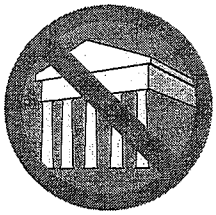

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SENATE SUBMISSIONS FOR GEOFFREY SHANNON AND UNHAPPY BANKING

INTRODUCTION:

Unhappy Banking was formed in December 2011 by Geoff Shannon, a former commercial client of BankWest, after publicising his problems with the Bank. The complaints that Mr Shannon has placed before the Courts are that BankWest was in serious financial trouble prior to the purchase by the CBA so much so that BankWest engineered defaults on its commercial borrowers both prior and post CBA. Unhappy Banking has various documents supporting these allegations.

The more media Mr Shannon generated, more people approached him with strikingly similar complaints. Unhappy Banking was therefore formed as an activist group to highlight the unconscionable behaviour of BankWest/CBA to provide mutual support to the Banks' victims through legal advice and individual counselling, as well as seeking to highlight the plight of these ordinary and hard working Australians in the media.

Unhappy Banking also actively lobbied to try and get a Senate inquiry into the myriad of serious allegations against BankWest/CBA.

Senator John Williams (NSW National Party) championed the right of these and other victims to be heard and their cases examined by spearheading the push for the Senate to examine in detail what went on when CBA acquired BankWest in 2008. Unhappy Banking and its members are indebted to Senator Williams and his Coalition colleagues for establishing this inquiry.

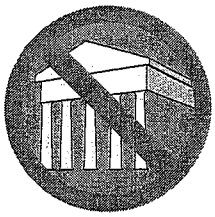
FORMATION AND ISSUES:

Unhappy Banking, with 414 members across Australia, has identified a number of very clear patterns among former and present clients. These are not isolated or "one off" events and we believe this indicates there was a very clear policy operating by CBA after it acquired BankWest from HBOS PLC in December 2008.

It has been widely reported and accepted that BankWest, under CBA, engaged in a ruthless and brutal book clearing exercise. This reversed the aggressive market expansion (on the East Coast) policy executed by HBOS Australia as it sought to challenge the big four Banks. CBA was looking to gain market share in the resource rich states and the opportunistic purchase of BankWest for $2.1 billion (including St Andrews) meant it could gain significant market share in Western Australia.

Unhappy Banking has always acknowledged that many commercial and business (let alone retail) clients get into difficulty due to circumstances such as market factors, poor management, etc.

The group fully accepts not all people with a grievance against BankWest have genuine cause to blame the Bank or its actions for the failure of their businesses.



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SUMMARY OF PERSONAL ISSUES FROM MY OWN DEALINGS WITH BANKWEST

In the lead up to the CBA merger my own company, 33 Electra Pty Ltd was a borrower of BankWest for a 16 Waterfront Terrace home development. The land for this development was purchased in 2007 and was valued at $3.2m. BankWest was not relied on to fund the purchase of the site as the company paid for the property prior to the BankWest first draw down. The company only required BankWest to fund the actual construction costs. (Details of the dealings between BankWest and 33 Electra Pty Ltd are currently before the Supreme Court of NSW).

However the valuation carried out by Colliers International for BankWest on a completion basis was $13.305m . The commercial advance facility for the construction was for an amount of $6m. My LVR was set to be under 50% on completion . During the year 2008 funding slowed to a point where as funding ceased. Pressure was mounting on my group of companies as each company had an involvement whether it was the building company, marketing company or building selection centre as each one relied upon BankWest to continue to fund the development. The construction was roughly two thirds of the way through construction going off BankWest's appointed quantity surveyor . Our cost to complete at this stage was under $2m. However, the Bank has argued that the cost of completion was higher since they appointed a different quantity surveyor and instructed them to value it similar to a liquidated development

Given funding had ceased my staff, contractors, and suppliers were all starting to get concerned, not to mention my family and myself. The stress from also my wife being ill at the time with a potential life threatening brain tumor and then my very own Daughter slipping into a depressed state, it also had an effect on myself where as I was admitted on 10 September 2008 to Taree Private Hospital on suicide watch for a period of 2 weeks. However whilst I was in hospital I still was trying to re finance etc and look at alternatives to BankWest as they advised they wanted out and would do whatever they had to in relation to recovering their money, however the whole time I had not received any letter stating BankWest's position as it was all verbal.

