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Economic References Committee,
PO Box 6100,
Parliament House,
Canberra ACT 2600

28th May,2012

Banking Sector Senate Inquiry Submission

Terms of Reference:

a) The impact of international regulatory changes on the Australian Banking Sector, particularly including changes to liquidity and capital holding requirements,
b) The impact on relative shares of specific banking markets,
c) The current cost of funds for lending purposes,
d) The impact on borrowing and lending practices in the banking sector both during and since the Global Financial Crisis,
e) The need for further consideration of the state of the broader finance and banking sector; and
f) Any other relevant matters.

My submission covers the Terms of Reference in order of generality; I do not attempt to comment where my experience or technical skills are limited. My commentary is designed to bring to the attention of the Economic Reference Committee specifics of my case that can be applied to (b), (d), (e) and (f) of the TOR above. I have included recommendations that should be based on ethical, conscionable and contractual obligations of both the lender and borrower. The Banking Sector Senate Inquiry provides for reform to the insolvency and banking practices.

Executive Summary

Bankwest/ Commonwealth Bank of Australia defaulted my company, sold all real estates assets including that of the guarantors and issued Bankruptcy Notice on myself. Bankwest created a default by under valuing real estate security and claiming that I had not returned loan documents thus there was no contact to advance funds. In addition they claimed that I was in breach of the Conditions Precedent but the Bank was unable to state what those conditions were.

It was proven that Bankwest had in fact received loan documents but the damage was done with the appointment of receivers. I was never in arrears, never breached any of the Conditions Precedent relating to the loan. I was victim of the CBA "cleanout" and motive to support the claw back in a deal with HBOS.

We had a successful business, forty years of hard work, saving and asset backing and a loving and supporting family. I have lost all of this due to the dishonourable and grubby agenda of the CBA/Bankwest. As one Sydney based law firm said.." you have been treated very shabbily." Bankwest have hidden behind legal technicality to support their actions; they have failed in their duty of care and conduct. They are dishonourable without any regard to the personal consequences of borrowers and their families.

Bankwest, in their statement in reply to the 4 Corners Program 9th April,2012, claim that they act fairly to all customers since its acquisition by the CBA and honoured all of the existing contractual and credit commitments with customers. They went on to say that they provide the customer with additional time to seek finance or sell down assets voluntarily. Bankwest and the CBA replies to the 4 Corners Program are not surprising; one would not expect a confession from them of wrong doing. They have never practised any of their "motherhood" statements on service and care.

Bankwest never consulted with me, gave the option of selling down assets voluntarily nor offered time to seek finance. Bankwest were in fact in breach of their contractual and credit commitments. They froze draw downs, failed to convert construction loans into three year investment loans and appointed receivers following a seven day Letter of Demand. As brutal and callous as that.

The acquisition of Bankwest by the Commonwealth Bank at an abnormally low price with "fast tracked" approval by authorities gives rise to questions of WHY?

Moreover, the actions by the Commonwealth Bank in "reviewing " 1100 of Bankwest's eastern seaboard property and business customers and making provision for bad debts on approximately 80% of these raises further questions on WHY?

Bankwest again in their response to the 4 Corners Program stated that it was only a small percentage of their one million customers. Most of their one million customers would be consumer types so why the focus on the eastern seaboard larger borrowers? Perhaps the answer is they represented a higher dollar value of impairment for a smaller number of customers. Perhaps it meant that the CBA were over weight in the category of the 1100 customers . Perhaps the CBA impaired loans meant that for every $1 of increased impairment it reduced by $1 the price CBA had to pay out for the acquisition of Bankwest.

The law courts are full of litigation cases against Bankwest; in comparison to other bank cases they are substantial WHY?

Insolvency practitioners (lawyers, managers and receivers and liquidators) have taken the place of a bank's traditional "collection department", there appears to be influence over the banks by these practitioners to control and manage so called impaired loans. The insolvency costs to the borrower is extreme and it is added back to their loan account which further increases the outstanding amount thus placing further pressure on loan to security ratios and not to mention further losses to the borrower. Why and where are the skills of the banks to manage their own process?

