

**30.5.2012**

**Economics References Committee**

**PO BOX 6100  
Parliament House**

**Canberra, ACT 2600**

**The Senators of Australia**

Dear Senators,

Please find my submission in relation to wrongful appointments and effects on Gelrol Pty Ltd and my family by Bankwest after the Commonwealth Bank of Australia purchased the Bank.

I have been a licenced builder for 31 years and a property developer for 25 years, the various size proposals from duplex sites to the current 1,000 residential lot proposal in the Hunter Valley of NSW.

Gelrol Pty Ltd had begun operating as a development and Building company in 1990. I have been a licenced builder since 1981 and have always worked for myself and as such trusted my judgement and took people on face value.

- Gelrol Pty Ltd was looking to refinance three properties and I approached a Newcastle finance broker who introduced me to the Bankwest Newcastle Property Officer
- The broker was being paid on a trailer fee from Bankwest.
- Letter or Offer received from Bank west October 2007 only included specific properties to be used as security.
- This was mentioned to me from the finance broker who considered the benefit of limited security a must in order to protect my company and myself.
- Settlement of the loan occurred in February 2008
- The period of the loan was for 12 months with interest compounded.
- The loans were obtained by Gelrol Pty Ltd of which I was the sole Director.
- A Bankwest panel valuer completed the valuation for Bank west on their instruction

Secured by the following properties –

- Lot 113 Fotheringay Road, Clarendetown owned by Gelrol Pty Ltd – Valued at \$3,900,000.00
- Lot 115 Fotheringay road, Clarendetown owned by Gelrol Pty Ltd – valued at \$1,900,000.00
- 102 Clarence Street, Wallalong owned by David Bone - valued at \$5,000,000.00

A variation to the facility was approved in 2009, the draft was sent to my Newcastle solicitor.

**February 2010**

A Bankwest Sydney employee requested a meeting at the Broadmeadow office of Bankwest.

My finance broker, two Bankwest employees and myself attended.

She requested that I give her a solution to the repayment of the loan, she mentioned she was under pressure to finalise this loan.

During the next couple of weeks she sent emails and I noted an increase in intensity with each contact.

In a discussion during the negotiation period the Bankwest employee said to me that “she was not going to suffer a loss in her integrity and jeopardize her career path” and therefore either produce a solution or they will send in receivers and sell the properties.

Bank west was demanding that they place a subordination order on the company Gelrol Pty Ltd. This matter was discussed with my solicitor and finance broker and myself, we agreed that the subordination order was not acceptable and therefore I rejected the demand.

### **May 2010**

Because of the difficulty in raising finance due to the demands placed on me by Bankwest position a private lender was found and the terms I agreed to were excessive, however I had no option but to agree to this because of the threats and duress created from Bank west.

This loan was eventually put into distress and eventual receivership and attempted sale because that lender used his Broker and Accountant to say they were aware of Bankwest issues and that this had triggered a default on the mortgage I had with the company.

Bank west would only agree if I could borrow funds from a property which was not an asset of Gelrol Pty Ltd. Otherwise a deed of subordination needed to be signed.

The terms were extreme as the lender was aware of my position that Bankwest had placed me in.

The conditions were put from Bankwest was that 9 months interest be paid in advance.

At this time a Development Application had been lodged on one of the secured properties and was awaiting approval and therefore the value was being enhanced.

Therefore the equity was improving also.

In effect I needed to borrow outside funds to develop a Bankwest held site, from another property I owned, in order to develop and use the proceeds to pay down the Bank west debt, this was absurd, but was the only way forward so as to not be closed down by Bankwest.

This document was finally signed and sent on the 15.7.2010

### **February 2011**

A Bank west employee called me and requested that he visit the sites to see the progress. (Bankwest property section at Newcastle had been closed for a period of time and therefore no local relationship manager was available)

After the inspection in early February 2011 the Bankwest employee rang and said he wanted a new valuation to take place.

He said he would not use the previous valuer as it was a policy of Bankwest to not use a valuer after a couple of times because the valuer would become too familiar with the property and owner.

The Valuation company who had previously completed Bankwest valuations were still on the Bankwest panel.

### **11.2.2011**

The Bankwest employee sent through an email to say a valuer had been appointed.