On Friday 26 September 2008 (which was between 17 September 2008 (HBOS collapse and 7 October 2008 (CBA announcement of merger). I was advised by Stacks The Law Firm Taree to meet with their friendly Administrator Mr X of PPB to get in before BankWest appointed a receiver to the company 33 Electra Pty Ltd. Upon my arrival to the offices of PPB in Port Macquarie I requested PPB to act as a voluntary Administrator to the Company 33 Electra Pty Ltd. PPB requested a fee of $500,000.00 to take on the role as a Voluntary Administrator. I advised PPB that it was not an option to pay that amount. Mr X then advised he would only accept the role if I handed him all the companies including C2C Investments, C2C Developments, 33 Electra, Shannon Trading Company, and Abode Group being 5 in total. I reluctantly accepted after considerable amount of discussions with my wife as no ones health was any good at that point in time. Five instruments appointing the Partner of PPB as Voluntary Administrator for each company were prepared by staff members of PPB. These documents were executed at 2.30pm that afternoon on the 26 September 2012. Initially my request for copies of the instruments and various documents were denied, however I advised the receptionist of PPB

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that I would like to show my future Grandchildren what we had to go through. This statement seemed to have an effect on her and she willingly supplied copies of all documents appointing PPB as V/A to my five companies (refer to annexure **SI7**).

On 29 Monday 2008 Representatives from PPB visited the premises of 33 Electra Pty Ltd building centre which was named Abode Selections in Taree. The representatives visited the premises to assess the value of stock plant and equipment, also whilst there they met with landlord, fellow staff members etc and introduced themselves as the Administrators for 33 Electra Pty Ltd. Affidavits from four individuals asserting to this are in my possession (refer to annexure **SI8**). They even had Slattery Auctioneers value the stock plant and equipment of the building selection centre owned by 33 Electra Pty Ltd.

On 30 September 2008 I received a telephone call from a partner of PPB stating it was my lucky day and that the senior manager in BankWest did not want another hostile loan on his books as they were selling the Bank. I was curious as to why it was my lucky day. The partner advised that he was handing back my company and not to worry about anything as the company was out of Voluntary Administration. I asked whether I could have my other four companies back however this request was denied.

I was unaware that his actions were illegal. I was not aware that the company had to go to a creditors meeting until I hired GWM Law at Port Macquarie on 3 October 2008. I made further contact with PPB but I was advised not to mention that I hired GWM Law because the Director of GWM Law was very concerned about the activities of PPB, BankWest, Stacks Finance and Stacks The Law Firm. GWM Law felt that I was being set up and they thought that they could control 33 Electra Pty Ltd through the share holdings of C2C Investments Pty Ltd given it owned all 402 shares of 33 Electra (refer to annexure **SI9**). GWM Law supplied advice on how to remove my other companies from Voluntary Administration.

The night before the first creditors meeting of the remaining four companies (on or about 9 October at about 6.30pm), I received a phone call from Mr X the partner of PPB, he advised me to stay away from the creditors meeting as a certain creditor was going to do me in. I asked who made the threat and he hinted that it was from a creditor in Port Macquarie, I only had two creditors in Port Macquarie so I asked Mr X was it from the plasterer and he confirmed it was. I immediately contacted the plasterer and asked why he had issues and we only spoke that day, he completely denied the allegations and made statements to my solicitor at GWM Law confirming no threats were made (refer to annexure **SI10**). The advice I received from my Lawyers was to definitely go to the creditors meeting as something was not right. The following day I attended the creditors meeting for the Four remaining companies and meet all creditors and advised them I would not let them down and the reason was because BankWest ceased to fund the development was the reason why the companies had a voluntary Administrator appointed and that I would work our way through this.

On or about 24 October I received a telephone call from Mr T who was the previous owner of a property C2C Investments purchased being lot 72 Kelman Estate Pokolbin. The reason for the call was to warn me about the conduct of the administrator and that I should watch my back. At this point in time the property had not been transferred to C2C Investments as

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Stacks The Law Firm had not transferred it into my companies name at the time of settlement and the title was sitting in Stacks The Law Firm safe. This particular property had no mortgage at that point in time and it was settled outright and no Bank was involved.

