Economics References Committee
P.O. Box 6100
Parliament House
Canberra, ACT 2600

24 May 2012

Dear Senators,

THE IMPACT on BANKWEST'S CLIENTS of the CBA TAKEOVER

. I expect to be put to proof of anything I allege. I ask the Senate to apply that standard of proof to experts and not rely on their qualifications. I urge Senators to view the USA documentary "Inside Job" which depicts the examination of financial leaders by US Senators after the GFC. The attached glossary defines terms.

1. **My loan.** In early 2008 I applied to Bankwest to take over my funding from Macquarie Bank (MBL). At that time Bankwest was 100% owned by HBOS. My $19m loan was settled on 1 May 2008.

2. **HBOS was on the brink of insolvency** in 2008. It had lent Bankwest $17bn . If HBOS failed so would Bankwest. Lloyds bought HBOS and required the sale of Bankwest. It was a forced sale.

3. **The RBA began funding Bankwest** in 2008, by $29m in August increasing to $3,752m in December . This apparent Government backing seems to have positioned CBA as the only purchaser for Bankwest. The $3,752m was reduced to zero in January after CBA bought Bankwest.

4. **CBA bought Bankwest** on 8 Oct 2008 for 80% of book value . Westpac had recently purchased St George bank for 270% of book value . On that day CBA sent Bankwest's last balance sheet to CBA's shareholders to explain why CBA had bought Bankwest. The sale contract provided that the sale price would be adjusted by re-estimating impairment provisions for Bankwest loans as at 19 December 2008 . That balance sheet showed Bankwest's assets were $55.5bn in "loans to customers" and $7.7bn in "other assets" all of which were needed to support those loans. Bankwest's only assets were its loans to customers. The ***only*** way to buy Bankwest cheaply was to impair those loans. The ***only*** way to impair loans is to devalue the properties securing the loans. Particularly those of the Bankwest clients CBA said they didn't want . CBA audited 1,100 Bankwest accounts and acted against 77% of them .

5. **For every $1 increase in impairment CBA would pay $1 less for Bankwest.** The contract price paid for Bankwest was determined by the impairment revision of Bankwest's loans as at 19 December 2008 . CBA improperly induced and instructed valuers to devalue the properties . CBA increased Bankwest's loan impairments from $113m to $754m .

6. **CBA increased Bankwest impairments.** Typically 1%-2% of loans by value are impaired. Over half of the East Coast property developer clients of Bankwest were defaulted. CBA instantly increased the impairment provisions of Bankwest by $800 million and lowered the price CBA paid for Bankwest.

7. **CBA did not report this $800m impairment** to their Shareholders or the ASX and consequently became only the third offender ever to be fined the maximum of $100,000 by ASIC . The impairment could not be justified. The Annual Report of HBOS shows that $200m was repaid by HBOS to CBA as a purchase price revision due to increased impairments as at 19 December 2008.

8. **CBA declared a** profit on the purchase of Bankwest of about $840m and reported it in compliance with the AIFRS reporting regulations as $612m after tax .

9. **CBA systematically devalued Bankwest's clients' properties** to the lowest price possible . Hundreds of Bankwest clients, and about a thousand properties were affected. Consent authorities,

builders and contractors were interfered with to augment devaluation. Thousands of construction jobs were lost. Construction stopped in many cases.

10. **CBA used every device to cause default by targeted Bankwest clients.** This simultaneously achieved a lower purchase price of Bankwest by increasing loan impairments and boosted income by the imposition of massive concealed penalties. Statements made by me, other victims, and litigation funders Slater and Gordon, Maurice Blackburn, and IMF, name the devices used by CBA against me and other Bankwest clients as set out in my affidavit as follows;

- devaluing property so that Loan to Valuation Ratios (LVRs) were breached
- withholding approved funds
- imposing excessive fees and interest rates including those applicable to default
- refusing to fund essential services such as building sub-contractors
- increasing interest rates based on misleading representations about cost of funds
- interfering with consent authorities
- refusing to accept unencumbered properties as further security
- withdrawing approval after the borrower had relied on approval to commence work

The Bankwest valuer confessed to me "*..you should sell everything because your problem is not with Bankwest it is with Commonwealth Bank. They are trying to put you in a 'headlock' and will sell everything at the lowest price possible."* Stupidly, I did not believe him. I did not then know about the price reduction CBA would get by devaluing my property. The valuer is a director of a Bankwest panel valuer. In 2007 he quoted and was paid $10,100 to value my property. Bankwest paid him over $33,500 to re-value it ($23,400 more for less work) and debited my account . My LVR was impaired when his valuation came in it at half the offer I had recently received from Sydney's largest apartment developer, Meriton.

Bankwest instructed the same valuer to value my site of 8,700sqm in Sydney's North Shore as a "house on a single block". He wrote in the executive summary to his valuation ***"Although the highest and best use of the subject site is for redevelopment, I have been instructed to value the property 'as is' as a single residential site…"***. MacQuarie Bank offered to purchase it for $9.5m ; more than double the Bankwest valuation . The site, under SEPP Seniors Living, can accommodate 80 apartments within walking distance of the Sydney Adventist Hospital.

