

Senate Inquiry Submission

Inquiry into the post-GFC banking sector

By Sean Butler

30th May 2012

Summary:

- 1) Addressing terms of reference
- 2) My history
- 3) Events summary
- 4) Deed of Forbearance
- 5) Our proposals
- 6) Appointment of receivers
- 7) Botched sales process
- 8) Bankwest secrecy
- 9) Bankwest & Taylor Woodings charged us \$2.5m
- 10) It's widespread
- 11) Regulatory bodies powerless
- 12) Media
- 13) Summary
- 14) I will give evidence at the Inquiry if requested

This submission is based on my experience with Bankwest and Taylor Woodings and is true and accurate.

1) **ADDRESSING TERMS OF REFERENCE:**

My submission addresses terms of reference in relation to our business experiences:

- c) The current costs of funds for lending purposes:
Bankwest lending margins doubled then quadrupled and more.
- d) The impact of borrowing and lending practices since the GFC:
Bankwest reduced its LVR's from 75% to 60%.
Reduced valuations below market levels.
Demanded money back even though ability to service debt.
- e) The need for further considerations of the state of the Banking sector:
Unconscionable conduct: Bankwest demanded penalty fees and confidentiality clause so we couldn't tell anyone.
- f) Other relevant matters:
Behaviour of Bankwest and their appointed Receivers Taylor Woodings and lack of accountability.

2) **MY HISTORY**

I am a Registered Builder in Perth Western Australia.

Started in business in 1989.

Built up a profitable reputable award winning business over 23 years employing over 50 staff.

Purchased The Lighthouse Hotel in Bunbury with a business partner who is a Banker in 2003.

Have banked with Bankwest since 2003, perfect record till 2010.

3) **EVENTS SUMMARY**

Bankwest valued our Lighthouse Hotel Property in Bunbury WA:

| | | | |
|----------|------|---------------|---|
| November | 2009 | \$ 14,740,000 | |
| June | 2010 | \$ 11,405,000 | (Well below market level at that time.) |

Bankwest interest margin on our facilities:

| | | | |
|-------------------|--------------|-------------|--------|
| 2003 to 2010 | BBSY + 1.25% | total being | 6.13% |
| From January 2011 | BBSY + 3.05% | total being | 7.93% |
| From June 2011 | BBSY + 6% | total being | 10.81% |

2012 on their excess charges of \$863,000 accumulating 18.81%
What business can stand this!!

Received a cash unconditional offer to sell:

| | | |
|--------------|--------------|---|
| January 2011 | \$14,000,000 | Through Real Estate Agents to a third party being \$2.59m Or 22% above the reduced Bankwest valuation. |
|--------------|--------------|---|

Our business partner who is a Banker:

- 1) Agreed to match that price and I accepted.
- 2) Gave Bankwest a settlement date of 31 May 2011.
- 3) Then offered settlement on reduced terms.
- 4) Failed to settle.
- 5) Went back to previous offer but they had brought elsewhere.

At this point we had capacity to pay all the interest on all our facilities going forward from the income from my business and my business partner. Bankwest knew this. The sale had not happened as planned so I put the property back on the market.

4) **DEED OF FORBEARANCE**

Bankwest then presented a Deed of Forbearance:

Document with main pages attached.

Note conditions:

- 1) \$200,000 Bankwest fee to extend facilities just 5 months.
- 2) Default rate of interest 18.81% if not repaid as agreed.
- 3) We pay for new Valuations.
- 4) We pay all Legal fees.
- 5) Confidentiality clause... So we can't tell anyone what the bank is doing to us i.e. they can screw us and we have to keep it secret.

This deed agreement was subject to us paying all interest on all our loans which Bankwest knew we were capable of.

Our lawyer advised us not to sign this Deed and advised us that it's very unfair and one sided in favour of the Bankwest. He said if we signed it Bankwest could virtually do what it liked to our business and we wouldn't be able to tell anyone about what they were doing. At least now we are free to go public on all this.

