

**This submission is for the committee on the inquiry into the impairment of customer loans.**

**Summary**

This submission is based upon our experience in owning a business and then being financially ruined at the hands of CBA/Bankwest.

This is not our own myopic belief, as accused by David Cohen in the recently reported article in The Australian by Richard Gluyas 9<sup>th</sup> June 2015.

CBA were looking at risk weighted assets, following their take over of Bankwest and of the dire situation of Bankwest, through manufacturing defaults and engineering the outcome they wanted.

Does this inconvenient truth extend to the white collar crime conducted by the banks?

We were a hard working middle class family, living in regional South Australia. Our business experience gained from prior small business ownership, employment in management roles of private corporations and government education providers.

Through hard work, perseverance, resilience and support we raised four children, paid off our home and were contributing members in our local community

Like many people we aspired to owning our own business, this became a reality when we purchased our first hotel in the Adelaide hills. Our objective was to create a living for ourselves and secure our own financial future.

We realised the need for expert and professional advice when purchasing business and engaged the skills of experienced and relevant hotel/hospitality services of accountants and lawyers.

We also knew through past tough financial times, the 1980's recession when Paul Keating was Prime Minister, that strong financial management and business practices were required to ensure the success of the business.

This combination of knowledge, experience, solid business performance, due diligence and advice gave us the confidence to proceed with the business. We did not expect to be the victims of a crime.

**The terms of reference**

***a. practices of banks and other financial institutions using a constructive default (security revaluation) process to impair loans, where constructive default/security revaluation means the engineering or the creation of an event of default whereby a financial institution deliberately reduces, through valuation, the value of securities held by that institution, thereby raising the loan-to-value ratio resulting in the loan being impaired;***

We purchased the Naracoorte Hotel Motel in November 2007. At the time the hotel broker recommended us to approach Bankwest to finance the hotel. Bankwest agreed to finance us and we had a mix of security to secure the loan, including cash and residential property. Our

Accountant was specialised in Hotel, Motel type businesses, he assisted us in our due diligence on the business.

We owned the leasehold of the Naracoorte Hotel Motel. The leasehold was for 28 years with the right of renewal.

In October 2008 The Commonwealth Bank purchased Bankwest. The Business development manager of Rural and Regional banking for Bankwest, \_\_\_\_\_, advised us at this time that nothing would change and everything would operate in the same manner and our loan situation would remain unchanged.

Approximately 8 weeks after this meeting, everything changed. It started with our accountant who received many phone call and emails regarding our loan. The tone of this communication, gave our accountant the impression that Bankwest was not looking at us favourably and was likely not to refinance our loan.

Our accountant became increasingly concerned for the way Bankwest was treating us and he felt they were not looking at us in a favourable light. He said in over 20 years in this role he had never experienced such conduct from the bank, with no valid reason. The loan had always been serviced, never any arrears, all debtors were up to date and staff entitlements fully paid.

Bankwest now started to increase the pressure upon us and our accountant, through written communication, emails, phone calls and meetings.

We were only given one meeting with Bankwest's representatives, Business Development manager, rural and regional banking, \_\_\_\_\_, Regional manager Bankwest Business.

This meeting was requested by our accountant and ourselves, for the purpose of understanding why the Bank was treating us in this manner and to share with them the performance of the business and how it was being managed. During this meeting \_\_\_\_\_ conducted herself in an aggressive manner, using bullying tactics and making ridiculous statements. \_\_\_\_\_ even tried to justify her behaviour at one point when she was absent from the meeting, saying she was managing personal issues. The appalling behaviour by \_\_\_\_\_ confirmed our suspicions that Bankwest were not going to continue our loan and following this meeting Bankwest's actions confirmed this, through their requests for further additional security, conducting no valuations on the business and no valuations conducted on secured properties. The bullying also continued in emails and phone calls on a weekly basis.

By December 2008 Bankwest/Commonwealth bank had initiated the process to impair our loan, through their engineering of reducing the valuation of the business, reducing the valuation of our security, which raised the loan to value ratio resulting in our loan being impaired.

We were advised by Bankwest would not refinance the loan to Lockland Pty Ltd as the value of the Naracoorte Hotel Motel would not be high enough to have the finance approved to us.

Bankwest did not have the Naracoorte Hotel Motel revalued they just advised us it would not come up to the right valuation.

