

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

Date: 24 May 2012

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

Dear Senators,

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

Introduction:

In 2005 Bankwest provided me with a loan of \$8.19 million to refinance land and construct 24 residential units on the mid-North coast of NSW. In the early stages of the GFC, Bankwest failed to act to the changing property market and prevented me from selling units at market value. As the full impact of the GFC was taking effect, Bankwest revalued the units and introduced unachievable special conditions onto the loan. Bankwest placed the loan into default and increased the interest rate to 17.51%.

I obtained alternate loans and offered to refinance the units, and Bankwest agreed to a settlement. However, the Bankwest later reneged on the agreement and took possession of the units. Bankwest then sold the units below market value and, my understanding is, the bank received less than my proposed refinance amount.

Detail:

- In 2005 I made enquires with a number of banks to obtain a construction loan to build 24 residential apartments on waterfront property located on the NSW mid-North Coast. I met with a Bankwest officer who offered to refinance the Forster property and fund the construction. The bank officer assisted me with completing a number of application forms and I was advised that Bankwest required \$3 million in presales in order to proceed with the loan.

- The loan was a Bankwest Commercial Advance facility. The limit was initially \$8.19 million (plus another \$900,000 for capitalised interest). The interest rate was Bank Bill Rate plus 2%.
- In late 2005 I had \$2.2 million in presales. The bank officer proposed that I should start construction and they would use my unencumbered family home in Sydney as collateral to make up the shortfall. The bank officer advised me that the family home would be released when they revalued the units once the construction was complete. The bank officer emailed me indicating that the final value of the units was \$15 million.
- I borrowed the funds through a company and I was the sole director. My wife and I were required by Bankwest to provide personal guarantees. Bankwest were aware that my wife had no involvement in the development.
- Construction commenced in mid 2006. I had no prior experience in property development. Bankwest recommended the Project Manager and Quantity Surveyor. During 2007 the construction work was behind schedule for a number of reasons, including disputes regarding the timeliness of drawdown payments by Bankwest to the builder.
- The Occupation Certificate was issued in February 2008. The pre-sales settled and Bankwest was paid approximately \$2.2 million in net proceeds. In addition, another 3 units were sold and Bankwest was paid approximately \$2 million in net proceeds. However, the bank refused to release the mortgage on my family home. I was told by the bank officer that the GFC was creating issues inside the bank. He told me that the best thing I could do was to sell more units or to refinance my loan.
- My facility agreement had a clause requiring me to obtain the Bank's permission to sell any units for a price that was less than 95% of the bank's valuation. Throughout 2008, with the onset of the GFC, the property market deteriorated and potential purchasers demanded larger discounts.
- In June 2008 I requested that Bankwest provide me with permission to sell a number of the units at a 20% discount to the bank's valuation. My request was refused. The bank officer told me that 'head office' would not allow the discount. Bankwest reminded me that I was only able to sell units at a 5% discount to the bank's valuation. This was despite the fact that my lending ratio (LVR) was below 65%, so there was sufficient equity to justify a larger discount.
- In June 2008 I received a variation letter from Bankwest. The variation letter contained a new special condition –

"A minimum of \$1,500,000 from net sale proceeds is to be achieved quarterly commencing 30th September 2008".

- On 19 Sept 2008 I emailed Bankwest for permission to run a Spring Sale campaign with prices at 15%-20% discount to bank valuation. The bank officer provided conditional consent for the campaign as long as units exchanged by 30 September 2008, a period of 10 days, and settled by 30 October 2008. It was not reasonable for the bank to expect me to sell units in just 10 days.
- On 29 October 2008 I received a 'breach letter' stating that I had breached the special condition and failed to pay \$1.5 million by 30 Sept. I disputed this with the bank officer because I was not initially aware of the special condition and, on reading the special condition, I had understood that it commenced on 30 Sept 2008 and therefore the \$1.5 million was due by 31 December 2008. The bank officer told me that Bankwest was 'cleaning the books' and there was nothing he could do.
- In November 2008 I received another variation letter from Bankwest in which they amended the wording of the special condition that I had previously disputed. I believe the bank amended the wording in their favour to ensure that I could be put into default at the end of the month. The condition was changed to –

"A minimum of \$1,500,000 from net sale proceeds of the Secured Real Property is to be achieved quarterly, and be applied in permanent reduction of your Outstanding Amount, commencing 30 September 2008."

The variation letter also contained the following condition –

"You must ensure that all future sales of individual units in the Secured Real Property are to be at least 90% of our current panel valuation. Sales for less than 90% of our current panel valuation are to be approved by us."