There is a trend to liquidate rather than workout a loan. With liquidation comes downward pressure on asset values which in itself triggers further defaults through non compliance of loan covenants. Banks can be found to cause losses in values when a "forced sale" is processed without the duty of care to "work out loans". The Letters of Demand only give a maximum of seven days notice to payout a loan. This is an impossibility in any market so WHY do the banks demand something that is impossible to achieve within their time frame for payout?

Receivership is a "death warrant" to a borrower. Once this is on record it is impossible to attract first and second tier lenders to the funding table. The appointment of a receiver is all too hastily done. It destroys any creditability of both borrower and business. Bankwest/CBAs' rush to appoint receivers following the takeover of Bankwest literally eliminated any chance of refinancing and continuance with a viable business. WHY did the CBA adopt this strategy? To deprive the victim of funds with which to litigate.

Borrowers enter into a relationship with a lender as a partnership; it is a joint venture of sorts that is guided by the banking Code of Conduct, ASIC, Trade Practise Act, Consumer Law and the unwritten law of common sense and a duty of care and understanding.

A bank tenders for the borrowers business and an agreement is constituted under that banks terms and conditions; they committed to support the business under the terms and agreed longevity. How can a takeover of a bank by another (CBA/Bankwest) undo this commitment?

All obligations must remain, however, with CBA/Bankwest's creation of default was this a method to by pass that previous commitment given that the CBA wanted out of the lending on the eastern seaboard and raise impairment levels to achieve a lower price for Bankwest-"clawback".?

Regarding the share of the lending market. With the Federal Government's guarantee of deposits limited to the major banks, the life of second and third tier lenders was cut short. It is those second and third tier lenders that generate competition within the industry. It provides an opportunity for those borrowers that may not qualify under the strict lending criteria of the four majors to develop their businesses and employment. There was bias by the Government to restrict the depositor guarantee to an elite few! The business community is controlled by the major banks; the choice has narrowed. With the majors "mirror imaging" lending policy there is little choice for a borrower to change lenders not to mention the high cost to do so (termination costs, stamp duty, establishment fees, valuation, legal etc).

In view of the limited choice for the business community to select a new lender there has been a plethora of finance brokers in the market promoting availability of finance from overseas and within Australia. Most offerings do not eventuate or exist. The uncontrolled and non legislated commercial broker attempts to receive up front "mandate" fees and then all is lost.

Issues and Recommendations for the Senate Inquiry to Consider

a) **Valuations.** The banks instructions to a valuer and the completed valuation should be issued to the borrower. The borrower must have a right of reply if the valuation or instructions impacts negatively on his business. An example of issues caused by a bank's incorrect instructions are:

i) I was associated with a joint venture storage unit operation in Gosford funded by Westpac. The complex was approved for strata which enhances the value two fold. Westpac indicated that after five years of impeccable repayment history that they would not renew the loan term on its expiration. In the meantime they instructed a valuer to value the complex as a one line sale. The value was 50% of a previous valuation done for Westpac two years earlier. Consequence of this, Westpac demanded the payment for the shortfall in valuation. This places great strain on the cash flow of business; it can make a business insolvent and give a bank an excuse to wind up the company if the banks policy is contrary to a continued banking relationship. Banks will not provide a copy of their valuation or instructions despite the fact that the borrower has to pay for the valuation. Transparency and accountability by banks is demanded.

ii) A borrower known to me and, a customer of Bankwest, has a hotel. Bankwest valued the hotel pre CBA takeover and confirmed the hotel's viability. Post takeover of Bankwest by the CBA, a new valuation was obtained which substantially reduced (25%-$1.2m) the hotel's valuation. Pressure was placed on the hotel owners to payout the loan due a breach of loan to security ratio. It was discovered after the event that the valuer was instructed by Bankwest/CBA to adopt a method of valuation not related to the hotel's actual and accounted takings and outgoings; an industry average of takings /outgoings for hotels was applied which is not a true reflection on a business's operation and profitability. Subsequent to the valuation, the hotel owner requested that the same valuer value his hotel again for the purpose of moving to another bank. The new valuation applied the traditional methodology and the valuation was 15% higher.

