Chapter 7

Allegations regarding Bankwest

7.1 This chapter begins the report's examination of one of the most prominent issues examined by this inquiry—certainly the subject addressed by the majority of written submissions—namely, allegations that Bankwest grossly mistreated a number of its business lending customers after the bank was acquired by the CBA during the height of the global financial crisis. Specifically, it has been alleged that a review of Bankwest following its acquisition by the CBA (dubbed "Project Magellan") resulted in the reassessment of many commercial loans to small businesses, particularly loans linked to property and property development. In many cases, aggrieved borrowers have alleged that Bankwest required the property associated with their loan to be revalued, with the outcome being an assessed value of the property that was significantly lower than the valuation that was undertaken before the loan was agreed to, which placed the borrower outside their LVR. This led to extraordinarily high rates of default interest being imposed, in most cases creating an unsustainable situation and leading to the loans being terminated. Questions about the conduct of individual bank employees, receivers and the relationship between the bank and valuation firms were also raised.

7.2 This chapter provides an overview of how the global financial crisis impacted the operations of Bankwest under its previous owner, and how that led to the CBA's acquisition of Bankwest in 2008. The chapter then outlines the evidence received from aggrieved business borrowers of Bankwest. The following chapter analyses the terms of the acquisition and the evidence further.

Bankwest's expansion prior to the global financial crisis

7.3 Under the ownership of UK bank HBOS plc, which acquired Bankwest through its Australian subsidiary in 2003,[1] Bankwest embarked on an aggressive growth strategy focused on the east coast states with the aim of opening 160 branches over four years. The ACCC described this expansion as 'unprecedented in Australian banking'.[2] It has been reported that in 2007 Bankwest's lending increased by 36 per cent.[3] Some submissions from small businesses and property developers noted that Bankwest was the only bank that would consider their loan applications, even as the

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1 HBOS's predecessor, the Bank of Scotland, had a majority interest in Bankwest from 1995.

2 ACCC, 'Commonwealth Bank of Australia—proposed acquisition of BankWest and St Andrew's Australia', *Public Competition Assessment*, 10 December 2008, p. 10.

3 Eric Johnston, 'BankWest cool as HBOS falters', *Australian Financial Review*, 23 June 2008, p. 64.

global financial crisis was at its height.[4] How responsible this lending was has been questioned. In his submission, Mr Geoff Shannon stated that the Unhappy Banking group (which he formed in response to Bankwest's actions) includes members who had experienced Bankwest modifying information to obtain credit approval and another member who borrowed at a LVR of 127 per cent.[5]

The global financial crisis and developments in the UK

7.4 Under the ownership of HBOS, Bankwest was very dependent on funding secured by its UK-based parent. Bankwest representatives advised that at this time 65 per cent of Bankwest's funding was self-funded from Australian deposits, with the remainder ($17 billion) funded through wholesale funding secured by HBOS:

> So obviously at the point where HBOS got into difficulty, whilst that funding was not immediately threatened because most of that funding would have been longer dated, it did put HBOS under serious pressure.[6]

7.5 HBOS, however, was particularly exposed to the global financial crisis and in 2008 found itself with a vulnerable funding position and experiencing a run on its shares. In June of that year, a number of upbeat statements attributed to Bankwest executives regarding the safety of Bankwest were reported in the media; additionally Bankwest announced new branches and jobs in Victoria that month.[7] The situation in the UK, however, became dire. In September 2008, at a time when the crisis had taken a dramatic turn[8] and HBOS's position had substantially worsened, a deal for

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4 For example, one borrower noted that Suncorp referred them to Bankwest after declining their application. Other examples were provided by Mr and Mrs Gilbert and Sylvia De Michiel (*Submission 5*, p. 3) and another borrower whose name has been withheld from publication (*Submission 66*, p. 2).

5 Mr Geoff Shannon, *Submission 118*, p. 8.

6 Mr Ian Corfield, Chief Executive, Bankwest Business, Bankwest, *Committee Hansard*, 10 August 2012, p. 53.

7 For example, Mr Ian Corfield, a senior Bankwest executive, was reported as stating '[o]f course customers want to know their money is safe but we've been able to assure them HBOS is one of the safest banks in the world and HBOS fully underwrites what Bankwest is doing … People who are investing in, or saving money with, BankWest are absolutely safe. This business is supported by a very strong balance sheet of its own and in turn is backed up by the HBOS balance sheet. People, in my view, are safe as houses'. Katherine Jimenez, 'BankWest parent committed to Australia despite sub-prime woes', *The Australian*, 12 June 2008, www.theaustralian.com.au/business/bankwest-parent-committed-to-australia/story-e6frg8zx-1111116606559 (accessed 19 April 2012).

8 Other key events during September 2008 included the rescue of Fannie Mae and Freddie Mac by the US government, the collapse of Lehman Brothers and the announcements by the US government of the Troubled Assets Relief Program (TARP) and a US$85 billion rescue package for AIG.

Lloyds TSB to acquire HBOS was negotiated.[9] The UK government subsequently announced it would make a capital investment into the merged firm, acquiring a stake of approximately 43.4 per cent.[10] At a hearing for this inquiry, one of the Bankwest executives to whom the positive statements reported in the media in June 2008 were attributed acknowledged the pressures that HBOS was under during that time, but maintained that 'the reason HBOS had to sell Bankwest was more about its difficulties in the UK than its position in Australia'.[11]

7.6 Overall, it is clear that there were serious issues at Bankwest; a previous managing director of the bank (appointed following the acquisition by the CBA) stated during his evidence to a 2009 inquiry that 'the previous owners had to stop writing business; they could not continue to write business given the funding pressures they were under'.[12] This statement was supported by anecdotal evidence taken during this inquiry:

> One former employee said to me: 'As a former employee of the bank I have to be careful what I say, but I think you might be onto something about their solvency, capital adequacy and risk provisioning. This was another reason I had to leave. I had more than $75 million in deals declined by the credit team in 2008—pre-GFC. They would've normally all been approved, but none of them were. So were Bankwest taking application fees and valuation fees off clients with no way of approving these loans? It's an interesting thought.'[13]
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> * * *
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> At a meeting with an employee from Bankwest, I said to a guy from Treasury that it must be interesting working within Bankwest and juggling the cash flows and he said, to my surprise, that at times they did not have money. He actually told me that there were times when Bankwest did not have money they were juggling things around behind the scenes. At that time I did not know how serious it was. At a meeting with a Bankwest business manager in Bunbury they told me that Bankwest Business Bunbury had not lent any money since the start of the GFC and they said something to the effect of, 'We call ourselves business banking'—referring

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9 This is a summary of Lloyds plc's submission to UK regulators as the proposed acquisition was being considered; Office of Fair Trading (UK), *Anticipated acquisition by Lloyds TSB plc of HBOS plc: Report to the Secretary of State for Business Enterprise and Regulatory Reform*, 24 October 2008, p. 10.

10 HM Treasury (UK), 'Treasury statement on financial support to the banking industry', *Media release*, 13 October 2008, webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/press_105_08.htm (accessed 11 April 2012); Financial Services Authority (UK), Final Notice: Bank of Scotland plc, 9 March 2012, www.fsa.gov.uk/static/pubs/final/bankofscotlandplc.pdf (accessed 11 April 2012), p. 32.