At the second Creditors meeting on 3 November 2008 I was advised to remove C2C Investments Pty Ltd from Voluntary Administration. That motion was successful. The need to remove it from the administrators control was due to the concerns of GWM Law regarding the shares it owned and also the many assets it held including unencumbered property being lot 72 Kelman Estate Pokolbin.

From 24 November 2008 I was approached by a person named Mr Z. This person represented that he was a willing investor and that he wanted to buy into the BankWest funded development. I was advised that it sounded too good to be true.

Over the next two weeks it became obvious to me that Mr Z had other reasons to speak to me. I started to receive threats etc and threats against my family. He was even aware of where my family had relocated to QLD and made threats against them. On 4 December 2008 and after some persuasion (the night before my creditors meeting on 4 Dec 2008 for C2C Developments Pty Ltd Deed Of Company Arrangement proposal) this person informed me of who hired him and who was going to vote against my DOCA.

This person also met my solicitor and I also hold three tape recordings of threats made and who hired him. I made an official complaint to the NSW Police in December 2008. I provided the Police with a tape recording of the conversation I had with this person. At the end of the tape, the person said, "I don't want to carry out my contract on you now". The Police considered that this comment negated all earlier threats and refused to investigate the matter further. I was advised to walk away and leave the area by the Police officer in charge. The recordings can be made available for any investigation.

On or about 7 January 2009, it was bought to my attention that the unencumbered property being lot 72 Kelman Estate Pokolbin was mortgaged to Mr X. I was unaware on how the partner of PPB was able to mortgage C2C Investments Pty Ltd assets in his personal name. GWM Law immediately placed caveats on title so that Mr X could not remove the mortgage as I was advised that those actions were criminal by nature.

After mentioning this with the previous owner he arranged a meeting with his then lawyer who handed the file over as they advised they were approached by the previous administrator from PPB to sign a new transfer form to enable the property be transferred directly into the Administrators personal name (refer to annexure **SI11**). Fortunately the previous owner was a friend and did not accede to the requests of Stacks The Law Firm acting for the Administrator of PPB to execute a transfer form, which would have by passed my company completely.

It was also bought to my attention that the Administrator supplied fixed and floating charges in favour of Stacks Managed Investments to all my companies within the first week of his appointment as Voluntary Administrator. This was during when a period the Corporation Act provides a moratorium which does not allow any creditor to deal within any recovery of any

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debt whilst within the initial stages of Voluntary Administration (refer to annexure **SI12**). This action by the Administrator granting charges to a financial services provider is also as questionable as it is unusual.

Notwithstanding the actions of the Administrator I was able to deal with the issues at a meeting which was held with PPB at their offices in Port Macquarie on 26 June 2009. The purpose was to discuss the illegal removal of 33 Electra Pty Ltd from V/A and the Illegal mortgage over C2C Investments Pty Ltd as well as the fixed and floating charges (refer to annexure **SI13**), which Mr X granted to Stacks Finance on 3 October. Present at that meeting was the Director of GWM Law, myself, Mr X and his manager from PPB Port Macquarie. Mr X when questioned about removing 33 Electra Pty Ltd for the benefit of a creditor being BankWest denied any suggestion that I had placed 33 Electra Pty Ltd into voluntary administration and asked for any evidence to support those allegations. The director of GWM Law advised for me to show him the evidence which included that the instruments and minutes of the meeting, which the receptionist from PPB had provided to me on 26 September 2008. As soon as I displayed the documents to Mr X, Mr X asked us both to immediately leave. He stood up and opened the door and showed us the way out. Meanwhile we asked him whilst being escorted out of his building about the mortgage he placed on my company's asset. He refused to answer.

Within 48 Business hours of the meeting BankWest appointed PPB as receivers and managers over the companies 33 Electra Pty Ltd and C2C Investments Pty Ltd. Once I became aware I telephoned BankWest and spoke with Ms S and I advised that a conflict arises due to the fact that PPB had mortgaged company's assets, which were in dispute. BankWest denied a conflict arose (refer to annexure **SI14**). Within seven days of the appointment, a variation to the Deed of Appointment over C2C Investments Pty Ltd receivers and managers where as excluding the asset in dispute was signed by BankWest and PPB (refer to annexure **SI15**). I continued to dispute the appointment of PPB and I received a letter from Mr Z from PPB Sydney stating that their office is not related to PPB Port Macquarie and that they are run separately. Further PPB Port Macquarie does not earn fees from Sydney (refer to annexure **SI16**).

