

Parliamentary Joint Committee
On Corporations and Financial Services Inquiry
The impairment of customer loans.
Inquiry into Bankwest / CBA

Submission by Sean Butler

15th August 2015

Our case proves beyond doubt that there is corruption within a section of Bankwest and Bankwest Senior Managers including the CEO of Bankwest and the CBA have been made aware of this case and have failed to act.

I request that I be allowed to appear in person to explain in more detail and to provide proof and that Bankwest Managers and Receivers involved be called so the Inquiry can see just how corrupt this whole thing is. Our case is just one of many and Bankwest need to be brought to account.

Bankwest completed an internal investigation report into our case which was to be released however when it was done they refused to release it and appointed another manager to our accounts. They then they requested I sign a Deed releasing them and their receivers from any claims we have against them and a confidentiality clause in return for them wiping off an alleged debt of \$4.1m. See letter in **Annexure A**. I request this inquiry ask Bankwest to release their report into our case. No bank wipes a debt of \$4.1m off unless there is a very good reason!

The debt is not able to be substantiated; it's a result of fees, dishonesty and a cover-up on their part so they have not come after me for it to date however we don't know what they will do next and this has gone on for over four years. Our losses as a result of this case are in the vicinity of \$10m.

When I refused to sign the deed they cut off all communication with me. They have not released the report. The Bankwest receivers have not released my companies' books and records even though they are legally bound to do so. Bank accounts I have finally received (and only after years of trying and as a result of media attention) show funds of \$575,000 being taken from just one account with no explanation. It's theft. I have asked them to let me know where the money went but they refuse to tell me.

There was an offer of \$14m for one of our properties from a banker involved which would have cleared almost all our debt. The banker was instrumental in putting my company into receivership, another interested party was told they couldn't place an offer to buy it off the receivers and the banker purchased the property off the receivers for \$9.5m. This is corruption. I can provide undisputable evidence in the form of emails and letters to prove this.

My case isn't isolated and some involved should be in jail. White collar crime in Australia needs to be investigated and cleaned up.

If this inquiry finds dishonesty by Bankwest or their Receivers, as I have no doubt they will, then an **Independent Arbitrator** should be called in to look at the facts (at Bankwest's expense) and action taken as required. It's as simple as that. The Government needs to act.

I address the Terms of Reference:

a. **Practices of banks using a constructive default:**

In our case Bankwest demanded a new valuation of our property just five months after a previous Bankwest valuation. The new valuation was 22% less than the previous valuation.

Bankwest then progressively increased their interest rate margin and subsequently demanded repayment of all funds even though we had a profitable cash flow business and had prior to all this happening not ever missed a payment in the term of the loan, over 8 years.

Our interest rates subsequently went from 6.13% to 18.81% a situation of absolute gouging by Bankwest.

b. **Role of property valuers:**

Lighthouse Hotel Bunbury WA. Valuers all appointed and instructed by Bankwest:

Valuation November 2007 \$20,000,000

Valuation November 2009 \$14,740,000

Valuation June 2010 \$11,405,000

Difference \$ 3,335,000 or 22.6% less than just seven months earlier.

(A few months later we received a cash offer for \$14m proving this valuation was too low).

We had to pay for the cost of all the valuations.

Buildings including a 70 room Hotel, restaurant, function rooms and indoor pool that were valued at \$11m five years earlier and that we had spent \$2.3m substantially refurbishing were discounted to just \$3.42m.

I attach in **Annexure A**, a letter I sent to Bankwest querying the valuation and requesting the valuation instruction. Bankwest refused to give me a copy of the instruction even though we paid for the valuation.

c. **Punitive clauses:**

Bankwest demanded we sign a Deed of forbearance. The terms of the Deed included:

- 1) \$200,000 Bankwest fee to extend facilities just 5 months. (How unfair is that!)
- 2) Default rate of interest 18.81% if not repaid as agreed.
- 3) We pay for new valuations.
- 4) We pay all legal fees.
- 5) Confidentiality clause... So we can't tell anyone what Bankwest is doing to us.
- 6) Us releasing Bankwest, its employees, officers, advisors and agents from all claims we have against them.

This Deed agreement was also subject to us paying all interest on all our loans which Bankwest knew we were capable of. The fact that this was included in the Deed indicated they knew we were solvent; after all we had an eight year history of paying interest in time, (until all this happened).