11 Mr Ian Corfield, Bankwest, *Committee Hansard*, 10 August 2012, p. 53.

12 Mr Jon Sutton, *Committee Hansard*, Senate Economics References Committee, Inquiry into aspects of bank mergers, 2 July 2009, p. 8.

13 Mr Guy Goldrick, *Committee Hansard*, 10 August 2012, p. 41.

> to how ironic it was. So they were saying they were business banking but they had basically turned off the tap.[14]

7.7 After analysing a revised version of APRA's banking statistics, litigation funder IMF Australia suggests that the RBA or, less likely, other financial institutions, intervened to support Bankwest during the months leading up to the acquisition.[15] The committee questioned RBA officials about this claim:

> Senator WILLIAMS: During the time that Bankwest was under enormous pressure when HBOS had collapsed in the UK, did the Reserve Bank lend any money to Bankwest to keep it afloat? Did you give any funds then to finance their loans in any way whatsoever?
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> Dr Debelle: All banks in Australia conduct repurchase operations with us where they bring in mostly government securities, or other bank paper, and borrow, and we give them cash against that. Bankwest or HBOS had access to that just like any other bank, and we would have provided funding to them as with any other bank. We do that every single day of the week. Bankwest participated in our market operations just like any other bank in Australia did, and on exactly the same terms and conditions as every bank and any financial institution in Australia.
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> Senator WILLIAMS: So there was no special treatment for Bankwest from the RBA?
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> Dr Debelle: No.
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> Senator WILLIAMS: Was there a case where Bankwest did a huge drawing on that sort of money, or anything out of the ordinary from the everyday events of the banking system?
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> Dr Debelle: No.[16]

The acquisition of Bankwest by the CBA

7.8 On 8 October 2008, the CBA announced that it had purchased Bankwest and St Andrew's Australia (also owned by HBOS at the time) for $2.1 billion.[17] This

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14 Mr Sean Butler, *Committee Hansard*, 8 August 2012, p. 66.

15 This is based on APRA's statistics on the liabilities due to clearing houses and financial institutions, which indicate that Bankwest began to owe $29 million in August 2008, $859 million in September and $3.75 billion by December. IMF Australia, 'Introduction', *A timeline for Bankwest*, 6 February 2012, www.imf.com.au/pdf/aTimelineForBankwestComplete.pdf (accessed 14 August 2012), pp. 3–4.

16 Dr Guy Debelle, Assistant Governor, Financial Markets, RBA, *Committee Hansard*, 9 August 2012, p. 42.

17 Commonwealth Bank of Australia, 'Commonwealth Bank of Australia to acquire Bank West and St Andrew's', *Media release*, 8 October 2008, www.commbank.com.au/about-us/news/media-releases/2008/081008-news-bankwest-acquisition.aspx (accessed 17 April 2012).

represents a price-to-book ratio of 0.8, significantly less than the average of 1.9 for recent acquisitions in the Australian banking sector.[18]

7.9 On 10 December 2008, the ACCC announced that it would not oppose the acquisition. On 18 December 2008, the Treasurer announced approval of the proposed acquisition, subject to certain conditions which were imposed for three years.[19] The acquisition was seen as essential for financial system stability. During the Competition Inquiry, the RBA Governor stated:

> Bankwest was in a situation where it had a struggling parent. It was going to be sold one way or another. In the environment that we were in, you do not want an institution with a weakened parent to be sort of twisting in the wind while they work out in the UK what they are going to do. That was the situation that we were facing. They found a suitor and, in my opinion, in the conditions of that time—this was October 2008, if I recall—stability was key.[20]

7.10 Also during the Competition Inquiry, the CBA gave evidence that it provided $17 billion in funding to prevent the collapse of Bankwest.[21] The CBA is of the view that, because it replaced Bankwest's funding liabilities, 'the Australian economy was spared a potentially significant financial shock, because of CBA's ability to acquire Bankwest'.[22] Evidence given by Treasury supports this position; the head of Treasury's Markets Group stated that if Bankwest was not taken over by someone the government would have had to let it fail, with the resulting winding up likely to cause 'great difficulty and big concerns not only for Bankwest customers and the business

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18 Price-to-book ratios for other notable acquisitions include 1.7 paid by CBA to acquire Colonial First State (2000), 1.9 paid by HBOS to acquire Bankwest (2003) and 2.7 for Westpac to acquire St George (2008). CBA Investor Pack, 8 October 2008; cited in ACCC, 'Commonwealth Bank of Australia—proposed acquisition of BankWest and St Andrew's Australia', *Public Competition Assessment*, 10 December 2008, p. 5.

19 In addition to the restrictions on mergers and acquisitions contained in the *Competition and Consumer Act 2010*, under the *Financial Sector (Shareholdings) Act 1998* financial sector companies are subject to a 15 per cent shareholding limit although the Treasurer may approve a higher percentage limit on national interest grounds. The Treasurer may also impose conditions on the higher percentage limit. The conditions related to CBA maintaining and growing the Bankwest brand, ATM fees, maintain the Bankwest head office, managing director and core functions in WA, not closing WA branches and also concerned arrangements for affected staff. The Hon. Wayne Swan MP, 'Proposed Acquisition of Bank of Western Australia and St Andrew's by the Commonwealth Bank of Australia', *Media release*, attachment A, 18 December 2008.

20 Mr Glenn Stevens, Governor, RBA, *Committee Hansard*, Competition Inquiry, 13 December 2010, p. 18.

21 Mr Ralph Norris, Chief Executive Officer, Commonwealth Bank of Australia, *Committee Hansard*, Competition Inquiry, 15 December 2011, p. 76.

22 Mr David Cohen, Group General Counsel and Group Executive, Commonwealth Bank of Australia, *Committee Hansard*, 9 August 2012, p. 24.

but also for the rest of the financial system—it would have raised huge worries and concerns in the community'.[23]

Actions by the CBA following the acquisition

7.11 During the Competition Inquiry, then CBA Chief Executive Officer Ralph Norris summed up the CBA's view of Bankwest's lending behaviour:

> Bankwest was, to a large extent, a failing bank. It would have been a failing bank if we had not bought it, because it was owned by an organisation that had carried out lending practices that were highly, I believe, inappropriate.[24]

7.12 The CBA initiated a review of the Bankwest portfolio which was described in the CBA's 2009–10 results presentation as 'comprehensive and in-depth'. By the end of June 2010, around 1100 loans had been reviewed with the review observing issues predominantly with loans on the east coast due to 'unrealistic security valuations'.[25] On the business banking portfolio, the CBA:

> … identified many pre-acquisition loans reflecting poor asset quality, high loan to value ratios and insufficient covenant coverage. This resulted in significant risk grade reassessments and security revaluations with loan impairment expenses increasing $304 million. These loans are confined to the pre-acquisition business banking book.[26]