My 5 acre industrial property in Mt Ku ring gai for which I had recently refused $4.1m , was sold by Bankwest for $635,000 gross. My account was credited with $195,000 after the bank paid its consultants. It was valued ***after*** the sale by a licenced valuer at $3.58m . The Registrar General notified me that a caveat had been lodged on the property by the buyer . I was not otherwise notified. My site is very close to the Newcastle Expressway and abuts a new 3 storey factory with identical zoning . I had similar plans prepared by the same designers for my land. By procuring default CBA made 14 times the profit they would otherwise have made . By selling the site cheaply CBA got rid of a Bankwest real estate developer and confirmed the exaggerated impairment of my loan which had been used to lower the price CBA paid for Bankwest.

11. **Market value.** In their response to the ABC 4 Corners program on 9 April 2012 Bankwest wrote;

"Bankwest, as a Mortgagee, and Receivers, as controllers, have obligations under the Corporations Law to realise security at market value. Bankwest and any Receivers appointed by them take this obligation seriously and comply with the applicable legislation."

After the CBA takeover Bankwest did not try to achieve market prices. It did everything to minimise them. Some sales were under 10% of market value. Sale prices to prove this are in the Land Titles Office. Valuations were sworn by experts and supported by tens of thousands of comparable sales reliably reported by the Valuer General and RP Data. As only a small fraction of all the Bankwest

properties were to be sold CBA had to devalue the targeted properties very hard. CBA sold property at the "lowest price possible". CBA's clients, their agents' clients, their receivers' clients and others all stood to benefit as purchasers. My real estate agent invited a prospective intestate buyer to inspect my Avon Rd project. The buyer was accompanied by a man whom he introduced to me as a Director of CBA. The agent told me that the CBA Director was showing the buyer "distressed sites" . Other victims report their properties being sold to CBA clients .

12. **Why sell so low?** If the properties had been sold for their true value the exaggerated impairment by CBA would have been exposed. When caught out CBA would face paying restitution of nearly $1bn to HBOS/ Lloyds and over $1bn to Bankwest clients who had been wrongly defaulted. The question must be asked ***"Why did the two most senior CBA executives in the takeover suddenly leave CBA with years to run on their contract and despite their exceptional financial contribution to CBA?"***

13. **GFC.** Both CBA and Bankwest claim that the GFC caused this sell-off. It is absolutely untrue. The evidence available from the Valuer General and RP Data shows that the GFC did not devalue property prices on the Eastern seaboard of Australia. The first downturn occurred in 2011 and 2012.

14. **ABC's 4 Corners Program** went to air for 45 minutes on 9 April 2012. CBA and Bankwest refused to be interviewed. Both provided short written denials of the accusations . These denials are pathetically untruthful. They and my comments on them shed more light on the CBA and Bankwest offences than any other documents I know of so far. I urge Senators to read them. (See Annexures A & B).

15. **CBA bankrupted Bankwest clients.** In the hundreds of court actions against Bankwest the court has sometimes held that a client whose property is sold for a fraction of its value has a remedy in damages. CBA has repeatedly protected itself from actions by litigants by ensuring that the potential litigant cannot fund a damages claim by bankrupting him. Bankwest clients have been interviewed on Channel 7's Today Tonight, 2SM radio and the ABC's 4 Corners program and testified to the extent of CBA's persecution of them.

16. **Hidden penalties.** The Bankwest loan agreements deliberately conceal interest penalties so large that they multiply Bankwest's (CBA's) profit by 10 to 20 times the amount clients contracted to pay.

17. **Disclosure is easy -** Bankwest could have complied with the Trade Practices Act, the ASIC Act, the Australian Consumer Law, the Code of Banking Practice and the unwritten law by stating in the Facility Terms words to the effect ***"If you are late in any payment we will impose a penalty of 12% per annum on top of the agreed margin of 1.65% on the whole of your outstanding balance."*** I would never sign such a term. My previous lender MBL shows how disclosure is usually done . The concealed Bankwest penalty is four times the MBL penalty which I objected to. Every Bankwest client I have spoken to said they would not sign such a clause if they had time to do otherwise. I have not met a single victim to whom these penalties were disclosed when they signed their agreements. Several senior members of the NSW Bar have expressed the view to me that this is a criminal offence.

18. **In my case** there was no disclosure and a deliberate effort to conceal the penalty. I chose Bankwest after calling tenders through a broker I had been dealing with for 22 years. I had a time-of-the-essence settlement with my ex-wife under which I had purchased her property interests. Default in settlement would have caused an immediate forced sale of my real property. Bankwest submitted a Financing Proposal which set out the cost of my loan which my broker recommended. It required me to sign **either** Facility Terms **or** General Terms neither of which was attached to the Financing Proposal. I signed the Financing Proposal and paid the fees after confirming that I would have to sign Facility Terms which apply to a $19m loan and not General Terms which apply to overdrafts.

19. **Duress.** Bankwest submitted Facility Terms two weeks before I would be in default with my divorce settlement. These imposed new conditions which had never been discussed.
20. **I was forced to fix the interest rate.** It was nothing more than a device to gain extra fees for HBOS which was in terminal financial trouble. I had no choice but to accept this. I would default with my

ex-wife if Bankwest didn't settle. I lost $750,000 because I fixed the rate and a further $100,000 because HBOS overcharged on the swaps used to deliver the fixing Bankwest could have fixed the rates by agreeing to a fixed rate and applying it to the outstanding balance for the life of the loan. This calculation is easy to verify. By applying a variable rate plus a Swap every month HBOS overcharged me in a way that is impractical to investigate or verify.