And, there was a Financial Undertaking condition, requiring the Loan to value ratio (LVR) to remain less than 65%.

- Initially I refused to sign the variation letter because I did not agree with the special condition. My accountant and I met with the bank officer and his regional manager. We argued that Bankwest could not impose a special condition retrospectively. The bank officers said that if I did not sign the variation letter the bank would take action against me.
- On 2 December 2008 I received an offer to sell 6 units for approximately \$4 million. I put this offer to Bankwest. In January 2009 I still had not received an approval from the bank and the purchasers withdrew.
- In December 2008 a bank officer told me that they were going to send a bank appointed valuer to inspect the remaining 18 units. Later the bank officer informed me that the gross value of the individual units was \$12,275,000 (incl. GST) but the value was only \$8,000,000 if the 18 units were sold in-one line. I was surprised because I had just been offered \$4,000,000 to sell 6 units in-one line.

- On 2 January 2009, Bankwest raised the interest rate on my facility from 6.7183% to 17.51%. I was not immediately notified of the interest rate increase and I noticed it on my bank statements a few weeks later.
- In February 2009 I started dealing with the Credit & Asset Department of Bankwest. I emailed a bank manager with a sales offer I had received to sell 5 units at a price that was a 30% discount to the bank's valuation. The bank manager rejected the sales proposal, however he emailed me saying the bank would allow units to be sold at a 25% discount to the bank's valuation.
- In May 2009 I had a meeting with Bankwest managers in which they acknowledged that the interest rate of 17.51% was not helping my situation. I told them that being on a penalty rate was also preventing me from being able to refinance the facility.
- On 18 June 2009, two of the Bankwest managers telephoned my son and left a voicemail message (I was recovering from a period of hospitalisation and was not contactable). In the voicemail message the bank manager states "its sitting with us since December and we've done nothing to help this borrower and I actually feel sad about that". The bank managers discuss the fact that the penalty interest rate is not helping the situation and the bank is going to reduce the interest rate to 8%. They seemed apologetic that the bank could not refund any of the default interest. I made a recording of the voicemail message. The bank manager states "Let them understand we'll work with you, without admitting any obligational liabilities." A transcript of the voicemail message is attached.
- In June 2009 Bankwest reduced the interest rate to 8.97%. But in October 2009 Bankwest again increased the interest rate to 16.61% and by June 2010 the interest rate was 18.26%. In early 2011 the interest rate was increased further to 18.81%.
- In mid 2009 a Bankwest manger encouraged me to sell my family home to my children. The bank manager said this was so they could deal with the units in Forster "on a commercial basis".
- I then spent a significant amount of time and money attempting to refinance my facility. Bankwest claimed that I now owed approximately \$8 million, even though I had already repaid approximately \$4.2 million. This was because of the default interest capitalising to the loan.
- In October 2009 I was able to secure conditional approvals for residential refinance loans totalling approximately \$5.2 million and I made an offer to Bankwest to refinance my facility for \$5.2 million. I was called in to the Bankwest head office for a meeting with the bank managers.
- In December 2009 the bank manager emailed me saying that the \$5.2 million refinance would be accepted as full payment of my facility and the bank would discharge their mortgages over my family home and the 18 remaining units. The bank manager said they would send me a settlement agreement.

- In December 2009 Bankwest sent me a Deed of Forbearance that contained significantly different terms to anything we had discussed and agreed to. Bankwest included my wife and my children as parties to the Deed. The Deed laid claim over any future income or profits that myself, my wife and my children would make for the next 10 years. I was extremely disappointed by the terms of the Deed and I told them it was unethical.
- This was followed by lengthy negotiations with Bankwest and their solicitors. Bankwest would often take weeks to respond and they would not budge on many of the terms. A number of times I requested that we meet to discuss the terms of the Deed, but they would always refer me to their solicitors. Bankwest was not commercial in their approach to the settlement that we had agreed on.
- Eventually the bank agreed to remove my children and reduce to forbearance term to 3 years. In June 2010, approximately 6 months had passed and I felt that I had no other option but to sign the Deed.
- The Deed of Forbearance gave me until 19 August 2010 to complete the refinance of \$5.2 million. The first refinance loan for 4 units and Bankwest was paid approximately \$1.25 million. The remaining balance of our agreement was then \$3.95 million against the 14 units and my family home.
- Bankwest frustrated my efforts to complete the remaining refinance by 19 August 2010 by refusing to provide confirmation to the new lenders of the refinance amount required (\$3.95 million), that no further debts were owed and that the refinance was by mutual agreement.
- Following 19 August 2010 Bankwest indicated that they were still willing to accept the refinance and on 31 August 2010 the bank manager sent an email to my finance broker confirming the refinance payout figure of \$3.95 million that they would accept to discharge all of the remaining securities.
- In September 2010 I received conditional approval from a lender for a loan of \$4m over the remaining 14 units and my family home. My finance brokers told me that banks were cautious of refinancing Bankwest loans and this would make obtaining final approval difficult. I regularly provided Bankwest with updates on the progress of the refinance.
- Bankwest would not consider the sale of any units during the Deed negotiations and after it was signed. In October 2010 I sold one of the units that had just been refinanced to another lender. The unit was sold for \$599,000.
- In early December 2010 another lender issued final approval for a \$4 million loan to refinance the remaining Bankwest security. I spoke to Bankwest and the bank manager confirmed by email that they would prepare for settlement. However, in late December 2010 Bankwest indicated there was an issue on their side and that they were going to delay the settlement until the New Year. In January 2011, Bankwest reneged on the agreement. The bank manager told me that because I had managed to sell a unit for