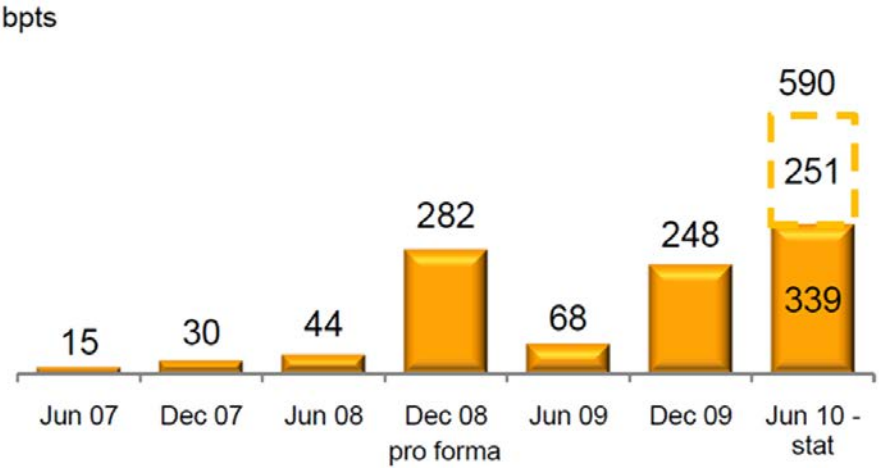
23 Mr Jim Murphy, Executive Director, Markets Group, Treasury, *Committee Hansard*, 8 August 2012, p. 8.

24 Mr Ralph Norris, Chief Executive Officer, Commonwealth Bank of Australia, *Committee Hansard*, Competition Inquiry, 15 December 2010, p. 69.

25 Commonwealth Bank of Australia, *Results presentation for the full year ended 30 June 2010*, 11 August 2010, p. 99.

26 Commonwealth Bank of Australia, *Profit announcement for the full year ended 30 June 2010*, 11 August 2010, p. 30.

Figure 7.1: CBA's impairment expense to gross loans, Bankwest business category



Notes: The pro forma information for December 2008 assumes, for comparative purposes, that the acquisition of Bankwest and St Andrew's Australia was completed on 1 July 2008.

Source: Commonwealth Bank of Australia, *Results presentation for the full year ended 30 June 2010*, 11 August 2010, p. 42.

7.13 Risk management practices were 'significantly strengthened' and aligned with CBA policies as a result.[27] The CBA changed senior management and made known its criticism of Bankwest's lending practices. In August 2010, the *Sydney Morning Herald* reported:

> Commonwealth Bank has dismissed several Bankwest executives, including a former risk officer, claiming the lender "systemically" inflated the credit quality of hundreds of commercial property loans and mortgages when it was owned by the British group HBOS.[28]

7.14 Under the CBA's ownership, Bankwest also shifted away from certain business lending activities that it previously engaged in. Bankwest's exposure to commercial property (as a proportion of its total portfolio) decreased to 13.5 per cent in June 2010, compared to 15.4 per cent in June 2009.[29] The CBA's profit announcement for the 2009–10 financial year contained the following statement on how Bankwest's business lending portfolio changed following the acquisition:

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27 Commonwealth Bank of Australia, *Results presentation for the full year ended 30 June 2010*, 11 August 2010, p. 99.

28 Eric Johnston, 'BankWest bad loans prove a headache', *Sydney Morning Herald*, 12 August 2010, www.smh.com.au/business/bankwest-bad-loans-prove-a-headache-20100811-11zrn.html (accessed 18 April 2012).

29 Commonwealth Bank of Australia, *Results presentation for the full year ended 30 June 2010*, 11 August 2010, p. 100.

> Business lending balances decreased 3% on the prior year to $24 billion due to weaker market demand and a strategic shift in focus away from the property sector. Lending margins were broadly in line with the prior year.[30]

7.15 Reviewing aspects of a new subsidiary would be sound commercial behaviour—in fact, it would be surprising if some form of review was not undertaken. This point was strongly made by the CBA's representatives at a public hearing, who noted that the CBA had a certain amount of knowledge about Bankwest's position prior to the acquisition but, with only three days due diligence prior to the acquisition, its detailed knowledge was 'absolutely scant':

> So, as a prudent business owner would do, having acquired a business, we undertook a general review to get to know that business much, much better. In the course of that review it became clear to us that there were some questions around the quality of the commercial property loan book in particular, but commercial loans in general. We had a new managing director of Bankwest appointed—Jon Sutton—who was from CBA. Jon led a project within Bankwest to thoroughly review the commercial loan book. That was a particular detail that we got into via Bankwest. Bankwest did carry that out. The distinction that I am drawing is that it was not a team of CBA people who were flown in from the east to pore through the books. That was not the case at all.[31]

7.16 A Treasury official also mused that he 'would have thought that anyone in the same situation would do that'; and noted that APRA would oversee any review in terms of its impact on capital and liquidity requirements.[32]

7.17 In addition to the review of the existing loan book, a shift away from new business lending in the commercial property sector may also have been an appropriate commercial decision. However, the submissions received by the inquiry do raise questions about the specific actions taken by the CBA and its Bankwest subsidiary against existing Bankwest customers.

Experiences of Bankwest business customers following the acquisition

7.18 Before outlining the allegations made against Bankwest, it is useful to briefly describe some characteristics of small business lending. The nature of the securities required and the conditions imposed during the life of the loan (known as covenants) are two important elements of lending to small business. Common securities for a business loan include the applicant's personal residence and assets of the business. As with residential mortgages, lenders' mortgage insurance may also be required. This is

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30 Commonwealth Bank of Australia, *Profit announcement for the full year ended 30 June 2010*, 11 August 2010, p. 30.

31 Mr David Cohen, Group General Counsel and Group Executive, Commonwealth Bank of Australia, *Committee Hansard*, 9 August 2012, p. 33.

32 Mr Jim Murphy, Executive Director, Markets Group, Treasury, *Committee Hansard*, 8 August 2012, p. 8.

insurance paid for by the borrower when the LVR of the loan is above a certain threshold and which protects the lender.[33] The inclusion of certain covenants is also common to enable a bank 'to monitor the customer's capacity to repay and the value and quality of the collateral for the loan'.[34] Default interest rates may be applied as a result of a covenant breach. Typical covenants require borrowers to:

- provide operational or financial information to a lender;
- refrain from incurring further debt during the life of the loan;
- ensure that the LVR does not go above a certain percentage;[35] and
- maintain adequate free cash flow to meet interest (interest cover ratio) and total debt service obligations (debt service ratio).[36]

7.19 As noted previously, most of the submissions received by the committee were from aggrieved former business customers of Bankwest. Submissions generally came from small businesses and individuals involved in the development of residential and light-industrial property, businesses in the tourism, accommodation and food services sectors (such as hotel, resort, restaurant and café owners), small shopping centres, childcare centres and farms. Submissions were also received from individuals involved in larger property developments.