***b. role of property valuers in any constrictive default (security revaluation) process;***

When we purchased the business in 2007, valuations were conducted on the business and the securities. During this process, the only valuer that Bankwest would accept was

The valuation came in at \$2.4million and also stated that in a forced sale the valuation would be \$2.1 million.

Once the bank in December 2008 initiated the process to impair the loan, they never carried out a valuation on the hotel or on the properties which secured the loan. Their representatives continued to state the hotel would not come anywhere the original Bankwest, valuation and the bank representatives even stated the hotel would not even come in at \$1.2 million. Bankwest did not physically visit the Naracoorte Hotel Motel or secured properties and did not instigate any valuations on the business or the securities.

***c. practices of banks and other financial institutions in Australia using non-monetary conditions of default to impair the loans of their customers, and the use of punitive clauses such as suspension clauses and offset clauses by these institutions;***

Bankwest used non-monetary conditions of default in our loans.

Risk Margins - They advised us in writing that they had changed their risk margin percentage on us. They increased the margin 0.5% which moved it to 2.25%.

Reporting requirements - They also imposed changes on reporting requirement, from quarterly to monthly.

***d. Role of insolvency practitioners as part of this process;***

Not applicable as we were never insolvent

***e. implications of relevant recommendations of the Financial System Inquiry, particularly recommendations 34 and 36 relating to non-monetary conditions of default and the external administration regime respectively;***

We believe there is very little implication on these recommendations as it is far too narrow on its definition of small business and does not go far enough to protect the majority of small business owners.

The unfair contract terms were only applied to suppliers like gas, electricity and telecommunication, they were not applied to bank contracts.

Bank contracts are one of the most significant contracts business owners will enter into. Why is there no protection from these contracts?

***f. extent to which borrowers are given an opportunity to rectify any genuine default event and the time period typically provided for them to do so;***

Not applicable as we never defaulted on our loans

***g. provision of reasonable written notice to a borrower when a loan is required to be paid;***

We do not believe we were given reasonable notice. Upon being advised by Bank representatives that without further additional properties as security or additional cash securities the loan would not be refinanced and the business needed to be sold.

Bankwest then undertook weekly harassment emails to our agents, accountant and ourselves on the progress of the sale of both our family home (part of initial security) and sale of the hotel.

The amount of stress this placed upon us was significant, trying to keep a business running, managing all aspects and being bullied by Bankwest was intolerable.

***h. appropriateness of the loan to value ratio as a mechanism to default a loan during the period of the loan;***

We do not believe this is an appropriate mechanism, as there are many factors involved in a business. Bankwest did not factor the management of our business, where we reduced staffing costs from \$26,000 down to \$16,000 a week and still managed to run the business successfully.

The business is situated in a strong regional tourist wine region and plays an important role in the community, where people meet, conduct business and relax. Often country hotels provide the community with employment, a place where families can celebrate life milestones, a core part of the local community.

How does the loan value ratio determine whether the business can service the loans? All the loan value ratio provides is an internal measure for the banks.

***i. conditions and requirements to be met prior to the appointment of an external administrator;***

Not applicable as an external administrator was not appointed

**2. in undertaking this inquiry, the Committee take evidence on:**

***a. the incidence and history of:***

***i. the loan impairments; and***

***ii. the forced sale of property***

We have been in the Hospitality Industry for many years and over a period of time have had Bank loans for the businesses we have owned.

We have always furnished these loans on time every time as per the contract details.

We have an excellent credit rating with no defaults against our name.

We (Lockland Pty Ltd) obtained a loan from Bankwest in November 2007 to purchase the Naracoorte Hotel Motel leasehold and business for a purchase price of \$2.4 million. The Naracoorte Hotel Motel is situated in the South East of South Australia, in the middle of the Coonawarra and Padthaway winery region. A tourist area with the famous Naracoorte Caves and the world known Mini Jumbuck wool products produced in the township of Naracoorte.

We took over the lease of the Naracoorte Hotel Motel in December 2007.

To obtain a loan from Bankwest we had to have cash money and other security, which we had in property that belonged to us and our children.

The valuation of the Naracoorte Hotel Motel by the Banks valuers was \$2.4 million the same as the purchase price. The valuation was completed by their own affiliated valuer. Bankwest who we met on one of our visits when purchasing the hotel said that our loan would be signed off immediately as we had more than enough security and cash and with the Hotel valuation.