b) **Acquisition of an operation. An obligation on the buyer to maintain previous commitments and obligations**. The CBA took an unethical way around to cancel the obligations of Bankwest to its borrowers by creating defaults on the borrower. Unless a borrower has a record of consistently not meeting the loan repayments, a bank should not foreclose or attempt to generate default through excuses of breach of loan covenants unless these loan covenants are of a nature that will contribute to an arrears problem.

c) **The Appointment of receivers and managers, particularly Bankwest is all too common**. I have highlighted that the appointment of a receiver is a "death warrant" to a business. A receiver should not be appointed for one year after a

non monetary default. This provides the business with a period in which to refinance without the record of a receiver. Receivers remuneration must be disclosed to the borrower as if it is a Cost Agreement issued by a law firm. As all costs currently go unchallenged, by the appointing bank, the receiver's costs ultimately are born by the borrower as the bank debits them back to the loan account. Accountability to the borrower is required. The bank must provide evidence that all efforts to avoid the appointment of a receiver is made. Bankwest appointed Receivers act as liquidators not Managers and Receivers.

d) **Law Firm Appointment.** Again the control of an account is immediately passed to the bank' law firm to communicate with the borrower. This is an unnecessary cost to be born by the borrower. Costs run unchallenged by the bank. A bank should maintain relationship with its customer for a period of twelve months if a non monetary default has not eventuated. As evidence of legal costs which should not be forced on a borrower I refer to my association with the Gosford Storage Units and the Westpac loan. Our account was passed to the "bad bank" of Westpac without notice to us. We were not and, never were in arrears; the bank just wanted out. The first meeting with Westpac's "bad bank "was in the offices of law firm Henry Davis York with two of its partners. This meeting was to inform us that the bank did not want our business. The legal bill for this meeting amounted to over $26K for which we received a letter of demand to pay. A bank must be restricted to the appointment of a law firm when such simple matters can be administered by the banks internal managers. I reiterate that the legal fraternity are influencing the banks relationship managers. Henry Davis York was questioned by me on why they had not copied in correspondence to Westpac's account manager assigned to our account. They replied that it is not their policy to inform the bank of their dealings with an account once they are involved.

e) **Letters of Demand.** These are issued as a formal notice to pay. I have seen and experienced that the period includes the weekend days so if one receives a LOD on late Thursday the borrower has less than five days to respond. LOD cannot be complied with, it is impossible to repay a loan within this period. On average a loan approval, that is if it fits within the market segment and lending criteria of the lender, can take up to three months to arrange including valuations. The banks will immediately appoint a receiver on the eight day thus killing any prospect of the borrower surviving beyond that date. LOD should provide a longer period for payout unless it can be proved that the borrower's is beyond "repair".

f) **Financial Ombudsman Services.** One could argue that there is a conflict here as this organisation is funded by the banks. The FOS is not positioned to assist businesses with their issues; it is designed to attend to consumer issues and for loans that are generally less than $500K. My experience with FOS was on the Bankwest case where late last year I requested that they get involved to prevent the sale of the properties having regard to the fact that a deal had been formed with Bankwest on payout. FOS responded after the auction stating..." we cannot attend to your request... you are fortunate to have a Receiver appointed as this receiver will look after your interest." FOS does not appear to work in the world of reality because if they did they would be aware that the receiver acts in the interest of the bank. FOS mandate should extend to business loans and be staffed by experienced business and lending operatives.