21. **Concealment.** The new loan offer required me to sign Facility Terms **and** General Terms. I did notice the change of the word "**or"** to "**and".** The General Terms were not attached, nor provided to my broker. He earned a trailing commission from Bankwest and had several other Bankwest clients. I immediately requested the General Terms and received them just before the default date for my settlement. They are 30 pages of fine print. The Facility Terms do not define an overdue, default or excess rate.

22. **When I got my 1st bank statement** I noted that it contained a reference to an "Excess Rate". I queried this with my broker and Bankwest and was told to read my Facility Terms. They both said the bank statement was used for multiple purposes, including overdrafts, not just for large facilities

23. **Penalty Rates.** After devaluing my properties CBA/Bankwest alleged default and imposed the penalty rate . A Bankwest employee explained to me that the Facility Terms do not refer to default rates in any way. The General Terms define the Overdue Rate as the rate which is so defined in the Facility Terms. The General Terms go on to say that where the Overdue rate is **not** defined in the Facility Terms , and it is not, it is 7% over the overdraft rate. That was 12% over my base rate which was 1.65% over the BBSY rate. Given that the bank pays about 0.8% to deliver and manage the loan this penalty increased their profit in my case from 0.85% to 12.85% or about 14 times what I had agreed to. I was paying Bankwest to borrow money and lend it to me. Neither my banking consultant to whom I paid $57,000 nor my lawyer to whom I paid $42,000 nor the Bankwest lawyers to whom I paid over $20,000, nor I, picked this penalty up or disclosed it.

24. **HBOS overcharged me on the swaps** used to fix the interest rates. This is a widespread practice. The CBA discloses $2.3 **trillion** in open derivatives for trading (hedging is a separate category). Nearly all those trades are against CBA clients. CBA makes about $300m a year from this.

25. **Cost of funds.** Bankwest deliberately misled me by saying their cost of funds had increased by more than their lending rates and they had to increase their interest margin by 1.35%. I could not dispute this at the time, and it had just cost me some $482,000 to change banks , so I agreed. The subsequent reports of all 4 big banks confirm that this was a deliberate misrepresentation as all 4 increased their profits by between 42% and 84% year on year in 2010 . It is not possible for all the big banks to increase their profits by that much if their cost of funds had actually increased by more than their lending rates . Borrowing and lending is simply too big a proportion of a bank's business. The whole of my 1.35% increase in margin went through to Bankwest's bottom line. That happened to most bank clients. We must ask *"**If the overseas cost of funds had increased by more than local lending rates why would the bank not raise more funds here and lend into the higher rates?"*** We must also ask why banks, alone, are entitled to pass on increased costs. It is absurd to suggest that a builder could increase his home building contract price because bricks went up in price.

26. **Depositor guarantees.** Potential buyers say they can't proceed because *"the banks aren't lending"*. During the GFC the big banks obtained depositor guarantees from the Government in addition to the lender of last resort guarantees which benefit banks. Tens of $billions flowed to the big banks from non-guaranteed competitors. The banks had promised the Government that they would improve liquidity. They did not do it. Instead these funds were used predominantly to complete purchases of other banks and to fund the acquisition of the loan assets of non-guaranteed competitors. It was an act of bad faith and the principal reason why purchasers perceive that "the banks aren't lending".

27. **Lack of competition.** Senator Bushby is perceptive in focusing on competition. Banks overcharge without limit to maximize their profits. We diagnosed this in the 1990s by spending man-years of

effort to quantify the overcharge. The intrinsic value of the essential banking service was defined to be either (a) the price of that service with perfect competition or (b) the cost to Australians if they performed the function for themselves, as in China. We estimated (b) at less than $2 billion per annum. The ABS advised that the big banks then collectively charged $14 billion for this service. The banks could do this because competition had reduced from c. 80% of perfect competition to c. 5%.

28. Reduction in bank competition. It is common knowledge that **s**ince 1992:

- The CBA was owned by the people and competed fiercely. It kept the others honest. It made a profit which went back to the people but was not obliged to maximize it. CBA supported public interest projects. Now it is our biggest private bank and it dishonourably maximizes its profit. Its only objectives are profit and growth. All its profit comes from its customers.
- All the State banks have gone or been taken over by profit maximising banks.
- All the big Mutuals (AMP, National Mutual, Colonial Mutual, Manchester Unity) whose profits went back to their members are privatized and now maximize profit above all else.
- The Building Societies, most of whom were mutuals or not-for-profit have become banks or been taken over by banks or have disappeared.
- The not-for-profit Credit Unions are now required to make profits because of bank lobbying.
- Many overseas banks have withdrawn from the Australian market.
- Depositor guarantees have removed non-guaranteed lenders from effective competition.
- The cost of changing banks is prohibitive because of application, valuation and contract fees.
- Statistically there is now no benefit from changing banks. They are approximately the same.
- **RECEIVERS AND LAWYERS**
- I have had many discussions with other victims of the CBA takeover who have given me evidence of the costs recovered from their assets by receivers and lawyers. It is beyond belief. Most of these victims will be unable to make submissions to the Senate because all their time is taken up by trying to deal with the financial stresses criminally imposed on them. I have attested above to the fact that the sale of my property valued at $3.58m produced a credit to my account of $195,000 after the receivers and agents, but not principal or interest, had been paid from the proceeds of sale.
- Yesterday the District Court of NSW handed down a judgment where I was awarded costs against the legal firm that had represented me since 1959. The judgment, my submission on costs and the subsequent decision on costs is evidence that the law in this area must be changed.

