

Submission – part 10

Introduction

This is my tenth submission to the Loan Impairment PJC Inquiry which relates to the CBA takeover of Bankwest in 2008. I am not a member of any lobby groups or advocacy organisations and make this further submission as a private citizen of Australia.

Terms of Reference

I have previously submitted this information below as submission #422 to the 2014 Senate Inquiry into the Performance of ASIC and wish to resubmit this to the PJC with additions as it relates to CBA's unconscionable use of non-monetary covenant defaults to terminate Bankwest commercial loans so that CBA could benefit from an impairment indemnity afforded to it during the Bankwest purchase in 2008.

Possible Legislative Breaches

I have been following several of the key court cases surrounding the CBA takeover of Bankwest over the past few years. The central allegation is that CBA/Bankwest manufactured defaults on otherwise performing businesses to firstly, hide the fact that Bankwest was insolvent due to the inability of its parent company HBOS to rollover Bankwest's \$17B funding requirements and secondly, to allow CBA to purchase Bankwest within the limitations of its own capital strategy.

It is alleged that CBA/Bankwest acted unconscionably by forcing customers who were not in any financial difficulty into receivership and then use the bank's Credit Asset Management (CAM) turn-around team as a profit making centre under the guise of assisting the customer by price gouging excess cash flow through unreasonable charges and interest rates and then asset stripping the businesses.

The allegations suggest that CBA/Bankwest acted in contravention of the following laws:

- Corporations Act, s 180 – Directors Duties - Care and diligence (civil offense)
- Corporations Act, s 588g – Trading whilst insolvent
- ASIC Act s 12CB – Unconscionable conduct in connection with financial services

If evidence is produced showing that this conduct was intentional and premeditated then this existence of mens rea gives rise for possible contravention of the following criminal breaches of law:

- Corporations Act s 184 – Good Faith, use of position (criminal offense)
- Criminal Code s 192D – Fraud, obtaining financial advantage or causing financial disadvantage

Whilst the civil offenses have a statute of limitation of 6 years, the indictable criminal offenses have no such limitation. If it is shown that this conduct was criminal by way of the existence of intent and premeditation then any such gain to CBA can be construed as proceeds of crime. The PJC should consider if the money unlawfully obtained by CBA can be confiscated via the Proceeds of Crime Act and returned to the victims via the various state Victims of Crime Compensation Schemes.

It is an offense under the Crimes Act section 316 for anyone to intentionally conceal an indictable offense. I am aware that ASIC have been aware of these allegations for some time now and have continued to state to victims ASIC will “take no further action” on the matter despite being presented with the same evidence presented to the PJC.

I believe the leadership at ASIC have a commercial vested interest in not investigating the Commonwealth Bank. For this reason I ask that the Senate pass this matter on to the National Crime Commission to investigate the CBA takeover of Bankwest and the conduct of ASIC in concealing a series indictable offense. I have already referred the matter to the National Crime Commission, Reference Numbers: 1670, 2295.

It is important for legislators and the Australian public to understand that this policy of manufactured defaults renders any government deposit guarantee useless as once the bank manufactures a default on a customer’s mortgage the bank is then free to cross default the customer’s cash accounts pursuant to the terms of the banks security documents.

For this reason it is important for legislators to provide further protection for consumers and businesses to protect themselves from such conduct by the bank in the event of the next Global Financial Crisis.

I believe that we have met the burden of proof required to confirm that these unlawful acts were premeditated and intentional. It should be pointed out that any Directors and Officers (D&O) Professional Indemnity Insurance held by the CBA executives may not cover any unlawful act that was committed intentionally or recklessly.

PJC Committee Requested Tasks

- | |
|---|
| <ol style="list-style-type: none">1. PJC Committee to refer the matter of the CBA takeover of Bankwest to a Royal Commission or National Crime Commission. |
|---|