed down. However it refused to withdraw its demand that we sell everything and pay back all loans. By the time of the FOS conference we had already sold two properties and had paid back four loans including the $100,000 referred to above. The Bank had agreed prior to these two sales being achieved, to take no further action provided we met the time frame for such sales and had said it would review our position at the end of the financial year. We did meet the Bank's timeframe but only by selling the properties at fire-sale prices. However, at the FOS conference the Bank went back on this written agreement and suddenly demanded that we sell the remaining properties within three months (which included the Christmas/New Year period) or hand them over with vacant possession.

This was totally unconscionable; firstly, despite us having done everything required by the Bank, it was now reneging on our agreement. Further, not only was it an unreasonable time frame, given both the state of the property market where we lived and the time of year, but also, because our commercial properties had tenants with registered leases, even if we had wanted to give the Bank vacant possession, this was not legally possible.

Then, when we did replace the tenant that had vacated from the commercial building, the Bank, for months, illegitimately, failed to consent to the lease, causing the new tenant to threaten to abandon the lease. This of course would have been financially devastating, as the Bank well knew.

These unreasonable demands and actions reveal the NAB's unconscionable intention to cause as much financial harm to us as possible. We were only able to make repayments because we received income from tenants and from our coffee business. Causing us to abandon the farm and coffee business and to remove tenants who paid rent, and hand these properties to the Bank vacant, would leave us without any income and would severely impact on the value of those properties.

NAB wanted to put us in a position where we had no income or resources and therefore could not fight them. Then, once they had run the debt up sufficiently by employing huge penalty interest and charges, while allowing our farm to deteriorate and business to become non-existent, they could sell the properties cheaply, taking all the proceeds and probably bankrupting us in the process.

The Bank has never explained why they didn't want our business, given we were loyal customers who kept our accounts impeccably, other than to state through FOS that they were making commercial decisions and were relying on unspecified terms in our contracts.

We believe we were targeted as we were in a category of farm/ small business loans that NAB no longer wanted, and we had ample equity in our assets that the Bank could seize. How we had conducted our accounts for decades, our fiscal responsibility and our long relationship with the Bank, counted for nothing.

As concerning as NAB's behaviour is, it has been the willful blindness of the agencies such as FOS, ASIC and LSC and their failure to apply or enforce the law, which has been the biggest shock of all. These agencies have resolutely refused to take any action against the Bank, providing various excuses for their inaction including: that there was no proof that the behaviour we complained of was "systemic" (ASIC); or excusing it as simply the Bank making "commercial decisions" (FOS); or refusing to act on the basis "we do not act for individuals" (ASIC); or excusing the Bank's in house lawyer from being accountable for breaches of the Solicitors, Rules because every lawyer at the Bank had been doing it, and not one of the dozens of senior lawyers working there knew it was a breach and now it has been bought to their attention they promised not to do it anymore, (LSC) and finally, that we should simply seek other avenues of redress (ASIC, LSC). None of the Agencies provide any right of independent appeal or review and therefore they can get away with blatantly protecting the Bank, safe in the knowledge that no one will hold them accountable for their bias.

As a result of NAB's actions we have been forced to sell our farm at a heavily discounted price in order to meet the Bank's unreasonable deadline on threat of repossession. The coffee business and income that we spent fifteen years establishing, along with all the stock and equipment, has been lost, as it had to be included in the farm sale at no extra cost, in order to induce a quick sale. We have also disposed of two other properties at the height of the property downturn at fire sale prices to meet unreasonable and unnecessary time frames. One of these properties was in Sydney and has since increased in value by more than 50% due to the now buoyant market. The Bank took the entire proceeds of these sales and would not even allow us to retain enough to cover the capital gains tax that was payable. We are now left without a home and very little prospect of being able to replace even one of the properties we were forced to sell. Having lost so much of what we worked hard to accumulate over our working lifetime we don't believe at 67 and 54 we have the luxury of time to to start over.

NAB now has the audacity to claim that all the property they forced us to sell under threat of repossessions was sold "voluntarily" and therefore any resulting loss to us cannot be blamed on them. The sheer magnitude of the dishonestly is breathtaking. The title alone of the Enforcement Letter above, gives the lie to the suggestion that we voluntarily disposed of our properties.

In the last six weeks the Bank and its external lawyers have finally been in contact with us again, after nearly two years of silence. Firstly, the Bank wrote suggesting that as we have been unhappy in the banking relationship we should pay out the remaining loans promptly and sign a Deed of forbearance. When we declined, citing the extent of the damage to us suffered as a result of the Bank's actions, we received a letter from their external lawyers suggesting perhaps it might be possible to put our banking relationship back on track. Essentially, the Bank would like to consign the past to history. Once again, given the extent of our losses both financial and personal, we did

not believe this to be a fair and reasonable resolution, especially given the Bank would want to take into account our now financially reduced circumstances before it would reissue the loans. Further, all the remaining loans involve the individuals to whom the Bank sent the fake enforcement letters and defamed us to. It is untenable therefore to expect they would wish to continue the association with us or the NAB. The Bank has now been considering its next step for over a month and we were advised yesterday that it could be several more weeks before we hear from them.

We now find ourselves in a situation that was unimaginable four years ago, through no fault of our own. While the financial damage is evident, there is also the physical and emotional cost of the Bank's actions, which for privacy concerns have not been elaborated here.

It is imperative therefore that something be done as a matter of urgency to halt the predatory and unchecked actions of banks. At the very least, the existing legislation should be enforced and if the Regulators continue to abrogate their duty in this regard, it is clear the system needs to be replaced. However, it is now apparent to all but the willful blind, that there is an overwhelming need for a wide ranging Royal Commission to examine how our financial system has been corrupted to the point the Banks can operate outside the law, not only unfettered by the Regulators, but most alarmingly, aided and abetted.

Lynne and Philipp Kreutzer