My solicitor, Peter Everett, made a claim against me for approximately $500,000 on the basis that he had made a mistake and repaid a loan twice. I applied to have his application struck out because it had no reasonable prospect of success. His Honour found in my favour on all 4 of the possible bases on which the matter could be struck out, handed down judgment in those terms, (1 below), and awarded costs in my favour. I made a formal submission on costs (2 below). His Honour then handed down a final judgment on costs (3 below).

1. The first two are Taylor J's Orders on my motion to strike out the claim. The judgment is on the District Court website.
2. The third is my submission on costs.

The fourth is Taylor J's decision on costs.

These documents show that my solicitor commenced an action against me, his client, to gain $500,000 which had absolutely no prospect of success. He engaged his firm, Dibbs Barker to represent him in his claim against me. His Honour found that his firm should not have represented him in the claim. Businessmen, if not lawyers, see the whole of this behaviour as extortionate.

Nevertheless I will receive no reimbursement for the man-months of my time that Mr Everett deliberately caused me to divert away from my business. I do not believe that my argument was deficient. I do not believe His Honour erred in the way he decided costs – that is the law with which he must comply. The Senate must change the law. Had my strike-out been refused my solicitor would have been awarded costs at a rate which every Australian worker would regard as obscene having regard to the low levels of risk and investment that apply to lawyers.

The legal profession is the beneficiary of laws which favour them unfairly and which have been brought about by the fact that MPs who are lawyers can vote to pass laws where they clearly have a conflict. I cite the evidence above as supporting this claim.

I understand that the Legal Service Commissioner (OLSC) in NSW has the power to award compensation in cases like this. But they never do. I think mine is an extreme case and that such action would be justified. I have suffered real hardship as a result of Mr Everett's actions. I will submit any response from the OLSC to the Senate.

I have tried to limit my submission to the key evidence however I have a great deal more documentary evidence part of which was submitted to the court to obtain the judgments referred to above. Please ask for more information if that is required to assist your evaluation.

I have had two previous cases which I referred to the OLSC, one formally the other less so. In both cases the OLSC wholly defended the lawyers. Both matters went to court where the lower court showed bias in favour of the lawyers and contempt for me as the applicant. I appealed both cases and won with costs against the lawyers. Both judgments made adverse comments about the lower court and gave practical effect to this by providing that costs could be recovered from the suitors' fund. I received no compensation for the hardship inflicted on me. I am ashamed to live in a country which is so blatantly corrupt in this particular way.

- Where I had formally referred the matter to the LSC, in the Dimocks matter, I sent the appeal judgment to the LSC who wrote back to me many months later to say that despite the court judgment they did not intend to take any action against the solicitor nor compensate me for the harm done.

CONCLUSION

CBA illegally transferred about $2 billion before tax to their shareholders from Bankwest's clients by wrongly inflicting default on targeted Bankwest customers.

- Nearly $1bn came from the reduced price paid for Bankwest by CBA achieved by impairing and then selling Bankwest's clients' real property.
- Over $1bn came from massive concealed interest penalties charged to Bankwest clients.

I respectfully request that the Senate use its powers to:

1. Immediately invoke the Moratorium Act or other legislation to protect those victims of CBA against any further harm by way of property sales or bankruptcy prosecution until the circumstances of the Bankwest takeover have been fully investigated and determined so as to allow the victims to recover appropriate compensation.

2. Require CBA, Bankwest, HBOS, Lloyds and others to produce documents including:

- The names of the 1,100 Bankwest clients whose accounts were audited and the 77% of them referred to by the CBA top management.
- The agreement under which CBA bought Bankwest from HBOS/Lloyds.

3. Propose that the Parliament make laws to require CBA to make the victims whole.
4. Prevent Members of Parliament from voting on legislation which would affect their profession as determined by their academic qualifications.
5.
6. Pass laws which will render professional fees, particularly those imposed on defenceless victims by lawyers and liquidators, subject to assessment by the Supreme Court.

James Woodward Neale 22 31 May 2012

GLOSSARY

AIFRS	Australian International Financial Reporting Standards.
CBA	Commonwealth Bank
GFC	The letters stand for "Global Financial Crisis", however it is used with different meanings and there is no reliable authority for it. I it is generally accepted that it was first called "the Sub-prime Crisis" in the USA.
HBOS	Halifax Bank of Scotland.
IMF	Australia's largest litigation funder listed on the Australian Securities Exchange.
Impaired	A company's asset that is worth less on the market than the value listed on the company's balance sheet.
LVR	The ratio of the loan value to the valuation of the property securing it. If a $1m loan facility is secure by a property valued at $2m the LVR is 50% or 0.5.
OLSC	Office of the Legal Services Commissioner in NSW.
RBA	Reserve Bank of Australia.
RP Data	A private company which maintains a database of property sales in NSW and makes it available to real estate agents and others.
SEPP	NSW State Environmental Planning Policy.