A fee of \$14,000.00 plus GST was chosen, but said I had to pay the valuers fee, and that I could not view the valuation.

I have never agreed to this, in my experience the fee was excessive and would not properly undertaken.

The facility was to end at the end of February 2011.

### **15.2.2011**

The valuer contacted me to meet me onsite.

### **17.2.2011**

I was unable to attend due to my leg having a staf infection, which lead to ten days on a drip in a Newcastle hospital plus rest at home afterwards.

### **7.3.2011**

I telephoned the valuer and said I was now able to meet him on site.

### **Mid March 2011**

The valuer and myself met at 100 Clarence Street, Wallalong (farm house on separate title) He did not drive or walk over the subject property (102 Clarence Street, Wallalong however I did offer full access to the property so he could undertake a proper valuation, he declined the offer saying -"he has seen this sort of land before".

All he did was look from the house yard on 100 Clarence Street, Wallalong, which does not give the correct perspective of the subject property as only 30 acres is visible from the house and not the entire area of 88 acres.

He never put a foot on 102 Clarence Street, Wallalong only using the driveway and yard of 100 Clarence Street, Wallalong.

I decided to talk to the valuer about the progress of Wallalong in planning terms and went on to say that Wallalong was about to be inserted into the Port Stephens Council Settlement Strategy and that we had full support from the Councillors and the Council Planning Department for urbanisation of the Wallalong area.

#### **He did not comment.**

I said to him that experienced property developers were amongst others that had purchased in the immediate area in recent years and that we had formed the Wallalong Landholders Group the previous November and that of the identified area of 640 hectares, 80% of the owners were contributing financially to support the rezoning of the area to residential.

I said that a steering committee of four experienced developers had been formed, of which I held one position.

I said to him that there was evidence of sales in the immediate area and that the value of land had increased to \$100,000.00 per acre on the back of the sale.

This was purchased by an astute and experienced property developer.

This represented a completed sale attached to the subject property, in effect sale history, which valuers need to use as a reference as to the current value.

This would have valued 102 Clarence Street, Wallalong at \$8,800,000.00 on as is basis based on the comparable sale attached to my property.

The valuer added that he could only value the property on a as is basis.

I mentioned that I had owned the property for twenty years and therefore had a great degree of knowledge about the area.

I again said to him that Bankwest had undertaken valuations previously on this property, the latest was in January 2010 by a Bankwest panel valuer and would strongly suggest he take into account all the work completed in the planning process.

I said to him that the entire Wallalong Investigation Area was 640 hectares and that 102 Clarence Street, Wallalong would yield approximately 350 lots based on the area potential of 10 lots per hectare.

#### **He did not comment.**

It was at this point, I said I would send him numerous reports which would support my comments and strongly urged him to take this into account when preparing his valuation.

**He did not comment**

Next we met at 210 Fotheringay Road, Clarendetown, I pointed the work which had been undertaken and the road reserve and the subsequent lot positions.

This site had achieved a Development Approval for subdivision.

**Once again no photos were taken and no comment was offered.**

Next inspection was at 221 Fotheringay Road, Clarendetown and showed him around only part of the property, this was at his request.

I was always willing and ready to show all aspects of the properties and said this to him.

He requested to look over the property further by himself, I agreed and I waited in a different section of the property and observed his movements.

He did not stay long parking outside on the driveway entry.

He did not enter the house or the shed or look at any improvements including underground irrigation on the property.

This was also a breach of the Property Institute guidelines for valuers.

There was numerous breaches to the code of conduct that property valuers work under.

I sent him by email all available reports via email as follows

16.3.2011

210 Fotheringay Road, Clarendetown – DA approval

21.3.2011

221 Fotheringay Road, Clarendetown – Geotechnical Report and Effluent Design, Bushfire report and Environmental documents which all supported development of the rezoned land.

30.3.2011

102 Clarence Street, Wallalong –  
Wallalong Water and Sewer Servicing Study  
Wallalong Desktop Study Strategy Report  
Wallalong Area Transport Assessment Paper

28.4.2011

102 Clarence Street, Wallalong – Wallalong Final Report

I requested that he send me a copy of the valuation once completed.

I heard nothing more from the valuer after this.

My solicitor had the valuer as a client also and I requested that a meeting be held between the three of us to discuss the valuation, as I knew there would be complications with the valuers work and I wanted to suggest he consider the true position of the subject land, before submitted to Bankwest.