5) **OUR PROPOSALS**

I put a proposal to Bankwest whereby other non-income producing properties would be sold for them to get money back and the income from my business and business partners income would pay all interest costs. My business profits were increasing and at near record levels. They declined to accept!

My Banker business partner offered Bankwest \$ 13.7m for the Lighthouse Hotel, \$700,000 less than what he had agreed to just a few months prior, which they refused to take.

6) **APPOINTMENT OF RECEIVERS**

Bankwest then appointed Taylor Woodings as Receiver Administrators. They would not allow us to work in the profitable successful business we had built instead employing their accountants to do what I and my wife had been doing but at rates up to \$525 per hour. Ten weeks after their appointment they sacked both myself and my wife without notice, for no reason and with no pay, entitlements or superannuation.

We were told by Bankwest appointed Taylor Woodings not to talk to the media about any aspect of the business, that we were not to talk to the staff of our business. I was told by several of my staff that they were threatened by Taylor Woodings with being sacked if they talked to me about what was going on in the business. 11 months later I have no idea where our profits are going despite repeated requests to find out.

I was told I was not to work for other similar business in the town and not to engage freelance subcontractors who had worked for me in the past. We had a good loyal staff and I was told several were in tears over what was happening and several have since left. I have had legal advice that Taylor Woodings had no right to make such demands and after several meetings with my lawyers they have since retracted some of their demands but only because I have stood up for what is right.

We took the matter to Fair Work Australia and the Fair Work Ombudsman and Taylor Woodings eventually and after several meetings with their teams of lawyers, which we pay for, offered us a part settlement of wages but only on the basis that we didn't pursue this further. I believe they spent more on lawyers fees than our small part payment. This is indefensible.

The receivers are accountants often not experienced in running the businesses to which they are appointed; on one instance I was informed that a large group of young children were in the Hotel swimming pool unsupervised. This is a real safety issue, people have died in these situations. On another time they had workers organised to work on asbestos without protective measures, potentially life threatening. In both instances I tried to contact the receivers but was unable so contacted staff directly to stop dangerous activities. They subsequently told me I had no right to interfere and that they know what they are doing and threatened me with a restraining order!

7) **BOTCHED SALES PROCESS**

Six weeks after their appointment the Lighthouse property was placed on the market on 31 August 2011 by expressions of interest for no price listed. I and another party put in an offer to buy it at a price that effectively matched the price my Banker business partner had offered Bankwest being \$13.3m. Our offer was a genuine offer but was not accepted because amongst other things it was subject to finance and the sale of another property. I then approached another syndicate who were in the process of putting in another offer for \$14m but they were told by the selling agents it had sold. We subsequently found out (by accidental release on their part) that they had accepted \$9.5m

from our Banker Business partner being \$4.5m less than what he had agreed to pay just 6 months prior. This is extremely unethical, unjust and I believe in breach of his duties as a director and business partner.

The other property involved here with Bankwest is the National Hotel in Fremantle. I also had other interested parties in that. This was put on the market by the receivers on 23rd November being 18 weeks after their appointment!! It was advertised over just a three week period with very little marketing. Had it been put on the market and sold earlier I could have purchased the Lighthouse. As the Lighthouse sold first I put an offer in to buy the National with another party for \$4.5m. This offer was rejected and I have since found out they accepted an offer of \$3.6m!

8) **BANKWEST SECRECY**

During this process Bankwest and Taylor Woodings refused to release recent trading figures from my own business requested by our finance broker and required by other Banks to refinance the properties, They wouldn't tell us if things are sold, unsold or under offer, they would give us no indication of price. They respond to our enquiries about our own business with long winded lawyers letters that they then say we are paying for and in effect don't bother asking again. Bankwest is getting away with taking excessive fees with accountability to no one. If this is legal laws need to be changed.

9) **BANKWEST & TAYLOR WOODINGS CHARGED US \$2.5m**

Bankwest have effectively hijacked a good cash flow business and between them and Taylor Woodings it appears they are sucking it dry. I have recently found out Bankwest and Taylor Woodings have charged us over \$2.5m in excess fees and Receivers fees for just 11 months work. Between these fees and destruction of value as described above the losses stand at over \$10m.

