

Economics References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

A Walton

23 May 2012

Dear Senators,

**Re: Submission to Senate Inquiry  
"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 Bankwest, both before and after it was acquired by the Commonwealth Bank of Australia during the GFC in late 2008.

I am 59 years old and a Civil Engineer by profession. I was a property developer in Sydney, and carried out many small to medium size developments, both land subdivision and building, since 1988. I suffered a heart attack in 2000, and, from this time, I have received benefits from my income protection policy, which provides me and my family with our sole source of income to live off. Since falling ill, I have been winding down my development business, and the development, to which I specifically refer, was to be my last development in NSW. It was a property I had held for many years, and was to be the culmination of my profit and all the years of hard work. I currently live on the Gold Coast with my wife and family, having moved here in early 2005.

**INTRODUCTION:**

**Precis**

Bankwest became my main banker and financier in mid 2003. They initially took over the ongoing finance for a complex, containing 24 home units, in southwest Sydney, which was the penultimate development by my company in NSW and was completed and occupied in early 2003. This complex was rented to the NSW Department of Housing on a 10 year lease. I retained this complex as an investment property and intended to hold onto it as a solid, long term income producing asset.

Bankwest continued to strive to provide my business ongoing funding, for every investment property and development that I owned. In late 2004, they funded the acquisition of a luxury apartment in Broadbeach, on the Gold Coast, which became my new family home. They lent against my previous, unencumbered home in Sydney. In early 2005, they agreed to provide funding for a development site in Leura, in the Blue Mountains. It consisted of twenty townhouses, in three stages, a nursery and a large, heritage listed home. Bankwest provided finance to take over the existing property loan and committed to provide construction finance for the development of the property over the next few years.

The ongoing facilities were continually rolled over and were due for further roll over again on 30 June 2007. I met with my Bankwest Manager, \_\_\_\_\_ on 1 June 2007, to facilitate this roll over process and to increase the construction facility to cover some variations, which were being carried out. He had been the only manager handling all my business affairs for Bankwest, organising all my loan facilities and signing my many loan offers and the Bankwest correspondence I received. From 30 June 2007, Bankwest, via \_\_\_\_\_ continually promised that these facilities would be provided and construction monies (sometimes in excess of the approved limits) were continued to be advanced, albeit slow at times.

Then came the turnaround. On 12 December 2007, an email came from \_\_\_\_\_ advising of the approved additional accommodation, but with an increased interest rate and a "renegotiation fee" of \$200,000.00 (also referred to as a penalty fee or success fee) payable in the event that all facilities have not been fully repaid by 28 February 2008. (The bank knew that I would be unable to refinance a loan of this magnitude, given such short notice and over the Christmas break). The LVR, using inaccurate security valuations, and facility amounts, which were never drawn, were manipulated to show to be greater than 80% and therefore, high risk. Not surprisingly, the

figures miraculously were calculated as 80.43%. This LVR apparently provided the justification for the higher interest rates and inflated renegotiation fee. A meeting was held on site on 13 December 2007 and without any prior notice, advised my company representatives he would no longer be handling my company account and that it would, in future, be handled by Bankwest representatives and I knew neither.

On 8 February 2008, I received a letter of loan offer (dated 1 February 2008) for the provision of the additional accommodation, as outlined above, and to repay all loans by 28 February 2008, otherwise the \$200,000.00 "renegotiation fee" would apply. Bankwest only gave me twenty days to repay a loan in excess of \$12m, without any prior notification or warning. I was then contacted by on 18 February 2008, and she threatened me that if I did not immediately sign the acceptance of the above loan offer, no further construction funds, with which to complete the first stage of the development, would be advanced by the bank. I could not permit this to happen as we were so close to completing and selling stage 1. Little did I know, at this stage, that the bank never had the funds, or the intention, to provide me to finish the first stage of the Leura development.

Bankwest were guilty of the following actions:

1. They never gave me any warning that they wanted "out" of the loan (even though they internally decided in September 2007 that I had to repay all facilities by 28 February 2008);
2. Through the latter half of 2007, they continually told my company that the facility was being rolled over;
3. They were misleading and deceptive in their conduct;
4. They acted unconscionably with their conduct;
5. They deliberately breached the Banking Code of Practice;
6. They deliberately contravened the ASIC Act.

