

**Submission to Senate Inquiry**  
**"Effects of the GFC on the Australian Banking Sector"**

**22/05/2012**

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

Dear Senators,

Please find attached my submission that relates to how my business was treated by BankWest after the Commonwealth Bank of Australia acquired it during the GFC in late 2008.

Tony Mollison

**Introduction:**

Our family business was made up of a wholesale division (trading as Brialite Pty Ltd) and a retail division (trading as Lightstyle comprising three lighting retail stores). The wholesale business had been trading for twenty-three years and the retail business for seven years as at late 2008.

The nature of the group's exposure to BankWest was typical of many small businesses and comprised business loans, a trade finance facility and rental guarantees. The exposure also included residential mortgages on two properties.

In late August 2008, the group was told to find another bank by BankWest because, in the banks view, the residential properties securing the business debts had reduced in value by at least 10-15% from their bank valuations. We were told by BankWest that our business cash flows were negative because their modeling takes 15% off the projections submitted by customers and we were also told that given the way the economy was going (GFC) we were in an 'at risk industry' being an importer/retailer.

**This demand to find an alternate source of finance was despite never having defaulted on any loan repayments or financial commitments.**

At this time the trade finance facility was withdrawn which effectively did not allow Brialite to purchase any stock from overseas for resale into the domestic market (at this time Brialite had in excess of \$60,000 in presales all of which were lost).

Despite our best efforts it was impossible to find a new financier at this time due to the Global Financial Crisis.

During this period there was enormous pressure placed on us by BankWest, which involved multiple daily phone calls, demands for repayment, requests for figures and demands for meetings, which culminated in the appointment of Ferrier Hodgson to undertake an internal assessment (IA).

BankWest was asked by Tony Mollison to professionally value the properties being used as security to obtain fair market values - this request was refused.

In an effort to appease BankWest an offer was made to sell the primary place of residence, which would pay of a large portion of the debt.

This property was sold for an amount 17% above the bank valuation and 39% over the BankWest derived valuation (bank valuation less 15%). This price was achieved despite a 'bargain hunters' market in early 2009.

This sale returned nearly half the funds owed but this did not appease BankWest and they effectively tried to shut the business down by strangling it financially.

The Brialite business was effectively destroyed as customers could not be supplied, orders were cancelled and a large number of sales were lost.

The loss of goodwill with suppliers, customers and landlords has been enormous.

A range of assets have been sold or cashed in during this period in an effort to obtain funds to buy stock. These assets include cars, personal items and the cashing in of personal super funds.

In addition, the IA to which the group was subjected came at a cost of \$37,000+, which even further reduced the amount of funds available to buy stock.

Rental guarantees with long-term landlords were withdrawn by Bankwest, which meant that the group had to place \$177,000 on term deposit as security. This action was undertaken simply to stay in business and keep the doors open. The result was a significant reduction in working capital at a time when BankWest had already put the group under maximum pressure.

During this period as Brialite was not able to supply its customers, turnover dropped dramatically. Evidence of this is the annual turnover of Brialite (wholesale) dropped from \$1.22m in 2007/08 to \$486,376 in 2009/10. As a consequence staff were made redundant or left because of the difficult working environment resulting in further costs and payouts.

The last four years have been enormously stressful as a result of the bullying and harassment undertaken by BankWest. Their illogical behavior has turned a small business meeting its commitments, into one that is still struggling for survival.

**Detail:**

**Sept 2006** Our business banker from NAB joined BankWest and starts to canvas for the banking business of the group of companies. The bank officer had been the group banker at the NAB since Feb 2002. As such he was very familiar with the groups operations and finances.

**Jan 2007** The Brialite Group switches from banking with the NAB to BankWest.

**July 2008** Daily and continuous requests for information. Financial data including cash flow forecasts and budget projections.

**15/08/2008** BankWest requested a meeting to discuss cash flows and business in general. Attended by two BankWest managers and a partner from Ferrier Hodgson.

Meeting revolved around Bankwest's concerns re difficulties for businesses under the current economic conditions, the importance of sound cash flow forecasts and the requirement to reduce expenses as much as possible.

The Ferrier Hodgson partner offered their services to –

Prepare a financial report (IA) on each company at an estimated total cost of \$30,000 - \$40,000

Or prepare cash flows for each business at an estimated cost of \$8,000.

When queried why either was necessary I was advised that BankWest considered us to be an "at risk" industry.

As the meeting progressed, it became obvious that the cash flow forecasts supplied by email to BankWest on 7 July 2008 had not been analyzed. This was explained to a Bankwest Manager after the meeting and they were resent by email on 15 August 2008.