g) **Commonwealth Bank.** The takeover of Bankwest by the CBA must be fully investigated to ascertain if there was any impropriety. The carnage that has occurred amongst Bankwest customers and the financial distress caused by the action of the CBA through suspect fraudulent and unconscionable conduct cannot be ignored by Government. There is enough evidence to suggest that Bankwest customers stand alone with high levels of insolvency caused by the CBA's method of creating defaults. The Government has the power to invoke the MORATORIUM ACT on all actions by the Bankwest/CBA until the investigation is completed. If it is found that the CBA action caused undue hardship and ruin on the Bankwest borrower then, the CBA must be ordered to remedy financially all borrowers affected.

h) **Legal Costs and Litigation.** Litigation is very expensive and difficult to fund by a borrower. The motive of a bank is to restrict the borrower's ability to fund litigation. This is done through receivership and liquidating all assets. Moreover, the legal system requests that the claimant put up surety for the banks legal costs. An impossibility in most cases so litigation "dies on the vine". There is a practice of deferring proceedings which continually runs up costs to all. Remembering that all of the banks legal costs are ultimately charged back to the borrower, the borrower in effect is doubled dipped with legal costs. Perhaps consideration should be given to mediation in the first instant to resolve disputes and claims. Added to this is the restriction on the appointment of a Receiver for reasons other than a non salvageable borrower.

i) **Finance Brokers.** The broker that purports to operate in the business finance sector is free of any regulations as to his conduct and services unlike brokers that operate in consumer lending. Brokers, when recommending a lender to a borrower, must be responsible for the delivery of the lender and its ability to fulfil the obligations and commitment for providing funds. Commercial finance brokers should be bound by an accreditation and a Code of Ethics. With the plethora of brokers posing as commercial brokers, and some unqualified to do the job, many borrowers have been caught in payment of up front mandate fees for services that are not delivered.

j) **Effective Cost of the Loan.** The only real cost disclosed to a borrower in most cases is the interest rate. However, with the establishment fees, legal, stamp duty, valuations, brokerage fees and other paid up front, the real rate of interest could be from 5% to 7% pa higher in the first year. This is particularly costly with a short term loan. In addition the bank should be required to set out and include in the effective cost of funding, the estimated dollar cost for account maintenance, potential annual review, valuations and audit that maybe a right of the bank, under their loan document, to charge this during the course of the loan term. I am one that believes that the bank should allow for their account management in the interest rate which includes any periodical valuations and other. If the bank want this then they should pay for it.

Background

My name is Trevor James Eriksson aged 65 years. I have held senior executive positions in a public listed companies, owned and operated a management consulting business which focused on the financial sector (eg: consulted for the World Bank which included a review of the financial sector in Indonesia) since 1995. In addition to my management consultancy business., I have been associated with residential, commercial and industrial property development and investment for over twenty years.

Project and Location

One of my companies Clergate Industrial Estate Pty Limited (CIE) was a purpose formed property development company that was to develop an industrial estate in Orange NSW.

In 2008 I sought the services of a Finance Broker to put out to tender my funding needs for the development. A total of $7m approximately was requested.

On the 26th March,2008 Bankwest (Bank of Western Australia Ltd) submitted a financing proposal which was subsequently accepted by me. On the 9th October 2008 a variation of the facilities to accommodate increases in building activity was submitted by Bankwest and accepted.

The industrial subdivision and building proved to be successful. Buildings were constructed for the RTA truck inspection station, Grace Document Storage with submissions to National Foods, Sandvik Mining, Atlas Copco, Apple City Bus Tours and others.

The Letter of variation-April 2009 (CBA/Bankwest created a default based on this after the CBA takeover)

Bankwest provided support for the expansion of the project and on 9th April,2009 they amended the loan facilities with a Variation of Facilities letter. The terms of the Variation of Facilities were accepted and returned to Bankwest on 22nd April,2009 followed up with a meeting on 29th April,2009 with Bankwest's Regional Manager and staff.

The variation of facilities included the offer of construction loans for the buildings and on completion and receipt of an Occupation Certificate, these loans would convert to a three year investment loan.