7.20 In addition to the similar nature of the businesses involved, across submissions there are a number of common issues raised about the nature of the borrowers' experiences with Bankwest and the specific actions that were taken. These include:

- the property securing the loan being revalued leading to the borrower being outside their LVR—questions were raised in submissions about the valuation process, including allegations that revaluations were used to trigger defaults;
- agreed funds for property developments not forthcoming, jeopardising the ability of the development to proceed;
- high rates of default interest being imposed once a default occurred, and at a rate that was not clearly disclosed in the loan documentation;
- disadvantageous changes to facility terms simply issued and not explained;
- a general unwillingness by Bankwest to work through issues and unrealistic notices of demand for repayment;

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33 Australian Bankers' Association and CPA Australia, 'Applying for a loan: information for small business', *Fact sheet*, May 2009, www.bankers.asn.au/ArticleDocuments/192/ABA-111090-v1-Fact_Sheet___Applying_for_a_Loan.pdf.aspx, p. 4 (accessed 16 May 2012).

34 Bankwest, *Submission 80*, p. 3.

35 Australian Bankers' Association and CPA Australia, 'Applying for a loan: information for small business', *Fact sheet*, May 2009, www.bankers.asn.au/ArticleDocuments/192/ABA-111090-v1-Fact_Sheet___Applying_for_a_Loan.pdf.aspx, p. 4 (accessed 16 May 2012).

36 Bankwest, *Submission 80*, p. 3.

- deeds of forbearance with confidentiality clauses being required;
- the unnecessary appointments of law firms and receivers; and
- properties being sold below market value, in some cases at what appears to have been at a significant discount or 'fire sale'.

7.21 Bankwest provided the following summary of its response to the evidence received by the committee:

> Lending policies – the Bank's lending policies and procedures require an appropriate assessment of a number of matters. Prior to and since the GFC Bankwest, like many financial institutions, has continually reviewed and adjusted its lending policies.
>
> CBA acquisition – the CBA sale agreement and purchase price adjustment process did not have any impact on Bankwest's approach to dealing with customers. The acquisition did not cause any change to existing contractual arrangements between Bankwest and its customers.
>
> Defaults – it is not in Bankwest's interests, and it makes no commercial sense, to "manufacture" defaults or to cause or increase losses.
>
> Customers in financial difficulty – customers in difficulty have been dealt with appropriately and on an individual basis, not on a global basis.
>
> Receiverships – Bankwest's level of receivership appointments have not been unreasonable or aggressive and are in line with its market share.
>
> Valuation process – where Bankwest uses valuers they are independent and have in place proper standards and processes.[37]

7.22 The following paragraphs discuss the specific actions taken against individual Bankwest borrowers from 2008 onwards and provide a sample of the evidence received. Possible explanations put forward for why this occurred to a significant number of Bankwest customers, such as the terms of the CBA's purchase agreement for Bankwest and the deterioration of the property market, are discussed in the following chapter.

Revaluation of property

7.23 The revaluation of the property securing the loan was a recurring theme in submissions. Many submitters noted that, following Bankwest's acquisition by the CBA, Bankwest required a revaluation to be undertaken. The outcome of the new valuation generally placed the borrower outside their LVR, causing the borrower to default. Some individuals alleged that the defaults were planned through the revaluation; they also questioned the methods undertaken to value the property and the independence of the valuer from the bank.

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37 Bankwest, *Submission 80*, p. 2.

7.24 To demonstrate the types of concerns put forward by submitters, the following is an extract from a submission lodged by a property developer in the Australian Capital Territory who purchased a property to redevelop with finance from Bankwest in July 2008:

> In January 2010 the bank surprisingly requested an updated valuation in relation to the Land even though … I still had a current valuation from Herron Todd White that was only 6 months old. The bank commissioned Knight Frank Australia Pty Ltd to carry out this valuation. The valuation dated 1 February 2010 put the Land at a decreased value which put me in breach of the allowable lend to value ratio (LVR) under the facility. This valuation had significant flaws such as inflated sales commission rates. That inflation alone took $4 million dollars off the value. I went to great lengths to analyse the valuation, to point out to Knight Frank where they used inaccurate data and I set this all out for the bank as well. Both Knight Frank and the bank refused to adjust the data and insisted on leaving the facility in breach of the LVR. They then charged me interest at the default interest rate.
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> …
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> Since development approval was granted I have obtained an updated valuation for the Land from CB Richard Ellis Australia valuing the land at $16 million. Throughout the course of the proceedings the bank was owed approximately $8,500,000.00. Their interest was always secured and well protected. They still did whatever they could though to put strain on me and quite frankly, it is working.[38]

7.25 The extracts from submissions below provide a further snapshot of this issue—they relate to a residential property development, a child care centre, the construction of a retirement village and a hotel respectively:

> Bankwest required us to revalue all of our land holdings in March 2009 and this resulted in loan values falling between 20% – 50% taking our group from a comfortable risk position of 45% – 50% to one that was no longer tenable with Bankwest or any other at 75%.[39]
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> * * *
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> … Bankwest sent a valuer from a large firm and he valued the Centre at $2.4 million with 32 children per/day, a 41% occupancy at that time, he stated in his report that if the attendance increased to 90% capacity the value would [be] $3.0 million and more … According to that report Bankwest gave me two loans … for the real estate and building of $1.138 million … In the year 2008 the same valuer come [sic] to the Centre by "Order from Bankwest" and said the Centre had improved its ratio of

38 Name withheld, *Submission 94*, pp. 3, 5.

39 Mr Robert Iannello and Ms Nicola Pagano, *Submission 76*, p. 2.

> occupancy to 70% and in his report the value of the Centre is now $2.0 million only.[40]
>
> * * *
>
> On the 14th November 2010 we submitted a loan application to the bank. It was met with verbal approval and a $200,000 advance to start civil works on 7 homes (6 of these with deposits). The bank then came back and asked for a valuation despite a previous valuation by Nelson Partners only 11 months prior. The valuation was ordered by the bank with CBRE and the value came in some $7 million less, equating from $190,000 residual land value per site to just $50,000 per site.[41]
>
> * * *
>
> In 2007, our main property, the Lighthouse Beach Resort, was valued at $20 million. That was at the peak of the property boom, I suppose. A few years later, in 2009, it was revalued at $14.7 million, which was a substantial discount but we thought that was fair enough given the way the property market had gone … At that stage, everything with our business was fine. We were going extremely well. Just five months after the reduced valuation, Bankwest advised us that they needed another valuation, at our cost, that being $9½ thousand. The new valuation came in at 22 per cent less than the valuation of just five months before.[42]

7.26 A common grievance from submitters was that their requests to view the new valuation reports were denied, even though Bankwest relied on that report to demonstrate that the borrower was outside their LVR, which in turn was related to the imposition of default interest and the ultimate termination of the loan facility. Submitters were particularly outraged by this because it is the borrower who pays for the valuation and with no say over who the valuer is, the costs borne by the borrower have often been substantial:

> We were fully aware that, according to the relevant section in the Memorandum of Mortgage, Bankwest was not obligated to provide us with a copy of this Valuation, but could do so at their discretion. However each time we politely requested a copy from them, they refused. To this day we still have no idea what that Valuation Report (for which we paid over $5,000!) contained and this remains a constant source of annoyance and frustration considering we put our heart and soul into that property only to have it snatched away from us so that someone else can now enjoy the benefits of our hard fought efforts.[43]
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40 Mr Nashaat Sedhom, *Submission 20*, p. 4.

