Submission to Senate Inquiry

"Effects of the GFC on the Australian Banking Sector"

30th May 2012

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

Dear Senators,

With regard to the Senate Enquiry on the effects of the GFC on the Australian Banking Sector, please find attached my submission that relates to how my business and I were treated by Bank West after it was acquired by the Commonwealth Bank of Australia during the GFC in late 2008.

I had been a Client of Bank West since 2005, up until the start of the GFC and subsequent purchase of Bank West by the Commonwealth Bank of Australia we had quite a good relationship with Bank West. My friend and business partner David Leslie started our business in 2004 as a small property developer on the Sunshine Coast. We soon moved into the area of Childcare and built our first Childcare centre at Coolum on the Sunshine Coast. This move into childcare came as a result of frustration with the standard of care being offered to both of our young families by the childcare industry. With the help of our wives and Families we decided to build and operate our own Childcare centre, our brand Kids Plus Childcare Centre's was built around putting the children first, a value that we remain true to today. Bank West had assisted us in growing our business through our start-up phase & continued to support our growth and vision. At the start of the GFC Sept 2008, my business had 4 facilities with Bank West totalling $12,270,000. 3 of these facilities were for our 2 childcare centres at Coolum & Maroochydore on the Sunshine Coast. The other two facilities were Commercial Property loans based at Bli Bli on the Sunshine Coast. Following is a summary of the actions that we view as unconscionable conduct that we experienced from Bank West after the start of the GFC & to a greater degree after CBA purchased the Bank West.

February 2009 – Charging of $70,000 "default Interest"

The first signs of problems in our relationship with Bank West started in January 2009. Prior to 2009 when our facilities expired we would automatically receive new LOV's with new expiry dates, usually for a further 3-6 month period. At these times the bank would attempt to charge default interest on the expired facilities but this was always explained as being due to "Bank West's system" and would be refunded once we received the extended facility agreements. This all changed on the 24th of February 2009, when we were charged $70,000 in default Interest by Bank West. One of our 2 commercial facilities expired on the 15th of January but we were still to receive an extension to our Facility. I met with Bank West on the 6TH of March 2009 to discuss the issue of the charging of this Default Interest. I was advised it was charged as we hadn't sign the new Letters of variation on the Facility, I advised the representatives of the Bank that I hadn't received the new facility agreements. At this time one the area Manager turned to my account Manager to question why I hadn't and he replied that he had organised them prior to him going on leave? I once again I confirmed that I hadn't received the documents. During this meeting and subsequent correspondence I advised the bank that our business was not in the position to be able to afford the charging of Default Interest and if the Bank were to retain their position it would make things very difficult for our business in an already difficult market. We then received the LOV's that afternoon. I was still faced with the issue of how I was going to pay for the default interest that was charged. In a phone conversation just post the meeting with my account Manager he advised that he was going to organise a temporary O/Draft for $70,000 to assist me in paying the "default Interest". I advised him that this would not help as it would only delay my issue. On the 31st of March 2009 I was advised via email that the temporary O/draft had been approved, I found this quite ironic as on numerous times previous to this Bank West had advised that they were not in a position to provide funding due to the state of the current market!! Yet here they were approving a temporary O/draft for $70,000?

I will add that after numerous requests, even to the point of writing to and meeting with the Qld State Manager to have the default interest refunded, Bank West agreed to refund $30,000 of the originally charged $70,000 of default Interest.

September 2009 – Default Interest of $150,000 charged on two of our Facilities. Larsin Development Trust & River Markets Unit Trust

On the 17th of September 2009 the above Companies were charged a total of $150,000 in Default Interest. Our facilities expired on the 15th of August and we lodged our application for extension on the 11th of August. We had provided the bank everything they had asked for to ensure that they had all of the information required to provide an extension to our facilities. On the 15th of September exactly 1 month from the date the facilities expired, Bank West charged default interest on the two facilities. From the time of lodging our requests for extensions we continually contacted Bank West by phone and email requesting the status of the extension request in line with our previous experience with the Bank charging Penalty Interest in February 2009. All we were constantly told was that the bank was reviewing the file. On the 17th of September 2009 we finally received the variation of facility documents extending the facilities to the 31st of October 2009. After numerous requests to the Bank to refund the default interest that they charged, we were advised by Bank West that they would not be refunding the default Interest.