**29/08/08**

Received a phone call from BankWest during which we were told to find another bank. When we asked BankWest why we were being cut off (when we have never defaulted on any payments) we were told, "You are in a 'at risk' industry given the current economic climate".

A Bankwest Manager stated we have reviewed the financial data you supplied. Unfortunately I have to tell you that we want you to find another bank. The main issues are:

- The impact of the GFC on businesses generally, particularly wholesale and retail
- The deterioration of real-estate valuations, reduced by at least 15% (this point was emphasized as the main issue but was not tabled in the subsequent letter that confirmed termination – Attachment A)
- Your cash flow projections are negative, as we take 15% off your forecasts in our modeling (this 15% reduction had never previously been mentioned)
- You have not met recent profit forecasts
- You have not agreed to an I/A
- You have 3 months to find a new bank
- A letter will be sent to you today to this effect

Tony Mollison responded that this advice was totally unexpected and unacceptable because:

- We had cooperated fully with the supply of financial data and forecasts when requested to do so
- While the financial performance of the companies had not met recent forecasts, the GFC had not had a major impact on our trading
- Negotiations were proceeding with the landlord of the Castle Hill retail outlet to close the loss making operation (the operation subsequently closed).
- The valuations for both residential properties were out of date and Tony Mollison asked if the properties could be revalued?
- All payment commitments to BankWest had been met on time.
- I did not agree to an I/A, as the financial data we supplied was legitimate. Also I did not wish to incur the cost of approx. \$30,000 - \$40,000 without due cause.
- I requested a reconsideration by BankWest of this decision, but the Bankwest Manager advised that this decision was final

Comments made “we don’t like your cash flow forecasts, our modelling shows they are negative as we take 15% off your forecasts as a general rule”.

The BankWest manager stated, “Your properties have de-valued by at least 10-15%”.

An emailed letter dated 29/08/08 followed up this conversation. The letter stated that the reasons for termination, but did not mention the supposed reduction in value of the residential properties which was such a key factor when we were advised of the termination verbally.

Please refer attachment A and its explanation.

**29/08/08** The trade finance facility was withdrawn with balance as at 29/08/08 reverting to overdraft. Told by BankWest that the Interest Cover Ratio and group EBIT targets were not being met.

At this point Brialite (wholesale) had three containers waiting to be shipped. The balances on these containers could not be paid resulting in a huge number of lost customer orders.

Going forward without the trade finance facility meant the group’s ability to purchase stock was critically affected.

**Sept-Dec 08** Meetings with Westpac, CBA, St George, Bendigo Bank and the NAB to secure new banking facilities.

Despite a huge number of meetings and initially positive feedback the group were unable to secure alternate funding. The comments were as follows:

CBA “we cannot entertain currently due to the global situation”

NAB “unless its guilt edged we won’t do it”

Westpac “it is very tough out there right now but will to look at it again when conditions improve”

**Nov 2008** Tony Mollison verbally asked a BankWest manager to obtain independent valuations of the properties providing security in an effort to prove the assets had not dropped by 10-15% as claimed by Bankwest. The Bankwest Manager had no interest in hearing evidence that the two properties providing security (Rushcutters Bay and Surry Hills) had not dropped in value but rather increased in value since the valuations were undertaken some time earlier.

The manager said he would consider the proposal but when pressed at a later date said it was not possible.

**09-12/2008** Daily harassment by BankWest which involved phone calls and emails requesting more financial information, demands for repayment and updates on the search for a new banking facility

**11/12/08** Tony Mollison received a demanding email to attend a meeting for the appointment of an IA at the BankWest office. Given the tone of the email the senior partner of Lincoln Partners, Ian Smith (group external accountants) was organised to also attend the meeting.

**13/12/08** Meeting with BankWest attended by two BankWest managers, Tony Mollison and Ian Smith (senior partner of group external accountant).

Prior to this meeting Ian Smith and Tony Mollison reviewed all options to achieve a satisfactory outcome, concluding the best option was to offer to sell the primary place of residence.

At the meeting a proposal was put to BankWest to sell the primary place of residence, which would clear a large portion of the debt.

BankWest were not interested in this debt reduction proposal and were absolutely insistent on proceeding with an IA.

The meeting was conducted in a hostile tone.

During the meeting Ian Smith stated that this was a fair and reasonable proposal and it was unreasonable for BankWest not to accept the debt reduction proposal given there had never been a default.

Ian Smith commented he could not believe the tone of the meeting and the rejection of the proposal.

After the meeting a BankWest manager said to Tony Mollison and Ian Smith "sorry Tony, as you can see my hands are tied, there is nothing I can do".