41 Mr Frank Galea, *Submission 21*, p. 3.

42 Mr Sean Butler, *Committee Hansard*, 8 August 2012, p. 61.

43 Mr Gilbert and Mrs Sylvia De Michiel, *Submission 5*, p. 9.

> Incidentally, we requested a copy of the minutes of the meeting and copy of their valuations, which the bank promised to give us and which we never received.[44]
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> * * *
>
> 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 …[45]

7.27 Others questioned the nature of the bank's instructions to the valuer. Mr James Neale noted that the executive summary of the report of his revaluation stated:

> 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…[46]

7.28 Mr Geoff Shannon submitted that the Unhappy Banking group he founded has received examples of valuations where the instructions given differ to what was in the facility terms. Mr Shannon submitted that the difference between an 'as is' valuation of current market value and an 'in one line'[47] valuation was generally 35 per cent. Mr Shannon suggested this could be a breach of the loan contract by Bankwest.[48]

Changes to facility terms and agreed funding not forthcoming

7.29 Disadvantageous changes to terms being issued without notice or explanation was another common issue raised in evidence. Several submissions stated that disadvantageous revisions to the facility terms were made by Bankwest and simply issued to the borrower ("congratulating" them that their facility had been revised), without the borrower being aware that changes were being made and without the changes highlighted or explained:

> Bankwest … sent us a Letter of Variation of Facilities in May 2009, congratulating us that Bankwest had agreed to vary our facilities. We had not requested a variation but came under increasing pressure via phone calls, letters and e-mails from our Bankwest Representative, to sign and return the documents as soon as possible.[49]

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44 Mr Neil Mackay, *Submission 77*, p. 6.

45 Mr David Bone, *Submission 71*, p. 2.

46 Mr James Neale, *Submission 54*, p. 2 [emphasis omitted].

47 A sale in one line valuation is based on the assumption of a single transaction for the total holding or a sale in one line to one buyer. See Australian Property Institute, *Australia and New Zealand valuation and property standards*, January 2012, paragraph 4.21.

48 Mr Geoff Shannon, *Submission 118*, p. 10.

49 Mr Nicholas Murphy, *Submission 15*, p. 2.

7.30 One example was given where a number of letters of variation were issued over time, including one which significantly brought forward the expiry date of their facilities:

> On going through my files and finding the paperwork of the variation letter of October 2009 I noted with horror that Bankwest had altered my two loans from 18.5 years and 28.5 years to run, to 6 months indeed expiring in April 2010.[50]

7.31 For property developers more generally, any loans that are agreed to in order to facilitate construction or development are clearly essential for the value of the asset to reach its potential and to enable the borrower to realise a return. However, the committee received evidence that Bankwest reneged on agreements to provide construction loans. As a property developer constructing a retirement village put it:

> The bank failed to do what they are in business to do: lend money. From day 1 Bankwest failed to lend sufficient funds to roll out the stages of development in such a way that stock would be sold and confidence among residents and prospective residents would be high. Confidence in retirees is what equates to sales. The bank also failed to deliver on promises that the clubhouse funding would be forthcoming at the conclusion of Stage 1.[51]

7.32 The experience of Kelgon Development Corporation Pty Ltd combines the issue of important changes not being disclosed in a clear manner and agreed essential funding for construction not being released. Kelgon had finance with Bankwest to fund the construction of an office/warehouse after a suitable tenant had been found. Such a tenant was found, but after 33 weeks without funding being forthcoming, Bankwest informally advised that it did not want to continue with the loan. Bankwest then sent Kelgon:

> … a cleverly worded Letter of Variation which began with "We are pleased to advise that we have agreed to provide additional Facilities to you." At first sight, it appeared that these facilities offered were in addition to the original land and construction loan offer of 14 August 2008. But a closer look revealed that, whilst the bank had increased the current land loan by $20,000, it had completely excluded the vital construction loan which was the very purpose of my original loan application. In other words Bankwest was saying that they will provide me with an additional $20,000 so that I could afford to pay their interest until maturity, and therefore avoid default on the land loan, if I relinquished my claim on the $2,450,000 construction loan despite having tenants in hand who were ready to occupy

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50 In July 2010 the borrower was informed that the facility would be terminated. Ms Fiona Howson, *Submission 39*, p. 5. Regarding this matter, Bankwest countered that the changes came about in response to additional funding for construction that was requested and reflected the anticipated date of completion of the construction. It also argued that the changes were 'the subject of discussions, emails and documentation with the customer'; Bankwest, answer to question on notice, 10 August 2012 (received 7 September 2012), p. 5. The committee makes no judgment on these competing claims.

51 Mr Frank Galea, *Submission 21*, p. 6.

> in 6 months, potentially paying a handsome net annual rental of $1,287,000 for a 10 year initial term.[52]

Default interest

7.33 Another common theme in submissions, and a key issue directly impacting the ability of the affected businesses to survive or to have sufficient time to seek refinance, is the imposition of default or penalty interest once a default has occurred or the expiry date in the facility terms has passed. In a number of cases, the default interest rate was around 18 per cent. For any business, interest rates at this level would be challenging and in many cases ultimately untenable. One hotel owner stated that 'Bankwest seem determined to put me into receivership now by charging me default interest which no business can sustain for any length of time':

> Bankwest will now not rollover my loan and are charging me default interest rates, even though I have not been late or missed a payment of interest. I am sure they are determined to put me into receivership without any real cause. I have tried to sell the hotels at a fair and reasonable price, and spent a considerable sum of money on advertising, but because of the market at present I have been unable to achieve a fair price. I would like time to sell the hotels for a fair price to cover my debts. I will not be able to meet the default interest rate charge, which means that my debt will be increasing with Bankwest. This is most unfair, as previously my LVR was well within the limits, but with Bankwest charging the Default interest rate and adding this to the principle [sic] of the loan, my LVR will in no time be out of the acceptable range.[53]

7.34 Mr Sean Butler, whose Perth hotel properties were financed with Bankwest, explained how the interest rates for his loans changed once a further revaluation was undertaken. In his view, Bankwest imposed unreasonable rates of interest:

> On 10 August [2010]—just a few weeks after the valuation was given to us—Bankwest advised us that our interest rate margins would double, from bank bill swap rate plus 1.25 per cent to bank bill swap rate plus three per cent. So our interest rate doubled within a few weeks of getting that valuation. I appealed to Bankwest to see if they would negotiate that, and they just said there was no room for negotiation and that we just had to wear that. So basically we decided to either refinance or sell the properties.
>
> In January 2011 we had further discussions with Bankwest. They said they would not budge on the higher interest rates being charged. In February 2011 we got a purchase offer for the Lighthouse Beach Resort at $14 million, that being 22 per cent higher than what the [r]evaluation was. In other words, we got an offer for it that was closer to the original valuation. It has almost proved them wrong. At that point our business partner, himself a banker, advised that he would match the $14 million offer and buy that property.

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52 Kelgon Development Corporation Pty Ltd, *Submission 4*, p. 4.