April 2009 – Charging of $37,000 "default Interest" Larsin Developments

The charging of this default interest was due to the fact that the Letters of Variation dated the 7th of April contained a clause that stated the facility would be reduced from $2,670,000 to $1,860,000 by the 15th of April. This reduction in loan was to be funded by the proceeds of the sale of the River Markets Shopping Centre. For reasons very well known to Bank West and I might add for reasons attributed to Bank West this settlement didn't take place till the 21st of May. This delay resulted in Bank West charging $37,000 in Default Interest. We made numerous correspondences with Bank West regarding our position on this, from our perspective it was due to Bank Wests pressure on our business to reduce debt that resulted in us having to sell the River Markets shopping centre. We felt that this duress that the bank placed us under forced us to sell at a lower price than what we could have achieved if we had held the shopping centre. We found it frustrating that even after reducing our debt levels with the bank by over $7 million and still they find it reasonable to charge default interest.

Interest Rate Increases of 2.5% overnight on our Childcare facilities.

As part of the extension of our 2 commercial facilities on the 17th of September 2009, I received 5 Letters of Variation. When reviewing the 5 LOV'S I realised that Bank West had reviewed our 3 childcare facilities. The reason why this was unusual was because the Facility expiry date on these facilities was 30th of September 2010 and still had over 12 months to run until the facilities expired. On closer review of the documents it became apparent that Bank West had reviewed the interest rate margin on these facilities from BBSY plus a 2% margin to BBSY plus 4.5% margin. This was an increase of 2.5% per annum overnight. When I questioned Bank West on the legality and Moral grounds of this they advised that they viewed all of our businesses as a "group" and therefore felt it appropriate to lift our rates across all of our facilities. I have attached a spread sheet that shows the Interest rate increases that Bank West made to our facilities between Oct 08 & Sept 09, the increases in pure Bank West increases to our margins totalled $274,350 in increased interest per annum!!! All of this through the GFC!!!! Add on to this the default Interest charges and you can see how the Bank wasn't assisting our business through the GFC. I will add to this point that when we received amended facility agreements in November 09, the new facility agreements contained an amended clause "Change in Market Conditions", this clause states that the bank can increase the interest rate margin in line with a "change in market conditions". This clause was not contained in previous facility agreements and we found it quite interesting that Bank West felt it important to insert this clause in all future facility agreements.

Purchase of Kids Plus Ormond – Bank West pull funding 3 weeks from Settlement. –

In August 2008 our business was primarily based on the Sunshine Coast in Qld. In attempt to diversify our business in terms of location, the Directors of the business decided to expand our Childcare Brand into Melbourne Victoria. We responded to an article in The Financial review and were short listed to purchase a 95 place childcare centre in Ormond Victoria. Having been chosen as the preferred purchaser we entered into a contract to purchase the Childcare leasehold and met with our Bank West account Manager to start the process of organising finance for the settlement. It was indicated that as long as the valuation came in at Purchase price then the Bank would lend under their current parameters of 60% LVR. Contracts were signed in August 2008 with settlement scheduled for the 10th of October. We received valuations (at purchase price) on the 24th of September 2008. On the 8th of October after numerous attempts to contact the Bank and many employees of the bank I received a call from my account Manager advising that the bank had changed their lending parameters and were no longer willing to provide the finance. The decision of Bank West obviously affected our business in a number of ways, we were forced to seek alternative funding through NAB (on less beneficial terms) and we had to request vendor finance for a period of 6 months from the vendors (eventually paying this out through an expensive private funding arrangement).

Conclusion

As you can hopefully understand, the above actions from Bank West placed an enormous amount of pressure on our business and also personally. In June 2010 the actions of Bank West forced my business partner and I to split our business. We were forced to do this as it was nearly impossible post GFC to re-finance to other financial institutions. The only way we were able to get away from Bank West was to sell assets and re-structure our business in the form of a partnership split. This allowed me to re-finance part of our facilities away from Bank West to NAB.

The duress & stress that Bank West placed us under through 2008-2010 had a huge effect on our health and Family life. Both my business partner and I have suffered emotionally throughout the timeline of the above actions of Bank West. Both of our businesses continue to struggle as a result of what was in our opinion a vendetta of the bank to ensure that our facilities were in technical default of the terms & conditions of our facilities.

In summary, I think the actions of Bank West can be evidenced by the fact that on the 26th of June 2009, I sent an email to our Account Manager with an attachment that was our P&L projections for the 2010 financial year. The forecast profit for our group was $546,696, as discussed above the amount of default interest and increase in Interest rates that was apportioned to our Company by Bank West during from Jan 2009 through to June 2010 totalled $501,350. !!

I thank you for reviewing my submission and I would be happy to present myself to the committee if required.

Yours Faithfully,

Steve Murphy