These actions by Bankwest, particularly the slow funding and the need to pull back as many loaned funds as possible, to improve their cash position, were due to the parent company, HBOS, suffering an enormous cash flow problem in Europe due to the GFC.

As a consequence, following my failure to be able to refinance the loans due to the GFC (I did obtain a loan offer to refinance all the Bankwest facilities, from Australian Unity on 28 March 2008, only to have it withdrawn 2 weeks later, as their lending book was suddenly closed, as a consequence of the GFC and subsequent Federal Government intervention) and to repay the Bankwest facilities, Bankwest proceeded to:

- o Appoint receivers to my business in October 2008;
- o Charge the excessive \$200,000.00 "renegotiation fee";
- o Charge penalty interest on the loan facilities;
- o Sell my 24 unit investment property for less than market value;
- o Evict my family from our Broadbeach home in June 2009;
- o Sell my Broadbeach, Gold Coast, home for less than market value;
- o Sell my security property (previous residence) for less than market value;
- o Sell my incomplete development property in Leura for less than market value;
- o Leave me without a penny when, in December 2007, I had real equity in my properties in excess of \$10m;
- o Proceeded to apply to the NSW Supreme Court for summary judgment against my company and me (as guarantor), but were unsuccessful.

I managed to hang on and fight off Bankwest, for as long as possible, and extend the period, of what could only be described as emotional agony, for as long as possible, but eventually Bankwest took control and took everything I owned.

#### **Involvement of the Commonwealth Bank**

The acquisition of Bankwest by CBA settled in December 2008, and it was imperative that Bankwest "tidy" its loan book prior to this date.

On 30 December 2009 CBA called for my company file **URGENTLY** from Bankwest. On the top of this file was all the information regarding my personal income protection, as I was personal guarantor to the loan. The benefits from this policy, paid due to my heart attack in 2000, were my only source of income. Coincidentally, my income protection insurance is held by Comminsure, a company wholly owned by CBA. On 5 February 2009, Comminsure wrongfully stopped the payment of my benefits immediately and without any notice.

I commenced litigation, which went on for over eighteen months. Because Comminsure had no legitimate or legal defence to this action, they capitulated only days prior to the Court hearing. My benefits were, as a result, fully reinstated.

It is obvious that the Commonwealth Bank influenced the actions of its subsidiary company, Comminsure, for its own selfish gain. The CBA conducted itself in a willful and malicious attempt to exert undue influence and pressure on me both financially and health wise. CBA thought that by depriving me of any financial resources and income they would prevent me, the defendant, and subsequently, my company, from ever contesting Bankwest, for their actions, in court. The following is **most definite**:

The CBA Group, comprising the Commonwealth Bank, Bankwest and Comminsure,

- Purposely breached the requirements of their respective industry codes when both my company and I (the customer), acted under the reasonable belief that they would comply with their respective codes;
- Took advantage of the customer when it had a stronger bargaining position;
- Forced the customer to comply with unreasonable and unfair conditions;
- Through its employees, exerted undue influence and pressure on the customer and used unfair tactics against the customer;
- Knowingly placed the customer in a position where I had limited options for obtaining the same or equivalent services from someone else;
- Conducted itself towards the customer in a different way it conducted itself with other similar business customers;
- Failed to disclose, to the customer, any intended conduct that might affect the interests of the customer, or any risks to the customer arising from the Group's intended conduct. These risks were foreseen by CBA and were not apparent to me;
- Were unwilling to negotiate term and conditions;
- Failed to act in good faith;
- Acted unconscionably; and,
- Contravened the ASIC Act and/or The Trade Practices Act.

I believe that this conduct, involving me, may have been part of the infamous "Project Magellan", a well known, wide-sweeping audit of Bankwest customers and book cleansing operation on behalf of the CBA's new fully owned subsidiary, Bankwest.