53 Name withheld, *Submission 14*, pp. 2, 3.

> On 31 March Bankwest advised us that if they did not get all their money back by 31 May it would get ugly. They advised us that if arrangements were not made to pay all the money back in one lot then penalty interest rates of 18 per cent would apply. Our business partner—the banker—then advised that he had changed his plans and did not want to buy the property anymore. So I advised Bankwest that our business was still capable of paying all the interest on all the loans and that we would put things back on the market. We had four separate properties we could sell. But they refused. They said they wanted all their money back in one lot. Our profits were at record levels, but I said we just could not afford to pay the 18 per cent interest rate.[54]

Rationale for default interest

7.35 In general terms, if a business is struggling because of a difficult business environment or other factors outside its control, the imposition of default interest by a bank appears counterintuitive in that is likely to secure the downfall of the business, as opposed to other actions which could assist the business through the more challenging times. Bankwest provided the following rationale for default interest being imposed:

> Obviously, clients in default have contractual obligations and when clients are then put into a team that is more intensive in terms of working with them there is an additional cost to that and also in terms of default there is increasing capital attributed to servicing and supporting that customer. So that is the logic for the default rates.[55]

7.36 While Bankwest's explanation may apply generally, and additionally there probably needs to be a direct financial disincentive to encourage borrowers not to breach covenants in the contract, witnesses were less well-disposed to Bankwest's motives:

> Bankwest have mastered the art of implementing penalty interest where they can through various technical defaults. I tender to the committee a transcript of a recorded message left on a commercial borrower's phone by two business development managers of Bankwest. The most interesting part of the transcript occurs after the point where the Bankwest managers thought they had successfully terminated the phone call, but it was still on … I am reading from the transcript: 'John: I will have to talk to my colleagues'—John is the BDM of Bankwest—'and my colleagues have something to think about. We've got 16 default rate.' There is no emotion about the fact that that is hurting. 'If you're going to write off money, that 16 per cent doesn't reduce your write-off; it increases it probably.' That sentence alone highlights that the bank knowingly use the default interest rate as a tool to force customers to go broke.[56]

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54 Mr Sean Butler, *Committee Hansard*, 8 August 2012, p. 61.

55 Mr Robert De Luca, Managing Director, Bankwest, *Committee Hansard*, 10 August 2012, p. 57.

56 Mr Geoff Shannon, *Committee Hansard*, 10 August 2012, p. 21.

7.37 Bankwest was asked about any tax benefits it may receive from using high rates of default interest to increase the debt of borrowers that the bank has decided it does not want to continue in business with. After repeated questioning, Bankwest acknowledged that increased losses would be tax deductible, but denied that there was an overall benefit.[57] Following the hearing, Bankwest provided a detailed statement regarding taxation arrangements for default interest on impaired loans:

> All interest income (including default interest) that the Bank accrues is taxed accordingly as income meaning an increased tax liability. If this interest is subsequently written off the impact is tax neutral, i.e. the tax liability on the interest is offset by the tax written off. Where a property that is held as security is sold for less than the corresponding debt, the bank writes off capital and the negatives of this far outweigh any interest income written off.
>
> When a customer loan is assessed as impaired the outstanding loan is classified as non-accrual. From this point any interest incurred is added to the loan but not recognised as income. Instead of recognising as income the interest is capitalised on the balance sheet (the capitalised interest is known as "interest reserved"). If the loan is subsequently written off, the interest added to the loan after impairment does not increase write-off expense as it is offset with the matching interest reserved account, and this is an offset between two balance sheet accounts. As such, the Bank does not receive any tax benefit from this process.[58]

Disclosure of default interest

7.38 Another issue raised in submissions regarding the imposition of default interest by Bankwest were claims that the default interest rates were not clearly disclosed—i.e. the rates that would apply were not stated in the facility terms related to the loan contract, rather they were imposed by reference to other bank documents and interest rates:

> 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.[59]

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57 Mr Robert De Luca; Mr Ian Corfield, Bankwest, *Committee Hansard*, 10 August 2012, pp. 57–58.

58 Bankwest, answer to question on notice, 10 August 2012 (received 7 September 2012), p. 4.

59 Mr James Neale, *Submission 54*, p. 4. See also Mr Geoff Shannon, *Submission 118*, p. 9.

7.39 A senior Bankwest executive was asked about these claims and expressed their view that the default rates were not concealed:

> I would say our default interest levels are spelt out clearly within our contracts. However, the reality of commercial loan contracts is that these are long and extensive documents, which is why our customers very often get lawyers to review them. I would be surprised if a lawyer was saying that they could not identify where the default interest was in a contract.[60]

Unwillingness of Bankwest to work through issues and unrealistic notices of demand

7.40 A number of borrowers suggested in their submissions that Bankwest was unwilling to engage with them to develop a remedy once a default occurred, with receivers instead appointed (even in non-monetary defaults). Borrowers also noted a short period of time (one to seven days) between when the notice of demand for the facility to be repaid was issued and when the bank appointed receivers. This left the borrower unable to refinance amounts often totalling millions.[61] Some borrowers claimed that Bankwest also did not cooperate with refinancing or restructuring attempts, with offers of finance from other banks expiring because of inaction at Bankwest, or not being fulfilled because Bankwest took possession of the property after being notified of the refinance offer.[62]

7.41 An instructive example of a business attempting to refinance but thwarted by a lack of co-operation from Bankwest was provided by Mr Trevor Eriksson. Mr Eriksson was involved in an industrial development in Orange, New South Wales that obtained finance from Bankwest in March 2008. In May 2010, receivers were appointed following a letter of demand with a seven day deadline. After mediation in December 2010, Bankwest agreed that the business could refinance the loan by the end of May 2011 and the receivers were withdrawn. The subsequent events were, in Mr Eriksson's view, as follows:

> During the first quarter of 2011, I entered the loan market. Traditional banks (ANZ and St George) were approached by a finance broker. All required a written reason from Bankwest as to why a receiver had been appointed. Further the lenders wanted a set of accounts.
>
> Requests were made, for the receiver to provide details for my Public Accountant to prepare a set of accounts and to Bankwest for support on the reason for the appointment of the receiver. Both entities denied assistance stating that the Deed of Release did not require them to assist with this information. They refused to cooperate and assist with the raising of funds to payout Bankwest … By April 2011 my Public Accountant managed to

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60 Mr Ian Corfield, Bankwest, *Committee Hansard*, 10 August 2012, p. 62.

61 In his submission, Mr Victor Seeto stated that he was issued a notice of demand which required $21 million to be repaid within 24 hours; Mr Victor Seeto, *Submission 106*, p. 2. See also Mr Guy Goldrick, *Submission 56*, p. 5.