**13/12/08** Following the meeting with BankWest Tony Mollison met with Ian Smith and Michael Stevens (lawyer) to review options.

As BankWest was not interested in the debt reduction proposal it was determined that legally the Ferrier Hodgson IA could not be prevented.

**19/12/08** A partner from Ferrier Hodgson arrived at the Brialite offices to begin the IA.

**Mid-Dec 08** Real-estate agents from LJ Hooker Bondi Junction were engaged to sell the primary place of residence in Rushcutters Bay.

Shortly after the meeting on the 13/12/08 BankWest requested the sales campaign start immediately for a sale prior to 31/12/08.

BankWest was informed that a sale in the two weeks leading up to Christmas was impossible and that the sales campaign would start in late January (when potential buyers had returned from Christmas holidays) for a 20/02/2009 auction.

**21/01/09** The IA report was supplied to BankWest by Ferrier Hodgson.

**(Approx.)** Tony Mollison received a draft hard copy of this report.

Part 4.3 of the report outlined the case for the re-instatement of the trade finance facility to Brialite from BankWest to pay overseas suppliers for orders thus allowing a continuation of trade.

Please refer to Attachment B.

**31/01/09** First open house for the sale of primary residence in Rushcutters Bay, Sydney.

**17/02/09** Following up on the Ferrier Hodgson report, BankWest was emailed requesting an advance of \$56,000 to pay overseas suppliers for stock. A report outlining existing customer orders was also sent.

There was no response to this email, which was followed up with telephone calls during February, March and April.

**19/02/09** The auction for Rushcutters Bay residence cancelled because there was only one realistic buyer who eventually purchased the property.

Many offers were received but due to the timing of the sale most were well below the fair market value.

Over the period of negotiations with the eventual buyer a BankWest manager was calling every second day, requesting information on the progress of the sale.

**09/04/09** Contract signed for the sale of primary place of residence in Rushcutters Bay. The price was achieved despite very difficult market conditions with many bargain hunter buyers placing low-ball offers.

This property was sold for an amount 17% above the bank valuation and 39% over the BankWest derived valuation (bank valuation less 15%).

**23/04/09** Received verbal response to e-mail request for additional funding. "The request to fund \$56,000 for the factory orders will only be considered once the settlement for the Rushcutters Bay property has been completed".

**22/05/09** Settlement of the RB property.

BankWest were advised of settlement and advised Tony Mollison by phone that there would be no advance to pay suppliers.

Tony Mollison advised a BankWest manager that “BankWest was driving us out of business” to which he replied, “We just want our money back”.

**22/05/09** BankWest were paid \$940,000 from the sale of the Rushcutters Bay property.

We had hoped that a small portion of the proceeds of the sale could be retained to buy stock for the wholesale business. This proposal was put to the bank on several separate occasions but BankWest were totally insistent that all funds were to be repaid to BankWest.

It was hoped that the repayment of a significant amount of the debt would appease BankWest however this was not the case. It was also hoped that the sale price achieved would prove the point that the value of the properties had not declined and would allow a re-instatement of facilities. Again this was not the case but clearly illustrated that there was no reasoning with BankWest.

**19/05/09-31/12/09** Over this period Tony Mollison was working with independent finance brokers in an effort to free the group from BankWest.

Rather than trying to re-finance the businesses it was decided to fully mortgage the remaining residential property in an effort to repay BankWest and be free from their constant harassment.

An alternative source of finance was found and the mortgage of the Surry Hills property was approved.

The valuation of the Surry Hills property undertaken for this loan came in at \$1.1m (the identical neighbouring property sold one month prior for this amount).

This makes a mockery of the BankWest claims that the property had significantly devalued (at least 10-15% from their valuation of \$720,000) to \$612,000 - \$648,000.

The new financier arranged with BankWest to settle on the 31/12/09, however due to BankWest incompetence the settlement was not completed until the 11/01/10.

All the loans to BankWest were re-paid and \$24,000 of the re-finance was put into Brialite to buy stock.



**Oct 2010** As a result of the on-going shortage of working capital Brialite Pty Ltd was subsequently liquidated in October 2010. A much smaller wholesale business is now trading as MO & CO Lighting Pty Ltd.

**Dec 2010** BankWest refused to release all securities over the companies and personal guarantors because there was one credit card left with BankWest that was progressively paid off.

All liabilities with BankWest have now been settled.