\$599,000 Bankwest thought they could get more money now if the bank took possession and sold the units.

- In early 2011 Bankwest sent a valuer to inspect the units. I was not provided with any details of the valuation. The valuer was well aware of my recent unit sale \$599,000.
- On 29 April 2011, I received a formal demand letter from Bankwest for payment of \$9,319,839.37 by 3pm on 29 April 2011 (the same day). And then on 18 May 2011, I received a Notice of Appointment of Receiver from Shaw Gidley.
- I then initiated court proceedings in the NSW Supreme Court against Bankwest with the intention of enforcing the settlement of the balance of the refinance, being \$3.95 million.
- I had to borrow money from my family to fund the court case, but by September 2011 I could no longer continue. I had no option but to agree to a settlement with Bankwest. In the settlement Bankwest took possession of the remaining 14 units, and they kept the \$5.45 million already paid to them from unit sales and refinancing. My wife disputed the validity of the bank's mortgage over her share of our family home with the Financial Ombudsman Service. Bankwest agreed to discharge our family home in return for an additional one-off payment to the bank of \$475,000. My wife and I were required to sign a Deed of Settlement and Bankwest retired the Receiver.
- The Receiver informed me that the bank had agreed to an offer to sell the 14 units in one line for \$4 million. I understand that the purchaser then on-sold the units prior to settlement to individual investors.. An RP Data search shows that the 14 units were sold to individuals in October 2011 for a total of \$4.4 million.
- From the \$4 million sale price, Bankwest would have deducted GST, real estate agent's commission, receiver's fees and legal fees. So to add insult to injury, I believe Bankwest sold the 14 units in October 2011 and they received much less than the \$3.95 million balance of the refinance that we had previously agreed..

Conclusion:

I am now 65 years old. When I arrived in this great country 45 years ago I quickly learned that the lucky country was a place where a person would get a fair go. When I signed a loan agreement with Bankwest it was a partnership, but during the GFC the bank did not act reasonably.

Bankwest denied my right to sell my property at current market value. Rather than working with me, Bankwest focused on putting my loan into default. At a time when the Reserve Bank was slashing interest rates to support the economy, Bankwest increased my interest rate to 17.51%. Bankwest failed to make timely decisions; instead they passed the buck from manager to manager.

In the end, greed got the better of Bankwest and they eventually reneged on our agreement. Bankwest then sold the units below market value and left my family with nothing but debts and legal fees.

I am now a financial burden on my children and the Government.

Affidavits and exhibits were lodged with the NSW Supreme Court, Case Number 2011/165163.

Thank you for taking the time to read my statement.

Yours Faithfully,

Great Lakes Developments Pty Ltd

Attachments:

Attached is a transcript of the voicemail message left by the two Bankwest managers. An audio file is available.

Thursday 18th June 2009

Voicemail messages

You have two saved messages

Message received today at 2.33pm

Mr X: Hi [name], I was just going to ring you back and discuss something else with you but we'll do that later, when you phone in, thank you. It's Mr X from Bankwest. Thanks very much, bye bye.

Message received today at 2.32pm

Mr X: [name], its Mr X and Mr Y from Bankwest, if you wouldn't mind phoning us back it would be great. I'm actually going to get Mr Y to give you your number because I'm just running in and out of discussions this afternoon, so if I'm not here he'll pick it up from here and can come and get me, so Mr Y if you could just leave your number there

Mr Y: Yep, yep. You can get me on 8299 XXXX.