62 For example, see Mr Nicholas Murphy, *Submission 15*, p. 3.

> extract some information from the receiver which assisted with a draft set of accounts. I received loan offers from both the ANZ and St George Banks which were submitted to Bankwest. These loan offers were conditioned upon more information such as valuations etc. The indication was both could settle CIE's loan with Bankwest during mid June, 2011; about two weeks after the agreed settlement date. I had kept Bankwest informed of the funding proposals and expectations.[63]

7.42 Receivers were again appointed to take control of Mr Eriksson's business, and both the ANZ and St George consequently withdrew their offers of finance.[64]

7.43 Borrowers also faced other practical issues in their attempts to seek refinance, particularly after previously committed funds were not made available:

> … Bankwest had left me with insufficient funds to finance an establishment fee, let alone the valuation and other costs required to lodge a new application. Also working against me was that I owed money to architects, engineers and others who had assisted with the project development while the Bankwest loan application was pending. But most importantly I lost my prime tenant, Fernhurst Cold Storage, who understandably declined to proceed after I informed them that my bank had withdrawn their construction loan facility and I could not meet their January 2010 occupancy deadline.[65]

7.44 Complaints were also received about the conduct of specific Bankwest relationship managers, with allegations of intimidation, harassment and general unprofessional conduct. Some borrowers faced persistent demands for information from the bank or its law firm, with information required on a frequent (in some cases, daily) basis:[66]

> Bankwest, through Norton Rose, added an additional condition during the period January 2011 to April 2011. I had to report to Norton Rose by 3pm every day. A bizarre and humiliating requirement. I was treated as if I was on parole. This condition was insulting, humiliating and reflected on the contemptible [mindset] of Bankwest and its legal representatives.[67]

Deeds of forbearance

7.45 Some borrowers noted that they were required to sign a deed of forbearance when they experienced difficulties. In his submission, Mr Sean Butler stated that the deed he signed included a $200,000 fee to extend facilities for five months, a default

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63 Mr Trevor Eriksson, *Submission 37*, p. 9.

64 Mr Trevor Eriksson, *Submission 37*, p. 10.

65 Kelgon Development Corporation Pty Ltd, *Submission 4*, p. 4.

66 For example, see Mr Tony Mollison, *Submission 18*, p. 2, Diane and Max Lock, *Submission 32*, p. 3, Chadoora Pty Ltd, *Submission 35*, p. 2.

67 Mr Trevor Eriksson, *Submission 37*, p. 9.

interest rate of over 18 per cent if not repaid as agreed, a requirement to pay for all valuations and legal fees, and a confidentiality clause.[68]

7.46 In the CBA's view, confidentiality agreements are not unusual. Its General Counsel observed:

> Quite outside the realms of banking, whenever parties enter into a settlement agreement it is standard practice to include a confidentiality clause. The reason is that both parties are generally compromising their legal position to some degree and their commercial position to some degree. It is usually not in either party's interest to have that compromise publicly known.[69]

Unnecessary appointments of receivers and law firms

7.47 Borrowers asserted that receivers were needlessly appointed, and sometimes without warning:

> The receivership was a complete surprise as just a few weeks earlier, [a] Bankwest representative confirmed the previously approved course of action, i.e. sell the most valuable asset to reduce or eliminate the loans.[70]
>
> * * *
>
> Bankwest/CBA's rush to appoint receivers following the takeover of Bankwest literally eliminated any chance of refinancing and continuance with a viable business.[71]

7.48 Bankwest explained the general factors it considers before deciding to appoint a receiver:

> Any decision by Bankwest to appoint receivers is not taken lightly and is based upon the particular circumstances of the matter. The ability to appoint receivers only arises if the customer is in default of their financing agreements with the Bank. In addition a number of the characteristics below are usually present before Bankwest makes a decision to appoint a receiver:
>
> - The customer breaches their monetary or other contractual obligations
> - Interest is not met when due
> - The customer's debt levels are increasing and unsustainable
> - A third party creditor (e.g. ATO) has initiated recovery action against the customer

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68 Mr Sean Butler, *Submission 111*, p. 2.

69 Mr David Cohen, Group General Counsel and Group Executive, Commonwealth Bank of Australia, *Committee Hansard*, 9 August 2012, p. 32. Bankwest supported this view: see Bankwest, answer to question on notice, 10 August 2012 (received 7 September 2012), pp. 8–9.

70 Name withheld, *Submission 115*, p. 1.

71 Mr Trevor Eriksson, *Submission 37*, p. 3.

- Loss making operations or holdings are deteriorating the customer's equity position
- The underlying project or development has stalled or costs have blown out
- The customer is unable or unwilling to deliver an appropriate strategy to resolve the matter
- Further delay or inaction would only compound the problem.[72]

7.49 In response to claims that it was too eager to appoint receivers, Bankwest stated:

> Bankwest's level of receivership appointments have not been unreasonable or aggressive and are in line with the bank's market share. Since 2009 the number of Bankwest Business customers placed in receivership has been small (less than 85 in each year) and, when compared with the overall number of industry wide receivership appointments, are consistent with Bankwest's market share during that period (in the range of 4% to 6%).[73]

7.50 The 'often vexed issue of insolvency practitioners' fees' is a topic that is familiar to the committee as it was considered in detail as part of the committee's 2010 inquiry into liquidators and administrators.[74] The fees charged by receivers were challenged in some submissions to this inquiry. For these borrowers, the size of the fees charged by the firm appeared to be unrelated to the cost of the task performed, as well as being unchallenged by the bank (and simply added to the borrower's debt). Similar concerns were raised about the use of law firms by the bank, with arguments made that passing control of the account on to a law firm, requiring all communication to go through the firm, was unnecessary.

7.51 On the fees charged by law firms, AJC Enterprises Pty Ltd complained of $500,000 in legal fees being charged for the conveyance costs of selling two hotels.[75] While this aspect of his submission was not related to Bankwest, one submitter noted that during a previous dispute with Westpac they were billed $26,000 for a meeting to inform them that the bank did not want their business.[76]

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72 Bankwest, *Submission 80*, p. 5.

73 Bankwest, *Submission 80*, p. 5.

74 The committee observed that there were 'fairly weak current incentives for practitioners to become more price-competitive' and concluded that the best way to resolve problems of overcharging and over servicing is to open the profession to more entrants. See Senate Economics References Committee, *The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework*, September 2010, p. 114, chapters 8 and 11.

75 AJC Enterprises Pty Ltd, *Submission 108*, pp. 2–3.

76 See Mr Trevor Eriksson, *Submission 37*, p. 5.

7.52 Given the number of submissions which addressed the issue of Bankwest terminating loans and sending in receivers, the fees charged by the receivers was a recurring issue. In his case, Mr Sean Butler advised that initially during the receivership he was unaware what the receivers where charging:

> Mr Butler: … On 8 June this year, for the first time since their appointment, as a result of our lawyers getting involved, they admitted to what they had charged us for 9½ months. For 9½ months of doing what I used to do they had charged us $1,055,000.
>
> Senator EGGLESTON: What cost would you have incurred for doing that work?
>
> Mr Butler: As I said, I was paying myself $87,000 a year. I just could not believe it. On 11 June justification of the fees was requested—and I have tabled this document. I could not believe it, so I requested justification of the fees. We got a letter back and I will briefly read it. It says: 'The receivers are not under any obligation to provide you with further information or documentation referred to in this letter. The fees and charges are subject to legal and professional privilege and, on that basis …'. Basically, they said go away and shut up.[77]

7.53 Others also objected to the fees charged by receivers:

> The Receivers and Managers are trying to sell the rest of the property at a reduced price just to clear the bank and earn their fees, about $100,000 per month … The Receivers and Managers have done nothing to earn their exorbitant fees, as we have arranged all sales so far, and they refuse to accept two offers of part of the subdivided property that is left which would clear all the loan amount and their fees to date. They appear to be deliberately slowing any transactions down, just so they can charge more fees.[78]

7.54 Mr Geoff Shannon outlined how the cumulative impact of default interest and the fees charged by law firms and receivers could quickly reach an astonishing level, relative to the size of the initial debt:

> At this point the Debt was climbing at a rate of about 19% per annum and was around $7m, which included an estimate of $3m for penalty interest, Receiver fees and various other charges.[79]

7.55 Bankwest argued that as receivers are often appointed in circumstances where both it and the customer may incur a loss, it is in its interest to ensure that receivers and other costs 'are as reasonable as possible'.[80]

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77 Mr Sean Butler, *Committee Hansard*, 8 August 2012, p. 65.