10) **IT'S WIDESPREAD**

I am not alone; there are hundreds of other affected businesses around Australia. There are several class actions planned against Bankwest and a group at www.unhappybanking.net.au claims to have over 400 members. A google search on Bankwest will show some of what has been going on. I have spoken to many others in similar situations and Lawyers and accountants have told me it's out of control but no one does anything because the big Banks are just too powerful. Many are too scared to speak up about this as they know if they get offside with the banks it will affect their business. The Banks have almost unlimited resources to pay teams of lawyers to defend their unethical practices. I have spoken to others who have been forced to sign Deeds of Forbearance with confidentiality clauses so they cannot tell their story This has to be stopped.

11) **REGULATORY BODIES POWERLESS**

The other unjust thing is the apparent lack of power by the regulatory bodies to do anything about it. I took our case to ASIC, to the Banking ombudsman, to Fair Work Australia and the Fair Work Ombudsman but Bankwest employed a whole team of lawyers against us. In one meeting it was me and my wife against two receives and three lawyers all on about \$500 per hour and being paid for from my company and they told us so!! In other words shut up and go away as every time you ask us a question we will charge you. Staff at the ASIC have told me they are powerless to act because the way the laws are drafted.

12) **MEDIA**

I have been in business successfully for over 23 years and have never seen anything like this. I have spoken to politicians on both sides and they all agree it seems out of control. Several have advised me to go to the media which I now have. I have and had articles in local and national newspapers and television. I will pursue my case through the courts if necessary and tell all in the media if required. One thing I have since found is Bankwest and their Receivers don't like adverse publicity and I have been threatened on several occasions with legal action if I go to the press. I now believe media and political attention may well be the best way of getting the system fixed. Laws need to be changed and the system needs to be fairer.

13) **SUMMARY**

It has reached a point where I know I may lose much of what I have worked for over 23 years. Commonwealth owned Bankwest will announce record profits and the executives running it will all get healthy bonuses. The legal fraternity around them and the receivers are cleaning up and businesses like mine and society are paying the price. My Banker Business partner appears to have worked the system to his advantage to try to buy assets below their true value.

These people have no morals at all it seems based on ours and others experience. This is just some of it. I could write pages more giving more detail if needed. So much for their suggestion in the media that Bankwest are trying to work with customers. So much for Happy Banking.

Bankwest were a good bank for us until early 2011, things rapidly changed. We were in a position where all interest payments could be met from business cash flows and partners income but they just wanted higher margins, reduced lending ratios, lower valuations and their money back. The sad thing in our case is the real destruction of value. The effect is widespread, jobs lost, income reduced, business stopped, buildings run down, less tax paid.

I have made numerous attempts from the beginning to resolve things with Bankwest but it's just a brick wall. For them it's all about profit and what they can "Legally" get away with. They have actually told me they take no responsibility for the actions or fees charged by their appointed receivers. I am a director and shareholder of my companies but I am given no information about what they are doing or charging. It's absolutely unbelievable how this industry works; they are in my opinion verging on corrupt and need to be stopped.

I am all for a healthy Banking system and healthy profits but is it fair or just when a business like Bankwest quadruples its margins then takes control of your business and destroys it. This becomes a much larger society value. Western Australia has a chronic housing shortage, a hotel room shortage, small businesses can't get funding. I sincerely hope this Senate Inquiry brings out what's been happening with Bankwest and the Receivership industry and that regulations are brought in to prevent fee gouging and this type of predatory secretive behaviour.

14) **I WILL GIVE EVIDENCE AT SENATE INQUIRY**

I can provide written evidence of almost my entire story above in the form of emails and letters from Bankwest, Taylor Woodings and their lawyers Minter Ellison and my Banker business partner. I can also get statements from third parties to prove if required. I would welcome the opportunity to give evidence at a public hearing. Apart from my case I want to stop this happening to others.

I hope the Senate Inquiry exposes what's been going on and brings about constructive changes.