I am not sure if the offer was put forward from my solicitor.

The Bankwest employee wrote to me and said because the valuation had shown a reduction in value and the LVR (Loan to valuation ratio) had been altered that I had to pay them the difference immediately to bring it to their requirements.

Once again I wrote to both the Bankwest employee and the valuer and asked that in fairness I should be able to view the valuation prior to consideration of their request, this request was not responded to .

I have since found out that the valuer did not have the authority to sign off the document and it had to signed of in the head office in Sydney.

Gelrol Pty Ltd was being sent monthly statements from Bankwest and they were being paid. I asked Bankwest to send a copy of the valuation but they declined. Gelrol Pty Ltd was being sent monthly statements from Bankwest each time showing an extension of the facility. In effect being a month to month facility. In a statement Bankwest dated 28.6.2011 , they mentioned the facility rolled and applied an accelerated interest rate and this pushed the loan into a default position. My Solicitor also requested a copy of the valuation, this was also declined. In the statement its shows the account was placed into default due to the valuers fees being deducted from the account . However it still shows the facility was ongoing until August 28<sup>th</sup> 2011.

#### **August 19<sup>th</sup> 2011**

I engaged the original Bankwest panel valuer who to value the following properties held under Bankwest.

- 102 Clarence Street, Wallalong - \$5,500,000.00 plus GST
- 210 Fotheringay Road, Clarencetown - \$1,675,000.00 plus GST
- 221 Fotheringay Road, Clarencetown - \$4,300,000.00 plus GST

All properties had increased in value as was normal when properties move towards rezoning / development approval etc. Therefore the equity position had again improved.

#### **September 13<sup>th</sup> 2011**

I received a letter from the legal firm representing Bankwest who stated that they would grant my company a further period of time to bring the facility into order, the date was extended until the **31.10.2011**

Bankwest appointed receivers wrote to my company and stated that Bankwest had appointed them as receivers on the 14.9.2011 (even though a letter had been received on the 13.9.2011 from Bankwest and offered a further period of time to amend facility) and took possession of my company and its assets immediately , also the secured property which was in my name.

The properties they took were –

- 210 Fotheringay Road, Clarencetown (contracts handed out and a sale was pending).
- 221 Fotheringay Road, Clarencetown
- 3 /58 Albert Street, Warners Bay
- 102 Clarence Street, Wallalong (contracts being handed out and a sale was pending)
- 616 Macquarie Drive ,Eleebana (since sold down by receivers for a loss of \$400,000.00)

#### **3/58 Albert Street, Warners Bay**

This is a villa which my elderly parents live in. Dad 82 Mum 78

I built the development in 2000 and they paid the proceeds from the sale of their family home . This was not enough to pay for the new villa but the difference was waived due to Dad completing painting and landscaping on his villa.

In my view they had then paid in full for the villa.

The reason the villa was not transferred into their name was that they could not afford to pay the Stamp Duty and as such the villa was still held in the company.

At no time did the completed villa have any finance held on it or mortgage.

Bankwest were never informed of this asset, as it was never used for the obtaining of finance and I therefore considered it Mum and Dad's home.

A Bankwest appointed receiver's employee met with myself and my Solicitors office in Newcastle. The receivers employee stated that they have taken possession of all assets and I raised Mum and Dad's place and he said "due to their age, they would not do anything".

He also stated that due to the Global Financial Crisis I now found myself in this position.

I disagreed with him saying " It is not my doing it is the valuation that is the problem".

He left and I discussed the issue with my Solicitors and then I left the office.

Fifteen minutes later I was walking past a cafe after leaving the office and the receivers employee flew out and bailed me up and accused me of hiding properties.

He stood within my personal space and was aggressive in his manner.

He accused me of hiding assets and demanded I explain.

He was getting a Lot no and Street no mixed up, thinking it was two properties and not one.

I was quite distressed with his actions and did not appreciate his assertions or manner.

My solicitor made a complaint to the Head of the Bankwest appointed receivers and they just brushed it off.

Bankwest appointed receivers, appointed Real Estate Agents in October to sell the following properties

- 3 /58 Albert Street, Warners Bay
- 210 Fotheringay Road, Clarencetown
- 102 Clarence Street, Wallalong

In an attempt to halt the process I attempted to get an injunction in the NSW Supreme Court.