In 2009 I complained to ASIC about Mr X, PPB, BankWest, Stacks The Law Firm & Stacks Finance. I was advised by ASIC that if I needed to be compensated by the actions of Mr X then I would need to instigate civil proceedings (refer to annexure **SI17**).

I continued to negotiate with refinance options however PPB hindered any Application because each time a financier contacted the PPB to discuss settlement and payout figures they made extremely negative comments. Consequently we lost the support of those financiers (refer to annexure **SI18**).

In November a group contacted me with a view to buying out the BankWest loan and engaging my building company to complete. We visited the site together and also I forwarded all pre-sale contracts that I had. The group made contact with each buyer and received enough support for them to take on the development.

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Again BankWest's agent PPB neglected to respond or supply the requested material for the purchasers to complete their due diligence .

At this point the Debt was climbing at a rate of about 19% per annum and was around $7m, which included an estimate of $3m for penalty interest, Receiver fees and various other charges . In the end the group walked away due to the no response of the receiver's agents Hartigan Bolt . A copy of sworn affidavits from the potential buyers is attached . BankWest, nine months later advertised the Dockside development FOR TENDER. Through BankWest's receivers, PPB and their marketing agents they requested a further valuation. BankWest advised PPB not to use COLLIERS INTERNATIONAL . They instructed Jeffrey Reid Flanagan from Port Macquarie and this valuation came in at $1.1m.

The marketing campaign was promoted by the agents that it could be bought for between $1-$2m . The property was sold for $2.215m. The third highest bidder was my ex solicitor and financier Mr X from Stacks Managed Investments . This appeared one decent way to extinguish me personally by leaving a massive $7m exposure to my personal guarantees.

Regardless of what has occurred I have managed to deal with all personal guarantees that were bona fide at that time. I have continued to pay unsecured creditors, that is, parties that are generally owed by my Group or me personally. I have honoured these and anyone can view my file in the Federal Court as I have resisted Bankruptcy through my personal guarantees on several occasions by finding ways to satisfy creditors.

I vow to continue to defend personal guarantees that are NOT bona fide. I have defended BankWest's attack against me personally and I am now defending my 4th amended Statement of Claim against my personal guarantee while BankWest are defending my companies claim for breaching the loan contract with my company by illegally terminating the facility.

I have been to two mediations with BankWest, however after various frustrations enough is enough I am only interested in resolving this in open Court.

In April 2010 we filed a claim against Mr X and PPB in the Federal Court alleging Fraud. The case number is 454/2010 . In Mr X affidavit in the Federal Court his last paragraph states that he no longer has the files and accounts relating to the administration of my group. Mr X claimed he stored the files in his shed in Brisbane and when the floods occurred even though his home did not flood, the rains penetrated the garage and all the documents got wet. He then states he put them out to dry but then the rats came along and ate the documents reducing them to a sodden pulp .

To date my expenses have exceeded $3m in legal fees.

BankWest's behaviour is so shocking they are even involved now in other litigation matters that I am faced with. BankWest accidently contacted my Solicitor by mistake in March 2012

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seeing if the other party had succeeded in Bankrupting me. The entire matter stems from BankWest illegally terminating my loan but they are not parties to this action before the Court in Brisbane. I have written to BankWest and also made a complaint to ASIC about Bankwest's unconscionable behaviour (refer to annexure **SI28**).

I would also like to draw to the Senate's attention BankWest's reactions to have taken my decision to go public with my concerns. On 16 February 2012, the National Media Manager from BankWest sent an email to a manager for the Today Tonight program at Channel 7. The manager at Channel 7 thought I should see what Bankwest was saying about me personally and he forwarded to me the email he received from BankWest (please see Annexure **SI29**).

The contents have been described as defamatory against me personally. BankWest provided details of a non associated Company of BankWest which had a Voluntary Administrator appointed who is now the subject a of a fraud complaint made in the Federal Court by myself. BankWest stated that I left 192 creditors out of pocket, when in fact it was a company that had appointed a voluntary Administrator. That Company has been repaying back any bona fide amounts due of which many were family related or secured borrowers. This company suffered severely due to the actions of BankWest as it was the contracting company for the construction of the development that BankWest was funding. Therefore when BankWest ceased funding so did so did cash flow to this company which was owed over $2million from company loans from the BankWest funded company.