CBA/Bankwest Froze All Approved Funding and Drawdowns

Following the return of the April,2009 Letter of Variation, requests for drawdown of the construction facilities were requested as we had contractual obligations to provide buildings for CIE's clients. Bankwest failed to process the request citing that their Credit Department was too busy to process the approved facilities. In urgent need to continue with construction it was requested by Bankwest that I use my working

capital funds as a short term remedy whilst they process the "refund "to me. The amount exceeded $450,000. I was informed by the Bankwest's Regional Manager at the time that changes were in the air following the takeover of Bankwest by the Commonwealth Bank. Bankwest never refunded my $450,000 plus.

In January,2010 Bankwest's Regional Office advised that the rural and regional areas were off the radar for lending. By February,2010 more than 400 Bankwest staff were retrenched, including my Bankwest account manager.

I continued to communicate with acting Bankwest management on the loan facility draw downs. The requests were met with "we will get back to you". This acting senior executive was also retrenched within two months of his appointment as my account manager.

Receivers Appointed-Letter of Demand to Payout Loans was 7 Days Notice

In May,2010 I received an invoice totalling $5,000 for legal costs by solicitors Norton Rose which was for review of loan documents. A CBA employee contacted me regarding my facilities. He made a visit to Orange and met with me. He stated that the Bank had re-valued my properties and that the valuation was less than the loan amounts. In late May,2010 I received a Letter of Demand giving me seven days to payout over $7m. On the 1st June,2010 receivers Grant Thornton were appointed to CIE and my guarantor companies.

The bank tried to justify the appointment of the receivers by claiming that they had no formal loan documents and ..."that the April,2009 Letter of Variation was not returned and even if it had been it was not received by the expiry date of 9th May,2009". They also said that I was in breach of Conditions Precedent but when questioned on detail they could not advise what conditions had not been complied with ; another fabrication of a default excuse.

The receivers Grant Thornton removed all credit funds from every bank account associated with the guarantor and borrowing companies leaving me with $2.40 to live on and meet other expenses.

Litigation Against Bankwest

I commenced litigation against the bank. During our findings it was discovered that the Bank had in fact acknowledged receipt of the subject Letter of Variation. In the meantime the receivers made two attempts to sell all of my assets. Bankwest had mislaid lease documents for the tenancies; their administration was a shambles.

My legal bill climbed to over $350,000 during 2010.

Mediation and Consequence of Bankwest's Refusal to Co-operate

In December,2010 Bankwest requested we mediate. A retired High Court judge was appointed as mediator.

By mid December,2010 an agreement was reached between the Bank and myself. The basis of the Agreement was that a $2.5m reduction be made off the CIE loan balance. Only monetary negotiations were discussed and agreed on. Other terms and conditions were never discussed which subsequently proved to be in favour of Bankwest. The bank's lawyers-Norton Rose then drafted a Deed of Release. I had to execute this on 24th December,2010 in Norton Rose's office without legal representation as all had taken Christmas leave. The Deed of Release highlighted that I payout the balance of the loan by the end of May,2011. Receivers were withdrawn on 24th December,2010.

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 co-operate and assist with the raising of funds to payout Bankwest.

Conditions Designed to Frustrate and Humiliate

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 mind set of Bankwest and its legal representatives.

Finally Loan Offers

By April 2011 my Public Accountant managed to 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.

Partial Repayment of Loan-I had Performed

In the meantime, on 27th May,2011 I made a partial loan repayment of approximately $1.35m which the Bank accepted as partial repayment of loan. The agreed payout of the loan was $5.85m so after the $1.35m the balance to be found was $4.5m. Bankwest acknowledged this and requested that we meet on 29th May,2011 to discuss moving ahead. This meeting was cancelled with an explanation that they were busy and that a new meeting date would be set the following week. On 1st June,2011 the bank reappointed the receivers-Grant Thornton without warning or notice to me. In fact the receivers were in Orange prior to their official appointment and this caused great embarrassment and humiliation when my tenants called to advise that the receivers were there to collect rent.