4 CORNERS PROGRAM 9 APRIL 2012 Bankwest Response dated 7 March 2012

I have commented on the Bankwest Response in bold within the Bankwest document itself which is in normal type here. Where the Bankwest document uses bold type I have put it in italics.

Acquisition Timeline

8 October 2008
CBA enters into agreement with HBOS to purchase Bankwest.
19 December 2008*.*
The completion date for the sale. HBOS presented the draft financial accounts of Bankwest to CBA as at this date. The sale agreement had in place a process to finalise the draft financial accounts and to **"**make any necessary adjustments to the purchase price**"**. **The clawback.** The process involved an independent auditor reviewing the financial records of Bankwest as at 19 December 2008.
9 July 2009
The independent auditor handed down its assessment of Bankwest's financial records as at 19 December 2008 and the purchase price adjustment was finalised. **Payment of the clawback.**

Important points:

• The terms of the sale had no impact on the Bank's approach to its business lending

(1) **The CEO of CBA has admitted to auditing 1,100 of Bankwest's customers with a view to changing the way Bankwest lent to them. There was no other reason given for the audit. CBA then directed the activities of Bankwest in relation to 77% of these customers. Properties were devalued, penalties were imposed, consent authorities and contractors were interfered with and default was provoked.**

and we strongly deny the speculation that the sale agreement encouraged the Bank to deal unfairly with customers.

(2) **Bankwest had already dealt unfairly with its customers by concealing massive penalties. The sale agreement caused CBA to deal unfairly with Bankwest's customers – see** (1).

• Claims that the CBA/Bankwest took unnecessary recovery action to generate a larger adjustment in the purchase price are completely baseless because:

The purchase price adjustment process involved a determination of the value of Bankwest as at 19 December 2008.

(3) **That is accepted for the purpose of this document.**

It does not relate to actions taken at any later date.

(4) **That is untrue. The impairment and subsequent sale of Bankwest's clients' property is directly connected to the 19 December revaluation. CBA caused the sale of hundreds of properties for 5% to 60% of their value. If CBA had sold them for their full price the impairment expenses would have been shown to be false or fraudulent. Lloyds or HBOS could bring serious charges against CBA for recovery. The audit trail is reliable evidence.**

It is inconceivable that HBOS, as vendor, would allow CBA as the purchaser to unilaterally take action that could decrease the purchase price.

(5) **That is exactly what CBA did. Neither HBOS nor Bankwest had any negotiating power. They were on the brink of insolvency. There was no other buyer. The RBA and the Government supported CBA only. The published CBA financial results show CBA increased the Bankwest impairment provisions, which are a matter of CBA opinion, by 600% when negotiating the price and then had experts increase them even more.**

The sale of the properties would be incontestable evidence not expert opinion. CBA had to instruct valuers to drive the prices down until they reached the impaired prices on which the Bankwest purchase price was based. As only a small fraction of all the Bankwest properties were to be sold CBA had to hit the targeted properties particularly hard. So valuers were instructed to value property at the "lowest price possible". Had CBA not done this the properties would have sold for their true value and the CBA impairment fraud would have been exposed and available to Lloyds and others. At best CBA would have had to pay money back to Lloyds. At worst CBA senior executives would have faced serious charges. The evidence available from the Valuer General and RP Data shows that the GFC did not, on average, devalue property prices on the Eastern seaboard of Australia.

An independent auditor, acting as umpire, decided what the value of Bankwest was, as at 19 December 2008, for purchase price adjustment **clawback** purposes. Their decision was handed down on 9 July 2009 and was binding on HBOS and the CBA.

• Bankwest has acted fairly with all its customers since its acquisition by the CBA and honoured all of the existing contractual and credit commitments with customers.

(6) **Bankwest breached its contract with victims. They had no right to sell properties for 20% of their value and admit this in this response where Bankwest say** "Bankwest, as a Mortgagee, and Receivers, as controllers, have obligations under the Corporations Law to realise security at market value. Bankwest and any Receivers appointed by them take this obligation seriously and comply with the applicable legislation." **Bankwest had no right to conceal or charge penalties which would increase their profit 14 times over.**

Bankwest bears the loss arising from defaulting loans and it prefers to, and it is in its clear commercial interests, to rehabilitate customers in financial difficulty.

(7) **CBA did not bear the loss from the artificially defaulted Bankwest loans. CBA profited from it by over a billion dollars. Bankwest has an interest in rehabilitating its own customers. CBA best interests lay in bankrupting Bankwest customers by devaluing their property and made nearly $2 billion out of (a) the reduced price they paid for Bankwest and (b) the concealed and excessive penalty interest that they continue to recover from the hundreds of Bankwest clients who are victims of this strategy.**

• Unfortunately some customers cannot be rehabilitated and do fail and the Bank takes appropriate steps to protect its position.

(8) **That is 1% to 2% of the customer base. Not 77% of it.**

This can be a tense and stressful time for the customer and it is understandable that some of them do vent their frustration. It is important to keep in mind that the number of individuals coming forward with complaints about Bankwest are only a small fraction of the 1million plus Bankwest customers.