It's very significant that this deed included a release, an attempt by Bankwest to prevent us ever exposing their conduct:

Exerts from Deed of forbearance prepared by Bankwest dated June 2011:

11.1 Release

“The Borrowers and the Security Providers absolutely and irrevocably release, waive and forever discharge the Bank and its employees, officers, advisors and agents from all or any claims which the Borrowers and the Security Providers have or, but for the execution of this deed may have held against the Bank and/or its employees, officers, advisors and agents arising from or otherwise connected in any way with the matters the subject of this deed including without limitation, the Lighthouse Debt, the Butler Constructions Debt and the National Hotel and Mr (*name withheld.. a banker involved*) Debt, the Facilities and the Security, whether such Claim was known or unknown to the parties at the time of this deed.”

11.2 Bar

The Bank and any of its employees, officers, advisors and agents may plead this deed as a bar to any Claims made or action or proceedings commenced by the Borrowers or the Security Providers (or anybody claiming through the Borrowers or Security Providers) against the Bank or any of its employees, officers, advisors or agents”

In other words we were told to sign away ALL our rights even though the bank knew we were fully capable of servicing the loan and paying it down as properties were sold and that if we didn't agree to waive all our rights as requested above receivers would be called in!

Bankwest was attempting to stop us ever taking action against them or anyone else involved for illegal conduct. We were advised strongly by both our Lawyer and Accountant NOT to agree to the unconscionable clauses and if we had would never be able to bring this case to the attention of the Authorities or this or other Government Inquiries such as this.

How many businesses has Bankwest had such Deeds demanded and then the owners sign?

This Inquiry should ask this question of Bankwest Management. Our case is proof of what's been going on.

d. Role of insolvency practitioners:

The Receivers were retired on 14 August 2014. I have been unable to get them to provide a summary of their costs and fees. In the lead up to this inquiry I have asked them again to release all books and records to which I am legally entitled but to date they have refused. I have taken this matter to ARITA, the Australian Restructuring Insolvency & turnaround Association (that name is ironic) in the hope of getting them to act.

The withholding of our companies books and records after the end of a receivership is illegal. Bankwest is aware of this but has also failed to act

See **Annexure C** item 6 attached submission.

“This is the most corrupt industry in town”. Quoted directly from my Lawyer. What other industry can act in secret, charge whatever they want and be accountable to no one? These thieves lied to sack me from my own profitable business and then went on to charge over \$110,000 a month to do my job! They raked up fees of over \$2m just to sell two properties and Bankwest then went on to charge us 18% on these fees. Five years later both Bankwest and their corrupt receivers refuse to tell us what went on. **These are nothing short of white collar criminals and need to be brought to justice.**

Bankwest receive _____ was called before the previous Senate inquiry in 2012 in response to my submission. He requested that his evidence be heard in secret. Senator Cameron asked him if all his legal advice would be made available to the Senate and he said he would have to get legal advice on that. This is all documented in Senate records.

Google _____ to see a YouTube video of him at the Senate

Watch in particular the section from about minute 6 onwards. In my opinio _____ **is clearly trying to hide what’s happened.** Why does he want secrecy and why doesn’t he release all the documents requested by Senator Cameron. He has to date refused to release the documents. I request this inquiry get _____ to release these documents and to find the truth.

e. Implications of Financial System Inquiry:

That Inquiry did not investigate the Bankwest takeover and its implications as this current inquiry can. Several previous Senate Inquiries have exposed corruption particularly within the Receivership industry but nothing has been done. Further investigations need to be made to see if Commonwealth / Bankwest acted dishonestly or unconscionably. If it is found again that they have then a full investigation at the Expense of CBA should be conducted and compensation paid to victims by CBA as required.

f. Extent to which borrowers are given opportunity to rectify:

In our case when all this happened we ended up one or two months behind in interest payments but only after Bankwest had jacked up fees and demanded all their money back. Our accountant advised us to spend money getting the property ready for the impending Bankwest fire sale so we did. Bankwest had made it perfectly clear what they were going to do so we saw it coming (at a time when all interest was being paid).

Going ahead our business was at its most profitable level ever and our accounts and cash flow showed a very strong situation. The cash flow from the business would have more than paid all interest if we had not been placed in receivership. Once in receivership interest rates went up from about 6% to 18% and receiver fees of over \$110,000 a month kicked in. Further to this the receivers installed a bunch of upstart young 20 something accountants to run a Hotel (at a cost of over \$500/ hr each for three of them) They had no idea what they were doing or how to run a Hotel and the profitability and value of the once strong business was destroyed by their incompetence and fees.