Letter to Bankwest Board of Directors to Intervene with Common Sense

I immediately challenged the bank with letters to all of its Directors stating that it was an unconscionable act on their part particularly when payout of the loan was on offer. The Receivers and Lawyers had influenced the decision to move against me; why would the bank change its mind two days out from and agreed meeting.? Was it influenced to by both the receiver and Norton Rose? It has become a revenue generating exercise as insolvency is one of the few growth areas for law firms.

Both the ANZ and St George Banks withdrew their offer on the appointment of the receiver.

The Receiver again removed all credit funds from my accounts.

Bankwest's acting General Manager wrote to me in response to my letters to Bankwest directors and senior management stating that they had the right to re-appoint receivers as I had not performed and that all communication had to go through Norton Rose.

More Legal Costs

My legal representative was law firm Warren McKeon Dickson. We commenced discussions with the receiver and Norton Rose. During a period June 2011 and September,2011 we arranged a new loan through law firm HWL Ebsworth whom joined our negotiations with Norton Rose/Bankwest.

New Loan Approval from the National Australia Bank/HWL Ebsworth

HWL Ebsworth provided evidence of the approved loan (NAB) to Bankwest whom had accepted the terms of settlement and amount to settle.. Bankwest requested that we pay $3500 into Norton Rose's trust account to cover the cost of settlement. HWL Ebsworth did this on our behalf and **in so doing a deal was struck.** HWL Ebsworth then tried to set a settlement date with Norton Rose but was ignored for many weeks. HWL Ebsworth had invoiced me a legal bill of $80,000 at this point.

Bankwest/CBA Unconscionable and Misleading Conduct.

In October,2011 the receiver advised that they will not attend settlement and that they will commence the marketing of my properties. Further they advised that if they did not reach our offer they would then accept what was previously a clear understanding of a payout amount as agreed with Norton Rose and HWL Ebsworth. Bankwest/CBA were treating my situation as a hedge against their possible inability to sell the properties.

Properties Sold

In November the properties were set for auction and some by tender. Neither sold and negotiations continued with interested buyers until they were sold in February,2012. All attempts by my legal representatives to communicate with Bankwest during this time were ignored.

By way of searches it was discovered that the properties were sold at less than 50% of current "for mortgage purposes" valuations for the ANZ, St George and NAB/HWL Ebsworth. **Further Bankwest provided loans funds to the buyer of the rental** properties. My family's other real estate assets were also sold by the receiver. These assets supported cross collateralised security to CIE's loans.

Section 420A of the Corporations Act

The Orange areas' leading valuer and commercial agents-Benchmark Commercial reported that the properties were under sold and should not have been marketed given the stigma that had been placed on them by a **receiver sale** due to three previous failed attempts to sell the properties.

The method of sale (by way of tender and auction) did not fulfil Section 420A of the Corporations Act.

Section 420A of the Act introduces a statutory duty upon controllers (including both Receivers and mortgagees in possession) to exercise a power of sale and to take all reasonable care to sell the property for:

a) If, when it is sold, it has a market value- not less than market valuation
or:
b) otherwise- the best price that is reasonably obtainable having regard to the circumstances existing when the property is sold.

Property Law various between states and there is inconsistency for practitioners to adhere to reasonable care. Mortgagees under the Section 85 of the Property Law Act (Qld) must take reasonable care to ensure that the property is sold at "market value".

Interestingly, Administrators under Part 5.3A of the Act are not under the same duty. The duty applicable to such administrators is arguably the less stringent duty

to exercise reasonable care. Perhaps that is why banks instruct receivers to administer the sale.

Definition of Market Value

"Market value" is a price at which a willing but not anxious vendor could reasonably expect to obtain and a hypothetical willing but not anxious purchaser could reasonably expect to pay."

The case against my properties is that a Receiver Sale" is taken by prospective buyers as a flag to a bargain because they are aware that the properties "must be sold". I challenge anyone to prove that a Receiver/mortgagee sale obtains a higher price than would otherwise be if the properties were market without notice of the receiver appointed.