This is where Unhappy Banking comes into its own. As I now understand what occurred to me also happened to hundreds, potentially thousands of others, I have vowed to assist them in any way I can. Most people do not have the ability or access to the resources that is normally required to take on such an opponent.

Given my experience above it is not hard to understand why Unhappy Banking evolved. Unhappy Banking already existed. Because there are hundreds, possibly thousands of borrowers like me that had been treated in similar ways and it was appropriate that a vehicle such as the unhappy Banking group made a home for these effected people.

Within the group are probably some of Australia's smartest people. Please take into account the borrowers are Australian business people who had ideas and took these ideas to this financial institution to partner up and bring their ideas to reality. It is unfortunate that they were not aware that their partner in business being BankWest changed the way in which it was to do business half way through the business plan. The business practice that I will demonstrate is unAustralian and may I also add that No Australian would do this to a fellow Australian. Sorry but what I have witnessed this So Called "Australian Bank" operating on our shores doing to our countrymen is absolutely appalling.

NEVER DEFAULTED; NEVER MISSED A REPAYMENT:
The people Unhappy Banking are representing are vastly different. The Group has many customers who never defaulted and who never missed a payment, at all.

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We have identified a number of very clear cut patterns that raise very serious questions about what the Bank was doing, to its commercial clients.

This policy was either pre-mediated or a "knee jerk" reaction to the rapidly deteriorating economic situation post acquisition.

Where "there's smoke there's fire, and when vastly different businesses across Australia demonstrate the exact same patterns of above at the hands of BankWest, resulting in hundreds of people's livelihoods being ruined. Bankruptcies, destroyed wealth, lost opportunity and local community downturns are but a few of the results of dodgy lending practices, then we believe a serious problem where institutionalised corruption exists within our biggest Bank.

At worst it is potentially corrupt, at best it is appallingly incompetent. Neither view is comforting, especially as the Banking sector has experienced a rapid contraction during the GFC with loss of competition.

VARIOUS SYSTEMIC PRACTICES OF BANKWEST & OR CBA

1. Unhappy Banking has identified issues and evidence against the Creditor identifying;
   - A) Breaches of the Banking Code Of Practice in particular paragraphs 2.2 and 25.2
   - B) Unconscionable conduct
   - C) Manufactured defaults to obtain illegal penalty interest.
   - D) Possible FRAUDULENT behaviour relating to non disclosure of penalty interest rates.
   - E) Misleading conduct.
   - F) Usury.
   - G) Breach of Contract.
   - H) Illegally appointing Receivers and Managers.
   - I) Breaches of Responsible Lending Practices.

2. It appears that in years leading up to 2008, BankWest set about ruthlessly to obtain new clients. In many circumstances borrowers were introduced to BankWest by Valuers, Mortgage Brokers, Quantity Surveyors and others. I have evidence to support that BankWest paid commissions to these introducers. In many cases it can be proven that BankWest did not operate under the statutory concept of "Responsible Lending" obligations. We have members that BankWest modified figures to meet credit approval, another member was lent 127% of LVR. It is obvious that the managers were also operating on a bonus type system for reaching certain targets. I know for a fact that my very own Business development manager Mr J had set targets to reach each month and bonuses were applied if the targets were met. The reason I am aware of this as he disclosed this to me on several occasions (refer to Annexure **SI30**).

It appears that BankWest operated and offered loans similar to the way in which Low Doc loans have been operating (refer to Annexure **SI31**).

3. Registrations of members include the periods up to the CBA merger and after the CBA merger. During the period up to the merger with the CBA it appears that BankWest was

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seriously in trouble. Many of our members had valuations ordered without warning. The new valuations caused breaches of the LVR covenants. Many Banks relied on expiry dates of facility terms to terminate loan contracts. One member Mr O from Western Australia was advised in February 2008 that BankWest actually was unable to fund developments (refer to annexure **SI32**). It is obvious that the Bank was facing liquidity issues particularly in the Third and Fourth quarter of 2008. It has been reported that the RBA loaned BankWest up to $4 Billion dollars leading up to the CBA takeover. It was obvious that BankWest required monies back in the Bank. Therefore it could be a reason why so many manufactured defaults occurred on the borrowers loan accounts so that recovery actions could proceed and return funds lent to customers.