78 Mr Robert Laut, *Submission 28*, pp. 2, 3.

79 Mr Geoff Shannon, *Submission 118* , p. 6.

80 Bankwest, *Submission 80*, p. 5.

Properties sold below market value

7.56 Related to revaluations of properties are allegations that properties were sold or required to be sold in a way that could not achieve true market value.[81] Others expressed concern about the lack of communication regarding the sale of their properties. In their submission, Mr and Mrs Hathaway stated that they had not been contacted in any way by Bankwest or the receivers since their motel and three residential properties were sold, leaving them to rely on second-hand reports indicating that the properties were sold for around half of their market value.[82]

> We have had no correspondence or phone calls from the Bank or the receivers—PPB since. The properties have subsequently been sold; to this day we have had no notification from the Bank or PPB. We have heard via informal sources that the properties have been sold for approximately half of their market value.[83]

7.57 The committee was also made aware of cases where the sale price for the property and other assets didn't cover the widely accepted value of some of the assets. The sale of the Grand Hotel in Cobar, New South Wales, and related assets which included poker machines, was put forward as an example:

> Senator WILLIAMS: … How much did the hotel sell for?
>
> Mr Reiher: $700,000, I believe. It was valued at the worst time, when we were evicted, at $1.1 million. We wanted a revaluation, probably six months after that because we knew the trade went up by $5,000 to $7,000 a week over that time.
>
> Senator WILLIAMS: It sold for around $700,000 to the best of your knowledge. How many poker machines were there?
>
> Mr Reiher: Nine.
>
> Senator WILLIAMS: If you had sold nine poker machines, you give three to the government and leave yourself with six to sell at $125,000, that is $750,000. So they have sold the freehold to the building and the licence. Was the stock included?
>
> Mr Reiher: Yes.
>
> Senator WILLIAMS: Walk in, walk out; the price of six poker machines.
>
> Mr Reiher: Yes.
>
> Senator WILLIAMS: That does not appear to be a very good sale.

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81 These types of concerns were raised regarding banks other than Bankwest as well: the owner of a restaurant in Newcastle submitted that the valuation report for the property stated that the likely period required to sell would be 12 months, but that the CBA demanded that it be sold in five months. Mr Alan Harrison, *Submission 9*, p. 3.

82 Mr and Mrs Bruce and Linda Hathaway, *Submission 122*, p. 3.

83 Mr and Mrs Bruce and Linda Hathaway, *Submission 122*, p. 3.

> Mr Reiher: They were just washing their hands of us.[84]

7.58 The duty of care required of receivers in exercising their power of sale is examined further in the next chapter.

Burden for government and personal implications

7.59 Finally, across many submissions was a common thread of personal hardship and an increased burden for the broader community. Following their experience with Bankwest, many borrowers encountered personal stress, severe medical problems, relationship breakdowns, and divorce. There were also cases of individuals being required to seek government assistance. A substantial number of borrowers stated that they have now had to apply for Centrelink benefits for the first time as a result of Bankwest's actions.[85] Unemployment for their employees also resulted and, given the nature of the loans involved, this was predominately in regional areas. To illustrate, a painting contracting business in Forbes, New South Wales which had 60 employees (and was the largest employer in the town) had to close its doors after almost 100 years in operation.[86]

Committee comment

7.60 While the committee has received a significant amount of material from aggrieved borrowers, the bank's view on the circumstances of a matter can differ significantly and in the context of the matters before this committee, some of the evidence regarding individual cases has been contradicted by evidence presented by other parties. Bankwest also stated that it did attempt to work with its customers:

> In many cases where customers were impacted the Bank entered into agreed arrangements with the customer to achieve an improvement in their financial position, and the Bank provided extensions of time or other favourable terms to assist them. Unfortunately, in a small number of cases the customer could not deliver an improvement in their financial circumstances and / or failed to comply with the principal terms of their agreements and a decision was taken by the Bank to take enforcement action.[87]

7.61 Banks are large organisations. No bank will be able to control the actions of each individual manager and, based on probability alone, there could easily be individual cases of questionable conduct by the bank's employees. Another point that

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84 Mr Geoffrey Reiher, *Committee Hansard*, 10 August 2012, pp. 5–6.

85 See Kelgon Development Corporation Pty Ltd, Submission 4; Mr Gilbert and Mrs Sylvia De Michiel, *Submission 5*; Mr Nashaat Sedhom, *Submission 20*; Mr David Crisp, *Submission 23*; Mr Tim Bowman, *Submission 57* (relating to the situation of Mr Bowman's parents); and Name withheld, *Submission 66*.

86 Name withheld, *Submission 29*.

87 Bankwest, *Submission 80*, p. 5.

needs to be recognised is that many commercial and business clients get into difficulty due to market factors, unreasonably optimistic expectations about the strength and potential of their business, poor management or inexperience and other reasons not related to their relationship with the bank. These borrowers may not be willing to recognise or accept these explanations, although this broad point was acknowledged by the Unhappy Banking group formed by Mr Geoff Shannon.[88] The committee is also aware that certain actions by some of the borrowers may have inadvertently compounded their problems, particularly when the sale of income earning assets or other assets securing the loan was involved. Illustrating this issue generally, in the context of farm debt mediation processes prescribed in some states and territories, NAB submitted that the process 'is often the catalyst to help a customer understand the true extent of their financial difficulties'.[89]

7.62 Nonetheless, while the CBA attempted to minimise the impact of some of the evidence received by the committee as being the result of a 'well orchestrated' campaign that 'has drummed up a number of submissions',[90] there are a large number of disturbingly similar cases put before the committee which necessitate scrutiny. The following chapter continues the committee's examination of this issue.

88 Mr Shannon's submission stated that Unhappy Banking 'fully accepts not all people with a grievance against Bankwest have genuine cause to blame the Bank or its actions for the failure of their businesses'. Mr Geoff Shannon, *Submission 118*, p. 1.

89 NAB, *Submission 79*, p. 11.

90 Mr David Cohen, Group General Counsel and Group Executive, Commonwealth Bank of Australia, *Committee Hansard*, 9 August 2012, p. 32.