Bankwest provided loan funds to the purchaser and this was not publicly offered from the outset to potential buyers. It is evidence that the Bank was desperate to move the properties on. I found the lending on a property in Orange to a Sydney based buyer was contrary to Bankwest's communication to me in 2010/11 that Regional and Rural Australia is off their lending radar.

Further the "market value" should reflect a reasonable time for sale. It is not accepted that just because an aggressive advertising program is implemented that the properties will fulfil "market value" status. Too many forced sales hide behind the "promotion activities" of Receivers and banks to justify a "market value" and think that they have compiled with Section 420A of the Act..

The "market valuations" obtained by St George Bank, ANZ and the NAB were in excess of $10million compared to the Receivers sale of the properties at approx.$5m. The receiver-Grant Thornton has refused to provide a copy of their valuation. It is suspected that their instructions to a valuer would not be to value the properties at "market value" but a "forced sale" value. This is not "market value". How can three valuations independently done for other banks be so far removed from Bankwest's valuations? My suggestion is that all valuations and bank instructions to valuers be copied to the borrower. Given that most lending decisions are based on valuations then there should not be any secret between lender and borrower. It would provide the borrower with a "right of reply" and accountability by the bank..

Bankruptcy Notice

Bankwest, following the forced sale and settlement, served Bankruptcy Notice on me on 3rd March,2012. The amount shown as owning to Bankwest was not detailed but did include in excess of $600,000 of legal and receivers costs plus penalty interest. Penalty interest was not part of any loan document or offering. It was concealed and the bank has no legal right to charge it.

By way of comparison the legal, receiver and selling costs amounted to approximately 15% of the sale price of my properties.

Motive for the Commonwealth Bank to Create Defaults

Following the takeover of Bankwest by the Commonwealth Bank there was a systematic strategy to qualify the loan book with bad and doubtful debt.. It is widely reported that the Commonwealth Bank profited from this through impairment of loans. Refer CBA's annual report.. The action is known as "adjustment (deduction) to the purchase price paid for Bankwest by the Commonwealth Bank. The impairment is generated by qualifying loans as bad and doubtful debts . The CBA then followed with intentional defaults and appointment of receivers to back up their exaggerated "clawback" from HBOS to avoid justification for a claim by HBOS.

The Courts are Full of Litigation Against Bankwest

It is a fact that on the eastern seaboard that there is an over whelming number of court cases against Bankwest. This is no coincidence and supports the fact that the CBA had an agenda to devalue the assets and look for reasons for defaults against Bankwest customers. This trend alone gives rise to the need for a Senate Inquiry into the takeover of Bankwest by the CBA and to investigate the profit motives for causing grief and financial distress with Bankwest borrowers.

I found that requesting the services of a major law firm to represent me against Bankwest was difficult. In confession made by many large Sydney based firms it was stated that they would have a conflict as they have banks as their clients. One firm stated that the bank business is more profitable to them then my case. It shows that profit is the motive and selection for litigation cases.

A major concern for borrowers is the high cost of litigation and at times unjustified as cases can be drawn out with appeals and requests for time to consider etc. Bank law firms are paid by the bank. The bank debits the borrower's loan account with this cost; a cost that goes without supervision. The borrower is ultimately "doubled dipped" with legal fees- his and the charge back of the bank's legal fees.

The strategy for Bankwest/CBA is to ensure that the Receiver "cleans out all surplus funds" belonging to the borrower and then ultimately bankrupts the borrower. This has the affect of "starving" the borrower of any funds to seek remedy for damages. If the borrower has some method of continuing the action the Bank will seek a guarantee for their costs against the borrower. Generally this cannot be obtained in view of the nil asset backing of the borrower so therefore further ensuring that a borrower cannot fund his claim. It is a case of the bank bully with deep pockets, which ultimately charges his legal costs/efforts back to the borrower, eliminating the right of the borrower to seek remedy for damages.