**Despite never having missed one repayment or having a financial default of any kind BankWest withdrew their funding at a time when it was impossible to find alternative finance due to the GFC. The harassment and demands for repayment were constant. The Ferrier Hodgson report (that Bankwest commissioned but we paid for) outlined the case to restore funding to enable overseas suppliers to ship goods for resale. Approximately 50% of the debt was repaid through the sale of the primary place of residence but this did not appease BankWest and their strangulation of the business continued.**

**BankWest made every effort to destroy our business with no consideration for the impacts on our family or our employees.**

**Impact:**

**The following points are direct and flow on effects of BankWest's withdrawal of funding and harassment.**

- Severely damaged reputation with overseas suppliers/factories. Deposits were paid, goods manufactured but delivery/final payment was made impossible. Some orders were placed but deposits were unable to be paid. Items manufactured waited along time for the balances to be paid causing the suppliers to continually request payment.
- Damaged reputation with local suppliers. Accounts took a long time to be paid often resulting in the termination of services. E.g. Component suppliers, printers, service providers, accountants.
- Damage to reputation with landlords. Three separate long-term landlords were regularly chasing overdue rent.

- Damaged reputation with customers. Many customers were lost due to the inability of Brialite to supply. Customers would wait months for product but would eventually cancel.
- Damaged reputation with staff. Staff, were continually asked to deal with accounts being on credit hold, phone calls from suppliers requesting payment and the late payment of wages. This was embarrassing and demoralizing when sales staff were being asked for every effort to increase revenue. The key staff were long-term employees (nearly ten years).
- Loss of preferred supplier status with David Jones. As stock supply dried up David Jones removed Brialite from their national preferred supplier list, which meant they no longer carried our stock.
- Damaged reputation with the ATO and other government offices such as Super/Workers Comp. The inability to pay amounts on time resulted in the structuring of payment arrangements and various undertakings.
- Personal stress. Tony Mollison was working towards retirement but instead found him self under incredible pressure facing the loss of all assets, constant harassment/pressure from BankWest as well as negotiating with potential new Banks plus managing the day to day operations of a crippled business. Tony continues to work seven days per week without remuneration. There was also family pressure at this time with one family member becoming estranged as a direct result of financial stress.
- The primary place of residence was reluctantly sold and there has since been significant uncertainty in personal accommodation.
- Another mature aged son working in the business was not paid for over two years but continued working because he could not leave his parents given the dire financial position imposed upon them by BankWest.
- Restriction of lifestyle. The lives of all family members involved have effectively been put on hold for nearly four years. Having been financially crippled, all family members have been working continually during this period without any chance for normal family activities e.g. Christmas holidays or any holidays. This is time that will never be recovered.

**Conclusion:**

BankWest made every effort to destroy our family businesses. What they did made no sense and we continually tried to work out why they were acting in the way they were. We thought at some point they would come to their senses especially because we had never defaulted, complied with all demands and because we paid back a significant portion of our debt. This never happened.

Over this period it became clear that BankWest were not interested in listening to reason. BankWest were intent on making life/business as difficult as possible for us and were simply looking for any excuse to shut the business down. The bank's actions appeared to be an attempt to push the group towards a financial default thus allowing the bank to appoint a liquidator.

If our group had continued banking with the NAB, rather than switching to BankWest, we would have barely been affected by the GFC. We continued to get a significant number of orders that we could simply not supply.

Through the whole process Tony Mollison made every effort to work and communicate with BankWest managers. He complied with all requests for information and attended all meetings. BankWest on the other hand were reticent to correspond in writing. Numerous emails, questions and written requests for funding went unanswered for months as did telephone messages.

Yours Faithfully

Tony Mollison

## Attachment A

PRIVATE AND CONFIDENTIAL

Enquiries:  
Our Ref: Brialite/Mollison

Email:  
Facsimile:

August 29, 2008

**BankWest** ~~988~~  
~~86~~

**Bank of Western Australia Ltd**  
ABN 22 050 494 454  
AFSL 236872

**Commercial Banking Chatswood**  
457 Victoria Avenue  
Chatswood NSW 2067

P.O. Box 5396  
West Chatswood NSW 1515

**Tony Mollison**  
Directors  
Brialite Pty Ltd, Lightstyle Pty Ltd & Charleston Capital Pty Ltd  
PO BOX 6177  
FRENCHS FOREST NSW 2086

Dear Tony & Barbara,

### REVIEW OF FACILITIES FOR THE "BRIALITE / MOLLISON" GROUP

Further to our telephone discussion this morning, I can now advise the following:

- After completing our full review of the Group's Facilities and based on the information supplied, you will need to re-finance all the Facilities for the Group within the next 3 months (ie by 28/11/08).
- Our major concerns are as follows:
  - \* Negative cashflow projection.
  - \* Decrease of security value due to current issues with stocks and debtors.
  - \* The Group's current issues with unpaid taxes.
  - \* Your unwillingness to appoint an external party (ie IA) to understand the Group's business & its current cash / stock issues.
- We are also not supportive of amending / reallocating any current facility due to the concern of increasing core debt.
- We need to receive copy of unconditional Approval Letter to re-finance all Facilities for the "Brialite / Mollison" Group by no later than Friday - 28/11/08.