(9) **CBA only defrauded 0.1% of Bankwest's total customer base by number. But about 10% of it by value. CBA focused on about one tenth of one percent of the Bankwest clients who were East Coast property developers and had loans of $5 million to $200 million. More than half of them have complained or taken legal action.**

A number of the following issues are present before Bankwest makes a decision to appoint a receiver: -

The customer repeatedly breaches their contractual obligations.
Third party creditors (e.g. ATO) initiate recovery proceedings.
The customer's management are under stress, become ineffective and are unable or unwilling to put in place a reasonable strategy to address their distressed financial position and make the business viable.
The customer appoints a voluntary administrator.
The customer's financial position had deteriorated to a level where interest and payments are not met when due.
It otherwise becomes clear that a customer's debt levels have become unsustainable.
Further delay or inaction would only compound the problem.

Bankwest works with its customers who are in financial difficulty in the following ways:

Bankwest will consider all the circumstances for the customer on an individual basis. That is there is not one standard course of action. Our aim is to secure full repayment of the loan even where this might be over a longer period than originally provided. Where we consider the prospects of full repayment to be diminished or highly unlikely we will be proactive in determining the outcome. A number of concessions and arrangements may, depending upon the specific circumstances, be provided to customers experiencing financial difficulty including:

• Extending the time for interest and other repayments that are due.
• Providing increases in funding to meet cost overruns, interest obligations and to keep the project going.
• Providing the customer with additional time to seek refinance or to sell down assets voluntarily.
• Reaching an agreement with the customer such as a deed of forbearance.

Response to claims that Bankwest has sold properties for a fraction of their value:

•This is false.

(10) **The sale prices are incontrovertible and available from the Land Titles office. The valuations are sworn by experts and supported by hundreds of thousands of comparable sales reliably reported by the Valuer General and RP Data and equivalent organisations.**

Bankwest, as a Mortgagee, and Receivers, as controllers, have obligations under the Corporations Law to realise security at market value. Bankwest and any Receivers appointed by them take this obligation seriously and comply with the applicable legislation.

(11) **This admission will be relied upon. Bankwest did not ever achieve market prices. Some of the reported sales are under 10% of the bank's loan. The sale prices are incontrovertible and available from the Land Titles office. The valuations are sworn by experts and**

supported by hundreds of thousands of comparable sales reliably reported by the Valuer General and RP Data.

• If Bankwest were to sell at under market value it is generally the Bank that would bear the loss thus it does not make any sense for it do this.

(12) **Bankwest didn't do it CBA did. They made a billion dollar profit from it as set out above.**

Bankwest does not gain anything by selling properties for less than market value and relies on independent valuers and selling agents to sell properties.

(13) **Bankwest didn't do it CBA did, and CBA couldn't lose and made a huge profit. The valuers are paid by the bank and the valuer's future depends on their ongoing relationship with the bank. They have absolutely no incentive to look after the customer whose property is being valued. In many cases the bank's agents sold the properties to their best clients who were often also clients of the bank.**

-ENDS

4 CORNERS PROGRAM 9 APRIL 2012 - CBA Response dated 22 March 2012

I numbered the 11 bullet points in the CBA response. Where bullet points raise more than one issue I inserted a sub-paragraph (a), (b) etc. My comments are in bold. The original document submitted by CBA is in normal type.

1. CBA asserts that there is no basis for asserting that Bankwest customers **(a)** were treated unfavourably **(b)** because of the terms of the Bankwest acquisition agreement.

   (a) Bankwest customers were treated unfavourably because;
   - **(i) They were charged penalty interest which would remunerate Bankwest 10 to 20 times as much as if the penalty were not charged and**
   - **(ii) Those penalties were not disclosed or were concealed and**
   - **(iii) Their properties were sold for between 5% and 60% of their true value and**
   - **(iv) The lower LVRs contributed to default and**
   - **(v) Many were bankrupted.**

   (b) 1%-2% of borrowers will default because they mismanaged their business or are victim of circumstances beyond their control. More than half of the East Coast property developer clients of Bankwest were treated as fatally impaired. CBA increased the impairment provisions of Bankwest by over $600 million to determine the price CBA paid for Bankwest. This impairment was not reported to the Shareholders nor the ASX in the CBA capital raising. The CBA is one of only three companies ever fined the maximum $100,000 for this infringement by ASIC. CBA probably forgot to disclose this impairment because they knew it was not real. The Annual Reports of Bankwest and HBOS and the analysis by McLernon and Gottliebsen all show that $200 million was clawed back as a price adjustment based on impairment as at 19 December 2008.

2. The purchase price of Bankwest was based on asset values reflected in its balance sheet as at 19 December 2008.

   (a) This is relevant, not verified, however accepted for the purposes of what follows.

3. CBA acknowledges that the Bankwest sale agreement allowed for the final price to vary according to the capital position of Bankwest as at 19 December 2008.

   (a) The Bankwest balance sheet sent by CBA in October 2008 to CBA shareholders shows that Bankwest's only assets were its loans to its customers and "other" assets required to support those loans. The *only* way to devalue Bankwest substantially was to impair its clients' loans. The only way to do that is to devalue the real estate assets backing the loans. Impairment expenses are assessed by the bank at their sole discretion. CBA published that they didn't want Bankwest's East Coast property developer clients.

4. The Bankwest balance sheets were finalised by independent experts.

   (a) Such experts are likely to bend in the direction of the entity that is paying them.