4. Unhappy Banking would like to highlight concerns regarding the effect of re-valuations, reliance upon expiry dates etc. Once a default has occurred this triggers penalty interest at rates typical of 18% -19% when in fact a typical facility was Bank Bill Rate plus a Margin of between 1-2%. These penalty interest rates cannot be found on the facility terms sheets which form part of the loan contracts. It appears that not mentioning penalty rates in the facility terms is a breach of contract by the Bank. See attached typical facility terms (refer to **SI33**). One of our members whom we are holding the receivers off at present through lodging a complaint with the Financial Ombudsman Service is a hotelier in rural QLD via BankWest have increased his interest payments from $23,000.00 per month to over $48,000.00 per month. This client is 72 years of age and faces losing everything through the Unconscionable conduct of BankWest (refer to annexure **SI34**). We have many similar stories reflecting these penalty interest rates, imposed.

5. Failure to disclose is dishonest within the meaning of 4B of the CRIMES ACT and passes all of the four modern tests set out by McHugh J of the High Court in the case of *Peters v R [1998] HCA7* in that clearly,

A) intention to prejudice the rights or interest of another.
B) making or taking advantage of representations which are known to be false.
C) concealing facts that they had a duty to disclose.
D) engaging in conduct that they had no right to engage in.

6. A further example is in a judgement which was delivered on 13 March 2012. In that case the Plaintiff was seeking relief under the Contracts Review Act (NSW) and under SS 12CA, 12CB and 12GM of the Australian Securities and Investment Commission ACT 2001 (CTH) ("2009 Proceedings"). The Plaintiff sought declarations that the rates of interest in respect of each of the transactions was excessive, harsh and unconscionable and an order that the transaction be voided or varied to provide for a reasonable commercial rate of interest. This particular Judgement is in regards to very high penalty interest rates however given the Bank in question is owned by one of the big four, it seems that their policy is very questionable when it comes to penalty interest rates which are in the vicinity of nearly 20% P.A in most cases (refer to annexure **SI35**).

7. In light of the above, Unhappy Banking would like to draw to the Senates attention to another Debtor of this creditor who has referred the findings regarding illegal penalty interest to the NSW Police Fraud Squad with the event number being 47427053.

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8. Unhappy Banking has received a transcript of a telephone conversation where as two of the Creditors Business development managers accidentally continued talking after leaving a message on borrowers answering machine. A paragraph from the transcript of the recorded phone message reads

"I'll have talk to my colleagues, and my colleagues have something to think about. You have got sixteen percent default rate, there is no emotion about the facts that is hurting. If you're going to write money off, that sixteen percent doesn't reduce our write off, it increases its probability."

"also we've done nothing to help this borrower and I actually feel sad about that".

A copy of this borrowers Affidavit, Deed of Forbearance, transcript and the taped recording are at annexure **SI36**.

9. In cases where the Bank relies on valuations to determine breaches of the Loan To Value Ratio and the Bank then proceeds to terminate the loan contract, it appears that most borrowers who have been served default notices relating to these breaches have never been supplied the valuations that the Bank relied upon to terminate. Unhappy Banking have been supplied valuations where as the instructions differ to what is in the facility terms of the loan contract i.e., where as the term 'As is on completion" and 'in one line" the difference is generally around a 35% (refer to annexure **SI37**). The reason we bring this to the Senates attention is that if the instructions for valuation differ to what is in the facility terms then this appears to be a breach of the loan contract by the Bank. We have asked our clients who have had their loan contract terminated due to a breach of LVR to request a copy of the valuation (for which the borrowers pay) and is relied upon by the Bank to be supplied. These requests are have never been complied with. There are other faults with certain valuations that we have identified. In one case the value went from $25 million to $4 million (refer to annexure **SI38**). In this case the default on which the Bank relied was the breach of LVR by 586%. The valuer being Colliers International again in this case has been identified in several other dubious valuations.

Unhappy Banking also have been advised that certain valuers have received generous commissions for introduction to BankWest (refer to annexure **SI39**).