Further, at the suggestion of the insurer, I was advised that I could complain about the treatment I received from Comminsure by taking my complaint to CBA Customer Relations, which I naively did. I was led to believe they were completely independent and offered the customer a fair and unbiased "policing" of Comminsure, without delay, on behalf of the CBA Group. Contrary to their policy, and, in breach of the Insurance Code of Practice, they saw fit to remain silent for some months on this issue and then incredulously concurred fully with the insurer's unconscionable actions. Their conduct was in itself unconscionable. This also exhibits the unlawful influence by the Commonwealth Bank.

The Commonwealth Bank, and its group of companies, is, by their conduct, guilty of:

1. Breaching the Code of Banking Practice;
2. Breaching the Insurance Code of Practice;
3. Multiple contraventions of the ASIC Act. and/or the Trade Practices Act.

#### **DETAIL:**

I believe the best way to provide sufficient detail to describe the actions of Bankwest and the Commonwealth Bank, through its insurance company, Comminsure, and its Customer Relations Section, is to set out a table in chronological order showing the significant events that occurred between 2003 and 2011. This chronological table follows later in the text.

I have abbreviated this document considerably, limiting it to what I see as the significant actions, throughout this time, taken by Bankwest and CBA Group to mislead and deceive me and to identify their unconscionable actions. I also provide a simple flow chart to simplify the interaction of all the companies

I apologise for the length of this document but I believe it is the best way to provide the clearest and easiest way to describe the actions of Bankwest and the entire CBA Group.

#### **SUPPORTING DOCUMENTS:**

I am currently in the midst of litigation with Bankwest. As a precaution, I have not purposely enclosed any supportive documents, as some of the evidence has manifested itself via the court discovery and disclosure process. I can assure you, **everything** I have said can be supported with written evidence. Should these documents be required, I will be able to produce some documents on request, as they are public knowledge, and some I would be able to produce under privilege. As you would understand, I would first need to consult with my lawyer over this issue.

The bank is obviously so afraid of the entire truth being revealed, that certain employees have defied the court order to produce all the relevant documents, at the risk of being in contempt of the court. They seem to feel that they are above the law at times.

#### **IMPACT OF THE ACTIONS BY THE BANK:**

As a consequence of the unconscionable actions adopted by the GBA Group of companies, and more specifically, Bankwest, Comminsure and CBA Customer Relations, my family and I have suffered immeasurably over the past few years. The result of action taken by the CBA Group of companies can be summarized as follows:

1. I have had my business, Daleport Pty Ltd, taken from me by the receivers;
2. In December 2007, I held equity in my properties in excess of \$10m, according to the bank's own admission. I now own nothing i.e. my personal wealth was reduced by over \$10m to zero, over four and a half years ago;
3. My only source of income from my income protection insurance was terminated;
4. My properties were all sold for less than their market value;
5. In June 2008, my family and I were thrown out of our family home;
6. My family and I suffered extreme hardship due to the bank's actions;
7. My wife, my children and I suffered enormous psychological stress and damage due to the harsh and unfair treatment inflicted by the CBA Group;
8. My wife and I were put under severe stress with our health, with total disregard displayed at all times by the bank.

We were exposed to the most severe stress that could possibly be imposed by the bank and its related companies, more stress and anxiety than any man should ever have to endure.

## CONCLUSION:

In summary, I can describe the conduct of the bank and its related entities as follows:

### 1. BANKWEST:

- (A) From mid 2003 to 30 June 2007, the bank provided my company Daleport Pty. Ltd. with various funds for property investment, acquisition and development.
- (B) From July 2007 to December 2007, my Bankwest bank manager led me, by his actions and conversation, both written and verbal, to believe the bank would rollover my existing facility and increase it to accommodate some variations, which were desired for the benefit of my development. He continued to fund the development past June 2007 and often advanced funds well in excess of the approved lending limit.
- (C) During this time, while my bank manager was telling me one thing, the senior management of Bankwest, due to the financial predicament of HBOS in Europe, was looking at an exit strategy. They were looking to rid me as a client and have me repay all the loans by 28 February 2008. The manager was instructed on 20 September 2007 that the client "*NEEDS TO BE INFORMED*" about debt reduction by 28 February 2008. Bankwest were also instructed by HBOS Scotland on 16 November 2007 that "*the borrower needs to understand that we will expect to see ourselves substantially de-risked*" by 28 February 2008. Unfortunately, no one informed me or my company of this.
- (D) The first I was advised of this was by the email dated 12 December 2007. This was totally opposed to what I had been continually told by my bank manager,
- (E) No one from the bank was honest and up front with me, or clear with their intentions or instructions towards me.
- (F) They were purposely MISLEADING AND DECEPTIVE.
- (G) Therefore, by their conduct, the bank denied me the opportunity to refinance the development and my other properties prior to 28 Feb 2008, or more specifically, by 12 December 2007, and before the impact of the GFC.
- (H) The conduct of the bank in this matter was UNCONSCIONABLE.

### 2. COMMONWEALTH BANK OF AUSTRALIA:

- (A) The CBA finalized the acquisition of Bankwest in December 2008.
- (B) The CBA called for my company file URGENTLY for examination on 30 December 2008.
- (C) This was evidence of the audit performed on existing Bankwest customers and part of the book cleansing operation.
- (D) CBA exerted influence and pressure on Comminsure to take certain action.

### 3. COMMINSURE:

- (A) Comminsure, as a result of CBA influence, cancelled the payment of my income protection benefits on 5 February 2009, without good and proper reason. They were trying to exert financial pressure on me so that I was unable to defend myself against the litigation by Bankwest to protect the interests of their newly acquired company.
- (B) Comminsure collected monthly life insurance premiums for almost nine years when they were not entitled to a penny. This amounted to almost \$40,000 in premiums when, under the plan protection of my policy, they should have waived my premiums while I was disabled.
- (C) Comminsure refused to pay the interest due to me for the above premiums until my lawyer advised them that I would take legal action against the insurer if they did not pay this interest.
- (D) Being advised and aware of their position, both morally and legally, they were given an opportunity at the court ordered mediation in April 2010 to fulfill their legal and contractual obligations by promptly settling this matter without incurring further legal



expense. They refused this, in order to gain unfair advantage for Bankwest and protect the financial interests of the Commonwealth Bank.

(E) Upon receipt of the medico-legal reports, Comminsire were immediately aware of the hopelessness of their case and should have immediately reinstated the payment of my benefits. They did not do this and continued with the expense of litigation in order to protect the interests of their bank.

(F) Ultimately, Comminsire, when left with no other choice, capitulated immediately prior to having to face court and suffer the consequences of an embarrassing defeat at the hands of the legal system. They chose to settle their malicious deeds privately and, hopefully, without any public knowledge of their unconscionable actions.

#### 4. CBA CUSTOMER RELATIONS:

(A) CBA customer relations were conspirators to the whole insurance affair. They were doing the "dirty work" for Comminsire on behalf of the CBA. At all times they were not acting fairly or in good faith. They were acting in the interests of CBA and not in the interest of the customer. At no time did they act independently or in a reasonable time. They went out of their way to protect the bank and its entities.

(B) Contrary to their professed policy, the CBA Customer Relations remained silent for as long as possible, wasting many valuable months to aid the cause of Comminsire and, ultimately, the CBA Group. This lack of response was designed to apply as much pressure to me as humanly possible.

(C) It was no coincidence that they finally got around to answering my complaint immediately following my correspondence to their General Manager. They orchestrated their reply to protect their General Manager (who obviously had full knowledge of the intertwined involvement of CBA, Bankwest and Comminsire) and to try to justify the malevolent deeds of the insurer, who they knew all along, were in the wrong. They hoped that by responding in agreement with the insurer, I would be unable to continue to fight Comminsire and, ultimately, to aid and protect their newly affiliated sister company, Bankwest. They realized the futility of the insurer's argument very early in time but were hoping to deter me with their negative response.

(D) The General Manager of this section has continued, to this day, to ignore all my questioning correspondence. He has purposely chosen to remain silent in order that he might avoid having to answer some very embarrassing questions which may incriminate him.