File No : 2011/353091

Just before the hearing began my Barrister and my Solicitor decided that in an attempt to get a copy of the Valuation that we try a different tact.

What was proposed to the Judge was that we would withdraw the injunction if Bankwest agreed to show us the Valuations.

Bankwest solicitors agreed but the **Judge ordered that David Bone would not be allowed to view the valuations.** I was ordered to pay costs.

When we went back to the Barrister's chambers the Barrister informed me that he has previously undertaken work for Bankwest and that he was aware of their practise.

If that was conveyed to me before, I would not have engaged him at all.

A conflict of interest comes into question.

The properties were advertised with 3 / 58 Albert Street, Warners Bay being sold immediately with an open house program in place immediately.

This corresponded with my Mother being placed on sedatives and for period of time my family held grave fears for her wellbeing.

My Father who was a successful manager in the mining industry had then retreated into himself and was struggling to get through the day.

In order to bring a little more normality for my parents and not be interfered with estate agents I relocated them for three months.

At the first open house I attended, the Real Estate Agent proceeded to discuss my financial predicament to all the open house attendees.

He stated that “ the man standing outside was not to be approached and that he was bankrupt and therefore the Bank had taken his parents home over and that there was a dispute with him and his parents.

I could not let him go further and tell lies for the Bank and receivers benefit and stepped inside of the villa and asked the agent if I could address the attendees, he said yes.

I denounced what he had said and thanked them all for coming but said I am sorry, my intention is to retain the property in our family.

The people left the house and left the site apart from two people who approached me and asked if I was building any other villas in the district as they liked the quality of the project.

I said yes, in the same street, then they gave me their phone numbers.

Later that week the receivers wrote to my solicitor complaining that I had interfered with the sale process and that I was openly soliciting myself on the footpath.

I waited on the footpath only to make sure the villa was locked and that Mum and Dad’s possessions were safe.

A Bankwest appointed receiver employee called me to say that “I had to own Mum and Dad’s position”, this was in relation to my comment to him that I feared for my parents rapidly declining health.

It was the valuation which was requested by Bankwest that triggered the default position and the conduct of the valuer would place him in breach of the Property Institute Guidelines for Valuers.

It was the direction of the Bank that lead to the appointment of the receiver and then the ongoing problems that have been ongoing since.

The three mentioned properties would have been sold for greatly reduced prices if I did not intervene with the signing new contracts to purchase and placing a 10 % deposit on the three properties.

I was made aware that the three properties shown would have only been sold for 25% of the Valuation I undertook in August 2011 by one of Bankwest panel valuers. My solicitor made a comment about a figure that represented the Bankwest valuation.

- 3/58 Albert Street, Warners Bay
- 102 Clarence Street, Wallalong
- 210 Fotheringay Road, Clarendtown

During this period we were attempting to complete a loan approval but unfortunately due to the receiver’s intervention and their demands the costs increased and the lenders pulled out.

Since that period another property owned by myself has been put in the hands of a receiver, who has now signed contracts for that property to be sold.

This is a property that I have invested 20 years of my life into and has been sold for 10% of its valued price.

The reason that property was put into receivership is directly attributed to the action of Bankwest appointing receivers.

We have submitted three applications to the Financial Ombudsman Office (FOS), one in November 2011, one in March 2011 both times it was rejected because the receivers were appointed and the current claim lodged in April 2012.

The claim number is :

As of this date FOS have not made a decision my opposing the appointment of the receiver, in fact they have not contacted myself or the Group who submitted the new application on my behalf.

The Bankwest appointed receivers are still selling my properties even though FOS is looking into the matter.

I challenge FOS on the basis that they have not acting in any way to support myself and my company

### **29.5.2012**

I went to the Supreme Court where at the exhibit section I requested the viewing of the evidence from the November 2011 Injunction attempt.

Only my evidence was on file as Bankwest had removed their evidence.

### **Conclusion**

The emotional toll on my wife and small children and my elderly parents that is immeasurable. It is totally unacceptable as to what has been going on and I must say should never be repeated.

Thank you for reading this document and hope something can be done to amend the appointment of the receivers in a matter of this scale.

David James Bone