Please note that the Bank:

1. Does not waive any of its rights arising as a result of the Interest Cover Ratio (ICR) breach of the Agreement and/or the supporting Securities; and
2. Has issued this letter without prejudice to its rights to act under the Agreement and/or supporting Securities should the Bank consider it necessary to act in the future to protect its position.
3. May apply default rate to all of the Group's facilities under the General Terms for Business Lending, 16.3 Consequences: Interest. Current default rate is 19.31% and may be effective as of 28 November 2008 if the unconditional Approval Letter to re-finance all Facilities has not been received beforehand.

Please call me on \_\_\_\_\_ if you have any queries regarding the above matter.

Yours faithfully,

**Business Development Manager.**

## **Explanation of Attachment A – Bankwest Major Concerns**

1. Negative cash-flow projections – Bankwest stated at this time (never previously) their modelling deducts 15% from cash flow forecasts submitted by customers. This deduction resulted in the negative projection.
2. In the 15/08/2008 meeting Bankwest managers stated that Brialite (wholesale) was overstocked by approximately \$200K. This was not the case and it was explained to Bankwest that we had just launched a new range into an additional market segment, which correspondingly required a stock carry. It was also explained to Bankwest that this market segment was less competitive and offered higher profits. It is this range that forms the basis of our current smaller wholesale business. There were no issues with debtors and this was outlined in the Ferrier Hodgson IA which said debtors are generally current (see Attachment B)
3. Brialite only (not the group) had a payment arrangement with the ATO and it was for a relatively insignificant amount.
4. Why would we be willing to have a receiver (Ferrier Hodgson) undertake an IA at a cost of \$40k when there was absolutely no basis for the appointment? As previously stated there has never been any financial default and the accounts provided were accurate and correct. The IA was never discussed as a requirement and the Ferrier Hodgson partner was promoted as a provider of financial services.

# Attachment B – Excerpt From Ferrier Hodgson IA Draft

Brialite Group of Companies  
14 January 2009



## 4 Forecast Financial Performance

### 4.3 Stock Purchases

- Management have requested the release of additional funding replenish stock and improve overall inventory mix.
  - Goods from two Chinese based suppliers with an estimated total landed cost of \$A48,701 (based on exchange rates as at 12/1/09) and a market value of \$A96,900 are currently on stop order.
  - The goods are located at the Chinese supplier's warehouse ready for delivery yet require prepayment before shipping the goods. ~~If payment is made prior to 19 January 2009, management believe the goods would be available during February 2009.~~
  - Management advise that the purchase of these goods will maintain relationships with customers and improve the overall product mix.
    - Evidencing this, existing sales pre-orders for these goods (according to company records we have reviewed) equate to \$A47,473 (gross value pre-GST) which account for approximately 50% of the goods being delivered based on estimate of market value; and
    - Most of these customers appeared to be within normal credit terms based on the October 2008 debtors ledger.
  - Risks associated with providing this funding include:
    - The market value is based on sales prices recorded in the Company's records.
    - ~~Should funding not be provided before 19 January 2009, goods will not be dispatched from China until after Chinese New Year and will arrive in early March 2009.~~ *stop*
- late / Feb.*
- As the Group does not adopt any hedging policies, an adverse movement in foreign exchange rates in the interim remains a concern.
  - Approximately \$5K of the \$47K (5%) in sales pre-orders are to the Lightstyle and Charleston entities. As our previous analysis revealed, payment of these accounts has not been timely.
  - The balance of the remaining stock on hand from this order could also be sold to Lightstyle and Charleston and convert to debtors rather than cash. *?*

## **Points Relevant to Attachment B**

- The report from Ferrier Hodgson clearly outlines a case for the advancement of funds to fill existing backorders.
- Customers were not placing (further) orders because of the out of stock situation. If the stock situation could be improved so would order flows.
- The report illustrates the situation the wholesale business was in where orders could not be filled because the trade finance facility had been withdrawn.
- The report states that “most of these customers appeared to be in normal credit terms” which contradicts the Bankwest termination letter (Attachment A) which states “current issues with stocks and debtors”.