Global Financial Crises

It is insulting to all hard working business persons to have the GFC thrown up as a reason why a borrower defaulted- particularly during the immediate takeover by the CBA and following years 2009/10. The impact of the GFC was not felt at that time in real estate. Almost without exception Bankwest borrowers were not in default with loan payments. A program of reviews by the CBA with the aim of impairing loans was the main cause for defaults; these default were not attributed to a borrower's doing.

The GFC was not the "dark cloud" that drifted over Bankwest customers in 2008/9 and devalued assets; this cloud had the CBA logo imprinted and the face of a pugnacious banker.

4 Corners Program

During a Four Corners program about Bankwest, Receivers -Korda Mentha stated that " developers come and go" whilst the community needs a bank's support. Korda Mentha divided hard working borrowers that have taken a risk and placed all of their financial backing to produce and survive in business. Korda Mentha profits from those not so fortunate and particularly the Bankwest borrowers. The Korda Mentha spokesman had a conflict and was arrogant with this statement.

Why Default When an Account is Not in Arrears?

Until the CBA intervened with a review of Bankwest's clients, business was moving ahead. Of course there were some that found times tough (estimated at 1-2%) but why cause the borrower to crash to destruction through technical defaults and loan covenants when a business it meeting its financial obligations? Motivation by the CBA= to profit from impairment of loans.

If all banks re-valued assets in this market for all their borrowers with real estate security there would be significant defaults against the loan to security ratio covenants. In lending the banks 'first way out" is the servicing of the loan (cash flow); the security is the second way out. Why then did not the CBA/Bankwest review all loans secured by property?

A distressed sale by the bank will cause all other real estate valuations to fall as valuations generally take the last sale as the benchmark for market value. Bankwest/CBA are causing real estate values to fall and this will have a compounding affect and pressure on loan covenants. Defaulting borrowers further results in the loss of jobs, production and confidence.

Bankwest/CBA are in Default!

It is noted that I was never in default on any interest payment or conditions of the loan whereas the bank was in breach of its obligations viz:

a) they did not convert construction loans to investments loans as approved,
b) they failed to provide draw downs of approved loans (froze all advances),

c) they charged penalty interest which was not disclosed,
d) they failed in their duty of care to borrowers,
e) and I suspect that they (experienced bankers) wrote Clauses in the Deed of Release knowing that my ability to raise external loans funds would be hindered.
f) they have been misleading and unconscionable in many dealings.
g) they had no intention of resolving in an amicable and trusting way the payout of my loans; they refused three offers from bank approved loans to settle (ANZ, NAB, St George)

CBA and Bankwest have been dishonourable.

When I accepted the offer from Bankwest to fund my development in Orange I entered into a partnership with the bank. A business partner whom one was to rely on in this "joint venture". All ran according to the "partnership agreement" (the loan agreement and obligations and undertaking) of both the bank and myself. CBA changed all that. The Senate must look at a moratorium and law to prevent a takeover and changes to an obligation of a bank to its customers. When we entered into a commitment with Bankwest we expected that we had a long term commitment with that bank; my dealings were with Bankwest not the CBA. CBA should not be able to enforce their control and changes that were obligated by Bankwest.

Personal Suffering and Financial Distress and Loss

My wife, son and I have suffered depression, humiliation and significant financial loss as a result of the Bankwest/Commonwealth intentions to profit from deliberate impairment of loans and the fraudulent charging of penalty interest.

I had a successful business but this has been taken away together with our dignity. At our stage of life we have lost everything and with legal and associated costs exceeding $600K, trying to defend my right for compensation, **on a matter which was never my fault,** our losses are in excess of $7m not to mention the break down of our 38 year marriage .

Why should the Commonwealth Bank/Bankwest be allowed to destroy the assets of decent and competent families and borrowers through deception, unconscionable conduct and concealment of interest rate penalties.? The CBA systematically and fraudulently contrived defaults without consideration to the consequences to existing Bankwest customers. Their actions are fraudulent for the benefit of bank shareholders and bonuses to the CBA executives.

My family, public accountant and close friends shake their heads with bewilderment. The CBA/Bankwest should hang their heads in shame and remorse.!

Trevor J. Eriksson