This unconscionable conduct by the CBA Group cost the corporation well in excess of half a million dollars. This decision was not made merely by the employees, in a futile attempt to save the company money. Rather, this strategy was a conscious decision taken at the very highest level of management, for only senior management have the authority to "waste" so much money if they are pursuing a more lucrative and beneficial outcome and attempting to protect the reputation of their organization. It is envisaged that these significant decisions were made at executive management or board level.

(I should note here also, the GM Customer Relations and the head of the Complaints Section (from whom I received no reply) also conveniently holds a position on the board of the Financial Ombudsman Service (along with other prominent positions with other organizations). It appears, contrary to appearances, he considers there is no conflict of interest here).

In considering these above matters, I believe both the ACCC and ASIC should determine the seriousness of breaches made by the bank and determine the contraventions to the ASIC Act. Clearly the Codes of Practice have been ignored and should not go without notice.

I sincerely hope that my submission is of considerable assistance to the Senate Inquiry. I am keen to see an end to the bank's unconscionable conduct. I may be contacted on the above address.

Yours sincerely

## **SUBMISSION TO SENATE INQUIRY – SUMMARY OF BANKWEST LOANS**

The borrower for all the loans was my company Daleport Pty. Ltd with guarantor being me, A Walton. My loans may be summarized as follows:

### **1. LOAN FOR WARWICK FARM:**

- (a) Property Description: Warwick Farm consisted of 24 one and two bedroom residential units, and was located at Warwick Farm in southwest Sydney. It was leased to the NSW Department of Housing in February 2003 for a period of ten years.
- (b) Value of Loan: The initial loan was for \$4.0m, and was settled on 4 September 2003. At the end of September 2003, the loan reduced to \$3.0m when I paid \$1.0m in cash from a property settlement.
- (c) Security: This was provided by the property itself valued at \$6.0m excluding GST (3/7/03). It was self-servicing from the rental income.

### **2. LOAN FOR WATERLINE APARTMENT AT BROADBEACH:**

- (a) Property Description: Waterline was a four-bedroom sub-penthouse occupying a full floor on level 11. It was used as the family home and was leased from the company, Daleport Pty Ltd, who was the owner.
- (b) Value of loan: The loan was for \$2.5m and the purchase was settled on 2 December 2004, and was termed a Light Housing Loan.
- (c) Security: This was provided by the property itself valued at \$3.4m (11/11/04)

### **3. LOAN FOR LEURA DEVELOPMENT:**

- (a) Property Description: Leura site consisted of approximately twelve acres of land. It was a residence and a nursery in earlier times and was now heritage protected. There was a large 40 square, two storey existing residence, which was approved for restoration. There was also a previous nursery site occupying two acres, approximately, with approval to construct a large glass and steel framed sales building and office. There was also approval to build a development consisting of nineteen townhouses and one villa, to be constructed in three stages.
- (b) Value of Loan: The total loan was initially for \$3.7m. The loan was for \$2.0m to refinance the existing facility (mortgagee was Grenfell Securities) and \$1.7m to complete construction of stage 1 of the development, including build the nursery building and restore the existing house. (This later increased due to Stage 2 and 3 works and some variation increases).

(c) Security: This was provided by the property. It was valued at \$4.0m January 2005. Total gross realization was \$12.27m.

4. BANK GUARANTEE FOR LEURA:

(a) Description: A bank guarantee was required by Blue Mountains City Council as surety to ensure that the heritage items on the site were preserved and reinstated.

(b) Value of Bank Guarantee: The guarantee provided was \$50,000.

(c) Security: This was provided by the surplus from the other properties.

5. GOLD EQUITY RELEASE:

(a) Description: This was a come and go facility or equity line for working capital to provide funds for day to day building requirements and to cover the interest payments where required.

(b) Value of loan: This was initially \$400,000. (increased to \$900K)

(c) Security: This was my unencumbered previous home at Macquarie Links in southwest Sydney. It was valued at \$760,000 in early 2005.



FLOW CHART SHOWING CBA CORPORATION ACTIVITY