10. Unhappy Banking has evidence that clearly demonstrates that BankWest has relationships with Valuers, which could be seemed as collusion. Valuers have underwritten Valuations for BankWest so that they are able to foreclose and realise funds recovered and bring those funds in as pure profit for the Creditor. Attached (refer to annexure **SI40**).

11. It appears that the Commonwealth Bank of Australia is able to rely on certain warranties provided by the previous owner being HBOS of any loans that are placed in the Impairment division of the Creditors books. These warranties are seen similar to those provided by Mortgage insurance on normal residential loans (refer to annexure **SI41**).

12. Unhappy Banking and its members asks for Senate to inspect the Impaired loans of BankWest. For documented evidence please refer to attachment (refer to annexure **SI42**).

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For reasons being once a loan has been placed in the Impairment section of the loan book it would then appear that no rational dealing can occur in regards to the borrower. This is due to the practice of BankWest, the CBA and other Banks. The typical process is to demand all monies due and payable once a breach has occurred. Once the loan has been placed in the Impairment section then a borrower becomes extremely vulnerable. Once vulnerable the banks callously move in for the "kill".

13. It appears that the CBA has placed a vast majority of its commercial loans into the Impairment section since the merger. At one stage the CBA performed "operation MAGELLAN" this was code name specifically to conduct a full audit of the Commercial loan book of BankWest. Once BankWest placed a loan into the Impairment section this triggered the warranty clause in the Share Sale Agreement document between the CBA (BankWest owner) and HBOS/ Lloyds former owner of the Creditor (refer to annexure **SI43**). It states that the CBA agreed to pay not only $2.72B less impairments at that time being $620m being a net if $2.1B BUT the CBA agreed also to fund $17Billion in funds owed by the Creditor to HBOS/Lloyds and it appears that any impairment amount triggers a discount off these amounts owed (refer to annexure **SI44**).

Now in reference to the above the CBA benefits hugely by,
A) receiving 100 cents per dollar for any loan it states is impaired.
B) tax concessions in its income reporting the Australian Taxation office.
C) receives the assets that secured the loans from the borrowers and this is recovered by the manufactured defaults to force the clients to be removed from the assets. Once the process of recovery is completed the monies generated from the sale of these assets are brought into the books of the CBA at 100% per profit.

So in fact the Bank recovers all monies twice over and receives tax concessions at the nominal tax rate that is applied to the organization.

It seems that once the loans are placed in the impaired section of the loan book there is no chance of returning these loans back into good viable loans.

One would say that the inducement far out ways ethical conduct that Banks should be governed by.

The actions of the Bank and it's employees verge tender on Fraud, misleading and deceptive conduct in many areas.

Please see attached acquisition documents (refer to annexure **SI45**) and promotional material regarding the CBA purchase of BankWest for their shareholders (refer to annexure **SI46**) as well as media release from HBOS (refer to annexure **SI47**).

14. A very common theme has emerged also, and that is a document drafted by BankWest's lawyers. This document is commonly called a Deed Of Forbearance. Once executed the borrower losses all rights in regards to challenging the Bank in any way shape or form. This deed is normally executed under severe economic duress and in many cases

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BankWest have charged the borrower hundreds of thousands of dollars as well. A typical deed of forbearance and a deed of settlement is attached (refer to annexure **SI48**).

15. Unhappy Banking has also been advised that on more than one occasion there was blatant corruption, whereby Bank managers have tried to take advantage of the borrowers who are in a distressed state due to the valuation process. These allegations are supported by affidavits from the borrowers (refer to annexure **SI49**).

16. Included in this submission is a copy of registrations by POSTCODES by Unhappy Banking Members with issues outlined above (refer to annexure **SI50**).

17. On a small note please see receipt of ownership of Domain names www.unhappyBanking.com and www.unhappyBanking.com.au, both these are owned by BankWest. Please see dates of purchase being three months before we purchased www.unhappyBanking.net.au . This in itself is a concern.

The above submission demonstrates possible misleading and deceptive conduct, and at least unconscionable conduct.

HOW BANKS AVOID SCRUTINY OF THE FINANCIAL OMBUDSMAN SERVICES AS FAR AS RECOVERY OF ASSETS IS CONCERNED.