Mr X: Thank you, I'll talk to you again [name]. Incidentally our people were up there yesterday looking at Wallis Lakes so, ah, we'll be able to chat to you about that. Ok thanks bye.

Mr Y: Bye

Mr X: So um

Mr Y: I'll let them know what

Mr X: Well look, um, if you get a phone call, um, and you discuss about it, just, just keep the phone call in-line with the discussion. You know, we're happy to help, but we can't, we don't expect to write this off

Mr Y: Yeah sure

Mr X: We're happy for you to continue with a housing loan, we don't [?] to agree to do that. We'll get it bumped to the housing loan rate, later. Um, in short, quickly

Mr Y: Yep, yep, yep

Mr X: And we're going to reduce the full interest rates...

Mr Y: Yeah, yeah most definitely

Mr X: And we're thinking, currently, at eight percent

Mr Y: Oh, the housing loan will be less than that

Mr X: And we think the housing loan will be less than that once we get it structured properly.

Mr Y: Yep

Mr X: Um so yeah, just go ahead and talk to him, you understand what we do, try to work with them. Um and we'll get that document to be done, exposure level is under eleven, under fifteen, so we can do all that here

Mr Y: So, I'm just thinking how realistic is a in-one-line sale

Mr X: Well have you really pushed it and, you know, you've got to get an agent to keep looking for you, get it done and free [name] up to do something else, that's all the risks settled

Mr Y: Yeah exactly

Mr X: And as, as, at the weakest and lowest point, the kids have probably encumbered their assets to help this project, whereas you know, its sitting with us since December and we've done nothing to help this borrower and I actually feel sad about that

Mr Y: Yeah sure

Mr X: And for that I'm prepared to do a cheaper interest rates than eight percent, I think we owe them something

Mr Y: Yeah, well at the moment we're giving them eight... eight point three

Mr X: I'll have a talk to my colleagues, and my colleagues have something to think about. You've got sixteen default rate, there's no emotion about the fact that's hurting. If you're going to write money off, that sixteen percent doesn't reduce your write-off , it increases it probably.

Mr Y: Yeah it just makes the matter worse. So yeah, that will effectively half their interest rate

Mr X: And, we would like to do it retrospectively but we can't, its just impossible inside this bank

Mr Y: Yep. Because you know your...

Mr X: But what we can do, is say seven percent, seven six... and you get one percent back every month

Mr Y: Yep. So you want to look to reduce the loan where it is now?

Mr X: Well we give them eight and if we've got to go to seven we go to seven. But start at eight, I mean, don't give them five

Mr Y: No no no, I'll say, look this is where it is... we've halved, we've effectively halved their interest bill

Mr X: But it doesn't mean they've recovered interest paid now, it doesn't compensate them for the eight percent burden they've covered for six months .

Mr Y: No

Mr X: I couldn't give them back that.

Mr Y: No, no, no

Mr X: Let them understand we'll work with you, without admitting any obligational liabilities

Mr Y: Yeah sure

Mr X: And how in the hell I'm going to get two million approved I've got no idea

Mr Y: Against a one and a half million dollar property, yeah

Mr X: If we don't write half a million off now, we can right it off later

Mr Y: Yeah for sure... better than, you know, writing off eight and a half

Mr X: Yeah, you know, that's my very basic thinking. I think it's the right sort of thinking. I don't think these blokes are crooks.

Mr Y: No, I think they're partially a vicMr Y of the Mr Yes

Mr X: Hmm, and we haven't helped them at all

Mr Y: No

Mr X: Which makes me sad because I think that as, as a good corporate citizen... and when things just [?] up, stand behind the rules on paper and say these are what the rules are. SomeMr Yes that's what you've got to do...

Mr Y: Yep

Mr X: And if it's litigious or if you've got to defend because you're under a lot of loss and you can't fix that loss

Mr Y: Yep

Mr X: Eight percent on what, eight million, that's a lot of money in six months

Mr Y: That's a lot of money. I mean, well, if they stayed on the sixteen point six, between now and, um

Mr X: Tell them we've already done it, we've already changed it, Monday, already did it Monday

Mr Y: Over two million bucks in interest over the next eighteen months they were repaying on the default rate, and on the um, on the eight point three then it comes down to about nine hundred and seventy thousand. So we've still already saved them over a million bucks

Mr X: [?] months

Mr Y: For the next eighteen months. If we get the bill for the last eighteen...

End of Voicemail message