Bankwest was provided with accounts and bank statements confirming our profits were at record levels but they installed their receivers and jacked up their fees anyway.

g. Provision of a reasonable notice to borrower to repay.

We were given five months which in itself is reasonable but it was the conditions of that period that we were advised by our lawyers not to agree to. **(As described in item c. above)** including a \$200,000 fee and secrecy conditions demanded by Bankwest. In effect we were asked to sign all our rights away.

h. Appropriateness of loan to valuation ratio as a mechanism to default:

Only appropriate if rules are fair: Bankwest was clearly playing unfair.

In our case Bankwest reduced substantially BOTH the loan to valuation ratio and the valuation. Previously Bankwest would lend to 80% (our LVR was only about 50%) but they reduced that to about 65% and then almost halved the valuation. We still could have survived even that as we had some houses we could sell to reduce debt and our business was at record profit levels just before they appointed receivers. We were not given a chance.

i. Conditions and requirements to be met prior to appointment of receiver:

Refer item c. above

Bankwest wanted \$200,000 and for us to sign a secrecy clause.

Clearly unconscionable and grossly unfair.

SUMMARY

My case proves beyond doubt that sections within Bankwest CBA are corrupt and Senior Management are involved.

I have been told that this will be the nineteenth inquiry into the Banking system in Australia in recent years and that all previous inquiries have uncovered dishonest conduct but little action has been taken.

This inquiry will show dishonest conduct once more. The Government needs to act.

They held a Royal Commission into the Construction Industry... The sums of money and amount of corruption exposed in the Banking and financial services sector far exceed any misconduct in the construction industry. If the government are genuine in their concerns over corruption in Australia there is only one thing to do:

Hold a Royal Commission into Banking and Financial Services.

Attached below:

Annexures:

- A Bankwest valuation artificially low.
- B Bankwest settlement proposal and gag request.
- C Senate Inquiry Submission: Inquiry into the post-GFC banking sector
By Sean Butler 30th May 2012

Annexure A:

Bankwest valuation artificially low

Annexure B:

Bankwest settlement proposal and gag request

Annexure C:

Senate Inquiry Submission Inquiry into the post-GFC banking sector

By Sean Butler
30th May 2012

Summary:

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

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

1) ADDRESSING TERMS OF REFERENCE:

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

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

2) MY HISTORY

I am a Registered Builder in Perth Western Australia.

Started in business in 1989.

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

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

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

3) **EVENTS SUMMARY**

Bankwest valued our Lighthouse Hotel Property in Bunbury WA:

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

Bankwest interest margin on our facilities:

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

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

Received a cash unconditional offer to sell:

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

Our business partner who is a Banker:

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

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

4) **DEED OF FORBEARANCE**

Bankwest then presented a Deed of Forbearance:

Document with main pages attached.

Note conditions:

- 7) \$200,000 Bankwest fee to extend facilities just 5 months.
- 8) Default rate of interest 18.81% if not repaid as agreed.
- 9) We pay for new Valuations.
- 10) We pay all Legal fees.
- 11) Confidentiality clause... So we can't tell anyone what the bank is doing to us i.e. they can screw us and we have to keep it secret.

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

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

5) **OUR PROPOSALS**

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

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

6) **APPOINTMENT OF RECEIVERS**

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

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

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

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

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

7) **BOTCHED SALES PROCESS**

Six weeks after their appointment the Lighthouse property was placed on the market on 31 August 2011 by expressions of interest for no price listed. I and another party put in an offer to buy it at a price that effectively matched the price my Banker business partner had offered Bankwest being \$13.3m. Our offer was a genuine offer but was not accepted because amongst other things it was subject to finance and the sale of another property. I then approached another syndicate who were in the process of putting in another offer for \$14m but they were told by the selling agents it had sold. We subsequently found out (by accidental release on their part) that they had accepted \$9.5m from our Banker Business partner being \$4.5m less than what he had agreed to pay just 6 months

prior. This is extremely unethical, unjust and I believe in breach of his duties as a director and business partner.

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

8) **BANKWEST SECRECY**

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

9) **BANKWEST & _____ CHARGED US \$2.5m**

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

10) **IT'S WIDESPREAD**

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

11) **REGULATORY BODIES POWERLESS**

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

12) MEDIA

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

13) SUMMARY

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

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

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

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

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

14) I WILL GIVE EVIDENCE AT SENATE INQUIRY

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

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