Unhappy Banking has identified a major flaw in regards to the National Credit Act. That is Receivers and Managers, Administrators and Liquidators are not bound by the Terms of Reference set out by the Financial Ombudsman Service. This is a serious issue as now any Bank that wants to recover any loans they now proactively appoint receivers to allow the receivers to foreclose on borrower's assets even whilst a dispute is lodged with the financial Ombudsman service (FOS).

This appears to be an issue that needs to be urgently rectified as regardless of the relatively new body being FOS to help struggling borrowers with either financial hardship or issues due to the Financial Services providers (FSP) actions the FSP has now found a path to avoid scrutiny of FOS by appointing Receivers. We believe that all Liquidators/ Receivers and Managers and Administrators need to be members of FOS therefore they then would need to adopt the TOR of FOS in regards to any appointment. This would cease all fire sale of assets until FOS made its determination therefore giving the borrowers a real chance of having their issues dealt with through FOS.

Unhappy Banking believes FOS is an excellent body to determine disputes without heavy legal costs , however it is quite useless now given this loophole where as Receivers do not need to be members of FOS, again I bring to the Senate's attention that the Banks are trigger happy to appoint receivers given the above.

CONCLUSION:

Given the pattern borne out by the above systemic issues including illegal default penalty interest rates, expiry dates, Deed of Forbearance documents, dubious valuations including instructions to valuers which differ from description in the facility terms and other issues noted in these submissions. Unhappy Banking and its members believe CBA and BankWest have engaged in a ruthless and unconscionable policy of clearing its commercial book

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because it no longer suited the Bank to have these small to mid-sized businesses on their books - the same businesses they had actively Courted and pledged to support.

We also believe it is important to assess the collateral damage done to many local economies by BankWest's actions; high rents are just one, with many small to mid-sized developers being "taken out" of the market altogether.

Unhappy Banking believes the main reason for taking down these commercial loans is linked to the warranty that was supplied to the CBA in the HBOS Share sale agreement when the CBA purchased BankWest.

It appears no one within the CBA group wants to deal with the concerns raised in this submission. It may have something to do with the fact that the now CEO of the CBA was the person responsible for the purchase of BankWest by the CBA (refer to annexure **SI51**). Given this it may be the reason why no one within the CBA group is wanting to deal with this because it goes right to the top of the organization.

Our members who have had their businesses destroyed and livelihoods ruined would like to know how much have they clawed back to date through this warranty clause. What happened to the borrowers assets, did these amounts come off the impairment values? How many more have been effected and Bankrupted?

We think most Australians would agree these are very serious issues that need to be examined forensically and we thank Senators for taking the time to get to the bottom of what happened after BankWest was acquired by CBA.

SENATE RECOMMENDATIONS

What is needed

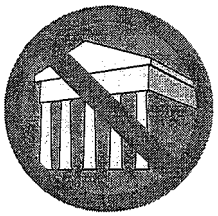
1. Full disclosure from Wayne Swan and Kevin Rudd. What did they know? Where they aware of the warranty supplied to the CBA?
   - A) If so why did they not see that the CBA would be induced to do what they did.
   - B) If not, why were they not advised. Why did the CBA not disclose this.

2. Full details of the share sale agreement.

3. How much have they received or discounted off what they owed from the $17b they agreed to pay back to Lloyds.

4. Is the CBA going to extinguish the BankWest brand.
   - A) If so when
   - B) If not and is continuing to operate independently what guarantee can the CBA supply to support this.

5. All personal guarantees associated with the commercial loans involved in the impairment relied on to activate the warranty clause in the share sale agreement be released.



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6. Any Bankruptcies overturned that relate to the operation in item 5 above.

7. Any directors or Executives caught involved in this operation bought to justice.

8. CBA to compensate for any losses .

9. Public apology.

10. Government to take measures to make sure this does not occur again. i.e. possible replacement of ASIC body to control the financial services industry.

11. ACCC to unwind merger and for WA Government to buy BankWest back.

12. Insolvency industry to open up to solicitors and barristers as only 650 or so liquidators and receivers are registered in Australia and given the big companies such as BDO, Grant Thorton, PPB employ about half that amount one could see that a monopoly has been adopted and Australians do not have many options if faced with financial issues.

13. Financial Ombudsman Service to include the Insolvency Industry as Members to comply with the Terms Of Reference.

14. Royal commission into White Collar Crime.

15. Government to sponsor a support group for victims of financial duress.