Bankwest approved Lockland Pty Ltd a loan in December 2007 to purchase the Naracoorte Hotel Motel.

We then had meetings with Bankwest discussing types of loans i.e. Interest payment only for a specified time or an Interest and Principal payment type loan, and we took out the second option loan.

The loan was for an initial three (3) years, principal and interest repayments with the bank to refinance the Hotel Motel at the end of this time.

**WE DID NOT MISS A PAYMENT BACK TO THE BANK AT ANY STAGE OF THE LOAN WITH BANKWEST.**

Our loan facility was due in November of 2010, and as this was fast approaching we had to act quickly to sell, to stave off receivers as we would have lost our families homes.

As the Hotel had not sold we had to sign a deed of forbearance on all of the properties and the cash we had as security.

Bankwest were ringing us at least twice a week during this period asking have we sold how were we going to fund the shortfall should this happen, plus constant emails, which was very worrying, we were still trading and paying our way and we were advised by the bank that we were obligated to let them know of any sales prospects, we put our home on the market this was incumbent.

The Hotel was sold for a fire sale price, as was our family home.

There was a large shortfall from the Fire sale of both and we had to furnish a loan to pay the bank.

The situation we were put in with Bankwest assuming that the Hotel would not come in at the right valuation for the loan ( even though there was no valuation carried out) our LVR was not acceptable to the bank.

***b. the effect of the forced sale of property in depressed market conditions and drought;***

Due to the impairment of the loans we were forced to sell our home in Semaphore in a market which was depressed and very uncertain. The effect was being forced to take the first offer, forced to get it listed and on the market with extreme expediency. Our real estate agent experienced the harassment and bully tactics from Commonwealth/Bank West.

Our health has suffered greatly, we have lost everything, after being successful all our lives, and very hard to feel trust again.

***c. comparisons between valuations and sale price;***

There was never a valuation carried out on the hotel, so it is difficult to know whether the fire sale price of \$1,550,000 was valid. Our home which was sold for \$520,000 was originally valued by the real estate agent at \$630,000.

***d. the adequacy of the legal obligations on lenders and external administrators (including s420A of the corporations Act 2001) to obtain fair market value for the forced sale of property;***

In our case there is inadequacy of the legal obligations on lenders to obtain fair market value for the forced sale of Naracoorte Hotel Motel. With no valuations completed or even comparisons to other businesses in the region completed how was the price determined?

***e. any related matters;***

Would people buy a business if they were told they have absolutely no protection regardless of legitimate expertise and no recourse?

The whole premise, and often the reason people start or go into business is to provide themselves with an income, create opportunities and a future for themselves and their family.

We are sick of elitist people like \_\_\_\_\_, defending big wealthy powerful bankers and not Mr and Mrs Middle Australia who keep Australia going. His statements of suggesting people get better jobs to earn more money to buy homes is flippant. We had the good house, the good job, where are his suggestions on protecting consumers from banks?

Both major political parties it seems, have no appetite for a royal commission into the corruption and actions of the major banks in both lending and financial advice. Do the donations furnished by the bank to the political party campaigns give protection to their actions?

Thankfully the senate prevailed in stopping the proposed changes to bank laws, where \_\_\_\_\_ tried to reduce current protections in place for consumers.

We also question the decision to put \_\_\_\_\_ in charge of an inquiry into Banking practices, how does this deliver a balanced approach to the inquiry. \_\_\_\_\_ was in a position of power as former CEO of Commonwealth Bank.

ASIC, the independent Australian government body that acts as Australia's corporate regulator. ASIC's role is to enforce and regulate company and financial services laws to protect Australian consumers, investors and creditors. In the 2012 senate financial inquiry, ASIC showed themselves as stammering, stuttering, shrugging, non engaged body. During questioning their lack of knowledge was apparent when questioned had the standard response "will have to get back to the senate committee".

If we treated our customers the way the bank treated us, there would be no business. They were bullish, disrespectful and arrogant. Their treatment and actions have caused us a tremendous amount of stress and worry. We have been left with nothing, our self esteem and belief in tatters, having no trust anymore in banks and in the bodies created to protect us.

How can banks have so much power to ruin peoples lives with no recourse to them even though no default occurred?

All we want is what was taken from us through the actions of Bankwest, their dark art dealings through adjusting loan value rations, re valuing security in a corrupt and greedy manner by these white collar criminals.

Signed by Diane and Max Lock