5. There must be evidence to show that the loan was impaired at the balance date.

   (a) The evidence available is limited to the expert opinion of the bank and of those independent accountants and valuers employed by the bank.

6. CBA state that events with no connection to 19 December 2008 cannot have impacted the Bankwest balance sheet and therefore the price paid for it by CBA.

(a) The impairment and subsequent sale of Bankwest's clients' property is directly connected to the 19 December revaluation. CBA caused the sale of hundreds of Bankwest properties for 5% to 60% of their value. If CBA had sold them for their full price the impairment expenses would have been shown to be false or fraudulent. Lloyds or HBOS would have been able to bring serious charges against CBA for recovery. The audit trail is reliable evidence.

7. CBA say that it is commercially unreal to say that CBA or Bankwest would **(a)** impair customer loans, **(b)** impact its customers, and **(c)** reduce its profits.

(a) The impaired loans were not owed by CBA's customers. They were owed by Bankwest's customers. CBA had nothing to lose and a lot to gain.
(b) The customers impacted were Bankwest's customers not CBA's.
(c) CBA declared a profit after tax of $612 million by buying Bankwest cheaply. CBA's profit was enhanced, not reduced, by these impairments and sales.

8. Bankwest honoured its commitments post CBA acquisition.

(a) Bankwest breached its contract with victims. They had no contractual right to sell properties for 20% of their value and admit this in their response (q.v.). Bankwest had no right to conceal or charge penalties which would increase their profit 14 times over.

9. Bankwest would rehabilitate its customers.

(a) That is quite different from CBA being prepared to rehabilitate those Bankwest customers which CBA said they didn't want.

10. Valuations were independent.

(a) At least two valuers have confessed to being instructed to value Bankwest's properties at "the lowest price possible" even when that was less than the debt owed to the bank. Such an instruction is commercially essential because;

(i) CBA could reduce the purchase price by that amount as admitted by the CBA and Bankwest responses and as proved by IMF, Robert Gottliebsen, Unhappy Banking, the CBA and HBOS Annual Reports and others.

(ii) CBA risked prosecution by Lloyds for damages if subsequent sales proved that the impairments accepted by Lloyds as the base for the purchase price had been massively overstated.

11. CBA alleges that Bankwest only appoints receivers if it is considered appropriate.

(a) This is not about the appointment of receivers. It is about fraudulent devaluation of property to obtain an unearned profit.

The Chairman
Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

James Neale

25 May 2012

Dear Senator,

I have received encouragement to make two separate submissions to the Senate in order to improve the effectiveness and efficiency of each.

1. **CBA/Bankwest** which should stand alone and not be diluted by the often unrelated GFC issues. My knowledge of this arises from my being a victim of it.

2. **GFC**. My knowledge of Australia's exposure to the GFC came from being chairman of two financial planning projects for Australia. Both took a commercial approach first and an economic approach second. I first did this for the Prime Minister and later for a private sector philanthropist running for the Senate.

I have specific skills and experience and areas of ineptitude and inexperience and Senators should know which is which. My greatest skill is diagnostic. I lack political nous. There is some fundamental aspect of intellect which simultaneously promotes the first while limiting the second.

My experience is as follows;

1960s – I made investments and prepared my own tax returns. I joined IBM and became expert at explaining how computers would improve the profitability of the large companies who would buy them. This required the ability to quickly and practically understand the published financial information relating to large companies.

1962. I joined IBM when it claimed to have 95% of the world's commercial computer market.

1964. IBM sent me to the USA as Australia's representative, with 80 people from other countries, to study diagnostic procedures relating to the latest computer technology.

1965. IBM trained diagnosticians by inducing faults on computers and scoring (a) whether the fault was found and (b) the time it took each of us to find it. I had the best scores.

1965. IBM US promoted me to teach the next course to students from around the world. I was 23.

1966. I taught this new technology and diagnostics to IBM's Australian staff.

1967. I was promoted to IBM head office responsible for diagnosis across Australasia.

1969. I designed the operating system software of the NSW TAB which then held the record for the number of terminals connected to one mainframe. NASA was second.

1970. IBM sent me to France to help develop the hardware and software that supported the TAB type of computer systems.

1971. I helped design traffic systems for NSW Railways and sold them new IBM computer systems.

1972. IBM had me lead over 100 Intensive Planning Sessions for its largest customers and itself.

1974. I took a Marketing Management position.

1976. The PM seconded me to lead such a planning session for Australia – treating it as a business. I signed a confidentiality agreement attaching the Crimes Act.

1976 onwards. I continued to chair planning sessions for large IBM customers on an occasional basis.

1979. I took an assignment to teach over 100 new IBM salesmen and system engineers.

1980. I was assigned to Hong Kong to run a course for the most senior IBM customer executives in Asia which explained the role of computers as a financial tool.

1980. I was promoted to head office with responsibility for IBM's marketing strategy in SE Asia.

1980. I accepted this promotion on the condition that I would derive the strategy from information entirely outside IBM, mostly from stockbrokers Merrill Lynch in the USA.

1981. I based this strategy on the fact that IBM was losing market share and was perceived, particularly by prospective customers, to be complacent and arrogant.

1981 My strategy received enthusiastic support in Australia including from our Chairman Alan Moyes. The US management did not agree. I resigned.

1981 IBM wrote off $11 billion, internationally, for reasons I had foreshadowed.

1981 I joined the board of a listed Merchant Bank. I was MD of its subsidiary public company which was a money market operator and a commodities and derivatives broker.

1982 I was their appointee to the Board of the Sydney Futures Exchange.

1982 The Chairman of the parent company would not reveal relevant financial information to me about my subsidiary, and on legal advice, I had to resign.

1983 I wrote the computer software to manage the trading position of a market-maker in the derivatives market with the intention of selling this to the banks.

1984. I joined the ASX, as it is now called, as a Registered Options Member and became a Primary Market Maker. I was regulated by what is now ASIC.

1984-1991 As a sole trader with no limitation of liability, I turned over about $13,000,000,000 in ASX Equities, Options, Futures and other derivatives of Australian stocks worldwide. Although I made markets in derivatives the business was so large that I was listed among BHP's top 20 shareholders. I prepared the ASX and all other financial returns myself.

1987-89 After the October 1987 crash I sued my lender, Elders, in the Supreme Court and after 9 days won with costs. The legal discovery process educated me in the internal accounts of a bank. The Judge accused the bank of fraud and said he would send the papers to ASIC as it is now called.

1991- I resumed leading Strategic Planning sessions and acquired unique information. Colin Ward sold Atlas Air Conditioning for a huge sum and decided to make a business plan for Australia. He appointed me chairman because I had done it before. The first effort had been confined to the head of Prime Minister's department and the next level of management. In 1991 we had representatives of all three tiers of Government and senior executives from the private sector plus the support of the ABS, the RBA and Treasury. The first effort was half a man-year's effort – the second probably 50 man-years and many of us are still going. The planners were senior businessmen who were, like me, very comfortable with balance sheets and not comfortable with the language in which National Accounts are discussed by economists. I translated National Accounts into balance sheet and p-and-l format.

Then Australia's largest liquidator (Ferrier Hodgson) paid me to lead their long-range strategic planning session. Their nine partners, including the founding partners attended. I handed them 5 years of financial returns of a company which was actually Australia and asked them how they would assess it. They were very critical. When I told them it was Australia they altered almost every figure. It was one of the steepest learning curves I have ever been on. The bottom line hardly changed.

1992 – We had to explain how a country with Australia's exceptional exports could have its Net Foreign Debt (NFD) increase from $3 billion in 1976 to about $100 billion at the time ($750 billion now). The simplified explanation is that the workforce has shifted from being predominantly a producer of goods and services at fair prices (i.e. near perfect competition) towards being employed by near-monopolies with insufficient competition so that their employees and shareholders consume more while the clients they overcharge produce less. The annual difference between total production and consumption adds to NFD. There was no larger contributor to this problem than the banking sector. It has become much worse in the 15 years since. Competition continues to be reduced. The banks get bolder in unjustly enriching themselves. We did not overlook the capital account and its effect on NFD. In addition to NFD Australia has a $110 billion deficit through having invested less overseas than overseas countries have invested here. A further increase in NFD would come from reducing the Federal Government deficit. Australia would need to raise $1 trillion to have no debt.

2001 I chaired a long-range planning session for the IBM credit union (now Intech). We dissected the financial reports of NAB and Intech to diagnose competitive differences. I became involved in the Credit Union movement and meetings with Joe Hockey who was the relevant Minister.

2001 – 2012 I have examined my personal accounts with my own Banks and studied the demise of Citicorp, HBOS (which bought and sold my bank) and others.

2007 – 2012 I settled with ANZ when I proved ANZ had defrauded me by overcharging every time they accessed my account. ANZ wrote off principal and interest entirely. ASIC refused to investigate. I did not take the next step and ask for a review because the reasons ASIC gave were so inadequate.

CBA/Bankwest Takeover

I believe this should be investigated and have made an extensive Senate submission.

Global Financial Crisis

The most obvious effect of the GFC is to cause the country affected by it to have increased Net Foreign Debt. That leaves the afflicted country without a defence to the purchase by foreigners of its most desirable assets. That may lead to a threat of Sovereign debt default. The average NFD for a country is zero. The planet is a closed economy. A country can only borrow from other countries which have a surplus. China has $3 ***trillion*** in Net Foreign Reserves. And we are a trillion in debt. Greece, Portugal and Ireland have already threatened default. Merrill Lynch's 30 economists around the world concluded that Australia was, at the end of 2008, the most exposed nation in this regard (263). Greece and Ireland were part of Euro in the ML analysis and their exposure was counter-balanced by the large Foreign Reserves of Germany.

When we resolved to completely diagnose the causes of Australia's NFD we had the support of all three tiers of Government, the ABS, the RBA and the Federal Treasury. We were unknowingly diagnosing the causes of the GFC which operate across the whole of the Western World.

The best analogy to explain the GFC is that it is like tectonic plates relentlessly grinding together. Occasionally one plate shatters suddenly and we get a tsunami. In 2008 we had a tsunami. In 2012 there are rumblings. The root cause of the GFC is genetic and non-genetic evolution of homo sapiens. Since WW2 monetary greed has migrated to the top of the motives that determine our behaviour.

Bottom Line: Our workforce is predominantly stealing from its mates instead of producing.

Signed, James Neale 25 May 2012